

NAVAJO NATION
CODE
ANNOTATED

Titles 1 thru 24

NAVAJO NATION CODE ANNOTATED

Titles 1 to 4 appear in this volume

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Title 1

General Provisions

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GENERAL PROVISIONS

Chapter 1. Navajo Nation Bill of Rights

Section

1. Other rights not impaired; deletion or abridgment only by public referendum
2. Equality of rights not abridged by entitlements, benefits or privileges; nor by affirmative action necessary to support rights of the Navajo People to economic opportunity
3. Denial or abridgment of rights on basis of sex; equal protection and due process of Navajo Nation law
4. Freedom of religion, speech, press, and the right of assembly and petition
5. Searches and seizures
6. Right to keep and bear arms
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8. Double jeopardy; self-incrimination; deprivation of property
9. Cruel and unusual punishment; excessive bail and fines

United States Code

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

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

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

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

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

Annotations

1. Authority of Indian governments

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

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

2. Tribal immunity

“We disagree with TBI’s position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1–9, nor 7 N.T.C. § 204(a) explicitly author-

izes suits against the Navajo Nation. [. . .] . . . [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [. . .] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe’s immunity from suit.” *TBI Contractors v. Navajo Tribe*, 6 Nav. R. 57, 61 (Nav. Sup. Ct. 1988).

3. Property interests

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

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

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

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1 N.N.C. § 2

History

CD-59-86, December 11, 1986.
CO-63-67, October 9, 1967.

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

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Annotations

1. Purpose

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

2. Bills of attainder

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

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

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

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

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

3. Tribal immunity

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

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

Recognition, enactment, lawful implementation and enforcement of provisions for specific entitlements, benefits and privileges based upon membership in the Navajo Nation or in other recognized Tribes of Indians and affirmative action in support of Navajo or other Indian preference in employment and business contracting or otherwise necessary to protect and support the rights of

1 N.N.C. § 2

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Navajo People to economic opportunity within the jurisdiction of the Navajo Nation, shall not be abridged by any provision herein nor otherwise be denied.

History

CD-59-86, December 11, 1986.

Library References

Civil Rights ☞1033(3), 1041, 1234.
Indians ☞6.2, 32(4.1).
Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights §§ 18, 20, 23 to 24, 64 to 65.

Annotations

1. Tribal immunity

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

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

2. Property interests

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

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

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

History

CD-59-86, December 11, 1986.

CF-9-80, February 7, 1980.

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

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

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

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

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

“4. No provision was made in the Navajo Bill of Rights for equal protection of the laws for both men and women; and

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

Library References

Civil Rights ☞1011.
Constitutional Law ☞82.5, 83(1), 86, 197 to 203, 209 to 250.5, 251 to 320.5.
Indians ☞6.2, 32(4.1).

Westlaw Topic Nos. 78, 92, 209.
C.J.S. Civil Rights §§ 2, 6 to 7, 9 to 10, 19, 21.
C.J.S. Constitutional Law §§ 409 to 431, 455, 461 to 467, 470 to 481, 501, 503, 505, 511

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1 N.N.C. § 3 Note 4

to 513, 518, 540, 557, 576 to 581, 585, 587, 596, 612, 614 to 618, 700 to 773, 775 to 912, 916 to 917, 919 to 1348, 1350 to 1396, 1399 to 1401, 1405 to 1427.

C.J.S. Right to Die § 2.

C.J.S. Zoning and Land Planning § 23.

Annotations

1. Interpretation

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

2. Presumptions

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

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

3. Tribal immunity

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

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

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

4. Due process

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

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

"This court has noted that the concept of due process was not brought to the Navajo Nation by the Indian Civil Rights Act nor the Navajo Bill of Rights. Instead, due process is fundamental fairness in a Navajo cultural context." *In the Matter of the Estate of Goldtooth Begay #2*, 7 Nav. R. 29, 31 (Nav. Sup. Ct. 1992).

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

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

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

"An elected official does not have a property right in public office. The office belongs to the voting public. Katenay's due process rights do not stem from his position as a holder of elected office. His due process rights are derived from

1 N.N.C. § 3

Note 4

2 N.T.C. § 4005, which gives him the right to explain to his constituents the grievances against him and to be voted out of office, or retained, by persons who were present during his explanation." *In re: Removal of Katenay*, 6 Nav. R. 81, 85 (Nav. Sup. Ct. 1989).

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

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

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

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

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

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

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

5. Contempt proceedings

" . . . [N]avajo courts must still afford due process protections in direct contempt proceedings. The judge must advise the contemnor of the charges and give the contemnor an opportunity to explain the contemptuous conduct. The order of contempt must show that the judge saw

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or heard the conduct constituting the contempt and that the contempt was committed in the presence of the court. The order must also state the facts constituting the contempt and the punishment imposed." *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

6. Trial procedure

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

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

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

7. Notice

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

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

"We hold only that the forfeiture of an automobile demands notice and a hearing. Navajo court proceedings must comply with the Navajo Nation Bill of Rights and the Indian Civil Rights

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1 N.N.C. § 4

Act, and as such, we must ensure compliance with procedural and substantive due process before someone is deprived of their private property.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

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

8. Retroactive and ex post facto laws

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

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

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

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

9. Statutory due process rights

“However as in *Katenay*, a statutory scheme can be the source of due process rights for an elected official. [...] There are a number of basic protections that the Navajo Tribal Council should afford while placing a Chairman or Vice Chairman on administrative leave. These are: (1) the Navajo Tribal Council must act in a properly convened session with a quorum as established in the Navajo Tribal Code; (2) an agenda must be properly adopted by the Council,

although procedures for presentation of resolutions and for voting on resolutions are within the power of the Tribal Council; (3) the resolution placing a Chairman or Vice Chairman on administrative leave must pass by a majority vote of the Navajo Tribal Council present, [...]; and (4) the resolution placing a Chairman or Vice Chairman on administrative leave must not be a bill of attainder.” *In re: Certified Questions II*, 6 Nav. R. 105, 119 (Nav. Sup. Ct. 1989).

10. Jurisdiction

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

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

11. Vagueness

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

12. Civil judgments

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

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

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

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

1 N.N.C. § 4

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History

CD-59-86, December 11, 1986.
CO-63-67, October 9, 1967.

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

Cross Reference

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

“Whereas:

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

Library References

Constitutional Law ¶84, 90, 91.
Indians ¶6.2, 32(4.1).
Westlaw Topic Nos. 92, 209.

C.J.S. Constitutional Law §§ 461 to 462, 466,
513 to 517, 539, 542, 612 to 629.

Research References

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

Annotations

1. Freedom of press, generally

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

2. Tribal immunity

“We disagree with TBI’s position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe if a violation of civil rights is assert-

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

§ 5. Searches and seizures

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

History

CD-9-86, December 11, 1986.
CO-63-67, October 9, 1967.

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

Library References

Indians ¶6.2, 32(4.1).

Searches and Seizures ¶23, 107, 113, 126.

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1 N.N.C. § 7

Westlaw Topic Nos. 209, 349.
C.J.S. Searches and Seizures §§ 3, 5, 9 to 12,
14 to 15, 24, 29 to 30, 32, 34, 47 to 48, 102,

139 to 143, 148 to 154, 157, 174, 176 to
181, 187, 189, 236.

Annotations

1. Construction and application

“The Navajo Nation Bill of Rights (1 N.N.C. § 5 (1995)), like the Fourth Amendment to the United States Constitution, and Section 1301 of the Indian Civil Rights Act, protects the right of the people to be secure in their persons and property against unreasonable searches and seizures of government, including unreasonable arrest and detention. A person may not be subject to incarcerations except by clear authority of the law. A person is entitled to prompt judicial determination of probable cause soon after arrest, but in no event later than thirty-six (36) hours, if in custody during business days, or forty-eight (48) hours if on a weekend or holiday. The probable cause determination examines whether arrest and detention are justified. However, a determination of probable cause only justifies initial arrest and detention incident to the arrest. When pretrial release is opposed, the question then becomes whether the defendant, if release, will seek to interfere with the proper administration of justice, or is a danger to the community. Our rules of criminal procedure require a finding that ‘the defen-

dant is dangerous to public safety or that the defendant will commit a serious crime, or will seek to intimidate any witness, or will otherwise unlawfully interfere with the administration of justice if released, or for any other reason allowed by law...’ Nav. R. Cr. P. 15(d). To ensure fairness and propriety the court must also, ‘state the reasons for the record.’” *Apache v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

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

§ 6. Right to keep and bear arms

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

History

CD-59-86, December 11, 1986.
CO-63-67, October 9, 1967.

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

Library References

Indians ⇌6.2, 32(4.1).
Weapons ⇌1.

Westlaw Topic Nos. 209, 406.
C.J.S. Weapons §§ 1 to 8, 61 to 62.

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

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, and shall be informed of the nature and cause of the accusation; shall be confronted with the witnesses against him or her; and shall have compulsory process for obtaining witnesses in their favor. No person accused of an offense punishable by imprisonment and no party to a civil action at law, as provided under 7 N.N.C. § 651 shall be denied the right, upon request, to a trial by jury of not less than six (6) persons; nor shall any person be denied the right to have the assistance of counsel, at their own expense, and to have

1 N.N.C. § 7

GENERAL PROVISIONS

defense counsel appointed in accordance with the rules of the courts of the Navajo Nation upon satisfactory proof to the court of their inability to provide for their own counsel for the defense of any punishable offense under the laws of the Navajo Nation.

History

CD-59-86, December 11, 1986.
CO-63-67, October 9, 1967.

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

Library References

Criminal Law ⇨577.1 to 577.16, 635, 641, 662.
Indians ⇨6.2, 38(1, 4).
Indictment and Information ⇨17.
Jury ⇨9 to 37.
Westlaw Topic Nos. 110, 209, 210, 230.
C.J.S. Bankruptcy § 34.

C.J.S. Criminal Law §§ 277, 578 to 621, 1115, 1120, 1134 to 1141.
C.J.S. Declaratory Judgments § 152.
C.J.S. Indians §§ 163 to 164.
C.J.S. Indictments and Informations § 28.
C.J.S. Juries §§ 6 to 279, 292, 299, 302 to 303, 306, 310, 354 to 355, 367, 396, 409, 443 to 447, 450 to 456, 460.

United States Code

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

Annotations

1. Sufficiency of complaint

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

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

2. Due process

“A person alleged to be in indirect civil or criminal contempt of court must be notified of the charges, have a right to be represented by counsel, have a reasonable time to prepare a defense, and have an opportunity to be heard.

[. . .] The rules of criminal procedure are also applicable to indirect criminal contempt proceedings.” *In the Matter of Contempt of Mann*, 5 Nav. R. 125, 128 (Nav. Sup. Ct. 1987).

3. Appointed counsel

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

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

4. Delay

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

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

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

History

CD-59-86, December 11, 1986.

CO-63-67, October 9, 1967.

GENERAL PROVISIONS

1 N.N.C. § 8 Note 5

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

Library References

Criminal Law ⇌393.
Double Jeopardy ⇌1.
Eminent Domain ⇌2, 122.
Indians ⇌6.2, 32(4.1), 38(1).
Witnesses ⇌292 to 310.

Westlaw Topic Nos. 110, 135H, 148, 209, 410.
C.J.S. Criminal Law §§ 208, 645.
C.J.S. Eminent Domain §§ 6 to 8, 13, 71 to 72, 82 to 83, 87 to 88, 106 to 107, 116, 120.
C.J.S. Indians § 163.
C.J.S. Witnesses §§ 520 to 558.

United States Code

Double jeopardy, 42 U.S.C. § 2000h-1.

Annotations

1. Eminent domain

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

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

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

2. Property interests

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

"The Navajo Nation Election Code, as it applies to these schools, does not affect property interests. It only affects management issues

which are of interest to the Navajo Nation as a sovereign. Accordingly, we hold that there was no "taking" by the imposition of new regulatory requirements and this no violation of due process." *Rough Rock Community School, Inc. v. Navajo Nation*, 7 Nav. R. 199, 201 (Nav. Sup. Ct. 1996).

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

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

3. Civil forfeitures

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

4. Double jeopardy, generally

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

5. Takings

"Requiring uncompensated representation of indigent criminal defendants by NNBA members is not a taking of private property without

1 N.N.C. § 8

Note 5

just compensation, but a reasonable condition of Bar membership.” *Boos v. Yazzie*, 6 Nav. R. 211, 220–221 (Nav. Sup. Ct. 1990).

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

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

History

CD–59–86, December 11, 1986.
CO–63–67, October 9, 1967.

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

Library References

Bail ⇨52.
Fines ⇨1.3.
Indians ⇨6.2, 32(4.1), 38(1).
Sentencing and Punishment ⇨1430 to 1607.
Westlaw Topic Nos. 49, 174, 209, 350H.

C.J.S. Bail.
C.J.S. Release and Detention Pending Proceedings § 69.
C.J.S. Criminal Law §§ 1459, 1461, 1463, 1469, 1472, 1593 to 1603, 1605 to 1609.
C.J.S. Indians § 163.

Annotations

1. Sentencing

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

“This Court has previously established that a criminal sentence not according to law is cruel and unusual punishment prohibited by the Navajo Nation Bill of Rights.” *Martin v. Antone*, No. SC–CV–48–02, slip op. at 2 (Nav.Sup. Ct. August 13, 2003); *citing: Navajo Nation v. Jones*, 1 Nav. R. 14, 18 (1971), *Johnson v. Navajo Nation*, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

“As a general matter, a criminal sentence [including a consecutive sentence] is not cruel

and unusual punishment as long as it falls within the boundaries set by the legislature.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav.R. 432, 447 (Nav. Sup. Ct. 1991).

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

2. Treatment of juveniles

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

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

Section

201. Diné Bi Beehazáanii Bitsé Siléí—Declaration of the Foundation of Diné Law
202. Diné Bi Beehanaz’áanii
203. Diyin Bits’áądeę’ Beehaz’áanii—Diné Traditional Law
204. Diyin Diné’é Bits’áądeę’ Beehaz’áanii—Diné Customary Law
205. Nahasdzáán dóó Yádilhił Bits’áádeé’ Beehaz’áanii—Diné Natural Law
206. Diyin Nohookáá Diné Bi Beehaz’áanii—Diné Common Law

History

CN–69–02, November 1, 2002.

Preamble. CN–69–02 contains the following preamble:

GENERAL PROVISIONS

1 N.N.C. § 201

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

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

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

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

“6. The Navajo Nation Council finds that the acknowledgment, recognition and teaching of these laws do not contravene 1 N.N.C. § 4; the incorporation of these fundamental laws into the Navajo Nation Code is not governmental establishment of religion nor is it prohibiting

the free exercise of religion; the Navajo Nation Council and the Diné have always recognized and respected the principle of these fundamental laws and the Diné have the right and freedom to worship as they choose; and the Navajo Nation Council and the Diné recognize that the Diné Life Way is a holistic approach to living one’s life whereby one does not separate what is deemed worship and what is deemed secular in order to live the Beauty Way; and

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

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

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

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

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

Diné Bi Beehaz’áanii Bitsé Siléí

Diyin Diné’é,

Sin dóó sodizin,

Bee

Nahasdzaán dóó yáidilhił nitsáhákees yił hadeidiilaa,

Tó dóó dził diyinii nahat’á yił hadeidiilaa,

Nilch’i dóó nanse’ altaas’éi iiná yił hadediilaa,

1 N.N.C. § 201

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Ko', adinídíin dóo ntl'iz náádahaniihjí' sihasin yił hadediilaa.
Díí ts'ídá aláájí' nihi beehaz'áanii bitse siléí nihá' ályaa.
Nitsáhákees éí nahat'á bitsé silá.
Iiná éí sihasin bitsé silá.
Hanihi'diilyaadi díí nihiihdaahya' dóo bee hadíníit'é.
Binahji' nihéého'dílzingíí éíí:
Nihízi',
Ádóone'é niidlíinii,
Nihinéí',
Nihee ó'ool íł,
Nihi chaha'oh,
Nihi kék'ehashchíín.
Díí bik'ehgo Diyin Nohookáá Diné nihi'doo'niid.
Kodóo dah'adiníisá dóo dah'adiidéél.
Áko dííshjíígi éí nitsáhákees, nahat'á, iiná, saad, oodlá',
Dóo beehaz'áanii ał'áá ádaat'éego nihitah nihwiileeh,
Ndi nihi beehaz'áanii bitsé siléí nhá ndaahya'áá t'ahdii doo lahgo ánéehda.
Éí biniinaa t'áá nanihi'deelyáháá doo níłch'i diyin hinááh nihiihdaahya'áá
ge'át'éigo,
T'áá Diné niidlíígo náásgóó ahoól'á.
The Holy People ordained,
Through songs and prayers,
That
Earth and universe embody thinking,
Water and the sacred mountains embody planning,
Air and variegated vegetation embody life,
Fire, light, and offering sites of variegated sacred stones embody wisdom.
These are the fundamental tenets established.
Thinking is the foundation of planning.
Life is the foundation of wisdom.
Upon our creation, these were instituted within us and we embody them.
Accordingly, we are identified by:
Our Diné name,
Our clan,
Our language,
Our life way,

Our shadow,
Our footprints.

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

From here growth began and the journey proceeds.

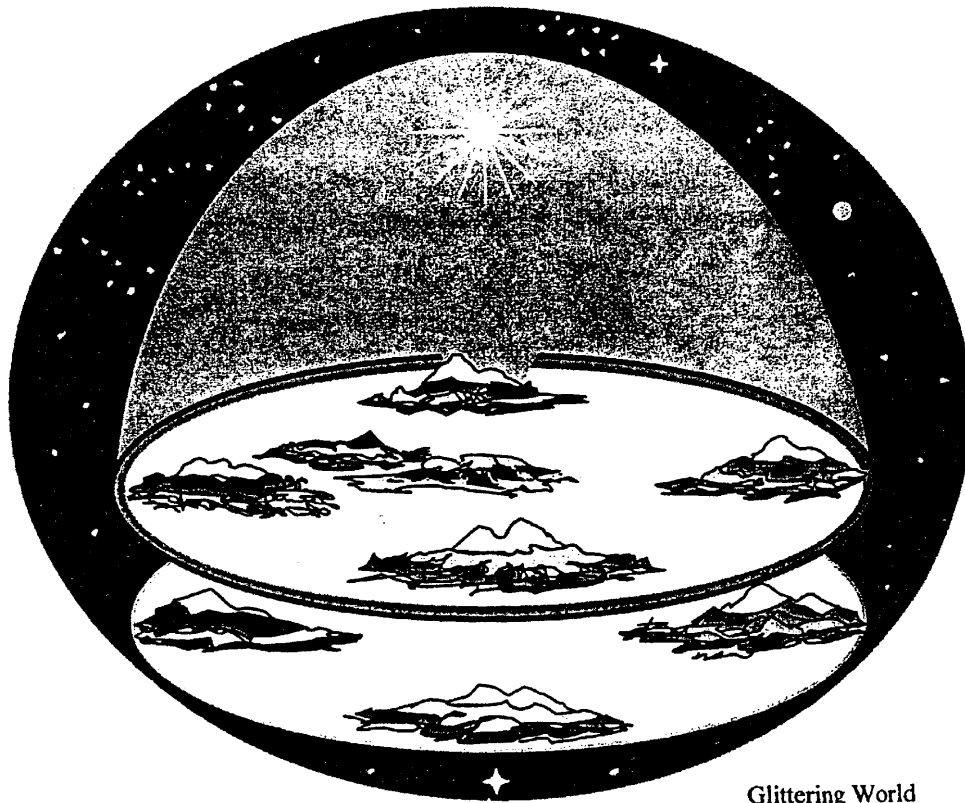
Different thinking, planning, life ways, languages, beliefs, and laws appear among us,

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

Hence, as we were created and with living soul, we remain Diné forever.¹

¹ The Navajo Nation is grateful to Mike Mitchell, Wilson Aronilth, Peggy Scott, Laura Wallace, the late Andrew Natonabah, and the late Dr. Dean Jackson who developed the declaration, with guidance from the Navajo Medicine–Men Association and Navajo Community College. The revision of the declaration interpretation was made by: Laura Wallace, Division of Diné Education; Roger Begay, Diné Language and Cultural Development–Division of Diné Education; and Henry Barber, Office of the Speaker.

Mother Earth and Father Universe



White World

Glittering World

History

CN-69-02, November 1, 2002.

Annotations**1. Application**

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

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

§ 202. Diné Bi Beenahaz’áanii

The Diné bi beenahaz’áanii embodies Diyin bitsaądeę’ beehaz’áanii (Traditional Law), Diyin Dine’é bitsaądeę’ beehaz’áanii (Customary Law), Nahas-dzáán dóó Yádiłhił bitsaądeę’ beehaz’áanii (Natural Law), and Diyin Nohookáá Diné bi beehaz’áanii (Common Law).

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

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

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

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

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

D. Self-governance; and

E. A government structure consisting of Hózhóójí Nahat’á (Executive Branch), Naat’ájí Nahat’á (Legislative Branch), Hashkééjí Nahat’á (Judicial Branch), and the Naayee’jí Nahat’á (National Security Branch); and

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

G. That Diné bi beenahaz’áanii provides for the future development and growth of a thriving Navajo Nation regardless of the many different thinking,

planning, life ways, languages, beliefs, and laws that may appear within the Nation; and

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

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

History

CN-69-02, November 1, 2002

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Annotations

1. Failure to plead

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

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

§ 203. *Diyin Bits'ą́ądeę' Beehaz'áanii—Diné Traditional Law*

The Diné Traditional Law declares and teaches that:

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

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

1 N.N.C. § 203

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

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

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

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

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

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

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

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

History

CN-69-02, November 1, 2002

Library References

Indians ⇄6.2, 32(4.1, 6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

Annotations

1. Application

“Resolutions CN–69–02 (recognizing the Fundamental Laws of the Diné) and CO–72–03 (adopting amendments to 7 N.N.C. § 204 choice of law provisions) expand the *Belone* rule beyond the initial pleading requirement for asserting the application of *Diné bi beenahaz’áanii* in our Courts. Resolution CN–69–02 instructs our judges and justices to take notice of *Diné bi beenahaz’áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beena-*

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

§ 204. *Diyin Diné’é Bitsaądeę’ Beehaz’áanii—Diné Customary Law*

The Diné Customary Law declares and teaches that:

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

B. It is the right and freedom of the people that the sacred system of k’é, based upon the four clans of Kiiyaa’áanii, Todíh’íinii, Honagháahnii and Hashtl’ishnii and all the descendant clans be taught and preserved; and

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

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

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

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

History

CN–69–02, November 1, 2002

Library References

Indians ⇐6.2, 32(4.1).
Westlaw Topic No. 209.

Annotations

1. Application

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

ble. Thus, the failure to raise *Diné bi beenahaz’áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one’s fancy, nor that it be raised in dilatory fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue.”

1 N.N.C. § 204

Note 1

Judy v. White, No. SC–CV–35–02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

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§ 205. Nahasdzáán dóó Yádiłhił Bits'ąadeę' Beehaz'áanii—Diné Natural Law

Diné Natural Law declares and teaches that:

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

B. The six sacred mountains, Sisnaajini, Tsoodzil, Dook'o'oolíid, Dibé Nitsaa, Dził Na'oodilii, Dził Ch'ool'í'í, and all the attendant mountains must be respected, honored and protected for they, as leaders, are the foundation of the Navajo Nation; and

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

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

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

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

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

History

CN–69–02, November 1, 2002

Library References

Indians ¶6.2.
Westlaw Topic No. 209.

Annotations

1. Application

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

our judges and justices to take notice of *Diné bi beenahaz'áanii* in their decisions, when applicable. Thus, the failure to raise *Diné bi beenahaz'áanii* in the initial pleading will not lead to exclusion of the claim. Importantly, we do not suggest that common law be raised with reckless abandon wherever and whenever it strikes one's fancy, nor that it be raised in dilatory

fashion. We suggest that whenever common law is raised, and whether it is raised *sua sponte* or by a party, the parties should be given ample time and opportunity to address the issue.” *Judy v. White*, No. SC-CV-35-02, slip op. at 17 (Nav. Sup. Ct. August 2, 2004).

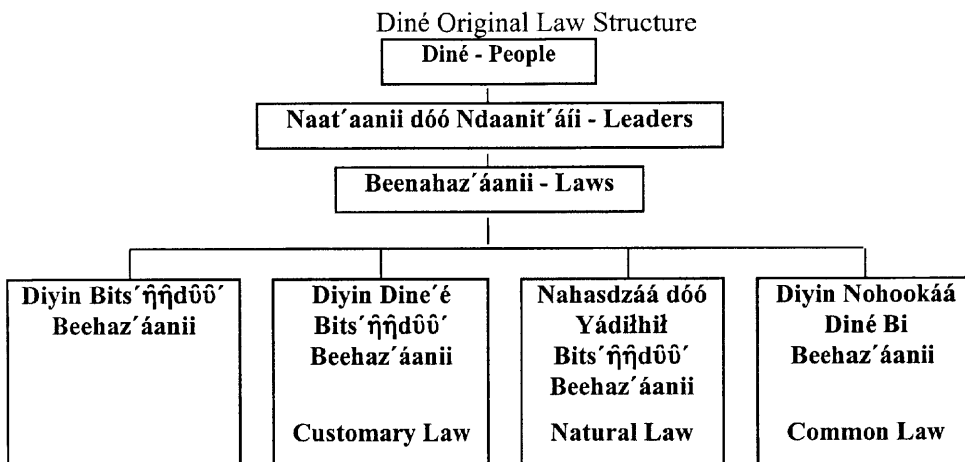
§ 206. Diyin Nohookáá Diné Bi Beehaz’áanii—Diné Common Law

The Diné Common Law declares and teaches that:

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

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

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



History

CN-69-02, November 1, 2002

Library References

Common Law ¶2.1, 9.

Indians ¶6.1.

Westlaw Topic Nos. 85, 209.

C.J.S. Common Law §§ 2 to 3, 5, 11 to 12, 22 to 24.

Annotations

1. Application

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

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

Chapter 3. Great Seal and Flag

Section

- 301. Great Seal
- 302. Flag
- 303. Display of the flag
- 304. Manner of display
- 305. Proper methods of handling, storage, or destruction
- 306. Desecration of the Navajo Nation Flag
- 307. Penalties

History

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

§ 301. Great Seal

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



History

CMY-18-88, May 3, 1988.
CJA-9-52, January 18, 1952.

Note. Two additional arrowheads were added to signify protection within the fifty (50)

states. Also, the word Tribe was changed to Nation.

Library References

Indians ↻32(4.1).
United States ↻5.5.
Westlaw Topic Nos. 209, 393.

§ 302. Flag

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

History

CMY-75-68, May 21, 1968.

Library References

Indians ↻32(4.1).
United States ↻5.5.
Westlaw Topic Nos. 209, 393.

§ 303. Display of the flag

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

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

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

History

CJA-6-70, January 8, 1970.

Library References

Indians ↻8, 9.1, 32(4.1).
United States ↻5.5.
Westlaw Topic Nos. 209, 393.
C.J.S. Indians § 48.

§ 304. Manner of display

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

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

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

D. The Navajo Nation flag should be displayed above any flags on a single staff, except the United States flag, and, if several flags are displayed together,

1 N.N.C. § 304

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the Navajo Nation flag should occupy the place of central or greatest prominence, except when the United States flag is displayed, in which case the Navajo Nation flag should be displayed immediately to the left and slightly lower than the United States flag.

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

History

CJA-6-70, January 8, 1970.

Library References

Indians ☞32(4.1).
United States ☞5.5.
Westlaw Topic Nos. 209, 393.

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

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

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

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

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

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

F. The flag, when it is in such condition that it is no longer a fitting emblem for display, should be destroyed in a dignified way, preferably by burning.

History

CJA-6-70, January 8, 1970.

Library References

Indians ☞32(4.1).
United States ☞5.5.
Westlaw Topic Nos. 209, 393.

§ 306. Desecration of the Navajo Nation flag

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

History

CJA-6-70, January 8, 1970.

Library References

Indians ⚡32(13).
United States ⚡5.5.

Westlaw Topic Nos. 209, 393.
C.J.S. Indians § 157.

§ 307. Penalties

Any person subject to the criminal jurisdiction of the Navajo Nation who is found to have committed the offense, defined and established by 1 N.N.C. § 306, shall be fined not more than one hundred dollars (\$100.00) or imprisoned for not more than thirty (30) days, or both. Any person not subject to the criminal jurisdiction of the Navajo Nation who is found to have committed the offense defined and established by 1 N.N.C. § 306, shall be excluded from the lands subject to the jurisdiction of the Navajo Nation.

History

CJA-6-70, January 8, 1970.

Library References

Indians ⚡32(13).
United States ⚡5.5.

Westlaw Topic Nos. 209, 393.
C.J.S. Indians § 157.

Chapter 5. Navajo Nation**Subchapter 1. Designation****Section**

501. Use of term “Navajo Nation”; certification of resolutions; address
502. Spelling of “Navajo”

History

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

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

551. Establishment
552. Definitions
553. General principles of sovereign immunity
554. Exceptions to the general principles of sovereign immunity; purpose and intent

Section

555. Procedure with respect to actions authorized by this subchapter

History

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

Subchapter 1. Designation

§ 501. Use of term “Navajo Nation”; certification of resolutions; address

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

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

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

History

CJY–55–85, July 25, 1985.
ACAP–101–69, April 15, 1969.

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

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 502. Spelling of “Navajo”

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

History

CJY–55–85, July 25, 1985.
ACAP–101–69, April 15, 1969.

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

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 2. Navajo Sovereign Immunity Act

History

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

§ 551. Establishment

There is established the Navajo Sovereign Immunity Act.

History

CMY-42-80, May 6, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Annotations**1. Construction and application**

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

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

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

§ 552. Definitions

For the purposes of this subchapter, “Navajo Nation” means:

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

History

CAU-47-03, August 29, 2003

CJY-42-03, July 25, 2003.

CMY-28-88, May 6, 1988.

CMY-42-80, May 6, 1980.

Library References

Indians ⇨27(1), 32(7).
Westlaw Topic No. 209.

C.J.S. Indians §§ 13 to 15, 19, 42, 53, 55, 60
to 62, 68, 89, 91 to 92, 94 to 95, 97, 139 to
143, 152.

Annotations

1. Construction and application

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

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

Formerly §§ 351–355. “Whether the Act applies is not determined by who the plaintiffs are,

but by who the defendants are and in what capacity the defendants are acting.” *MacDonald v. Yazzie*, 6 Nav. R. 95, 96 (Nav. Sup. Ct. 1989).

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

§ 553. General principles of sovereign immunity

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

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

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

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

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

F. Neither the President, Navajo Nation, the Vice-President, Navajo Nation, nor the delegates to the Navajo Nation Council may be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation or any proceeding which is under the jurisdiction of the courts of the Navajo Nation

concerning any matter involving such official's actions pursuant to his/her official duties.

History

CMY-28-88, May 6, 1988.
CMY-42-80, May 6, 1980.

Library References

Indians ⇄ 27(1), 32(7).
Westlaw Topic No. 209.

C.J.S. Indians §§ 13 to 15, 19, 42, 53, 55, 60 to 62, 68, 89, 91 to 92, 94 to 95, 97, 139 to 143, 152.

Annotations

1. Construction and application

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

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

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

2. Immunity

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

Re: Sov. Imm. Act definition of Navajo Nation: "The suit challenges certain resolutions passed by the Navajo Tribal Council. When the Navajo Tribal Council and the delegates to that body are performing legislative functions they fall within the definition of Navajo Nation and

the [Navajo Sovereign Immunity] Act applies." *Plummer v. Brown II*, 6 Nav. R. 88, 91 (Nav. Sup. Ct. 1989).

3. Powers of council

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

4. Remedies

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

5. Jurisdiction

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

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

A. The purpose and intent of the Navajo Sovereign Immunity Act is to balance the interest of the individual parties in obtaining the benefits and just

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

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

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

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

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

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

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

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

F. The Navajo Nation may be sued only in the courts of the Navajo Nation with respect to any claim which is within the express coverage and not

excluded by either commercial liability insurance carried by the Navajo Nation or an established Navajo Nation self-insured and/or other claims program of the Navajo Nation government, approved and adopted pursuant to the laws of the Navajo Nation and further, subject to the following provisions and limitation:

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Relief awarded by the courts of the Navajo Nation under this subsection (G) shall be limited to declaratory or prospective mandamus or injunctive relief and in accordance with the express provisions of the laws of the United States and the Navajo Nation establishing the responsibility for such performance. The courts may further, in the exercise of judicial discretion, award necessary costs of suit and/or reasonable fees for legal representation,

GENERAL PROVISIONS

1 N.N.C. § 554

in the same manner and to the same extent provided in paragraph (5) subsection (F) hereof.

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

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

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

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

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

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

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

a. Punitive damages;

b. Damages from claims arising in tort;

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

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

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

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

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

History

CJY-40-92, July 24, 1992.

CMY-28-88, May 6, 1988.

CD-60-86, December 11, 1986.

CJY-55-85, July 25, 1985.

CMY-42-80, May 6, 1980.

Library References

Indians ⇨27(1), 32(7).

Westlaw Topic No. 209.

C.J.S. Indians §§ 13 to 15, 19, 42, 53, 55, 60 to 62, 68, 89, 91 to 92, 94 to 95, 97, 139 to 143, 152.

Annotations

1. Construction and application

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

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

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

“Official capacity suits are suits naming individual officials or employees, but in reality seeking compensation from the Navajo Nation.” *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 8 (Nav. Sup. Ct. March 11, 2004).

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

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

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

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

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

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

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

2. Construction with federal law

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

3. Exceptions to immunity

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

GENERAL PROVISIONS

1 N.N.C. § 554

Note 5

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

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

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

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

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

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

Referring to previous Sov. Imm. Act at 7 N.T.C. § 854(c) re: insurance exception. “The law requires that the plaintiff’s claim be covered under the insurance policy before the court can assert jurisdiction over the Navajo Nation.” *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 197 (Nav. Sup. Ct. 1987).

4. Civil rights

“A person seeking redress of civil rights violations must establish that Navajo Nation courts have jurisdiction to hear her claims. If the claimant is suing the Nation, the claimant must, as a jurisdictional predicate, establish that the Nation’s immunity from suit has been waived.”

Raymond v. Navajo Agricultural Products Industry, et al., 7 Nav. R. 142, 145 (Nav. Sup. Ct. 1995).

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

5. Waivers of immunity

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

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

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

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

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

1 N.N.C. § 554

Note 6

6. Special prosecutor

“The [Special Prosecutor] Act blends well with the Sovereign Immunity Act because it provides a remedy for the Navajo Nation

against officers or employees who exceeded their authority.” *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 296 (Nav. Sup. Ct. 1990).

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

History

CJY-55-85, July 25, 1985.
CMY-42-80, May 6, 1980.

Library References

Indians \S 27(5, 6), 32(7).
Westlaw Topic No. 209.

C.J.S. Indians \S § 13, 16, 18, 42 to 43, 60 to 62, 95, 139 to 143, 146, 152.

Annotations

1. Notice

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

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

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

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

"For the reasons stated, CIT was not covered by the Sovereign Immunity Act's umbrella of 'enterprises of the Navajo Nation' in April

1995." *Blaze Construction, Inc. v. Crownpoint Institute of Technology*, 7 Nav. R. 296, 299 (Nav. Sup. Ct. 1997).

2. Enforcement of orders

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

3. Jurisdiction

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

"Therefore, as a 'jurisdictional condition precedent,' 1 N.N.C. § 555(A), the plaintiff is required to name each defendant and the claim against that defendant." *Chapo, et al. v. Navajo*

1 N.N.C. § 555

Note 3

Nation, et al., No. SC-CV-68-00, slip op. at 5 (Nav. Sup. Ct. March 11, 2004).

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

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

4. Procedures, generally

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

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

“When the Department of Justice makes proper and timely demand for transfer, the Court is without discretion to deny it. The authority to request a transfer pursuant to 1

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N.N.C. § 555(D) is limited to the Department of Justice, however, and no other party or entity, including the Court, may raise it. If suit is brought in a district other than Window Rock, and the Department of Justice fails to make a proper and timely request for transfer, then the trial will remain in the initial district.” *Judy v. White*, No. SC-CV-35-02, slip op. at 12 (Nav. Sup. Ct. August 2, 2004).

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

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

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

5. Immunity

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

Chapter 7. Membership in the Navajo Nation

Subchapter 1. General Provisions

Section

- 701. Composition
- 702. Adoption as not possible
- 703. Member of another tribe
- 704. Authority of Government Services Committee
- 705. Renunciation of membership

History

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

Subchapter 3. Enrollment Procedure

- 751. Application for enrollment
- 752. Enrollment Screening Committee; action by Government Services Committee
- 753. Standards for Screening Committee recommendations
- 754. Appeals from Screening Committee–District Courts
- 755. Navajo Nation Supreme Court
- 756. Application of rules and regulations
- 757. Appeals
- 758. Order directing enrollment of applicant
- 759. Effectiveness of provisions
- 760. Form of application [Deleted]

History

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

Subchapter 1. General Provisions

§ 701. Composition

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

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

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

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

History

CF–12–54, February 26, 1954.

CJ–50–53, July 20, 1953.

CM–36–53, May 21, 1953.

CM–12–51, May 7, 1951.

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

Library References

Indians ⇄32(8).

Westlaw Topic No. 209.

C.J.S. Indians §§ 29, 59, 157.

Annotations**1. Construction and application**

“While there is a formal process to obtain membership as a Navajo, [. . .], that is not the only kind of ‘membership’ under Navajo

Nation law.” *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 392 (Nav. Sup. Ct. 1999).

1 N.N.C. § 702

GENERAL PROVISIONS

§ 702. Adoption as not possible

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

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

History

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

Cross References

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

Library References

Adoption ⇌5.

Indians ⇌6.10, 32(8).

Westlaw Topic Nos. 17, 209.

C.J.S. Adoption of Persons §§ 18 to 24.

C.J.S. Indians §§ 29, 59, 157.

§ 703. Member of another tribe

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

History

CJ-50-53, July 20, 1953.

Library References

Indians ⇌32(8).

Westlaw Topic No. 209.

C.J.S. Indians §§ 29, 59, 157.

§ 704. Authority of Government Services Committee

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

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

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

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

History

CJY-70-69, July 24, 1969.

CF-12-54, February 26, 1954.

Cross References

Eligibility for membership generally, see § 701 of this title.
Oversight authority of the Government Services Committee, see 2 N.N.C. § 343(B)(4).

Library References

Indians ⇨32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 705. Renunciation of membership

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

History

CJ-50-53, July 20, 1953.

Library References

Indians ⇨32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Subchapter 3. Enrollment Procedure

Code of Federal Regulations

Enrollment appeals, see 25 CFR ? 62.1 et seq.
Preparation of rolls of Indians, see 25 CFR ? 61.1 et seq.

§ 751. Application for enrollment

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

History

ACS-39-55, September 7, 1955.

Cross References

Navajo Office of Census and Vital Statistics, see 2 N.N.C. § 2221 et seq.

Library References

Indians ⇨32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Annotations

1. Construction and application

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

Navajo common law.” *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

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

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

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

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

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

History

CJY-70-69, July 24, 1969.

ACS-39-55, September 7, 1955.

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

“Executive Director of the Division of Natural Resources” was substituted for “Director of

Land Investigations” in light of 2 N.N.C. § 1901 *et seq.*

Subsection (B) slightly reworded for statutory clarity.

Library References

Indians ⇄32(8).

Westlaw Topic No. 209.

C.J.S. Indians §§ 29, 59, 157.

Annotations

1. Construction and application

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

Navajo common law.” *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

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

§ 753. Standards for Screening Committee recommendations

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

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

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

History

ACS-39-55, September 7, 1955.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Annotations

1. Construction and application

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

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

§ 754. Appeals from Screening Committee–District Courts

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

1 N.N.C. § 754

GENERAL PROVISIONS

History

CJY-70-69, July 24, 1969.
ACS-39-55, September 7, 1955.
CF-12-54, February 12, 1954.
CJ-50-53, July 20, 1953.

Revision note. “Trial Courts” changed to “District Courts”.

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

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Annotations

1. Construction and application

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

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

§ 755. Navajo Nation Supreme Court

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

History

CJY-70-69, July 24, 1969.

Revision note. “Appeals Court” changed to “Navajo Nation Supreme Court”. “Trial Court” changed to “District Court”.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 756. Application of rules and regulations

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

History

CJY-70-69, § 2C, July 24, 1969.

Revision note. “Appeals Court” changed to “Navajo Nation Supreme Court”. “Trial Courts” changed to “District Courts”.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Annotations**1. Construction and application**

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

Navajo common law.” *Means v. The District Court of the Chinle Judicial District*, 7 Nav. R. 383, 393 (Nav. Sup. Ct. 1999).

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

§ 757. Appeals

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

History

CJY-70-69, July 24, 1969.

Revision note. “Trial Court” changed to “District Court”.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

Annotations**1. Construction and application**

“We find that the petitioner, by reason of his marriage to a Navajo, longtime residence within the Navajo Nation, his activities here, and his status as a *hadane*, consented to Navajo Nation criminal jurisdiction. This is not done by ‘adoption’ in any formal or customary sense, but by assuming tribal relations and establishing familial and community relationships under

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

§ 758. Order directing enrollment of applicant

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

History

CJY-70-69, July 24, 1969.

Revision note. “Trial Courts” changed to “District Courts”. “Appeals Court” changed to “Supreme Court”.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 759. Effectiveness of provisions

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

History

ACS-39-55, September 7, 1955.

Library References

Indians ⇄32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

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

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

Revision note. See 1 N.N.C. § 704(C).

Title 2

Navajo Nation Government

Chapter	Section
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5. Executive Branch	1001
6. Ethics in Government Law	3741
7. Personnel	3800
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Chapter 1. Establishment

Subchapter 1. Generally

Section

1. Navajo Nation government establishment
2. Location of Navajo Nation capitol
3. Oath of office
4. [Deleted]

§ 1. Navajo Nation government establishment

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

History

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

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 2. Location of Navajo Nation Capitol

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

History

CD-68-89, December 15, 1989. Language Tribal Council Res. 1922-1951, Res. p. 371,
slightly amended. October 14, 1949.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

2 N.N.C. § 3

NAVAJO NATION GOVERNMENT

§ 3. Oath of office

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

History

CD-68-89, December 15, 1989.

Cross References

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

Library References

Indians ⇐32(6).

Officers and Public Employees ⇐36(1).

Westlaw Topic Nos. 209, 283.

C.J.S. Indians § 51.

C.J.S. Officers and Public Employees § 59.

§ 4. [Deleted]

History

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

CJN-60-71, June 8, 1971; an organizational structure for the Navajo Nation was adopted. Justifications in the 1972 budget for all departments, programs, etc., were approved and adopted as plans of operation. Each year thereafter the appropriate budget year reference was substituted until CS-28-83, September 28, 1983

substituted references of 1984 for 1983. The approval of plans of operation and organizational structure rested with the Advisory Committee.

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

Cross References

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

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

Subchapter 2. Property Control

Section

51. Purpose
52. Statutory provision
53. Scope
54. Explanation of terms
55. Distinction of terms
56. Classifications of property
57. General provision concerning Navajo Nation's property
58. General property accounting
59. Inventories of property
60. Adjustments of discrepancies

§ 51. Purpose

This policy sets forth, in general terms, the authority, principles, and policies governing the accounting for Navajo Nation property in terms of both dollar value and units, and prescribes staff responsibilities for their execution and

supervision. This policy also provides the basis for the implementation of and general supervision over procedures necessary to put such principles and policies into practice; insures physical integrity and responsible use of all Navajo Nation assets through the maintenance of records, performance of inventories and implementation of disposal procedures; and insures the provision of adequate and economical warehousing, receipt and delivery of the Navajo Nation’s property.

History

ACJY-84-84, July 10, 1984.

Library References

Indians ¶9.1, 23, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 52. Statutory provisions

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

History

ACJY-84-84, July 10, 1984.

Library References

Indians ¶9.1, 23, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 53. Scope

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

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

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

History

ACJY-84-84, July 10, 1984.

Library References

Indians 9.1, 23, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 54. Explanation of terms

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

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

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

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

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

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

1. This obligation includes that of property responsibility. Such records, as well as books of account, are subject to examination by auditors or others as may be authorized or required.

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

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

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

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

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

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

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

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

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

History

ACJY-84-84, July 10, 1984.

Note. Slightly reworded for grammatical clarity.

Library References

Indians ⇨9.1, 23, 32(4.1).

Westlaw Topic No. 209.

C.J.S. Indians § 30.

§ 55. Distinction of terms

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

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

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

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

History

ACJY-84-84, July 10, 1984.

Library References

Indians ⇨9.1, 23, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 56. Classifications of property

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

A. Real property consists of lands and interest therein, leaseholds, buildings and improvements and appurtenances thereto. It includes piers, docks, warehouses, rights-of-way and easements, whether temporary or permanent, underground conduits and associated manholes, utilities systems and parts thereof, and all other improvements permanently attached and ordinarily considered real estate. It does not include machinery, equipment, fixed signal communications systems, etc., which may be severed or removed from buildings without impairing or destroying the usefulness of the structures.

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

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

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

History

ACJY-84-84, July 10, 1984.

Note. Slightly reworded for grammatical clarity.

Library References

Indians ¶9.1, 23, 32(4.1).

Westlaw Topic No. 209.

C.J.S. Indians § 30.

§ 57. General provision concerning the Nation’s property

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

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

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

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

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

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

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

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

History

ACJY-84-84, July 10, 1984.

Note. Slightly reworded for grammatical clarity.

Library References

Indians ¶9.1, 23, 32(4.1).

Westlaw Topic No. 209.

C.J.S. Indians § 30.

§ 58. General property accounting

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

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

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

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

History

ACJY-84-84, July 10, 1984.

Library References

Indians ↻9.1, 23, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians § 30.

§ 59. Inventories of property

In the interest of proper accounting, complete, detailed and accurate physical inventories of property assigned will be made and reconciled annually or upon a change of accountable individuals within departments or equivalent levels of administration. A physical inventory involves an actual observation and count of the property. A property condition check is a part of inventories. Damaged/destroyed property will be handled as prescribed in the Internal Operating Procedures of the Property Control and Stores Department.

History

ACJY-84-84, July 10, 1984.

Library References

Indians ↻9.1, 23, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians § 30.

§ 60. Adjustments of discrepancies

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

History

ACJY-84-84, July 10, 1984.

Library References

Indians ↻9.1, 23, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians § 30.

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

Subchapter 1. Privacy and Access to Information

Section

- 81. Short Title
- 82. Declaration of Public Policy
- 83. Definitions

2 N.N.C. § 81

NAVAJO NATION GOVERNMENT

Section

- 84. Public records
- 85. Protected records
- 86. Access to protected documents
- 87. Segregation of records
- 88. Procedures
- 89. Denials
- 90. Ordinances adopted in compliance with this Subchapter
- 91. Criminal penalties
- 92. Civil penalties

§ 81. Short Title

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

History

CAP-48-99, April 23, 1999

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 82. Declaration of Public Policy

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

History

CAP-48-99, April 23, 1999

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 83. Definitions

As used in this subchapter:

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

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

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

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

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

1. Materials that are legally owned by an individual in his private capacity;
2. Materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by a governmental entity;
3. Junk mail or commercial publications received by a governmental entity or an official or employee of a governmental entity;
4. Books and other materials that are catalogued, indexed, or inventoried and contained in the collections of libraries open to the public;
5. Daily calendars and other personal notes prepared by the originator for the originator’s personal use or for the personal use of an individual for whom he is working;
6. Computer programs that are developed or purchased by or for any governmental entity for its own use; or
7. Notes or internal memoranda prepared as part of the deliberative process by a member of the judiciary or any other body charged with performing a quasi-judicial function.

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 84. Records that must be disclosed

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

1. Laws;
2. Names, gender, job titles, job description, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, relevant education, previous employment, and similar job quali-

fications of the governmental entity's current and former employees and officers excluding:

- a. Undercover law enforcement personnel; and
- b. Investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;
3. Inter-office memoranda;
4. Final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is protected.
5. Final interpretations of statutes or rules by a governmental entity;
6. Information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting, excluding executive sessions, or a governmental entity;
7. Judicial records unless a court orders the record to be restricted under the rules of civil or criminal procedure or unless the records are protected under this subchapter;
8. Records filed with or maintained by governmental entities that give public notice of:
 - a. Titles or encumbrances to real property, including homesite permits, land use permits and grazing permits; or
 - b. Restrictions on the use of real property;
9. Records filed with or maintained by governmental entities that evidence incorporations, name changes, and uniform commercial code filings;
10. Documentation of the compensation that a governmental entity pays to a contractor or private provider; and
11. Data on individuals that would otherwise be protected under this subchapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public.

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

1. Administrative staff manuals, instructions to staff, and statements of policy;
2. Records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;
3. Contracts entered into by a governmental entity;
4. Any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

- 5. Correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the Nation, a political subdivision, the public, or any person;
 - 6. Empirical data if contained in drafts if:
 - a. The data is not reasonably available to the requester elsewhere in similar form; and
 - b. The governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;
 - 7. Drafts that are circulated to anyone other than a governmental entity, a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program, or a contractor or private provider;
 - 8. Drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;
 - 9. Arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;
 - 10. Search warrants after execution and filing of the return, except that, for good cause, a court may order restricted access to search warrants prior to trial;
 - 11. Records that would disclose information relating to formal charges or disciplinary action against a past or present governmental entity employee if:
 - a. The disciplinary action has been completed and all time periods for administrative appeal have expired; and
 - b. The formal charges were sustained.
- C. The list of public records in this section is not exhaustive and should not be used to limit access to records.

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).
Records ☞54.

Westlaw Topic Nos. 209, 326.
C.J.S. Records §§ 99 to 100, 103 to 104.

§ 85. Protected records

- A. The following records are private or otherwise protected and shall not be considered public for purposes of required disclosure;
 - 1. Records concerning an individual’s eligibility for social services, welfare benefits, or the determination of benefit levels;
 - 2. Records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data, including psychiatric or psychological data;
 - 3. Records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individ-

ual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Drafts, unless otherwise classified as public;

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

18. Information which cannot be released without interfering with an individual's right to exercise or practice his chosen religion;

19. Information otherwise protected by applicable laws;

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ↻32(4.1).

Westlaw Topic Nos. 209, 326.

Records ↻58.

C.J.S. Records §§ 104 to 105, 107 to 110.

§ 86. Access to protected documents

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

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

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

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

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

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

F. Before releasing a protected record, the governmental entity shall obtain evidence of the requester's identity.

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).
Records ☞52.

Westlaw Topic Nos. 209, 326.
C.J.S. Records § 98.

§ 87. Segregation of records

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

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

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).
Records ☞66.

Westlaw Topic Nos. 209, 326.
C.J.S. Records §§ 115 to 116, 124 to 125.

§ 88. Procedures

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

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

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

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

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

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

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

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

1. Approving the request and providing the record;
2. Denying the request by providing a written explanation of why the record is protected from disclosure. In making such determinations, the governmental entity shall consult with the Department of Justice; or
3. Notifying the requester that it does not maintain the record and providing, if known, the name and address of the governmental entity that does maintain the record.

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

1. This application must meet the notice and filing requirements of the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551, et seq.
2. Any person who may have an interest in maintaining the confidentiality of the record may appear and demonstrate the need for maintaining the confidentiality of such record.
3. In determining the availability of any record requested, the District Court shall apply the standards set forth in 2 N.N.C. §§ 84 and 85.

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).
Records ☞34.

Westlaw Topic Nos. 209, 326.
C.J.S. Records §§ 63 to 64, 72, 74 to 75, 86.

§ 89. Denials

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

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

2 N.N.C. § 89

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

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

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).

Records ☞34.

Westlaw Topic Nos. 209, 326.

C.J.S. Records §§ 63 to 64, 72, 74 to 75, 86.

§ 90. Ordinances adopted in compliance with this subchapter

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

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

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

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(4.1).

Westlaw Topic No. 209.

§ 91. Criminal penalties

A. A public employee or other person who has lawful access to any protected record under this subchapter, who intentionally discloses or provides a copy

of a protected record to any other person is guilty of an offense and upon conviction thereof shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000).

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

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ☞32(13).
 Records ☞31.
 Westlaw Topic Nos. 209, 326.

C.J.S. Criminal Law §§ 449 to 450.
 C.J.S. Indians § 157.
 C.J.S. Records §§ 74 to 92.

§ 92. Civil penalties

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

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

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

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

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

History

CAP-48-99, April 23, 1999

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

Chapter 3. Legislative Branch

Subchapter 1. Navajo Nation Council

Section

- 101. Establishment
- 102. Powers; composition
- 103. Qualifications
- 104. Incompatible service
- 105. Term of office
- 106. Compensation of Council Delegates
- 107. Advances to Council Delegates
- 108. Group insurance
- 109. Tax declarations and returns; deductions

Subchapter 2. Navajo Nation Council Meetings

- 161. Place
- 162. Number; time; duration
- 163. Agenda
- 164. Navajo Nation Council and Committee resolutions procedure
- 165. Legislation
- 166. Record of proceedings; interpreters; access to records
- 167. Failure to attend
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Subchapter 3. Navajo Nation Council Committees—Generally

- 180. Appointment

- 181. Membership
- 182. Term of office
- 183. Meetings; quorum
- 184. Chairperson; Vice-Chairperson; Chairperson Pro Tem
- 185. Powers
- 186. Subcommittees
- 187. Reports
- 188. Committee actions
- 189. Staff
- 190. Conflicts of interest
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Subchapter 4. [Reserved]

Subchapter 5. Resolutions and Documents

- 221. Resolutions; certification; filing; codification
- 222. Contracts or other papers generally
- 223. Contracts
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Subchapter 6. [Reserved]

Subchapter 7. Speaker of the Navajo Nation Council

- 281. Office of Speaker of the Navajo Nation Council
- 282. Selection of the Speaker; term of office
- 283. Residence
- 284. Salary
- 285. Powers and duties
- 286. Removal; vacancy
- 287. Speaker Pro Tem

Subchapter 8. [Reserved]

Subchapter 9. Standing Committees

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- 341. Establishment; purposes
- 342. Membership
- 343. Powers
- 344. Meetings

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- 371. Establishment

2 N.N.C. § 92

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- 372. Purposes
- 373. Membership; advisors
- 374. Powers
- 375. Meetings

Article 3. [Reserved]

Article 4. Transportation and Community
Development Committee

- 420. Establishment
- 421. Purposes
- 422. Membership; advisors
- 423. Powers
- 424. Meetings

Article 5. Health and Social Services Committee

- 451. Establishment
- 452. Purposes
- 453. Membership
- 454. Powers
- 455. Meetings

Article 6. Education Committee

- 481. Establishment
- 482. Purposes
- 483. Membership
- 484. Powers
- 485. Meetings

Article 7. [Reserved]

Article 8. [Reserved]

Article 9. Judiciary Committee

- 571. Establishment
- 572. Purposes
- 573. Membership
- 574. Powers
- 575. Meetings

Article 10. Human Services Committee

- 601. Establishment

- 602. Purposes
- 603. Membership
- 604. Powers
- 605. Meetings

Article 11. [Reserved]

Article 12. Public Safety Committee

- 661. Establishment
- 662. Purposes
- 663. Membership
- 664. Powers
- 665. Meetings

Article 13. Resources Committee

- 691. Establishment
- 692. Definition of terms
- 693. Purposes
- 694. Membership
- 695. Powers
- 696. Meetings

Article 14. Economic Development Committee

- 721. Establishment
- 722. Purpose and scope
- 723. Membership
- 724. Powers
- 725. Meetings

Article 15. [Reserved]

Article 16. [Reserved]

Article 17. [Reserved]

Article 18. Intergovernmental Relations Committee

- 821. Establishment
- 822. Purposes
- 823. Membership; selection; Chairperson
- 824. Powers
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Article 19. Ethics and Rules Committee

- 831. Establishment
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Subchapter 11. Boards and Commissions

Article 20. Navajo–Hopi Land Commission

- 851. Establishment; purposes
- 852. Membership; selection; Chairperson and Vice–Chairperson; term of offices; ex-officio members
- 853. Powers
- 854. Meetings
- 855. Procedure
- 856. Staff
- 857. Reports
- 858. Subcommittees

Article 2. Eastern Navajo Land Commission

- 861. Establishment; purpose
- 862. Membership
- 863. Powers and duties
- 864. Staff
- 865. Meetings; procedures

Article 3. Navajo Board of Election Supervisors

- 871. Establishment; purposes
- 872. Membership; terms; Chairperson and Vice–Chairperson
- 873. Powers and duties
- 874. Meetings; quorum; compensation
- 875. Ethics
- 876. Office; purpose
- 877. Director; staff; powers and duties
- 878. Political practices

Article 4. Commission on Emergency Management

- 881. Establishment
- 882. Membership
- 883. Purpose
- 884. Powers

- 885. Meetings
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Article 5. Black Mesa Review Board

- 901. Establishment
- 902. Purposes
- 903. Membership of Board; Chairperson; Vice–Chairperson; Secretary
- 904. Jurisdiction
- 905. Board employees and offices
- 906. Determination and payment of compensation
- 907. Appeal
- 908. Standards of adjudication
- 909. Administration
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Article 6. Navajo Nation Insurance Commission

- 931. Establishment
- 932. Purposes
- 933. Powers
- 934. Membership; Chairperson and Vice–Chairperson; quorum; advisors, Review Boards and Committees
- 935. Procedures
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- 941. Establishment
- 942. Purposes
- 943. Organization and membership
- 944. Powers and authority
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- 946. Amendments

Subchapter 12. Legislative Offices

Article 1. Office of Legislative Services

- 951. Establishment
- 952. Purpose
- 953. Director
- 954. Organization and functions

Article 2. Office of Legislative Counsel

- 960. Establishment

2 N.N.C. § 101

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- 961. Purpose
- 962. Legislative and administrative oversight
- 963. Personnel
- 964. Authorities, duties and responsibilities

Article 3. Commission on Navajo Government Development and the Office of Navajo Government Development

- 970. Establishment
- 971. Purposes
- 972. Membership; officers; term; qualifications
- 973. Duties and responsibilities
- 974. Meetings; procedures
- 975. Subcommittee
- 976. Power and duties of the Director
- 977. Office; staff, duties and accountability
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Article 4. [Reserved]

Article 5. Community Services Coordinators Program

- 990. Establishment
- 991. Purpose
- 992. Objectives
- 993. Organization
- 994. Personnel
- 995. Department processing/procedures
- 996. Conflicts of interest
- 997. Amendments

Subchapter 1. Navajo Nation Council

§ 101. Establishment

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

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

History

CD-68-89, December 15, 1989.

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

Library References

Indians ☞32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 102. Powers; composition

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

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

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

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

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

F. The Navajo Nation Council shall confirm the appointments of all division directors upon recommendation from the appropriate oversight committee. The President shall present the appointments at the next Navajo Nation Council session following the date the appointments are made.

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

History

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

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

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

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

Cross References

Navajo Nation Council, Rules of Order adopted, see CJA-1-04.
 Navajo Nation Election Code, see 11 N.N.C. § 1 *et seq.*

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

Annotations

1. Legislative body; jurisdiction of Secretary of Interior

"The Navajo Government has been called 'probably the most elaborate' among tribes . . . The legitimacy of the Navajo Tribal Council, the freely elected governing body of the Navajos, is beyond question . . . [N]either Congress nor the Navajos have found it necessary to subject

the Tribal Council's tax laws to review by the Secretary of the Interior. . . ." Kerr McGee Corp. v. Navajo Tribe, 471 U.S. 195 (1985).

2. Powers of Navajo Nation Council

"If a Chairman or Vice Chairman is not exercising powers as defined by the Council, or if the powers are not exercised in the best inter-

2 N.N.C. § 102

Note 2

ests of the Navajo people, or if the powers are being used to provide for personal gain or profit, then surely the Council can restrict use of those powers.” *In re: Certified Questions II*, 6 Nav. R. 105, 116 (Nav. Sup. Ct. 1989).

“ . . . [T]he offices of Chairman and Vice Chairman were created by the Council and whatever powers are in those offices were placed there by the Council. Without the Council giving and defining those powers the Chairman’s or Vice Chairman’s powers would not exist.” *In re: Certified Questions II*, 6 Nav. R. 105, 116 (Nav. Sup. Ct. 1989).

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

“The Navajo Nation Council clearly has authority to withdraw, limit, or supervise the exercise of power it gives to the offices of Chairman and Vice Chairman. The power to create an office and delegate authority to that office includes the power to abolish, withdraw, limit, or supervise exercise of those powers by the office holder. The Navajo Tribal Council can prevent a Chairman and Vice Chairman from exercising certain powers it has delegated to the offices of Chairman and Vice Chairman, and the Council

§ 103. Qualifications

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

History

CD-68-89, December 15, 1989.

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

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can specify how those powers can be exercised. The latter has frequently been done by the Council as shown by the history of Navajo government.” *In re: Certified Questions II*, 6 Nav. R. 105, 115 (Nav. Sup. Ct. 1989).

3. Retroactive legislation

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

4. Presumptions

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

Cross References

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

Library References

Indians ↻32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 104. Incompatible service

A. No person shall serve as a delegate if he or she is in the permanent employment of the United States or any state or any subdivisions thereof; nor shall an elected official of the United States or the several states thereof serve

as a delegate. This section shall not apply to service on a school board or elective county office.

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

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

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

History

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

CAU-40-84, August 9, 1984. Effective October 8, 1984, former provision of this section forbidding a person from serving as a Tribal Council Delegate if he or she was in the employment of "any private employer with business interests on the Navajo Reservation" was re-

scinded, as contrary, inconsistent with, and superseded by, the Navajo Nation Ethics in Government Law, 2 N.N.C. §§ 3751-3761.

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

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

Cross References

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

Library References

Indians ⇄32(6).

Officers and Public Employees ⇄30.1.

Westlaw Topic Nos. 209, 283.

C.J.S. Indians § 51.

C.J.S. Officers and Public Employees §§ 37 to 39, 44.

§ 105. Term of office

A. Each delegate to the Navajo Nation Council shall serve for a term of four (4) years.

B. A delegate shall not be limited in the number of terms he or she may serve.

History

CD-68-89, December 15, 1989; previously at § 104; subsection (B) added.

Rules governing Tribal Council July 1938, Ch. 1, § 9, 1954 Res. 192.

Cross References

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

Library References

Indians ⇄32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 106. Compensation of Council Delegates

A. Delegates shall be compensated by an annual salary of twenty-five thousand dollars (\$25,000) per year. All Council Delegates shall be paid bi-

weekly. A salary increase may be approved by the Navajo Nation Council but shall not become effective unless ratified by two-thirds ($\frac{2}{3}$) of all Navajo Nation chapters within thirty (30) days of approval by the Navajo Nation Council. The provisions of this section shall not apply to mileage payments, per diem payments, deferred compensation benefits or any other payments or benefits which are separate from the bi-weekly base salary established in this section.

B. Delegates attending a Navajo Nation Council meeting or their respective committee meetings may receive sixty dollars (\$60.00) per diem for each day official business is conducted and mileage reimbursement for use of a private vehicle at the rate established in the Navajo Nation Travel Policy and Procedures Handbook, and amendments thereto. Chairpersons of Committees may receive as compensation for extra time spent by the Chairperson beyond meetings to execute committee business eighty dollars (\$80.00) per diem for each committee meeting day.

C. For every week of a session of the Navajo Nation Council, delegates shall be paid mileage equal to one round trip to Window Rock from their residence and return, according to the official mileage chart of the Controller.

D. For each complete committee meeting delegates to the Navajo Nation Council shall be paid mileage equal to one round trip to Window Rock, from their residence and return, according to the official mileage chart of the Controller.

E. Full per diem shall be paid only for attendance of at least three (3) hours of meeting or until all agenda items are concluded.

F. Delegates, or their beneficiary in the event of death, are paid a deferred compensation benefit when they leave office.

History

CJY-63-00, Override of Presidential Veto, CJY-52-00, Amending §§ 106(A) and 1008 to Adjust the Salaries of the Navajo Nation President, Vice-President, and Navajo Nation Council Delegates by ten thousand dollars (\$10,000). Determined legally invalid. See, *Judy v. White*, No. SC-CV-35-02, slip op. (Nav. Sup. Ct. August 2, 2004).

CJA-16-00, Override of Presidential Veto, CO-98-99, Amending § 106(A) to Eliminate the Ratification Requirement of Two-Thirds of All Navajo Nation Chapters. Not effective, as amendment failed to receive approval by $\frac{2}{3}$ of Navajo Nation Chapters.

CJA-15-00, Amending § 106(B) Mileage Rate in Accordance with the Navajo Nation Travel Policy and Procedures Handbook.

CAU-73-97, August 22, 1997, Override of Presidential Veto, CJY-49-97, Amending § 106(A) to Exclude Certain Council Delegate Fringe Benefits.

CD-68-89, December 15, 1989; previously at § 107. Subsection (A) increased salary to twenty-five thousand dollars (\$25,000). Also added

second sentence. Subsection (B): amended generally. Subsection (E) and (F) added.

CJY-52-85, July 24 1985. Subsection (A) increased salary to twenty-one thousand dollars (\$21,000).

1982 Amendment. Increased salary to twenty thousand dollars (\$20,000).

CMY-26-79, May 4, 1979. Subsections (A) and (B) increased compensation.

1978 Budget, pages 1-2, 1-6. Subsection (B) raised per diem allowance from thirty dollars (\$30.00) to forty dollars (\$40.00).

1976 Budget, Div. 0, Dept. 0 1. Increased compensation per year and per diem.

1974 Budget, Div. 0, Dept. 0 1. Deleted provision-raising per diem for trips away from home.

1972 Budget, Div. 0, Dept. 01. Increased compensation per year and per diem.

CMY-49-65, May 4, 1965. Rescinded CJY-34-63. Subsection (A) increased salary to five thousand two hundred ninety-seven dollars (\$5,297).

CJY-34-63, rescinded CAP-9-63. Subsection (A) increased salary to three thousand dollars (\$3,000) and the per diem for each Council session to eighteen dollars (\$18.00).

CAP-9-63, April 23, 1963. Subsection (A) provided an annual salary of two thousand seven hundred dollars (\$2,700), payable bi-weekly, instead of the twenty-seven dollars (\$27.00) per day.

CAU-41-61, August 22, 1961. CAU-40-61, August 22, 1961. Repealed CMY-23-60 and CJY-45-60.

CJY-45-60, July 14, 1960.

CMY-23-60, May 4, 1960. CJY-35-58 repealed.

CJ-35-58, July 21, 1958.

CM-42-53, May 15, 1953.

CM-39-53, May 13, 1953.

1922-1951, Res. P. 573, passed September 13, 1951; 1922-1951 Res. p. 572, passed August 24, 1951; 1922-1951 Res. p. 569, passed April 13, 1950; 1922-1951 Res. p. 567, passed October 14, 1949; 1922-1951 Res. p. 566, passed November 4, 1947; 1922-1951 Res. p. 565, passed February 21, 1947; 1922-1951 Res. p. 555, passed November 8, 1938; 1922-1951 Res. p. 553, passed July 23, 1937, provided compensation for Council Delegates in such forms as salaries, wages, fees, expenses, mileage, and per diem, subject to various limitations and exceptions.

Note. For the Deferred Compensation Plan referred to at subsection (F), see BFMY-41-73 as amended by BFD-251-82, BFD-212-86 and BFMY-26-91. See also CF-21-73 authorizing the Plan.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. Purpose

“CJY-52-00 was adopted by the Navajo Nation Council on July 20, 2000, to amend 2 N.N.C. § 106 to increase the salaries of the Council delegates, the president and vice president.” *Judy v. White*, No. SC-CV-35-02, slip op. at 18 (Nav. Sup. Ct. August 2, 2004).

2. Construction and application

“Lastly, we consider the District Court’s mandate that White ‘take such actions as may be necessary to recoup illegal payments of salary, deferred compensation or tax contributions by the Navajo Nation, and to seek assistance of pertinent Navajo Nation officials for such purposes.’ *Judy v. White*, No. CH-CV-53-01, slip op. At 12 (Chin.Dist.Ct. August 21, 2002). We

reverse and vacate the district court’s judgment.” *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

“2 N.N.C. § 106(A), as codified, is the only valid legislation which can form the basis for Council Delegate salary increases.” *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

3. Validity

“Resolution CJY-52-00 is invalid, and any payment of salaries in excess of those mandated by 2 N.N.C. §§ 106(A) and 1008 is illegal. We therefore affirm the trial court’s decision invalidating CJY-52-00.” *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

§ 107. Advances to Council Delegates

A. Temporary travel advances to a Council Delegate, not to exceed the reasonable expected cost and expenses of authorized travel, maybe made by the Controller upon written authorization of the Speaker of the Navajo Nation Council.

B. Claims for reimbursement of travel expenses shall be submitted to the Controller promptly upon completion of travel. Travel advances outstanding at the time reimbursement claims are submitted shall be deducted from the amount being claimed.

C. Temporary travel advances not cleared, either partially or completely, within thirty (30) days from the date of advance shall be deducted from the next bi-weekly Council Delegate’s pay.

2 N.N.C. § 107

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D. Salary advances to a Council Delegate, not to exceed fifteen thousand dollars (\$15,000) during any bi-weekly pay period, may be made by the Controller or his or her designee.

E. Salary advances made to a Council Delegate during any bi-weekly pay period shall be deducted in amounts not less than fifty dollars (\$50.00) from his or her bi-weekly pay, unless larger deductions are authorized in writing by the individual Council Delegate.

F. The Navajo Nation shall have the right to deduct from any and all moneys or other credits which the Navajo Nation owes to any Council Delegate receiving an advance under this section, an amount equal to the total funds advanced at any time within thirty (30) days prior to the expiration of the Council Delegate's term of office, or at any other time after the Council Delegate leaves his or her office for any reason whatsoever, whether voluntary or involuntary.

History

CJA-12-99, July 23, 1997, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed twenty-five thousand dollars (\$25,000), Presidential Veto Exercised, February 4, 1999.

CJY-54-97, July 23, 1997, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed fifteen thousand dollars (\$15,000).

CJY-56-96, July 17, 1996, Amending § 107(D) Increasing Council Delegate Salary Advances Not to Exceed five thousand dollars (\$5,000).

CD-68-89, December 15, 1989. Amended generally. Previously at § 108.

CN-75-80, November 11, 1980. Subsections (D) and (E) rewritten.

CMY-38-74, May 1, 1974. Added subsections (G) and (H).

Note. There no longer is a subsection G; and the substance of subsection (H) now is under subsection (F).

CO-86-71, October 13, 1971. Substituted one thousand dollars (\$1,000) for five hundred dollars (\$500.00).

CAP-28-67, April 27, 1967. Subsection (D) changed one hundred dollars (\$100.00) to five hundred dollars (\$500.00); subsection (E) provided that a sum not to exceed fifty dollars (\$50.00) be deducted from a Council Delegate's bi-weekly pay for special advances.

CJY-89-66, July 20, 1966.

Library References

Indians ☞32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 108. Group insurance

A. Navajo Nation group insurance shall be provided for Navajo Nation Council Delegates and their dependents

B. The Navajo Nation shall pay a percent of the insurance premium as its contribution.

History

CD-68-89, December 15, 1989. Amended generally. Previously at § 109.

CF-8-62, February 16, 1962. Extended coverage to dependents.

CF-9-58, February 11, 1958, app. April 28, 1958.

Cross References

See also, Navajo Nation Personnel Policies and Procedures.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 109. Tax declarations and returns; deductions

A. Each delegate to the Navajo Nation Council is a common law employee of the Navajo Nation for federal employment tax purposes.

B. The Controller of the Navajo Nation shall make deductions in the proper amounts from the salaries of the delegates to the Navajo Nation Council for federal income tax and social security income withholding.

C. Excluded from participating in the Navajo Nation Personnel Policy are the elected officials, public boards, volunteer, and any other contractual services agreements to provide services to the Navajo Nation Government.

History

CJY-59-00, July 21, 2000, Amending CAP-23-00 to become effective on July 1, 2000. CD-68-89, December 15, 1989. Amended generally. Previously at § 110. CO-107-66, CAP-23-00, April 18, 2000, Amending § 109 Classifying Navajo Nation Council Delegates As Common-Law Employees for Federal Tax Purposes. October 6, 1966.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. Purpose

“CAP-23-00 was adopted on April 18, 2000, to amend 2 N.N.C. § 109 to make Council delegates ‘common law employees’ of the Navajo Nation.” *Judy v. White*, No. SC-CV-35-02, slip op. at 18 (Nav. Sup. Ct. August 2, 2004).

2. Construction and application

“Amendment of Section 109 did not require the chapter ratification process as did Section 106(A), and for good reason. Whether a Delegate was self-employed or a common law employee, the salary remained at twenty-five thousand dollars (\$25,000). There was no significance to the change except a shift in the responsibility for payment of individual tax liability.” *Judy v. White*, No. SC-CV-35-02, slip op. at 23 (Nav. Sup. Ct. August 2, 2004).

3. Procedural considerations

“In this respect, we disagree with the district court that CAP-23-00 was a salary increase and

thus subject to the procedural demands of Section 106(A). We vacate the district court’s decision.” *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

“Had the Title II Amendments contemplated that additional tax benefits operate to increase Delegate salaries, it would have subjected Section 109 to the same chapter ratification process. The Council recognized that the federal taxing process was keyed to the salary set by 106(A), and not an amount in addition to the salary. In passing CAP-23-00, the Council recognized that the legislation dealt only with employment benefits and, ‘not salary increases for Council delegates,’ CAP-23-00, Resolved Clause 2 (April 19, 2000).” *Judy v. White*, No. SC-CV-35-02, slip op. at 23 (Nav. Sup. Ct. August 2, 2004).

“Resolved Clause 7 does not comply with the procedural requirements of Section 165. Although the exhibits attached to the resolution carried the required overstriking and un-

2 N.N.C. § 109

Note 3

derlining, the clauses within the body of the resolution itself did not. We acknowledge that Section 165 was under contemporaneous consideration with Section 106(A) and had not yet become law, but we believe that the Council nonetheless intended then that amendments to any Navajo Nation statutory law ought to reflect the same deliberation and contemplation

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that it gave to the Title II amendments, given the then-recent governmental controversy. Therefore, we hold that Resolution CD-68-89, Resolved Clause 7 (1989) was not a legislative act carrying the weight of law." *Judy v. White*, No. SC-CV-35-02, slip op. at 21-22 (Nav. Sup. Ct. August 2, 2004).

Subchapter 2. Navajo Nation Council Meetings

§ 161. Place

A. All regularly scheduled or special meetings of the Navajo Nation Council shall be held at the Navajo Nation Council Chambers located at Window Rock, Navajo Nation (Arizona) with the following exceptions:

1. If the Chambers in Window Rock are unsuitable for meeting, because of fire, physical damage, remodeling or other cause the Speaker may designate an alternate meeting place in Window Rock, and give reasonable notice to all Council Delegates.

2. A majority of all Council Delegates may agree to hold a meeting in some location in Window Rock other than the Chambers. Such agreement may be by written petition or by motion at any regular or special session of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Amended Rules governing Tribal Council, July 1938, generally. Previously at § 110. Ch. VI, § 1, 1954 Res. p. 206.
CF-29-72, February 3, 1972.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Annotations

1. Validity of resolutions

"... [R]esolutions of the Navajo Tribal Council are presumed to be valid and the party seeking to challenge the validity of any Council

resolution has the burden of rebutting that presumption with clear evidence to the contrary." *Thompson v. Navajo Nation*, 6 Nav. R. 181, 184 (Nav. Sup. Ct. 1990).

§ 162. Number; time; duration

A. There shall be four regular sessions of the Navajo Nation Council each year. Such Sessions shall commence at 10 a.m. on the fourth Monday of January, and the third Monday of April, July and October of each year.

B. Special meetings of the Navajo Nation Council may be called upon reasonable and timely notice to all Council Delegates, by:

1. The Speaker of the Navajo Nation Council acting on the recommendation of the Ethics and Rules Committee; or

2. Written petition of a majority of all Council Delegates.

C. The duration of each session shall be no more than five (5) working days. Each meeting day of the Navajo Nation Council shall be for a minimum of six (6) hours each day of the session.

History

CJA-1-98, January 20, 1998. Changed the day of commencement for the Navajo Nation Council Winter Session from the third Monday to the fourth Monday of January, to accommodate celebration of the Martin Luther King federal holiday. CD-69-89, December 15, 1989. Generally, changed meeting dates, added a notice requirement for special meetings, limited the duration of sessions to five (5) working days, and provided a minimum time requirement for each meeting day.

CF-29-72, February 3, 1972. Changed dates for regular meetings and added provision for special meetings.

CMY-60-66, May 16, 1966. Provided that the first meeting shall commence on the first Tuesday after the first Monday of January instead of the second Monday in January and that the duration of each meeting shall be determined by a majority vote of the Navajo Nation Council instead of jointly by the Area Director and the Chairperson of the Navajo Nation Council.

Tribal Council Res. 1922-195 1, Res. p. 59 1, passed May 7, 195 1.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 163. Agenda

A. The Navajo Nation Council shall adopt an agenda in accordance with written rules and procedures established by the Navajo Nation Council.

B. Once an agenda is adopted, it shall be amended only by two thirds (2/3) vote of the Council.

History

CAP-83-93, April 22, 1993. Rules of Order were amended for budget deliberations.

CAP-24-90, April 30, 1990. Rules of Order for the Navajo Nation Council were adopted.

CD-68-89, December 15, 1989.

CF-29-72, February 3, 1972.

CMA-51-66, § 2, March 9, 1966.

1922-1951 Res. p. 592, May 7, 1951.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 164. Navajo Nation Council and committee resolutions procedure

A. Statements of policy, enactment of positive law, intergovernmental agreements, budget resolutions, and reallocations, must be reviewed and approved by resolution by the appropriate standing committee(s) and the Navajo Nation Council except as otherwise provided herein.

1. Only Council delegates or Standing Committees may introduce a proposed resolution to the Standing Committee(s) and the Navajo Nation Council, except where Navajo government employees are authorized by statute or regulation to introduce proposed resolutions. Prior to introducing the proposed resolution, the Office of Legislative Counsel shall review and draft the proposed resolution for the council delegate(s) or standing commit-

tee(s) to ensure that the proposed resolution is drafted in a proper codified format. Where Navajo government employees are authorized to introduce proposed resolutions, they may seek the assistance of either the Office of Legislative Counsel or the Navajo Department of Justice.

2. Proposed resolutions expressing condolence shall be reserved for former members of the Navajo Nation Council, Chairman, Vice-Chairman, President and Vice-President of the Navajo Nation.

3. After the proposed resolution is drafted, the council delegate(s), standing committee(s) or Navajo government employee(s) shall present the proposed resolution to the Executive Director for the Office of Legislative Services who will assign a number to the proposed resolution.

4. After the proposed resolution is assigned a number, the Speaker of the Navajo Nation Council shall assign the proposed resolution to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters contained in the proposed resolution for proper consideration and distribute a photocopy of the proposed resolution to the Office of the President, Office of the Attorney General, Office of the Controller and the affected division, department and/or program. The chairpersons of the standing committees shall place the proposed resolution on the committees' agenda for consideration by the standing committee at the next regular committee meeting. Passage of the proposed resolution, defeating the proposed resolution and tabling the proposed resolution shall be considered as actions taken by the standing committee.

5. Proposed resolutions that require final action by the Navajo Nation Council shall be assigned to at least two standing committees; the oversight committee(s) and the Ethics and Rules Committee. The standing committees may markup the proposed resolutions, which will be presented as amendments. Only the Navajo Nation Council proposed resolution shall be introduced, and the Ethics and Rules Committee shall present the oversight committee(s) markup to the Council as amendment(s).

6. Proposed resolutions that do not require final action by the Navajo Nation Council shall be assigned to the respective standing committees authorized to act on the proposed resolutions and considered by said standing committee as provided in Subsection (3) above. Only the resolution for the committee having authority over the subject matter shall be introduced. The oversight committee not having final approval authority over the resolution may recommend amendments.

7. The Ethics and Rules Committee of the Navajo Nation Council shall, upon the recommendation of the Speaker of the Navajo Nation Council, develop the proposed agenda for the Navajo Nation Council fifteen (15) calendar days prior to the start of the regular sessions; all verbal and written reports shall be presented to the Council only on the first day of the regular sessions. The proposed resolutions to be placed on the proposed Navajo Nation Council agenda shall have completed the procedures set forth in Subsections (1), (2), (3), and/or (4) of this Section prior to placement on the agenda.

- a. Resolutions which address matters which constitute an emergency shall not be subject to this provision. Matters constituting an emergency shall be limited to the cessation of law enforcement services, disaster relief services, fire protection services or other direct services required as an entitlement under Navajo Nation or Federal law, or which directly threaten the sovereignty of the Navajo Nation.
- B. Agreements not requiring Committee or Council approval.
 - 1. Subcontracts implementing agreements approved under § 164(A) above, grants providing funds to the Navajo Nation, contracts expending funds appropriated by the Navajo Nation Council, Letter of Assurance agreements, memoranda of understanding, memoranda of agreement and other agreements that do not expend funds, associated amendments shall not require approval by resolution by the Navajo Nation Council or its committees.
 - 2. Prior to final execution as provided in 2 N.N.C. § 222, documents not requiring approval by resolution of the Navajo Nation Council or its committees shall be reviewed and signed by the following:
 - a. The appropriate Division Director for departments and activities under his or her supervision;
 - b. The Controller (or designee) for all documents having a financial impact on the Navajo Nation; and
 - c. The Attorney General of the Navajo Nation of the Navajo Nation (or designee).

History

<p>CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.</p> <p>CJY-32-03, July 22, 2003. Amended generally.</p> <p>CAP-24-97, April 22, 1997. Amended generally. Subsections (B) and (C) were added. The time period for reviews was reduced from ten (10) to five (5) working days. Attorney General</p>	<p>review was eliminated for certain proposed resolutions.</p> <p>CD-68-89, December 15, 1989. Amended generally. Subsections (A)(2), (5), (6), (7), (C) (4), (D) and (E) were added.</p> <p>CJA-14-72, January 26, 1972.</p> <p>The review requirements were previously at § 165.</p>
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Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Annotations

- 1. **Validity of resolutions**
 “ . . . [R]esolutions of the Navajo Tribal Council are presumed to be valid and the party seeking to challenge the validity of any Council resolution has the burden of rebutting that presumption with clear evidence to the contrary.” *Thompson v. Navajo Nation*, 6 Nav. R. 181, 184 (Nav. Sup. Ct. 1990).
- 2. **Construction and application**
 “ . . . [B]ecause we have held that Title 2 of the Navajo Nation Code is an ‘organic law’ which takes precedence over other statutes, along with the Navajo Nation Bill of Rights, *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 319, 322-323 (1990), procedural requirements for the enactment of Navajo Nation legislation must be strictly observed.” *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 5 (Nav. Sup. Ct. July 18, 2001). [Editor’s note: This opinion (answer to certified question) was

2 N.N.C. § 164

Note 2

issued prior to amendments to 2 N.N.C. § 164 by CJY-32-03].

“We take judicial notice of the fact that the Navajo Nation Council adopts many kinds of resolutions, which may approve, disapprove or recommend some action, but not all are ‘legislative acts’ in the legal sense of statutes or legislation as such, which carry the weight of law.” *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 3-4 (Nav. Sup. Ct. July 18, 2001). [Editor’s note: This opinion (answer to certified question) was issued prior to amendments to 2 N.N.C. § 164 by CJY-32-03].

“Acknowledging the presumption that the Navajo Nation Council will not enact legislation which would deny civil rights in contravention of the Navajo Nation Bill of Rights,¹ noting the procedures used to place the measure before the Navajo Nation Council, and given the lack of compliance with Navajo Nation statutes for the enactment of legislation, and an additional presumption that the Navajo Nation Council will follow the limitations it places on itself, we hold that the resolution is not a statute which carries the weight of law, but a declaration of the

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wishes of the Navajo Nation Council and guidance for future legislation.” *In the Matter of Certified Question from the United States District Court for the District of Arizona and Concerning the Case of: Peabody Western Coal v. Nez, et al.*, No. SC-CV-49-00, slip op. at 2 (Nav. Sup. Ct. July 18, 2001). [Editor’s note: This opinion (answer to certified question) was issued prior to amendments to 2 N.N.C. § 164 by CJY-32-03].

“The statute, 2 N.T.C. § 164 (contained in comprehensive 1989 amendments to Title 2 of the Navajo Tribal Code, which are intended to establish the fundamental structure and operations of the Navajo Nation Government), is clearly mandatory rather than directive, and its procedures are a condition precedent to the enactment of valid legislation. The required procedure was not followed in the enactment of Council Resolution CO-80-90, and the same is void under the clear wording and meaning of 2 N.T.C. § 164.” *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 308 (Nav. Sup. Ct. 1990).

“A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or change such powers [in 2 N.N.C. § 873].” *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

§ 165. Legislation and Reading

A. All resolutions proposing new laws or amendments of laws are legislation and shall clearly indicate new language by underscoring the new language and deletion by overstrike and shall refer to appropriate Navajo Nation Code Titles and Sections.

B. All proposed resolutions enacting new laws, amending existing laws, or adopting a statement of policy shall be read twice in their entirety to the members of the Navajo Nation Council, the exhibits attached to the proposed resolutions shall be identified by reference only; these proposed resolutions are subject to veto by the President of the Navajo Nation, pursuant to 2 N.N.C. § 1005(C)(10) and (11), with the exception of those proposed resolutions approving internal procedures and policies of the Navajo Nation Council. If no member of the Navajo Nation Council objects, only the title of proposed resolutions expressing condolences, appreciation and congratulation shall be read and any amendments thereto shall be incorporated without being read to the members of the Council; these proposed resolutions are not subject to review by the President of the Navajo Nation pursuant to 2 N.N.C. § 1005(C)(10) and (11) as they are expressions of the sentiment of the Navajo Nation Council.

History

CAU-48-03, August 29, 2003, Override Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.

CJY-32-03, July 22, 2003. Added Subsection B.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Annotations

1. Construction and application

“Resolved Clause 7 does not comply with the procedural requirements of Section 165. Although the exhibits attached to the resolution carried the required overstriking and underlining, the clauses within the body of the resolution itself did not. We acknowledge that Section 165 was under contemporaneous consideration with Section 106(A) and had not yet become law, but we believe that the Council

nonetheless intended then that amendments to any Navajo Nation statutory law ought to reflect the same deliberation and contemplation that it gave to the Title II amendments, given the then-recent governmental controversy. Therefore, we hold that Resolution CD-68-89, Resolved Clause 7 (1989) was not a legislative act carrying the weight of law.” *Judy v. White*, No. SC-CV-35-02, slip op. at 21-22 (Nav. Sup. Ct. August 2, 2004).

§ 166. Record of proceedings; interpreters; access to records

A. Proper records of the proceedings of the Navajo Nation Council and all standing committees, boards and commissions shall be kept and the necessary interpreting services shall be provided by the Office of Legislative Services.

B. Access to records of the proceedings of the Navajo Nation Council, standing committees, boards and commissions shall be provided to the public through the Office of Legislative Services and the Central Records Department.

History

CD-68-89, December 15, 1989. Added subsection (B), and redesignated § 167 as § 166.
CF-29-72, February 3, 1972.
Rules governing Tribal Council, July 1938, Ch. VI, § 4, 1954 Res. p. 206.

Note. Subsection (B) slightly reworded for clarity.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 167. Failure to attend

All delegates to the Navajo Nation Council shall attend all regular and special meetings of the Navajo Nation Council or Committees. If any delegate is absent from sixty percent (60%) of the meeting days within a one (1) year period, the Navajo Nation Council may consider a motion to censure said delegate. If his/her absence continues, the Navajo Nation Council shall have the authority to declare the delegate’s seat forfeited and vacant.

History

CD-68-89, December 15, 1989. Amended generally. Previously at § 169.
CF-29-72, Exhibit A, § D, February 3, 1972;
Prior language provided that a Council Delegate unable to attend meetings for a year resign.

Rules governing Tribal Council, July 1938, Ch. VI, § 4, 1954 Res. p. 206.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 168. Sergeant at Arms; appointment; duties

A. The Director of the Division of Public Safety shall designate a member of the Navajo Nation police force to fill the post of Sergeant at Arms.

B. The Sergeant at Arms shall maintain order under the direction of the Speaker or Presiding Chairperson of the Navajo Nation Council or Committees and shall make appropriate arrangements for maintenance of law and order during Council and Committee sessions.

History

CD-68-89, December 15, 1989. Amended Tribal Council Res. 1922-1951 Res. p. 591, generally; previously at § 171. May 7, 1951.
CJ-54-53, July 22, 1953.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 169. Quorum

A. A quorum shall consist of a simple majority of all voting members of the Navajo Nation Council.

B. No resolution or motion of the Navajo Nation Council or its Standing Committees shall be passed or otherwise acted upon unless a quorum is present. When a quorum is present, any motion or resolution shall be passed if it receives a majority of all votes cast in favor or opposed, unless a larger proportion than a simple majority has been properly stipulated in advance or is required by Navajo Nation law. Abstention vote may be cast only when a delegate has a personal interest conflict in the motion of the Council or Standing Committee. Only a vote in favor and opposed shall be accepted. A delegate who fails to cast a vote shall be declared absent from the whole meeting. Any delegate who intentionally fails or refuses to cast a vote shall be declared absent from the entire meeting, unless otherwise excused by the Speaker of the Navajo Nation Council.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989. At subsection (B) added were provisions addressing votes acceptable and Council Delegates not casting votes. Previously at § 172.
CJY-32-03, July 22, 2003. Added language to Subsection B, changing the voting requirements for Council Delegates. CF-29-72, February 3, 1972.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Annotations

- 1. Construction and application** change such powers [in 2 N.N.C. § 873].” *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).
 “A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or

Subchapter 3. Navajo Nation Council Committees—Generally

§ 180. Appointment

Each delegate to the Navajo Nation Council shall be appointed to no more than one standing committee and no more than one board or commission of the Navajo Nation excluding membership on the Intergovernmental Relations Committee; except that the Speaker of the Navajo Nation Council shall serve only on the Intergovernmental Relations Committee and shall not serve on any board, commission or any other entity of the Navajo Nation.

History

CD-68-89, December 15, 1989.
 CMA-17-89, March 24, 1989.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 181. Membership

A. Committee members representing agencies of the Navajo Nation shall be recommended by the agency caucuses for selection by the Speaker and confirmation by the Navajo Nation Council. The Speaker shall select the at-large committee members. The Speaker shall select and the Navajo Nation Council confirm any of its members to fill vacancies which may occur in the Committee membership.

B. At least one (1) member of each Committee shall be from each of the Agencies of the Navajo Nation.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. Amended Subsection A to provide for agency caucus recommendation for standing committees.
 CD-68-89, December 15, 1989. Amended generally. CMA-17-89, March 24, 1989.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 182. Term of office

Committee members shall serve a term of office coinciding with their term of office as delegates of the Navajo Nation Council.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.
CJY-32-03, July 22, 2003. Deleted language relative to continuation on standing committees.

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 183. Meetings; quorum

A. All meetings of the Navajo Nation Council committees or commissions shall be held in Window Rock, Navajo Nation, (Arizona). For a meeting to be deemed to have been held, each of the following acts shall occur: a quorum is present, an agenda is adopted, substantive actions (approval, disapproval or table) are taken, and per diem and roundtrip mileage are paid to committee members or commissioners. Meetings shall not mean work sessions, workshops, orientations, training and business meetings with Navajo or non-Navajo entities, therefore, no meeting per diem payment for work sessions, workshops, etc. shall be paid. See 2 N.N.C. § 106. Meetings held elsewhere within the Navajo Nation shall be by written permission of the Speaker of the Navajo Nation Council, provided that funds are available. No meetings shall be held outside the Navajo Nation unless by written permission of the Speaker of the Navajo Nation Council, provided that funds are available; and further provided that the meeting is with a legislative body of another sovereign.

B. Committee and commission meetings shall be for a minimum of three (3) hours for each meeting day and such meetings shall be for at least two (2) days each month. No compensation, per diem and mileage shall be paid unless these requirements are met. Special meetings may be held only if the following conditions are met:

1. Funds are available within the approved annual budget for additional meetings; and
2. The Speaker of the Navajo Nation Council approves such meetings; and
3. Notice of the meeting is posted at Window Rock Navajo Nation offices, published in a daily newspaper and announced on local radio, at least one (1) day before the meeting.

C. When a Committee is authorized by law to hold hearings as a quasi-judicial body, the restrictions on meeting days per month and minimum hours for meetings shall not apply to said hearings.

D. Until the Navajo Nation Council adopts uniform rules for conduct of Committee meetings, the Committees may adopt their own rules for conduct of meetings.

E. Quorums for committees, boards and commissions shall be a simple majority of the membership of the committees, boards, and commissions.

F. No committee or commission meeting shall be held while the Navajo Nation Council is in special or regular session except to consider a matter which is already a part of the agenda for the Council session then in progress and for which committee or commission action is a legal condition precedent to action by the Council. Nor shall the Speaker approve travel for any member of the Council which is to take place during a special or regular session of the Council except when such travel is to conduct a meeting with, or to give official testimony to, the government of another sovereign.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.	meetings and other gatherings such as work sessions. Added Subsection F.
CJY-32-03, July 22, 2003. Amended Subsection A to clarify meeting requirements and differentiate between Standing Committee	CMY-26-90, May 3, 1990. Added "simple majority" provision at subsection (E).
	CD-68-89, December 15, 1989.

Cross References

Standing committees, rules of procedure, adopted pursuant to subsection (D), see CJA-06-92, January 22, 1992.
 Ethics and Rules Committee, rules of procedure adopted by Navajo Nation Council, see CAP-32-92, April 17, 1991.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 184. Chairperson; vice-chairperson; chairperson pro tem

- A. The chairperson and vice-chairperson of committees shall be selected by vote of the committee.
- B. At any committee meeting where the duly appointed Committee Chairperson and Vice-Chairperson are absent, the majority of those committee members present may select a pro tem chairperson to conduct the committee meeting; the pro tem chairperson shall retain the power to vote.
- C. The chairperson of a committee or in his or her absence the vice-chairperson shall vote only in the event of a tie vote by the regular voting members.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 185. Powers

- A. Subject to existing funding or contract requirements, the committees, chapters, boards or commissions may reallocate funds appropriated by the Navajo Nation Council to the committees, boards and commissions and to

divisions, departments and programs over which the committees have oversight authority, provided that funds are determined available by the Controller; further provided that such reallocation is upon the request of the affected division, department or program and further provided that reallocation of funds is by two-thirds (2/3) vote of the full membership of the committee, board or commission.

B. The committees, boards and commissions shall have the power to subpoena and acquire from any executive department, bureau, agency, board, commission, office, independent establishment or instrumentality, information, suggestions, estimates, and statistics necessary for execution of the purposes and authorities. Each such department, bureau, agency, board, commission, office, establishment or instrumentality is authorized and directed to furnish to the extent permitted by law such information, suggestions, estimates and statistics directly to the committee, board or commission upon request by the chairperson.

C. The committees, boards and commissions may, for the purpose of carrying out purposes and authorities, hold such hearings and shall have the power to subpoena the attendance and testimony of such witnesses and the production of books, records, memoranda, papers and documents as deemed advisable.

D. Any member of a committee, board or commission may administer oaths or affirmations to witnesses appearing before the Committee, board or commission.

E. Committees shall coordinate with one another where areas of authority and responsibility overlap.

F. Subpoenas and orders may be enforced by the courts of the Navajo Nation by means of civil enforcement of committee action. A committee, by the Attorney General, may apply to the District Court of the Window Rock Judicial District for an order to enforce any committee subpoena.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Deleted Subsection B.

CJY-54-01, July 19, 2001. Subsections (B)(1) and (2) were amended to eliminate the consideration of contracts entered into pursuant to the Navajo Nation Procurement Code, including small purchases, emergency procurements and sole source procurements.

CN-76-92, November 10, 1992. Amended generally subsections (C) and (D) to specifically grant subpoena power. Subsection (G) was added.

CD-68-89, December 15, 1989.

CMA-14-92, March 28, 1992. Also, see resolved clause 8(c) Navajo Nation Council interpretation of this section as it relates to chapters.

Note. Subsection (C) was slightly reworded for clarity.

Library References

Indians ⇄ 32(4.1).
Westlaw Topic No. 209.

§ 186. Subcommittees

Each committee may establish subcommittees consisting of committee members selected by the committee. The subcommittee shall exist until its assigned

tasks are completed and report and recommendation is made to the committee. The same provisions which apply to committee meetings shall also apply to subcommittee meetings.

History

CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 187. Joint Committee meetings

A. Standing committees of the Navajo Nation Council may convene joint meetings to address issues where their authority and responsibility overlap. The same provisions that apply to committee meetings including, but not limited to, committee uniform rules of order shall also apply to the joint committee meetings.

B. Joint committee meetings shall be held when:

1. Funds are available within the approved annual budget for each standing committee account wanting to participate in the joint meeting;
2. The chairpersons of the standing committees wanting to participate in the joint meeting shall request the joint meeting.
3. Each standing committee participating in the joint meeting shall have a quorum of its members at the joint meeting; and
4. The meeting is approved by the Speaker of the Navajo Nation Council and notice of the joint meeting posted on a Navajo government building and published in a daily newspaper or announced on the local radio twenty-four (24) hours in advance of the joint meeting.

C. No substantive action shall be taken in joint committee meetings. Each committee shall make substantive decisions individually as provided in § 189 of this Title.

D. The presiding chairperson for the joint committee meeting shall be selected by the committee members present from among the chairpersons of the standing committees participating in the joint meeting; if only one chairperson of the standing committees participating in the joint meeting is available, said chairperson shall automatically preside over the joint meeting. If the chairpersons of any of the standing committees is not present, the vice-chairperson of such standing committee can be selected to preside over the joint committee meeting. If all the chairpersons and vice chairpersons of all the standing committees that are participating in the joint meetings are absent, the committee members of the joint meeting shall select any one of the committee members present to preside over the entire joint meeting.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CJY-32-03, July 22, 2003. Added New Section 187 and renumbered succeeding Sections.

2 N.N.C. § 187

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Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 188. Reports

All committees, boards and commissions of the Navajo Nation Council shall report quarterly and in writing to the Navajo Nation Council concerning their areas of oversight.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.
CJY-32-03, July 22, 2003. Renumbered Section.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 189. Committee actions

All substantive actions shall be by written resolution duly certified by the presiding officer, setting forth the action taken and signed by the presiding officer. Resolutions and memoranda shall be identified by number and filed with the Central Records Department of the Navajo Nation.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.
CJY-32-03, July 22, 2003. Renumbered Section and deleted reference to committee memoranda.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 190. Staff

Staff from divisions over which the committees have oversight authority shall assist the committees in execution of their authority and shall provide necessary advice and clerical services.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.
CJY-32-03, July 22, 2003. Renumbered Section.

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 191. Conflict of interest

Committee members who have personal, family or business interests in matters before the Committee or joint committee meeting shall not participate in the committee or joint committee proceeding or vote on the matter.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CD-68-89, December 15, 1989.

CJY-32-03, July 22, 2003. Renumbered Section and added reference to Joint Committees.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 192. Legislative oversight

Committee oversight shall be limited to legislation and policy decisions and shall not involve program administration. Where the committee has statutory authority to appoint a director, the committee shall exercise administrative oversight consistent with the appointment authority.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03. CJY-32-03, July 22, 2003. Renumbered Section.

Library References

Indians ☞32(4.7).
Westlaw Topic No. 209.
C.J.S. Indians § 53.

§ 193. Agency caucus

A. Purpose. The Navajo Nation Council Rules of Order recognize the ability of the Council to form itself into caucuses for the discussion of Council business. Caucuses are formed by delegates dividing themselves among the Bureau of Indian Affairs agencies from which each delegate is elected. Each agency caucus then develops policy on issues to be discussed by the Council, and those policies are advanced by each member delegate of the caucus. It is the purpose of this section to formalize the agency caucus powers and procedures. The purpose of this statute is to improve and make more efficient the legislative process by creating a forum which provides education of, and information to, Council delegates on issues pending before the Council and which allows formulation of positions on these issues in advance of Council sessions.

B. Agency Caucus defined. An agency caucus shall consist of all those Council delegates elected from chapters within the BIA recognized Northern, Fort Defiance, Chinle, Western and Eastern Agencies.

C. Powers. An agency caucus shall have authority to make recommendations on any issue before the Council. Caucuses shall act by resolution, but

need not seek review of such resolutions pursuant to 2 N.N.C. § 164. In addition, the authority of the caucuses to make recommendations shall not be deemed to extend or add any requirement for review, recommendation or approval of any resolution of the Council. Caucus resolutions shall be only advisory in nature and are not binding upon the Council or the members of the caucus.

D. Procedures. The caucus shall select a caucus leader and Whip, and Recorder from among its members. The caucus leader may call meetings of the caucus upon notice to all members in a form reasonably calculated to provide actual notice of the meeting. There shall be no requirement that notice be given at any particular time in advance of the meeting; notice shall be timed only to provide members with as much advance notice of the meeting as is consistent with the requirements of due process. A caucus may adopt rules of order to govern their meetings. All caucus resolutions shall be in written form.

E. Powers and duties of caucus leader. In addition to powers and duties set forth elsewhere in this statute, the Caucus Leader shall have the following powers and duties:

1. Act as chair of all caucus meetings;
2. Speak of behalf of the caucus at all meetings of the Council and present the positions adopted through caucus resolutions;
3. Ensure that all caucus members have notice of all issues and legislation pending before the Council.

F. Powers and duties of whip. In addition to the powers and duties set forth elsewhere in this statute, the Whip shall have the following powers and duties:

1. Act as deputy to the caucus leader and exercise the powers and duties of the leader in his or her absence;
2. Communicate caucus policy, as adopted by resolution of the caucus, to all caucus members and seek to ensure that the actions of caucus members coincides with this policy;
3. Canvass all caucus members on issues during Council sessions and keep the Caucus Leader informed as to the number of votes which can be counted on for such issues.

G. Powers and duties of Recorder. The recorder shall have the following powers and duties:

1. Keep a record of all meetings of the caucus;
2. Arrange for preparation of all documents, including resolutions, utilized by the caucus;
3. Submit official forms on behalf of all caucus members.

History

CJA-12-03, January 31, 2003. Subsection (H) eliminated, making the Agency Caucuses permanent entities of the Navajo Nation Government.

CJA-17-00, January 28, 2000. Established the Pilot Project Agency Caucuses, with an initial authorized period of three (3) years duration.

Library References

Indians ↻32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

Subchapter 5. Resolutions and Documents

§ 221. Resolutions; certification; filing; codification

A. The Speaker of the Navajo Nation Council or Speaker Pro Tem shall certify the adoption of any resolution of the Navajo Nation Council by signing the same after it is engrossed by the Executive Director of the Office of Legislative Services or his or her designee. Adopted resolutions shall be filed with the Central Records Department of the Navajo Nation and the Legislative Counsel shall immediately arrange for codification thereof.

B. All resolutions that enact new Navajo law or amend existing Navajo law and are adopted by the Navajo Nation Council shall become effective on the day the President of the Navajo Nation signs it into law or the Navajo Nation Council takes action to override the President’s veto, unless the Navajo Nation Council specifically authorizes and directs a different effective date.

C. All resolutions that do not enact new Navajo law, amend existing Navajo law or make a policy statement and are adopted by the Navajo Nation Council shall become effective upon the certification by the Speaker or Speaker Pro Tem of the Navajo Nation Council. Resolutions that adopt internal policies and procedures of the Navajo Nation Council shall become effective upon certification by the Speaker or Speaker Pro Tem.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.	CF-24-57, February 15, 1957.
CJY-32-03, July 22, 2003. Amended Subsection A to add engrossment requirement. Added Subsections B and C.	CA-48-52, § 1, 1952, Res. p. 107, passed August 15, 1952.
CD-68-89, December 15, 1989. Filing and Codification requirements added.	CA-34-52, § 2, 1952, Res. p. 106, passed April 25, 1952.
CO-51-81, October 22, 1981.	Rules governing Tribal Council, July, 1938, Ch. VI, § 6, 1954 Res. p. 208.

Cross References

Office of Legislative Counsel, see 2 N.N.C. §§ 164 and 964.

Library References

Indians ↻32(4.7).
 Westlaw Topic No. 209.
 C.J.S. Indians § 53.

§ 222. Contracts or other papers generally

All contracts or agreements entered into pursuant to the Navajo Nation Procurement Code, to the extent applicable, or approved by the Navajo Nation Council, or its Committees shall be executed in the following manner:

2 N.N.C. § 222

NAVAJO NATION GOVERNMENT

A. The President or the Vice-President of the Navajo Nation or their designee shall execute contracts or agreements pertaining to the Executive Branch;

B. The Chief Justice of the Navajo Nation or their designee shall execute contracts or agreements pertaining to the Judicial Branch; and

C. The Speaker of the Navajo Nation Council or their designee shall execute contracts or agreements pertaining to the Legislative Branch.

D. The Chapter President of the Navajo Nation Chapter shall execute contracts or agreements pertaining to the Chapter.

History

CJY-54-01, July 19, 2001. Initial clause amended to acknowledge the application of the Navajo Nation Procurement Code. Subsections (A),(B),(C), and (D) amended to allow signature of contracts by designees of Branch Chiefs.

CD-68-89, December 15, 1989. Amended generally.

CO-61-62, October 17, 1962.

CF-24-57, February 15, 1957, provided as follows: "Notwithstanding any other provision of the resolutions of the Tribal Council, the execution of all contracts or papers of any nature heretofore signed by the Chairperson or Vice-Chairperson alone, purporting to act for the Navajo Nation, is hereby ratified, as of the date of such signatures. The purpose of this section is merely to ratify the signatures on such

contracts or papers and not to validate any contract or paper which may be void or voidable for any reason other than improper signature."

CF-13-53, § 4, 1953 Res. p. 224, January 6, 1953.

CA-48-52, § 1, 1952 Res. p. 107, August 15, 1952.

CA-34-52, § 2, 1952 Res. p. 106, April 25, 1952.

CA-48-52, § 2, 1952 Res. p. 107, August 15, 1952.

1922-1951 Res. p. 552, July 19, 1937, repealed by CF-24-57, § 5.

TAC-RC-9, 1922-1951 Res. p. 384, May 24, 1949.

Library References

Indians ⇄24.

Westlaw Topic No. 209.

C.J.S. Indians §§ 12, 31.

§ 223. Contracts

Except as otherwise provided, any contract authorized to be executed on behalf of the Navajo Nation shall meet the following conditions:

A. All contracts involving the expenditure of funds shall expressly state that the liability of the Navajo Nation under such contract is contingent upon the availability of appropriations by the Navajo Nation Council to carry out the same.

B. All contracts shall have sufficient funds appropriated and available.

C. Contracts shall not waive the sovereign immunity of the Navajo Nation or its entities unless approved by two-thirds (2/3) vote of the full membership of the Navajo Nation Council. This provision shall not apply to authority to waive immunity properly delegated.

D. All contracts, including those entered into pursuant to the Navajo Nation Procurement Code, shall comply with the Navajo Business Procurement Act, 12 N.N.C. § 1501 *et seq.*, the Navajo Employment Preference Act, 15 N.N.C. § 601

et seq., Navajo Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, and rules and regulations promulgated thereto.

E. All contracts shall be awarded only after public advertisement and bidding unless otherwise authorized as small purchases, emergency purchases or sole source purchases under the Navajo Nation Procurement Code, or are Intergovernmental Agreements approved by the Navajo Nation Council or its standing committees.

F. All change orders, modifications or amendments of contracts utilizing Navajo Nation funds shall not exceed twenty percent (20%) of the accepted bid. If the twenty percent (20%) cap is exceeded by any change orders, modifications or amendments, such change orders, modification or amendment shall be subject to the provisions of § 223(E) above.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.	CD-68-89, December 15, 1989.
CJY-32-03, July 22, 2003. Deleted Subsection B.	CO-67-56, 1956 Res. p. 275, passed October 26, 1956, app. by Commissioner, February 11, 1957.
CJY-54-01, July 19, 2001. Subsections (B), (E), (F), and (G) amended to acknowledge changes made by the passage of the Navajo Nation Procurement Code.	Note. Subsection (G) slightly reworded for statutory clarity.

Library References

Indians ↔24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 224. Filing

All executed contracts or papers, and any modifications thereof, shall be filed with Central Records Department of the Navajo Nation. Executed contracts shall also be filed with the Office of Contracts and Grants.

History

CD-68-89, December 15, 1989.

Cross References

Office of Contract and Grants, plan of operation adopted, see ACMY-79-86.

Library References

Indians ↔24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 225. Public access

Access to contracts or papers shall be provided to the public by the Central Records Department as provided in the Navajo Privacy and Access to Information Act.

History

CJY-32-03, amended to reference Navajo Privacy and Access to Information Act. CD-68-89, December 15, 1989.
CAU-48-03, overrode Presidential veto.

Subchapter 6. [Reserved]

Subchapter 7. Speaker of the Navajo Nation Council

§ 281. Office of Speaker of the Navajo Nation Council

A. There is hereby established the Office of the Speaker of the Navajo Nation Council.

B. The Speaker of the Navajo Nation Council shall be a member of the Navajo Nation Council, in good standing.

C. The Office of the Speaker shall have such support personnel as may be budgeted for.

History

CD-68-89, December 15, 1989.
See Rules governing Tribal Council, July 1938, Ch. 111, § 1, 1954, Res. p. 196.

Library References

Indians ⇐32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 282. Selection of the Speaker, term of office

A. The Speaker of the Navajo Nation Council shall serve in such office at the pleasure of the Navajo Nation Council.

B. The term of office of the Speaker shall be two (2) years.

C. The Speaker shall be selected and confirmed by the Navajo Nation Council as the first order of business at the Council session scheduled for the fourth Monday in January of any odd numbered year.

History

CJA-1-98, January 20, 1998. Changed the day of commencement for the Navajo Nation Council Winter Session from the third Monday to the fourth Monday of January, to accommodate celebration of the Martin Luther King federal holiday. CD-68-89, December 15, 1989.

Cross References

Selection and confirmation of Speaker, process and procedure, see CJA-02-99.

Library References

Indians ⇐32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 283. Residence

A residence may be furnished at Window Rock, Navajo Nation (Arizona), together with the cost of water, sewer, refuse disposal, electricity and natural gas without charge to the Speaker. If the Speaker declines to reside in such residence, the Navajo Nation shall not be responsible or liable for costs and expenses of living elsewhere.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 284. Salary

The salary of the Speaker shall be thirty thousand dollars (\$30,000) per annum above the salary as a Navajo Nation Council Delegate.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 285. Powers and duties

A. The Speaker of the Navajo Nation Council shall exercise all powers and authorities which are delegated to the Office by law or may from time to time be delegated to such Office by the Navajo Nation Council.

B. The Speaker’s powers and duties shall include the following:

1. Preside at all Navajo, Nation Council and Intergovernmental Relations Committee meetings;
2. Direct and supervise the personnel and programs under the Legislative Branch as provided by law,
3. Appoint a Speaker Pro Tem to allow the Speaker to participate in debate and sponsor legislation before the Navajo Nation Council and, in the sole discretion of the Speaker, to carry out the administrative duties of the office of Speaker when the Speaker is unavailable and absent due to travel, illness, or for any other reason deemed sufficient by the Speaker;
4. Vote only in the event of a tie vote;
5. Call a special session of the Navajo Nation Council pursuant to 2 N.N.C. § 162; and
6. Recommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Legislative Branch and advise

2 N.N.C. § 285

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the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee.

History

CAU-48-03, August 29, 2003, Overrode Presidential Veto of CJY-32-03.

CJY-32-03, July 22, 2003. Amended Subsection B(5) to add reference to 2 N.N.C. § 162.

CJY-58-00, July 21, 2000. Subsection (B)(3) amended to allow for the appointment of a

Speaker Pro Tem to allow the Speaker to sponsor legislation, and to carry out administrative duties of the Speaker when the Speaker is unavailable.

CD-68-89, December 15, 1989.

Cross References

Special sessions, authority to call on recommendation of Ethics and Rules Committee, see 2 N.N.C. § 162(B).

Library References

Indians ⇨32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 286. Removal; vacancy

A. The Speaker may be removed by two-thirds (2/3) vote of the full membership of the Navajo Nation Council.

B. If a vacancy should occur in the Office of the Speaker of the Navajo Nation Council, the Navajo Nation Council shall select and confirm from among its members a successor to serve the remainder of the term.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇨32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 287. Speaker Pro Tem

A. When a quorum of the Navajo Nation Council is present at any duly called regular or special meeting, the members present, in absence of the Speaker, may select from among the Chairpersons of the standing committees to serve as the Speaker Pro Tem until the Speaker arrives.

B. The Speaker, in his or her sole discretion, may appoint a Speaker Pro Tem to carry out the administrative duties of the office of Speaker whenever the Speaker is both absent and unavailable due to travel, illness, or any other reason deemed sufficient grounds by the Speaker. The appointment shall be made in writing and shall expire at a time designated by the Speaker or whenever withdrawn in a separate writing by the Speaker, and shall, in any event, automatically expire in five (5) working days after the date of the appointment unless renewed in writing by the Speaker. Only current members

of the Council may be appointed as Speaker Pro Tem pursuant to this provision and shall serve without additional salary compensation.

C. If the Speaker is unable to perform his or her duties for any reason and is unable to appoint a Speaker Pro Tem pursuant to § 287(B), the Chairperson of the Government Services Committee shall serve as the Speaker Pro Tem until the Speaker’s inability to perform his or her duties is removed.

D. A Speaker Pro Tem appointed pursuant to §§ 287(B) or (C) shall, in addition to his or her salary as a delegate pursuant to 2 N.N.C. § 106(A), receive mileage compensation in accordance with 2 N.N.C. § 106(A) and per diem for each day of service as Speaker Pro Tem in an amount equivalent to the daily rate of the salary established in 2 N.N.C. § 284.

History

CJY-58-00, July 21, 2000. Subsections (B), (C), and (D) added to allow for the appointment of a Speaker Pro Tem to carry out administrative duties of the Speaker when the Speaker is unavailable. CD-68-89, December 15, 1989.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Subchapter 8. [Reserved]

Subchapter 9. Standing Committees

Article 1. Government Services Committee

§ 341. Establishment; purposes

A. The Government Services Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

B. It is the purpose of the Committee to monitor and coordinate the activities of all divisions and departments of the Executive Branch of the Navajo Nation.

History

CD-68-89, December 15, 1989. By CD-68-89, the “Government Services Committee” was established and the “Advisory Committee” abolished. CJA-1-81, January 28, 1981. CF-17-67, February 28, 1967. CMA-51-66, March 9, 1966. CS-51-64, September 4, 1964.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 342. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

2 N.N.C. § 342

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History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 343. Powers

A. General. The Committee shall have powers necessary and proper to carry out the purposes set forth herein.

B. Enumerated Powers. The Committee is hereby authorized and directed:

1. To recommend to the Navajo Nation Council legislation for the creation of colleges, or other entities of the Navajo Nation and to recommend the amendment or rescission of such legislation.

2. To create any division or department of the Executive Branch of the Navajo Nation government by adoption of its plan of operation and to amend or rescind that Plan or the existing plan of operation for any division or department.

3. To give final confirmation of appointments to boards, commissions, and colleges.

4. To oversee the conduct and operations of entities of the Navajo Nation not otherwise under the oversight authority of other standing committees, except that such oversight shall not interfere with the prerogative or business decisions of management and governing boards.

5. To recommend legislation to Navajo Nation Council on matters within the Committee's jurisdiction.

History

CD-68-89, December 15, 1989.

Cross References

Fact-finding hearings, rules of Government Services Committee, see, also, GSCMY-33-90.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 344. Meetings

Meetings shall be held on the second and fourth Tuesday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183. CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 2. Budget and Finance Committee

§ 371. Establishment

The Budget and Finance Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Amended generally.	CN-91-69, November 13, 1969.
CMA-17-89, March 24, 1989.	CMA-18-67, March 2, 1967.
CAP-17-84, April 19, 1984.	CJY-90-66, July 20, 1966.
CJA-1-71, January 12, 1971.	CMA-28-65, March 18, 1965.
	CF-11-6 1, February 13, 1961.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 372. Purposes

The purposes of the Committee are:

- A. To coordinate, oversee and regulate the fiscal, financial, investment, contracting and audit policies of the Navajo Nation.
- B. To report to the Navajo Nation Council on the fiscal and financial state of the Navajo Nation.
- C. To recommend to the Navajo Nation Council the adoption of legislation designed to strengthen the fiscal and financial position of the Navajo Nation and to promote the efficient use of the fiscal and financial resources of the Navajo Nation.
- D. To protect the interests of the Navajo People through the prudent management of the financial reserves of the Navajo Nation and the efficient use of funds available for expenditure by the Navajo Nation.
- E. To oversee and provide direction for lending programs within the Committee's authority.

History

CD-68-89, December 15, 1989. Amended generally.	CN-91-69, November 13, 1969.
CMA-17-89, March 24, 1989.	CMA-18-67, March 2, 1967.
CAP-17-84, April 19, 1984.	CJY-90-66, July 20, 1966.
CJA-I-71, January 12, 1971.	CMA-28-65, March 18, 1965.
	CF-11-61, February 13, 1961.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 373. Membership; advisors

A. The Committee shall consist of eight (8) members of the Navajo Nation Council.

B. The Department of Justice, Controller, Auditor General, Legislative Counsel, Director of Legislative Services and Director of the Division of Finance shall serve as official advisors to the Committee and shall provide appropriate support, advice and counsel on all matters.

History

CD-68-89, December 15, 1989. Amended generally.	CMA-18-67, March 2, 1967.
CMA-17-89, March 24, 1989.	CJY-90-66, July 20, 1966.
CAP-17-84, April 19, 1984.	CMA-28-65, March 18, 1965.
CJA-1-71, January 12, 1971.	CF-11-6 1, February 13, 1961.
CN-91-69, November 13, 1969.	Note. The reference to "Division of Administration and Finance" at Subsection (B) was changed to "Division of Finance".

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 374. Powers

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds.
2. To the extent permitted by federal or Navajo Nation laws and regulations, the Committee shall appropriate, allocate, cancel, reappropriate and review the use of Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources.
3. With prior approval of the President, Speaker and/or Chief Justice to recommend to the Navajo Nation Council amendment of the approved annual budgets by reallocating funds between branches.
4. To coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises, as well as other agencies, federal, state, regional and private, expending or seeking to expend funds within the Navajo Nation or for the benefit of the Navajo People.
5. To require the presentation and submission of financial reports by any enterprise, authority, or entity chartered or approved by the Navajo Nation Council or its committees.
6. To return unexpended funds to the Reserve Fund or the appropriate funding source.
7. To promulgate policies and regulations concerning wages, expenditure reimbursement, and fringe benefits for Navajo Nation officials and employees.

8. To require reports from and to monitor the financial performance of all offices, divisions, departments, enterprises, authorities, committees, boards, commissions, or entities having oversight or control over fiscal matters or financial obligations to the Navajo Nation.

9. To require an annual audit of the accounts of the Navajo Nation by certified public accountants and to present such audit to the Navajo Nation Council.

10. To review the annual budgets of the Bureau of Indian Affairs, the Indian Health Services and other departments and agencies of the United States government and to recommend the approval or disapproval of such budgets.

11. To promulgate rules and regulations for lending money to members of the Navajo Nation.

12. To provide legislative oversight over lending programs previously delegated to the Central Loan Committee.

13. To coordinate loan programs under the committee's oversight with other governments.

14. Review and approve agreements to make funds available for loans to Navajo individuals, except economic development business loans.

15. To approve lease purchase agreements concerning all tribal programs, departments and divisions within all branches of the Navajo Nation government upon recommendations of the Division of Finance.

16. Oversight of the functions of the Division of Finance.

History

CO-81-90, October 30, 1990. Subsections (B)(15) and (16) added.	CMA-18-67, March 2, 1967.
CMA-17-89, March 24, 1989. Amended generally.	CJY-90-66, July 20, 1966.
CAP-17-84, April 19, 1984.	CMA-28-65, March 18, 1965.
CJA-1-71, January 12, 1971.	CF-11-61, February 13, 1961.
CN-91-69, November 13, 1969.	Note. Central Loans Committee ACN-229-87, November 13, 1987, was discontinued by the amendments adopted by CD-68-89.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 375. Meetings

All regular meetings of the Committee shall be held on the first and third Tuesday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.	CJA-1-71, January 12, 1971.
CMA-17-89, March 24, 1989. Amended generally.	CN-91-69, November 13, 1969.
CAP-17-84, April 19, 1984.	CMA-18-67, March 2, 1967.
	CJY-90-66, July 20, 1966.
	CMA-28-65, March 18, 1965.
	CF-11-61, February 13, 1961.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 3. [Reserved]

Article 4. Transportation and Community
Development Committee

§ 420. Establishment

The Transportation and Community Development Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CMY-26-90, May 3, 1990. "Transportation"
was added to the title of the Committee.
CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 421. Purposes

The purposes of the Committee are:

A. To develop overall policies and legislation appropriate to the housing needs of the Navajo Nation.

B. To promote local community land use plans which support community infrastructural development.

C. To promote development of chapter government which enhances local self government.

D. To promote, review, coordinate and approve projects to be financed by funds designated for capital improvement. Such projects shall include but not be limited to chapter houses, multipurpose buildings, preschools, senior citizen centers, powerline extensions, housewiring, airports, waterline extensions and other water systems, airport/road infrastructures and other Navajo Nation facilities.

E. To be responsible for planning and coordinating all roads and transportation activities of the Navajo Nation.

History

CD-68-89, December 15, 1989.

Library References

Indians ☞9, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 67.

§ 422. Membership; advisors

A. The Committee shall consist of eight (8) members of the Navajo Nation Council.

B. The Executive Director of the Division of Community Development, the General Manager of the Navajo Tribal Utility Authority, the Area Director of Indian Health Service and other personnel from appropriate agencies shall serve as technical advisors to the Committee.

History

CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 423. Powers

A. General. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. Housing Development. The Committee shall:

1. Review and approve contracts and agreements between the Navajo Nation and any other entity for the development, construction and renovation of housing subject to applicable laws.

2. Propose policies and laws relating to housing development, including but not limited to building, construction, and utility codes.

3. Oversee and periodically review the overall function of the Division of Community Development to ensure that the purposes and objectives are properly and timely achieved and to recommend any amendments to the Division of Community Development Plan of Operation.

4. Represent the Navajo Nation at local, state and federal levels for housing development.

5. Coordinate with the Budget and Finance Committee and lending institutions for housing loans to enrolled members of the Navajo Nation residing within the Navajo Nation.

C. Community Development. The Committee shall:

1. Approve legislation to develop and improve local governmental units.

2. Review and approve comprehensive community land use plans and zoning ordinances and amendments or modifications thereof, including land withdrawals necessary for the implementation of such land use plans.

3. Review and approve local ordinances, not otherwise delegated to Chapters by the Navajo Nation Council, enacted by local government entities and Chapters.

4. Review and approve all surface easements and rights-of-way and other clearances related to local community development including but not limited to powerline, waterline and sewerline extensions.

D. Capital Improvement Projects. The Committee shall:

1. Review and recommend to the Navajo Nation Council through the budget process an annual budget for capital improvement projects utilizing all sources of funds.

2. Review and recommend to the Navajo Nation Council through the appropriate process supplemental appropriations to the capital improvement projects annual budget to fund necessary additional capital improvement projects.

3. To review, prioritize and approve capital improvement projects funded by all funding sources.

4. To lobby for state, federal, and other sources of funds.

5. To review and recommend legislation to accomplish Committee purposes.

6. To periodically review the progress of capital improvement projects and take necessary action(s) to ensure timely and efficient completion of projects.

7. To require periodic reports from the Controller of the Navajo Nation concerning the fund status of capital improvement projects and require such other reports from appropriate officials as may be necessary to execute the Committee's purposes.

8. To review the annual capital improvement projects budgets of the Bureau of Indian Affairs, Indian Health Services and other departments or agencies of the United States, and recommend the approval or disapproval of such budgets.

E. Transportation and Roads. The Committee shall:

1. Represent the Navajo Nation in all roads and transportation matters.

2. Develop and approve a priority list for roads and transportation projects.

F. Other Powers. The Committee shall:

1. Promulgate rules and regulations necessary to accomplish the Committee's purposes.

2. Review and approve new programs and improve existing programs to better serve the public and communities.

3. Review and approve alternative and appropriate technological projects related to housing, community development and capital improvement projects.

History

CMY-26-90, May 8, 1990. At subsection CD-68-89, December 15, 1989. (E)(2), the word "maintain" was changed to "approve."

Library References

Indians ↻9, 24, 32(4.1, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31, 63, 67.

§ 424. Meetings

Committee meetings shall be held on the first and third Tuesday of every month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183. CD-68-89, December 15, 1989.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Article 5. Health and Social Services Committee

§ 451. Establishment

The Health and Social Services Committee is hereby established and continued as a standing Committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. "Health and Human Services Committee" changed to "Health and Social Services Committee." CAU-36-73, August 22, 1973. CJA-2-71, January 12, 1971. CAP-11-63, April 30, 1963.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 452. Purposes

The Committee shall address health and social service problems affecting Navajo People and develop, monitor, and coordinate policies and proposals, laws, regulations and delivery of services to abate these problems consistent with and acceptable to the traditional practices and customs of the Navajo People.

History

CD-68-89, December 15, 1989. Amended Generally. ACMA-35-84, March 14, 1984.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 453. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

2 N.N.C. § 453

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History

CD-68-89, December 15, 1989. Committee membership increased from "6" to "8". Subsections (B) and (C) deleted.
ACMA-35-84, March 14, 1984.

CAU-36-73, August 22, 1973.
CJA-2-71, January 12, 1971.

Library References

Indians ⇐32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 454. Powers

A. The Committee shall have all authority necessary and proper to carry out the purposes set forth.

B. The Committee shall have the power:

1. To represent the Navajo Nation in matters relating to health, social services, and environmental health, including lobbying for, promotion and education on Navajo Nation policies.

2. To review and approve agreements and contracts negotiated with federal, state, regional, local, private and Navajo Nation health and social service authorities, subject to applicable laws of the Navajo Nation.

3. To coordinate all health and social services related activities of the Navajo Nation and its enterprises, relating to the delivery of health and social services and health and social services planning and prevention.

4. To coordinate all environmental health-related activities of the Navajo Nation and its enterprises.

5. To promulgate health and social services policies, objectives, priorities and regulations for the Navajo Nation and to monitor the implementation of those plans and regulations.

6. To recommend legislation relating to health, environmental health and social services.

7. To prepare and recommend a Committee budget each fiscal year.

8. To serve as the oversight committee for the Division of Health and the Division of Social Services except as delegated otherwise by Navajo Nation Council and this oversight responsibility shall include other programs designated by the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

Library References

Indians ⇐7, 24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31, 46 to 47.

§ 455. Meetings

Regular meetings shall be held the second and fourth Tuesday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.	CD-68-89, December 15, 1989. Meeting dates changed and quorum requirements amended.
	ACMA-35-84, March 14, 1984.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Article 6. Education Committee

§ 481. Establishment

The Education Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.	CJA-13-38, Tribal Council Res. 1922-1951, p. I 11, January 18, 1938.
ACMA-35-84, March 14, 1984.	
CJ-9-57, January 31, 1957.	

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 482. Purposes

The Committee's general purpose is to oversee the educational development of the Navajo Nation and to develop policies for a scholastically excellent and culturally relevant education.

History

CD-68-89, December 15, 1989. Subsection (B) deleted, and remaining paragraph amended generally.	ACMA-35-84, March 14, 1984.
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Library References

Indians ⇄8, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 483. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

2 N.N.C. § 483

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History

CD-68-89, December 15, 1989. Committee membership increased from "6" to "8". Also, subsections (B), (C) and (D) were deleted. ACMA-35-84, March 14, 1984.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 484. Powers

A. The Committee shall have such powers as are necessary and proper for the accomplishment of the purposes set forth above.

B. The powers of the Committee are:

1. Promulgate regulations, policies and procedures to implement Navajo Nation education laws.

2. Review and recommend legislation to the Navajo Nation Council.

3. Review, sanction and authorize applications, reapplications and amendments for Self-Determination Act¹ contracts and grants for the operation of education programs, subject to final approval by the Intergovernmental Relations Committee. Authorization of contract or recontract applications or amendments by the Education Committee shall constitute approval by the Tribal governing body.

4. Serve as the oversight committee of the Navajo Division of Education and colleges within the Navajo Nation.

5. Assist, support and coordinate with local communities, parent organizations and school boards and school board organizations.

6. Represent the Navajo Nation in consultation with federal, state and local officials regarding any proposed changes in educational programs, including additions, deletions, school closures, consolidations, and the like. The Committee shall, where appropriate, seek concurrence of the Intergovernmental Relations Committee of the Navajo Nation Council or the Navajo Nation Council in framing official responses from the Navajo Nation to proposals for major changes in educational programs, such as proposals regarding major school closures or transfers of jurisdiction.

7. Review, approve and regulate any programs offered on the Navajo Nation by off-Navajo Nation post-secondary institutions or any "nonresident" or home study post-secondary programs for which student recruitment activities are conducted on the Navajo Nation.

History

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

Cross References

Navajo Division of Education, establishment, see CJN-60-71, June 8, 1971.

Library References

Indians ⇨8, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Research References

Validity, construction, and application of Indian Self-Determination and Education Assistance Act, 190 A.L.R. Fed. 249 (2003).

United States Code

Indian self-determination and education assistance, see 25 U.S.C. § 450 et seq.

§ 485. Meetings

The Committee shall hold its regular meetings every second and fourth Friday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183. CD-68-89, December 15, 1989. Meeting dates specified and quorum requirements set.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

Article 7. [Reserved]

Article 8. [Reserved]

Article 9. Judiciary Committee

§ 571. Establishment

The Judiciary Committee, Navajo Nation Council, is established and continued as a permanent standing committee of the Navajo Nation Council with oversight responsibilities for the Judicial Branch of the Navajo Nation.

History

CJA-04-01, January 24, 2001. Amended generally. ACMA-35-84, March 14, 1984. Amended generally. CD-68-89, December 15, 1989. Amended generally. CAU-54-59, August 14, 1959.

Library References

Indians ⇨32(4.1, 7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 572. Purposes

The purposes of the Judiciary Committee are:

2 N.N.C. § 572

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A. To improve the administration of justice on the Navajo Nation by ensuring an independent judiciary free from political influence in its deliberative process that remains accountable and responsible to the Navajo Nation for its administrative and operational activity.

B. To work towards cooperation between the courts of the Navajo Nation and the courts of the various states, the federal court system, and the administrative-judicial system of the Department of the Interior and other federal of state agencies.

C. To promote the interests of the Navajo People through support and/or sponsorship of projects and legislation to improve the quality of the justice system within the Navajo Nation.

D. To support and promote increased funding, planning and coordination to develop Navajo Nation infrastructure relating to or having an impact on the Judicial Branch, including but not limited to court facilities and detention facilities.

History

CJA-04-01, January 24, 2001. Amended generally.
ACMA-35-84, March 14, 1984.
CD-68-89, December 15, 1989.

Library References

Indians ⚡32(4.1, 7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Annotations

1. Construction and application

“The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee.” *In re: Certified*

Questions I, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

“The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1).” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

§ 573. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Increased membership of Committee from 6 to 8.
ACMA-35-84, March 14, 1984. Amended generally.
CJA-4-79, January 26, 1979. Provided for a Chairperson and Vice-Chairperson of the Com-

mittee and provided that each agency have at least one member on the Committee.

CJA-3-71, January 12, 1971. Increased membership of Committee from 3 to 5.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 574. Powers

In addition to the powers enumerated at 2 N.N.C. § 185, the Committee shall have the following powers including those powers necessary and proper to carry out the purposes set forth in § 572 above.

A. To serve as the oversight committee for all operations of the Judicial Branch.

B. To determine, with the approval of the Navajo Nation Council, qualifications to be required of judges and justices of the Navajo Nation.

C. To provide a process for accepting applications for judicial positions and for determining the most qualified candidates.

1. Upon screening all eligible applicants, the Committee shall recommend to the President of the Navajo Nation a panel of qualified candidates for appointment as probationary Chief Justice, Associate Justices of the Supreme Court and probationary judges of the lower courts, and all other judicial positions which the Navajo Nation Council may create.

2. The President shall appoint probationary justices and judges only from among those named in the panel submitted by the Committee. Probationary justices or judges shall be confirmed by the Navajo Nation Council.

D. To review and evaluate the performance of probationary and permanent justices and judges.

E. To recommend to the President of the Navajo Nation the removal of probationary justices and judges prior to their permanent appointment.

F. To recommend to the President the permanent appointment of probationary justices and judges.

1. The President shall not appoint to a permanent position any justice or judge not recommended by the Judiciary Committee.

2. The appointment of permanent justices and judges shall be confirmed by the Navajo Nation Council.

G. To present directly to the Navajo Nation Council the issue of permanent appointment of any probationary justice or judge whom the Committee and the Chief Justice have recommended for permanent appointment and which recommendation the President of the Navajo Nation has failed to convey to the Navajo Nation Council within sixty (60) days of receiving the recommendation.

H. To recommend to the Navajo Nation Council the removal of permanent justices or judges.

I. To initiate, recommend, support, and sponsor legislation to improve the Navajo judicial system.

J. To review and/or propose legislation and make recommendations regarding any proposed or current laws, procedures, and regulations affecting or creating any impact on the Judicial Branch.

K. To review and approve plans of operation for all Judicial Branch divisions, departments and programs and to amend or rescind such plans of operation.

L. To review and approve policies, procedures and regulations necessary for the administration and operation of the Judicial Branch including, but not limited to, travel policies, retirement policies and personnel policies for Judicial Branch employees, justices and judges.

M. To review and approve contracts, subcontracts, and agreements negotiated with federal, state, international, tribal, regional, local and private entities, subject to Intergovernmental Relations Committee approval when required by law. All Judicial Branch contracts must be in compliance with the requirements of 2 N.N.C. §§ 222(B) and 223.

History

CJA-04-01, January 24, 2001. Amended generally.

CD-68-89, December 15, 1989.

Cross References

Reallocation of funds, see also, 2 N.N.C. § 185.

Library References

Indians ⇨32(4.1, 7).

Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Annotations

1. Screening, generally

“The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1).” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

2. Powers of committee

“Different events occur if the Judiciary Committee recommends a probationary judge to a permanent position. [. . .] The legislative scheme does not allow the Chairman’s denial of permanent appointment to a probationary judge to be final. [. . .] The Navajo Tribal Council will make a final decision as to whether to grant permanent status to this type of probationary judge.” *In re: Certified Questions II*, 6 Nav. R. 105, 108–110 (Nav. Sup. Ct. 1989).

“If the Judiciary Committee’s recommendation is that the probationary judge be denied permanent appointment, the Chairman must deny the appointment. [. . .] The Chairman is required to follow the Judiciary Committee’s recommendation of denial.” *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

“The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee.” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

3. Termination of judge

“The above cited statute providing for removal of probationary judge is not discretionary

because the statute gives the public an overwhelming and compelling interest in ensuring that only qualified and ethics-conscious individuals become judges. The Navajo public has an interest in a strong and independent judiciary. Navajo sovereignty is strengthened by a strong and independent judiciary. For these reasons, a probationary judge who has been determined to be unfit for office by the Judiciary Committee must be removed by the Chairman. The public is protected by the removal of the judge." *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

"If a probationary judge is to be removed prior to the expiration of his probationary period, the Judiciary Committee must make a recommendation of removal to the Chairman. Pursuant to such recommendation, the Chairman *must* remove the probationary judge. No further removal proceeding is required. The removal is final." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

"The Chairman of the Navajo Tribal Council is not empowered to act alone in either removing a probationary judge or denying a permanent appointment to a probationary judge. The Navajo Tribal Code laws on the Judicial Branch provide for two ways by which a probationary judge can be terminated. The first is by removal and the second is by denial of permanent appointment. In either case the Chairman cannot act until after the Judiciary Committee of the Navajo Tribal Council has formally acted by recommendation." *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

4. Probationary evaluations

"The Committee makes an independent determination of the training requirement and whether the probationary judge has performed satisfactorily over the two (2) year probationary term." *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

§ 575. Meetings

Meetings shall be held on the second and fourth Thursday of each and every month.

History

CMY-26-90, May 3, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates specified and quorum requirements added.

ACMA-35-84, March 14, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 10. Human Services Committee

§ 601. Establishment

The Human Services Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. "Labor and Manpower Committee" changed to "Human Services Committee".

CJA-4-79, January 26, 1979. Increased membership from five to seven and provided that each agency have a member on the Committee.

CN-73-76, November 11, 1976. Rescinded §§ 601-603.

CJA-4-71, January 12, 1971. Established Labor and Manpower Committee.

Library References

Indians ☞7, 32(4.1).

Westlaw Topic No. 209.

2 N.N.C. § 601

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C.J.S. Indians §§ 46 to 47.

§ 602. Purposes

The purposes of the Committee are as follows:

- A. To coordinate the Navajo Nation efforts with respect to the implementation and enforcement of Navajo Nation labor and veterans laws and policies.
- B. To coordinate all employment and training and veterans services programs.

History

CD-68-89, December 15, 1989. Implementation of veterans laws and coordination of veterans services included among purposes of the Committee. ACMA-35-84, March 14, 1984.

Library References

Indians ⇨7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 603. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Increased membership from "6" to "8", and subsections (B), (C), and (D) were deleted. ACMA-35-84, March 14, 1984.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 604. Powers

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To promulgate regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation and laws relating to veterans services.
2. To represent the Navajo Nation in matters relating to labor, employment and training and veterans services.
3. To recommend legislation regarding employment, training, and veterans services.
4. In conjunction with the Education Committee to oversee and to propose the establishment of any employment training center or institution

under the jurisdiction of the Navajo Nation and to review, recommend or propose the adoption, amendment or rescission of its Plan of Operation.

5. To serve as the oversight authority for the Division of Human Resources.

History

CD-68-89, December 15, 1989. Amended generally.

ACMA-35-84, March 14, 1984.

Library References

Indians ⇐7, 32(4.1).

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47.

§ 605. Meetings

Meetings shall be held on the second and fourth Monday of each month.

History

CJY-69-95, July 21, 1995. Changed meeting days to the second and fourth Monday.

CMY-26-90, May 3, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.

CD-68-89, December 15, 1989. Meeting dates and quorum requirements specified.

ACMA-35-84, March 14, 1984.

Library References

Indians ⇐32(4.1).

Westlaw Topic No. 209.

Article 11. [Reserved]

Article 12. Public Safety Committee

§ 661. Establishment

The Public Safety Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.

ACMA-35-84, March 14, 1984. "Police Committee" changed to "Public Safety Committee".

CJA-4-79, January 26, 1979.

CMY-29-61, May 25, 1961. Changed name of Committee from "Law and Order Commit-

tee" to "Police Committee"; transferred certain functions.

CJ-9-57, January 1, 1957. Navajo Nation assumed Law Enforcement responsibilities.

CJ-1-55, June 22, 1955.

Library References

Indians ⇐32(4.1).

Westlaw Topic No. 209.

2 N.N.C. § 662

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§ 662. Purposes

The purposes of the Committee are:

A. To coordinate legislative activities relating to administration, police services, highway safety, fire and rescue services, detention, and criminal investigations within the Navajo Nation and such other activities as may hereafter be specifically delegated to the Division of Public Safety.

B. To coordinate federal, state and Navajo law enforcement activities.

C. To promote the efficient operation of public safety on the Navajo Nation.

History

CJY-51-90, July 20, 1990. Reference to ACMA-35-84, March 14, 1984. "Emergency Services" deleted.

CD-68-89, December 15, 1989. Reference to "Emergency Services" added.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 663. Membership

A.¹The Committee shall consist of seven (7) members of the Navajo Nation Council.

¹ So in original.

History

CD-68-89, December 15, 1989. Membership increased from "6" to "7" and subsections (B) and (C) deleted. ACMA-35-84, March 14, 1984. CJ-9-57, January 31, 1957.

§ 664. Powers

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To represent the Navajo Nation in matters relating to law enforcement.

2. To coordinate all law enforcement activities of the Navajo Nation and its enterprises, as well as those activities of federal, state and regional agencies.

3. To recommend to the Navajo Nation Council the enactment, repeal or amendment of law enforcement, traffic and safety legislation.

4. To promulgate regulations and rules as may be necessary to carry out the purposes stated herein and the laws of the Navajo Nation concerning law enforcement.

5. To serve as legislative oversight authority for the Division of Public Safety.

History

CJY-51-90, July 20, 1990. Amended generally. ACMA-35-84, March 14, 1984.
 CD-68-89, December 15, 1989. Amended generally.

Library References

Indians ⇨32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 665. Meetings

Meetings shall be held on the second and fourth Monday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183. CD-68-89, December 15, 1989. Meeting dates and quorum requirements specified, and subsection (C) was deleted.

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

Article 13. Resources Committee

§ 691. Establishment

The Resources Committee is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Amended generally. CJA-5-71, January 12, 1971. Amended generally. Tribal Council Res. 1922-1951, p. 539, July 15, 1950.
 CJA-4-79, January 26, 1979. Reduced membership from "8" to "7".
 CAU-35-73, August 21, 1973. Reduced membership from "11" to "8".

Cross References

Agriculture and livestock, see generally, 3 N.N.C. § 1 *et seq.*

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

§ 692. Definition of terms

As used within this article, the following definition of terms shall apply:

A. "Resources". Any and all Navajo owned, controlled or claimed, natural, renewable, nonrenewable, solar and wind power energies, cultural, leisure, and

2 N.N.C. § 692

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recreational resources which includes, but is not necessarily limited to, land, air, airways, water, minerals, wildlife, fish, forests, woodlands, vegetation, livestock and parks.

B. "Surface Disturbance". The alteration of the land resources to an extent that would change its existing utilization (e.g., penetration of the land surface, however slight, disposition of materials upon the surface, withdrawal of rangelands for homesite purposes, etc.).

C. "Natural State". That which occurs or exists in the environment, not a result of man, inclusive of natural regeneration induced by man.

D. "Mineral Agreements". Mineral leases, operating agreements, and any other agreements authorized by the Indian Mineral Development Act of 1982.

History

CN-72-92, November 12, 1992. Amended generally and added subsection (D).
CD-68-89, December 15, 1989.

Library References

Indians ☞9, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 67.

United States Code

Indian Mineral Development Act of 1982, see 25 U.S.C. § 2101 et seq.

§ 693. Purposes

The purpose of the Committee is to insure the optimum utilization of all resources of the Navajo Nation and to protect the rights, and interests and freedoms of the Navajo Nation and People to such resources.

History

CD-68-89, December 15, 1989. Subsections (2)-(1) were deleted, and the remaining paragraph was amended generally. ACMA-35-84, March 14, 1984.

Library References

Indians ☞9, 32(4.1), 32.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 67, 122 to 123.

§ 694. Membership

The Committee shall consist of eight (8) members of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Increased Committee membership from "6" to "8"; and subsections (B), (C), and (D) were deleted.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 695. Powers

A. The Committee shall have all powers necessary and proper to carry out the purposes set forth above, and to promulgate rules and regulations thereto.

B. The Resources Committee shall have the following powers, including the authority to delegate to appropriate Executive Branch officials within the Division of Natural Resources provided that the Committee first approves rules and regulations governing such delegations and to rescind such delegations, and to adopt resolutions, regulations or policies that shall be necessary and proper for carrying into execution the following powers:

1. To act as the Central Grazing Committee in order to accomplish their duties as set forth in 3 N.N.C. §§ 832 and 852.

2. To give final approval of any land exchanges or non-mineral leases, subleases or assignments of leases of Navajo land, rights-of-way, prospecting permits, sand and gravel permits, including royalty rates and bonding rates of such permits, integration of tracts and unitization of approved-mineral agreements, mission site leases, and other licenses and usufructuary interests in Navajo land, including unrestricted (fee) land, in accordance with applicable federal and Navajo Nation laws.

3. To review, monitor, prioritize and/or negotiate all proposed land acquisitions and energy development agreements. The Resources Committee shall recommend to the Navajo Nation Council all actions which may involve the approval of mineral agreements, land acquisitions, and energy development agreements.

4. To give final approval of homesite lease procedures; and promulgate rules and regulations thereto.

5. To delegate authority to the Department Director of the Navajo Land Department (NLD) to review and grant individual homesite leases and certificates in accordance with procedures adopted by the Resources Committee. Such delegated authority shall be limited to withdrawal of one (1) acre or less of Tribal Trust/Fee Lands for residential purposes, excluding the authority to withdraw land for residential subdivisions and other withdrawals.

6. To give final approval of all land withdrawals for residential subdivisions, rights-of-way, including all surface easements and other clearances related but not limited to powerline, waterline, and sewer line extensions.

7. To oversee and regulate all activities within Navajo Nation lands, including actions which may involve disposition or acquisition of resources, surface disturbance, or alteration of the natural state of the resource.

8. To approve an overall Resource Management Plan of the Navajo Nation, including regulations governing the designation and use of resources.

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9. To approve all water development projects utilizing Navajo water resources.

10. To give final confirmation of appointments to the Navajo Nation Water Rights Commission.

11. To issue cease and desist orders, and to assess fines for violations of its regulations and orders.

12. To oversee the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and utilization of resources.

13. To establish Navajo Nation policy with respect to the optimum utilization of all resources, including the authority to initiate and require studies of the natural resources for the protection and efficient utilization, management, administration, and enhancement of such resources and to approve consultants for such studies. The Resources Committee shall report to the Navajo Nation Council the findings and recommendations of committee studies of such resources.

14. To represent the Navajo Nation at local, state, and federal levels, in cooperation and coordination with the President of the Navajo Nation and the Intergovernmental Relations Committee of the Navajo Nation Council, on proposed legislation or actions affecting resource issues, natural resources development, and research and energy resources.

15. To serve as Legislative oversight authority for the Division of Natural Resources, District Grazing Officers, Eastern Navajo Land Board and Farm Boards, and over all matters affecting Navajo resources.

History

CO-59-03, amended 2 N.N.C. § 695 (B)(1), (4) and (5).

CAP-17-03, April 23, 2003, Added subsection 695(B)(10), authorizing final confirmation of members to the Navajo Nation Water Rights Commission.

CN-72-92, November 12, 1992. Amended generally.

CD-68-89, December 15, 1989. Amended generally.

Note. Paragraphs 4-13 renumbered for purposes of statutory form and slightly reworded for clarity and grammatical form.

Cross References

Range land leases, see 3 N.N.C. § 501 *et seq.*

Leasing, Economic Development Committee powers, see 2 N.N.C. § 724(B).

Library References

Indians ↻9, 32(4.1), 32.5.

Westlaw Topic No. 209.

C.J.S. Indians §§ 67, 122 to 123.

Annotations

1. Court jurisdiction

"The Navajo Nation District Courts continued to have jurisdiction over all land dispute cases filed in the courts between the time of the *In re*:

Mary Joe Ellis Joe, 6 Nav. R. 177 (1990) and November 12, 1992." *Malone, et al. v. Yazzie, et al.*, 7 Nav. R. 88, 90 (Nav. Sup. Ct. 1994).

§ 696. Meetings

Meetings shall be held on the second and fourth Thursday of each month.

History

<p>CN-72-92, November 12, 1992. Amended generally.</p> <p>CMY-26-90, May 11, 1990. Subsection (B) on quorum requirements deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183.</p>	<p>CD-68-89, December 15, 1989. Meeting dates and quorum requirements generally changed.</p> <p>ACMA-35-84, March 14, 1984.</p>
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Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Article 14. Economic Development Committee

§ 721. Establishment

The Economic Development Committee is hereby established and continued as a Standing Committee of the Navajo Nation Council.

History

<p>CD-68-89, December 15, 1989. Name "Economic and Community Development Committee" changed to "Economic Development Committee."</p> <p>CJY-32-88, July 28, 1988. Provided for a revised Plan of Operation for the Committee.</p> <p>ACMA-35-84, March 14, 1984.</p>	<p>CJA-4-79, January 26, 1979. Provided that each agency have at least one member on the Committee.</p> <p>CAU-37-73, August 22, 1973. Amended generally.</p> <p>CJA-6-71, January 13, 1971. Rescinded Res. 1922-1951, p. 515, passed July 15, 1950, which related to a "Trading Committee."</p>
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Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 722. Purpose and scope

The purposes of the Committee shall be to establish, amend, regulate and enforce and foster policies pertaining to the development of the economy of the Navajo Nation.

History

<p>CD-68-89, December 15, 1989. Subsections (A)-(D) were deleted and the remaining introductory paragraph was generally amended.</p>	<p>CJY-32-88, July 28, 1988. Amended generally.</p> <p>ACMA-35-84, March 14, 1974.</p>
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Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 723. Membership

Membership of the Committee shall consist of eight (8) members of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Membership increased from "6" to "8", and subsections (B), (C), and (D) were deleted. CJY-32-88, July 28, 1988.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 724. Powers

A. Generally

The Committee shall have all powers necessary and proper to carry out the purposes set forth above.

B. Authority to promulgate business site lease regulations, redelegation of approval authority, issue leases, permits and licenses.

1. The Committee shall have the authority to promulgate regulations governing the business, commercial or industrial site leasing, permitting and licensing of Navajo Nation lands, including unrestricted (fee) lands for business purposes. This authority does not extend to use of lands for resources (forestry, grazing, farmlands, ranches and parks), mineral and homesite purposes and allotments. Such regulations shall set forth the policies and standards to be followed in approving, amending, transferring or terminating business site leases, permits and licenses and setting, increasing, decreasing, or waiving rental rates.

2. The Committee shall, in accordance with approved regulations, grant final approval of non-mineral business leases, permits licenses and associated right-of-way for the use of Navajo Nation lands, including unrestricted (fee) lands for business purposes. The Committee may delegate its approval or granting authority to the Division of Economic Development of the Executive Branch, an entity or Chapters of the Navajo Nation provided that the Committee first approves rules and regulations governing such delegations and rescission of such delegations. The Committee's authority includes business site lease transactions, including industrial, shopping center and other commercial leases, subleases, modifications, assignments, leasehold encumbrances, and transfers, renewals and extensions, and terminations in accordance with all applicable laws.

C. Economic Development Land Withdrawal

The Committee shall review and grant final approval of land withdrawals for economic development projects, subject to chapter approval and/or existing Navajo Nation law regarding local land use control.

D. Economic and Business Development

The Committee shall approve economic development plans which require the use of Navajo Nation funds and/or assets; shall be the central point of contact for economic development activities; shall establish and approve the Navajo Nation Overall Economic Development Plan and Ten Year Plan including the priority lists for economic and business development projects funded by Navajo Nation and federal funds; development plans for individual business site leases shall not be subject to such approval.

E. Navajo Nation Enterprises and Other Entities

1. The Committee shall periodically receive reports and review the operations of the Navajo Nation enterprises, authorities and industries and shall recommend the creation, reorganization, termination or “Privatization” of any enterprise to the Navajo Nation Council. The Committee shall also confirm appointments to enterprise boards.

2. The Committee shall jointly with appropriate Standing Committees of the Navajo Nation Council do all things necessary and proper to create an independent financial institution designed to provide credit and financing to the Navajo Nation business community.

F. Tribal Laws and Regulations; Commerce and Business; Taxation.

1. The Committee shall propose or review legislation relating to commerce and business within the Navajo Nation, and shall recommend the adoption or amendment of such laws to the Navajo Nation Council.

2. The Committee shall, in consultation with the Navajo Tax Commission, make recommendations to the Navajo Nation Council regarding taxation proposals affecting business or commercial activities.

G. Oversight

The Committee shall serve as the oversight committee of the Division of Economic Development or its successor in responsibility, including those activities which deal with the planning, development, promotion and oversight of economic development activities.

H. Other Powers

The Committee shall have the power to represent the Navajo Nation in matters related to economic development.

History

CJA-12-01, Amended § 724(B).	CJY-32-88, July 18, 1988.
CD-68-89, December 15, 1989. Amended generally.	ACMA-35-84, March 14, 1984.

Cross References

Business Site Leasing Act, see 5 N.N.C. §§ 2301-2305, and CJA-12-01, January 24, 2001.
Resources Committee, powers related to land, see 2 N.N.C. § 695 and 24 N.N.C. § 101 *et seq.*

Library References

Indians ⇄ 7, 9, 24, 32(4.1, 9, 10). Westlaw Topic No. 209.	C.J.S. Indians §§ 12, 31, 46 to 47, 63, 67, 130 to 132, 134.
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2 N.N.C. § 725

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§ 725. Meetings

Meetings shall be held on the first and third Wednesday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) on meeting dates, the language of subsection (A) quorum requirements deleted. Quorum re- was deleted.
quirements for all Committees found at 2
N.N.C. § 183. CJY-32-88, July 28, 1988.

CD-68-89, December 15, 1989. Quorum re-
quirements generally changed. Except for

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 15. [Reserved]

Article 17. [Reserved]

Article 18. Intergovernmental Relations Committee

§ 821. Establishment

The Intergovernmental Relations Committee is hereby established as a stand-
ing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.
ACMA-35-84, March 14, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 822. Purposes

The purposes of the Committee are:

A. To coordinate all federal, county and state programs with other standing
committees and branches of the Navajo Nation government to provide the most
efficient delivery of services to the Navajo Nation.

B. To ensure the presence and voice of the Navajo Nation.

History

CD-68-89, December 15, 1989.
ACMA-35-84, March 14, 1984.

Library References

Indians ☞7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 823. Membership; selection; Chairperson

A. The Committee shall consist of the Speaker of the Navajo Nation Council and the chairpersons of the Navajo Nation Council standing committees. In the absence of the chairperson of a standing committee, the vice-chairperson shall represent the standing committee.

B. The Chairperson of the Committee shall be the Speaker of the Navajo Nation Council.

C. In the absence of the Speaker, the members of the committee may select a Chairperson Pro Tem.

History

CD-68-89, December 15, 1989.
ACMA-35-84, Mardi 14, 1984.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 824. Powers

A. The Committee shall have all the powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the following powers:

1. To serve as the oversight committee for the Office of Legislative Services and other offices, programs, commissions, boards or task forces under the Legislative Branch of the Navajo Nation government and to approve and amend plans of operation thereto.

2. To assist and coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation.

3. To review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments.

4. To authorize, review, approve and accept any and all contracts, grants and associated budgets with the United States, its departments and agencies for the implementation of the Indian Self-Determination and Education Assistance Act as amended upon the recommendation of the standing committee which has oversight of the division, department or program applying for the contract and/or grant.

5. To coordinate with all committees, chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, departments of the United States government, state legislatures and departments and county and local governments.

6. To authorize, review, approve and accept agreements, including contracts and grants, between the Navajo Nation and any federal, state or

2 N.N.C. § 824

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regional authority upon the recommendation of the standing committee which has oversight of the division, department or program which has applied for the agreement, or upon recommendation of the Chapter.

7. To recommend to United States departments and agencies, the states and various regional agencies the appointment of individuals who, in the judgment of the Committee, will fulfill the requirements of their office and serve the interests of the Navajo Nation.

8. To continually monitor contracts with state, federal and regional entities to ensure compliance with applicable laws, regulations and contract terms.

9. To review and approve the negotiation and setting of the Navajo Nation's indirect cost or administrative cost rate agreements with the cognizant federal agent. When in the best interest of the Nation, the Committee may waive the indirect cost or administrative cost rate when:

a. The division, department or program requesting the waiver demonstrates a statutory and/or regulatory requirement that limits the indirect cost or administrative cost rate available for a particular grant or contract, or

b. There is a showing of necessity and a commitment of available general funds by the division, department or program requesting the waiver which is available to offset the loss in indirect costs or administrative costs.

c. Chapters meeting these requirements will not be subject to any administrative costs assessed by the central government.

10. To review and approve the distribution of funds appropriated or allocated to assist enrolled Navajos residing outside the Navajo Nation.

History

CD-68-89, December 15, 1989.
ACMA-35-84, March 14, 1984.

Note. Word "in", appearing at subsection (B)(10) deleted.

Library References

Indians ↻4, 7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 7 to 8, 21, 46 to 47.

United States Code

Indian Self-Determination and Education Assistance Act, see 25 U.S.C. § 450 et seq.

§ 825. Meeting

Regular meetings shall be held on the first and third Monday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) was deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183 (E).
CD-68-89, December 15, 1989. Meeting and quorum requirements changed.
Prior law. ACMA-35-84, March 14, 1984.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Article 19. Ethics and Rules Committee

§ 831. Establishment

The Ethics and Rules Committee of the Navajo Nation Council is hereby established and continued as a standing committee of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.	ACMA-35-84, March 14, 1984.
ACJA-37-89.	CJA-1-83, January 25, 1983.
ACMA-130-84, October 10, 1984. Plan of Operation for Ethics and Rules Committee amended generally.	

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 832. Purposes

The purposes of the Committee are as follows:

- A. To insure that public officials and affected employees of the Navajo Nation are held to the highest standards of ethical conduct.
- B. To provide for a fair, honest and an efficient government of the Navajo Nation, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

History

CD-68-89, December 15, 1989. Amended generally.	ACMA-130-84, October 10, 1984.
ACJA-37-89, January 26, 1989.	ACMA-35-84, March 14, 1994.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 833. Membership

The Committee shall consist of eight (8) delegates of the Navajo Nation Council.

History

CD-68-89, December 15, 1989. Increased Committee membership from "6" to "8" and deleted subsections (B), (C), and (D).	ACJA-37-89, January 26, 1989. ACMA-35-84, March 14, 1984.
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Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 834. Powers

A. The Committee shall have all the powers necessary and proper to carry out the purposes set forth above.

B. The Committee shall have the power:

1. To review and recommend rules of procedure for the effective and efficient conduct of the Navajo Nation Council and its Committees.

2. To recommend legislation to maintain the highest standards of ethical conduct in the functions of the Navajo Nation government.

3. To perform the duties and responsibilities delegated by and implement the provisions of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741, et seq. and such other authority as may be delegated from time to time.

4. To provide for the compilation and publication of all Navajo Nation laws, rules and regulations.

5. To review and recommend an agenda for all Navajo Nation Council sessions.

6. To promulgate such rules and regulations as necessary to execute its authority.

7. To serve as the oversight authority for the Ethics and Rules Office.

8. To review and recommend referendums and initiatives to the Navajo Nation Council.

9. To appoint a Director of the Ethics and Rules Office of the Navajo Nation who will serve at the pleasure of the Committee.

History

CD-68-89, December 15, 1989. Amended ACO-130-84, March 14, 1984.
generally. ACMA-35-84. March 14, 1984.
ACJA-37-89, January 26, 1989.

Cross References

Referendums (Election Code), see also 11 N.N.C. Part 2.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 835. Meetings

Meetings shall be held on the first and third Friday of each month.

History

CMY-26-90, May 8, 1990. Subsection (B) deleted. Quorum requirements for all Committees found at 2 N.N.C. § 183 (E). CD-68-89, December 15, 1989. Amended generally.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 11. Boards and Commissions

Article 1. Navajo-Hopi Land Commission

United States Code

Navajo and Hopi tribes, settlement of rights and interests, see 25 U.S.C. § 640d et seq.

§ 851. Establishment; purposes

A. The Navajo-Hopi Land Commission (“Commission”) is hereby established within the Legislative Branch.

B. It is the purpose of the Commission to:

1. Monitor, collect, and update information on any and all land use conflicts between the Navajo Nation and the Hopi Tribe, and any claimants in and to lands within the area described in the Act of June 14, 1934 (48 Stat. 960).

2. Speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96-305.

History

CD-68-89, December 15, 1989. The Navajo-Hopi Land Commission was moved from the Executive Branch (2 N.N.C. § 330 1) and placed within the Legislative Branch. Land Dispute Commission” to “Navajo-Hopi Land Commission.” Also, a “purpose” section was added.

ACAP-49-83, April 4, 1983. The name of the Commission was changed. from “Navajo-Hopi CAU-70-72, August 7, 1972.

Library References

Indians ↻9, 32(1, 4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51, 67.

§ 852. Membership; selection; Chairperson and Vice-chairperson; term of office; ex-officio members

A. The Commission shall consist of eleven regular voting members and two ex-officio members who shall be appointed by the Speaker of the Navajo Nation Council with the approval of the Intergovernmental Relations Committee of the Navajo Nation Council. The Commission shall have the authority to establish subcommittees as deemed appropriate to provide advisory input from citizens, professionals, federal and other non-elected sources.

2 N.N.C. § 852

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B. The Commission shall consist of:

1. Eleven voting members of the Navajo Nation Council representing areas affected by the Navajo–Hopi Land Dispute.

2. All members of the Commission shall be appointed by the Speaker of the Navajo Nation Council and shall serve at the pleasure of the Intergovernmental Relations Committee of the Navajo Nation Council.

3. The Agency Superintendent, Bureau of Indian Affairs, of Tuba City Agency and Crownpoint Agency and tribal employees shall provide technical input to the Commission.

C. The Chairperson and Vice–Chairperson of the Commission shall be selected by the Commission.

D. Commission members shall serve a term of office coinciding with the term of office of members of the Navajo Nation Council and until their successors are appointed.

E. The President and Vice–President of the Navajo Nation shall serve as ex-officio members of the Commission.

History

CD–68–89, December 15, 1989.
ACAP–49–83, April 4, 1983.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 853. Powers

A. General. The Commission shall have all powers necessary and proper to carry out the purposes set forth in 2 N.N.C. § 851.

B. Enumerated Powers. The Commission is hereby authorized and directed:

1. To advise the President of the Navajo Nation concerning all matters relating to land use conflicts between the Navajo Nation and the Hopi Tribe, and any claimants in and to lands within the areas described in the Act of June 14, 1934 (48 Stat. 960).

2. To speak and act for the Navajo Nation with respect to the land selection and land exchange provisions of P.L. 96–305 by making such selections and approving or disapproving any proposed exchanges, subject to the limitations set forth in resolution CN–69–80.

History

CD–68–89, December 15, 1989.
ACAP–49–83, April 4, 1983.

Cross References

GSCF–10–91, January 9, 1991.

CN-69-80, November 7, 1980.

Library References

Indians ☞9, 32(1, 4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51, 67.

§ 854. Meetings

Meetings shall be held on the call of the Chairperson of the Commission, the President of the Navajo Nation, or upon written request of any six members of the Commission. At any meeting, a quorum shall consist of six members.

History

CD-68-89, December 15, 1989. Amended generally.
ACAP-49-83, April 4, 1983.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 855. Procedure

Until such time as the Navajo Nation Council adopts procedures and rules for the conduct of Commission business, the Commission is empowered to develop its own procedure for the conduct of meetings, provided that all formal substantive action shall be taken by written resolution duly certified by the presiding officers, or memorialized by written memorandum setting forth the action taken and signed by the presiding officer and filed with the Central Records Department of the Navajo Nation. Minutes shall be kept of all meetings and shall be officially recorded by the Office of Legislative Services.

History

CD-68-89, December 15, 1989.
ACAP-49-83, April 4, 1983.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 856. Staff

A. There shall be a Navajo-Hopi Land Commission Office under the direction of the President of the Navajo Nation. The President of the Navajo Nation shall appoint a staff assistant who shall head the Land Commission Office who shall serve at the pleasure of the President of the Navajo Nation.

B. The Commission shall utilize the Navajo-Hopi Land Commission Office in performing its assigned functions.

2 N.N.C. § 856

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History

CD-68-89, December 15, 1989.
ACAP-49-83, April 4, 1983.

Library References

Indians ☞32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Cross References

GSCF-10-91, January 9, 1991.

§ 857. Reports

The Commission shall report quarterly and in writing to the Navajo Nation Council concerning matters relating to the land use conflict and agreements with the Hopi Tribe.

History

CD-68-89, December 15, 1989.
ACAP-49-83, April 4, 1983.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 858. Subcommittees

The Commission is authorized and directed to establish at least one Citizen's Advisory Subcommittee to provide advice and assistance to the Commission. The members of the Citizen's Advisory Committee shall be non-elected private citizens who reside in or near the lands affected by P.L. 96-305 and such other private citizens as the Commission and the President of the Navajo Nation may deem appropriate.

History

CD-68-89, December 15, 1989.
ACAP-49-83, April 4, 1983.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 2. Eastern Navajo Land Commission

§ 861. Establishment; purpose

A. The Eastern Navajo Land Commission ("Commission") is established as a Commission of the Navajo Nation Council within the Legislative Branch.

B. The Commission is established for the following purposes:

1. To assist in resolving land title problems in the Eastern Navajo Agency.
2. To assist in mitigating the impact of energy development in the Eastern Navajo Agency.
3. To coordinate Navajo efforts with respect to Eastern Navajo Agency land-related matters in dealings with federal, state and local authorities and private interests in judicial, legislative, administrative and private settings.
4. To provide information and assistance to Navajo residents of the Eastern Navajo Agency, the Eastern Navajo Agency Council, and the Land Boards with respect to land-related matters and to receive input from Navajo residents of the Eastern Navajo Agency with respect to such matters.

History

CD-68-89, December 15, 1989. The Commission was moved from the Executive Branch (2 N.N.C. § 3321) and placed within the Legislative Branch (2 N.N.C. § 861). Also, the “standing committee” status was changed. CF-2-80, February 5, 1980.

Library References

Indians ¶9, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians § 67.

§ 862. Membership

- A. The Commission shall be composed of seven members.
- B. Six members shall be Navajo Nation Council Delegates representing the so-called “Checkerboard” Area, selected by the Speaker, Navajo Nation Council, and confirmed by the Navajo Nation Council.
- C. One member shall be an enrolled member of the Navajo Nation skilled in land and/or energy matters, selected by the President, Navajo Nation, and confirmed by the Navajo Nation Council.
- D. All members shall serve three (3) year terms and until their successors are appointed.
- E. All members shall serve at the pleasure of the President, Navajo Nation, and the Navajo Nation Council.
- F. The Commission shall appoint a Chairperson and Vice-Chairperson from among its members.

History

CD-68-89, December 15, 1989. Previously at 2 N.N.C. § 3322. Amended generally. CF-2-80, February 5, 1988.

Library References

Indians ¶32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 863. Powers and duties

The Commission is hereby authorized and directed:

- A. To establish an office at Crownpoint for the transaction of business.
- B. To represent the Navajo Nation on land and energy matters affecting the Eastern Navajo Agency; provided however that any agreement involving more than twenty-five thousand dollars (\$25,000) or 100 acres or for longer than one (1) year shall be concurred by the Intergovernmental Relations Committee, Navajo Nation Council.
- C. To hire such staff and consultants excluding legal counsel which shall be the responsibility of the Navajo Nation Council as may be provided for in the annual Navajo Nation budget of the Commission.
- D. To report quarterly and in writing to the Navajo Nation Council and the Eastern Navajo Agency Council concerning activities of the Commission.
- E. To provide for the reimbursement of the Commission members, for travel and other expenses consistent with the practice of other standing committees of the Navajo Nation Council.
- F. To take all actions as may be necessary and proper to carry out the purposes for which the Commission was established.

History

CD-68-89, December 15, 1989. Previously at
2 N.N.C. § 3323. Generally amended.
CF-2-80, February 5, 1980.

Library References

Indians ¶9, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 67.

§ 864. Staff

- A. The Commission shall engage an executive director and such other staff as maybe provided for in the annual Navajo Nation budget.
- B. All staff shall serve at the pleasure of the Commission.
- C. The Executive Director and the other staff shall have such duties and responsibilities as may be assigned to them from time to time by the Commission.

History

CD-68-89, December 15, 1989. Previously at
2 N.N.C. § 3324.
CF-2-80, February 5, 1980.

Library References

Indians ¶32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 865. Meetings; procedures

A. The Commission shall meet on the call of the Chairperson of the Commission or the written request of any three members, or the call of the President, Navajo Nation.

B. At any meeting a quorum shall consist of four members.

C. All formal substantive action shall be taken by written resolution certified by the presiding officer or shall be reflected in summary memorandum Attested to by the presiding officer.

D. The Commission is empowered to develop and establish such other procedures for meetings as it deems just and proper.

History

CD-68-89, December 15, 1989. Previously at
2 N.N.C. § 3325. Amended generally.
CF-2-80, February 5, 1980.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Article 3. Navajo Board of Election Supervisors

History

CD-68-89, December 15, 1989.

Cross References

11 N.N.C., Part 1, § 1 et seq.

§ 871. Establishment; purposes

A. The Navajo Board of Election Supervisors, hereinafter, the Board, and the Election Administration Office, hereinafter, the Office are hereby established. The Board is created by the Navajo Nation Council as an independent entity. The Board shall be responsible to the Navajo Nation Council only and shall be placed under the Intergovernmental Relations Committee who shall have ministerial oversight and whose primary purpose shall be routing documents and record-keeping incidental to the authority delegated to the Board and the Office by the Election Code; and to cause effect to the authority entrusted solely in the Board and Office; and to guard the public interests entrusted to the Board.

B. The purposes of the Board are to:

1. Provide efficient and uniform administration and conduct of elections.
2. Provide the opportunity for each qualified elector to exercise his or her right to vote for a candidate of his or her choice.

2 N.N.C. § 871

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3. Provide the opportunity for all qualified person(s) to serve the Navajo public by seeking office.
4. Provide for fair, unbiased and untainted elections.
5. Encourage voter registration at the Navajo Nation, state and federal levels.
6. Guard against abuse of the electoral system in the Navajo Nation.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. **Construction and application** *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).
“The Board is an independent entity, responsible only to the Navajo Nation Council, . . .”

§ 872. Membership; terms; Chairperson and Vice-Chairperson

A. The Board shall be composed of ten (10) members to be elected. Each of the five agencies shall have two (2) representatives. The Election of the ten (10) members shall be in conformity with the Election Code.

B. All members shall serve four (4) year terms on a staggered basis in conformity with the Election Code.

C. The Chairperson and Vice-Chairperson shall be selected from among the members.

D. In the event the Chairperson and Vice-Chairperson are absent at a Board meeting, the majority of the members present shall select a Pro Tem Chairperson to-conduct the meeting.

History

CD-68-89, December 15, 1989.

Note. Slightly reworded for grammatical purposes.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 873. Powers and duties

A. **General.** The Board shall have all powers necessary and proper to carry out the purposes set forth in the Election Code.

B. **Enumerated Powers.** The Board is hereby authorized and directed:

1. To administer, implement and enforce the Navajo Election Code.

2. To oversee and supervise generally all Navajo Nation elections.
3. To compile information regarding elections, and distribute and educate the Navajo public to include printing and publishing the Election Code and procedures in pamphlet form for distribution to all certified chapter officials, candidates, poll officials and registrars.
4. To hear all election disputes, including the power to subpoena witnesses.
5. To make Board and Administrative policies.
6. To establish rules and regulations and to interpret the Election Code consistent with Navajo Nation laws.
7. To obtain and maintain uniformity in the application of the Election Code and operation of the Election office.
8. To develop and recommend to the Navajo Nation Council all apportionment plans for election purposes.
9. To hire and maintain direct authority over the Director of the Election Administration Office and confirm the hiring of the Deputy Director by the Director and maintain general supervision over an election staff to carry out authority vested in the Board.
10. To develop and submit separate annual budgets for the Board and the Election Administration to include devising and managing a revolving account utilizing filing, penalty and resignation fees for special election costs in addition to the annual appropriation for this category.
11. To coordinate with county, state, and federal election agencies efforts, including seeking and obtaining from various governmental entities and private organizations funding and support to carry out the duties and responsibilities set out in the Election Code.
12. To establish subcommittees and delegate to them the authority to declare vacancies, certify elections, and to make rules and regulations not inconsistent with the Election Code.
13. To initiate recounts of ballots, where necessary.
14. To maintain the Election Administration Office and staff independent under its supervision with the Intergovernmental Relations Committee.
15. To maintain such staff and consultants including legal counsel as may be provided for in the annual Navajo Nation budget of the Board.
16. To recommend the withdrawal of land for the establishment of a building facility which is to be separate from other entities and convenient to the public and to request funding from the Navajo Nation to erect such a public building for the operation of the Election Office.
17. To procure necessary supplies, services, equipment and furniture purchases and to enter into contracts through the tribal process.
18. To delegate authority to the Election Office not inconsistent with the Election Code.
19. To bring action as deemed necessary and proper for the enforcement of the Election Code through the Attorney General and report violations/offenses to the Ethics and Rules Committee where necessary.

2 N.N.C. § 873

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History

CJA-05-01, January 24, 2001. Subsections (B)(12) and (13) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals.

CD-68-89, December 15, 1989.

Note. Slightly reworded for grammatical purposes.

Cross References

See 11 N.N.C., Part 1, § 321.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. Construction and application

“A vote of two-thirds of a quorum of the Navajo Nation Council is necessary to modify or change such powers.” *Navajo Nation v. Redhouse*, 6 Nav. R. 305, 307 (Nav. Sup. Ct. 1990).

2. Powers of board

“Both of these statutes [2 N.T.C. § 873(B)(6) and 11 N.T.C. § 321(A)(6)] limit the Board discretion to interpret the Navajo Election Code of 1990 by requiring that such interpretations be consistent with Navajo Nation law.” *Howard v. Navajo Board of Election Supervisors*, 6 Nav. R. 380, 381 (Nav. Sup. Ct. 1991).

“While the Board does have statutory discretion to interpret election laws, such discretion is limited, and the Navajo Nation Supreme Court has appellate jurisdiction to review whether the Board acted within its statutory discretion.” *Pioche v. Navajo Board of Election Supervisors*, 6 Nav. R. 360, 364 (Nav. Sup. Ct. 1991).

3. Due process

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

“Although 2 N.T.C. § 4005(c) is silent on this matter, fairness and due process are best served by requiring that the Board give an affected official or his authorized representative adequate notice and an opportunity to attend the verification process.” *In re: Removal of Katenay*, 6 Nav. R. 81, 84 (Nav. Sup. Ct. 1989).

§ 874. Meetings; quorum; compensation

A. The Board shall meet the 2nd and 4th Thursday of each month unless otherwise scheduled by the majority of a quorum.

B. A simple majority shall constitute a quorum.

C. Where subcommittees are designated, four members shall constitute a subcommittee. Subcommittee action shall require ratification by a quorum of the full Board.

D. All meetings shall be held in Window Rock Navajo Nation, (Arizona). Meetings held elsewhere must be authorized by the Chairperson of the Intergovernmental Relations Committee.

E. All meetings shall be recorded and minutes transcribed. All dispute decisions shall be in writing and filed.

F. Board members attending Board meetings or delegated Election business shall receive sixty dollars (\$60.00) per diem for each day official business is conducted and mileage at twenty-four cents (24¢) per mile for use of a private

vehicle. Full per diem shall be paid for attendance of at least three (3) hours of meeting or until all agenda items are concluded.

History

CJA-05-01, January 24, 2001. Subsection (A) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals. CD-68-89, December 15, 1989. **Note.** Slightly reworded for grammatical purposes.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 875. Ethics

The Board shall not, for the purpose of personal gain, use any information or conduct any proceeding for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, or any other employee, official or candidate for office of the Navajo Nation. The Board shall conduct themselves in accordance with the requirements of all applicable laws of the Navajo Nation, especially the Navajo Ethics in Government Law.

History

CD-68-89, December 15, 1989. **Note.** Slightly reworded for grammatical purposes.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 876. Office; purpose

The Election Administration Office shall implement the Election Code and assist the Board in carrying out authority delegated solely to the Board by the Navajo Nation Council to implement the Election Code and conduct elections.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 877. Director; staff; powers and duties

A. Powers and duties of the Director. The Director shall have all powers delegated by the Board and necessary and proper to carry out the purposes of the Election Code as authorized by the Board. The duties shall include the following:

2 N.N.C. § 877

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1. Assist the Board in implementing and enforcing the Election Code.
 2. Assist the Board in maintaining accountability to the Navajo Nation Council and the Intergovernmental Relations Committee and other Departments and Offices.
 3. The Executive Director shall hire the Deputy Director with confirmation by the Board.
 4. Serve as the Executive Director of the Navajo Election Administration and supervise the administrative staff.
 5. Formulate administrative policies for Board approval.
 6. Acquire and coordinate voting and election information from the States of Arizona, New Mexico and Utah and from the Bureau of Federal Elections and disseminate the information where necessary to meet objectives and goals.
 7. Consult periodically with officials, Council Delegates, other elective offices, and various government officials regarding registration and elections in general, including the scheduling of activities called for by the Election Code and other states, counties, and federal government election requirements.
 8. Serve as the communicating and organizing agent for the Board in executive level planning and activities.
 9. Solicit available funding with approval of the Board for special programs not of a continuing nature, which relate to registration and elections, including "Voter Registration Drive" and "Get Out to Vote" projects and other educational training programs for chapter offices, poll officials and the Navajo Nation Council.
 10. Supervise and administer staff subject to Navajo Nation Personnel Policies and Procedures, compensation and benefits.
 11. Coordinate with the Office of Legislative Services the processing of payroll, budget expenditures for travel, supplies, equipment, property and facilities management.
 12. To determine and certify the qualifications of candidates for all elective positions, subject to appeal to the Office of Hearings and Appeals.
- B. Powers and Duties of Staff. The staff shall have all powers delegated by the Board and Election Administration Office Director and necessary and proper in carrying out the purposes of the Election Code as authorized by the Board. The duties include the following:
1. Provide administrative support to the Board implementing the Election Code.
 2. Register as many Navajos as possible for Navajo Nation, county, state and federal elections on an ongoing basis and insuring that they have the opportunity to vote in these elections.
 3. Disseminate voter information across the Navajo Nation by publishing and distributing forms and information pamphlets and where necessary providing information in the Navajo language.

4. Obtain and maintain the cooperation of the appropriate county registrars and other officials in the States of Arizona, New Mexico and Utah to obtaining maximum Navajo voter registration for state and federal elections.
5. Assist in providing ongoing in-service training for Chapter officials and election workers on a regular basis.
6. Utilize available reach to provide a sound and firm foundation in the areas of voter registration and elections for the Navajo People.
7. Providing logistical and technical assistance to the Board.
8. Assist in the drafting of proposed resolutions for the Board's consideration.
9. Execute the directives of the Board.
10. Assist the Board in the development of revisions of the Election Code for Navajo Nation elections.
11. Provide all required technical and support staff and equipment for Navajo Nation elections.
12. Insure elections are conducted pursuant to the Election Code and in a timely manner.
13. Conduct recounts under the supervision of the Board.
14. Assist the Board in functions as follows:
 - a. Declare vacancies in elective positions.
 - b. Oversee the destruction of ballots.
 - c. Approve policy decisions.
 - d. Recommend major purchases of election equipment.
 - e. Serve as a review and fact finding entity regarding election grievances.
 - f. Certify election results and petitions as provided for in the Election Code.
 - g. Develop rules and regulations not inconsistent with the Election Code.
 - h. Review state and federal legislation which may affect the Navajo Nation electorate or Election Code.
 - i. Attend and participate in recounts of voter tallies.
 - j. Refer election disputes to the Office of Hearings and Appeals.
 - k. Enforce the Election Code by reporting violations of the Election Code to the Attorney General or Ethics Office.
 - l. Study, develop and recommend apportionment plans.
 - m. Develop and submit annual budgets.

History

CJA-05-01, January 24, 2001. Subsections (A)(12), (B)(7) and (12) and (14)(J) amended to acknowledge transfer of hearing functions to the Office of Hearings and Appeals.

CD-68-89, December 15, 1989.

Note. Slightly reworded for grammatical purposes.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 878. Political practices

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, or any other employee, official or any candidate for an office of the Navajo Nation. The Director and staff shall conduct themselves in accordance with the requirements of all applicable laws of the Navajo Nation, especially the Navajo Ethics in Government Law.

History

CD-68-89, December 5, 1989.
Note. Slightly reworded for grammatical purposes.

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Article 4. Commission on Emergency Management

§ 881. Establishment

There is hereby established the Navajo Nation Commission on Emergency Management.

History

CJY-51-90, July 20, 1990.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 882. Membership

A. The Commission shall be composed of six persons, one with technical expertise in each of the following subject areas;

1. Civil defense/law enforcement;
2. First Aid/health;
3. Fire fighting;
4. Environmental,
5. Broadcast and Print Media; and an
6. Elected official.

B. All members of the Commission shall be appointed by the Speaker of the Navajo Nation Council and confirmed by the Intergovernmental Relations Committee of the Navajo Nation Council and shall serve a term concurrent to that of the President of the Navajo Nation, or until replaced, whichever is longer.

C. The President shall designate a Chairperson and Vice-Chairperson of the Commission.

History

CJY-51-90, July 20, 1990.

Library References

Indians ☞32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 883. Purposes

A. In conjunction with the Navajo Department of Emergency Management, to coordinate emergency and disaster relief services by the Navajo Nation and non-tribal entities.

B. To serve as the tribal emergency response commission analogous to a state emergency response commission pursuant to the Emergency Planning and Community Right to Know Act, 42 USC § 11001. Under the Act, the Commission responsibilities include:

1. To designate emergency planning districts in order to facilitate preparation and implementation of emergency plans;
2. To appoint a local emergency planning committee for each emergency planning district, and supervise and coordinate the activities of such committees;
3. To establish procedures for receiving and responding to requests from the public for information as provided in the Act, including the designation of an official to serve as the coordinator of information.
4. To notify the Administrator of the U.S. Environmental Protection Agency of problem areas on the Navajo Nation which are subject to the Act;
5. To accept and maintain data submitted by the owners or operators of facilities subject to the Act,
6. To review and make recommendations on emergency plans which shall be submitted by local emergency planning committees to ensure coordination of such plans with emergency response plans of other emergency planning districts;
7. To accept notification from an owner or operator of a facility subject to the Act of the release of an extremely hazardous substance;
8. To accept and maintain emergency and hazardous chemical inventory forms submitted by facility owners or operators who must prepare a material safety data sheet pursuant to the Occupational Safety and Health Act of 1970;¹

2 N.N.C. § 883

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9. To provide for availability for public inspection data required under the Act (under penalty of civil liability); and

10. To recommend a civil action to the Navajo Nation Attorney General against a subject facility operator or owner for non-compliance with the Act.

C. To recommend to the Navajo Nation Council legislation or other appropriate activity regarding natural and man-made emergencies.

¹ 29 U.S.C. § 659 et seq.

History

CJY-51-90, July 20, 1990.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 884. Powers

A. General. The Commission shall have all powers necessary and proper to carry out the purposes set forth in § 883 of this Plan of Operation.

B. Enumerated Powers:

1. With the concurrence of the President of the Navajo Nation, to declare states of emergency affecting the Navajo Nation or any section thereof.

2. On behalf of the Navajo Nation, to assist in seeking assistance from federal, state, other tribal governments, and local and private agencies.

3. To obtain, coordinate and oversee assistance, whether in the form of goods, services, equipment, motor vehicles, or personnel, from all divisions, departments and enterprises of the Navajo Nation for use in addressing the requirements of the people in any declared emergency.

4. Within the approved budget, to execute contracts and other agreements for goods and services.

5. Within the approved budget, to employ such persons as may be necessary to carry out the responsibilities of the Commission, with the exception of legal counsel.

6. To establish offices within the Navajo Nation for the transaction of business as necessary.

7. To provide for the compensation of Commission members in a manner consistent with that of commissions of the Navajo Nation Council, pursuant to 2 N.N.C. § 183.

8. To establish such subcommittees as it deems appropriate and to delegate to such subcommittees the authority it deems proper.

9. To ensure accountability by establishing specific policies, procedures and guidelines for the use of funds, goods, services or any type of assistance intended for use in meeting the requirements of the people in any declared emergency.

History

CJY-51-90, July 20, 1990.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 885. Meetings; quorum

Meetings shall be held on the call on the Chairperson or Vice-Chairperson of the Commission on Emergency Management, the President of the Navajo Nation, or upon the written request of any three (3) members of the Commission on Emergency Management for the purpose of obtaining timely action on emergency matters. At any meeting, a quorum shall consist of three (3) members.

History

CJY-51-90, July 20, 1990.

Cross References

Meetings of committees or commissions, see also, 2 N.N.C. § 183.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 886. Procedures

Until such time as the Navajo Nation Council adopts rules and procedures for the conduct of Commission business, the Commission on Emergency Management is empowered to develop its own procedures for the conduct of meetings, provided that any formal substantive action shall be taken by written resolution duly certified by the presiding officer and filed with the Records Department of the Navajo Nation.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 887. Amendments to Plan of Operation

The Plan of Operation may be amended from time to time by approval of the Government Services Committee of the Navajo Nation Council.

History

CJY-51-90, July 20, 1990.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 5. Black Mesa Review Board

§ 901. Establishment

There is hereby established the Black Mesa Review Board.

History

ACN-143-82, November 10, 1982. Rescinded ACMA-22-82 and reestablished the Board with a revised Plan of Operation.

ACMA-22-82 March 10, 1982, Reestablished the Black Mesa Review Board.

CMY-45-80, May 6, 1980, effective October 1, 1980 abolished the Board.

CN-101-72, November 30, 1972, as amended by Advisory Committee Resolution ACMA-32-78, March 15, 1978. Established the Black Mesa Review Board, formerly codified at §§ 3701-3709 then § 3671-3679 of this title.

Note. This Board has been placed in the Legislative Branch by Budget Resolution since FY 1989.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 902. Purpose

The purpose of the Board shall be to provide fair, adequate, and prompt compensation to Navajo families whose economic interests are adversely affected by the coal mining and allied operations of the Peabody Coal Company (henceforth "Peabody") on Black Mesa; and to make such recommendations, concerning the health, welfare, and environment of the Navajo People affected by the mining operations to the President of the Navajo Nation, the Navajo Nation Council, and the Peabody Coal Company or its successor in interest as the Board may deem appropriate.

History

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § I, November 10, 1982.

Library References

Indians ⇨7, 16.10, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 107 to 108.

§ 903. Membership of Board; Chairperson; Vice-Chairperson; secretary

A. Two members shall be appointed by the Kayenta Chapter, one of whom must be a resident of the Peabody Lease area. Two members shall be appointed by the Forest Lake Chapter, one of whom must be a resident of the Peabody lease area. One member shall be appointed by the Shonto Chapter. One member shall be appointed by the Chilchibeto Chapter. And one member shall be appointed at large by the President of the Navajo Nation. The four chapters and the President of the Navajo Nation shall appoint their respective members within thirty (30) days of the effective date of this resolution.

B. Within thirty (30) days of their appointment, the seven aforementioned members shall meet and select a Chairperson and a Vice-Chairperson from the

membership. The Board shall also select from among the membership a secretary to keep all minutes of board meetings and to supervise the execution of all correspondence, agreements, and other documents for the Board. The Chairperson, Vice-Chairperson, and secretary shall serve for a term of one (1) year. At the end of each year, the Board shall again select members to fill these positions; however, any member may be selected to serve consecutive terms.

C. All members of the Board shall preferably be fluent in both English and Navajo.

D. Four members shall constitute a quorum.

E. The Board shall meet at least once a month.

F. The term of appointment of all Review Board members shall be five (5) years subject to renewal or until such time as Peabody, or its successors or assigns, shall have completed and terminated all mining and allied mining operations at Black Mesa.

G. Compensation. The Budget and Finance Committee of the Navajo Nation Council shall identify funding sources with which board members shall be compensated for travel and meeting expenses.

1. Should any member cease to serve for any reason, he or she shall be replaced by the organization which originally named him or her.

2. Should any officer cease to serve for any reason, the vacancy shall be filled by the chapter or organization which originally named him or her and then the Board shall select a member to fill the position as provided in 2 N.N.C. § 903(B).

3. The Board shall request, on an annual basis, sufficient funding from the Navajo Nation to continue the operations contemplated by this Plan of Operation.

H. Removal. Any board member who misses two consecutive meetings without just cause may be removed by the Board with a majority vote.

History

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § 11, November 10, 1982.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 904. Jurisdiction

The authority of the Board shall extend to the determination of fair and just compensation to be paid to individual Navajos and Navajo families affected by the Peabody Coal Mining operation. The Board may also make recommendations to either the President of the Navajo Nation, the Navajo Nation Council,

2 N.N.C. § 904

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or the Intergovernmental Relations Committee, or to the Peabody Coal Company or its successors in interest on behalf of the Navajo People who are affected by the mining operations.

History

ACS-178-89, September 26, 1989. Amended generally. Committee", pursuant to authority at 2 N.N.C. § 824(B)(1).

ACN-143-82, Plan, November 10, 1982.

Note. "Advisory Committee" in this section replaced by the "Intergovernmental Relations

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 905. Board employees and offices

A. Board Employees.

1. Investigator. To assist the Board in its determination of economic loss suffered by Navajo families, the Board shall utilize one or more available investigators from the Office of Navajo Land Administration and/or the Navajo Nation Minerals Department who shall submit to the Board reports concerning the economic loss suffered by individual Navajos as a result of the mining activities.

a. The investigator shall be qualified and experienced in evaluating economic loss; and if necessary the investigator may be assisted by an interpreter.

b. Compensation.

(1) The investigator(s) shall be compensated by the Department by which he or she is employed.

(2) In addition, the investigator shall receive reimbursement for actual expenses at the rate generally paid Navajo Nation employees.

2. Secretary. The Board may request clerical assistance from the Navajo Nation to prepare reports, correspondence and handle other communications between the Board, Peabody, claimants, the investigators, etc.

B. Offices. The Board shall utilize the Division of Natural Resources and/or Department of Justice of the Navajo Nation to assist it in processing damage claims, preparing correspondence, and handling all communications on behalf of the Board.

History

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § IV, November 10, 1982.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 906. Determination and payment of compensation

A. Upon the filing of a claim with the Board, by a Navajo individual or family, the Board shall cause the investigator to investigate all elements of the claim and report back to the Board within thirty (30) days of the filing of the claim. The Investigator shall mail copies of the report to all members of the Board, as well as to the claimant or representative and Peabody. The report of the investigator shall state the extent and amount of economic damage suffered by the Navajo individual or family as well as the specific description of property or properties lost or damaged and the date(s) the aforesaid damage or dislocation occurred.

B. Within thirty (30) days after the mailing by the investigator of his/her report, either the claimant or Peabody may file a demand with the Board for a hearing on the claim. If no such request is filed with the Board within thirty (30) days after copies of the investigator's report have been mailed, the report shall be deemed accepted by the claimant and Peabody, and the Board shall enter judgment for the amount recommended in the investigator's report.

C. If either Peabody or the claimant file objections with the Board, the Chairperson of the Board shall schedule a hearing within thirty (30) days of the date the first such objection is filed (to be held at a location as near as practicable to the land in question). At such hearings, both the claimant and Peabody may present any relevant evidence with respect to the economic loss, subject to 2 N.N.C. § 908.

D. At the conclusion of this presentation, the Board shall make a determination as to the amount of compensation to be paid, if any. This determination may be made immediately at the conclusion of the presentation of evidence, or by written notice to the claimant and Peabody within fifteen (15) days after the hearing. Provided no appeal pursuant to 2 N.N.C. § 907 is taken, Peabody shall pay the amount of this award:

1. Within fifteen (15) days of the hearing if the award is made at the hearing;
 2. Within fifteen (15) days of the date the Board's order is mailed to it;
- or
3. If the investigator's report is not contested, within forty-five (45) days of its mailing to Peabody.

E. Alternative Hearing Procedure.

1. In addition to the investigative and hearing procedure herein provided, any four members of the Board or the Chairperson thereof may call a hearing to be held in the area affected by the mining activities at the request of the Kayenta Chapter, the Forest Lake Chapter, the Shonto Chapter, the Chilchinbeto Chapter, Peabody, or upon petition of interested Navajos.

2. It shall be the duty of the Board to give notice of such a hearing in as broad a fashion as possible to persons who are or might be affected by the mining activities.

3. At such a hearing the Board would explain its function and procedure to the parties present. Any party who has or might have a claim cognizable under the provisions of this Plan of Operation could present that claim at such a hearing.

4. Further Board action will follow as if the claim had been filed with the Board.

F. Minimizing Adverse Economic Impact.

1. The Board and/or investigator may, in addition to testimony received with respect to economic loss, take testimony from interested parties as to proposed methods for reducing the adverse economic impact of the mining activities on the Navajo People in the Black Mesa area.

2. The investigator may also make specific recommendations as to procedures and operations to be followed in the individual case investigated, as well as in the general mining operations, so as to minimize the adverse economic impact of the mining activities on Navajo families within the Peabody Coal mining area.

3. The determination of the Board may also include recommendations to Peabody with respect to the individual claimant, or with respect to the general mining operations so as to minimize the adverse economic impact upon the individual claimant or upon Navajos living in the Peabody Coal Mining area.

History

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § V, November 10, 1982.

Library References

Indians ¶7, 16.10, 32(4.1).

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 107 to 108.

§ 907. Appeal

A. Within fifteen (15) days of the Board's order of determination or the mailing of the Board's order of determination, either the claimant or Peabody may file a petition for review with the Navajo Nation District Court at Kayenta, Arizona. The petition for review shall state why the finding of the Board is clearly erroneous.

B. The proceedings in the Navajo Nation District Court shall proceed as all civil actions in the Navajo Nation Court except that the standard for review will be that the Board's determination shall be upheld unless it is determined by the Navajo Nation District Court to be clearly erroneous.

History

ACS-178-89, September 26, 1989. Amended generally.

ACN-143-82, Plan, § VI, November 10, 1982.

Library References

Indians ↻32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 908. Standards of adjudication

A. These standards of adjudication shall apply to the determination made by the investigator, the Board and the Navajo Nation District Court.

B. Adverse economic effect shall include but not be limited to the following:

1. Loss or damage to personal property and improvement to real property;
2. Loss or damage to traditional or customary grazing areas or areas grazed under permit;
3. Increased cost, hardship or inconvenience in the use and enjoyment of real property, personal property, grazing permits, or customary use areas;
4. Relocation, moving and other expenses caused or resulting from the mining operations;
5. Detriment to the quality of life as compared with that previously enjoyed by the individual Navajos or Navajo families;
6. In determining costs of relocation, value of structures and intangibles, traditional Navajo values including but not limited to costs of required religious ceremonies shall be considered to be relocation expenses.

C. Where mining operations allow the Navajo family or families displaced to return to their traditional area, the amount of damages sustained by relocated individuals or families shall take into account the likelihood and possibility of the Navajo individual or family being able to resume the life and lifestyle existing prior to the taking by Peabody.

D. It shall be no defense to a claim for damages suffered that the individual claimant was grazing more livestock than the range could economically bear.

E. Interest at the prevailing rate from the date of the taking is determined to have occurred shall be added to any judgment made pursuant to this Plan of Operation. Where such damage includes the relocation of the claimant, the interest on the amount of such damages attributed to relocation expenses shall commence on the date the family actually relocated.

F. With respect to determinations as to affirmative or negative conduct to be required of or forbidden by Peabody, it is to be assumed that Peabody is required, pursuant to its leases with the Navajo Nation, to conduct its mining activities so as to minimize the adverse economic impact on the Navajos involved.

History

ACS-178-89, September 26, 1989. Amended ACN-143-82, Plan, § VII, November 10, 1982.

2 N.N.C. § 908

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Library References

Indians ⇨16.10, 32(4.1, 7).
Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 107 to 108, 139 to
143, 152.

§ 909. Administration

A. All costs of administration of the Black Mesa Review Board as well as compensation and expenses of members, investigators, employees, and office expenses shall be paid by the Navajo Nation through available tribal funding; provided that Peabody may assume these costs if it agrees to do so.

B. The Chairperson of the Board shall file with Financial Services of the Navajo Nation, on a monthly basis, the time spent by the members of the Board at hearings and other activities and a statement of other expenses actually incurred.

C. If applicable, the Navajo Nation shall submit to Peabody, on a quarterly basis, a statement of all Board expenses which shall be paid by Peabody within thirty (30) days or pursuant such other agreement reached between the Navajo Nation and Peabody.

D. All notices required to be sent pursuant to this Plan of Operation shall, in addition to being sent to the Board members, the claimant or his/her representative and Peabody, also be sent to the secretaries of the Kayenta Chapter, Forest Lake Chapter, Shonto Chapter, Chilchinbeto Chapter, and the Office of the President of the Navajo Nation.

History

ACS-178-89, September 26, 1989.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 910. Amendment

This Plan of Operation may be amended from time to time, upon the recommendation of the Black Mesa Review Board, and subject to approval by the Government Services Committee of the Navajo Nation Council.

History

ACS-178-89, September 26, 1989.

Note. Pursuant to CD-68-89, reference to “Advisory Committee” changed to “Government Services Committee”.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

Article 6. Navajo Nation Insurance Commission

§ 931. Establishment

The Navajo Nation Insurance Commission is hereby established and continued as the Navajo Nation Insurance Commission within the Legislative Branch.

History

CD-68-89, December 15, 1989. The Commission was specifically placed within the Legislative Branch. ACAP-49-82, April 16, 1982.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 932. Purposes

The purpose of the Commission shall be to insure accurate insurance coverage and protection for the Navajo Nation, its entities, employees, and property.

History

CD-68-89, December 15, 1989.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 933. Powers

A. Subject to approval of the Government Services Committee and the Budget and Finance Committee of the Navajo Nation Council, the Navajo Nation Insurance Commission shall have the sole authority to review, determine, select and coordinate all insurance coverage and programs pertaining to the Navajo Nation, including all offices, divisions, departments, entities, programs, interests, property and employees, with any private or public carriers, plans or organizations and together with all self-insured programs or combined coinsured programs. Said programs may, without limitation, include the following coverages, together with any other insurance programs selected, reviewed or administered under the jurisdiction of the Navajo Nation Insurance Commission:

1. General, automobile, and excess liability insurance.
2. Building, personal property, equipment systems, machinery and vehicle physical damage insurance.
3. Health, life and accident, disability and income protection insurance.
4. Key man life insurance.
5. Blanket employee crime coverage.
6. Performance, fidelity, surety and other bonding.
7. Workmen's compensation and all other self-insured or co-insured programs.

B. To review and determine all policy or program premium and/or rate making obligations and to provide orderly procedures for payment of premiums for bonding and insurance obligations, and to establish appropriate reserves for self and coinsured programs, with appropriate apportionment of such obligations among the insured entities and parties for which coverage is provided.

C. To direct, supervise and review the administration and implementation of all insurance programs by the Insurance Services Department, together with all determinations of any review boards or committees established to administer any Navajo Nation Insurance program and to review, evaluate, determine or make recommendations pertaining to all claims made under such programs.

D. To report annually or as deemed necessary to the Budget and Finance Committee of the Navajo Nation Council at its budget session on the insurance coverages, and on the status of all pertinent fiscal, premium, revolving, special, operational and reserve accounts.

E. To recommend to the Navajo Nation Council the adoption of legislation appropriate to strengthen and protect the operations of the Navajo Nation, its entities, employees and property.

F. To establish and administer appropriate means for review, evaluation and recommendation for the disposition and settlement of all claims of liability pertaining to the Navajo Nation, its entities or employees acting within the scope of their employment, to the extent such disposition involves the expenditure of funds (whether within self-insured, coinsured, deductible or reimbursable insurance or other liability coverage); and to award damages from funds appropriated by the Navajo Nation Council for indemnification of such liability as determined by the Navajo Nation Insurance Commission.

G. To authorize or conduct appropriate investigation for determination of liability and evaluation of claims involving payment or reimbursement of funds in accordance with the above described purposes.

History

CD-68-89, December 15, 1989. Section 932 redesignated as § 933, and amended generally.
ACAP-49-82, April 16, 1982.

Library References

Indians ⇄32(1, 4.1), 33.
Westlaw Topic No. 209.

C.J.S. Indians §§ 49 to 51, 65, 93 to 95, 130, 132, 134.

§ 934. Membership; Chairperson and Vice-Chairperson; quorum; advisors; Review Boards and Committees

A. Membership. The Commission shall consist of the following members.

1. Director of Office of Personnel Management;
2. The Senior Administrative Service Officer in the Office of the Speaker of the Navajo Nation Council;
3. A representative of the Navajo Nation enterprises selected by consensus among the enterprises participating in the Navajo Nation insurance program; and

4. A permanent employee of the Navajo Nation government selected at large by the employees for a term of four (4) years. The election of the employee representative shall be conducted by the Office of Personnel Management.

B. The Chairperson and Vice-Chairperson shall be selected by the Commission.

C. At any meeting, a quorum shall consist of three (3) members.

D. Advisors. Representatives of the Attorney General, Controller, Auditor General, Office of Contracts and Grants, all divisions and departments and duly chartered enterprises of the Navajo Nation are official advisors to the Commission and shall provide appropriate support, advice and counsel on substantial matters. The Risk Management Department shall provide staff assistance to the Committee.

E. Review Boards and Committees. Review boards and committees may be constituted, appointed and delegated review and administrative duties herein under the auspices of the Insurance Commission for such approved insurance programs including but not limited to the following:

1. Liability Claims Review Board.
2. Property and Casualty Insurance Review Board.
3. Key Man Insurance Review Board.
4. Employee Benefits Review Board.
5. Community, commercial and claims Arbitration boards.

History

CD-68-89, December 15, 1989. § 933 redesignated as § 934, and amended generally.
ACAP-49-82, April 16, 1982.

Note. "Contract Office" changed to "Office of Contracts and Grants."

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 935. Procedures

A. On or before January 25 of each year, the Insurance Commission of the Navajo Nation shall meet to determine:

1. The insurance coverages to be in effect during the forthcoming fiscal year.
2. The premiums to be incurred for such coverages.
3. The sums which shall be necessary to meet deductible or coinsurance features with respect to such coverage.
4. The appropriate apportionment of such premiums and deductible and coinsurance rates, among the Navajo Nation and its enterprises.

B. Following this meeting and on or before February 15 of each year, the Insurance Commission shall meet with the appropriate representatives of each

2 N.N.C. § 935

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enterprise participating in the Insurance Programs of the Navajo Nation, the Director, Division of Finance (or his/her representative) and the Director, Risk Management Department (or his/her representative) and the Controller of the Navajo Nation to:

1. Discuss insurance programs for the forthcoming fiscal year.
2. Discuss the apportionment, or premiums, deductible and co-insurance rates and present invoices for the respective entities.
3. Discuss risk management for the enterprises and the Navajo

Nation.

C. Premiums deductible and coinsurance shall be paid within thirty (30) days of receipt of approved invoice.

D. All such funds received from the Navajo Nation and its enterprises shall be placed in and administered on a revolving account basis. Appropriate procedures shall be used to identify the payer and the type of coverage for each payment.

E. The Insurance Commission shall cause payment for appropriate revolving accounts, premiums, bills and payments to divisions of the Navajo Nation and enterprises which suffer losses which are not fully paid by the carriers because of deductible and coinsurance requirements, as deemed appropriate.

F. On or before April 1 of each fiscal year, the Insurance Commission shall convene to review the status of these revolving accounts. A representative of the Director, Division of Finance and the Risk Management Department shall also be in attendance. This meeting shall determine:

1. If the payments due from the Navajo Nation and its enterprises have been made.
2. If account balances are adequate to meet premium and other obligations for the balance of the fiscal year.
3. Any risk management question which may be appropriate.
4. In the event that any balance is inadequate, the amount(s) necessary to carry the program through the balance of the fiscal year and its appropriate share of the additional funds needed for the program.

G. In the event that there is a surplus of funds in the premium contribution account at the end of any fiscal year (as determined by the Insurance Commission), the contributions of the Navajo Nation and the enterprises shall be reduced in the following fiscal year by the amount of such surplus.

History

CD-68-89, December 15, 1989. § 934 redesignated as § 935, and generally amended.

ACAP-49-82, April 16, 1982.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 936. Compensation

The members of the Insurance Commission shall receive no additional compensation for their activities in connection with the Insurance Commission, other than reimbursement for required and authorized expenses incurred in the performance of their duties and shall assume their responsibilities in addition to their other responsibilities as employees of the Navajo Nation or its entity.

History

CD-68-89, December 15, 1989. § 935 redesignated as § 936.

ACAP-49-82, April 16, 1982.

Library References

Indians ¶32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Article 7. Employees Advisory Board

§ 941. Establishment

As directed by Navajo Nation Council Resolution CW-37-90 authorizing the planning and design of a Plan of Operation for an Employees Advisory Committee, there is hereby established the Navajo Nation Employees Advisory Board (“Board”) located within the Legislative Branch of the Navajo Nation government. Principal legislative oversight shall be provided by the Human Services Committee of the Navajo Nation Council.

History

CO-59-90, October 18, 1990.
CMY-37-90, May 8, 1990.

CO-59-90, October 18, 1990. Adopted the Plan of Operation for the Employees Advisory Board.

Library References

Indians ¶32(4.1).
Westlaw Topic No. 209.

§ 942. Purpose

The principal purpose of the Board is to serve as an official vehicle and forum through and by which Navajo Nation employees may express and address concerns and problems regarding their employment, consider solutions, and propose recommendations to the Navajo Nation government. Further, when an employee expresses or addresses a concern before the Board there shall be no retaliation against the employee by supervisors or others. The Board shall be given notice and the opportunity to review and make comments and recommendations on any proposed law, policy, or regulation affecting Navajo Nation employees. The Board shall not, however, act in any manner to bypass, circumvent, or attempt to defeat the Personnel Policies and Procedures or other relevant laws and policies.

2 N.N.C. § 942

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History

CD-59-90, October 18, 1990.
CMY-37-90, May 8, 1990.

Library References

Indians ⚡32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 943. Organization and membership

A. Administrative support to the Board shall be provided by the Division of Human Resources and the Personnel Management Department and, as appropriate, the Personnel Office of the Legislative Branch.

B. Membership

Official and voting members of the Board shall be as follows:

1. One representative from each tribal division; and
2. One representative from the collective programs and offices comprising Executive Offices; and
3. One representative from the Legislative Branch.

As regular salaried employees, all members shall serve without additional compensation.

C. Selection

Representatives shall be permanent status employees who shall be elected by majority vote of their fellow permanent employees in an election to be held every two (2) years during the fourth week in October. Election rules and regulations shall be formulated and promulgated by the Board and elections shall be conducted by the Personnel Management Department.

The Board shall elect a Chairperson and Vice-Chairperson to lead the Board in the conduct of official activities.

D. Term of Office

Representatives shall normally serve a two-year term. Should a representative leave employment, transfer to another division, or resign from the Board, a vacancy shall be declared and a special election shall be conducted within thirty (30) days to elect a new representative.

History

CO-59-90, October 18, 1990.
CMY-37-90, May 8, 1990.

Note. Reference to an organizational chart at Subsection (A) was deleted as such charts are generally not codified.

Library References

Indians ⚡32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 944. Powers and authority

Specific duties, functions and responsibilities shall be as follows:

- A. Those powers necessary to properly carry out the purposes set forth herein;
- B. Conduct periodic meetings to hear and respond to stated personnel concerns, problems, and recommendations of Navajo Nation employees;
- C. Request and receive appropriate reports and information from Navajo Nation offices in order to review, study, and consider resolution to problems, concerns, and propose recommendations;
- D. Formulate recommendations and proposed solutions to stated employee concerns and problems to appropriate offices of the Navajo Nation government; and,
- E. Recommend upon subjects including, but not limited to, personnel policies, procedures, and programs, working conditions, health and safety, employee training, and employee benefits and services.

History

CO-59-90, October 18, 1990.
 CMY-37-90, May 8, 1990.

Library References

Indians ⇄32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 945. Meetings and reports

A. Meetings. Meetings shall normally be held on the fourth Friday of each month. Special meetings may be held upon written request of the majority of the Board membership. All meetings shall be publicized at least twenty-four (24) hours in advance. At any meeting, a quorum is required and shall consist of a simple majority of the seated members. All meetings shall be open to the public and Navajo Nation employees except where confidential material is to be presented. Leave with pay shall be authorized to the Board members when attending Board meetings. Further, as far as possible, any travel expenses of members shall be borne by budget accounts of the members' respective program, department, or division.

B. Reports. The Board shall provide a quarterly report to the Office of the President, Office of the Speaker, and the Human Services Committee of the Navajo Nation Council.

History

CO-59-90, October 18, 1990.
 CMY-37-90, May 8, 1990.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 946. Amendments

Sections 941 through 945 may be amended from time to time as deemed appropriate by the Government Services Committee of the Navajo Nation Council, upon recommendation of the Human Services Committee.

History

CO-59-90, October 18, 1990.
CMY-37-90, May 8, 1990.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 12. Legislative Offices

Cross References

Note. See 12 N.N.C. §§ 1-7 for establishment of the Office of Auditor General under the Navajo Nation Council.

Article 1. Office of Legislative Services

§ 951. Establishment

The Office of Legislative Services is established within the Legislative Branch.

History

CD-68-89, December 15, 1989; redesignated
2 N.N.C. § 1051 as “§ 951”.
ACJN-77-84, June 15, 1984.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 952. Purpose

The Office of Legislative Services shall provide complete and full range of professional, technical and administrative support services to the Navajo Nation Council, Standing Committees of the Navajo Nation Council, unstaffed Commissions, Task Forces or Boards of the Navajo Nation Council, Council Delegates and the certified chapters of the Navajo Nation.

History

CD-68-89, December 15, 1989; redesignated
 2 N.N.C. "§ 1052" as "§ 952".
 ACJN-77-84, June 15, 1984.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 953. Director

A. The Office of Legislative Services shall be headed by a Director, who shall be recommended for appointment by the Speaker in consultation with the Intergovernmental Relations Committee and subsequently confirmed by the Navajo Nation Council. The Director will be administratively responsible to the Speaker and serve at the pleasure of the Intergovernmental Relations Committee of the Navajo Nation Council. The Director will be responsible for program planning and administration, staff, guidance, direction and general supervision, budget preparation, implementation, management and control, and property and facilities coordination and management within the Office of Legislative Services.

B. The Director shall faithfully and diligently execute all duties and authorities delegated by law.

History

CD-68-89, December 15, 1989; redesignated
 2 N.N.C. "§ 1053" as "§ 953".
 ACJN-77-84, June 15, 1984.

Library References

Indians ⇄32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 954. Organization and functions

The Director shall establish an organizational structure which will provide for the following primary organizational functions within the Legislative Branch:

A. General Services, which shall include processing of payroll and budget expenditures for travel, supplies, equipment, etc., personnel administration and management, property and facilities coordination and management;

B. Reporting and Clerical Services, which shall include recording meetings, transcription and maintenance of Council and standing committee meetings and resolutions, minutes, resolution processing, agenda preparation and provision of secretarial services to Council Delegates.

C. Legislative Research, which shall include researching for preparation of Council and Committee legislation, drafting of legislation, monitoring and analysis of pending legislation, and providing technical assistance (including

2 N.N.C. § 954

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English to Navajo and Navajo to English interpretation) in resolution processing and discussion, and coordination with various council delegates, Navajo Nation programs, departments, divisions on proposed, pending and approved legislation. In addition, this organizational unit shall perform various intergovernmental relations functions, which shall include monitoring of federal, state and other legislative actions, providing of periodic reports on these matters to the appropriate standing committees, Navajo Nation offices and officials, and the full Navajo Nation Council.

D. Support services to the Office of Legislative Counsel.

History

CD-68-89, December 15, 1989; redesignated ACJN-77-84, June 15, 1984.
2 N.N.C. "§ 1054" as "§ 954", and all former provisions were deleted.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Article 2. Office of Legislative Counsel

§ 960. Establishment

The Office of Legislative Counsel is established within the Legislative Branch of the Navajo Nation government.

History

CD-68-89, December 15, 1989.
CF-3-89, February 17, 1989.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 961. Purpose

The purpose of the Office of Legislative Counsel is to provide legal advice and legislative services to the Navajo Nation Council, standing committees, commissions and boards of the Navajo Nation Council, independent of the Department of Justice.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 962. Legislative and administrative oversight

A. The Office of Legislative Counsel shall be directly accountable to the Navajo Nation Council for all legal and legislative assignments and activities of the Office.

B. The Intergovernmental Relations Committee of the Navajo Nation Council shall exercise legislative oversight over the Office on behalf of the Navajo Nation Council.

C. Day to day administrative and operational matters, such as time and attendance, travel authorizations, expenditure requests, and provision of office space and equipment shall be coordinated through the Speaker of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 963. Personnel

A. There is hereby established the position of Chief Legislative Counsel, who shall be a state-licensed attorney, appointed by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee of the Navajo Nation Council. The Chief Legislative Counsel shall serve at the pleasure of the Navajo Nation Council at a negotiated salary. The appointment shall be effective upon the approval of the Navajo Nation Council. The Chief Legislative Counsel shall not be allowed to engage in the private practice of law.

B. A state-licensed attorney or firm, selected in accordance with Navajo preference laws, may be hired as the Chief Legislative Counsel under a contract. Such contract shall not exceed one (1) year and shall be approved by the Navajo Nation Council upon recommendation of the Intergovernmental Relations and the Budget and Finance Committees of the Navajo Nation Council. Such attorney contract shall require the training of a qualified Navajo replacement within the term of the contract.

C. A non-Navajo licensed attorney may be hired only if a licensed Navajo attorney cannot be found to fill the position of Chief Legislative Counsel.

D. All other personnel shall be hired and compensated pursuant to usual Navajo Nation policies and procedures. The Chief Legislative Counsel shall be responsible for the selection and supervision of personnel.

History

CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1, 6).
Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 964. Authorities, duties and responsibilities

A. General authorities, duties and responsibilities of the Office of Legislative Counsel shall include:

1. Report and be responsible to the Navajo Nation Council and to the Intergovernmental Relations Committee of the Navajo Nation Council.
2. Coordinate with the Department of Justice and other attorneys providing legal services to the Navajo Nation the work of the Legislative Counsel to avoid duplication of work and conflicting legal advice and opinion.
3. Develop an annual work plan and budget for the office for consideration by the Navajo Nation Council during the regular annual budget process.
4. To advise the Navajo Nation Council on legislative matters pending before the Navajo Nation Council.
5. To advise standing committees, commissions, and boards of the Navajo Nation Council on legislative matters pending before the respective committees, commissions or boards.
6. To assist members of the Navajo Nation Council in preparing proposed resolutions for consideration by chapters, committees, commissions, boards or the Navajo Nation Council.
7. Perform all duties and responsibilities in accordance with the highest standards of legal ethics.

B. Codification of Navajo Nation Laws, Rules and Regulations:

1. The Legislative Counsel shall periodically review all legislation of the Navajo Nation Council and standing Committees of the Navajo Nation Council to determine codification within the Navajo Nation Code.
2. The Legislative Counsel shall periodically prepare and publish new, revised and updated hard-bound versions of the Navajo Nation Code.
3. The Legislative Counsel shall periodically review and evaluate the Navajo Nation Code and recommend appropriate actions to repeal, supersede, clarify and generally update provisions of the Navajo Nation Code for consideration by the appropriate standing committees of the Navajo Nation Council.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Article 3. Commission on Navajo Government Development
and the Office of Navajo Government Development

§ 970. Establishment

The Commission on Navajo Government Development is established within the Legislative Branch. The Commission is a special entity created by the Navajo Nation Council with quasi-independent authority to accomplish the Council’s project of instituting reforms necessary to ensure an accountable and responsible government. The Commission shall be responsible directly to the Navajo Nation Council with respect to its overall activities. The Intergovernmental Relations Committee of the Navajo Nation Council shall have legislative oversight authority.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 971. Purposes

The purposes of the Commission on Navajo Government Development shall be as follows:

A. To review and evaluate all aspects of the existing government structure of the Navajo Nation including laws, rules and regulations, practices, functions, goals and objectives of the central government as it relates to chapters, and local communities and the relationship of chapters and local communities and the relationship of chapters and local communities to the central government.

B. To develop recommendations and proposals for alternative forms of chapter government and chapter empowerment or local community empowerment for consideration and possible adoption by the Navajo People through a referendum vote.

History

CJY-65-94, July 22, 1994.
CD-68-89, December 15, 1989.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 972. Membership; officers; term; qualifications

A. The Commission shall consist of twelve (12) Navajo members to be confirmed by and serve at the pleasure of the Navajo Nation Council as follows:

1. One member shall be nominated by the Executive Branch through the President of the Navajo Nation to serve a term of two (2) years from the date of confirmation by the Navajo Nation Council.

2. One member shall be nominated by the Judicial Branch through the Chief Justice of the Navajo Nation to serve a term of two (2) years from the date of confirmation by the Navajo Nation Council; the nominee shall be a licensed attorney and a member of the Navajo Nation Bar Association.

3. One member shall be nominated by the Legislative Branch through the Intergovernmental Relations Committee of the Navajo Nation Council to serve a term of two (2) years from the date of confirmation by the Navajo Nation Council, the nominee shall have prior experience as an official or employee of a state government or any subdivision thereof.

4. One member shall be nominated by the Director of the Office of Navajo Government Development in consultation with the Navajo Government Development Commission; the nominee shall be a practitioner of the Navajo healing arts to serve a term of four (4) years from the date of confirmation by the Navajo Nation Council.

5. Five members shall be nominated from the five agencies of the Navajo Nation. Each agency council shall nominate one member from recommendations to be submitted by chapters in each agency, said nominees shall be either chapter officers or Grazing Committee/Land Board members. These members shall serve a term of four (4) years from the date of confirmation by the Navajo Nation Council so long as they continue as chapter officer or Grazing Committee/Land Board member.

6. One member shall be nominated by the Student Body Government of the Navajo Community College; the nominee shall be a student at Navajo Community College and serve so long as said nominee is a full-time student at Navajo Community College, but no longer than two (2) years from the date of confirmation by the Navajo Nation Council.

7. One member shall be nominated by the Education Committee of the Navajo Nation Council; the nominee shall be a graduate student from any accredited college or university, such member shall serve so long as said nominee is a full-time graduate student, but no longer than two (2) years from the date of confirmation by the Navajo Nation Council.

8. One member shall be nominated from the Commission of Navajo Women of the Navajo Nation; such member shall serve for a term of two (2) years from the date of confirmation by the Navajo Nation Council.

B. The Chairperson and the Vice-Chairperson of the Commission shall be selected by the members of the Commission and serve terms concurrent with their membership terms.

C. A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

D. Commission members shall be chosen from among individuals who have demonstrated scholarship, a strong sense of public interest, knowledge of Navajo history and cultural heritage, spiritual leadership, leadership in the Navajo government and abilities likely to contribute to the fulfillment of the duties of the Commission.

History

CJY-65-94, July 22, 1994.
 CD-68-89, December 15, 1989.

Library References

Indians Ⓒ32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 973. Duties and responsibilities

A. The Commission shall have powers necessary and proper to carry out the purposes set forth herein or as otherwise authorized by the Navajo Nation Council.

B. The Commission shall have the powers:

1. To develop a series of recommendations and proposals for alternative forms of chapter government and chapter empowerment or other local community empowerment for consideration by the Navajo Nation Council and the Navajo People by examining and utilizing the concepts of the separation of powers and the delegation of authority to provide for the appropriate checks and balances in Navajo government; to establish the responsibility of the Navajo government to protect the rights and freedoms of the Navajo People; to establish limitations on how the Navajo government and its officials may use its powers and to define the powers of the Navajo People.

2. To provide short and long range comprehensive planning, evaluation and development appropriate to further enhance a Navajo Government that will perpetually accommodate the Navajo People both at the central government level and at the local level by providing for their involvement, promote their general welfare, ensure governmental accountability, integrity, justice, domestic order, and retain traditional harmony, cultural respect, heritage, and the protection of personal liberties.

3. To review, evaluate, and recommend laws, rules and regulations including those of agencies, boards and commissions in order to develop a comprehensive system of government for the Navajo People.

4. To collect, assemble, evaluate, interpret and distribute information, data statistics and evidence which accurately describes the present Navajo government with emphasis on chapter and local empowerment.

5. To encourage the public, private and public organizations, chapters, traditional Navajo leaders, including Native ceremonial practitioners (medicemen), to actively participate in carrying out the purposes of the Commission and to conduct public hearings. The Commission shall give due consideration to traditional values and philosophical views of the Navajo People.

6. To encourage appropriate educational curriculums designed to educate students and the general public on the governmental development of the Navajo Nation.

7. To serve as the oversight authority for the Office of Navajo Government Development.

2 N.N.C. § 973

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8. To appoint a Director of the Office of Navajo Government Development who shall serve at the pleasure of the Commission.

9. To maintain such staff and consultants, including legal counsel as may be provided for in the annual Navajo Nation budget of the Commission and the Office.

History

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

Library References

Indians ⚡32(4.1).

Westlaw Topic No. 209.

§ 974. Meetings; procedures

A. The Commission shall meet on a designated day of each month. Special meetings shall be held on the call of the Chairperson of the Commission.

1. At any meeting, a quorum shall consist of seven (7) members.

2. All meetings shall be held in Window Rock, Navajo Nation (Arizona) for the transaction of Commission business. Meetings held elsewhere must be authorized by written permission of the Chairperson Intergovernmental Relations Committee.

B. The Commission is empowered to develop its own rules of procedures for the conduct of meetings, which shall be approved by the Ethics and Rules Committee of the Navajo Nation Council.

C. Members shall receive honorarium pay of one hundred dollars (\$100.00) for each official meeting as required at 2 N.N.C. § 974 (A) and maybe reimbursed for actual expenses incurred relative to Commission business.

History

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

Library References

Indians ⚡32(4.1).

Westlaw Topic No. 209.

§ 975. Subcommittee

The Commission may establish subcommittees consisting of Commission members selected by the Commission. The subcommittee shall exist until it has completed its assigned task, made recommendations and reported to the Commission. The same provision which applies to Commission meetings shall also apply to the subcommittee meetings.

History

CJY-65-94, July 22, 1994.

CD-68-89, December 15, 1989.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 976. Powers and duties of the Director

The powers and duties of the Director shall be to:

- A. Develop reports to be transmitted to the Intergovernmental Relations Committee and to the Navajo Nation Council by the Chairperson of the Commission concerning activities of the Commission, including reports on the implementation of its recommendations;
- B. Develop the budget and formulate administrative and operating policies of the Office and take action for accomplishment and enforcement thereof;
- C. Hire and supervise support staff and consultants in accordance with Navajo law, regulations, and procedures. The Director shall employ or engage those persons qualified by education and experience necessary to discharge the duties of the Commission;
- D. Exercise supervisory control and direction over the day to day operation of the Office;
- E. Represent the Office in executive level planning;
- F. Delegate authority to members of the staff; and
- G. Perform other duties as directed by the Commission.

History

CJY-65-94, July 22, 1994.
CD-68-89, December 15, 1989.

Note. "The powers and duties of the Director shall be to:" was added for purposes of grammar and statutory consistency.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 977. Office; staff, duties and accountability

- A. The staff is accountable and reports to the Director. The staff is hired and subject to the Navajo Nation Personnel Policies and Procedures.
- B. The duties of staff are as follows:
 - 1. To provide a full range of administrative and support services to the Commission.
 - 2. To act as resource persons for the Commission.
 - 3. To collect information and maintain central files of all information, data, statistics and research materials.
 - 4. To assist in preparing for Commission meetings by collecting and confirming information, notifying interested parties and preparation of materials necessary to conduct meetings.
 - 5. To assist in the coordination of scheduling of Commission and subcommittee meetings and activities.

2 N.N.C. § 977

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6. Perform other duties as directed by the Director.
7. The Office of Navajo Government Development shall be authorized to procure necessary supplies, services, equipment, furniture, and make contracts as authorized from time to time through the Navajo Nation budget process.

History

CJY-65-94, July 22, 1994.
CD-68-89, December 15, 1989.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 978. Amendments

Sections 970-977 herein may be amended by the Navajo Nation Council upon recommendation of the Intergovernmental Relations Committee and the Commission on Navajo Government Development.

History

CJY-65-94, July 22, 1994.
CD-68-89, December 15, 1989.

Note. "Sections 970-977 herein" substituted for the words "The sections hereof" for clarity and grammar.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 4. [Reserved]

Article 5. [Repealed]

Chapter 5. Executive Branch

Subchapter 1. Generally

Article 1. Office of the President and Vice-President

Section

1001. Executive Branch establishment
1002. Office of the President and Vice-President; term
1003. Vice-President
1004. Qualifications
1005. Powers and duties
1006. Vacancy
1007. Residences
1008. Salary
1009. Staff
1010. Gifts of property
1011. Valuation and accounting, distribution
1012. Recording of gifts

Article 2. Navajo–Hopi Land Commission Office

1021. Navajo–Hopi Land Commission Office

Subchapter 3. Office of Hearings and Appeals

- 1051. Establishment
- 1052. Purpose
- 1053. Organization and staff
- 1054. Power and authority
- 1055. Judicial enforcement of orders and subpoenas
- 1056. Sunset provision
- 1057. Right of Appeal
- 1058. Legislative oversight
- 1059. Amendments

Subchapter 4. [Reserved]

Subchapter 5. [Reserved]

Subchapter 6. Navajo Women’s Commission

- 1121. Navajo Women’s Commission
- 1122. Legislative Oversight
- 1123. Amendment of the Plan of Operation

Subchapter 7. Navajo Nation Washington Office

- 1150. Establishment
- 1151. Purposes
- 1152. Personnel
- 1153. Duties, responsibilities and authority of the Director
- 1154–1199. [Reserved]

Subchapter 8. [Reserved]

Subchapter 9. Office of Management and Budget

- 1201. Establishment
- 1202. Purpose
- 1203. Authority and responsibility
- 1204. Personnel
- 1205. Amendments

Subchapter 10. [Reserved]

Subchapter 11. Division of General Services

- 1251. Establishment
- 1252. Purposes and objectives
- 1253. Personnel
- 1254. Organization
- 1255. Legislative oversight
- 1256. Amendments

Subchapter 12. [Reserved]

Subchapter 13. [Reserved]

Subchapter 14. [Reserved]

Subchapter 15. Division of Public Safety

- 1351. Establishment
- 1352. Purpose and objectives
- 1353. Staffing and organization
- 1354. Responsibility and authority
- 1355. Amendments

Subchapter 16. Crimestoppers Program

- 1361. Establishment
- 1362. Purposes
- 1363. Board of Directors
- 1364. Contributions and depositories
- 1365. Contracts and debts
- 1366. Financial examination
- 1367. Fiscal year
- 1368. Parliamentary authority
- 1369. Amendments

Subchapter 17. Division of General Services

Subchapter 18. [Reserved]

Subchapter 19. Division of Community Development

- 1451. Establishment
- 1452. Purposes and objectives
- 1453. Personnel and organization
- 1454. Authority, duties and responsibilities
- 1455. Legislative oversight
- 1456. Amendments

Subchapter 20. [Reserved]

Subchapter 21. Division of Economic Development

- 1501. Establishment
- 1502. Purposes
- 1503. Personnel
- 1504. Organization
- 1505. Legislative Oversight
- 1506. Amendments

Subchapter 22. Water Rights Commission

- 1551. Establishment
- 1552. Purposes
- 1553. Organization
- 1554. Legislative Oversight
- 1555. Amendments

Subchapter 23. Division of Health

- 1601. Establishment
- 1602. Purposes
- 1603. Personnel
- 1604. Organization
- 1605. Legislative Oversight
- 1606. Amendments

Subchapter 24. [Reserved]

Subchapter 25. Division of Social Services

- 1651. Establishment
- 1652. Purpose
- 1653. Personnel
- 1654. Organization
- 1655. Legislative Oversight
- 1656. Amendment

Subchapter 26. [Reserved]

Subchapter 27. Division Of Human Resources

- 1701. Establishment
- 1702. Purpose
- 1703. Staffing and organization
- 1704. Responsibility and authority
- 1705. Legislative oversight
- 1706. Amendments

Subchapter 28. [Reserved]

Subchapter 29. [Reserved]

Subchapter 30. [Reserved]

Subchapter 31. Division of Education

- 1801. Establishment
- 1802. Purpose
- 1803. Goals
- 1804. Staffing and organization
- 1805. Responsibility and authority
- 1806. Legislative oversight
- 1807. Amendments
- 1808. Promulgation/implementation of rules

Subchapter 32. [Reserved]

Subchapter 33. [Reserved]

Subchapter 34. [Reserved]

Subchapter 35. Division of Natural Resources

- 1901. Establishment
- 1902. Purposes
- 1903. Personnel
- 1904. Organization
- 1905. Legislative oversight

Subchapter 36. [Reserved]

Subchapter 37. Environmental Protection Agency

- 1921. Establishment
- 1922. Purposes
- 1923. Personnel
- 1924. Authority
- 1925. Jurisdiction
- 1926. Legislative oversight
- 1927. Amendments

Subchapter 38. [Reserved]

Subchapter 39. Department of Justice

Article 1. Generally

- 1961. Establishment; purpose; composition
- 1962. Personnel

- 1963. Authority, responsibilities and duties
- 1964. Attorney General; Chief Legal Officer
- 1965. Opinions of the Attorney General

Article 2. Office of the Prosecutor

- 1971. Generally
- 1972. Purpose
- 1973. Chief Prosecutor
- 1974. Duties, responsibilities and authority
- 1975–1977. [Deleted]
- 1978. Assistance of, and coordination with, other agencies
- 1979. Investigations
- 1980. Civil case intervention
- 1981. Extradition and civil exclusion proceedings
- 1982. Authority to subpoena witnesses and documents
- 1983. Criminal investigation equipment
- 1984. Prohibiting interference
- 1985. Special Investigative Team (white collar crime)
- 1986. Central records system
- 1987. Case dismissal log and reporting
- 1988. juvenile justice section
- 1989. Grievance procedure

Article 3. Office of the Navajo Public Defender

- 1991. Establishment
- 1992. Purpose
- 1993. Personnel
- 1994. Public Defender Commission
- 1995. Qualifications for personnel
- 1996. Duties of Director
- 1997. Representation of indigent persons
- 1998. Duties of the Office of the Navajo Public Defender
- 1999. Appointment of other attorney in place of Public Defender
- 1999A. Recoupment of fees and costs
- 1999B. Amendments

Article 4. [Reserved]

Article 5. [Reserved]

Article 6. Special Prosecutor

- 2021. Application for appointment of a Special Prosecutor
- 2022. Duties of the Special Division
- 2023. Authority and duties of a Special Prosecutor
- 2024. Termination and removal of a Special Prosecutor

Subchapter 40. [Reserved]

Subchapter 41. Navajo Tax Commission

- 3351. Establishment
- 3352. Membership
- 3353. Powers
- 3354. Compensation

Subchapter 42. [Reserved]

Subchapter 43. Navajo Telecommunications
Regulatory Commission

- 3451. Establishment
- 3452. Purpose
- 3453. Powers, authorities and duties
- 3454. Membership of Commission

Subchapter 44. Motor Vehicle Review Board

- 3551. Establishment
- 3552. Purpose
- 3553. Composition
- 3554. Meetings and Board Expenses

Subchapter 45. [Reserved]

Subchapter 1. Generally

Article 1. Office of the President and Vice-President

§ 1001. Executive Branch establishment

There is established the Executive Branch of the Navajo Nation government. The branch shall consist of such divisions, departments, offices, or programs as may be established by law.

History

CD-68-89, December 15, 1989.

Library References

Indians ⇨ 32(4.1).
Westlaw Topic No. 209.

§ 1002. Office of President and Vice-President; term

- A. There is established the Office of President and Vice-President.
- B. There shall be one President of the Navajo Nation.
- C. The President shall be elected for a term of four (4) years.
- D. The President shall serve no more than two (2) terms.

History

CD-68-89, December 15, 1989.
 CS-31-54, September 3, 1954.

Rules governing Tribal Council, July 1938,
 Ch. 111, § 1, 1954 Res. p. 196.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1003. Vice-President

- A. There shall be one Vice-President of the Navajo Nation.
- B. He/she shall be elected for a term of four (4) years.
- C. The Vice-President shall serve no more than two (2) terms.

History

CD-68-89, December 15, 1989.
 CJA-1-63, January 10, 1963.

Rules governing Tribal Council, July 1938,
 Ch. 111, §§ 4-5, 1954 Res. p. 196.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1004. Qualifications

A. No person shall serve as President or as Vice-President of the Navajo Nation unless he/she is an enrolled member of the Navajo Nation, thirty (30) years old or older.

B. No person shall serve as President or Vice-President of the Navajo Nation unless he/she has continually, during the last three (3) years before the time of election been physically present within the Navajo Nation. The “Navajo Nation” is defined at 7 N.N.C. § 254.

History

CD-68-89, December 15, 1989. Rules governing Tribal Council, July 1938, Ch. 111, §§ 7-8, 1954 Res. pp. 196-198.

Cross References

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

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1005. Powers and duties

A. The President of the Navajo Nation shall serve as the Chief Executive Officer of the Executive Branch of the Navajo Nation government with full authority to conduct, supervise, and coordinate personnel and programs of the Navajo Nation. He/she shall have fiduciary responsibility for the proper and efficient operation of all Executive Branch offices.

B. The President shall represent the Navajo Nation in relations with governmental and private agencies and create favorable public opinion and good will toward the Navajo Nation.

C. The President shall have the following enumerated powers:

1. Faithfully execute and enforce the laws of the Navajo Nation.
2. Negotiate and execute contracts subject to applicable laws.
3. Appoint supervisory executive personnel subject to applicable laws.
4. Appoint members of boards, commissions, and other entities subject applicable laws.
5. Report quarterly to the Navajo Nation Council on the state of the Navajo Nation.
6. Recommend to the Budget and Finance Committee an annual operating budget or amendments thereof for the Executive Branch and advise the Navajo Nation Council on the annual budget recommended by the Budget and Finance Committee.
7. Recommend to the Navajo Nation Council supplemental appropriations for the Executive Branch.
8. Recommend legislation, rules or regulations to the Navajo Nation Council or its Committees.
9. Exercise such powers as may be lawfully delegated to the Office of the President of the Navajo Nation.
10. Sign legislation passed by the Navajo Nation Council into Navajo law within ten (10) calendar days after the certification of the legislation by the Speaker or Speaker Pro Tem.
11. Veto legislation passed by the Navajo Nation Council subject to an override of the veto by two-thirds (2/3) vote of the membership of the Navajo Nation Council. The veto shall be exercised by the President by a letter to the Speaker specifying the reasons for the veto. The President's veto shall not be subject to an override by the Navajo Nation Council after the end of the next regular session of the Navajo Nation Council following the session in which the legislation was first passed by the Council.
12. The President's authority to sign into law or veto legislation shall be deemed to be waived if not exercised within ten (10) calendar days after certification of the legislation by the Speaker or Speaker Pro Tem and the

legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221.

13. Speak and act for the Navajo Nation on any and all matters relating to the Navajo–Hopi land dispute subject to applicable laws.

14. Issue executive orders for the purpose of interpreting, implementing or giving administrative effect to statutes of the Navajo Nation in the manner set forth in such statutes. Executive orders shall have the force of law upon the recipient.

D. The Vice–President of the Navajo Nation, during the absence of the President, shall exercise the powers and execute the duties of the President of the Navajo Nation.

History

- CAU–48–03, August 29, 2003, Overrode Presidential Veto of CJY–32–03.
- CD–68–89, December 15, 1989.
- CJY–32–03, July 22, 2003. Added Subsections B(10), (12) and (14). Amended Subsection B(11) and Renumbered within Subsection B.
- CAU–50–59, August 6, 1959.
- GSCF–10–91, January 9, 1991. Added Subsection (C)(11).
- CJ–13–53, January 6, 1953.
- Rules governing Tribal Council, July 1938, Ch. 111, §§ 3–6, 1954 Res. p. 196.

Library References

- Indians ⇄32(6).
- Westlaw Topic No. 209.
- C.J.S. Indians § 51.

§ 1006. Vacancy

If a vacancy should occur in the Office of the President of the Navajo Nation or the President is unable to perform his/her powers and duties, the Vice–President of the Navajo Nation shall serve as President of the Navajo Nation and serve the remainder of the term or until the President’s inability to perform his/her powers and duties is removed. If a vacancy should occur in the Office of the President and Vice–President of the Navajo Nation, the Speaker of the Navajo Nation Council shall serve as President of the Navajo Nation until a special election is held. Such special election shall be called by the Navajo Board of Election Supervisors pursuant to the provisions of the Navajo Election Code. Service by the Speaker as the President shall not create a vacancy in the Office of the Speaker.

History

- CD–68–89, December 15, 1989.
- Rules governing Tribal Council, July 1938, Ch. 111, § 10, Res. p. 198.
- CJ–13–53, January 6, 1953.

Library References

- Indians ⇄32(6).
- Westlaw Topic No. 209.
- C.J.S. Indians § 51.

§ 1007. Residences

Residences shall be furnished at Window Rock, Arizona, together with the cost of water, sewer, refuse disposal, electricity and natural gas, without charge, to the President and Vice-President of the Navajo Nation. If the President or Vice-President decline to reside in such residence, the Navajo Nation shall not be responsible or liable for costs and expenses of living elsewhere.

History

CD-68-89, December 15, 1989.
CJ-13-53, January 6, 1953.
CO-69-53, October 9, 1953.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1008. Salary

The salary of the President and Vice-President of the Navajo Nation shall be fifty-five thousand dollars (\$55,000) and forty-five thousand dollars (\$45,000) per annum, respectively. Salary adjustments may be approved by the Navajo Nation Council but shall not become effective until and unless approved by a referendum.

History

CJY-63-00, Override of Presidential Veto, Adjust the Salaries of the Navajo Nation President, Vice-President, and Navajo Nation Council Delegates by ten thousand dollars (\$10,000). Determined invalid. See, <i>Judy v. White</i> , No. SC-CV-35-02, Slip. Op. August 2, 2004 (N. Sup. Ct. 2004).	1984-1982 Budgets.
CD-68-89, December 15, 1989.	CMY-26-79, May 4, 1979.
	1972 Budget.
	CJY-30-63, July 6, 1963.
	CM-25-56, May 17, 1956.
	CJ-3-53, January 6, 1953.
	CJ-11-52, January 23, 1952.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations**1. Construction and application**

“Lastly, we consider the District Court’s mandate that White ‘take such actions as may be necessary to recoup illegal payments of salary, deferred compensation or tax contributions by the Navajo Nation, and to seek assistance of pertinent Navajo Nation officials for such purposes.’ *Judy v. White*, No. CH-CV-53-01, slip op. At 12 (Chin. Dist. Ct. August 21, 2002). We reverse and vacate the district court’s judg-

ment.” *Judy v. White*, No. SC-CV-35-02, slip op. at 24 (Nav. Sup. Ct. August 2, 2004).

“2 N.N.C. § 1008, as codified, is the only valid legislation which can form the basis for the President’s and Vice President’s salary increases.” *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

2. Validity

“Resolution CJY-52-00 is invalid, and any payment of salaries in excess of those mandated

by 2 N.N.C. §§ 106(A) and 1008 is illegal. We therefore affirm the trial court's decision invalidating CJY-52-00." *Judy v. White*, No. SC-CV-35-02, slip op. at 22 (Nav. Sup. Ct. August 2, 2004).

§ 1009. Staff

The President and Vice-President shall appoint such assistants, administrators, legal counsel and clerical staff as may be budgeted for.

History

CD-68-89, December 15, 1989.
 1976-1972 Budgets.
 CJA-8-71, January 31, 1971.

Library References

Indians ⇨32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1010. Gifts of property

The President of the Navajo Nation shall, for and on behalf of the Navajo Nation, accept or decline gifts of property, provided, that any such acceptance or refusal of a gift of an estimated value in excess of one thousand dollars (\$1,000) shall be with the concurrence of the Government Services Committee. All gifts to the Navajo Nation shall be and remain the property of the Navajo Nation.

History

CD-68-89, December 15, 1989.
 CMY-44-70, May 19, 1970.

Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C., § 3741 *et seq.*

Library References

Indians ⇨32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1011. Valuation and accounting; distribution

The President of the Navajo Nation, upon acceptance of any gifts of property, shall cause a valuation and accounting of the property to be made. He/she shall further cause the property to be preserved and distributed in such a manner that the Navajo People will receive benefit thereby, or that income from sales will accrue to the Navajo Nation. Distribution of gifts in excess of one thousand dollars (\$1,000) value shall be with concurrence of the Government Services Committee.

History

CD-68-89, December 15, 1989. CMY-44-70, May 19, 1970.

2 N.N.C. § 1011

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Library References

Indians ☞32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1012. Recording of gifts

All public officials, elected and non-elected, of the Navajo Nation receiving gifts, whether intended as a gift to the official or to the Navajo Nation, shall record or cause to be recorded such gift with the Ethics and Rules Office.

History

CD-68-89, December 15, 1989.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1013. [Repealed]

History

CJY-54-01, July 19, 2001. Section repealed to acknowledge changes made by passage of the Navajo Nation Procurement Code.

Article 2. Navajo-Hopi Land Commission Office

History

GSCF-10-9 1, February 26, 1991.
CD-68-89, December 15, 1989.
ACAP-49-83, April 4, 1983.

Note. The “Navajo-Hopi Land Commission”, previously at 2 N.N.C. §§ 33013308 is

redesignated at 2 N.N.C. §§ 851-858 in the Legislative Branch.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1021. Navajo-Hopi Land Commission Office

A. The Navajo-Hopi Land Commission Office (“Commission Office”) is established under the Office of the President of the Navajo Nation. The President of the Navajo Nation shall appoint an Executive Director who shall head the Land Commission Office and who shall serve at the pleasure of the President of the Navajo Nation.

B. The Navajo-Hopi Land Commission Office shall perform its assigned functions as outlined in its approved Plan of Operation.

History

GSCF-10-91, February 26, 1991.

Cross References

Navajo-Hopi Land Commission, see 2 N.N.C. §§ 851-858.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

Subchapter 3. Office of Hearings and Appeals

History

Subchapter 3. formerly "Office of Legislative Affairs" adopted by ACJN-77-84, June 15, 1984, was discontinued when Office of Legislative Services was established by CD-68-89, December 15, 1989. See now 2 N.N.C. § 951 et seq. See also, the 1972 Budget, "Office of Legislative Secretary".

§ 1051. Establishment

There is established the Office of Hearings and Appeals within the Executive Branch of the Navajo Nation government. The Office shall be separate and independent from all other divisions, departments, programs, commissions, enterprises, boards, or other Navajo Nation government entities.

History

GSCAP-19-95.
GSCAP-20-93, April 27, 1993.

Library References

Indians ⇨32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1052. Purpose

The purpose of the Office of Hearings and Appeals is to serve as an informed, fair and impartial forum for hearing contested cases arising under applicable rules and regulations. The Office may also serve as a forum for contested cases not otherwise included in Navajo Nation law, if requested to do so by the exempted governmental entity. At the discretion of the Director of the Office, the Office may serve as a forum for rule-making hearings, upon request from a governmental entity.

History

GSCAP-19-95.
GSCAP-20-93, April 27, 1993.

Library References

Indians ⇨32(4).
Westlaw Topic No. 209.

C.J.S. Indians §§ 51 to 52, 115.

§ 1053. Organization and staff

A. The Director, who will also act as the chief hearing officer, shall be appointed by the President for a term of six (6) years. Upon completion of a six-year term, the Director may be considered for reappointment to another six-year term. The Director shall not be a political appointment; nor shall he/she serve at the pleasure of any person or entity. The Director shall have all of the rights of a permanent Executive Branch employee under the Personnel Policies and Procedures. The Director shall be responsible for implementation of policy and the administration of the Office, and shall exercise the powers and authority granted to the Office. The Director may employ or engage persons qualified by education and experience necessary to discharge the duties of the Office and may delegate authority and duties among such persons.

B. Staff.

1. The Director is authorized to hire, pursuant to the applicable laws and regulations of the Navajo Nation, hearing officers and technical and support staff authorized by the Office from time to time. The Director may also recommend additional staff positions as needed to carry out the purposes and powers described herein. Such additional staff shall be hired within applicable budget limitations.

2. All staff personnel shall be employed and compensated in accordance with applicable Personnel Policies and Procedures.

3. Hearing officers who hear contested cases shall be attorneys licensed to practice law in the Courts of the Navajo Nation and in the courts of one or more of the three states in which the Navajo Nation is situated. If a hearing officer is hired without such qualifications, a one (1) year probationary period will be provided in order to obtain the necessary license. If the license is not attained within one (1) year, the hearing officer shall be released from employment with the Office.

4. Support staff for the Office shall include one or more legal secretaries.

C. Organization. Personnel added after the initial establishment of the Office may be hired without change in this Plan of Operation or in the organization so long as there is appropriate funding available and the added positions fit within this plan and the organization.

History

GSCAP-19-95.

GSCAP-20-93, April 27, 1993.

(C) were made to reflect this action and for statutory form.

Note. The organizational chart was deleted and minor changes in language in subsection

Library References

Indians ☞32(4).

Westlaw Topic No. 209.

C.J.S. Indians §§ 51 to 52, 115.

§ 1054. Power and authority

In addition to all powers and authority reasonable to carry out the purposes set forth in this plan, the Office of Hearings and Appeals shall have the following specific powers and authority to:

A. In contested cases, hear and decide or make recommendations to the decision-making authority pursuant to Navajo laws and regulations.

B. In hearings for other than contested cases, hear and decide or make recommendations as may be required or requested.

C. Exercise all powers and authority necessary or reasonable to carry out the purposes of applicable Navajo laws and regulations.

D. With relation to contested cases or other hearings, a hearing officer may

1. Administer oaths, examine witnesses, and receive evidence; however, no person may be compelled to divulge information which he/she could not be compelled to divulge in the courts of the Navajo Nation;

2. Issue subpoenas, procedural orders, and other orders necessary to the hearing procedures referred to herein;

3. Receive relevant evidence and rule upon offers of proof and other evidentiary matters;

4. Take or cause depositions to be taken;

5. Regulate the course of the hearing;

6. Hold conferences for the settlement or simplification of the issues;

7. Dispose of procedural matters by decision;

8. Take official notice of matters that could be given judicial notice in the Courts of the Navajo Nation; and

9. Take any other action authorized by the laws or regulations of the Navajo Nation.

E. Promulgate regulations to govern hearings in contested cases and, if the Office exercises its discretion to preside over rule-making hearings, promulgate regulations to govern such hearings.

History

GSCAP-19-95.

GSCAP-20-93, April 23, 1993.

Library References

Indians ☞32(4).

Westlaw Topic No. 209.

C.J.S. Indians §§ 51 to 52, 115.

§ 1055. Judicial enforcement of orders and subpoenas

A. If an individual fails to obey a subpoena issued by a hearing officer, or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the aggrieved party may petition the appropriate Navajo Nation Court for enforcement of the subpoena.

B. In addition to other remedies provided by law or regulation, the Office or its hearing officers may seek enforcement of its rules, regulations, rulings, or

2 N.N.C. § 1055

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orders by filing a petition for civil enforcement in the appropriate Court of the Navajo Nation. The Office or hearing officer may request declaratory relief, temporary or permanent injunctive relief, or any other civil remedy, or combination of remedies, provided by the laws of the Navajo Nation.

History

GSCAP-19-95.
GSCAP-20-93, April 23, 1993.

Library References

Indians ⇐32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 1056. [Repealed]

History

GSCAP-19-95, Repealed Sunset Provision.
GSCAP-20-93, April 23, 1993.

Library References

Indians ⇐32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 1057. Right of Appeal

Unless otherwise provided by law, the right of appeal of final decisions of the Office of Hearings and Appeals is exclusively to the Navajo Nation Supreme Court and must be filed within thirty (30) days from the date of decision.

History

GSCAP-19-95. Added § 1057.
GSCD-98-01, December 11, 2001, Added
§ 1057.

Library References

Indians ⇐32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 1058. Legislative oversight

The Office of Hearings and Appeals shall be under the legislative oversight of the Government Services Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 343 (B) (4).

History

GSCAP-19-95.
GSCAP-20-93, April 23, 1993.

Library References

Indians ↻32(4).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 51 to 52, 115.

§ 1059. Amendments

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council.

History

<p>GSCD-98-01. Added Section 1057 to provide a right of appeal to the Navajo Nation Supreme Court. Subsequent sections renumbered.</p>	<p>GSCAP-19-95. GSCAP-20-93, April 23, 1993.</p>
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Subchapter 4. [Reserved]

Subchapter 5. [Reserved]

History

<p>Subchapter 5 formerly the Office of Auditor General derived from the 1978 Budget, can now be found at 12 N.N.C. §§ 1-7; prior designation of this subchapter at §§ 1101-1104, "Legal Office", was redesignated "Tribal Legal Department" by the 1978 Budget Resolution and</p>	<p>moved to 2 N.N.C. § 1991-1994. See now Office of Attorney General at 2 N.N.C. § 199 1, et seq.; Office of Legislative Counsel at 2 N.N.C. § 960 et seq.; and 12 N.N.C. §§ 1-7 for Office of Auditor General.</p>
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Subchapter 6. Navajo Women's Commission

History

<p>Former §§ 1121-1124, 1126-1127, deleted by CJA-07-92, January 22, 1972, leaving only Navajo Women's Commission at § 1125, now redesignated at § 1121. GSCS-54-91, September 10, 1991, renamed the Office of Navajo Women,</p>	<p>the Office of Navajo Women and Families and placed the program in the Division of Human Resources; see also 2 N.N.C. § 1701 et seq. and CJA-07-92, January 22, 1992.</p>
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§ 1121. Navajo Women's Commission

A. The Navajo Women's Commission is established under the Executive Branch of the Navajo Nation government.

B. The purposes of the Women's Commission include:

1. Supporting improvement in the status of Navajo men, women, youth, children and their families;
2. Promoting methods for enabling women to develop their skills, to continue their education, to be retained or assume leadership roles;
3. Assisting in setting government policies related to Navajo men, women, youth, children and their families;
4. Assuring the Commission complies with Navajo Nation, federal and state laws;

5. Reporting to the Navajo Nation President from time to time on the status of Navajo women and families;

6. Undertaking studies and reviews on the status of Navajo men, women, youth, children and their families; and

7. Securing recognition for the accomplishments and contributions of women to Navajo society; and

8. Securing and/or seeking tribal, state and federal funding to provide awareness and prevention, intervention against domestic violence, youth violence and abuse against elderly.

C. Membership, selection, terms of office, removal:

1. The Commission shall consist of ten (10) enrolled Navajo individuals representing various socio-economic, educational, and professional backgrounds, who shall be appointed by the Navajo Nation President, and confirmed by the Government Services Committee of the Navajo Nation Council. Appointed commissioners shall represent but not be limited to the following fields: education, business, human services, law, and health. Commissioners shall have demonstrated leadership skills and ability to contribute to the fulfillment of the purpose and duties of the Commission.

2. Each of the five agencies of the Navajo Nation shall have representatives on the Commission:

A. Eastern Agency (2), One from Crownpoint Agency, One to represent Alamo, Ramah or Tohajilee Community;

B. Fort Defiance Agency (2), One from Fort Defiance Agency, One to represent Southwest (Dilkon Community);

C. Northern Agency (2), One from Shiprock Agency, One to represent Utah;

D. Western Agency, One from Tuba City Agency, One to represent Kayenta Community;

E. Central Agency (2), One from Chinle Agency, One from Pinon Community.

3. Term of Office. The term of office shall be for a staggered term of four (4) years. All appointments shall remain effective until the qualification, selection and confirmation of their successors is made or, until they resign, or are removed or disqualified, and shall remain in effect for the duration of that Commissioner's term. The initial appointments of the Navajo Women's Commission shall be made by the President and confirmed by the Government Services Committee of the Navajo Nation Council for a period of four (4) years. The Commissioners shall retain at least four members, to ensure that experienced members of the Navajo Women's Commission are serving at all times.

4. The Chairperson, Vice-Chairperson, and Secretary of the Commission shall be selected by the Commission; and

5. A Commissioner shall be removed by the Navajo Nation President for missing three consecutive meetings without good cause, or at the request of that commissioner.

D. Powers. The powers of the Commission are as follows:

1. The Commission is authorized and directed to disseminate information to the Navajo public concerning men, youth, children and women's issues, maintain local participation of men, youth, children and women within their communities, and advocate the continuation and support of programs and laws assisting Navajo men, women, youth and children;
2. To develop recommendations and proposals relating to Navajo men, women, youth and children;
3. To provide short and long range planning, evaluation, and development to further enhance the status of Navajo men, women, youth and children;
4. To review, evaluate, and recommend laws, rules and regulations of the Navajo Nation Government in order to improve direct service delivery systems for Navajo women and families;
5. To collect, assemble, evaluate, interpret, and distribute information, data, statistics, and evidence which describe the needs, circumstances, and status of Navajo men, women, youth and children;
6. To conduct public hearings;
7. To encourage private and public organizations, chapters, traditional Navajo leaders, including native ceremonial practitioners to actively carry out the purposes of the Commission. The Commission shall give due consideration to the traditional values, preservation of family harmony and philosophical views of the Navajo People;
8. Work through the Navajo Women's Commission, and with the Office of Navajo Women and Families Program Director and staff to plan overall goals and objectives and implement actions; and
9. Work with Navajo Nation Council Delegates and the Navajo Nation President's Office to promote plans and legislation on behalf of Navajo men, women, youth and children;
10. To establish networking and coordination with other Navajo Nation Departments/Divisions, State, Federal agencies for the benefit of Navajo men, women, youth and children;
11. To establish the authority to solicit funds, fund raising and accept donations for Navajo youth and families incentive program and awards.

E. Meetings.

1. Meetings shall be held at least every month, provided that funds are available.
2. At any meeting a quorum shall consist of six members.
3. In the event the Chairperson and Vice-Chairperson are absent from a meeting, the majority of the members present shall select a Pro Tem Chairperson to conduct the meeting.
4. Minutes of each meeting shall be recorded and officially filed with the Records Management of the Navajo Nation.
5. Members attending Commission meetings shall be reimbursed for travel and other expenses consistent with the rates established by Navajo

2 N.N.C. § 1121

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Nation policy. Full per diem shall be paid when all agenda items are concluded; and

6. The Commission is empowered to develop its own procedures for the conduct of official meetings.

F. Reports. The Commission shall provide reports quarterly and in writing to the Navajo Nation President and Navajo Nation Council concerning matters relating to Navajo men, women, youth and children.

History

CAP-34-97, April 24, 1997. Amended generally.

Library References

Indians ⇄6.1, 32(4.1).
Westlaw Topic No. 209.

§ 1122. Legislative Oversight

Legislative oversight for the operation of the Office of Navajo Women and Families shall be provided by the Human Services Committee of the Navajo Nation Council.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1123. Amendment of the Plan of Operation

The Office of Navajo Women and Families Plan of Operation may be amended from time to time upon recommendation by the Human Services Committee and final approval by the Government Services Committee of the Navajo Nation Council.

History

CJA-07-92, January 22, 1992.
GSCS-54-91, September 10, 1991.
ACAP-63-85, April 11, 1985.

See also, ACJY-108-83, July 6, 1983.

Note. Slightly reworded and corrected for grammatical purposes.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 7. Navajo Nation Washington Office

History

Former Subchapter 7, The Navajo Veteran's Commission was established by CF-14-82, February 10, 1982. By ACAU-104-84, August 24, 1984, a Plan of Operation was adopted which was later rescinded by ACJY-167-87; July 28,

1987; thereafter ACN-213-88, November 15, 1988, rescinded by the Plan of Operation for the Navajo Veterans Commission and established in its stead a Navajo Nation Council Committee, the Navajo Veteran's Committee. By

CMA-17-89, the Veterans Committee was continued until December 15, 1989, when the Veteran's Committee was abolished and its responsibilities absorbed into the Human Services

Committee which was established by CD-68-89, December 15, 1989. See now 2 N.N.C. § 601 *et seq.*

§ 1150. Establishment

There is hereby established the Navajo Nation Washington Office within the Executive Branch of the Navajo Nation Council as an intergovernmental relations office.

History

ACAU-102-84, August 23, 1984.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1151. Purposes

The purpose of the Navajo Nation Washington Office is to:

- A. Exist as an extension of the Navajo Nation government in Washington, D.C., representing the Navajo Nation government's concerns to the United States Congress and federal Agencies.
- B. Enhance the success of the Navajo Nation government's goals and objectives by strengthening the control and influence of the Navajo Nation over the activities of the federal Government.
- C. Maintain a Navajo presence in Washington, D.C., that would emphasize the government to government relationship thereby improving the capacity of the Navajo People to govern and represent themselves.
- D. Provide for the Navajo Nation government easy and rapid access to Congress, the Administration, and federal Agencies.
- E. Monitor and analyze all Congressional legislation and activities of committees and subcommittees that affect the Navajo Nation, as well as all federal administration activities, specifically those that administer Indian programs.
- F. Distribute to the Navajo Nation government information concerning congressional and administrative activities that affect the welfare of the Navajo Nation and to provide advice regarding alternatives that exist in developing strategies and decisions concerning Navajo programs, policies, budgets, and any other areas of concern to the Navajo Nation.
- G. Assist in the preparation of legislative proposals and testimony before Congress.
- H. Provide assistance to Navajo Nation government entities testifying before Congress or conducting Navajo Nation government business in Washington, D.C.

2 N.N.C. § 1151

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History

ACAU-102-84, August 23, 1964.

Cross References

Intergovernmental Relations Committee of the Navajo Nation Council, authority and powers, see 2 N.N.C. § 821 *et seq.*

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1152. Personnel

A. There is hereby established the position of the Director of the Navajo Nation Washington Office and such other positions as may from time to time be budgeted for by the Budget and Finance Committee of the Navajo Nation Council or the Navajo Nation Council or by any other source acceptable to the President of the Navajo Nation.

B. The Director shall be appointed by the President of the Navajo Nation, subject to confirmation by the Navajo Nation Council, to serve at a negotiated salary and at the pleasure of the President of the Navajo Nation.

C. All other personnel shall be hired by the Director and shall serve at the pleasure of the Director. Such personnel shall be compensated and adhere to Navajo Nation Personnel Policies and Procedures, as amended.

Library References

Indians ⇨32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1153. Duties, responsibilities and authority of the Director

The duties, responsibilities and authority of the Director shall be as follows:

A. Report and be responsible to the Navajo Nation Council through the President of the Navajo Nation for the accomplishment of the purposes, objectives, and functions of the Navajo Nation Washington Office.

B. Formulate overall administrative and operating policies pertaining to the Navajo Nation Washington Office and to take such actions as the Director shall deem necessary for the accomplishment and enforcement thereof.

C. Represent the Navajo Nation Washington Office in executive level planning.

D. Represent the Navajo Nation government within the areas of the responsibility of the office in dealings and relations with persons and organizations outside the Navajo Nation government.

E. Conduct such special projects and programs as maybe assigned.

F. Delegate authority to his or her staff.

History

CAU-40-84, August 9, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1154-1199. [Reserved]

Subchapter 8. [Reserved]

History

Formerly at Subchapter 7, the Office of the Prosecutor was continued at Subchapter 8, §§ 1171-1183 by ON-60-71, June 8, 1971 and CJY-43-76, June 14, 1976 (Budget resolutions) and is now redesignated at 2 N.N.C. § 1971 et seq. within the Office of the Attorney General. See 2 N.N.C. § 1971 et seq.

Subchapter 9. Office of Management and Budget

History

The Office of Operations, in the 1977, 1976 and 1972 Budgets and previously codified at §§ 1201-1203 of this title, was discontinued by the 1978 Budget and organization chart. The Office of Management and Policy Analysis was discontinued in 1979.

§ 1201. Establishment

There is established the Office of Management and Budget within the Executive Branch of the Navajo Nation. The Director of the Office of Management and Budget shall serve under the general direction and guidance of the President of the Navajo Nation and the Budget and Finance Committee of the Navajo Nation Council shall provide legislative oversight.

History

ACO-131-84, October 11, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1202. Purpose

The purpose of the Office of Management and Budget is to direct and manage the allocation and appropriation processes of all funds for the Navajo Nation and to provide management support in the areas of fiscal management, budgets, program operation and management, contracts, grants and similar agreements. The Office of Management and Budget is to communicate key information necessary for decision-making using principles of sound management and generally accepted processes and procedures.

History

CAP-17-02, April 16, 2002. Amended generally.
ACO-131-84, October 11, 1984.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1203. Authority and responsibility

A. The Office of Management and Budget is authorized to:

1. Recommend and develop actions on all appropriation processes (i.e. general, federal, state, etc.) to ensure optimal Navajo Nation participation and benefit.
2. Direct and coordinate the submission of proposed budgets, contract and grant applications, and any other related agreements to ensure compliance with appropriate laws, regulations and guidelines.
3. Conduct comprehensive program analysis and monitoring.
4. Establish and administer all necessary policies for improved program performance to appropriate Navajo Nation officials to ensure compliance with Navajo Nation laws, regulations and guidelines.
5. Recommend and develop actions for improved program performance to appropriate Navajo Nation officials to ensure compliance with Navajo Nation laws, regulations and guidelines.
6. Represent the Navajo Nation within areas of the responsibility and authority of the office in relations with persons and organizations outside the Navajo Nation and in matters relating to agreements with state or federal agencies pertaining to appropriation and allocation of funding.

B. Contracts and Grants Section Responsibilities. The Office of Management and Budget shall employ a Contracting Officer, with the general responsibility to coordinate the contracts and grants administration process for the Navajo Nation Government.

1. Authorities of the Contracting Officer:
 - a. Ensure all applications, proposals and related funding requests comply with applicable laws, regulations, and guidelines.
 - b. Review original applications and/or proposals to ensure proper approval prior to submission to the external funding source.
 - c. Arrange and coordinate joint meetings within the Navajo Nation and between the Navajo Nation and external funding sources to resolve contracts and grants issues.
 - d. Obtain program information as required for conducting monitoring and compliance activities.
 - e. Negotiate, on behalf and in the best interest of the Navajo Nation, contracts, grants and other similar agreements in accordance with the needs and requirements of the Navajo Nation.

f. Recommend and develop actions to appropriate officials on any matters pertaining to Navajo Nation contracts and grants and other external funds.

g. Recommend approval or disapproval of any application and/or proposal based upon:

(1) Consistency with current Navajo Nation strategies, goals, objectives and work plans for overall program planning and development: and

(2) Compliance with current Navajo Nation policy and procedures for entering into contracts and grants and other similar agreements.

History

CAP-17-02, April 16, 2002. Amended generally. **Note.** Slightly reworded and corrections made for purposes of statutory form.
 ACO-131-84, October 11, 1984,

Library References

Indians ⇄24, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

§ 1204. Personnel

A. The Office of Management and Budget shall be administered by an Executive Director who shall be employed and compensated pursuant to Personnel Policies and Procedures of the Navajo Nation. The Executive Director shall report directly to the President of the Navajo Nation.

B. The Office of Management and Budget shall include a Contracting Officer who shall be responsible for the administration of all contracts and grants as delineated at § 1203(B) herein. The Contracting Officer shall report directly to the Executive Director of the Office of Management and Budget for ministerial matters and to the President and/or appropriate standing committee for grant/contract issues.

History

CAP-17-02, April 16, 2002. Amended generally. **Note.** Slightly reworded for purposes of statutory form.
 ACO-131-84, October 11, 1984.

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1205. Amendments

This Plan of Operation may be amended by the Navajo Nation Council upon recommendation by the Budget and Finance Committee of the Navajo Nation Council.

2 N.N.C. § 1205

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History

CAP-17-02, April 16, 2002. Amended generally.
ACO-131-84, October 11, 1984.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Subchapter 10. [Reserved]

History

Office of Youth Affairs established by ACJY-82-82 was continued by ACAU-97-84 as the Division of Youth Development and Services. By GSCJA-02-95 the Plan of Operation

for the Department of Youth/Community Services was incorporated into the Division of Education. See 2 N.N.C. § 1801 et seq.

Subchapter 11. Division of General Services

History

CMA-16-90, Exhibit "B", March 29, 1990. By way of Budget resolution the Navajo Nation Council restructured the Division of Administration and Finance and the Division of General Services. No establishment language was adopted at the time nor was a Plan of Operation put in place.

Note. Listed below are a few of the programs operated within the Division of Finance.

Purchasing Services. "Property Department", later redesignated as "Property and Purchasing Department", (CJY-43-76) was created by the 1973 Budget Resolution (CJN-66-72) however was discontinued by the 1978 Budget Resolution (CO-65-77). The Department was replaced with the materials Management Branch of the General Services Department of the Division of Administration and Finance.

Property Management. "Property Department", later redesignated as "Property and Purchasing Department", (CJY-43-76) was created by the 1973 Budget Resolution (CJN-66-72) however was discontinued by the 1978 Budget Resolution (CO-65-77). The Department was replaced with the materials Management Branch of the General Services Department of the Division of Administration and Finance.

Credit Services. See CF-13-85, ACD-234-85, CO-50-87, ACN-229-87, ACF21-88.

Home Loan Program. See BFJN-51-94 for Policies.

Personal Loan Program. See ACF-21-88, CLCO-34-88 and CLCO-19-88.

§ 1251. Establishment; purpose; composition

There is hereby established the Division of General Services within the Executive Branch of the Navajo Nation Government.

History

CO-87-95, October 19, 1995.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1252. Purposes and Objectives

A. The purpose of the Division of General Services shall be:

1. To administer, plan, organize and monitor all aspects of the Division of General Services' programs or departments to ensure that services for the Navajo Nation Government and its individual employees are properly provided.

2. To effectively manage the diverse services provided by the various programs and departments.

B. The objectives of the Division of General Services shall include:

1. Providing safe and efficient chartered air transportation for various officials of the Navajo Nation in compliance with all Navajo Nation, state and federal laws regarding such transportation.

2. Providing management and planning for all communication and utility services for the Navajo Nation Government, including working with all state and federal agencies to develop and maintain technological systems to ensure efficient and comprehensive service to the Navajo Nation Government and its people.

3. Providing updated computer technology to the Navajo Nation Government and its various divisions which may include assisting with development of training of the Navajo Nation employees in the use of various available computer systems.

4. Providing rental houses for the Navajo Nation employees in the local area so as to maintain an adequate work force.

5. Providing maintenance of the Nation's buildings including all structural, mechanical and electrical services, heating and cooling systems, grounds maintenance, custodial services and limited building renovation.

6. Providing motor vehicle transportation for the Navajo Nation Government employees including acquisition of a fleet of vehicles, routine maintenance of the fleet and selling vehicles as needed.

7. Providing cost effective insurance for the Nation and its employees by working with the Navajo Nation Insurance Commission.

8. Providing a ground transportation system for the Navajo people by offering low cost fixed route services on and around the Navajo Nation and by offering charter services to various groups in and around the Navajo Nation.

9. Maintaining custodial care of all vital official Navajo Nation Government records and provide duplicating services for the Government.

History

CO-87-95, October 19, 1995.

Library References

Indians ⇄ 32(4.1).
Westlaw Topic No. 209.

§ 1253. Personnel

The Division of General Services shall be administered by an Executive Director who shall be appointed by the President of the Navajo Nation and

2 N.N.C. § 1253

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confirmed by the Navajo Nation Council. The Executive Director shall serve at the pleasure of the President. All personnel shall be subject to the Navajo Nation Personnel Policies and Procedures.

History

CO-87-95, October 19, 1995.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1254. Organization

The Division of General Services shall be comprised of such departments and programs as deemed necessary to fulfill its purpose and objectives, subject to legislative review and approval of the Division's plan of operation.

History

CO-87-95, October 19, 1995.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1255. Legislative Oversight

The Division of General Services shall be subject to the Legislative oversight authority of the Government Services Committee of the Navajo Nation Council.

History

CO-87-95, October 19, 1995.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1256. Amendments

§§ 1251—1255 may be amended from time to time by the Navajo Nation Council, upon recommendation by the Government Services Committee of the Navajo Nation Council.

History

CO-87-95, October 19, 1995.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 12. [Reserved]

Subchapter 13. [Reserved]

History

This subchapter "Division of Justice" was re-named Department of Justice by CF-8-82, February 5, 1982 and redesignated at 2 N.N.C. § 1961 *et seq.*

Also formerly at Subchapter 13 was the "Office of Navajo Land Administration". CAU-50-59, § 1, August 6, 1959 established the Land Investigations Department.

The 1973 budget changed the Land Investigations Department into the Office of Navajo Tribal Land Administration codified at 16 N.N.C. § 201. The 1978 budget changed the Office of Navajo Tribal Land Administration to Land Ad-

ministration Department and by ACAP-57-88 the Office of Navajo Land Administration was included in the Division of Resources.

By CAP-41-94, 16 N.N.C. § 201-204 were deleted from the Code and the Division of Natural Resources was established at 2 N.N.C. Subchapter 35. The Division is comprised of such programs as may be deemed necessary. See 2 N.N.C. § 1901 *et seq.* and notes.

Note. Planning and Zoning formerly at § 1302 is now in the Division of Community Development. See 2 N.N.C. § 1451, *et seq.*

Subchapter 14. [Reserved]

Subchapter 15. Division of Public Safety

History

CAU-50-59, August 6, 1959, reorganized the Executive Branch and created among others a Division of Public Services which included "Police". This was implemented in the 1960 Budget.

CJA-7-70, January 8, 1970, amended CAU-50-59 to remove supervision of "Police" from the Division of Public Services and placed supervision with the Chairperson of the Navajo Tribal Council.

By CJN-60-71 the Office of Administration was established and the Division of Law Enforcement was placed under the Office of Administration.

CJY-72-74 created a Division of Law Enforcement by removing it from the Office of Administration.

In 1976 by Budget resolution, the Police Department was changed to the Office of Law Enforcement. Office of Resources and Security §§ 1351-1360 of this title was discontinued in 1978 by Budget Resolution and the Office of

Law Enforcement was changed to the Division of Public Safety. ACJY-89-81, July 24, 1981 established the Division of Public Safety in Subchapter 15; 2 N.N.C. § 1351-1352.

ACAP-45-83 adopted a Plan of Operation for the Navajo Division of Public Safety by amendments to 2 N14C §§ 1351 and 1352. ACN-232-87, November 13, 1987, rescinded ACJY-89-81 and ACAP-45-83 and established the Navajo Division of Public Safety at 2 N.N.C. § 1351 and adopted a Plan of Operation. GSCAU-28-92, August 12, 1992 amended ACN-232-87 but by its terms the amended Plan of Operation expired October 30, 1993 and ACN-232-87 came back into effect provided no new plan was adopted.

GSCN-62-93 extended the October 30, 1993 date to December 31, 1993.

Note. The Office of Resources and Security, §§ 1351-1360 of this title, was discontinued by the 1978 Budget and organization chart.

§ 1351. Establishment

There is hereby established the Navajo Division of Public Safety within the Executive Branch of the Navajo Nation Government.

History

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1352. Purpose and objectives

A. The purposes of the Navajo Division of Public Safety shall be:

1. To plan, organize and administer all aspects of the Navajo Division of Public Safety programs so as to provide multi-public safety services that meet the needs of tribal members of the Navajo Nation, as well as other individuals and entities, within the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254 and 18 U.S.C. § 1151.

2. To exercise control and authority over all law enforcement and public safety activities within the Navajo Nation and adjoining Indian Country as designated under Navajo, federal and other applicable laws where the Navajo Nation exercises jurisdiction.

B. The objectives of the Navajo Division of Public Safety include, but are not limited to the following:

1. To maintain law and order by the enforcement of applicable criminal laws and the safeguarding of the lives and properties of the persons on the Navajo Nation by deterring criminal activities and violations of tribal, state and federal laws, through effective investigation, and to provide assistance in prosecutions and appropriate court actions, in cooperation with the Navajo Nation Office of the Prosecutor and other criminal justice entities which possess jurisdiction; to negotiate and enter into appropriate agreements with other governmental jurisdictions to carry out the responsibilities herein, in compliance with applicable Navajo Nation laws, rules and regulations.

2. To provide support services in the collection of information and generation of reports relating to vehicular accidents which involve injuries, deaths and property damage for purposes of minimizing contributing factors; to provide defensive driver education for Navajo Nation employees; and to issue Navajo Nation driver's permits.

3. To plan for, respond to, and aid in the recovery from natural and man-made disasters on the Navajo Nation and to coordinate with and train tribal and affiliated non-tribal entities in the development of a comprehensive emergency management plan.

4. To provide fire and rescue services and to develop community volunteer fire services to effectively and efficiently respond to fire and rescue operations; to provide training facilities and instructors for local fire departments; to enforce fire and building codes and other applicable codes related to fire safety.

5. To respond to medical emergencies by rendering emergency care, and to transport the sick or injured to a clinic or hospital when appropriate.

6. To establish, operate and provide support services for victims of serious and violent crimes.

7. To provide and coordinate support services to ensure the availability of counseling for Division employees.

8. To coordinate and disseminate information on safety programs and to facilitate funding mechanism for its component departments with non-tribal entities.

9. To plan for, establish, provide and operate appropriate correctional facilities and appropriate correctional services.

History

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

Library References

Indians Ⓔ7, 32(4.1, 13).

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 157.

§ 1353. Personnel

The Navajo Division of Public Safety shall be administered by an Executive Director appointed by the President of the Navajo Nation, with the consent of the Navajo Nation Council, and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall exercise full authority and control over all division activities and shall be responsible for the selection and supervision of all department directors and all personnel, including delegation of authorities. The Executive Director shall further exercise full authority to commission certified law enforcement personnel pursuant to standards approved by the Navajo Nation. All personnel shall be subject to the Navajo Nation Personnel Policies and Procedures and other applicable grant or contract provisions.

History

CO-86-95, October 19, 1995.

ACN-232-87, November 13, 1987.

Note. The organizational chart was deleted from the Code and minor changes in language were made for statutory form.

Library References

Indians Ⓔ32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 1354. Organization

The Navajo Division of Public Safety shall comprise such departments and administrative components as may be deemed necessary by the Executive Director to fulfill its purposes, subject to legislative review and approval of the Division's Plan of Operation. The specific functions and responsibilities of the Navajo Division of Public Safety are more fully set forth within the Plans of Operation for its component departments.

History

CO-86-95, October 19, 1995.

GSCAP-21-94, April 21, 1994. Amended subsection (F).

2 N.N.C. § 1354

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ACN-232-87, November 13, 1987.

Note. Slightly reworded for statutory form and consistency.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1355. Legislative Oversight

The Navajo Division of Public Safety shall operate under the legislative oversight of the Public Safety Committee of the Navajo Nation Council, pursuant to the powers granted that committee in 2 N.N.C. § 661, et seq.

History

CO-86-95, October 19, 1995.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1356. Amendments

This Plan of Operation may be amended from time to time by the Navajo Nation Council upon recommendation of the Public Safety Committee and the Government Services Committee of the Navajo Nation Council, as deemed appropriate.

History

CO-86-95, October 19, 1995.
ACN-232-87, November 13, 1987.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 16. Crimestoppers Program

§ 1361. Establishment

There is established a Navajo Nation Crimestoppers Program.

History

ACAP-51-84, April 12, 1984.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1362. Purposes

The purposes of the Navajo Nation Crimestoppers Program shall be:

- A. To establish and maintain an office in Window Rock, Navajo Nation, Arizona, to carry out the purposes stated herein.
- B. To promote community involvement in reduction of criminal activity across the Navajo Nation.
- C. To provide for confidentiality of information and anonymity for informants.
- D. To provide twenty-four (24) hour toll-free telephone access from across the Navajo Nation for the Crimestoppers Program. Such telephone to be located at the Navajo Division of Public Safety Dispatcher Office and manned by the Division of Public Safety personnel.
- E. To serve as a clearinghouse for confidential information on actual or anticipated crimes.
- F. To secure and provide information to law enforcement authorities on crimes occurring within the Navajo Nation.
- G. To publicize through the news media facts on preselected unsolved crimes and request community involvement on a weekly basis.
- H. To receive from the Navajo Division of Public Safety information on unsolved felony and misdemeanor cases and develop a "Crime of the Week" weekly column in the Navajo Times.
- I. To serve as a recipient of financial contributions, bequests, grants or gifts for operational costs and/or rewards and to find and develop other funding sources.
- J. To establish a reward fund and provide monetary rewards to informants when convictions occur.
- K. To develop procedures necessary for control of and maintain complete records of incoming calls, informant code numbers and other statistical data.

History

ACAP-51-84, April 12, 1984.

Cross References

Gifts, authority of President of Navajo Nation to accept, see 2 N.N.C. § 1010.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1363. Board of Directors

A. Composition. The Navajo Nation Crimestoppers Program shall be governed by a Board of Directors composed of twenty-one (21) members appointed by the President of the Navajo Nation. No Director shall receive any compensation for serving on the Board.

2 N.N.C. § 1363

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1. Term of Office. A term of office shall normally be for one (1), two (2) or three (3) years; however, no director may serve for more than three (3) consecutive terms (including years served between September, 1984, and October, 1986). A person maybe reappointed after being off the Board one (1) or more years. Terms shall begin on the date of the appointment and maybe for one (1), two (2), or three (3) years as determined by the Board, the objective being, insofar as practical, to have no more than one-third (1/3) to one-half (2) of the Directors replaced at any one time.

2. Removal. Any Director may be removed, with or without cause, by a two-thirds (2/3) vote by secret ballot, at a regular or special meeting of the Board, provided that notice of the intent to call for such a vote, naming the Director, is given at least twenty-four (24) hours prior to the meeting.

3. Enumerated Powers. In managing the affairs of the Crimestoppers Program, the Board shall specifically have, but not be limited to, the power to:

- a. Adopt standing rules;
 - b. Recommend individuals to be employed;
 - c. Procure and maintain bonds for persons having custody of funds;
- and
- d. Authorize disbursement of funds

B. Meetings of Directors.

1. Regular Meetings. The Board of Directors shall hold no less than nine (9) regular meetings, including an annual meeting in September of each fiscal year. Normally, regular meetings will be held on a monthly basis on the second Friday of each calendar month at 10:00 a.m. The regular location for all meetings shall be at Window Rock, Navajo Nation, Arizona 86515. The date, time and location of regular meetings can be changed by the Chairperson of the Board by twenty-four (24) hours advance notice.

2. Special Meetings. Special meetings of the Board of Directors may be called by the Chairperson with at least twenty-four (24) hours notice, or by any four (4) Board members with at least five (5) days written notice. Such notice by the Chairperson or at least four Board members shall include a statement of the purpose of the meeting as well as the date, time and location of the special meeting.

3. Quorum. A quorum shall be a simple majority of the total Board of Directors, present and voting, excluding vacancies.

C. Officers and Duties.

1. Officers. The Officers of the Crimestoppers Program shall be a Chairperson of the Board, a Vice-Chairperson, a Secretary and a Treasurer, elected by the Board from within the Board of Directors, and such other officers as the Board may elect from time to time to carry out the affairs of the Crimestoppers Program.

2. Term. A term of office shall be for one (1) year and shall begin at the close of the annual meeting. No officer may serve two consecutive terms in the same office.

3. Vacancies. A vacancy shall be filled by the President of the Navajo Nation from a slate presented by a nominating committee elected by the Board of Directors. The individual appointed shall serve for the remainder of the term of the member he or she replaces.

No name shall be placed in nomination without the consent of the nominee.

4. Duties and Powers. Officers of the Crimestoppers Program shall perform the duties and exercise the powers prescribed by this Plan of Operation, the parliamentary authority adopted herein, and those assigned by the Board or which normally pertain to the office. These duties and powers shall include but not be limited to the following:

a. The Chairperson shall:

(1) Be the principal officer of the Crimestoppers Program.

(2) Preside at all meetings of the Board of Directors and the Executive Committee.

(3) Cosign all checks, promissory notes and contracts.

(4) Appoint standing committee chairs and members, except for the nominating committee and create special committees and chairpersons and members thereof as the need arises.

(5) Be an ex-officio member of every committee except the nominating committee.

b. The Vice-Chairperson shall:

(1) Assume such duties as may be assigned by Chair, the Board of Directors or the Executive Committee.

(2) In the absence of the Chair, preside at all Board of Directors and Executive Committee meetings.

(3) In the absence of the Chair, create special committees and appoint chairpersons and members thereof as the need arises, fill vacancies on standing committees except for the nominating committee.

c. The Secretary shall:

(1) Record the proceedings of all meetings of Board of Directors and Executive Committee.

(2) Provide each member of the Board with a copy of the Minutes of each Board of Directors meeting.

(3) Assume such duties as may be assigned by the Chairperson of the Board, the Board of Directors or the Executive Committee.

d. The Treasurer shall:

(1) Be custodian of all funds.

(2) Make a financial report at each meeting of the Board of Directors.

(3) Cosign all checks, promissory notes and contracts.

(4) Disburse rewards as authorized by the Board of Directors, after reasonably satisfying him/herself as to the identity of the recipient.

D. Committees.

2 N.N.C. § 1363

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1. Standing Committees. There shall be standing committees to deal with the following subjects:

- a. Fund raising;
- b. History and records;
- c. Publicity; and
- d. Standing rules.

Additional committees may be created by amendment to this Plan of Operation. The Committee Chairpersons shall be members of the Board of Directors, but additional members need not be.

2. Special Committees. Special Committees may be created by the Chairperson or the Board of Directors. The Chairpersons shall be members of the Board, but additional members need not be.

3. Executive Committee. There shall be an Executive Committee composed of the Chairperson of the Board and four (4) officers and one (1) additional Director, elected by the Board at the first regular Board meeting following the annual meeting. The Executive Committee, in an emergency, shall have all the powers of the Board between meetings, except the power to amend this Plan of Operation, to dissolve the Crimestoppers Program, or remove a member of the Board. Meetings may be called by the Chairperson or by any two (2) members of the Committee and three (3) members shall constitute a quorum.

History

ACAP-51-84, April 12, 1984.

Library References

Indians ☞32(6, 13).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 157.

§ 1364. Contributions and depositories

A. Contributions. Any Contributions, bequests or gifts made to the Crimestoppers Program shall be accepted or collected and deposited only in such manner as shall be designated by the Board of Directors.

B. Depositories. The Board of Directors shall determine what depositories shall be used by Navajo Nation Crimestoppers Program. All checks and orders for the payment of money from said depositories shall bear the signature of the Chairperson of the Board and shall be countersigned by the treasurer.

History

ACAP-51-84, April 12, 1984.

Cross References

Gifts, authority of President of Navajo Nation to accept, see 2 N.N.C. § 1010.

Library References

Indians ☞32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1365. Contracts and debts

All contracts and evidences of debt may be executed only as directed by the Board of Directors. The Chairperson and the Treasurer shall execute, in the name of the Navajo Nation Crimestoppers Program, all contracts or other instruments so authorized by the Board of Directors and approved by the Budget and Finance Committee of the Navajo Nation Council.

History

ACAP-51-84, April 12, 1984.

Cross References

Government Services Committee oversight, see 2 N.N.C. § 341 (B).

Library References

Indians ☞32(4.1, 13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1366. Financial examination

An annual examination of the financial accounts of the Navajo Nation Crimestoppers Program shall be made by an independent auditor appointed by the Chairperson of the Board with the advice and consent of the Board.

History

ACAP-51-84, April 12, 1984.

Library References

Indians ☞32(4.1, 13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1367. Fiscal year

The Crimestoppers Program shall operate on a fiscal year beginning October 1st and ending September 31st of each year.

History

ACAP-51-84, April 12, 1984.

§ 1368. Parliamentary authority

Robert's Rules of Order, newly revised, shall be the parliamentary authority for all matters or procedures not specifically covered by the Articles of Incorporation, these Bylaws, or by special rules of procedure adopted by the Board of Directors.

History

ACAP-51-84, April 12, 1984.

§ 1369. Amendments

This Plan of Operation may be amended, from time to time, by the Government Services Committee of the Navajo Nation Council.

History

ACAP-51-84, April 12, 1984.

Note. Throughout the Plan of Operation for the Crimestoppers Program slight revisions

were made for statutory form, clarity and grammatical form.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

Subchapter 17. [Reserved]

Subchapter 18. [Reserved]

Subchapter 19. Division of Community Development

History

GSCS-70-94, September 7, 1994, adopted a Master Plan of Operation for the Division of Community Development and rescinded GSCO-60-91.

GSCS-34-92 amended the Plan of Operation for Design and Engineering Services in the Division of Community Development.

GSCO-60-91 adopted a comprehensive Plan of Operation for the Division of Community Development. By this resolution ACO-137-84, ACJA-2-85, ACJA-385, ACAP-59-35, ACMA-42-85, ACJN-106-85, ACJA-20-87, ACJY-135-89, ACJA-1-90, and all other inconsistent Advisory Committee resolutions were rescinded.

ACJA-1-90, created the Community Planning Department in the Division of Community Development.

ACAP-89-88, April 21, 1988; amended ACMA-42-85 (Capital Improvement Program).

ACJA-20-87, January 7, 1987, established the Department of Transportation in the Division of Community Development.

ACJA-2-85 adopted a Plan of Operation for Navajo Housing Services Department.

ACMA-42-85, March 13, 1985 adopted a Plan of Operation for the Capital Improvement Program within the Division of Community Development.

ACJN-106-85 rescinded ACO-177-83 and adopted a new Plan of Operation for Navajo Revenue Sharing.

CS-45-84; the 1985 budget included the chapter claims settlement monies in the Revenue Sharing Office.

ACO-177-83 adopted a Plan of Operation for the Navajo Revenue Sharing Office.

ACS-116-80 established the Housing Services Department in the Division of Community Development.

The Office of Financial Policy Analysis, previously §§ 1451-1454 of this title was discontinued by the 1978 Budget.

CJA-20-74, created the Office of Navajo Revenue Sharing, previously Article I of this subchapter. The 1978 Budget established the Division of Community Development at § 1451 *et seq.* of this title.

§ 1451. Establishment

The Division of Community Development (DCD) is established within the Executive Branch of the Navajo Nation government.

History

GSCS-70-94, September 7, 1994.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 1452. Purposes and objectives

The purposes of the Division of Community Development shall be:

- A. To assist communities to become self-sufficient and self-governing entities responsible for working with District, Agency, and central offices;
- B. To improve the standard of living for Navajo families and individuals by facilitating increased construction of new homes and rehabilitation of existing homes;
- C. To provide infrastructure planning and development for future growth of communities; and
- D. To foster the growth of communities by adopting the most current economical and technical advances with limited governmental involvement.

History

GSCS-70-94, September 7, 1994.

Library References

Indians ⇐7, 32(4.1, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 63.

§ 1453. Personnel and organization

A. The Navajo Division of Community Development shall be administered by a Division Director, who shall be appointed by the President of the Navajo Nation, confirmed by the Navajo Nation Council, and who shall serve at the pleasure of the Navajo Nation. The Division Director shall hire personnel as may be deemed necessary to carry out the purposes of the Division and as funds are available. All personnel shall be employed and compensated in accordance with the applicable Navajo Nation Personnel Policies Manual.

B. The Division of Community Development shall consist of twelve (12) offices: Division Administration, seven (7) Departments and five (5) agencies to execute the Division's purpose. The Departments may consist of sections, programs, and agencies to accomplish the Department purpose. The seven (7) departments and five (5) agencies are as follows:

1. Division-Administration;
2. Capital Improvement Office;
3. Design and Engineering Services Department;
4. Navajo Housing Services Department;
5. Navajo Department of Transportation;
6. Solid Waste Management Program;

2 N.N.C. § 1453

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7. Community Development Block Grant;
8. Local Governance Support Center–Fort Defiance Agency;
9. Local Governance Support Center–Eastern Agency;
10. Local Governance Support Center–Chinle Agency;
11. Local Governance Support Center–Tuba City Agency;
12. Local Governance Support Center–Shiprock Agency;

History

GSCMA-13-00
GSCS-70-94, September 7, 1994.

Note. Department plans of operation were included in GSCS-70-94. Department Plans of Operation are no longer codified.

Library References

Indians Ⓒ32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1454. Authority, duties and responsibilities

The Division Director of the Division of Community Development shall have the authority for the overall Division's operational planning and direction. The Division Director shall have the following duties and responsibilities:

- A. Executive directives of the President of the Navajo Nation, Navajo Nation Council, and the Transportation and Community Development Committee.
- B. Provide written monthly and/or quarterly reports to the Office of the President, Transportation and Community Development Committee of the Navajo Nation Council, annual reports to the Navajo Nation Council, and any other reports deemed necessary.
- C. Promulgate Division program policies, time frames and other guidelines to ensure the proper and timely implementation of Division projects.
- D. Establish and maintain partnership with local, county, state, federal entities and other authorities on matters related to the objectives of the Division.
- E. Provide effective overall management and financial direction to Division departments and programs.
- F. Delegate authority pertaining to the operation of the Division and its program to subordinate directors of the Division, to the extent permitted by the laws and policies of the Navajo Nation, as appropriate.
- G. Negotiate written agreements on behalf of the Division relevant to community development for oversight committee's recommendation.
- H. Seek external funding for programs and projects to enhance community development.
- I. Recommend the creation, merger, separation, amendment or abolishment of programs, or specific functions within the Division in accordance with applicable Navajo Nation laws.

J. Recruit, select, supervise, conduct employee performance evaluation, and recommend reclassification of positions for the Administration Staff and Department and Program Directors, in accordance with Personnel Policies Manual of the Navajo Nation.

History

GSCMA-13-00.
GSCS-70-94, September 7, 1994.

Library References

Indians ☞7, 32(4.1, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 63.

§ 1455. Legislative oversight

Pursuant to 2 N.N.C. §§ 421 and 423 et seq., the Division of Community Development shall operate under the legislative oversight of the Transportation and Community Development Committee of the Navajo Nation Council.

History

GSCMA-13-00.
GSCS-70-94, September 7, 1994.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1456. Amendments

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

GSCMA-13-00.
GSCS-70-94, September 7, 1994.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Subchapter 20. [Reserved]

Subchapter 21. Division of Economic Development

History

CAP-36-96, April 18, 1996. BFO-44-92 established a revolving account for the Navajoland Tourism Department.
EDCAP-30-92, a Plan of Operation of the Navajoland Tourism Department was adopted.

2 N.N.C. § 1456

EDCAP-30-92 recommended Government Services Committee approve a new Plan of Operation for Division of Economic Development and that ACAU-196-87 be repealed. This has not been done.

EDCS-88-90, in setting up a revolving account established the Industrial and Tourism Development Department within the Economic Development Division.

EDCJA-14-89, January 27, 1989, the Division was directed to present a new Plan of Operation for the Navajo Wool and Mohair Industries to the Advisory Committee. This was never done.

ACAU-162-88, August 1, 1988, adopted a Plan of Operation for the Navajo Tourism Department.

ACAU-196-87 adopted the Commission for Accelerating Navajo Development Opportunities (CANDO) under the Chairperson as successor for the Division of Economic Development. All programs and departments in the Division with the exception of programs relating to business regulation and non-business lending assistance were transferred to CANDO.

The Revenue Sharing provisions previously codified at Subchapter 21 were superseded by ACJN-106-85, June 12, 1985, and incorporated in the Plan of Operation for the Division of

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Community Development at 2 N.N.C. §§ 1451 et seq., now deleted. See History at Subchapter 19.

ACN-142-82, November 15, 1982, amended the Navajo Wool Growers Marketing Program Plan of Operation.

ACMA-37-78, March 29, 1978, adopted a new Plan of Operation for the Navajo Wool Growers Marketing Program and rescinded CO-56-73.

ACMY-144-75, May 28, 1975.

CO-56-73, October 17, 1973, established the Navajo Wool Growers Marketing Program.

CJN-60-71, June 8, 1971, the Navajo Nation government was restructured and the 1972 budget justifications were authorized as the Plans of Operation for the various departments. It was stated at the time that all other inconsistent resolutions were no longer controlling. At that time the Office of Program Development was established with Navajo Tourism Development, Navajo Small Business Development, Governmental Relations Section, Industrial & Economic Development, and a Planning and Development Section.

Note. There is no comprehensive Plan of Operation for the Division of Economic Development.

§ 1501. Establishment

The Navajo Division of Economic Development is hereby established as a Division of the Executive Branch of the Navajo Nation Government.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 1502. Purposes

The purpose of the Navajo Division of Economic Development shall be to provide an environment within the Navajo Nation that is conducive to promoting and developing businesses in the commercial, tourism, industrial and other sectors of the Navajo economy, thereby creating job and business opportunities.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 1503. Personnel

The Navajo Division of Economic Development shall be administered by an Executive Director, who shall be appointed by the President of the Navajo Nation, with the consent of the Navajo Nation Council, and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall cause to be hired all such personnel as may be deemed necessary to carry out the purposes of the Division. All personnel shall be subject to the applicable Personnel Policies and Procedures of the Navajo Nation.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1504. Organization

The Navajo Division of Economic Development shall be comprised of such programs, quasi-enterprises and administrative components as may be deemed necessary by the Executive Director to fulfill its purposes, subject to legislative review and approval of the Plan of Operation of the Division.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1505. Legislative Oversight

The Navajo Division of Economic Development shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to the powers granted that Committee in 2 N.N.C. § 721 et. seq. The Division shall operate only pursuant to a Plan of Operation approved by the Economic Development Committee and the Government Services Committee of the Navajo Nation Council.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

2 N.N.C. § 1506

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§ 1506. Amendments

The enabling legislation for the Navajo Division of Economic Development shall be amended by the Navajo Nation Council upon the recommendation of the Economic Development Committee of the Navajo Nation Council.

History

CAP-36-96, April 18, 1996.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 22. Water Rights Commission

§ 1551. Establishment

There is hereby established the Navajo Nation Water Rights Commission (herein referred to as the “Commission”) in the Executive Branch of the Navajo Nation Government.

History

CAP-39-02, April 19, 2002.

Library References

Indians ⇄16.5, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 1552. Purposes

The purpose of the Commission is to ensure that the water rights of the Navajo Nation are vigorously pursued, effectively coordinated, and to enhance the communication between all entities engaged in water rights efforts on behalf of the Navajo Nation.

History

CAP-39-02, April 19, 2002.

Library References

Indians ⇄16.5, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 1553. Organization

The organization of the Navajo Nation Water Rights Commission shall be set forth in the Plan of Operation adopted by the Government Services Committee upon recommendation of the Resources Committee of the Navajo Nation Council.

History

CAP-39-02, April 19, 2002.

Library References

Indians ⇄16.5, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 101 to 106.

§ 1554. Legislative Oversight

The Commission shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council. The Commission shall operate pursuant to a Plan of Operation recommended by the Resources Committee of the Navajo Nation Council and adopted by the Government Services Committee of the Navajo Nation Council.

History

CAP-39-02, April 19, 2002.

Library References

Indians ⇄16.5, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 101 to 106.

§ 1555. Amendments

The enabling legislation for the Commission may be amended from time to time by the Navajo Nation Council by majority vote upon the recommendation of the Resources Committee and Government Services Committee of the Navajo Nation Council.

History

CAP-39-02, April 19, 2002.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

Subchapter 23. Division of Health

History

Previously §§ 1601-1605 of this title, the Water Rights Office was discontinued by the 1978 Budget and organization chart.

By CO-65-77, the 1978 budget changed the department name from Health and Welfare Department to Tribal Assistance and Projects Department, substituted Division of Social Welfare for other Social Services Programs, and estab-

lished a Division of Health Improvement Services.

CF-20-77 established the Office of Health Improvement Services.

ACAU-142-60, August 11, 1960 established a Health and Welfare Department responsible to the Director.

Article 1. Division of Health

§ 1601. Establishment

The Navajo Division of Health is hereby established as a Division of the Executive Branch of the Navajo Nation Government.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⚡7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 1602. Purposes

The purposes of the Navajo Division of Health shall be:

A. To provide to the Navajo people such direct health care services as are approved and authorized by the Navajo Nation Council; and

B. To ensure the highest quality of overall health care for the Navajo people by coordinating with the Indian Health Service and other federal, state and private entities and the appropriate public health and quality assurance regulatory authority.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⚡7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 1603. Personnel

The Navajo Division of Health shall be administered by an Executive Director and Deputy Director. The Executive Director shall be appointed by the President of the Navajo Nation, with the approval and recommendation of the Health and Social Services Committee and the consent of the Navajo Nation Council and shall serve at the pleasure of the President of the Navajo Nation. The Executive Director shall cause to be hired a Deputy Director and such other personnel as may be deemed necessary to carry out the purposes of the Division. All personnel, other than the Executive Director, shall be subject to the Personnel Policies and Procedures of the Executive Branch of the Navajo Nation.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1604. Organization

The Navajo Division of Health shall be comprised of such departments, programs, offices and administrative components as may be deemed necessary by the Executive Branch to fulfill its purposes, subject to legislative review and approval of the Division’s Plan of Operation.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1605. Legislative Oversight

The Navajo Division of Health shall operate under the legislative oversight of the Health and Social Services Committee of the Navajo Nation Council, pursuant to the powers granted the Committee in 2 N.N.C. §§ 191 and 451 et. seq. The Division shall operate pursuant to a Plan of Operation approved by the Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1606. Amendments

The enabling legislation for the Navajo Division of Health is subject to amendment, revision and other necessary modification by the Navajo Nation Council with review, input and recommendation by the Health and Social Services Committee of the Navajo Nation Council and the Navajo Division of Health.

History

CJY-70-95, July 21, 1995.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

Subchapter 24. [Reserved]

Subchapter 25. Division of Social Services

History

CJA-03-01, January 24, 2001.

On January 14, 1992, the Health and Social Services Committee of the Navajo Nation Council recommended the amendment of the enabling legislation for the Division of Social Services codified at 2 N.N.C. § 1651 *et seq.*, and further recommended the approval of a new Plan of Operation for the Division of Social Services by the Government Services Committee. Neither the Government Services Committee nor the Navajo Nation Council have acted upon the 1992 recommendation of the Health and Social Services Committee.

ACJA-5-81 reconfirmed the Division of Social Welfare as the Navajo Nation's agency responsible for implementing the provisions of the Indian Child Welfare Act of 1978, P.L. 96-608.

The Office of Law Enforcement, formerly § 1651 of this title, was redesignated the Division of Public Safety by the 1978 Budget, at page XI-I. The provisions relating to the Division of Public Safety are codified 2 N.N.C. § 1351 *et seq.*

ACMA-18-78 delegated the responsibility of providing social services to needy Navajo individuals to the Division of Social Welfare as the key agency for the Navajo Nation in Social welfare programming and family and child services.

By CO-65-77, adopting the 1978 Budget, the Navajo Government was reorganized. A Division of Social Welfare was established in place of other Social Services Programs.

CF-77-74, approved a Plan of Operation for the Navajo Office of Social Services within the Division of Human Development which was subsequently amended by ACMY-77-74, May 15, 1974.

ACAU-142-60, August 11, 1960 established a Health and Welfare Department responsible to the Director, other Social Services Programs.

§ 1651. Establishment

There is hereby established the Navajo Division of Social Services within the Executive Branch of the Navajo Nation.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1652. Purposes

The purpose of the Navajo Division of Social Services shall be to provide the Navajo people with such essential social services as approved and authorized by the Navajo Nation Council and to ensure the highest quality of social welfare programs for the Navajo people by coordinating with the Bureau of Indian Affairs and other federal, state and private entities.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇄7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 1653. Personnel

The Navajo Division of Social Services shall be administered by an Executive Director whose appointment shall be made by the President of the Navajo Nation and confirmed by the Navajo Nation Council upon recommendation of the Health and Social Services Committee of the Navajo Nation Council and who shall serve at the pleasure of the President of the Navajo Nation. The Executive Director may employ a Deputy Director and shall employ such other personnel as may be deemed necessary to carry out the purposes of the Division. All personnel shall be subject to the Personnel Policies and Procedures of the Executive Branch of the Navajo Nation.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1654. Organization

The Navajo Division of Social Services shall be comprised of such Departments, Programs, Offices and administrative components as may be deemed necessary by the Executive Director to fulfill its purpose, subject to legislative review and approval of the Division's Plan of Operation.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1655. Legislative Oversight

The Navajo Division of Social Services shall operate under the legislative oversight of the Health and Social Services Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 451 et. seq. The Division shall operate pursuant to a Plan of Operation approved by the Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1656. Amendments

§§ 1651 through 1655 may be amended from time to time by the Navajo Nation Council upon recommendation by the Health and Social Services Committee of the Navajo Nation Council after consultation with the Navajo Division of Social Services.

History

CJA-03-01, January 24, 2001.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 26. [Reserved]

Subchapter 27. Division of Human Resources

History

The Division of Human Resources was formerly the Division of Labor.

GSCO-63-91 adopted the Plan of Operation for the Navajo Nation Band Program within the Division of Human Resources, initially established pursuant to ACMY-196-71. CS-57-89 separated the Navajo Tribal Band Program from the Office of Navajo Women and placed it under the Division of Human Resources.

GSCO-59-91 adopted the Plan of Operation for the Navajo Occupational Safety and Health Administration within the Division of Human Resources, initially established pursuant to ACAP-85-87.

GSCS-54-91 adopted the Plan of Operation for the Office of Navajo Women and Families within the Division of Human Resources. See now 2 N.N.C. § 1121, Navajo Women's Commission.

GSCAU-49-91 adopted the amended Plan of Operation for the Department of Navajo Veterans' Affairs within the Division of Human Resources. CNIA-25-71 initially established the Department of Navajo Veterans' Affairs within the Executive Branch. The Plan of Operation for the Department of Navajo Veterans' Affairs was first adopted by ACJY-91-82 which was subsequently rescinded by ACAU-104-84 and ACJY-167-87. ACJY-91-82 was also rescinded by ACNIA-36-88 which amended ACJY-167-87.

GSCJY-39-91 adopted the amended Plan of Operation for the Office of Navajo Labor Relations within the Division of Human Resources established pursuant to CJA-4-72, as amended by ACJY-134-86 and ACJY-159-87.

GSCJN-35-91 adopted the Plan of Operation for the Public Employment Program within the Division of Human Resources. GSCJN-35-91

amended the Plan of Operation for the Chapter Support Services Department's Plan of Operation into which the Public Employment Program had been originally incorporated pursuant to ACJY-111-86. In adopting the Plan of Operation for the Chapter Support Services Department, ACJY-111-86 also rescinded ACJA-3-85 which adopted the Public Employment Program's first Plan of Operation.

GSCJN-31-91 adopted the Plan of Operation for the Navajo Department of Employment and Training within the Division of Human Resources and rescinded ACJY-161-87 which approved the original Plan of Operation for the Navajo Department of Employment and Training.

GSCMA-20-91 directed that the "Personnel Policies Manual" included as part of the amended Plan of Operation for the Department of Personnel Management under 2 N.N.C. § 2351 *et seq.*, as adopted by GSCN-57-90, shall become effective on April 1, 1991. GSCMY-30-94 approved the amendment to the "Personnel Policies Manual" to include provisions for medical and family leave.

GSCJA-3-91 adopted the Plan of Operation for the Navajo Tribal Retirement Program within the Division of Human Resources. GSCN-57-90 adopted the amended Plan of Operation for the Department of Personnel Management, within the Division of Human Resources, then codified at 2 N.N.C. § 2351 *et seq.*, thereby amending the Plan of Operation of the Department of Personnel Management pursuant to CJY-43-76; amended the Personnel Policies and Procedures of the Navajo Tribe pursuant to ACJN-297-73; and amended the Personnel Policies and Procedures of the Nava-

jo Tribe pursuant to CAU-50-59, which established the Department of Personnel Management and adopted the original version of the Personnel Policies of the Navajo Nation.

GSCAU-43-90 adopted the Plan of Operation for the Office of Broadcast Services within the Division of Human Resources.

GSCAU-39-90 adopted the Plan of Operation for the Division of Human Resources.

CS-49-88 created a new Division of Human Resources thus replacing the former Division of Labor.

ACJY-161-87 repealed CF-22-75 and the amendments to the Plan of Operation for the Division of Labor under Page X-1, 1978 Tribal Budget adopted pursuant to CO-65-77, and approved further amendments to the Plan of Operation for the Division of Labor.

ACD-181-82 adopted the Plan of Operation for the Navajo Office of Census and Vital Statistics, which was subsequently incorporated into the Division of Human Resources as the Navajo Office of Vital Records pursuant to GSCAU-3990. CAU-50-59 established the Navajo Office of Census and Statistics Services for which no Plan of Operation was adopted. ACAU-163-77 adopted a Plan of Operation for the Central Records Office.

CF-22-75 established the "Navajo Manpower Administration" which was renamed the "Office of Labor" in 1976 which Plan of Operation was originally codified at 15 N.N.C. §§ 1-6. The Office of Labor was subsequently redesignated the "Division of Labor" which Plan of Operation was amended under Page X-1, 1978 Tribal Budget, adopted pursuant to CO-65-77 and then codified at 2 N.N.C. § 1701.

§ 1701. Establishment

There is established the Division of Human Resources within the Executive Branch of the Navajo Nation government. The Executive Director of the Division of Human Resources shall be under the general direction and guidance of the President of the Navajo Nation and the Human Services Committee of the Navajo Nation Council shall provide legislative oversight.

History

GSCAU-39-90, August 14, 1990.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1702. Purpose

A. The Division of Human Resources shall consolidate all human resources programs and activities of the Navajo Nation government within a single division to facilitate effective management and delivery of human resource programs and services in a comprehensive manner.

B. The Division shall provide the following services to the Navajo Nation government:

1. Department of Personnel Management to include Staff Development & Training, Support Services, Recruitment/Selection, Employee Relations, Classification and Tribal Retirement Plan;
2. Department of Employment and Training to include employment and job training activities and decentralized programs to five (5) agency offices;
3. Department of Veterans Affairs to include veterans housing and financial needs assistance to Navajo veterans; and, decentralized services to five (5) agency offices; and
4. Department of Public Services to include Broadcast Services and Mass Communications, Office of Navajo Labor Relations, Public Employment

2 N.N.C. § 1702

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Program, Office of Navajo Women & Families, Navajo Nation Band, the Navajo Office of Vital Records and the Navajo Occupational Safety and Health Administration.

History

GSCAU-39-90, August 14, 1990.

Library References

Indians Ⓒ32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1703. Staffing and organization

A. Staffing.

1. The Division of Human Resources shall be managed by an Executive Director who shall be appointed by and report to the President of the Navajo Nation.

2. The Executive Director of the Division of Human Resources shall have prior experience in managing the functional areas under the jurisdiction of the Division of Human Resources as represented by prior positions and private industries or a governmental agency.

3. The Director shall be authorized to recruit additional professional, technical and clerical positions as needed to carry out the organizational purpose as stated herein. Additional positions shall be acquired in accordance with Navajo Nation Personnel Policies and Procedures and within applicable budget rules established for conducting the annual Navajo Nation budget process.

4. All personnel shall be employed and compensated in accordance with applicable Navajo Nation Personnel Policies and Procedures.

B. Organization. The Division of Human Resources shall consist of four (4) departments, each comprised of several programs and units as described below:

1. Department of Personnel Management. a. Staff Development and Training; b. Support Services Unit; c. Recruitment/Selection Unit; d. Employee Relations Unit; e. Classification Unit; and f. Navajo Nation Retirement Plan.

2. Department of Employment & Training. a. JTPA program activities; and b. Field/Agency Offices: Fort Defiance Agency, Crownpoint Agency; Chinle Agency; Shiprock Agency, and Tuba City Agency.

3. Department of Veterans Affairs. a. Field/Agency Office: Fort Defiance Agency, Crownpoint Agency, Chinle Agency, Shiprock Agency, and Tuba City Agency.

4. Department of Public Services. a. Broadcast Services; b. Mass Communications; c. Office of Navajo Labor Relations; d. Public Employment Program; e. Office of Navajo Women & Families; f. Navajo Nation

Band; g. Navajo Office of Vital Records; and h. Navajo Occupational Safety and Health Administration.

History

GSCAU-39-90, August 14, 1990.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1704. Responsibility and authority

The Division of Human Resources provides centralized and decentralized human resource program services to the Navajo Nation government within the organizational departments, programs and units within the Division, provides unique services with qualified personnel and other resources. The Division management is accountable to the President of the Navajo Nation for performance of its functional responsibilities in an effective and efficient manner. All management personnel within the Division shall have sufficient authority established by their Plans of Operation to perform their job responsibilities not inconsistent with the Master Plan or Navajo law.

History

GSCAU-39-90, August 14, 1990.

Note. For the responsibilities of the individual departments, see GSCAU-39-90.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1705. Legislative oversight

Legislative oversight for the operations of the Division of Human Resources shall be provided by the Human Services Committee of the Navajo Nation Council.

History

GSCAU-39-90, August 14, 1990.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1706. Amendments

Sections 1701 through 1706 may be amended by the Governmental Services Committee of the Navajo Nation Council at the recommendation of the Human Services Committee.

History

GSCAU-39-90, August 14, 1990.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

Subchapter 28. [Reserved]

Subchapter 29. [Reserved]

History

CS-28-83, September 28, 1983. This subchapter formerly governing the establishment, purposes, powers and operations of the Division of Chapter Development, were derived from ACD-157-81, December 9, 1981. See 2 N.N.C. § 4041 *et seq.*, and § 4061 *et seq.* See 2 N.N.C. § 1451, *et seq.*, Division of Community Development.

Subchapter 30. [Reserved]

Subchapter 31. Division of Diné Education

§ 1801. Establishment

There is established the Division of Diné Education within the Executive Branch of the Navajo Nation government.

History

GSCAP-35-01.
GSCO-81-95.
GSCJA-2-95, January 9, 1995.

Library References

Indians ⇐8, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 1802. Purpose

A. The Division of Diné Education is the administrative agency within the Navajo Nation with the responsibility and authority for implementing and enforcing the educational laws of the Navajo Nation pursuant to Title 10 of the Navajo Nation Code. It is the mission of the Administration of the Division of Diné Education, pursuant to the Navajo Education Policies and laws, to assure that the opportunity of formal education is available to the Navajo people, and to enable them to carry on the work of Nation building.

B. The Administration will provide technical assistance and coordinate educational services to assist the Navajo people to preserve, and respect their language, heritage and culture.

C. The Navajo Nation, through its Division of Diné Education, is committed to perpetuate, develop and advocate for confident, self-sufficient citizens who

are able to master the knowledge, technologies, skills and abilities to succeed in society. Citizenship and leadership with a commitment to serve the Navajo Nation are highly encouraged.

History

GSCAP-35-01.
 GSCO-81-95.
 GSCJA-2-95, January 9, 1995.

Library References

Indians ⇐8.	C.J.S. Indians § 48.
Schools ⇐47.	C.J.S. Schools and School Districts §§ 81 to
Westlaw Topic Nos. 209, 345.	92, 174.

§ 1803. Goals

The following goals are intended to accomplish the purpose of the Administration of the Division of Diné Education.

1. To protect, preserve and perpetuate Diné culture, language, history and government;
2. To actively encourage the acceptance and implementation of the provisions of all education laws of the Navajo Nation and to function similarly to a state department of education;
3. To build a Navajo Nation education infrastructure that will engage in comprehensive planning to coordinate networking of resources, to conduct legislative analysis, to facilitate and coordinate interagency governmental affairs, to develop community support and relations, to develop research and technological capacities, to develop curriculum materials, to assist in school improvement, and to provide training and technical assistance;
4. To develop the capacities and potential of the Navajo people to the fullest extent from birth through adulthood by strengthening and developing necessary educational services for the Navajo Nation;
5. To foster principles of local control of Navajo education and to advocate and facilitate the Indian Self Determination Act, Public Law 93-638, and the Hawkins-Stafford Act, Public Law 100-297, and subsequent amendments thereof;
6. To support the planning and development of a local community infrastructure necessary for a safe and orderly school environment;
7. To facilitate the coordination and integration of Navajo Nation economic development needs with overall educational needs and services;
8. To institute a comprehensive library system throughout the Navajo Nation;
9. To institute a plan that will allow for the delivery of General Equivalent Diploma (GED) instruction and Adult Education to the Navajo communities;
10. To maintain quality delivery of early childhood services and the transition of Head Start children to kindergarten programs by implementing the

2 N.N.C. § 1803

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recruitment of professionally trained administrators and teachers for the early childhood programs.

11. To provide career counseling sites throughout the Navajo Nation by coordinating activities and establishing field scholarship offices;

12. To achieve excellence in the delivery of overall higher education services throughout the Navajo Nation;

13. To encourage and promote an increase in the number of qualified and licensed Navajo teachers and administrators;

14. To ensure the quality and improvement in the delivery of services to the Navajo Nation by providing program staff the opportunity to advance their educational status;

15. To research, obtain input, and collaborate with appropriate entities to establish and recognize a Tribal Education Department.

16. To represent and advocate for Navajo education interests to tribal, state and federal education agencies to promote excellence in education.

History

GSCAP-35-01.
GSCO-81-95.
GSCJA-2-95, January 9, 1995.

United States Code

Educational programs, administration by local educational agencies, see 20 U.S.C. § 1232d et seq.
Indian self-determination and educational assistance, see 25 U.S.C. § 450 et seq.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 1804. Staffing and organization

A. Staffing.

1. The Executive Director shall be the administrator of the Division of Diné Education. The Executive Director shall be appointed by the President of the Navajo Nation and recommended by the Education Committee of the Navajo Nation Council for confirmation by the Navajo Nation Council, 2 N.N.C. § 102(F). The Executive Director is hereby authorized to carry out the general responsibilities and duties to achieve the mission and purpose of the Division.

2. The Executive Director shall have the authority to provide overall supervision and administration; set goals and internal policy; provide direct supervision to the Program Directors; work directly with the President's office, and other Division Directors and the Education Committee.

3. The Executive Director oversees, directs and coordinates the exercise of all functions identified in this section. The Executive Director may

through written directives plan, design and implement administrative and supervisory activities within each department.

4. The Executive Director shall be authorized to employ additional positions as needed to carry out the organizational purpose(s). Additional positions shall be acquired in accordance with the duly approved Navajo Nation Personnel Policies Manual and within applicable budget rules established for conducting the annual Navajo Nation budget process.

B. Organization.

1. The organization of the Division of Diné Education will be comprised of the:

- a. Department of Dine' Technical Assistance and Assessment Services;
- b. Department of Youth/Community Services;
- c. Department of Head start;
- d. Department of Johnson O'Malley;
- e. Navajo Nation Library System;
- f. Office of the Diné North Central Association;
- g. Office of Special Education and Rehabilitation Services;
- h. Navajo Nation Scholarship/Financial Assistance Program;
- i. Office of Diné Culture, Language and Community Services;
- j. Office of Teacher Education Program; and
- k. Office of Research and Planning.

2. All employees shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures. Employment of personnel shall be subject to the laws, regulations, contract or grant terms, applicable to the program. Hiring of all personnel is under the direction and subject to the approval of the Executive Director. Navajo Nation laws regarding Navajo preference shall apply to all personnel actions.

History

GSCAP-35-01.
 GSCO-81-95.
 GSCJA-2-95, January 9, 1995.

Library References

Indians ⇄8, 32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 48, 51.

§ 1805. Responsibility and authority

The Division, under the general supervision of the Executive Director, has the authority to:

- A. Supervise all Division programs and all Division staff, particularly professional and supervisory staff.
- B. Coordinate Division departments by providing team leadership.

2 N.N.C. § 1805

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C. Oversee and approve the preparation of budgets and budget documents for all Division activities and assure the maintenance of financial and personnel records for all Division programs.

D. Conduct in-house technical review of Division documents, e.g., contracts, resolutions, commentaries on proposed laws and regulations, and similar documents.

E. Develop and recommend interagency and intergovernmental agreements to implement desirable educational and support programs, e.g., interagency efforts to enforce compulsory attendance, cooperative bus transportation agreements, cooperative agreements to combat substance abuse in schools, joint tribal/state standards and essential competencies in Navajo language and social studies.

F. Coordinate in-service training for Division staff and develop a career development system for Division staff.

G. Provide services to the Education Committee of the Navajo Nation Council upon request.

H. Act as liaison with Navajo Community College and Crownpoint Institute of Technology on matters of policy and common concern.

I. Assume other authority as is necessary for the administration of the Division as is consistent with Navajo Nation law.

J. Establish committees as needed to address Navajo Nation educational issues.

History

GSCAP-35-01.
GSCO-81-95.
GSCJA-2-95, January 9, 1995.

Library References

Indians ⇨8, 32(4.1).	C.J.S. Indians § 48.
Schools ⇨47.	C.J.S. Schools and School Districts §§ 81 to
Westlaw Topic Nos. 209, 345.	92, 174.

§ 1806. Legislative oversight

The Education Committee of the Navajo Nation Council is the oversight committee for the Division of Diné Education pursuant to 2 N.N.C. § 484 (B) (4).

History

GSCJA-2-95, January 9, 1995.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1807. Amendments

This Plan of Operation may be amended by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Education Committee of the Navajo Nation Council.

History

GSCAP-35-01.
 GSCO-81-95.
 GSCJA-2-95, January 9, 1995.

Library References

Indians ⇐32(4.1).
 Westlaw Topic No. 209.

§ 1808. Promulgation implementation of rules

The Division, upon approval of the Education Committee of the Navajo Nation Council, may promulgate policies, procedures, rules and regulations for all departments and programs within the Division not inconsistent with the Plan of Operation and other applicable laws.

History

GSCAP-35-01.
 GSCO-81-95.
 GSCJA-2-95, January 9, 1995.

§ 1821-1823. [Superseded]

History

GSCJA-2-95, January 9, 1995. See 2 N.N.C. § 1801, *et seq.*

§ 1831-1836. [Superseded]

History

GSCJA-2-95, January 9, 1995. See 2 N.N.C. § 1801, *et seq.*

Library References

Indians ⇐8, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians § 48.

Subchapter 32. [Reserved]

Subchapter 33. [Reserved]

History

Division of Water and Sanitation was rescinded by ACJY-1 12-83, July 14, 1983, and CS-28-83, September 28, 1983, see History preceding 2 N.N.C. §§ 1901, *et seq.*

Subchapter 34. [Reserved]

Subchapter 35. Division of Natural Resources

§ 1901. Establishment

The Division of Natural Resources is established as a division within the Executive Branch of the Navajo Nation government.

History

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution changed the name of the Division of Natural Resources to the Division of Resources.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Organizational Chart.

Library References

Indians ☞9, 32(4.1), 32.5.

Westlaw Topic No. 209.

C.J.S. Indians §§ 67, 122 to 123.

§ 1902. Purposes

The purposes of the Division of Natural Resources shall be:

A. To provide for the protection, restoration, conservation, management and sustainable development of all Navajo natural, cultural and historic resources, under the guidance and direction of the people of the Navajo Nation and the Navajo Nation Council.

B. To ensure that the highest quality of natural, cultural and historic resources are available for the enjoyment and use of present and future generations of Navajo People.

History

CAP-41-94, April 20, 1994.

ACAP-57-88, April 13, 1988.

1981 Budget Resolution.

ACMA-67-78, May 11, 1978.

1977 Budget Resolution.

1976 Budget Resolution.

Library References

Indians ☞9, 32(4.1), 32.5.

Westlaw Topic No. 209.

C.J.S. Indians §§ 67, 122 to 123.

§ 1903. Personnel

The Division of Natural Resources shall be administered by an Executive Director, who shall be appointed by the President of the Navajo Nation upon the confirmation of the Navajo Nation Council and who shall serve at the pleasure of the President of the Navajo Nation. All personnel other than the Executive Director shall be subject to all of the Personnel Policies and Procedures of the Navajo Nation.

History

CAP-41-94, April 20, 1994.
 ACAP-57-88, April 13, 1988.
 1981 Budget Resolution.

ACMA-67-78, May 11, 1978.
 1977 Budget Resolution.
 1976 Organizational Chart.

Library References

Indians ☞32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1904. Organization

The Division of Natural Resources shall be comprised of such programs and administrative components as may be deemed necessary, subject to legislative review and approval of department and/or program Plans of Operation.

History

CAP-41-94, April 20, 1994.
 ACAP-57-88, April 13, 1988.
 1981 Budget Resolution.
 ACMA-67-78, May 11, 1978.

1977 Budget Resolution.
 1976 Organizational Chart.
Note. Slightly reworded for statutory and grammatical form.

Library References

Indians ☞32(4.1).
 Westlaw Topic No. 209.

§ 1905. Legislative oversight

The Division of Natural Resources shall operate under the legislative oversight of the Resources Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 691 *et seq.* The Division shall operate only pursuant to plans of operation approved by the Resources Committee and the Government Services Committee of the Navajo Nation Council.

History

CAP-41-94, April 20, 1994.

Library References

Indians ☞32(4.1).
 Westlaw Topic No. 209.

Subchapter 36. [Reserved]

History

CAP-41-94, April 20, 1994, adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Division of Water Resources, previously codified at 2 N.N.C. §§ 1921-1925.

ACJA-6-86, January 15, 1986. Amended the Plan of Operation for the Division of Water Resources.

ACJY-112-83, July 14, 1983. Adopted a Plan of Operation for the Division of Water Resources.

Subchapter 37. Environmental Protection Agency

§ 1921. Establishment

There is established the Navajo Nation Environmental Protection Agency within the Executive Branch of the Navajo Nation government.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Indians ↻32(4.1).

Westlaw Topic No. 209.

§ 1922. Purposes

The Navajo Nation Environmental Protection Agency is established for the following purposes:

A. To establish on behalf of the Navajo Nation environmental policies which shall govern activities which may have an impact on the environment of the Navajo Nation.

B. To protect the public health and the environment of the Navajo Nation through legislative proposals, monitoring and data collection, rule making as may be authorized by the Navajo Nation Council, enforcement actions, public education, obtaining funding, and other appropriate means.

C. To represent the Navajo Nation with respect to environmental issues and concerns in interactions with federal, state, local and Navajo Nation entities and agencies.

D. To exercise inherent Navajo sovereign authority over the Navajo Nation in part by obtaining primacy for regulation of all activities which may have an impact on the environment within the Navajo Nation.

E. To provide a central repository of information, studies, plans, and statements relating to environmental protection within and near the Navajo Nation for the Navajo Nation government.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Environmental Law ⇌15.
Indians ⇌9, 32(1, 4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49 to 51, 67.

§ 1923. Personnel

A. The Environmental Protection Agency shall be administered by a Director who shall be appointed by the President of the Navajo Nation, subject to confirmation by the Navajo Nation Council, upon the recommendation of the Resources Committee of the Navajo Nation Council. The Director of the Navajo Nation Environmental Protection Agency shall report directly to the President of the Navajo Nation.

B. The Director is authorized to hire additional professional, technical and clerical positions as needed to carry out the purposes stated herein. These positions shall be filled in accordance with Navajo Nation personnel policies and procedures and within applicable budget rules established for conducting the annual Navajo Nation budget process.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act. GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.
CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.
Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Indians ⇌32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1924. Authority

In implementing the purposes of the Environmental Protection Agency, the Director shall have the power:

A. To adopt, give final approval, and enforce rules, provided that these rules shall be adopted only after notice and comment, pursuant to rules promulgated by the Director and approval of the Resources Committee of the Navajo Nation Council.

B. To issue cease and desist orders, compliance orders or such other orders as the Director shall deem necessary to enforce Environmental Protection Agency regulations to prohibit or to put a stop to activities that may pose an imminent and substantial danger to the public health or the environment.

C. To implement by regulation, rules for administrative appeal of any adverse action taken by the Navajo Nation Environmental Protection Agency pursuant to the authority of this section and to issue final agency decisions.

D. To levy civil penalties for each day of violation of any order issued by the Director; provided, however, that any person or entity as defined in 2 N.N.C.

2 N.N.C. § 1924

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§ 1925 shall have the right to appeal any civil penalty to the courts of the Navajo Nation as specifically provided in the chapters administered by the Navajo Nation Environmental Protection Agency. No appeal shall operate to stay an order unless the court determines, after a hearing, that there is no basis in fact to support the order or that the order is not in compliance with applicable law.

E. To take such other actions as may be necessary or appropriate to implement the purposes of the Environmental Protection Agency.

F. To carry out any other powers consistent with the purposes of the Environmental Protection Agency that may be authorized in its Plan of Operation upon recommendation of the Resources Committee and approval of the Government Services Committee of the Navajo Nation Council.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Environmental Law ☞15.

Indians ☞9, 32(1, 4.1).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49 to 51, 67.

§ 1925. Jurisdiction

The Navajo Nation Environmental Protection Agency has regulatory, monitoring, and enforcement authority over all natural resources relating to the quality of the environment within the Navajo Nation, as defined in 7 N.N.C. § 254, and over any person, including but not limited to Navajo citizens, enterprises, corporations, associations, partnerships, chapters, tribal government entities or other entities; non-Navajo individuals, corporations, associations, partnerships, other entities, successors and assigns; states; counties; local governments and other agencies; and the United States where not prohibited by applicable laws, doing business within or otherwise affecting the environment of the Navajo Nation.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Environmental Law ⇌15.
Indians ⇌9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1926. Legislative oversight

The Resources Committee of the Navajo Nation Council shall serve as the legislative oversight committee for the Navajo Nation Environmental Protection Agency, pursuant to 2 N.N.C. § 695(B)(13) and this section.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Indians ⇌32(4.1).
Westlaw Topic No. 209.

§ 1927. Amendments

§§ 1921-1926 may be amended by the Navajo Nation Council, upon recommendation from the Resources Committee and the Government Services Committee of the Navajo Nation Council. Amendments by the Government Services Committee shall be subject to approval by the Resources Committee of the Navajo Nation Council.

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act.

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Note. Previously codified at 2 N.N.C., § 3401 *et seq.*, but redesignated at 2 N.N.C., §§ 1921-1927.

Library References

Indians ⇌32(4.1).
Westlaw Topic No. 209.

Subchapter 38. [Reserved]

Subchapter 39. Department of Justice

Article 1. Generally

History

Note. Sections 1961–1963 of this title, relating to the Department of Justice, were formerly codified at 2 N.N.C. §§ 1301, 1993, 1994 respectively.

“Office of General Counsel” was rescinded and all references to such office are now incorporated in the Department of Justice.

§ 1961. Establishment; purpose; composition

A. There is established the Department of Justice within the Executive Branch of the Navajo Nation government.

B. The purpose of the Department of Justice is to provide legal services to the Navajo Nation government and to administer its programs.

C. The Department of Justice shall consist of the Attorney General, the Deputy Attorney General; the staff budgeted for the Department by the Navajo Nation Council, and the following programs:

1. Office of the Navajo Public Defender;
2. Office of the Prosecutor;
3. Juvenile Justice; and
4. Navajo–Hopi Legal Services.

History

CF–7–90, February 1, 1990.

CAP–34–93, April 22, 1993 authorized the Office of the Navajo Public Defender and rescinded the Legal Aid and Defender Office.

CF–8–82, February 5, 1982.

1978 Budget.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1, 6, 7, 13).
Westlaw Topic No. 209.

C.J.S. Indians §§ 51, 60 to 62, 139 to 143,
152, 157.

§ 1962. Personnel

A. There is established the position of Attorney General and Deputy Attorney General of the Navajo Nation, and such other positions as may from time to time be budgeted by the Navajo Nation Council or by any other source acceptable to the President of the Navajo Nation.

B. The Attorney General and Deputy Attorney General shall be licensed attorneys. The Attorney General and Deputy Attorney General shall be appointed by the Navajo Nation Council, upon the recommendation of the President, to serve at a negotiated salary. The appointment shall be effective upon the approval of the Navajo Nation Council, for a term concurrent with the term of the President. The Attorney General and Deputy Attorney General shall serve at the pleasure of the Navajo Nation Council. All other attorneys shall serve at a negotiated salary and at the pleasure of the Attorney General.

C. The Deputy Attorney General shall serve in the stead of the Attorney General, with full authority of the Attorney General, in the event of the death, disability, or removal of the Attorney General, until a new Attorney General is approved by the Navajo Nation Council.

D. All other personnel shall be hired and compensated pursuant to usual Navajo Nation Personnel Policies and Procedures.

History

CF-7-90, February 1, 1990.
 CMA-6-89, March 1, 1989.
 CF-8-82, February 5, 1982.

1978 Budget, page IX-1.
 CJA-15-72, January 26, 1972.

Library References

Indians ↻32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 1963. Authority, responsibilities and duties

The Attorney General is authorized and directed to:

A. Report and be responsible to the Navajo Nation Council through the President for the accomplishment of the purposes and objectives of the legal needs of the Navajo Nation.

B. On behalf of the Navajo Nation and without prior approval of the Navajo Nation Council, or any Committee thereof, the President or any other official of the Navajo Nation, to negotiate and execute attorney contracts, within the approved Navajo Nation budget for attorneys' fees and expenses, to provide for legal counsel to the Navajo Nation government or any other legal representation deemed necessary to protect the interests of the Navajo Nation.

C. Monitor the work of all retained legal consultants and law firms.

D. Formulate overall administrative and operating policies pertaining to the Department of Justice, and to take such action as the Attorney General shall deem necessary for the accomplishment and enforcement thereof.

E. Exercise supervisory control and direction over all personnel within the Department of Justice.

F. Represent the Department of Justice in executive level planning.

G. Represent the Navajo Nation government regarding its legal interests in the Nation's dealings and relations with all persons and organizations outside the Navajo Nation government.

H. Conduct such special projects and programs as maybe assigned.

I. Delegate authority to members of his or her staff.

J. Develop programs and budgets for the Department of Justice of the Navajo Nation.

K. Perform all duties and responsibilities of the office in accordance with the highest standards of legal ethics as required of members of the Navajo

2 N.N.C. § 1963

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Nation Bar Association and by the American Bar Association Code of Professional Responsibility.

History

CF-7-90, February 1, 1990.
CMA-6-89, March 1, 1989.
CF-8-82, February 5, 1982.

1978 Budget, Page IX-1.
CJA-15-72, January 26, 1972.

Library References

Attorney General ☞6.
Indians ☞32(4.1, 6).
Westlaw Topic Nos. 46, 209.

C.J.S. Attorney General §§ 7 to 15.
C.J.S. Indians § 51.
C.J.S. Parent and Child § 251.

§ 1964. Attorney General; Chief Legal Officer

A. The Attorney General is the Chief Legal Officer of the Navajo Nation and shall have charge of the Department of Justice and of all legal matters in which the Navajo Nation government has an interest.

B. The Attorney General shall render legal services to the Navajo Nation government, including its chapters, branches, and entities, subject to available resources, as maybe required.

C. No division, program, enterprise, or other entity of the Navajo Nation government shall retain or employ legal counsel except as may be approved by the Attorney General. The branches shall not retain or employ legal counsel for external litigation except as may be approved by the Attorney General. Navajo Nation Chapters may employ their own counsel, subject to available funds, under the terms and conditions approved by the Chapter membership.

D. The Attorney General shall adopt reasonable rules and regulations to allow for the hiring of independent and additional outside counsel as needed, as provided in this subpart.

E. The Attorney General may retain private counsel to handle any particular matter or types of matters as he deems appropriate, subject to the availability of funds appropriated for such purposes. Such counsel may be retained to represent the Navajo Nation government in distant forums, to provide specialized legal expertise not available from within the Department of Justice, and to respond to exceptional demand for legal services.

F. The Attorney General shall defend and initiate all actions, including appeals, in which the Navajo Nation is a party, including any action brought in the name of Navajo Nation government officials for conduct arising out of their official duties, and may compromise or settle any action or claim by or against the Navajo Nation government. Before concluding any such compromise or settlement which involves a particular branch, division, department or program, the Attorney General shall consult with such branch, division, department, or program.

Where no branch or division is named, or otherwise particularly involved, the Attorney General shall consult with the President prior to concluding any such compromise or settlement.

G. All communications between elected tribal officials, officers, employees, or agents of the Navajo Nation government and its attorneys shall be protected by the attorney-client privilege and shall not be admissible or discoverable in any judicial or administrative proceeding. No waiver of the attorney-client privilege shall be effective against the Navajo Nation government without the express approval of the Attorney General. The Attorney General is authorized to waive the attorney-client privilege when such waiver will advance the overall legal interests of the Navajo Nation government.

H. If the Attorney General determines that he/she is disqualified from providing legal representation or legal services on behalf of any entity of the Navajo Nation government in relation to any matter, the Attorney General shall give written notification to the entity affected. If the entity has received such notification from the Attorney General, the entity is authorized to make expenditures, subject to available appropriations, to employ attorneys to provide the representation or services.

I. The Attorney General in his or her discretion is authorized to represent an officer or employee of the Navajo Nation against whom a civil action is brought in his or her individual capacity until such time as it is established as a matter of law that the alleged activity or events which form the basis of the complaint were not performed, or not directed to be performed, within the scope or course of the officer’s or employee’s duty or employment.

History

CF-7-90, February 1, 1990.

Library References

Attorney General ⇐4.
Indians ⇐27, 32(4.1, 7).
Westlaw Topic Nos. 46, 209.

C.J.S. Attorney General §§ 10 to 11, 13 to 14.
C.J.S. Indians §§ 13, 60 to 62, 68, 89, 91, 97,
139 to 143, 152.

Annotations

1. Construction and application
“See also 2 N.N.C. § 1964(I) (authorizing the Attorney General to represent an official sued in their personal capacity until ‘it is established’ as a matter of law that the official’s activities were not in the scope of his or her ‘duty or employment’)[.] We read these provisions to require an

explicit determination by the district court that the actions of the official or employee were or were not in the scope of his or her authority before moving forward to consider immunity defenses.” *Chapo, et al. v. Navajo Nation, et al.*, No. SC-CV-68-00, slip op. at 11 (Nav. Sup. Ct. March 11, 2004).

§ 1965. Opinions of the Attorney General

A. Any branch, division, department, enterprise, chapter or other entity of the Navajo Nation government, or any elected official of the Navajo Nation government may request the Attorney General to issue an opinion concerning any question of law relating to their respective entity or offices. No adverse action may be taken by the Navajo Nation government against any official or employee of the Navajo Nation government for conduct taken in reasonable reliance upon the advice given in such an opinion.

B. The Attorney General shall, at least annually, publish the official opinions of the Attorney General. The Attorney General shall provide copies to the

2 N.N.C. § 1965

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President, the Speaker, the Chief Justice, and each delegate of the Navajo Nation Council.

History

CF-7-90, February 1, 1990.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

Article 2. Office of the Prosecutor

History

Note. Sections 1971-1983 of this title, relating to the Office of the Prosecutor, were formerly codified at 2 N.N.C. §§ 1171-1183.

§ 1971. Generally

The Office of the Prosecutor is continued as a department in the Justice Department of the Navajo Nation government, directly under the Office of the Attorney General.

History

ACS-157-83, September 22, 1983.
CF-8-82, February 5, 1982.
ACF-9-79, February 15, 1979.

Note. Slightly reworded for consistency and statutory clarity.

Library References

Indians ⚡32(4.1, 13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1972. Purpose

The purpose of the Office of the Prosecutor is to prosecute to completion all cases involving alleged violations of the Navajo Nation Code by Indian persons, to conduct investigations and other activities necessary for the conduct of its affairs, and to assume certain responsibilities with respect to civil matters, including extradition and exclusion proceedings.

History

ACS-157-83, September 22, 1983.
ACF-9-79, Exhibit A, February 15, 1979.

Note. Slightly reworded for grammatical form.

Library References

Indians ⚡32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1973. Chief Prosecutor

A. The Office of the Prosecutor, as established by this article, shall be headed by a Chief Prosecutor, who shall be a member of the Navajo Nation and have original domicile upon the Navajo Reservation, or land under the jurisdiction of the Navajo Nation Courts for a term of six (6) months immediately preceding his or her appointment as Chief Prosecutor.

B. The Chief Prosecutor shall be appointed by the Attorney General and he or she shall serve at his or her pleasure.

C. The Chief Prosecutor shall serve until his or her successor is appointed.

D. Any attorney/advocate positions within the Office of the Prosecutor, other than the Chief Prosecutor's position, shall be appointed by the Chief Prosecutor and shall serve at the pleasure of the Chief Prosecutor. All other personnel shall be hired and compensated pursuant to the Navajo Nation Personnel Policies and Procedures.

History

ACS-157-83, September 22, 1983.
 CF-8-82, February 5, 1982.
 ACF-9-79, February 15, 1979.

Note. Slightly reworded for purposes of statutory clarity.

Library References

Indians ↻32(6, 13).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 51, 157.

§ 1974. Duties, responsibilities and authority

The Prosecutor shall:

A. Report to the Attorney General with respect to all activities of the office and be responsible to him or her for all administrative and operational matters not relating to the investigation and prosecution of suspects, criminal defendants and cases.

B. Investigate, prosecute and dispose of all cases within his or her jurisdiction, acting independently and upon his or her own authority within the guidance of law and professional ethics in the performance of his or her duties.

C. Formulate overall administrative and operating policies of the Office of the Prosecutor and take action as he or she shall deem necessary for the accomplishment and enforcement thereof.

D. Exercise supervisory control and direction of all sections under the Office of the Prosecutor.

E. Represent the Office of the Prosecutor in executive level planning.

F. Represent the Navajo Nation government, within the areas of the Prosecutor's responsibility as authorized by the Attorney General.

G. Plan and participate with other areas of law enforcement toward full realization of benefits from federal and state programs for technical and financial assistance.

2 N.N.C. § 1974

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H. Develop programs and budgets for the Office of the Prosecutor, conduct periodic reviews of program and budget executions of the Office of the Prosecutor and participate in overall program and budget review.

I. Delegate authority to members of the staff.

J. Conduct special programs or projects as may be assigned by the Attorney General not inconsistent with the duties and responsibilities contained herein.

History

ACS-157-83, September 22, 1983.

CF-8-82, Exhibit B, February 6, 1982.

ACF-9-79, Exhibit A, § 2, February 15, 1979.

Note. Slightly reworded for statutory clarity and grammar.

Library References

District and Prosecuting Attorneys ⇌8.

Indians ⇌32(6, 13).

Westlaw Topic Nos. 131, 209.

C.J.S. District and Prosecuting Attorneys

§§ 20 to 21, 29 to 30.

C.J.S. Indians §§ 51, 157.

§ 1975-1977. [Deleted]

History

Note. §§ 1975-1977, "Personnel"; "Offices; hours" and "Admission to practice; Oath", were deleted from the Code.

§ 1978. Assistance of, and coordination with, other agencies

A. The Office of the Prosecutor shall have the authority to call upon the Navajo Division of Law Enforcement or any of its personnel for information, records, reports, etc., and to conduct investigations for the Office of the Prosecutor.

B. The Office of the Prosecutor shall have the authority to call upon all Navajo divisions, enterprises, departments and commissions for assistance in carrying out its work. Such divisions, enterprises, departments and commissions shall provide the Office of the Prosecutor such information and assistance as is necessary to permit the Office of the Prosecutor to carry out its responsibilities and duties under law.

C. The Office of the Prosecutor shall have the authority to call upon United States Governmental Offices serving the Navajo Nation in the name of the Navajo Nation for assistance in carrying out its work.

History

CF-8-82, February 5, 1982.

ACF-9-79, February 15, 1979.

Library References

Indians ⇌32(13).

Westlaw Topic No. 209.

C.J.S. Indians § 157.

§ 1979. Investigations

The Office of the Prosecutor shall have complete authority to initiate and conduct investigations into any alleged violations of the Navajo Nation Code and for the security of the Navajo Nation government, the Navajo Nation Chapter Houses and Officers, the Navajo Nation Courts including the Supreme Court of the Navajo Nation, and any other department, enterprise and entity of the Navajo Nation government.

History

ACS-157-83, September 22, 1983.
ACF-9-79, February 15, 1979.

Note. Slightly reworded for purposes of statutory clarity. Reference to the “Court of Appeals” changed to the “Supreme Court”.

Library References

Indians ⇐32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1980. Civil case intervention

The Office of the Prosecutor shall have the authority to intervene in civil matters involving the interests of the Navajo Nation government, and shall further have the authority to initiate civil actions on behalf of the Navajo Nation government in the Courts of the Navajo Nation, against individuals who violate the laws of the Navajo Nation. The Office of the Prosecutor shall have the authority to initiate civil actions seeking restitution on behalf of the Navajo Nation government against individuals who have caused damage to Navajo Nation property or who have deprived the Navajo Nation government of any property belonging to said government.

History

ACF-9-79, February 15, 1979.

Library References

Indians ⇐27, 32(7, 13), 37.
Westlaw Topic No. 209.

C.J.S. Indians §§ 13, 22, 60 to 62, 68, 89, 91, 97, 139 to 143, 152, 157.

§ 1981. Extradition and civil exclusion proceedings

A. The Office of the Prosecutor shall have the authority to execute and initiate extradition proceedings against Indian residents of Navajo Indian Country.

B. The Office of the Prosecutor, on behalf of the Navajo Nation, shall have the authority to execute and initiate civil exclusion proceedings to exclude nonmembers from tribal land, pursuant to 17 N.N.C. §§ 1901 and 1902.

History

ACF-9-79, February 15, 1979.

Library References

Indians ☞32(8, 13).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 29, 59, 157.

§ 1982. Authority to subpoena witnesses and documents

The Office of the Prosecutor shall have the authority to require the production of books, papers and other documents and may issue subpoenas to compel the attendance and testimony of witnesses. If any person shall refuse to obey any subpoena as issued or shall refuse to testify or produce any books, papers or other documents required by the subpoena, the Office of the Prosecutor may petition any court of the Navajo Nation to issue any appropriate order to enforce the subpoena.

History

ACF-9-79, February 15, 1979.

Library References

Indians ☞32(13), 38.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 157, 163.

Annotations**1. Construction and application**

“ . . . 2 N.T.C. § 1982 supports the activities of the Special Prosecutor, and we too are hesitant to usurp the legislative function in granting power to secure evidence through the use of subpoenas. [¶] There is no statute or rule of law which prohibits the Special Prosecutor from conducting a criminal investigation when criminal charges are pending against an individual.” *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 298 (Nav. Sup. Ct. 1990).

2. Scope of subpoena

“In addressing the objections to the particularity, time periods, and breadth of subpoenas, . . . 1. The subpoena may command only the production of things relevant to the investigation; 2. Specification of things to be produced must be made with reasonable particularity; and 3. Production of records covering only a reasonable period of time may be required.” *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 293 (Nav. Sup. Ct. 1990).

§ 1983. Criminal investigation equipment

Consistent with applicable federal law and regulations and the duly approved budget of the Office of the Prosecutor, the Chief Prosecutor is authorized to acquire such criminal investigation equipment as he/she deems appropriate. The Chief Prosecutor is further authorized, consistent with applicable federal law and regulations, to permit his/her staff to utilize such equipment in carrying out their duties and responsibilities. The Chief Prosecutor and his/her assistants may carry firearms for their own protection while on official duty, provided however, that no employee of the Office of the Prosecutor shall carry a firearm unless such employee has first received instruction and Certification in the use of the firearm by the Division of Public Safety.

History

ACS-157-83, September 22, 1983.
 CF-8-82, February 5, 1982.
 ACF-9-79, February 15, 1979.

Library References

Indians ↻32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1984. Prohibiting interference

The Office of the Prosecutor has an independent responsibility to enforce appropriate provisions of the Navajo Nation Code. No employees, including Executive Branch personnel, shall intercede, or interfere, attempt to intercede or interfere in the legal functions of the Office of the Prosecutor. All inquiries concerning the status of a particular case or policy shall be in writing; additionally, all responses shall be in writing.

History

ACS-157-83, September 22, 1983.
Note. Slightly reworded for statutory and grammatical clarity.

Library References

Indians ↻32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1985. Special Investigative Team (white collar crime)

Consistent with recommendations of the Bureau of Indian Affairs and the Navajo Nation Special Counsel, a Special Investigative Team shall be established. The Special Investigative Team shall specialize in the areas of white collar or public integrity criminal violations. The Special Investigative Team shall seek Navajo Nation-level prosecutions and recovery of misused Navajo Nation funds, equipment and property. The more serious violations shall be referred to federal authorities in accordance with the United States Attorney's guidelines, after Navajo Nation investigators have concluded their reports.

History

ACS-157-83, September 22, 1983.

Library References

Indians ↻32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 1986. Central records system

The Office of the Prosecutor shall establish a Central Records Keeping System. The system shall include the date and agency to whom the referral is made, the prosecutor to whom the case is assigned, case status, presiding judge, previous criminal history, title of investigation and case disposition.

2 N.N.C. § 1986

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History

ACS-157-83, September 22, 1983.

Note. Slightly reworded for statutory and grammatical clarity.

§ 1987. Case dismissal log and reporting

Each district Office of the Prosecutor shall maintain a log of all cases dismissed. Each log shall contain the case number or docket number, case title, individual's name, date dismissed, and explanation of dismissal. Copies of each district case dismissal log shall be submitted to the Office of the Prosecutor's Central Office monthly.

History

ACS-157-83, September 22, 1983.

Library References

Indians ☞32(13).

Westlaw Topic No. 209.

C.J.S. Indians § 157.

§ 1988. Juvenile Justice section

A. Duties of the Juvenile Justice Administrator will be to supervise District Juvenile Representatives, coordinate case load monitoring, give legal advice for the handling of juvenile cases, evaluate staff and program, and coordinate with federal, state, and Tribal agencies.

B. Each of the five districts will have Juvenile Representatives. The responsibilities of the Juvenile Representative will include juvenile delinquency proceedings both civil and criminal, case disposition recommendations, Indian Child Welfare case management and other duties as assigned by the juvenile Justice Administrator.

C. One Assistant Juvenile Representative will be under the direct supervision of the District Juvenile Representative at the district level. The Assistant Juvenile Representative will have duties as assigned by the District Juvenile Representative.

D. For administrative purposes, the District Prosecutors will handle leave requests, time and attendance records for the Juvenile Representatives. Should administrative problems arise, the District Prosecutor shall bring them to the attention of the juvenile justice Administrator. All other supervision and substantive case supervision will be conducted by the Juvenile Justice Administrator.

E. Authority for hiring and dismissal shall remain with the Chief Prosecutor thus bringing the Juvenile Justice Administrator and juvenile representatives under the codified exclusive authority of the Chief Prosecutor.

History

ACS-157-83, Exhibit A, September 22, 1983.

Note. Slightly reworded for statutory and grammatical clarity.

Library References

Indians ☞6.7.
Westlaw Topic No. 209.

§ 1989. Grievance procedure

An interdepartmental grievance procedure will be established within four weeks after approval of this article. Such procedure will include an appeal to the Attorney General. Secretarial and clerical support staff will be given the right to utilize Navajo Nation grievance procedures.

History

ACS-157-83, September 22, 1983.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Article 3. Office of the Navajo Public Defender

History

CAP-34-93, April 22, 1993.

CF-8-82, February 5, 1982.

Note. The Legal Aid and Defender Office formerly at this article was changed to the Of-

fice of the Navajo Public Defender by

CAP-34-93, April 22, 1993.

§ 1991. Establishment

There is established the Office of the Navajo Public Defender within the Executive Branch of the Navajo Nation government, and under the oversight of the Government Services Committee of the Navajo Nation Council.

History

CAP-34-93, April 28, 1993.

CF-8-82, February 5, 1982.

CJA-15-72, January 26, 1972, 1978 Budget, page IX-1.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1992. Purpose

The purpose of the Office of the Navajo Public Defender is to provide legal defense services to individual indigent persons charged with criminal offenses and to fulfill the requirement for pro bono services by all attorneys and advocates employed by the Navajo Nation government. The public defender

2 N.N.C. § 1992

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shall at all times serve his or her clients independent of any political considerations or private interests and provide legal services to indigent persons accused of crimes which are commensurate with those available to nonindigent persons. By providing these services through the expenditure of public funds, attorneys and advocates employed by the Navajo Nation government should not hereafter be appointed to pro bono representation in the courts of the Navajo Nation, except for those employed by the Office of the Navajo Public Defender pursuant to this Act.

History

CAP-34-93, April 28, 1993.
CF-8-82, February 5, 1982.
1978 Budget, page IX-1.

CJA-15-72, Exhibit A, § II, January 26, 1972.

Note. Slightly reworded for statutory consistency and clarity.

Library References

Criminal Law Ⓒ641.11.
Indians Ⓒ6.4, 32(13), 38(1).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 300, 317.

C.J.S. Indians §§ 157, 163.

§ 1993. Personnel

There are hereby established the following positions:

- A. Director
- B. Staff attorneys
- C. Tribal court advocates
- D. Appropriate clerical personnel
- E. Investigators
- F. Such other positions as may from time to time be budgeted by the Navajo Nation Council.

History

CAP-34-93, April 28, 1993.
CF-8-82, February 5, 1982.
CJA-15-72, January 26, 1972.

Note. Slightly reworded for purposes of statutory clarity.

Library References

Indians Ⓒ32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1994. Public Defender Commission

A. There shall be established a Public Defender Commission consisting of three members who shall serve without compensation. Each of the following entities shall appoint one of the commission members:

- 1. The Navajo Nation Supreme Court;
- 2. The President of the Navajo Nation;
- 3. The Board of Bar Commissioners of the Navajo Nation Bar Association.

B. At least two of the members shall be admitted to the practice of law before the courts of the Navajo Nation. No member of the Commission shall at any time be a judge, prosecutor, public defender, or employee of a law enforcement agency.

C. The Public Defender Commission shall appoint and discharge, for good cause only, the Director of the Office of the Navajo Public Defender. The Director shall be appointed to serve a term of three (3) years and shall serve until his or her successor is appointed and qualified. The Director may be reappointed for one or more subsequent three-year terms. Vacancies in the office shall be filled by the Public Defender Commission for the remainder of the unexpired term.

History

CAP-34-93, April 28, 1993. Added § 1994 and renumbered former § 1994 at § 1996.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1995. Qualifications for personnel

A. The Director shall be licensed to practice law before the Navajo Nation Courts and before the courts of one of the States of Arizona, New Mexico, or Utah. The Director shall have been licensed in at least one of those jurisdictions for not less than three (3) years prior to his or her appointment. The Director shall devote full time to the performance of his or her duties and shall not engage in the private practice of law.

B. A range for compensation of the Director shall be fixed by the Navajo Nation Council. The Public Defender Commission shall set the precise amount of compensation through negotiation, giving consideration to such factors as the experience of the Director. This compensation, once set, may not be reduced during the term of the Director's appointment.

C. The Director shall employ and fix the compensation of the staff attorneys, tribal court advocates, investigators, clerical personnel, and any other employees necessary to discharge the functions of the public defender office. All salaries shall be reviewed and approved by the Public Defender Commission. Staff Attorneys must be licensed in a state court jurisdiction, and both attorneys and advocates shall become licensed to practice before the courts of the Navajo Nation within a reasonable time after beginning their employment with the office. Staff attorneys and tribal court advocates shall serve on a full-time basis, at the pleasure of the Director, and shall not otherwise engage in the practice of law.

History

CAP-34-93, April 28, 1993. Added new § 1995.

2 N.N.C. § 1995

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Library References

Criminal Law ⌘641.11.
Indians ⌘32(6).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 300, 317.
C.J.S. Indians § 51.

§ 1996. Duties of Director

The Director, in addition to any other duties outlined in this part, is hereby authorized and directed to:

A. Represent individual indigent persons who are charged with criminal offenses in the Navajo Nation courts, and advise and counsel these individuals in their legal affairs;

B. Report and be responsible to the Public Defender Commission with regard to administrative matters, in a manner not inconsistent with the Code of Professional Responsibility;

C. Formulate overall administrative and operating policies pertaining to the Office of the Navajo Public Defender and to take such action as he or she shall deem necessary for the accomplishment and enforcement thereof;

D. Coordinate the pro bono appointment system of other attorneys and advocates for the representation of indigent persons not represented by the Office of the Navajo Public Defender.

History

CAP-34-93, April 28, 1993.
CF-8-82, February 5, 1982.

1978 Budget, page IX-1.
CJA-15-72, January 26, 1972.

Library References

Indians ⌘32(6, 13), 38(1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 157, 163.

§ 1997. Representation of indigent persons

A. The Office of the Navajo Public Defender shall represent as counsel, without charge, each indigent person who is under arrest for or charged with committing a criminal offense under the Navajo Nation Code which may lead to the imposition of a sentence of incarceration if:

1. The defendant requests it; or
2. The court, on its own motion or otherwise, so orders and defendant does not affirmatively reject, on record, the opportunity to be represented by legal counsel in the proceeding.

B. The determination of indigence shall be made by the district court to which the case is assigned pursuant to uniform rules promulgated by the Navajo Nation Supreme Court.

History

CAP-34-93, April 28, 1993.

Library References

Criminal Law ☞641.11.
 Indians ☞6.4, 32(13), 38(1).
 Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 300, 317.
 C.J.S. Indians §§ 157, 163.

§ 1998. Duties of the Office of the Navajo Public Defender

A. When representing an indigent person, the Office of the Navajo Public Defender, only after conditions of § 1997 have been met, shall:

1. Counsel and defend him/her, whether he/she is held in custody, filed on as a delinquent, or charged with a criminal offense, at every state of the proceedings following arrest, detention, or service of process; and
2. Prosecute any appeals or other remedies before or after conviction which the office considers to be in the interest of justice.

B. In no case, however, shall the Navajo Public Defender be required to prosecute any appeal or other remedy unless the Navajo public defender is satisfied first that there is arguable merit to the proceeding.

History

CAP-34-93, April 28, 1993.

Library References

Criminal Law ☞641.11.
 Indians ☞6.4, 32(13), 38(1).
 Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 300, 317.
 C.J.S. Indians §§ 157, 163.

§ 1999. Appointment of other attorney in place of public defender

The court may, upon the application of the Director of the Office of the Navajo Public Defender, appoint an attorney other than the public defender to represent the indigent person at any state of the proceedings or on appeal. The application may be based upon any good cause, including, but not limited to, a determination by the Director that the then available resources of the office are insufficient to adequately meet the need for representation in a particular case. The court may appoint alternate counsel, who shall serve without compensation, pursuant to the pro bono appointment system then in effect, which is coordinated by the Director under § 1996 (D).

History

CAP-34-93, April 28, 1993.

Library References

Indians ☞6.4, 32(13), 38(1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 157, 163.

§ 1999A. Recoupment of fees and costs

In any case when a court determines that a defendant is able to repay all or part of the expenses of court-appointed counsel or any ancillary expenses

2 N.N.C. § 1999A

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incurred in representing such defendant, the court shall assess such fees or costs against such defendant.

History

CAP-34-93, April 28, 1993

Library References

Indians ☞38.
Westlaw Topic No. 209.
C.J.S. Indians § 163.

§ 1999B. Amendments

These provisions may be amended by the Navajo Nation Council upon the initiative or recommendation of, or through legislation supported or sponsored by the Government Services Committee of the Navajo Nation Council, as provided in 2 N.N.C. § 343(B).

History

CAP-34-93, April 28, 1993.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Article 4. [Reserved]

History

CAP-34-93, April 22, 1993.
CF-8-82, February 8, 1982. Rescinded former Article 4, "Office of the General Counsel".

Article 5. [Reserved]

History

CO-59-93, October 20, 1993. Rescinded former Article 5, "Navajo Hopi Legal Services Program" and incorporated the program within the Department of Justice. ACAU-140-83, August 10, 1983.

Article 6. Special Prosecutor

§ 2021. Application for appointment of a Special Prosecutor

A. The Attorney General shall conduct a preliminary investigation pursuant to the provisions of this section whenever he/she receives information sufficient to constitute grounds to investigate whether any of the persons listed in Subsection (B) of this section has committed a violation of any federal or state

criminal law or any law or regulation of the Navajo Nation, or committed any act upon which the Navajo Nation may have a civil cause of action. The Attorney General may take no longer than sixty (60) days to conduct such preliminary investigation.

B. The persons referred to in Subsection (A) of this section are:

1. The President of the Navajo Nation;
2. The Vice-President of the Navajo Nation;
3. Any member of the Executive Staff of the Office of the President or the Vice-President.
4. The Chairperson of any Standing Committee of the Navajo Nation Council;
5. The Attorney General, in which case the Deputy Attorney General shall perform the functions of the Attorney General pursuant to the provisions of §§ 2021–2024 of this title;
6. The Director or Acting Director or Deputy Director of any Division, Department, Program or Office of the Executive Branch of the Navajo Nation; and
7. Any other official, employee or agent of the Navajo Nation, where the Attorney General determines that investigation or prosecution or civil litigation against such person by the Attorney General or other officer or employee of the Department of Justice may result in a personal, financial, or political conflict of interest.

C. In determining whether grounds sufficient to investigate exist, the Attorney General shall consider the degree of specificity of the information received and the credibility of the source of the information.

D. Upon completion of the preliminary investigation, if the Attorney General finds that there are no reasonable grounds to believe that further investigation or prosecution is warranted, or that the matter may be handled by the Attorney General, the Office of the Prosecutor or other officials, or employees of the Department of Justice without resulting in personal, financial or political conflict of interest, the Attorney General may take such lawful action or inaction as he/she deems appropriate.

E. Upon completion of the preliminary investigation, if the Attorney General finds that there are reasonable grounds to believe that further investigation or prosecution is warranted, and that the matter cannot be handled by the Attorney General, the Office of the Prosecutor or any other official or employee of the Department of Justice without resulting in personal, financial, or political conflict of interest, the Attorney General shall apply to the Special Division of the Window Rock District Court for appointment of a Special Prosecutor.

F. An application pursuant to Subsection (E) of this section shall contain sufficient information to assist the special division to select a Special Prosecutor and to define that Special Prosecutor's jurisdiction. The Attorney General shall recommend at least three persons among whom the Special Division shall appoint such Special Prosecutor, shall recommend appropriate compensation, and shall recommend the extent of such Special Prosecutor's jurisdiction.

G. If for any reason the Special Division fails to comply with the provisions of § 2022(A) of this title, then the Attorney General shall exercise the powers of the Special Division under of § 2022 (A) and (C) of this title.

H. Whenever a Special Prosecutor is currently in office, and whenever the Attorney General receives information sufficient to cause him/her to apply for appointment of a Special Prosecutor pursuant to Subsection (E) of this section, in lieu thereof the Attorney General may apply to the Special Division to enlarge the jurisdiction of such Special Prosecutor to include any such new matter.

I. No application or any other documents or materials supplied to the Special Division in connection with an application or appointment of a Special Prosecutor shall not be revealed to any person outside the Special Division or the Department of Justice without leave of the Special Division, or the written release of the Attorney General.

J. Whenever a matter is within the jurisdiction of a Special Prosecutor, the Attorney General, the Chief Prosecutor, and all officers and employees of the Department of Justice, shall suspend all investigations and proceedings regarding such matter, except insofar as such Special Prosecutor and the Attorney General agree in writing that such investigations and proceedings may continue.

K. Notwithstanding the provisions of Subsection (J) of this section, the Attorney General may appear in any proceeding before any court or legislative or administrative body as an amicus curiae concerning any issues of law raised by any case or proceeding.

History

CMA-8-89, March 1, 1989.

Cross References

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

Library References

District and Prosecuting Attorneys ⇌3(1).
Indians ⇌32(6).
Westlaw Topic Nos. 131, 209.

C.J.S. District and Prosecuting Attorneys
§§ 50 to 54, 57.
C.J.S. Indians § 51.

Annotations

1. Construction with other laws

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

2. Construction and application

“If the Attorney General funds from the preliminary investigation that there are reasonable grounds for further investigation or prosecution

and there is a conflict of interest by the Attorney General or prosecution office, he or she may apply to the Special Division of the Window Rock District Court for appointment of a special prosecutor.” *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 11 (Nav. Sup. Ct. 1992).

3. Investigations

“Once a special prosecutor assumes jurisdiction, the attorney general and chief prosecutor must suspend all investigations except insofar as such special prosecutor and attorney general agree in writing that such investigations and

proceedings may continue.” *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 6 (Nav. Sup. Ct. 1992).

§ 2022. Duties of the Special Division

A. Within ten (10) days of receipt of an application pursuant to § 2021 (E) of this title, the Special Division shall appoint an appropriate Special Prosecutor from among the persons recommended by the Attorney General, and shall determine such Special Prosecutor’s jurisdiction.

B. The Special Division may request, and upon request shall receive, the assistance of the Attorney General in securing the appointment of a Special Prosecutor.

C. The Special Division shall set the fees and expenses to be paid to a Special Prosecutor upon his or her appointment, in an amount agreed between the proposed Special Prosecutor and the Special Division. The Special Division may request, and upon request shall receive, assistance and cooperation from the Division of Administration and Finance and the Budget and Finance Committee of the Navajo Nation Council, in determining and arranging for funding such fees and expenses. The Special Division shall enter into an appropriate contract with the Special Prosecutor, in the name of the Navajo Nation, and shall comply with the requirements as may be applicable of 25 U.S.C. § 81. Notwithstanding any other provision of law, the presiding judge of the Special Division is hereby delegated the authority to execute, and shall execute the contract on behalf of the Navajo Nation. Such contract shall be a valid, binding and enforceable obligation of the Navajo Nation.

D. If a vacancy in office arises because of the death of a Special Prosecutor, the Special Division shall appoint a successor in the same manner as the initial appointment was made. The Special Division may appoint either a person recommended to the vacant office in the initial application, or one of three other persons to be recommended by the Attorney General at the Special Division’s request.

E. If a vacancy in office arises because of the removal pursuant to § 2024 (B), (C) or (D) of this title, the Special Division shall appoint an acting Special Prosecutor to serve until any judicial review of such removal pursuant to § 2024 (D) of this title is either completed or barred by time, after which time the Special Division shall take appropriate action. The Special Division may appoint either a person recommended to the vacant office in the initial application, or one of three other persons to be recommended by the Attorney General.

F. Upon the request of a Special Prosecutor, the Special Division may enlarge the jurisdiction of such Special Prosecutor whenever it appears that there exist new matters related to matters within his or her original jurisdiction which, had they been known by the Special Division at the time of such Special Prosecutor’s appointment, would have been included within his or her jurisdiction.

History

CMA-8-89, March 1, 1989.

Cross References

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 2023. Authority and duties of a Special Prosecutor

A. A Special Prosecutor appointed pursuant to § 2022 of this title shall have full power and independent authority to exercise all functions and powers of the Attorney General and the Office of the Prosecutor, as defined in 2 N.N.C. §§ 1963(A), (B), (G), (I), and (K); 1972; 1974(B); 1978-1984, with respect to all matters within his or her jurisdiction.

B. A Special Prosecutor shall have full power and authority to appear before any court of the Navajo Nation, the same as if he/she were admitted to the bar of such court, with respect to any matter within his or her jurisdiction or the duties and responsibilities of his or her office.

C. A Special Prosecutor shall have full power and independent authority to initiate or participate in any proceeding pursuant to 2 N.N.C. §§ 3751-3761, or before the Board of Election Supervisors, the Tax Commission or the Labor Commission, with respect to any matter within his or her jurisdiction.

D. Upon the authorization of the Navajo Nation Council, and subject to its continuing authority and supervision, a Special Prosecutor shall have the power and authority to commence a civil or administrative action against any person or entity, before any federal or state court or administrative body, with respect to any matter within his or her jurisdiction.

E. Notwithstanding the provisions of 17 N.N.C. § 1801, a criminal complaint signed and sworn before a judge of any court of the Navajo Nation by a Special Prosecutor shall be deemed a valid complaint.

F. With the prior consent of the Special Division, a Special Prosecutor shall have the power and authority to appoint, fix the compensation of, and assign the duties to and thereafter supervise such employees, including investigators, attorneys and consultants, as such Special Prosecutor deems necessary.

G. A Special Prosecutor may request, and upon request shall receive assistance from any Branch, Division, Department, Office or Program of the Navajo Nation, which may include access to any records, files or other materials relevant to any matter within his or her jurisdiction. Upon agreement by the Attorney General, a Special Prosecutor may utilize the resources and personnel of the Department of Justice where necessary to perform such Special Prosecutor's duties.

H. A Special Prosecutor shall have all necessary and proper power and authority incident to the exercise of his or her other powers and authority.

History

CMA-8-89, March 1, 1989.

Cross References

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

Library References

Indians ↻32(6, 13).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 157.

Annotations

1. Construction and application

“That includes the power to obtain the production of documents or compel testimony by subpoena and to petition the courts to issue subpoena enforcement orders.” *MacDonald, Sr. v. Navajo Nation ex rel. Rothstein*, 6 Nav. R. 290, 291 (Nav. Sup. Ct. 1990).

“The special prosecutor has full power and independent authority to exercise all functions

and powers of the Attorney General and the Office of the Prosecutor and has specific authority to proceed against any person or entity in a civil or administrative action.” *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

§ 2024. Termination and removal of a Special Prosecutor

A. The appointment of a Special Prosecutor shall terminate when:

1. The Special Prosecutor notifies the Attorney General and the Special Division that the investigation and prosecution of all matters within such Special Prosecutor’s jurisdiction have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions; and

2. The Special Prosecutor files a report in full compliance with Subsection (F) of this section.

B. The Special Division, either on its own motion or upon the suggestion of the Attorney General, may terminate the appointment of a Special Prosecutor, upon the grounds provided in Subsection (A) (1) of this section.

C. A Special Prosecutor may be removed upon the 2/3 vote of the Navajo Nation Council, or by action of the Attorney General, and only for good cause, physical disability, mental incapacity, or other condition that substantially impairs the performance of such Special Prosecutor’s duties.

D. A Special Prosecutor may seek judicial review of any termination of his appointment by the Navajo Nation Council, the Special Division, or the Attorney General, by filing within five (5) days thereof a petition of review with the Supreme Court of the Navajo Nation. Notwithstanding any other provision of law, the Supreme Court shall have and shall accept jurisdiction to hear and determine said petition and to take such remedial action as it deems appropriate.

2 N.N.C. § 2024

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E. Upon the termination of a Special Prosecutor's appointment pursuant to Subsections (B), (C) or (D) of this section, such Special Prosecutor shall promptly file a report with the Special Division, the Navajo Nation Council and the Attorney General in full compliance with subsection (F) of this section.

F. The report required by subsections (A) (2) and (E) of this section shall set forth fully and completely a description of the work of the Special Prosecutor, including the status and disposition of an cases brought, the reasons for not prosecuting any matter within such Special Prosecutor's jurisdiction which was not prosecuted, and an accounting of all funds received and expenditures made in the performance of his or her duties.

History

CMA-8-89, March 1, 1989.

Cross References

Window Rock District Court, Special Division, see 7 N.N.C. § 291 *et seq.*

Library References

District and Prosecuting Attorneys ⇌3(1).

Indians ⇌32(6).

Westlaw Topic Nos. 131, 209.

C.J.S. District and Prosecuting Attorneys
§§ 50 to 54, 57.

C.J.S. Indians § 51.

Subchapter 40. [Reserved]

Subchapter 41. Navajo Tax Commission

§ 3351. Establishment

The Navajo Tax Commission is hereby established as a part of the Executive Branch of the Navajo Nation government.

History

CJA-6-74, § 1, January 16, 1974.

Library References

Indians ⇌32(4.1, 9).

Westlaw Topic No. 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 3352. Membership

A. The Commission shall consist of five members, at least three of whom shall be Navajos.

B. The President of the Navajo Nation shall, at the times required under subsection (C) and (E), nominate a person qualified by virtue of education, experience, or office, and upon confirmation by the Government Services Committee of the Navajo Nation Council, such person shall be appointed to serve a term as a Commissioner.

C. The terms of office of commissioners shall be five (5) years; provided, however, that in order to stagger the expiration of terms of office, March 31 of each year shall be the common anniversary date, the three present Commissioners shall continue to serve out their appointed terms, and, of the two new Commissioner appointees, one shall be appointed for a term ending in 1990, and the other for a term ending in 1991.

D. A Commissioner shall be removed only for cause by the President of the Navajo Nation and upon ratification by the Government Services Committee of the Navajo Nation Council; provided that the person so removed may then appeal the removal to the Supreme Court of the Navajo Nation. For the purposes of this subsection, "cause" means:

1. Incapacity. Physical or mental incapacity, where such incapacity extends or is expected to extend longer than six (6) months.
2. Nonfeasance. Failure to perform the duties of office, including, but not limited to, repeated and unexcused failure to attend the meetings and other official functions of the Commission.
3. Ex parte violation. Participation in ex parte consultations with any representative of a taxpayer who is an appellant in a dispute before or with the Commission.
4. Certain other acts. Any act that is a felony in the jurisdiction where committed, or any act involving moral turpitude that is a misdemeanor in the jurisdiction where committed.
5. A vacancy in the Commission, whether caused by death, removal, or resignation shall be filled by an interim appointment to complete the vacated term made in accordance with this section.

History

CN-59-87, November 18, 1987.	deleted as the correct name for this Court is
CJA-6-74, § 2, January 16, 1974.	"The Supreme Court of the Navajo Nation".
1987 amendment. Amended generally and added Subsection (d). "Court of Appeals" was	

Library References

Indians ⇄32(6, 9).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 51, 130 to 132, 134.

§ 3353. Powers

- A. The Navajo Tax Commission shall have the following powers:
1. To review and study all sources of wealth and income within the Navajo Nation and the possible revenues from the taxation of those sources, in order to develop an appropriate, comprehensive system of taxation.
 2. With the authorization of the Navajo Nation Council, to lay and collect taxes on income from whatever source derived, to lay and collect taxes on property, both tangible and intangible, and to lay and collect taxes on sales, inventories and wages completed or earned, and other measures of economic activity or engagement within the Navajo Nation.

2 N.N.C. § 3353

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3. To adopt such other rules and regulations as it deems necessary for the proper functioning of the Commission, to implement the taxes enacted by the Navajo Nation Council, and to defend, enforce, and collect the taxes and accomplish their proper and efficient administration, including delegating authority and duties to appropriate offices, officers, and representatives.

4. To employ or engage, either directly or through delegation, those persons qualified by education and experience necessary to discharge the duties of the Commission, the offices or officers.

B. The official business of the Commission shall be conducted by a quorum of members, at meetings duly called by the presiding officer or a designee.

1. A quorum shall comprise three Commissioners and any substantive action of the Commission shall be taken by the affirmative vote of a majority of the Commissioners present.

2. Except for special or emergency meetings which may be called when and if circumstances warrant, at least one official regular business meeting shall be held by the Commission during each calendar quarter.

3. From time to time, the Commissioners shall select their presiding officers and may delegate other specific duties among themselves.

History

CN-59-87, November 18, 1987.

CJA-6-74, § 3, January 16, 1974.

1987 amendment. Amended generally and added subsection (A)(4) and subsection (B).

Note. Slightly reworded for statutory form.

Library References

Indians ⇨32(9).

Westlaw Topic No. 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 3354. Compensation

A Commissioner shall be compensated for services and expenses by payment of an honoraria of two hundred fifty dollars (\$250.00) per day, or fraction thereof, and by reimbursement of actual and reasonable expenses incurred, in connection with attendance at Commission meetings and the performance of other official Commission duties.

Library References

Indians ⇨32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

Subchapter 42. [Reserved]

Subchapter 43. Navajo Telecommunications
Regulatory Commission

History

Formerly “Film and Media Commission.” By FY 1985 Budget Resolution, the regulatory function was delegated to the Navajo Telecommunication Regulatory Commission and non-regulatory functions related to filming or radio/television activities were placed in the Broadcast Services Department. ACAP-62-85, April 11, 1985.

§ 3451. Establishment

There is hereby established under the Office of the President and Vice-President within the Executive Branch of the Navajo Nation government, and in accordance with Resolution ACMA-36-84 of the Advisory Committee of the Navajo Nation Council, the Navajo Telecommunications Regulatory Commission, hereinafter called the “Commission”.

History

ACAP-62-85, April 11, 1985.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 3452. Purpose

The purpose of the Commission shall be to act upon and regulate any and all matters of the telecommunications industry on the Navajo Nation, including but not limited to computer, video, television, telegraph, radio, cable television, satellite dishes, two-way radio, and other related telecommunication services transmitted by electricity, wire land lines, wireless technology, cable, fiber optics, microwave, satellite or radiowave, to provide for the orderly growth and development of the telecommunications industry, and the operations thereby.

History

CAP-17-03, April 23, 2003, Amended purpose to include additional technologies.
ACAP-62-85, April 11, 1985.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 3453. Powers, authorities and duties

A. The Commission shall have all the powers necessary and appropriate as delegated through legislative enactments by the Government Services Committee of the Navajo Nation Council pursuant to the inherent power of a government to impose restrictions on private rights to protect public welfare, order and security, to carry out the purpose and goals set forth in § 3452. This

delegation of authority shall be inclusive of the entire regulatory scheme, but exclusive of any telecommunications services or development activity, except where telecommunications regulation may apply to such activities.

B. The enumerated powers of the Commission are:

1. To establish and adopt a regulatory policy subject to Navajo Nation Council enactment which will govern any and all Navajo Nation telecommunications activities, not inconsistent with federal Communications Commission regulation.

2. To establish, promulgate, and enforce rules, regulations, policies, and issue orders and resolutions, which are consistent with the Navajo regulatory code and this Plan of Operation, as necessary for the accomplishment of its purpose, authority, functions, and responsibilities.

3. To establish methods, procedures, schedules, and conditions of accessing permits, respective fees, and reasonable rates of compensation for particular telecommunication services on the Navajo Nation.

4. To approve and enter into such agreements, contracts, or written understandings as necessary or appropriate in accomplishing the duties and purpose of the Commission. All such contracts and agreements shall be in the name of the Navajo Nation and shall be subject to normal procedures established for contracts and agreements.

5. To establish procedures and requirements for hearings and investigations pertinent to the functions and powers of the Commission, consistent with normal due process; to hear complaints concerning noncompliance with regulations established as the conditions of engaging in any telecommunications activities on the Navajo Nation, or any valid complaint from any entity which is aggrieved by any action by the Commission or staff.

6. The Commission in furtherance of its powers shall have the authority to recommend and impose fines or other sanctions according to established schedules, on any entity for violation of all telecommunications laws, regulations, rules, orders and policies.

History

CAP-17-03, April 23, 2003, Amended Subsections (B)(1), (B)(3), (B)(6) generally.
ACAP-62-85, April 11, 1985.

Note. Slightly reworded for purposes of statutory clarity.

Library References

Indians ⇄ 32(4.1).
Westlaw Topic No. 209.

§ 3454. Membership of the Commission

A. The Commission shall consist of seven (7) Commissioners, all of whom shall be appointed by, and serve at the pleasure of the President of the Navajo Nation, and confirmed by the Government Services Committee of the Navajo Nation Council, and shall serve their terms of office according to their appointments.

B. Each appointment shall be for a period of four (4) years, with the exception of those appointments made in 2002, which appointments shall be

made at the discretion of the President of the Navajo Nation as follows, two appointments for a period of two (2) years, two appointments for a period of three (3) years and three appointments shall be for a period of four (4) years.

C. No Commission member shall have a financial, political or any other interest or motive in any sector of the telecommunications industry on the Navajo Nation, as provided for in the Navajo Nation Ethics in Government Law. The Commission members shall carry out their duties and responsibilities in a manner which protects and promotes the best interests of the Navajo Nation.

D. The Chairperson and Vice-Chairperson of the Commission shall be selected by the Commission from its membership by majority vote, for such term as is determined appropriate. The Chairperson and the Vice-Chairperson shall have the following duties and responsibilities:

1. To call meetings, special sessions, hearings, or inquiries; and to preside at all these events.
2. To represent the Commission in all matters relating to telecommunications activities.

History

CAP-17-03, April 23, 2003, Amended subsections (B),(C) and (D), generally.
ACAP-62-85, April 11, 1985.

Note. Slightly reworded for statutory form and to state the correct citation from the referenced law.

Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C. §§ 3751-3761.

Library References

Indians ⇐32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3455. Staff Personnel

The President of the Navajo Nation shall employ an Executive Director of the Commission who shall serve at the pleasure of the President of the Navajo Nation and be subject to confirmation by the Government Services Committee of the Navajo Nation Council. All other staff shall be employed by the Executive Director in accordance with the Personnel Policies Manual of the Navajo Nation.

History

CAP-17-03, April 23, 2003, Added Section 3455, Staff Personnel.

Library References

Indians ⇐32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Subchapter 42. Reserved

Subchapter 44. Motor Vehicle Review Board

§ 3551. Establishment

The Motor Vehicle Review Board (hereinafter referred to as the "Board") is hereby established as a non-budgeted entity within the Executive Branch of the Navajo Nation.

History

ACD-172-82, December 21, 1982.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 3552. Purpose

The purpose of the Board shall be to determine and establish the most appropriate policies and procedures for meeting transportation needs in conducting the Navajo Nation's business.

History

ACD-172-82, December 21, 1982.

Note. 1982 amendment deleted "Motor Vehicle Review" preceding "Board", substituted "appropriate policies" for "economical methods" following "the most" and substituted "the Navajo Nation's" for "Tribal" preceding "business".

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 3553. Composition

The Board shall consist of seven members. All members shall have the right to vote on all matters brought before the Board. One member shall act as the Chair. The President of the Navajo Nation shall appoint the members of the Board and shall name the Chairperson of the Board. In appointing the members of the Board and naming the Chair, the following restrictions shall be observed:

A. One member shall be the Chairperson of the Budget and Finance Committee of the Navajo Nation Council or an alternate from the membership of the Budget and Finance Committee of the Navajo Nation Council named by the Chairperson of the Budget and Finance Committee of the Navajo Nation Council.

B. One member shall be the current director or manager of the operating department administering the Navajo Nation fleet. This member shall act as the recording secretary of the Board.

C. All members of the Board shall be employees or officials of the Navajo Nation and will serve without additional compensation.

History

ACD-172-82, December 21, 1982.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 3554. Meetings and Board Expenses

Meetings shall be called whenever necessary by the Chairman of the Board. The Chairman shall have sole authority over the establishment of the agenda for each meeting. A quorum shall consist of at least three members; and, a motion will pass only if it receives a majority of votes of those members present and voting, and as such shall constitute the final action of the Board. No member shall have individual authority to act independently on behalf of the Board by reason of membership on the Board, except in the enforcement of rules and regulations regarding the use of Tribal vehicles.

Members of the Board shall receive reimbursement for actual and reasonable expenses incurred because of their duties as members of the Board. Expense vouchers shall be submitted and processed according to Navajo Nation procedures and charged against the appropriate budget accounts to their respective departments. Expenses of the members of the Budget and Finance Committee will be charged to the Transportation Services Department.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 45. [Reserved]

History

CAP-41-94, April 20, 1994. Adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources' department and program plans of operation from the Navajo Nation Code, including the Office of Navajo Tribal Land Administration, previously codified at 16 N.N.C. § 201, *et seq.*

GSCMY-36-94, May 25, 1994. Adopted a Plan of Operation for the Navajo Land Department.

1978 Budget Resolution. Changed name from "Office of Navajo Land Administration" to

the "Land Administration Department" and moved it from 2 N.N.C. Subchapter 13, §§ 1301-1302 to 2 N.N.C. Subchapter 45, §§ 2151-2152.

1973 Budget Resolution.

CMA-42-66, March 3, 1966.

CAU-50-59, August 6, 1959.

Note. This subchapter 45, § 2151, *et seq.*, "Land Administration Department", is also deleted pursuant to the direction given by the Office of the Attorney General's memorandum dated January 4, 1991, regarding codification of enabling legislation.

Subchapter 46. [Reserved]

Subchapter 47. [Reserved]

History

Note. Former §§ 2201–2202 “Information Services Department” responsible for official records of the Navajo Nation government, under ACAU–163–77, is now called “Records Management” in the Division of General Services. See 2 N.N.C. Subchapter 17.

Subchapter 48. [Reserved]

History

Note. Formerly “Navajo Office of Census and Vital Statistics”, now the “Navajo Office of Vital Records” in the Division of Human Resources. See 2 N.N.C. § 1701 *et seq.*

Subchapter 49. [Reserved]

History

The Computer Services Department has been reorganized under the Division of General Services within the Executive Branch of the Navajo Nation. Pursuant to the Office of Attorney General’s memorandum dated January 4, 1991, this Plan has been deleted from the Code. See the 1978 Budget and ACAP–95–76, April 21, 1976.

Subchapter 50. [Reserved]

Subchapter 51. [Reserved]

History

Formerly “Tribal Assistance and Projects Department” responsible for health, education and welfare programs, as delineated in the 1978 budget has since been rescinded by subsequent inconsistent acts authorizing the Division of Health, the Division of Education and the Division of Social Services to plan, organize and administer the Navajo Nation’s health, education and welfare programs.

Subchapter 52. [Reserved]

Subchapter 53. [Reserved]

History

Formerly “Personnel Services Department”, the “Personnel Management Office” is now in the Division of Human Resources. See 2 N.N.C. § 1701 *et seq.*, and GSCN–57–90, November 27, 1990.

Subchapter 54. [Reserved]

Subchapter 55. [Reserved]

History

Formerly "Commerce and Business Regulation Department" discontinued by the 1981 Budget. See Division of Economic Development, 2 N.N.C. Subchapter 21.

Subchapter 56. [Reserved]

Subchapter 57. [Reserved]

History

"Revenue Sharing Department" superseded by ACJN-106-85, June 12, 1985. See Division of Community Development, 2 N.N.C. § 1451 *et seq.*

Subchapter 58. [Reserved]

Subchapter 59. [Reserved]

History

"Tax Assistance Department" discontinued by the 1981 Budget.

Subchapter 60. [Reserved]

Subchapter 61. [Reserved]

History

The 1978 Budget discontinued the Transportation Department and redesignated it as the Transportation Branch of the General Services Department of the Division of Administration and Finance. See now the Department of Transportation within the Division of Community Development, 2 N.N.C. § 1451 *et seq.*

Subchapter 62. [Reserved]

Subchapter 63. [Reserved]

History

The 1978 Budget, page III-1, discontinued the "Maintenance Engineering Department" and replaced it with the "Maintenance Engineering Branch" of the General Services Department of the Division of Administration and Finance. See now the Division of General Services, 2 N.N.C. Subchapter 17.

Subchapter 64. [Reserved]

Subchapter 65. [Reserved]

History

The “Design and Engineering Services Department” is now in the Division of Community Development, See 2 N.N.C. § 1451 *et seq.* and GSCS-70-94, September 7, 1994. See also, ACAP-59-85, April 11, 1985. 1977 Budget. 1974 Budget. 1972 Budget.

Subchapter 66. [Reserved]

Subchapter 67. [Reserved]

History

Formerly Community Development Program, see now 2 N.N.C. § 1451 *et seq.* and GSCS-70-94, September 7, 1994, adopting a Master Plan of Operation for the Division of Community Development.

Subchapter 68. [Reserved]

Subchapter 69. [Reserved]

History

CAP-41-94, April 20, 1994. Adopted Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources’ department and program plans of operation from the Navajo Nation Code, including the Department of Recreational Resources, (Parks and Recreation Department) codified at 19 N.N.C. §§ 301-304. 1978 Budget Resolution. 1977 Budget Resolution. 1976 Budget Resolution. CJA-16-72, January 27, 1972. **Note.** This subchapter 69, § 2801 *et seq.*, “Parks and Recreation Department”, is also deleted pursuant to the direction given by the Office of the Attorney General’s memorandum dated January 4, 1991, regarding codification of enabling legislation.

Subchapter 70. [Reserved]

Subchapter 71. [Reserved]

History

Formerly Property and Purchasing was discontinued by the 1978 Budget. (See now Division of Finance, 2 N.N.C. Subchapter 11.)

- Subchapter 72. [Reserved]
- Subchapter 73. [Reserved]
- Subchapter 74. [Reserved]
- Subchapter 75. [Reserved]
- Subchapter 76. [Reserved]
- Subchapter 77. [Reserved]
- Subchapter 78. [Reserved]
- Subchapter 79. [Reserved]
- Subchapter 80. [Reserved]
- Subchapter 81. [Reserved]

History

Note. This subchapter 81, § 3101, *et seq.*, formerly “Range Resources Department” is now part of the Division of Natural Resources, see 2 N.N.C. § 1901 *et seq.* See the Office of the Attorney General’s memorandum dated January 4, 1991 regarding codification of enabling legislation.

- Subchapter 82. [Reserved]
- Subchapter 83. [Reserved]

History

CAP-41-94, April 20, 1994. Adopting Enabling Legislation for the Division of Natural Resources and repealed and deleted certain Division of Natural Resources’ department and program plans of operation from the Navajo Nation Code, including the Department of Range Management (Range and Livestock Department), previously codified at 2 N.N.C. § 401 *et seq.* 1977 Budget Resolution. CMA-34-66, March 2, 1966. CAU-50-59, August 6, 1959. CS-82-57, September 18, 1957. CF-29-57, February 16, 1957.

Note. Subchapter 83, § 3151, *et seq.*, formerly the “Range and Livestock Department” is deleted. See by the Office of the Attorney General’s memorandum dated January 4, 1991, regarding codification of enabling legislation.

- Subchapter 84. [Reserved]
- Subchapter 85. [Reserved]

History

Previously codified sections on the Navajo Tribal Special Education Department under the Division of Education within the Executive Branch deleted. See Attorney General’s memorandum dated January 4, 1991 regarding codification of enabling legislation. See now 2 N.N.C. § 1801 *et seq.*

Subchapter 86. [Reserved]

Subchapter 87. [Reserved]

History

Formerly "Navajo Water Commission". Discontinued by ACJ-1 12-83, July 14, 1983 and CS-28-83, September 28, 1983.

Subchapter 88. [Reserved]

Subchapter 89. [Reserved]

Subchapter 90. [Reserved]

Subchapter 91. [Reserved]

History

The Navajo Tax Commission formerly codified at Subchapter 91 is now found at Subchapter 41.

Subchapter 92. [Reserved]

Subchapter 93. [Reserved]

History

CAP-47-95, April 21, 1995. Adopted Enabling Legislation for the Environmental Protection Agency and removed it from within the Division of Natural Resources. Also adopted the Navajo Nation Environmental Policy Act. See 2 N.N.C. § 1921, *et seq.*

GSCJY-50-94, July 13, 1994. Adopted a Plan of Operation for the Environmental Protection Agency.

ACAP-94-76, April 21, 1976.

CAU-72-72, August 10, 1972. Established the Environmental Protection Commission.

Cross References

Navajo Nation Environmental Protection Agency, see 2 N.N.C. § 1921 *et seq.*

Subchapter 94. [Reserved]

Subchapter 95. [Reserved]

History

Navajo Telecommunications Regulatory Commission formerly codified at Subchapter 95 is now found at Subchapter 43.

Subchapter 96. [Reserved]

Subchapter 97. [Reserved]

History

Formerly the "Records Management Committee". Records Management is now in the Division of General Services. See ACAU-163-77.

Subchapter 98. [Reserved]

Subchapter 99. [Reserved]

History

Motor Vehicle Review Board formerly codified at Subchapter 99 is now found at Subchapter 44.

Subchapter 100. [Reserved]

Subchapter 101. [Reserved]

History

Formerly Legal Aid & Defender Services. Discontinued by CAP-34-93, April 28, 1993. See now 2 N.N.C. § 1991.

Subchapter 102. [Reserved]

Subchapter 103. [Reserved]

History

Formerly "Cartographic Facility". Discontinued by ACN-211-77, November 2, 1977 and ACD-223-77, December 21, 1977.

Subchapter 104. [Reserved]

Subchapter 105. [Reserved]

History

"Energy Impact Mitigation Commission" (EIMC) §§ 3701-3704, was discontinued by CS-28-83, passed September 28, 1983.

Subchapter 106. [Reserved]

Subchapter 107. [Reserved]

Chapter 6. Navajo Nation Ethics in Government Law

Subchapter 1. Title and Purpose; Definitions

Section

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Subchapter 1. Title and Purpose; Definitions

§ 3741. Title

This chapter may be cited as the Navajo Nation Ethics in Government Law.

History

CJY-23-92, July 20, 1992.
 CF-11-88, February 4, 1988.
 CAU-40-84, August 9, 1984.

Note. This section was formerly § 3751.
 Amended generally by CJY-23-92.

§ 3742. Legislative purpose and intent

A. Purpose. Where government is founded upon the consent of the governed, the people are entitled to have complete confidence in the loyalty and integrity of their government. The purpose of the Navajo Nation Ethics in Government Law, therefore, is to require accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, by:

1. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such

2 N.N.C. § 3742

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officials and employees which permits opportunities for private gain or advantage to influence government decisions;

2. Requiring public officials and employees to abstain from using any function of their office or duties in a manner which could place or appear to place their personal economic or special interests before the interests of the general public.

B. Intent. It is the intention of the Navajo Nation Council that the provisions of this Navajo Nation Ethics in Government Law be construed and applied in each instance, so as to accomplish its purposes of protecting the Navajo People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

History

CAP-49-99, April 23, 1999. Subsection (A)(2) repealed in elimination of economic disclosure statement requirements.

CJY-23-92, July 20, 1992.

Note. Formerly § 3752.

Library References

Indians ☞32(4.1, 6).

Officers and Public Employees ☞110.

Westlaw Topic Nos. 209, 283.

C.J.S. Indians § 51.

C.J.S. Officers and Public Employees §§ 234 to 245.

§ 3743. Definitions

As used in this chapter:

A. “Business” includes any enterprise, organization, trade, occupation or profession whether or not operated as a legal entity for profit, including any business, trust, holding company, corporation, partnership, joint venture, or sole proprietorship, consultant or other self-employed enterprise.

B. “Business with which the person is associated” includes any business in which the person or a member of the person’s immediate family is a director, officer, partner, trustee or employee, holds any position of management or receives income in any form such as wages, commission, direct or indirect investment worth more than one thousand dollars (\$1,000) or holds any ownership, security or other beneficial interest, individually or combined, amounting to more than ten percent (10%) of said business.

C. “Candidate for public office” means any person who has publicly announced such intent, authorized promotion for, or filed a declaration of candidacy or a petition to appear on the ballot for election as a public official; and any person who has been nominated by a public official or governmental body for appointment to serve in any public capacity or office.

D. “Committee” means the Ethics and Rules Committee of the Navajo Nation Council.

E. “Compensation” or “income” means any money or thing of value received, or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend,

royalty, rent, capital gain, or any other form of recompense or any combination thereof.

F. “Confidential information” means information which by law or practice is not available to the public at large.

G. “Conflict of interest” means the reasonable foreseeability that any personal or economic interest of a public official, or employee, will be affected in any materially different manner from the interest of the general public, by any decision, enactment, agreement, award or other official action or function of any governmental body or political subdivision of the Navajo Nation.

H. “Dependent business” means any business, as defined herein, in which the person or members of the person’s immediate family, individually or combined, have any direct or indirect ownership, investment, security or other beneficial interest amounting to more than twenty percent (20%) of such business.

I. “Employee” means any person or entity working for, or rendering or exchanging any services or performing any act for or on behalf of another person, organization or entity in return for any form of pay or other compensation or thing of value received or to be received at any time temporarily, permanently or indefinitely, in any capacity; whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.

J. “Employment” means the status or relationship existing or created by and between a person designated or acting as an “employee” as defined herein and the person, organization, group or other entity for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for pay or any other form of compensation.

K. “Economic interest” means an interest held by a person, members of the person’s immediate family or a dependent business, which is:

1. Any ownership, income, investment, security or other beneficial interest in a business, or
2. Any employment or prospective employment for which negotiations have already begun.

L. “Gift” includes any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.

M. “Governmental body” means any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau, committee, legislative body, agency, and any establishment of the Executive, Administrative, Legislative or Judicial Branch of the Navajo Nation, and certified Chapters of the Navajo Nation.

N. “Immediate family” includes spouse, children and members of the household of public officials, public employees and candidates for public office, as defined in this chapter.

O. “Ministerial action” means an action that a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person’s own judgment upon the propriety of the action being taken.

P. “Official discretionary action” means any official function of public office or employment, including any vote, decision, opinion, allocation, recommendation, approval, disapproval, finding, delegation, authorization, contract, commitment, settlement, disbursement, release or other action which involves the exercise of discretionary authority, for, on behalf of or in any manner affecting any interest or property of the Navajo Nation, including any governmental body, political subdivision or member thereof.

Q. “Public employee” means any employee, as defined herein, temporarily, periodically, permanently or indefinitely in the employment of the Navajo Nation, and/or any governmental body thereof as defined herein, including intergovernmental personnel.

R. “Public office” means any elected or appointed office or position of permanent or temporary employment in any governmental body of the Navajo Nation as defined herein.

S. “Public official” means any person holding an elective or appointed office in any governmental body of the Navajo Nation as defined herein, including grazing committee members.

History

CJY-23-92, July 20, 1992.
CF-11-88, February 4, 1988
CAU-40-84, August 9, 1984.

as such sections generally do not appear at the end of statutes.

Note. Formerly § 3758. The definition section of this chapter was placed at the beginning

Cross References

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

Subchapter 2. Standards of Conduct and Restricted Activities of Public Officials and Employees

History

Note. Subchapter 2 was formerly designated § 3753.

Library References

Indians ⇄32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 3744. Conduct in conformity with applicable rules and laws

Public officials and employees shall at all times conduct themselves so as to reflect credit upon the Navajo People and government; and comply with all

applicable laws of the Navajo Nation with respect to their conduct in the performance of the duties of their respective office or employment.

History

CJY-23-92, July 20, 1992.
 CAU-40-84, August 9, 1984.
Note. Formerly § 3753(A).

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 3745. General prohibitions; conflicts of interest

A. No public official or employee shall use, or attempt to use, any official or apparent authority of their office or duties which places, or could reasonably be perceived as placing, their private economic gain or that of any special business interests with which they are associated, before those of the general public, whose paramount interests their office or employment is intended to serve.

B. It is the intent of this Subsection (B) that public officials and employees of the Navajo Nation avoid any action, whether or not specifically prohibited by the Standards of Conduct set out herein, which could result in, or create the appearance of

1. Using public office for private gain;
2. Giving preferential treatment to any special interest organization or person;
3. Impeding governmental efficiency or economy;
4. Losing or compromising complete independence or impartiality of action;
5. Making a government decision outside official channels; or
6. Adversely affecting the confidence of the people in the integrity of the government of the Navajo Nation.

History

CJY-23-92, July 20, 1992.
 CAU-40-84, August 9, 1984.
Note. Formerly § 3753(B).

Library References

Indians ⇄32(6).	C.J.S. Indians § 51.
Officers and Public Employees ⇄110.	C.J.S. Officers and Public Employees §§ 234 to 245.
Westlaw Topic Nos. 209, 283.	

§ 3746. Use of confidential information for private gain

No public official or employee shall use or disclose confidential information gained in the course of or by reason of their official position or activities, to further their own economic and personal interest or that of anyone else.

2 N.N.C. § 3746

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History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753(C).

Library References

Indians Ⓒ32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3747. Restrictions against incompatible interests or employment

A. Public officials and employees shall not:

1. Have direct or indirect financial or other economic interests nor engage in such other employment or economic activity which, as determined in accordance with the provisions of this chapter and other applicable laws of the Navajo Nation, necessarily involve inherent substantial conflict, or appears to have such substantial conflict, with their responsibilities and duties as public officials or employees of the Navajo Nation; nor

2. Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through their public office or employment; nor

3. Acquire any economic or other financial property, contractual or other economic interest at a time when they believe or have reason to believe, that it will directly and substantially affect or be so affected by their official actions or duties.

B. Subject to the restrictions and conditions set forth in this chapter, public officials and employees are free to engage in lawful financial transactions to the same extent as the general public. Governmental bodies and agencies of the government of the Navajo Nation may, however, adopt further approved restrictions upon such transactions or employment as authorized herein and by other applicable laws of the Navajo Nation, in light of special circumstances or their particular duties.

C. No business or other entity shall employ a public official or employee if such employment is prohibited by or otherwise violates any provision of this chapter.

D. The term “employment”, within the meaning of this section, includes professional services and other services rendered by a public official or employee, whether rendered as an employee, consultant or other independent contractor.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753 (D).

Library References

Indians Ⓒ32(6).
Officers and Public Employees Ⓒ30.1.

Westlaw Topic Nos. 209, 283.
C.J.S. Indians § 51.

C.J.S. Officers and Public Employees §§ 37 to
39, 44.

§ 3748. Abstention from official action

A. When a public official or employee is required to take official action on a matter in which such public official or employee has a personal economic interest, they should first consider eliminating that interest. If that is not feasible nor required under § 3747 above, such public official or employee shall:

1. Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official or employee is aware of such conflict and they shall deliver copies of such statement to the responsible party for inclusion in the official record of any vote or other decision or determination and also to the Ethics and Rules Committee;

2. Abstain from voting, sponsoring, influencing or in any manner attempting to influence any vote, official decision or determination which would favor or advance such person's personal economic interest in such matter; and

3. Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the governmental body making such decision or determination, or otherwise legally required by law, (such as the vote of an elected representative delegate which is cast on behalf of his or her electorate constituents), or unless such person's vote, position, recommendation or participation is contrary to their personal economic interest.

B. Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a governmental body, agency or commission to take such action or vote upon such matter.

C. Public employees shall also deliver a copy of such statement to the Committee and to their immediate superior, if any, who shall assign the matter to another. If such employee has no immediate superior, he or she shall take such steps as the Committee shall prescribe or advise, to abstain from influencing actions and decisions in the matter.

D. In the event that a public official's or employee's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Committee.

History

CJY-23-92, July 20, 1992.
CF-11-88, February 4, 1988.

CAU-40-84, August 9, 1984.
Note. Formerly § 3753 (E).

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. Construction and application

“... Navajo Nation employees who are also elected officials are prohibited from claiming a salary while attending a meeting as an elected official, and are required to take annual leave or leave without pay to tend to their elected position duties. No ‘flex time’ is mentioned in the statute.” *Barton v. Navajo Nation Ethics and*

Rules Office, No. SC–CV–48–01, slip op. at 3 (Nav. Sup. Ct. September 15, 2003).

“While the ethics law prevents conflicts of interests, it also provides solutions that the parties can use.” *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 365 (Nav. Sup. Ct. 1998).

§ 3749. Navajo Nation government contracts; restrictions and bid requirements

A. No public official or employee or any member of such person’s immediate family shall be a party to, nor have an interest in the profits or benefits of, any governmental contract of the Navajo Nation or of any investment of funds of the Navajo Nation, unless the contract or the investment meets the following requirements:

1. The contract is let by notice and competitive bid or procurement procedures as required under all applicable laws, rules, regulations and policies of the Navajo Nation, for necessary materials or services for the governmental agency or entity involved;
2. If the continuous course of a business commenced before the public official or employee assumed his or her current term of office or employment;
3. The entire transaction is conducted at arm’s length, with the governmental agency’s full knowledge of the interest of the public official or employee or a member of his or her immediate family;
4. The public official or employee has taken no part in the determination of the specifications, deliberations or decision of a governmental agency with respect to the public contract; and
5. The public official or employee is not a member, office holder, employee or otherwise directly associated with the same governmental agency or entity primarily responsible for letting, performing, receiving, regulating or otherwise supervising the performance of the contract.

B. The requirements of § 3749(A) shall not apply to the negotiation, execution, award, transfer, assignment or approval of mineral or non-mineral leases, permits, licenses and like transactions other than contracts involving the investment, award or payment of government funds; provided, that such leases, permits, licenses and like transactions shall be subject to all other provisions of this section and to all other applicable laws, rules and regulations of the Navajo Nation and its governmental bodies; and provided further that § 3749 (A) shall likewise fully apply to all contracting and other activities, conducted thereunder, which are subject to this chapter. Provisions in accordance with the purposes and intent of this chapter shall be incorporated as part of the rules,

regulations and guidelines applicable to the negotiation, approval and assignment of such leases, permits, licenses and like transactions.

C. In the absence of bribery or a purpose to defraud, a public official or employee or a member of his or her immediate family shall not be considered as having an interest in a public contract or the investment of public funds, when such a person has a limited investment interest of less than ten percent (10%) of the ownership of net assets, or an interest as creditor of less than ten percent (10%) of the total indebtedness of any business or other entity which is the contractor on the public contract involved or in which public funds are invested, or which issues any security therefor.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753(F).

Cross References

Contract requirements, see 2 N.N.C. § 223.
Navajo Business Preference Law, see 5 N.N.C. § 201 *et seq.*

Library References

Indians ☞24, 32(4.1, 6).	C.J.S. Indians §§ 12, 31, 51.
Public Contracts ☞4.	C.J.S. Public Administrative Law And Procedure § 5.
Westlaw Topic Nos. 209, 316A.	

§ 3750. Restrictions on assisting or representing other interests before governmental bodies for compensation

No public official or employee except an employee of a governmental body duly established and authorized for such purposes by the Navajo Nation shall represent or otherwise assist any person or entity other than the Navajo Nation or a governmental body or political subdivision thereof, for compensation, before any governmental body where the matter before the governmental body is of a non-ministerial nature. This section shall not be construed to prohibit the duties of elected or appointed public officials to represent their constituents' interests before government agencies or entities nor the performance of ministerial functions, including but not limited to the filing or amendment of tax returns, applications for permits and licenses, and other documents or reports. It does, however, prohibit representation of such other interests for any fee or compensation in seeking to obtain any legislation, contract, payment of any claim or any other governmental benefit.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753 (G).

Library References

Indians ☞32(6).	Westlaw Topic No. 209.
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C.J.S. Indians § 51.

§ 3751. Restrictions on assisting or representing other interests subsequent to termination of public office or employment

A. No former public official or employee nor partner, employee or other associate thereof shall, with or without compensation, after the termination of such public office or employment, knowingly act as agent or attorney for or otherwise represent any other person or entity (except the Navajo Nation, its governmental bodies or political subdivisions) by formal or informal appearance nor by oral or written communication, for the purpose of influencing any governmental body of the Navajo Nation or any officer or employee thereof, in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which such former public official or employee personally and substantially participated, through approval, disapproval, recommendation, rendering of advice, investigation or otherwise, while so acting or employed.

B. With respect to any such matter which was actually pending among such former public official's or employee's responsibilities, but in which such person did not participate as set forth in Subsection (A), the prohibitions set forth hereunder shall apply for the period of two (2) years following the termination of such public office or employment.

C. Nothing in this chapter shall prevent a former public official or employee from appearing and giving testimony under oath, nor from making statements required to be made under penalty of perjury, nor from making appearances or communications concerning matters of a personal and individual nature which pertain to such former public official or employee or are based upon such person's own special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.

D. The Navajo Nation, its governmental bodies and political subdivisions shall not enter into any contract with, nor take any action favorably affecting or economically benefitting in any manner differently from members of the public at large, any person, business, governmental or other entity, which is assisted or represented personally in the matter by a former public official or employee whose official act, while a public official or employee, directly contributed to the making of such contract or taking of such action by the Navajo Nation or any governmental body or political subdivision thereof.

E. Nothing contained in this subsection shall prohibit a former public official or employee from being retained or employed by the governmental entity which he or she formerly served.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753(H).

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3752. Unauthorized compensation or benefit for official acts

A. No public official or employee shall accept or receive any benefit, income, favor or other form of compensation for performing the official duties of their office or employment, beyond the amount or value which is authorized and received in his or her official capacity for performing such duties.

B. This section shall not be construed to prohibit the receipt of authorized compensation for the performance of other distinct and lawful public duties by public officials or employees.

C. No public official or employee, however, shall accept any benefit, income, favor or other form of compensation for the performance of the duties of any other official or employment not actually performed or for which such official or employee is not otherwise properly authorized or entitled to receive.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753(1).

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3753. Unauthorized personal use of property or funds of the Navajo Nation

No public official or employee shall use any property of the Navajo Nation or any other public property of any kind for other than as authorized and approved for official purposes and activities. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.

History

CJY-23-92, July 20, 1992. CAU-40-84, August 9, 1984.
Note. Formerly § 3753 (J).

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Annotations

1. Construction and application

Re: conflicts of interest: “This statute prohibits any conflict of interest, defined as having a direct or indirect interest in an activity which creates, or appears to create, a substantial conflict with the duties of office. It requires proof of an interest or stake in an activity which conflicts with one’s duty to serve the public and not use the public position for personal gain.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 444 (Nav. Sup. Ct. 1991).

2. Transparency requirements

Re: gifts and loans: “The statute prohibits the practice of businesses who have done business with the Navajo Nation giving a gift or benefit to influence continued favors. There, the Navajo Nation had to prove the identity of the official, the identity of the giver, and the nature of the gift or benefit.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443–444 (Nav. Sup. Ct. 1991).

§ 3754. Staff misuse prohibited

No public official or employee shall employ, with funds of the Navajo Nation, any unauthorized person(s) nor persons who do not perform duties commensurate with such compensation, and shall utilize authorized employees and staff only for the official purposes for which they are employed or otherwise retained.

History

CJY–23–92, July 20, 1992.
CAU–40–84, August 9, 1984.
Note. Formerly § 3753(K).

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3755. Anti-nepotism

No public official or employee shall employ, appoint, or otherwise cause to be employed, nor nominate, nor otherwise influence the appointment or employment to any public office or position with the Navajo Nation or any governmental or political subdivision thereof, any person or persons related by consanguinity or affinity within the third degree, nor any member of the same household as said public official or public employee. Assignment of such persons to duties, positions, governmental offices or other entities shall in all instances be made in strict compliance with the current provisions of the Personnel Policies and Procedures of the Navajo Nation, as amended from time to time.

History

CJY–23–92, July 20, 1992.
CAU–40–84, August 9, 1984.
Note. Formerly § 3753(L).

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3756. Restrictions against gifts or loans to influence official acts

Except as otherwise provided herein or by applicable rule or regulation adopted hereunder by the Ethics and Rules Committee of the Navajo Nation Council, or by other applicable law, no public official or employee shall solicit or accept for himself/herself or another, any gift, including economic opportunity, favor, service, or loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of one hundred dollars (\$100.00) or more in any calendar year, from any person, organization or group which:

A. Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any governmental office or entity with which the public official or employee is associated or employed; or

B. Conducts operations or activities which are regulated or in any manner supervised by any governmental office or entity with which the public official or employee is associated or employed; or

C. Has any interest which, within two (2) years, has been directly involved with, or affected by, the performance or non-performance of any official act or duty of such public official or employee or of the government office or entity with which the public official or employee is associated or employed or which the public official or employee knows or has reason to believe is likely to be so involved or affected.

History

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

Note. Formerly § 3753(M).

Library References

Indians ☞32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 3757. Permitted gifts, awards, loans, reimbursements and campaign contributions

Section 3756 shall not be construed to prohibit:

A. An occasional non-pecuniary gift, insignificant in value;

B. Gifts from and obviously motivated by family or social relationships, as among immediate family members or family inheritances;

C. Food and refreshments customarily made available in the ordinary course of meetings where a public official or employee may properly be in attendance;

D. An award or honor customarily-and publicly presented in recognition of public service; and/or

E. A political campaign contribution, in accordance with all applicable election laws and provided that such gift or loan is actually used in the

recipient's political campaign for elective office of a governmental body or political subdivision thereof and provided further that no promise or commitment regarding the official duties of office or employment is made in return for such contribution.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3753(N).

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3758. Adoption of supplemental codes of conduct for official and employees of governmental entities of the Navajo Nation

A. The chief executive or administrator of every governmental entity of the Navajo Nation which is subject to the provisions of this chapter is authorized to submit for approval and adoption by the Committee such supplemental rules, regulations and standards of conduct for the public officials and employees of such entity, which are necessary and appropriate to the special conditions relating to their particular functions, purposes and duties and not in conflict with the purposes and other provisions of this chapter. Upon adoption, such supplemental standards, rules and regulations shall be implemented in the same manner and to the extent applicable, as are all other standards, rules and regulations provided and adopted in accordance with the provisions of this chapter.

B. The Ethics and Rules Committee is also authorized to adopt supplemental rules, regulations, and standards of conduct for all elected officials as defined by the Navajo Nation Code.

C. Other Navajo Nation Political Governing Bodies.

1. Other political governing bodies of the Navajo Nation are authorized and directed to draft, adopt, implement and administer standards of conduct, disclosure requirements and other procedures, rules and regulations in conformity with the purposes and provisions of this chapter.

2. Any lawful authorization for any sponsorship or conduct of participation or involvement in any business activity by any political subdivision of the Navajo Nation shall be conditioned upon its prior adoption of such provisions, and enforcement thereof, as approved by the Committee.

D. The Committee and the Navajo Nation Department of Justice shall provide such assistance as needed and requested by such governmental entities and political governing bodies of the Navajo Nation, in the preparation and drafting of such supplemental and implementing provisions as authorized and which are not in conflict with the purposes and provisions of this chapter.

History

CAP-19-02, April 16, 2002. Subsection (B) added and (C) amended.
 CD-93-85, December 4, 1985.
 CJY-23-92, July 28, 1992. CAU-40-84, August 9, 1984.
 CF-11-88, February 4, 1988. **Note.** Formerly § 3753(0).

Library References

Indians ↻32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

Subchapter 3. [Repealed]

History

CAP-49-99, April 23, 1999. Subchapter 3 repealed in elimination of economic disclosure statement requirements.

Subchapter 4. Implementation and Compliance with Ethics in Government Law; Duties and Responsibilities; Investigation, Hearings, Findings, Reports and Recommendations

History

Note. This subchapter was formerly § 3756.

§ 3766. Ethics and Rules Committee of the Navajo Nation Council—Powers and duties

In accordance with all powers and authority as provided in 2 N.N.C. §§ 831-835 and in addition, the Committee shall have the specific duties, responsibilities and authority to:

- A. Adopt, amend and publish rules and regulations to implement all provisions of this chapter. Before such rules and regulations are enacted a 45-day public notice and comment period shall be allowed.
- B. Ensure that all appropriate measures are taken for protecting the confidentiality of all statements, records, documents, other materials and information designated as such by this chapter or by any other applicable rules or regulations of the Navajo Nation or other competent jurisdiction.
- C. Provide written advisory opinions to guide the conduct and address specific questions when requested by officials and employees who are subject to this chapter.
 - 1. All opinions shall be confidential and maintained on record within the Ethics and Rules Office;
 - 2. All opinions shall be binding upon the Committee, with regard to matters related to the specific request, until amended or revoked by the Committee.

2 N.N.C. § 3766

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D. The Committee may initiate and/or receive, review and/or investigate complaints filed with the Ethics and Rules Office.

E. The Committee shall conduct Administrative Hearings to determine violations or noncompliance with this chapter. All Committee hearings shall follow Rules of Procedures established and adopted by the Committee. The director shall be charged with the responsibility of representing the Navajo Nation in bringing forth all complaints filed under this chapter.

History

CAP-49-99, April 23, 1999. Subsections (B) through (H) repealed in elimination of economic disclosure statement requirements.
CJY-23-92, July 20, 1992.
CD-93-85, December 4, 1985.

CAU-40-84, August 9, 1984.

Note. Formerly § 3756(A)(1)-(A)(10)(B). Also, new § 3766(F) slightly reworded for clarity.

Library References

Indians ⇨32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3767. Retaliation prohibited

A. Retaliation against any party or witness to a complaint shall be prohibited. Retaliation shall include any form of adverse or punitive action. This protection shall also be afforded to any person(s), including Ethics and Rules Office staff, offering testimony or evidence or complying with directives of the Committee.

B. Any violations shall be subject to penalties under this chapter, as well as obstruction and contempt violations of both the civil and criminal codes of the Navajo Nation.

History

CF-11-88, February 4, 1988.
CJY-23-92, July 20, 1992.

Note. Formerly § 3756(A)(10). Also heading "Retaliation Prohibited" was added for organizational purposes.

Library References

Indians ⇨32(4, 13).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115, 157.

§ 3768. Dismissals

Upon recommendation of the Ethics and Rules Office, the Committee may dismiss any complaint which the Committee determines has insufficient facts to constitute a violation or noncompliance to this chapter; or if there is insufficient evidence to support the allegations; or if the Committee lacks personal and subject matter jurisdiction.

History

CJY-23-92, July 20, 1992.

CAU-40-84, August 9, 1984.

Note. Formerly § 3756(A)(I 1). Also, heading “Dismissals” was added for organizational purposes.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3769. Statute of Limitations

No action shall be brought under this chapter more than four (4) years after cause of action has accrued.

History

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures. CJY-23-92, July 20, 1992.

Note. Formerly § 3756(A) (12).

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3770. Administrative hearings

A. The Committee, in the capacity of a quasi-judicial body, shall conduct administrative hearings on any alleged violation or noncompliance.

B. The Ethics and Rules Office shall act in the capacity of complainant on matters to be heard by the Committee.

C. The Hearing body may impose or recommend any sanctions, civil damages, restitution, or other penalties provided in this chapter, or refer their findings to other appropriate entities for action.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.

Note. Formerly § 3756(A)(13). Also, heading “Administrative Hearings” was added for organizational purposes.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3771. Appeals to Supreme Court

A. The Supreme Court of the Navajo Nation shall have jurisdiction to hear appeals from final decisions. Appeals shall be limited to questions of law.

B. A notice of appeal shall be filed within ten (10) working days of the issuance of a written decision.

2 N.N.C. § 3771

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History

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.
CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.

Note. Formerly § 3756(A)(14). Also, heading “Appeals to District Courts” was added for organizational purposes.

Library References

Indians ⚡32(6, 7).
Westlaw Topic No. 209.

C.J.S. Indians §§ 51, 60 to 62, 139 to 143, 152.

§ 3772. Deliberations by the committee

In any complaint where the accused is the President, Vice-President, Chief Justice, or other judges of the Navajo Nation, chapter official or a Council Delegate, the Ethics and Rules Committee, upon completion of the administrative hearing, shall deliberate in executive session and by resolution render its findings of facts, conclusions of law and recommendations for sanction.

History

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.
CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.

Note. Formerly § 3756(A)(15)(a). Also, heading “Recommendations to the Navajo Nation Council for Certain Officials” was added for organizational purposes.

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3773. [Repealed]

§ 3774. Committee’s power as a quasi-judicial body

A. The Committee shall hold in contempt any person found disobeying any lawful order, process writ, finding or direction of the Committee.

B. The Committee is authorized to administer oaths and issue subpoenas to compel attendance and testimony of witnesses, or to produce any documents relevant to the matter before the Committee.

C. The Committee shall maintain a complete record of all hearings, including all testimony and documents presented as evidence.

D. The Committee shall not be bound by formal rules of evidence.

E. The Committee shall conduct all hearings in open session. All records, transcripts, and other documents in the possession of the office shall remain confidential unless such information are submitted by the office as evidence.

F. The Committee shall cause a copy of any order or decision to be delivered to the appropriate branch of the government.

History

CJY-23-92, July 20, 1992
Note. Formerly § 3756(B).

Library References

Indians ⇄32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 3775. Committee conflict of interest

No Committee member shall hear matters before the Committee which involve a member of his/her immediate family and/or personal economic interest.

History

CJY-23-92, July 20, 1992.
Note. Formerly § 3756(C).

Library References

Indians ⇄32(4).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 51 to 52, 115.

§ 3776. Independent legal counsel

Subject to all applicable laws, the Committee may obtain independent legal counsel to assist and advise the Committee.

History

CJY-23-92, July 20, 1992
Note. Formerly § 3756(D).

Library References

Indians ⇄32(4).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 51 to 52, 115.

§ 3777. Special prosecutors

A. Notwithstanding any provision in this chapter, any Special Prosecutor appointed pursuant to 2 N.N.C. §§ 2021–2024 shall have the following powers and authority in connection with any administrative proceeding under this chapter, exercisable in the name of the Navajo Nation, with respect to any matter within such Special Prosecutor’s jurisdiction:

1. To file a complaint with the Committee alleging a violation of this chapter by any person subject thereto;
2. To prosecute the complaint and represent the Navajo Nation’s interest in any and all proceedings thereon;
3. To exercise an unconditional right to intervene and be substituted as the complainant in any proceeding pending under this chapter, without regard to the stage of such proceedings; and

B. In the event of any administrative proceeding under this chapter in which the Navajo Nation, through a Special Prosecutor, is a complainant against a person, any other complaint filed against such person hereunder

2 N.N.C. § 3777

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(whether filed before or after the date on which the Navajo Nation became complainant) shall abate and shall be dismissed without prejudice, as to any common allegation of prohibited conduct.

History

CAP-50-99, April 23, 1999. Amended to reflect changes in appellate procedures.
CJY-23-92, July 20, 1992.

Note. Formerly § 3756(E) and (F). Also, heading “Special Prosecutors” added for organizational purposes.

Library References

Indians ⇨32(4, 13).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115, 157.

§ 3778. [Repealed]

§ 3779. Other relief not barred

Nothing herein shall be construed as foreclosing the right of the Navajo Nation, through a Special Prosecutor or otherwise, to initiate proceedings to secure the relief and sanctions referred to in §§ 3781 or 3782 of this chapter.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3756(1).

Cross References

Civil penalties, see 2 N.N.C. §§ 37808, 3781 (D) and 3782(F).

Library References

Indians ⇨32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Subchapter 5. Sanctions and Penalties

§ 3780. Administrative sanctions

A. Upon finding that there has been violation of any provision of this chapter, the Committee may impose any or all of the following penalties or sanctions:

1. Removal, discharge or termination from public office or employment in accordance with applicable Navajo Nation law and procedure.
2. Disqualification for all elective public offices of the Navajo Nation and/or appointment to or employment in any public office of the Navajo Nation, for five (5) years from the effective date of removal, discharge or any other termination of public office or employment of the Navajo Nation.

3. Suspension from public office or employment and forfeiture of all compensation and benefits accruing therefrom, for not less than thirty (30) days nor for more than one (1) year.

4. Accordingly, any public employee of the Navajo Nation shall be subject to discipline, including suspension without pay or other benefits and dismissal as provided by other laws, regulations and personnel policies or procedures applicable thereto.

5. Issuance of a written public reprimand, which shall be entered into such person's permanent record of employment or office and upon the permanent record of the public office or entity of which such person is a member or employee, according to provision of applicable Navajo Nation law and procedures.

6. Issuance of a private reprimand to such person, with or without suspension of any or all other sanctions provided herein.

7. Imposition of restitution or such other civil penalties as hereinafter provided under § 3781.

B. Any person who is found to have violated any provisions of this chapter shall forfeit any elective public office. This forfeiture provision shall not apply to any person against whom the only sanction imposed under § 3780(A) is for a suspension from public office, or a written public reprimand, or private reprimand, or restitution of less than one thousand dollars (\$1,000).

C. No sanctions or penalty provided herein shall limit any other powers of the Navajo Nation Council, Navajo Nation Courts, Judicial, Executive or Legislative Branches of the Navajo Nation, nor of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.

History

CAP-51-99, April 23, 1999. Subsection (B) amended.
 CAU-40-84, August 9, 1984.
 CJY-23-92, July 20, 1992.

Note. Formerly § 3757(A).

Library References

Indians ⇄32(6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

Annotations

1. Jurisdiction, generally
 " . . . [S]ection 3780(C) does not give this Court appellate jurisdiction over final decisions of the Ethics and Rules Committee finding Navajo Nation Council delegates in violation of the Ethics in Government Law." *Vandever, v. The Navajo Nation Ethics and Rules Office*, 7 Nav. R. 356, 357 (Nav. Sup. Ct. 1998).

§ 3781. Other civil damages

A. A person found in violation of this mandate shall be further subject to, and personally liable for the following provisions, without regard to the imposition of any administrative sanction or criminal conviction:

1. Any public official or employee who violates any economic disclosure or reporting requirement of this chapter may be held liable to the Navajo

2 N.N.C. § 3781

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Nation for civil damages in an amount not to exceed the value of any interest not properly reported.

2. Any public official or employee who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in Subchapter 2 and 3 of this chapter shall be liable to the Navajo Nation for civil damages in an amount not exceeding three (3) times the amount or value of the benefit or benefits so obtained.

B. If two (2) or more persons are responsible for any violation, each of them shall be liable to the Navajo Nation for the full amount of any civil damages prescribed herein, the full amount of which may be imposed upon and collected from each of them individually.

C. Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to the Navajo Nation and shall be paid into the General Fund of the Navajo Nation.

D. No imposition of any or all civil damages provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

History

CJY-23-92, July 20, 1992, added Subsection (A). **Note.** Formerly § 3757(B).
CAU-40-84, August 9, 1984.

Library References

Indians ⇨32(6, 7, 13).
Westlaw Topic No. 209.

C.J.S. Indians §§ 51, 60 to 62, 139 to 143,
152, 157.

§ 3782. Misdemeanor violations; punishments

The Navajo Nation, through the Office of the Prosecutor or Special Prosecutor shall be responsible for the enforcement of the following subsection.

A. Any person who is convicted or found guilty of knowingly and willfully violating any provision of subchapter 2 of this chapter is guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than one hundred eighty (180) days, or both.

B. Any person knowingly and willfully filing any complaint authorized under this chapter or by any other applicable law, without just cause and with malice or other improper purpose, including personal, political or other harassment or embarrassment, shall be guilty of a misdemeanor and for a first offense shall be fined not more than five hundred dollars (\$500.00) and may be sentenced to imprisonment for not more than one hundred eighty (180) days, or both.

C. Upon conviction of any subsequent offense prescribed in subsection (A) or (B) of this section, such person shall be fined not less than five hundred

dollars (\$500.00) and shall be sentenced to imprisonment of not less than thirty (30) days nor more than one hundred eighty (180) days.

D. A person convicted of a misdemeanor under this chapter shall not be a candidate for elective public office, nor be eligible for any appointive office of the Navajo Nation, nor any of its governmental entities or political governing bodies; for five (5) years following the date of conviction.

E. A plea of nolo contendere shall be deemed a conviction for purposes of this chapter.

F. No criminal or misdemeanor action, judgment, conviction or punishment hereunder shall operate to bar any action for civil damage or penalty or imposition of any administrative sanction provided hereunder, nor be barred thereby.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3757(C).

Library References

Indians ⇄32(6, 13), 38.
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 157, 163.

§ 3783. Severability

If any provision of this chapter or the application of such provision to any person, firm, association, corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations, corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3759.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 3784. Effective date

The effective date of all provisions of this Navajo Nation Ethics in Government Law shall be October 8, 1984.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3760.

2 N.N.C. § 3785

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§ 3785. Prior inconsistent law superseded

Upon the effective date of this Navajo Nation Ethics in Government Law, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

History

CJY-23-92, July 20, 1992.
CAU-40-84, August 9, 1984.
Note. Formerly § 3761.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Subchapter 6. Ethics and Rules Office

§ 3786. Establishment

There is hereby established the Ethics and Rules Office within the Navajo Nation government.

History

ACJA-3 5-89, January 26, 1989.
ACJN-109-85, June 12, 1985.
CAU-40-84, August 9, 1984.
ACMA-35-84, March 14, 1984.

CJA-1-83, January 25, 1983.

Note. This section was redesignated as "3786" (formerly § 3771).

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 3787. Purpose

The purpose of the Ethics and Rules Office shall be to:

A. Provide administrative assistance to the Ethics and Rules Committee of the Navajo Nation Council in ensuring adherence to legislative mandates under the Navajo Nation Ethics in Government Law, Ethics and Rules Committee Plan of Operation, and other applicable laws of the Navajo Nation;

B. To represent the interests of the Navajo Nation in maintaining the highest standards of ethical conduct by the elected and appointed public officials, officers and representatives of the Navajo Nation, in the performance of their public and official duties and functions, (includes candidates and public employees);

C. To maintain and make available for official information, complete and current written records of all laws, resolutions, rules, regulations and other official enactments, rulings, decisions or opinions relating to requirements,

prohibitions or standards of ethical conduct or disclosure by elected and appointed public officials, officers, employees and representatives of the government of the Navajo Nation; together with current and complete records of such written disclosures as may be required by the laws of the Navajo Nation; and

D. To protect the interest of the Navajo People in fair, honest and efficient conduct of the government of the Navajo Nation, in accordance with the laws of the Navajo Nation and the will of the Navajo People, through review, recommendation and sponsorship of projects, legislation, rules and standards in furtherance of these ends.

History

ACJN-109-85, June 12, 1985.

Note. Formerly § 3772.

Library References

Indians ⇄32(4.1, 6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 3788. Personnel and organization

A. There is established the position of Director for the Ethics and Rules Office and administrative/secretarial staff as may be budgeted by the Navajo Nation Council.

B. The Ethics and Rules Committee and the Executive Director of the Office of Legislative Affairs shall have the authority to employ the Director of the Ethics and Rules Office.

C. The Director shall have the authority to hire the administrative/secretarial staff, pursuant to Navajo Nation Personnel Policies and Procedures.

D. All Ethics and Rules Office personnel shall be subject to the Navajo Nation personnel compensation, benefits, and policies and procedures

E. The Director of the Ethics and Rules Office shall be administratively responsible to the Executive Director, Office of Legislative Services, in carrying out policies authorized and directed by the Ethics and Rules Committee of the Navajo Nation Council, as provided under section 3787 of this subchapter.

History

ACJN-109-85, June 12, 1985.

Note. Reference to organizational chart omitted for purposes of statutory form; this section was formerly § 3773.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 3789. Duties, responsibilities and authority

A. The Director shall have the authority necessary and proper to carry out the purpose set forth in § 3787 of this chapter.

B. Under general direction, the Director of the Ethics and Rules Office shall have the duties, responsibility, and authority to assist the Ethics and Rules Committee of the Navajo Nation Council to:

1. Provide recommendations to the Ethics and Rules Committee concerning rules and regulations necessary to implement provisions of the Navajo Nation Ethics in Government Law and to publish same after proper approval;
2. Prescribe and make available appropriate forms for economic disclosure statements and distribute such forms to all persons required to complete and file with the Ethics Rules Committee of the Navajo Nation Council;
3. Establish policies and procedures for completing and filing economic disclosure statements and provide training as deemed necessary,
4. Maintain current list of all persons required to file economic disclosure statements;
5. Provide for the preservation of economic disclosure statements filed with the Ethics and Rules Committee and ensure their confidentiality in accordance with the Navajo Nation Ethics in Government Law and all applicable rules and regulations;
6. Audit, review and evaluate all economic disclosure statements and make available for public access those deemed public records during regular office hours;
7. Provide and maintain written advisory opinions on the requirements of the Navajo Nation Ethics in Government Law, upon request from persons whose conduct is subject thereto and who have specific need to use such opinions;
8. Receive, examine and investigate complaints and conduct such hearings, in accordance with rules and regulations lawfully adopted and authorized to determine facts of allegations or noncompliance with provisions of the Navajo Nation Ethics in Government Law;
9. Implement, facilitate and require compliance with all provisions of the Navajo Nation Ethics in Government Law in accordance with stated purposes and intent, together with lawfully adopted rules and regulations, and the provisions of the Ethics and Rules Committee, Plan of Operation; and
10. Assist in instituting and conducting hearings on any matter which cannot be resolved by voluntary compliance and/or remedial action.

History

ACJN-109-85, June 12, 1985.

Note. Slightly reworded for purposes of statutory clarity; this section was formerly § 3774.

Library References

Indians ⇄32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 3790. Political practices prohibited

The staff shall not, for the purpose of personal gain, use any information or conduct any proceedings for the intent of causing harm or injury to the political standing or reputation of any member of the Navajo Nation Council, the President and Vice-President of the Navajo Nation, or any other employee, or officer of the Navajo Nation.

History

ACJN-109-85, June 12, 1985.

Note. Formerly § 3775.

Library References

Indians ⇐32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 3791. Office location and hours

A. The administrative office of the Ethics and Rules Office shall be located in Window Rock, Arizona. Mailing address is as follows: P.O. Box 3390, Window Rock, Arizona 86515.

B. The office shall be open Monday through Friday, between 8:00 a.m. and 5:00 p.m., in the absence of any directive to the contrary from the Director, Ethics and Rules Office.

History

ACJN-109-85, June 12, 1985.

Note. Formerly § 3776.

§ 3792. Construction

Nothing contained in this Plan of Operation shall be construed to limit the authority of the Ethics and Rules Committee of the Navajo Nation Council and/or their representatives in ensuring adherence to and carrying out the legislative intent of the Navajo Nation Ethics in Government Law and the Ethics and Rules Committee’s Plan of Operation, and all applicable laws of the Navajo Nation.

History

ACJN-109-85, June 12, 1985.

Note. Formerly § 3777.

Library References

Indians ⇐32(4.1).

Westlaw Topic No. 209.

§ 3793. Amendments

This Plan of Operation may be amended by the Ethics and Rules Committee of the Navajo Nation Council subject to the approval of Intergovernmental Relations Committee of the Navajo Nation Council.

History

ACJN-109-85, June 12, 1985. therein is the “Intergovernmental Relations Committee” pursuant to 2 N.N.C. § 824(B)(1),
Note. Formerly § 3778. Also, reference to “Advisory Committee” deleted and substituted CD-68-89, December 15, 1989.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 7. Personnel

§ 3800. Drug and Alcohol Testing Policies

The Navajo Nation Council hereby sanctions the adoption of drug and alcohol testing policies for all Navajo Nation employees who perform safety-sensitive functions. Such policies may vary in scope and detail depending on contractual requirements and/or employment functions to be performed by Navajo Nation employees.

History

CD-111-95, December 21, 1995.

Library References

Indians ↻32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Chapter 9. Navajo Nation Chapters

Subchapter 1. [Repealed]

Subchapter 3. [Repealed]

History

CAP-34-98, April 20, 1998.

Subchapter 5. Chapter Development Committees

- 4041. Establishment
- 4042. Purpose
- 4043. Authority
- 4044. Creation
- 4045. Membership; qualifications
- 4046. Selection; certification; tenure; compensation; removal
- 4047. Officers; selection; duties; removal
- 4048. Meetings; quorum; procedure

History

The Chapter Managers Program formerly at Subchapter 7 was discontinued by CJY-621-91, July 23, 1991. See now 2 N.N.C. § 990 et seq., the Community Services Program and the role of Community Services Coordinators.

§ 4041. Establishment

Chapter Development Committees are hereby established.

History

ACMA-25-82, March 10, 1982.

Library References

Indians ¶32(4.1).
Westlaw Topic No. 209.

§ 4042. Purpose

The purposes of a Chapter Development Committee are:

A. To advise, make recommendations, and assist the Chapter concerning all matters related to comprehensive Chapter planning and development for Chapter projects funded through the Navajo Nation government and other funding sources.

B. To review, prioritize and submit written recommendations at the direction of the Chapter for proposed chapter development projects, to be prepared to offer alternatives to those projects, and to defend and explain those alternatives.

C. To promote coordination and working relationships among local residents, pursuant to the direction of the Chapter government, and the divisions and departments of the Navajo Nation government.

D. To utilize the services of Community Development Specialists from the Division of Community Development and the services of the Navajo Nation, Bureau of Indian Affairs, United States Public Health Service, and other agency personnel to obtain technical advice, assistance, and recommendations in order to carry out community planning and projects.

E. To submit necessary reports, correspondence, forms, and other documents, as required, to the Chapter, to the Division of Chapter Development, and to other agencies requiring such information.

F. To assist the Chapter in implementing approved Chapter projects, if the Chapter so delegates.

G. To assist with the review and make recommendations to the Chapter for developmental land use permits, including business site leases, homesite leases, and mission site leases within the Chapter planning area.

History

ACMA-25-82, March 10, 1982. References to "Division of Chapter Development" at subsections (D) and (E) deleted pursuant to **Note.** Slightly reworded for purposes of statutory form.

2 N.N.C. § 4042

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ant to GSCO-60-91; substituted therefore is
"Division of Community Development."

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 4043. Authority

A Chapter Development Committee shall serve solely as an advisory committee of the Chapter in order to recommend various Socio-economic Chapter development projects. The Chapter Development Committees shall in no way have any authority over the local Navajo Chapters.

History

AMA-25-82, March 10, 1982.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 4044. Creation

All Chapter Development Committees shall be created by Chapter resolution at a duly called meeting of the Chapter at which a quorum is present.

History

ACMA-25-82, March 10, 1982.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 4045. Membership; qualifications

A. Membership. Each Chapter Development Committee shall consist of at least five members, and additional non-voting technical advisers, if desired by the Chapter.

B. Qualifications. Each Chapter Development Committee member must be at least eighteen (18) years of age and an enrolled member of the Navajo Nation.

History

ACMA-25-82, March 10, 1982.

Library References

Indians ↻32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 4046. Selections; certifications; tenure; compensation; removal

A. Selection. All members of the Chapter Development Committee shall be selected at a duly called Chapter meeting at which a quorum is present and their selection shall be set forth in a certified written resolution.

B. Certification. The Division of Community Development shall certify the selection of the Committee exclusively for purposes of compensation of five committee members, upon receipt of a certified Chapter resolution setting forth the designated Chapter Development Committee members.

C. Tenure. Chapter Development Committee members shall serve one (1) year terms to coincide with funding cycles.

D. Compensation.

1. The Division of Community Development shall provide a stipend of twenty dollars (\$20.00) (subject to program funds) to each of five Committee members to insure the greatest possible effort on the part of the Committee members in executing the purposes of the Chapter Development Committee. Additional Committee members and/or technical advisers can be compensated by the Chapter out of Chapter funds, if the Chapter so desires.

2. The monies provided by the Division of Community Development shall be contingent upon the availability of federal funding sources.

E. Removal.

1. Grounds. Any member of the Chapter Development Committee may be removed:

a. Upon recommendation to the Chapter by the other members of the Chapter Development Committee.

b. Upon any other grounds established by the Chapter by means of a duly certified Chapter resolution.

2. Removal.

a. Any member of a Chapter Development Committee may be removed by majority vote of the quorum of a Chapter at a duly called Chapter meeting.

b. The Division of Community Development must be notified by certified Chapter resolution within two weeks of the removal of a Committee member in order to facilitate termination of compensation payments.

History

ACMA-25-82, March 10, 1982. pursuant to GSCO-60-91; substituted therefore
Note. References to "Division of Chapter De- is "Division of Community Development."
 velopment" at subsections (B) and (D) deleted

Library References

Indians ⇄32(4.1, 6).
 Westlaw Topic No. 209.
 C.J.S. Indians § 51.

§ 4047. Officers; selection; duties; removal

A. Selection. At its initial meeting, the members of each Chapter Development Committee shall select a Chairperson, a Vice-Chairperson, and a Secretary.

B. Duties.

1. The Chairperson shall call and preside over all duly called meetings of the Committee.

2. The Vice-Chairperson shall preside at all Chapter Development Committee meetings in the absence of the Chairperson and perform such other duties as assigned by the Chairperson.

3. The Chapter Development Committee Secretary shall maintain all minutes of Committee meetings, the permanent files of the Committee, and shall perform other duties as assigned by the Chairperson.

C. Removal. The officers of the Chapter Development Committee shall serve a one (1) year term in their official capacity, unless removed as an officer by a majority vote of the other Chapter Development Committee members.

History

ACMA-25-82, March 10, 1982.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 4048. Meetings; quorum; procedure

A. A Chapter Development Committee shall have one compensated meeting per month, but additional meetings may be compensated out of Chapter funds if the Chapter so desires. All Chapter Development Committee meetings shall be open to the public. Notice of all Chapter Development Committee meetings shall be posted at least one week in advance.

B. A simple majority of the Committee members shall constitute a quorum.

C. “Robert’s Rules of Order” shall be utilized at all Chapter Development Committee meetings, and all actions shall be taken by certified resolutions, or written memoranda, setting forth the action taken and filed with the Chapter Secretary and the Division of Community Development.

History

ACMA-25-82, March 10, 1982.

to GSCO-60-91; substituted therefore is “Division of Community Development.”

Note. Reference to “Division of Chapter Development” at subsection (C) deleted pursuant

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

Subchapter 7. [Reserved]

History

§ 4061-4068, the Chapter Manager's Program was repealed and was replaced with the Community Services Program by CJY-61-9 1, July 19, 1991. See 2 N.N.C. Article 5, § 990.

Subchapter 9. Kayenta Township Home Rule

- 4081. Establishment
- 4082. Purposes; goals
- 4083. Jurisdiction
- 4084. Duties, authorities and responsibilities of Kayenta Township Commission
- 4085. Code of Ethics
- 4086. Amendment and revisions

§ 4081. Establishment

There is established the Kayenta Township created as a home rule municipality under the governance of the Kayenta Township Commission.

History

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03. CN-86-85, November 5, 1985.
 CJY-42-03, July 25, 2003, Amended section to create Kayenta Township as home rule municipality.

Library References

Indians ⇄32(4.1), 39.
 Westlaw Topic No. 209.
 C.J.S. Indians § 49.

§ 4082. Purposes; goals

- A. The Navajo Nation recognizes that the Kayenta Township has undergone the first stages of rapid and accelerated development.
- B. The Kayenta Chapter and Kayenta Township have through joint planning, executing and evaluating developed an improved system of local government. The Navajo Nation fully supports this effort.
- C. The establishment of the Kayenta Township as a home rule municipality is for the purpose of authorizing the local governance of Kayenta Township by the Kayenta Township Commission.

History

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03. CN-86-85, November 5, 1985.
 CJY-42-03, July 25, 2003, Amended section generally.

Library References

Indians ⇄32(4.1), 39. Westlaw Topic No. 209.

2 N.N.C. § 4082

NAVAJO NATION GOVERNMENT

C.J.S. Indians § 49.

§ 4083. Jurisdiction; authority

A. The Kayenta Township shall be governed by the Kayenta Township Commission (KTC).

B. The KTC shall have jurisdiction over all that area authorized and designated by the Navajo Nation Council in November 1985 (Resolution CN-86-85), and the official survey plat filed with Navajo County and submitted to the Bureau of Indian Affairs; said area shall be subject to amendment pursuant to Kayenta Township ordinance and concurrence by the Kayenta Chapter.

C. The authority of the KTC shall prevail over all other authority contingent upon its consistency and compliance with all generally applicable laws and regulations of the federal government and the Navajo Nation.

Library References

Indians ⇄32(1, 4.1), 39.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51.

§ 4084. Duties, authorities and responsibilities of Kayenta Township Commission

The KTC shall have the duty, authority, and responsibility to perform all functions necessary for local self government, consistent with all generally applicable laws and regulations of the federal government and the Navajo Nation.

History

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03. CN-86-85, November 5, 1985
CJY-42-03, July 25, 2003, Amended section generally.

Library References

Indians ⇄32(4.1), 39.
Westlaw Topic No. 209.
C.J.S. Indians § 49.

§ 4085. Code of Ethics

Officers and members of the KTC shall maintain a high standard of conduct in all dealings. This standard of conduct shall include but is not limited to conducting all KTC business openly without taint of impropriety, serving the KTC, Kayenta Chapter and the Navajo Nation to the very best of their ability in full compliance with the Navajo Nation Ethics in Government Law.

History

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03. CJY-42-03, July 25, 2003, Amended section generally. CN-86-85, November 5, 1985.

Library References

Indians ↻32(6), 39.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

§ 4086. Amendments and revisions

This subchapter may from time to time be amended as necessary and appropriate by a two-thirds majority of the full Navajo Nation Council with recommendations from the KTC and the Kayenta Chapter.

History

CAU-47-03, August 29, 2003, Overrode veto of Resolution CJY-42-03. CN-86-85, November 5, 1985.
CJY-42-03, July 25, 2003, Amended section to create Kayenta Township as home rule municipality.

Title 4

Environment

Chapter	Section
1. Navajo Nation Solid Waste Act	101
3. Navajo Nation Pesticide Act	301
5. Navajo Abandoned Mine Lands Reclamation Code [Recodified]	501
7. Navajo Energy Development Administration	701
9. Navajo Nation Environmental Policy Act	801
11. Navajo Nation Air Pollution Prevention and Control Act	1101
13. Navajo Nation Clean Water Act	1301
15. Navajo Nation Underground Storage Act	1501

History

Previous Title 4, "Ceremonies and Fairs," §§ 1, 2, 101 and 102 were deleted pursuant to ACA-51-58, April 21, 1958 and ACAU-1 53-68, August 16, 1968) has been removed and replaced by a new Title 4, "Environment"; prior Navajo Nation Attorney General's advice on plans of operation for Navajo Nation Divisions dated January 4, 1991.

Chapter 1. Navajo Nation Solid Waste Act

Subchapter 1. General Provisions

Section

- 101. Title
- 102. Definitions
- 103. Definitions of Policy
- 104. Applicability; Exemptions
- 105. Voluntary Compliance Agreement
- 106. Governmental Cooperation
- 107. General Authorities of the Director
- 108. Construction
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- 121. Disposal, Collection, Transporting, Processing
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Subchapter 4. Permitting

- 141. Requirement to Obtain Permit
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Subchapter 5. Enforcement

- 151. Recordkeeping, Inspections, Monitoring and Entry
- 152. General Enforcement Authority
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- 154. Administrative Assessment of Penalties
- 155. Citizen Suits
- 156. Administrative Hearings

Subchapter 6. Rulemaking and Judicial Review

- 161. Rulemaking and Other Administrative Procedures
- 162. Review in Navajo Nation Supreme Court

United States Code

Solid waste disposal, see 42 U.S.C. § 6901 et seq.

Subchapter 1. General Provisions

§ 101. Title

This Chapter may be cited as the “Navajo Nation Solid Waste Act.”

History

CJY-51-97, July 24, 1997.

§ 102. Definitions

A. For purposes of this Chapter:

- 1. “Attorney General” means the Attorney General of the Navajo Nation.
- 2. “Director” means the Director of the Navajo Nation Environmental Protection Agency or his/her designee.
- 3. “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.
- 4. “Health Advisor” means the Director of the Navajo Area Indian Health Service or his or her designee.

5. “Navajo Nation” when used in terms of territorial jurisdiction, means the area defined in 7 N.N.C. § 254.

6. “Navajo Nation Council” means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. § 102 *et seq.*

7. “Navajo Nation Solid Waste Program” or “Navajo Nation SWP” means the program, including any successor program, regardless of name, within the Navajo Nation Environmental Protection Agency that is responsible for implementing and enforcing this chapter products.

8. “Open burning” means the combustion of solid waste without: control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products.

9. “Open dump” means any facility or site where solid waste is disposed of and which does not comply with the requirements established for solid waste landfill facilities pursuant to this chapter and the regulations promulgated hereunder.

10. “Open dumping” means the act of depositing solid waste in a non-complying manner or management practice.

11. “Operator” means any person who operates, controls or otherwise supervises a solid waste management facility.

12. “Owner” means any person who owns all or part of or leases (in the case of trust land) a solid waste management facility.

13. “Person” means any individual, public or private corporation, company, partnership, firm, association or society of persons; the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

14. “Resource Conservation and Recovery Act” or “RCRA” means the federal Resource Conservation and Recovery Act, as amended, that is set forth at 42 U.S.C. § 6941 *et seq.*

15. “Resources Committee” means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for in 2 N.N.C. §§ 1921–1927.

16. “Solid waste” means any garbage, refuse or sludge from a wastewater treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from residential, industrial, commercial, mining, and agricultural operations and from community activities, but does not include:

- a. Drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;

b. Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed, with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

c. Waste from extraction, beneficiation and procession of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

d. Agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;

e. Cement kiln dust waste;

f. Sand and gravel;

g. Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. § 2011 et seq.;

h. Densified-remse-derived fuel; or

i. Any material regulated by Subtitle C or Subtitle I, 42 U.S.C. § 6901 et seq., petroleum-contaminated soils, of the Resource Conservation and Recovery Act of 1976, or substances regulated by the Toxic Substances Control Act, 7 U.S.C. § 136 et seq. or low-level radioactive waste.

17. "Solid waste landfill" or "SWLF" unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A SWLF unit also may receive other types of RCRA subtitle D¹ wastes, such as commercial solid waste, waste tires, construction/demolition debris, nonhazardous sludge conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A SWLF unit may be a new SWLF unit, an existing SWLF unit or a lateral expansion.

18. "Solid waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

19. "Storage" means the accumulation of solid waste after generation and prior to and following collection, processing, composting, recycling, transportation and/or disposal.

20. "Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and/or route collection vehicles to deposit collected solid waste from offsite into a larger transfer vehicle for transport to a solid waste handling or disposal facility. It does not include solid waste storage containers placed for individual or clusters of

residences and institutional, commercial, recreational or industrial establishments that service exclusively those establishments.

21. "Variance" means an acceptable alternative that meets or exceeds the standards required by this Chapter and the regulations hereunder.

¹42 U.S.C. § 6941 et seq.

History

CJY-51-97, July 24, 1997.

§ 103. Declaration of Policy

A. Legislative Purposes

1. The Navajo Nation Council finds and declares that disposal of solid waste in or on the land without careful planning and management can present a danger to public health and the environment; that open dumping is particularly harmful to public health, potentially contaminates drinking water from underground and surface sources, and pollutes the air and the land; and that potentially recoverable material that could be recycled is needlessly buried each year, using scarce land resources, even though methods are available to separate usable materials from solid waste. The Navajo Nation Council is hereby creating a coordinated program for management of solid waste within the Navajo Nation.

2. The Navajo Nation Council, by enacting this Chapter, intends to protect the health, safety, welfare and environment of the Navajo Nation; to manage, protect and preserve the resources of the Navajo Nation; and to maintain and improve the aesthetic appearance of the Navajo Nation, by:

- a. Assuring that solid waste management practices are conducted in a manner which protects human health and the environment and minimizes the need for corrective action at a future date;
- b. Prohibiting open dumping and requiring the closure of existing open dumps;
- c. Prohibiting open burning at SWLFs;
- d. Minimizing the generation of solid waste by encouraging recycling and reuse; and
- e. Providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery and disposal practices and systems.

3. The Navajo Nation Council places primary responsibility for the enforcement of this Chapter with the Navajo Nation Environmental Protection Agency.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞353.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 104. Applicability; Exemptions

A. Except as otherwise provided in this Section, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.

B. Except as otherwise provided in Subsections (C) and (D) of this Section, the provisions of this Act and/or regulation promulgated thereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions and to all property within the Navajo Nation owned or operated by such person.

D. If not otherwise applicable in accordance with Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated thereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to Section 105 of this Act.

E. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞353, 358.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 105. Voluntary Compliance Agreement

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be for a term of not less than one (1) year, and may be subject to renewal for successive terms of not less

than one (1) year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with § 143(B) of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until final approval of the agreement is given by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞358.
Indians ☞32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 106. Governmental Cooperation

The provisions of this Chapter may be carried out by agreements between the Navajo Nation and federal, state or county agencies, including but not limited to the Indian Health Service and the Bureau of Indian Affairs

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞342, 349.
Indians ☞4, 7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 7 to 8, 21, 46 to 47, 49, 51.

United States Code

Agreements with Indian tribes, solid waste disposal, see 42 U.S.C. § 6908a.

§ 107. General Authorities of the Director

A. Powers and Duties. In carrying out this Chapter, the Director is authorized to:

1. Prescribe such regulations as are necessary to carry out his/her functions under this Chapter (including but not limited to regulating the open burning of solid waste), pursuant to the provisions of § 161 of this Chapter;
2. Enforce the provisions of this Chapter and the regulations promulgated hereunder, pursuant to the provisions of Subchapter 5 of this Chapter;
3. Require monitoring, sampling or other studies, as provided in § 151 of this Chapter;
4. Issue permits, exemptions and variances pursuant to the provisions of Subchapter 3 and 4 of this Chapter;
5. Assess fees on persons involved with the collection, disposal, transportation, processing or storage of solid waste;
6. Issue compliance orders, civil penalties and citations to carry out the intent of this Chapter and regulations promulgated hereunder;
7. Conduct investigations, inspections and tests to carry out the duties of this Chapter pursuant to the provisions of Subchapter 5 of this Chapter;
8. Hold hearings related to any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;
9. Provide to the public pertinent educational materials and information regarding solid waste management issues;
10. Issue guidelines and encourage voluntary cooperation with the provisions of this Chapter and the regulations promulgated hereunder;
11. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Solid Waste Program, as authorized under Navajo law; and
12. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

In prescribing regulations under this Chapter, the Director shall consider but shall not be limited to the relevant factors prescribed by Subtitle D¹ of the Resource Conservation and Recovery Act and the regulations thereunder,² except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under RCRA. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Delegation of Authority. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he/she may deem necessary or expedient.

C. Use of Funds. Monies derived from fees and penalties imposed under this Chapter shall be available solely for the administration and implementation of this Chapter and the regulations promulgated hereunder. Such funds shall be deposited into a duly established Special Revenue Fund and expended by the

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4 N.N.C. § 110

Director for the use of the Solid Waste Program in accordance with the Special Revenue Fund plan of operation pursuant to an approved budget. Any monies contained in said Fund at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

¹42 U.S.C. § 6941 et seq.
²40 C.F.R. § 256.01 et seq.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨342, 356. Westlaw Topic Nos. 149E, 209.
Indians ⇨7, 32(6). C.J.S. Indians §§ 46 to 47, 51.

§ 108. Construction

This Chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨344.
Indians ⇨32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 109. Compliance with Other Laws and Regulations

Compliance with this Chapter and regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨349.
Westlaw Topic No. 149E.

§ 110. Contractual Compliance

Contracting for the storage, collection, transportation, processing or disposal of solid waste shall not relieve the contractor or contractee from responsibility for compliance with the provisions of this Chapter and the regulations promulgated hereunder.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨356, 367.
Indians ⇨7, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

§ 111. Severability

If any provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

History

CJY-51-97, July 24, 1997.

Library References

Statutes ⇨64.
Westlaw Topic No. 361.
C.J.S. Statutes § 83.

Subchapter 2. Prohibited Acts

§ 121. Disposal, Collection, Transporting, Processing

A. It shall be unlawful for any person to:

1. Dispose of any solid waste in a manner that will harm the environment, endanger the public health, safety and welfare or create a public nuisance;
2. Dispose of any solid waste in a place other than a facility which is in compliance with these regulations and other applicable laws;
3. Dispose of any waste not defined as solid waste in a solid waste disposal facility;
4. Dispose of bulk or non-containerized liquids in a solid waste facility;
5. Collect, dispose of, transport, process or store solid waste in any manner or at any facility that is not in compliance with the provisions of this chapter or the regulations promulgated hereunder;
6. Interfere/prohibit with inspections, entry or monitoring activities; and
7. Violate any other provision, requirement or prohibition of this Chapter, including but not limited to a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter or a fee assessed under this Chapter.

B. The on-site disposal of on-site generated solid waste from a family ranch, camp or farm is not prohibited where said disposal does not, according to the Director, create a public health or environmental hazard or public nuisance.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌356, 367.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 122. Permits Required

Unless otherwise specified by this Chapter or regulations promulgated hereunder, no person shall construct, operate or modify a solid waste landfill facility unless the facility has obtained a permit or permit modification from the Director for the described action. A permit is not required, however, for facilities that qualify under § 121(B).

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌358.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 123. Open Burning

No open burning shall be allowed at any solid waste landfill facility.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌370.
Indians ⇌7.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

§ 124. Open Dumping

All open dumping shall be prohibited.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌358, 359.
Indians ⇌7.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

Subchapter 3. Solid Waste Management Planning and Criteria

§ 131. Solid Waste Management Criteria

A. Regulations. The Director is authorized to promulgate regulations establishing requirements for solid waste landfills, transfer stations, composting

facilities, collection and transportation of solid waste and recycling. Such regulations may include but are not limited to:

1. Siting criteria;
2. Design requirements, including requirements regarding liners, leachate collection, and methane gas monitoring and control; operating requirements; recordkeeping and reporting requirements; and requirements for the preparation of contingency plans in the event of release of contaminants or hazardous waste to the environment;
3. Ground water monitoring, sampling and analysis and corrective action requirements;
4. Closure criteria and post-closure care requirements, including requirements for the installation of final cover; and
5. Financial responsibility requirements, including financial assurance requirements for damage claims, closure, post-closure care and corrective actions relating to SWLFs. The Director shall specify the various financial assurance mechanisms which will be deemed to satisfy these financial responsibility requirements.

B. Transportation Inspection Fees. The Director shall have the authority to inspect solid waste transportation vehicles, by regulation and charge reasonable fees for such service.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞359, 360, 367.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 132. Variances

A. Issuance. The Director shall adopt regulations providing for the issuance of variances to owners or operators of solid waste management facilities, which would allow such facilities to vary from provisions of this Chapter and regulations and plans adopted and permits issued pursuant to this Chapter. Such regulations shall allow owners and operators of solid waste management facilities to petition the Director in writing for variances, and shall specify the minimum requirements for such petitions and for public participation. The Director shall also consider issuing variances for hardships caused by, but not limited to, isolation and extreme weather conditions. In all cases, the Director shall grant a petition for a variance only if the Director finds that issuance of the variance will not endanger public health, safety, welfare or the environment and does not violate 40 C.F.R. Parts 257 or 258.

B. Terms and Conditions of Variances. The requirements imposed as a basis for granting or renewing a variance shall include, but not be limited to:

1. A detailed plan for the completion of corrective steps needed to conform to the provisions of this Chapter and the regulations adopted and permits issued hereunder, wherever practicable;

2. A fixed term for the variance; and
3. The right of the Director to make periodic inspections of the facilities for which the variance is granted.

Subject to the provisions of Subsection (C), variances shall be valid for no longer than the term specified in the variance. The Director may impose fees with the approval of the Resources Committee, on a facility for the issuance of a variance.

C. Renewals. A holder of a variance may petition the Director for a renewal of such variance. A petition for renewal may be filed not more than sixty (60) days nor fewer than thirty (30) days prior to the expiration of the variance. The Director, within thirty (30) days of receipt of the petition, shall issue a decision to grant or deny the request for a renewal of the variance.

D. Suspension and Revocation. If the terms of a variance are being or have been violated, the Director may seek to revoke or suspend the variance. In such event, the Director shall serve notice of such violation on the holder of the variance, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the variance should be suspended or revoked.

History

CJY-51-97, July 24, 1997.

Note: Slightly reworded for clarity.

Library References

Environmental Law ⇌356.

Indians ⇌7, 9, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51, 67.

Subchapter 4. Permitting

§ 141. Requirement to Obtain Permit

Any person owning or operating any SWLF or any composting facility, and any person planning to construct a new SWLF or composting facility or to expand or modify such facility, shall not construct, expand, create a lateral expansion of a unit modify or operate such facility without first obtaining a permit or permit modifications from the Director, unless specifically exempt from such requirement by regulation promulgated, by the Director pursuant to this Chapter. In the case of a SWLF, or composting facility that is already in existence at the time of enactment of this Chapter or of promulgation of permit regulations under this Chapter, the owner or operator shall submit a permit application to the Director within ninety (90) days of the promulgation of permit regulations under this Chapter. Such owner or operator shall be treated as having been issued a permit until a final administrative disposition is made on the permit application, unless the Director finds that a final administrative disposition has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the

application. A permit shall not be required to undertake a corrective action pursuant to the regulations promulgated under this Chapter. The Director also may by regulation require permits for the collection and transportation of solid waste within the Navajo Nation.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌358.
Indians ⇌7, 9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 67.

§ 142. Permit Applications

A. Content of Permit Application. The applicant shall submit to the Director for approval a completed permit application, on a form prescribed by the Director, together with all other information, as required by the regulations promulgated under this Chapter.

B. Application Fees. A filing fee as prescribed by the Director by regulation shall accompany the application for a permit. In addition, the Director may charge a review fee at an hourly rate for the review of a permit application.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇌358.
Indians ⇌7, 9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 67.

§ 143. Permit Determinations

A. Issuance of Permit. The Director shall issue a permit, for a fixed term not to exceed thirty (30) years, for construction, expansion, modification or operation of a facility that complies with all the requirements of this Chapter and the regulations promulgated hereunder. In the event that the applicant proposes modification of the facility in question, or the Director determines that modifications are necessary to comply with the requirements of this Chapter and the regulations hereunder, the permit shall specify the time allowed to complete the modifications. The Director also may allow the applicant an opportunity to revise a permit application to remedy deficiencies. The approval of a permit application does not relieve the applicant from the responsibility of compliance with all applicable provisions of this Chapter and the regulations promulgated hereunder and applicable federal regulations.

B. Conditions to Permits. As a condition of obtaining a permit and/or constructing, expanding, modifying or operating a SWLF or composting facility,

1. The Director or Health Advisor shall have the right to enter the facility to conduct inspections, take samples and conduct monitoring, as provided under this Chapter or the regulations promulgated hereunder;

2. The Director shall have the right to enter any premises where records relevant to determining compliance with this Chapter, the regulations promulgated hereunder or the requirements of the permit are kept;

3. The permittee, his agents, employees, lessees, sublessees, successors and assigns shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Solid Waste Act. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assignees, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit”; and

4. Permittee shall include the statement in Paragraph 3 of this Subsection as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued by the Director, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “permittee” as appropriate.

C. Permit Fees. The initial fee for a permit shall be in accordance with the fee schedule established by the Director in the regulations promulgated pursuant to this Chapter. A permit may be renewed following administrative review and payment of the renewal fee prescribed by regulation of the Director.

D. Permit Transfers. A permit may not be transferred, from one location, facility or person to another, without approval from the Director pursuant to the regulations promulgated under this Chapter.

E. Judicial Review of Final Permit Determinations. An applicant may seek judicial review of any final permit determination (including revocation) in Navajo Nation Court, pursuant to the provisions of § 162 of this Chapter.

History

CJY-51-97, July 24, 1997.

Note: Slightly reworded for clarity.

Library References

Environmental Law ⚡358.
Indians ⚡7, 9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 67.

§ 144. Permit Revocation

The Director may revoke a permit for failure to comply with the terms or conditions of the permit; fraud, deceit or submission of inaccurate information to the Director; or failure to comply with the provisions of this Chapter or the regulations promulgated hereunder.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨358.
Indians ⇨7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 145. Public Participation

A. Availability of Documents. The Director shall maintain a file of all permit applications, documents accompanying such applications and permits issued under this Chapter. This file shall be available for public inspection and comment. If any applicant or permittee is required to submit information entitled to protection from disclosure under § 151(D) of this Chapter, the applicant or permittee may submit such information separately. The requirements of § 151(D) shall apply to such information. The contents of a permit shall not be entitled to protection under § 151(D).

B. Notice of Final Permit Determination. Before making a final determination regarding any permit under this Chapter, including before issuing, transferring, renewing, revising, revoking or denying a permit, the Director shall publish in local newspapers and broadcast over local radio stations the Director's intent regarding such permit. If the Director receives a written request for a public hearing on such permit within fifteen (15) days of publication of such notice, the Director shall schedule a public hearing on such permit, and shall give notice of the date time, place and subject matter of such hearing in the aforementioned manner.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨358, 377.
Westlaw Topic No. 149E.

Subchapter 5. Enforcement**§ 151. Recordkeeping, Inspections, Monitoring and Entry**

A. Requirements in Orders or Permits. The Director may require, by order or permit, any owner or operator of a solid waste management facility, or any other person who is subject to any requirement of this Chapter, to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, use and maintain monitoring equipment, and use audit procedures or methods;
4. Monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe);

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5. Submit compliance certifications in accordance with Subsection (B) of this Section; and

6. Provide such other information as the Director may reasonably require.

B. Production of Records. Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this Chapter or of any regulation hereunder or any requirement of a permit or order issued pursuant to this Chapter, he/she may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

C. Public Availability of Information. Any records, reports or information obtained under Subsections (A) or (B) of this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Chapter or when relevant to any proceeding under this Chapter.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞361.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 152. General Enforcement Authority

A. In General. Whenever, on the basis of any information available to the Director, the Director finds that any person conducting an activity that threatens human health or the environment and/or has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans, variances or fees issued or approved pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring the person to comply with each requirement or prohibition, pursuant to the provisions of this Section;
2. Issue and serve on such person an administrative penalty order in accordance with § 154 of this Chapter;
3. Bring a civil action in accordance with § 153(A) of this Chapter; and/or
4. Bring a criminal action in accordance with § 153(B) of this Chapter.

In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter,

or permits, orders, variances or fees issued or approved pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate a solid waste management facility within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a solid waste management facility within the Navajo Nation.

B. Requirements for Orders to Comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 161 of this Chapter, if such hearing is requested in writing within thirty (30) days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the thirty (30) days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. If the order is issued to a corporation, it shall be issued to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

C. Emergency Compliance Orders. Notwithstanding any other provision of this Section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request with the Director for a stay pending the outcome of any appeal taken under this Section in accordance with the procedures provided for in § 152(B). The Director shall, by written notice, grant or deny the request for a stay within five (5) days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has thirty (30) days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in § 154(D) of this Chapter.

D. Enforcement of Compliance Orders. Orders of the Director shall be enforced by the NNSWMP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and

2. Terminating part or all operations at the solid waste management facility.

E. Injunctive Relief. Notwithstanding any other provision of this Section, the Director may seek injunctive relief pursuant to § 153(A) to restrain any activity which may endanger or cause damage to human health or the environment.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞383.
Indians ☞32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 153. Judicial Enforcement

A. Civil Judicial Enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in a maximum amount per day per violation of not less than five hundred dollars (\$500.00) but not to exceed twenty-five thousand dollars (\$25,000), in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and
3. Whenever an activity exists which may endanger or cause damage to human health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs (1) and (2).

B. Criminal Penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter;
2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required pursuant to this Chapter to be filed or maintained, including required by a permit issued pursuant to this Chapter; or
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less five hundred dollars (\$500.00) but not to exceed five

thousand dollars (\$5,000) per day per violation or imprisonment for not more than one hundred eighty (180) days per day per violation or both or be subject to any other penalty imposed by the court available under Navajo law. For the purpose of this Subsection, the term “person” includes, in addition to the entities referred to in § 102(A)(13) of this Chapter, any responsible corporate officer.

C. Suits for Costs. In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

D. Jurisdiction and Venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such Court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Nation under this Chapter, and award any other appropriate relief.

E. Calculation of Penalties; Notice.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 154 or § 155, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator’s full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court may assess penalties for noncompliance with administrative subpoenas under § 161 of this Chapter or actions under Subchapter 2 of this Chapter where

the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

F. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 155 of this Chapter, require the filing of a bond or equivalent security.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞384, 699.
Indians ☞32(7, 13), 37, 38.
Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 60 to 62, 139 to 143,
152, 157, 163.

§ 154. Administrative Assessment of Penalties

A. Basis for Penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one (1) year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing Requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be

assessed and provide such person an opportunity to request a hearing within thirty (30) days of receipt of the notice.

C. Field Citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per violation may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.

D. Judicial Review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within thirty (30) days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within thirty (30) days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to Pay Penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be 10% of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

F. Calculation of Penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 153(E) of this Chapter.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ⇨384, 644.
Indians ⇨32(4.1), 37.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 22.

§ 155. Citizen Suits

A. Authority to Bring Civil Action; Jurisdiction

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf:

a. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, an order or permit issued pursuant to this Chapter or a requirement to have a permit issued under this Chapter; or

b. Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste which may present an imminent and substantial endangerment to health or the environment.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, order or permit requirement, to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid waste, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice.

1. An action may not be commenced under Subsection (A)(1)(a) of this Section fewer than sixty (60) days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in an action filed with the Window Rock District Court.

2. An action may not be commenced under Subsection (A)(1)(b) of this Section fewer than ninety (90) days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and any person alleged to have contributed or to be contributing to the past or present handling,

storage, treatment, transportation, or disposal of any solid waste. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting an administrative or a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may present the alleged endangerment, except that any person may intervene as a matter of right in an action before the Window Rock District Court if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Director or the Navajo Nation shows that the person's interest is adequately represented by existing parties.

C. Venue; Intervention; Service of Complaint.

1. Any action respecting a violation by a solid waste management facility of any requirement of this Chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as a matter of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of Costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court; determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Penalty Fund. Penalties received under this Section shall be deposited in a Special Revenue Fund in the Navajo Nation Treasury for use by the Director to finance solid waste management compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞385.
Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 156. Administrative Hearings

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to hear appeals taken under § 154(A) and (B) (administrative penalties), § 154(C) (field citations) and § 152(C) (emergency compliance orders). The Director may establish an informal review process to hear all other administrative appeals provided for under this Chapter. Until the Director establishes a formal hearing review process, appoints a qualified presiding officer and certifies this in writing, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under § 154(A) and (B), § 154(C) and § 152(C); provided, however, the Director may, at his/her discretion, transfer other appeals allowed under this Chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞381.
Indians ☞32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 115.

Subchapter 6. Rulemaking and Judicial Review**§ 161. Rulemaking and Other Administrative Procedures****A. Rulemaking.**

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Nation that are concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least thirty (30) calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for twenty (20) calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative Subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Nation's courts. In case of contumacy or refusal to obey a subpoena, the court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to declaratory relief.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞379.
Indians ☞32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 162. Review in Navajo Nation Supreme Court

A. Petitions for Review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards, issuance of orders and issuance and denial of permits (but not including imposition of administrative penalties under § 154 which are subject to review under § 154(D), or challenge of an administrative subpoena which are subject to review under § 161(B)(3) shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within sixty (60) days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within sixty (60) days after such grounds arise.

B. Limitations on Review.

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three (3) months.

3. Except as otherwise expressly allowed by Navajo law no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

D. Challenge to Provisions. Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this Chapter in the Window Rock District Court, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within ninety (90) calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The Window Rock District Court shall have exclusive jurisdiction and venue over any action challenging any provision of this Chapter.

History

CJY-51-97, July 24, 1997.

Library References

Environmental Law ☞644, 685.

Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Chapter 3. Navajo Nation Pesticide Act

Section

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United States Code

Environmental pesticide control, see 7 U.S.C. § 136 et seq.

Code of Federal Regulations

Recordkeeping on restricted use pesticides by certified applicators, surveys and reports, see 7 CFR § 110 et seq.

§ 301. Title

This Act may be referred to as the “Navajo Nation Pesticide Act.”

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ⇌421.
Westlaw Topic No. 149E.

§ 302. Purpose

The purpose of this Act is to promote the protection of the health and welfare of the public and the environment by providing for the safe use and handling of pesticides within the Navajo Nation.

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ☞421.
Indians ☞7, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

§ 303. Definitions

A. Except as specifically defined herein, the terms used in this Act (Chapter) shall be given the same meaning as the identical terms are given in the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 “FI-FRA”, and the federal regulations promulgated pursuant to such Act.

B. “Applicator”. The term shall be applied as follows:

1. “Certified applicator”. The term “certified applicator” means any individual who is certified by the states of Arizona, New Mexico or Utah and who is licensed by the Administrator or his/her designee as authorized to use or supervise the use of any pesticide which is classified for restricted use. All applicators of restricted use pesticides must be certified pursuant to the requirements under §§ 307, 311, 312, 313, 314, 315, 316, and 326 of this Act.

2. “Private applicator”. The term “private applicator” means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person. This term includes persons who use or supervise the use of restricted use pesticides on any lands of the Navajo Nation including lands of the Navajo Nation for purposes of producing any agricultural commodity for themselves, their families or households.

3. “Commercial applicator”. The term “commercial applicator” means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purposes or on any property other than as provided by Subsection (C)(2) or (4) herein.

4. “Public applicator”. The term “public applicator” means a pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use on any lands within the Navajo Nation including lands of the Navajo Nation in his capacity as any employee, official, or agent of the Navajo Nation, the United States, or any other government or subdivision thereof. This term does not include those applicators acting on behalf of the business enterprises of the Navajo Nation.

5. “Under the direct supervision of a certified applicator”. The term “under the direct supervision of a certified applicator” means a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is immediately available if and when needed, as defined in § 315 of this Act, unless otherwise prescribed by its labeling.

C. “Device”. The term “device” means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than man and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam.

D. “EPA”. The term “EPA” means the U.S. Environmental Protection Agency.

E. “Executive Director”. The term “Executive Director” means the Executive Director of the Navajo Nation Environmental Protection Agency, or his/her designee.

F. “District Court”. The term “District Court” means a District Court of the Navajo Nation.

G. “FIFRA”. The term “FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq.

H. “Label and Labeling”.

1. The term “label” means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

2. The term “labeling” means all labels and all other written, printed, or graphic matter:

a. Accompanying the pesticide or devices at any time; or

b. To which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and the Interior, the Department of Health and Human Services, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

I. “NNEPA”. The term “NNEPA” means the Navajo Nation Environmental Protection Agency.

J. “Navajo Nation”. The term “Navajo Nation” means:

1. All lands within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;

2. All land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

3. All other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

K. “Navajo Nation Council”. The term “Navajo Nation Council” means the governing body of the Navajo Nation as set forth in 2 N.N.C. § 101.

L. “Pesticide”. The term “pesticide” means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term pesticide shall not include any article that is;

a. A “new animal drug” within the meaning of § 201 (w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 321 (w)); or

b. An animal drug that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or

c. An animal feed within the meaning of § 201 (x) of such Act (21 U.S.C. § 321 (x)) bearing or containing an article covered by paragraph (1) of this Subsection.

N. “Pesticide Dealer”. The term “pesticide dealer” means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale any pesticide classified for restricted or general use pursuant to FIFRA.

O. “Resources Committee”. The term “Resources Committee” means the Resources Committee of the Navajo Nation Council.

P. “Restricted Use Pesticide”. The term “restricted use pesticide” means a pesticide that is classified for restricted use under the provisions of § 3 (d)(1)(C) of FIFRA or by NNEPA.

Q. “State”. The term “State” means the States of Arizona, New Mexico, or Utah. Portions of the Navajo Nation lie within all three states. When the term “State” is used herein it shall be used as a reference for the particular state in which the relevant portion of the Navajo Nation may be located, unless otherwise noted.

R. “An Unreasonable Adverse Effect on the Environment”. The term “an unreasonable adverse effect on the environment” means any unreasonable risks to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

Revision note. Slightly reworded for purposes of statutory form.

§ 304. Applicability

A. Except as otherwise provided in this Section, the provisions of this Chapter shall apply to all persons and property within the Navajo Nation.

B. Subject to the provisions of Subsections (C) and (D) of this Section, the provisions of this Chapter shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid waiver of jurisdiction or covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Chapter shall apply to any person who has submitted an application for a certification or license pursuant to this Chapter.

D. Nothing in this Chapter shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation or limit the jurisdiction of the Navajo Nation.

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ☞421.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 305. Authority of Executive Director

A. The Executive Director is responsible for administering this Act and is authorized to exercise all of the legal authority necessary for this purpose including developing plans and strategies related to the use of pesticides on the Navajo Nation. The Executive Director may delegate authority to the Navajo Nation Pesticides Program to insure that the requirements of this Act and the regulations promulgated under this Act are met. In addition, the Executive Director may designate the Pesticides Program as the lead program in developing and implementing a Navajo Nation groundwater management plan, to protect the quality of groundwater throughout the Navajo Nation from contamination by agricultural chemicals. The Pesticides Program would act in cooperation with other NNEPA programs and with EPA. The Executive Director also may delegate authority to the Pesticides Program to develop a plan for implementing the Worker Protection Standard for pesticide workers and handlers and to administer the Navajo Nation Endangered Species Plan in cooperation with EPA and the U.S. Fish and Wildlife Service.

B. The Executive Director is authorized to promulgate such rules and regulations from time to time as may be necessary to carry out the provisions of this Act. Subject to Subsection (D) of this Section, such rules and regulations may include:

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1. Regulations governing the determination of penalties, denials, suspension or revocation of certifications or licenses;
2. Rules and procedures governing appeals pursuant to Subchapter 6 of this Chapter; and
3. Regulations governing administration of this Chapter by the Executive Director.

C. Subject to Subsection (D) of this Section, proposed rules and regulations shall be published for public review and comment for at least thirty (30) days prior to their adoption. Rules and regulations shall be effective in accordance with their terms after review and approval by the Resources Committee.

D. Upon adoption of an Administrative Procedure Act by the Navajo Nation Council, the provisions of such Act shall supersede and apply instead of the provisions of Subsection (C) of this Section, and the provisions of Subsection (B) of this Section where they are inconsistent.

E. The effectiveness and enforceability of the provisions of this Chapter shall not be dependent upon the adoption of regulations pursuant to Subsection (B) of this Section.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.
CJY-46-86, July 17, 1986.

Library References

Environmental Law ☞421.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 306. Construction

A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this Act, and so as not to conflict with applicable law of the United States.

B. Nothing contained in this Act shall be construed to diminish, limit, or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under other applicable law.

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ☞407.
Westlaw Topic No. 149E.

§ 307. Registration and classification of pesticides

The Navajo Nation recognizes the classification of pesticides, whether for general use or restricted use, or both made by the Administrator of the EPA by the EPA pursuant to FIFRA. In addition, the Executive Director may restrict

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the use of additional pesticide products if the Executive Director finds that their uses must be restricted to prevent damage to property other than the property to which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Library References

Environmental Law ⌘423.
Indians ⌘7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Registration of pesticides, see 7 U.S.C. § 136a.

§ 308. Restricted use pesticide dealer

A. Licensing. Any pesticide dealer in the Navajo Nation shall obtain a license from the Executive Director pursuant to the regulations promulgated under this Act.

B. Responsibility. Every licensed pesticide dealer shall be responsible for the acts of each person employed by him/her in the distribution, sale, solicitation, handling and storage of pesticides. The pesticide dealer's license or the qualification of the sales manager or both may be suspended or revoked, after a hearing, for any violation of this Act, whether committed by the pesticide dealer, the sales manager or by any other officer, agent, or employee of the sales outlet.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.
CJY-46-86, July 17, 1986.

Library References

Indians ⌘7, 32.
Licenses ⌘11(1).
Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 2.
C.J.S. Indians §§ 46 to 47, 49, 51.
C.J.S. Licenses § 34.

§ 309. Qualifications of sales manager

Any person seeking to work as a sales manager for a pesticide dealer shall apply for qualification from the Executive Director pursuant to the regulations promulgated under this Act.

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ⌘421.
Westlaw Topic No. 149E.

§ 310. Classification of pesticide applicators

Pesticide applicators shall be classified as commercial applicators, public applicators or private applicators according to the definitions shown in § 303(B) of this Act.

History

CJY-46-86, July 17, 1986.

Library References

Environmental Law Ⓒ421.
Westlaw Topic No. 149E.

§ 311. Classification and categorization of pesticide applicators

A. The Executive Director will classify pesticide applicators as commercial applicators, public applicators, private applicators, according to the definitions in § 301 (B). In addition, commercial and public applicators shall be categorized in one or more of the categories defined below, based on the application site and the type of work they perform.

B. Categories:

1. Agriculture Pest Control

a. Plant. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the production of agricultural crops, including but not limited to feed grains, soybeans and forage, vegetables, small fruits, tree fruits and nuts, and including use or supervision of use of restricted use pesticides on grasslands and non-crop agricultural lands.

b. Animal.

(1) This category includes commercial and public applicators using or supervising the use of restricted use pesticides on animals, including, but not limited to beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and including the use or supervision of the use of restricted use pesticides on places in which animals are confined.

(2) Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

2. Forest Pest Control. This category includes commercial and public applicators utilizing or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

3. Ornamental and Turf Pest Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

4. Seed Treatment. This category includes commercial and public applicators using or supervising the use of restricted use pesticides on seeds.

5. Aquatic Pest Control. This category includes commercial and public applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health-related activities included in category (8) below.

6. Right-of-Way Pest Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric, powerlines, pipelines, railway rights-of-way or other similar areas.

7. Industrial, Institutional, Structural and Health-Related Pest Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

8. Public Health Pest Control. This category includes Navajo Nation, state, federal, or other governmental employees using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

9. Regulatory Pest Control. This category includes Navajo Nation, state, federal, or other governmental employees who use or supervise the use of restricted use pesticides in the control of regulated pests.

10. Research and Demonstration Pest Control. This category includes:

a. Persons who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration; and

b. Persons conducting field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides.

11. Rodent, Predator, and Bird Pest Control. This category includes commercial and public applicators using or supervising the use of any restricted use pesticides in the control of rodents, predators, or birds.

12. Wood Preservative Control. This category includes commercial and public applicators using or supervising the use of restricted use pesticides in wood preservative products containing creosote, pentachlorophenol (including its salts) and inorganic arsenicals.

C. Subcategories. Type of Pesticides. All commercial and public applicators are further placed into subcategories according to the types of pesticides they apply. These subcategories are:

1. Herbicides, desiccants, defoliant, and plant regulators;
2. Insecticides, attractants, and repellents;
3. Pesticides;
4. Rodenticides, predicides and avicides;
5. Fungicides and nematocides; and
6. Disinfectants and germicides.

D. All applicators who apply pesticides via aircraft must comply with all applicable federal and Navajo Nation regulations.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Library References

Environmental Law ☞421.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 312. Standards of competency for certification of commercial and public applicators

A. Commercial and public applicators must demonstrate competency in the use and handling of pesticides, both with regard to general standards applicable to all users and to additional specific standards applicable to each category or subcategory in which the applicator is to be classified.

B. General Standards for Commercial and Public Applicators. Commercial and public applicators must demonstrate knowledge of the following subjects in order to receive certification:

1. Label and Labeling Comprehension.
 - a. The general format and terminology of pesticide labels and labeling;
 - b. The understanding of instructions, signal words, terms, symbols, and other information commonly appearing on pesticide labels;
 - c. Classification of the product, general or restricted; and
 - d. Necessity for use consistent with the label.
2. Safety. Factors including:
 - a. Pesticide toxicity and hazard to man and common exposure routes;
 - b. Common types and causes of pesticide accidents;
 - c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
 - d. Need for and use of protective clothing and equipment;
 - e. Symptoms of pesticide poisoning;
 - f. First aid and other procedures to be followed in case of a pesticide accident; and
 - g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from gaining access to pesticides and pesticide containers.
3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
 - a. Weather and other climatic conditions;
 - b. Types of terrain, soil or other substrate;
 - c. Presence of fish, wildlife and other non-target organisms; and

- d. Drainage patterns.
- 4. Pests. Factors such as:
 - a. Common features of pest organisms and characteristics of damage needed for pest recognition;
 - b. Recognition of relevant pests; and
 - c. Pest development and biology as it may be relevant to problem identification and control.
- 5. Pesticides. Factors such as:
 - a. Types of pesticides;
 - b. Types of formulations;
 - c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
 - d. Hazards and residues associated with use;
 - e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - f. Dilution procedures.
- 6. Equipment. Factors including:
 - a. Types of equipment and advantages and limitations of each type; and
 - b. Uses, maintenance and calibration of equipment.
- 7. Application Techniques. Factors including:
 - a. Techniques used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which techniques of application to use in a given situation;
 - b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
 - c. Prevention of drift and pesticide loss into the environment.
- 8. Laws and Regulations. Applicable federal and Navajo Nation laws and regulations.

C. Category Specific Standards. In addition to the general standards, commercial and public applicators must demonstrate knowledge of the principles of pesticide use as they relate to the particular use category in which the applicator is involved. The following are the category specific standards.

- 1. Agricultural Pest Control.
 - a. Plant. Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such knowledge is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.
 - b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associ-

ated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

2. Forest Pest Control. Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in the Navajo Nation and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent lands use. Due to frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to human, pests and other domestic animals.

3. Ornamental and Turf Pest Control. Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant materials, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitation to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards to humans, pests, and other domestic animals.

4. Seed Treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

5. Aquatic Pest Control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effect on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

6. Right-of-Way Pest Control. Applicators shall demonstrate practical knowledge of a wide variety of environments since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides, the need of containment of these pesticides within the right-of-way area, and the impact of their application activities on the adjacent areas and communities.

7. Industrial, Institutional, Structural and Health-Related Pest Control. Applicators shall demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure of people and pets. Since human exposure, including babies, children, pregnant women and elderly people, is frequently a potential problem, applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor application, applicators must also demonstrate practical knowledge of environmental conditions particularly related to this Activity.

8. Public Health Pest Control. Applicator shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

9. Regulatory Pest Control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulations of pests, and the potential impact on the environment of restricted use pesticides used in suppressing and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

10. Research and Demonstration Pest Control:

a. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Such persons should also demonstrate an understanding of

pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in 40 C.F.R. § 171.4(b). In addition, such persons shall meet the specific standards required for categories (1)-(7) of this Section as may be applicable to their particular activity.

b. Persons conducting field research or method improvement work with restricted use pesticides will be expected to know the general standards detailed in § 312 (B) of this Act. In addition, they shall meet the specific standards required for categories (1)-(7) of § 312(C) of this Act that are applicable to their particular activity, or alternatively, they shall meet the more inclusive requirements listed under “Demonstration”.

11. Rodent, Predator, and Bird Pest Control. Applicators shall demonstrate practical knowledge of rodents, predators, and bird pests, as well as predator-prey relationships. They should possess practical knowledge of rodent, predator and bird habits and habitat, and the hazards associated with secondary poisoning of non-target species.

12. Wood Preservative Control. Applicators shall demonstrate practical knowledge of wood preservative products containing creosote, pentachlorophenol (including its salts) and the inorganic arsenicals. They shall possess knowledge of how wood is preserved when using an EPA-registered pesticide containing creosote, pentachlorophenol (including its salts) and inorganic arsenical to protect it from insect attack and decay. Also knowledge should include applicator safety and environmental protection. Wood treated with creosote, pentachlorophenol (including its salts) and inorganic arsenic should only be used in areas where such protection is important.

D. Exemptions from Standards. The above standards do not apply to the following persons for purposes of this Act:

1. Persons conducting laboratory type research involving restricted use pesticides; and

2. Doctors of Medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medication during the course of their normal practice other than Doctors of Veterinary Medicine included under category (B)(1) of § 311 of this Act.

E. Until such time as the NNEPA has adopted its own plan and procedures for examination and testing of competency, any applicant who possesses a certificate from the State of Arizona, New Mexico, or Utah, granted pursuant to an approved state FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Library References

Environmental Law ☞421.	C.J.S. Architects § 2.
Indians ☞7, 32.	C.J.S. Indians §§ 46 to 47, 49, 51.
Licenses ☞11(1).	C.J.S. Licenses § 34.
Westlaw Topic Nos. 149E, 209, 238.	

United States Code

Certification of applicators, see 7 U.S.C. § 136i.

§ 313. Standards of competency for certification of private applicators

A. In order to receive certification, all private applicators must show that they possess a practical knowledge of the pest problems and pest control practices associated with their agricultural operations; proper storage, use, handling and disposal of the pesticides and containers; and their related legal responsibilities. This practical knowledge includes the ability to:

1. Recognize common pests to be controlled and prevent potential damages caused by them.
2. Read and understand the label and labeling information including the common name of the pesticide to be applied; pest(s) to be controlled; timing and methods of application; safety precautions; preharvest or re-entry restrictions; and any specific disposal procedures.
3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as areas to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
4. Recognize local environmental situations that must be considered during application to avoid contamination.
5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

B. Until such time as the NNEPA has adopted its own procedures for examination and testing of competency, any applicant who possesses a certificate from the State of Arizona, New Mexico, or Utah, granted pursuant to an approved state FIFRA plan, shall be deemed to have demonstrated the level of knowledge and competency necessary to receive a similar certificate from the Navajo Nation.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Library References

Indians ☞7, 32.	C.J.S. Architects § 2.
Licenses ☞11(1, 1).	C.J.S. Indians §§ 46 to 47, 49, 51.
Westlaw Topic Nos. 209, 238.	C.J.S. Licenses § 34.

United States Code

Certification of applicators, see 7 U.S.C. § 136i.

§ 314. Certification and license application conditions

A. All certification and license applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any certification or license:

“Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with any certification or license issued pursuant to this application or to which the provisions of the Navajo Nation Pesticide Act otherwise apply. This consent shall be effective whether or not a certification or license is issued or is in effect, and may not be withdrawn by Applicant. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of Applicant.”

B. Applicant shall include the foregoing statement as a term and condition of any agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any certification or license issued under this Chapter, and each party to any such agreement must agree and subscribe to said statement, substituting the name of the party for “Applicant” as appropriate, and substituting the phrase “this agreement” in place of the phrase “any certification or license issued pursuant to this application.” Failure by Applicant to include such statement, or of any party to agree and subscribe to such statement, shall render the contract or other agreement void and unenforceable, and shall subject Applicant to a civil penalty in accordance with § 322 of this Chapter.

History

CJY-62-95, July 21, 1995.

Library References

Indians ☞7, 32.

Licenses ☞11(1).

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 2.

C.J.S. Indians §§ 46 to 47, 49, 51.

C.J.S. Licenses § 34.

United States Code

Certification of applicators, see 7 U.S.C. § 136i.

§ 315. Standards for supervision of non-certified applicators by certified applicators

A. Certified applicators (except non-readers) whose activities indicate a supervisory role must demonstrate a practical knowledge of federal and Navajo Nation supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

B. The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, “direct supervision” shall include verifiable instruction to the competent person, as follows:

- (1) Detailed guidance for applying the pesticide properly, and
- (2) Provisions for contacting the certified applicator in the event he/she is needed. In other situations, and as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

C. Each commercial applicator shall be responsible for the acts of each person employed, contracted, subcontracted, or supervised by him in the application of pesticides and all claims and recommendations for use of pesticides. The certified applicator shall be subject to criminal or civil penalties for any violation whether committed by him, or by his officers, agents, employees or subcontractors. Reliance on a subcontractor shall not constitute a defense against any action brought by the Executive Director against a certified applicator pursuant to this Act.

History

CJY-62-95, July 21, 1995. CJY-46-86, July 17, 1986.
 CMY-28-90, May 3, 1990, added subsection
 (Q).

Library References

Indians ☞7, 32.	C.J.S. Architects § 2.
Licenses ☞11(1).	C.J.S. Indians §§ 46 to 47, 49, 51.
Westlaw Topic Nos. 209, 238.	C.J.S. Licenses § 34.

§ 316. Certification procedures

A. Commercial and Public Applicators

1. Certification Methods:

a. A Navajo Nation certification may be obtained by presenting to the Executive Director a valid commercial or public applicator certification issued by the State of Arizona, New Mexico, or Utah pursuant to an approved state FIFRA plan. The Navajo Nation certification issued will reflect Navajo Nation certification only in the commercial or public applicator categories appearing on the State certification. Further, the expiration date on the Navajo Nation certification shall not exceed the expiration date given on the State certification.

b. The Executive Director is authorized to develop and implement a Navajo Nation commercial and public applicator examination and certification program, in conjunction with EPA, and in accordance with the standards required by this Act and FIFRA. Such program maybe either an exclusive or non-exclusive alternative to the acceptance of state certification. A Navajo Nation certification issued pursuant to such a program shall be valid for a period of three (3) years from the date of issuance. A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation certification, whether the certification is based on a State certification or on exam.

2. Certification Renewal. A Navajo Nation certification may be renewed by presenting a valid Arizona, New Mexico, or Utah certification to

the Executive Director, and shall be re-issued for a period not to exceed the expiration of such State certification; provided, if the Executive Director has promulgated a Navajo Nation examination procedure for commercial and public applicators, such certification may be renewed pursuant to the procedure specified therein.

3. Records

a. Commercial and public applicators shall keep and maintain records of each application of any restricted use pesticide within the Navajo Nation. Such records shall include the following information:

(1) Name and address of the person for whom the pesticide was applied;

(2) Location and size of treatment site, if different from subsection (A)(3)(a)(1);

(3) Year, month, day and time of application;

(4) Name of pesticide, identified by trade name and EPA registration number, formulation, concentration, rate applied, and total amount used;

(5) Purpose of application, including target pest(s), crop, commodity, or site, as applicable;

(6) Weather conditions; and

(7) Type and amount of pesticide disposed of, method of disposal, date, and location of disposal site.

b. Such records shall be kept for a period of two (2) years from the date of application of the pesticide and shall be available for inspection by the Executive Director at reasonable times. The Executive Director shall, upon written request, be furnished a copy of such records by the commercial or public applicator. Records of restricted use pesticides application performed by persons under the direct supervision of a certified commercial or public applicator shall be the responsibility of the supervising certified applicator.

4. Exemption. The provision of this Section concerning records shall not apply to persons conducting research involving restricted use pesticides nor to Doctors of Medicine or Doctors of Veterinary Medicine applying restricted use pesticides as drugs or medication during the course of their normal practice other than Doctors of Veterinary Medicine included under category (B) (1) (b) of § 311 of this Act.

B. Private Applicators

1. Certification Methods

a. A private applicator may obtain a Navajo Nation certification by presenting to the Executive Director a valid Private Applicator's certification issued by the States of Arizona, New Mexico, or Utah pursuant to an approved state FIFRA plan. The Executive Director will issue a Navajo Nation certification to the holder of an Arizona, New Mexico, or Utah certification which shall authorize only those uses authorized by the State certification. The expiration date of the Navajo Nation certification shall not exceed the expiration date given on the State certification.

b. The Executive Director is authorized to conduct or arrange for the conducting of training sessions for private applicators. Applicators who complete a thorough training in the use of one or more pesticides and demonstrate competency to use such pesticide(s), based on the private applicator standards set forth above, may be certified by the Executive Director to use such pesticide(s). The certification program may employ either a written or oral testing procedure or a thorough physical demonstration of proper technical knowledge and competency. This certification program maybe either an exclusive or a non-exclusive alternative to the acceptance of State certification. A Navajo Nation certification issued pursuant to such a program shall be valid for three (3) years from the date of issuance.

c. A reasonable fee, at a rate set by regulation, may be charged for the issuance of a Navajo Nation certification.

d. Recertification may be obtained by presenting an updated Arizona, New Mexico, or Utah certification to the Executive Director, but such renewal shall not exceed the period of the state certification, provided, if the Executive Director has promulgated a Navajo Nation Certification Program, such certifications shall be renewed pursuant to the procedures specified therein.

C. Certification of Non-English Reading Applicators/Non-Readers

1. The Executive Director may certify a person who is unable to read English, if such person can demonstrate competency with regard to all of the standards required by this Act, except the ability to read. An applicator who does not read English or cannot for any other reason read the appropriate labels must:

a. Receive personal instruction from a certified applicator in the use of the pesticide.

b. Physically demonstrate that he understands how to use such pesticide.

c. Learn and memorize all of the significant information on the label.

d. Be able to distinguish by label shape, color, size or configuration the pesticide from others.

e. Be aware of sources of advice and information for safe and proper use of each pesticide related to his authorization.

2. Certification for non-readers is limited to one pesticide per certification. Non-readers may not supervise non-certified applicators.

History

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

Library References

Indians ⇄7, 32.

Licenses ⇄22.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 9.

C.J.S. Indians §§ 46 to 47, 49, 51.
C.J.S. Licenses § 43.

United States Code

Certification of applicators, see 7 U.S.C. § 136i.

§ 317. Pesticide containers

Storage and disposal methods shall comply with appropriate pesticide label instructions and regulations promulgated pursuant to this Act. All containers shall be flattened or pierced before disposal so that they cannot be used to contain any other materials or used for any other purposes. Storage and disposal of pesticides shall only be at areas designated and approved by the Executive Director. Disposal of pesticide containers shall only be at approved or permitted landfills, in accordance with applicable solid waste laws and regulations.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 8, 1990.
CJY-46-86, July 17, 1986

Library References

Environmental Law ☞421.	Westlaw Topic Nos. 149E, 209.
Indians ☞7, 32.	C.J.S. Indians §§ 46 to 47, 49, 51.

§ 318. Entry and inspection

For purposes of carrying out this Act, the Executive Director may enter at reasonable times any establishment or other places where pesticides or devices are held for use, distribution or sale or where pesticides are being, or have been used, for the purposes of inspecting and obtaining samples of any pesticides or devices or samples of any container or copies of labels. The Executive Director also may enter at reasonable times any establishment or site for the purpose of inspecting records required to be maintained pursuant to this Act or the regulations hereunder.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Library References

Environmental Law ☞421.	C.J.S. Indians §§ 46 to 47, 49, 51.
Indians ☞7, 32.	C.J.S. Searches and Seizures §§ 99 to 101,
Searches and Seizures ☞79.	189.
Westlaw Topic Nos. 149E, 209, 349.	

§ 319. Cooperative agreements

The Executive Director is authorized to pursue the development of cooperative agreements including grants-in-aid from any agency of the States of Arizona, New Mexico, or Utah, the Bureau of Indian Affairs, or the United

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States Environmental Protection Agency for the purpose of carrying out the provisions of this Act. Any such agreements are subject to approval in accordance with the laws and procedures of the Navajo Nation.

History

CJY-62-95, July 21, 1995.
CJY-46-86, July 17, 1986.

Cross References

Navajo Nation standing committee authority, see 2 N.N.C. § 824(B)(6).

Library References

Indians ↻4, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 7 to 8, 21, 49, 51.

United States Code

Cooperation, aid and training, see 7 U.S.C. § 136u.

§ 320. Denial, suspension or revocation of license or certificate

A. The Executive Director may, for good cause shown or upon his/her own information and belief, informally contact any pesticide dealer or applicator about possible violations of the Act or practices which may result in violations. These informal contacts are to assist the dealer or applicator in adhering to practices which promote the proper use of pesticides.

B. Upon recommendation to the Executive Director or based upon his/her own findings and belief, the Executive Director may issue a Warning of Possible Violation in the form of a letter to a dealer or an applicator. The letter shall explain the basis for the Warning, possible measures which the dealer or applicator may take to mitigate the basis of the Warning, and an explanation of the steps that maybe taken if the dealer or applicator does not take positive corrective action. Neither this letter nor an informal contact are a necessary prerequisite to any further administrative or judicial action, except that the issuance of a warning of possible violation is a prerequisite to any criminal action against a private applicator.

C. The Executive Director is authorized to issue to any person who has willfully or negligently failed to comply with the recommendations of a Warning of Possible Violation or otherwise failed to comply with the requirements of this Act or the terms of a license or certification, an Order to Show Cause why a license or certification should not be revoked. Such an Order will require the person to appear before the Executive Director or other body designated by the Executive Director.

D. The Executive Director is authorized to suspend immediately or deny an application for a license or certification of any dealer or applicator whose actions or omissions in violation of this Act pose a significant threat to the health or welfare of the Navajo Nation, its people and its resources. Within thirty (30) days of any such action, the Executive Director must insure that the

dealer or applicator is given an opportunity for a hearing before the Executive Director or a body the Executive Director may designate for consideration of the suspension action and consideration as to whether the license or certification must be revoked, denied, or suspended pending further investigation.

History

CJY-62-95, July 21, 1995. C.J.S. Architects §§ 4, 7, 10.
 CMY-28-90, May 3, 1990 amended subsection (C). **Revision note.** Slightly reworded for purposes of statutory form.

Library References

Indians ☞32. C.J.S. Architects §§ 4, 7, 10.
 Licenses ☞20, 38. C.J.S. Indians §§ 49, 51.
 Westlaw Topic Nos. 209, 238. C.J.S. Licenses §§ 39 to 41, 48, 50 to 63.
 C.J.S. Agriculture § 4.5.

§ 321. Prohibited acts

A. No pesticide applicator (commercial, public, private, or otherwise) using or supervising the use of a restricted use pesticide shall:

1. Use any pesticide in a manner inconsistent with its labeling or with this Act.
2. Use any restricted use pesticide without being certified or under the direct supervision of a certified applicator.
3. Supervise the use of a restricted pesticide without first obtaining a Navajo Nation certification.
4. Falsify any applications or records required by this Act.
5. Fail to keep or refuse to allow inspection of any records required by this Act.
6. Make available any restricted use pesticide to anyone who is not authorized to use it or is not acting directly under the supervision of one who is authorized to use it.
7. Use or dispose of any pesticide or pesticide container in a manner which is inconsistent with the label directions or which unreasonably endangers or harms the quality of the natural environment or the health of any living beings.
8. Violate any of the requirements of this Act or the regulations thereunder.

B. No pesticide dealer shall:

1. Distribute, sell, offer, or hold for sale any pesticide without being licensed by the Executive Director.
2. Sell any restricted use pesticide not registered pursuant to FIFRA.
3. Detach, alter, deface, or destroy, in whole or in part, any label or labeling required by FIFRA.
4. Add or delete any substance to or from a pesticide which may alter its registered composition.
5. Sell or offer for sale any pesticide other than from the original unbroken package.

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6. Make false or misleading representation or advertisement for any pesticide or device, including any advertisement or representation which fails to reveal the consequences which may result from the use of the pesticide or device to which the advertisement or representation refers.

7. Use any pesticide in a manner inconsistent with the label or this Act.

8. Dispose of or store any pesticide in areas not approved for disposal and storage.

9. Violate any of the requirements of this Act or the regulations thereunder.

C. No person shall:

1. Distribute, sell, offer for sale, hold for sale, ship, or deliver for shipment to, or receive from, any person any pesticide that is not registered with the EPA under FIFRA or subject to the exceptions listed under FIFRA § 3 (a) and (b).

2. Produce any pesticide subject to FIFRA or any active ingredient used in producing a pesticide subject to FIFRA unless the establishment in which it is produced is registered with the EPA.

3. Use restricted use pesticides unless certified pursuant to this Act. This prohibition however does not apply to persons who apply pesticides under the direct supervision of a certified applicator pursuant to this Act. In addition, any person may use a general use pesticide, provided it is used in accordance with its directions, warnings, and cautions, and only for the uses for which it is registered.

4. Transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, or beneficial insects, or to pollute any waterway in a manner harmful to any wildlife therein or the quality of the water in such waterway, or to otherwise adversely impact the quality of any other water resources, including groundwater, within the Navajo Nation.

5. Violate any of the requirements of this Act or the regulations thereunder.

History

CJY-62-95, July 21, 1995.

CJY-46-86, July 17, 1986.

Library References

Environmental Law ⇌421.

Indians ⇌32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49, 51.

United States Code

Unlawful acts, environmental pesticide control, see 7 U.S.C. § 136j.

§ 322. Penalties

A. Criminal Penalties.

1. Any person who commits one or more violations of the provisions of this Act shall be subject to criminal prosecution in the District Courts of the

Navajo Nation. Upon receipt of the Executive Director's sworn statement alleging one or more violations of this Act, the Office of the Prosecutor of the Navajo Nation shall investigate and prosecute as appropriate alleged criminal violations of this Act.

2. Any person who knowingly violates any provision of this Act or the regulations promulgated thereunder, or who knowingly makes any material false statement or omits material information from, or alters, conceals, or fails to file or maintain any record, application, or other document required pursuant to this Chapter to be filed or maintained shall, upon conviction, be subject to a criminal fine of not greater than five thousand dollars (\$5,000), except that in the case of a private applicator the maximum fine shall be one thousand dollars (\$1,000), and/or imprisonment for a period not to exceed thirty (30) days.

3. In any instance where the Navajo Nation lacks jurisdiction over the person charged, the Executive Director may refer the action to the appropriate EPA Regional Administrator. Any person who is not subject to the criminal jurisdiction of the Navajo Nation also may be subject to exclusion from the territory of the Navajo Nation for consistent violations of the provisions of this Chapter or the regulations promulgated thereunder. Exclusion proceedings may be initiated by the Director in the District Courts of the Navajo Nation upon his/her determination that such violations have occurred.

4. In addition to the above proceedings, the Director in the District Courts of the Navajo Nation is authorized to initiate a proceeding, separately or in connection with either a criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter or the regulations promulgated thereunder, for any expenses incurred in investigating and evaluating such damages or violations, for any administrative costs incurred, and for the reasonable value of any attorney time or expenses associated with such proceeding.

B. Civil Administrative Penalties.

1. Any person who violates any provision of this Act or the regulations promulgated hereunder may be assessed a civil administrative penalty by order of the Executive Director of not more than five thousand dollars (\$5,000) for each violation; provided, however, that no civil penalty shall be assessed unless the person cited shall have been given notice and opportunity for a hearing on such violation. The person cited shall have thirty (30) days from receipt of such notice to pay the penalty or request a hearing. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived.

2. In the event that the Executive Director is unable to collect the civil penalty, the Executive Director shall refer the matter to the Attorney General of the Navajo Nation, for recovery of such amount in the appropriate District Court of the Navajo Nation. In addition, the Attorney General is authorized

to recover all of the Director's enforcement expenses, including, but not limited to attorneys' fees and the cost of collection proceedings.

3. In determining the amount of the penalty, the Executive Director shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. Whenever the Executive Director finds that the violation occurred despite the exercise of due care or did not cause significant harm to health or the environment, the Executive Director may issue a warning in lieu of assessing a penalty.

C. Stop Sale, Use, Removal, and Seizure.

1. Stop Sale, Use, or Removal Orders. In addition to any other penalties or actions available under this Act, the Executive Director may issue and enforce a written or printed "stop sale, use, or removal" order to the pesticide dealer for any lot of pesticides or devices which the Executive Director has reasonable cause to believe are being sold or offered for sale in violation of any of the provisions of this Act or regulations promulgated pursuant to this Act. Such order shall remain in effect until the Executive Director has determined that the provisions of this Act or regulations in question have been complied with.

2. Seizure. If the Executive Director has reasonable cause to believe that a pesticide dealer is selling or offering for sale any pesticides or devices in violation of a "stop sale, use or removal order," the Executive Director may seize the pesticides or devices subject to such order and hold them at a designated place until the violation of this Act or its regulations has been complied with or until the violation has been otherwise legally disposed of and the dealer has paid all costs incurred in connection with the seizure. Such seizure shall be conducted in accordance with the applicable laws of the Navajo Nation.

D. Injunctive Relief. If the violation of any of the provisions of this Act or of any regulations promulgated thereunder is a nuisance or a hazard to the health and safety of humans or harmful to the environment, such activity may be restrained or enjoined at any time by an order issued by the appropriate District Court of the Navajo Nation, but only if all administrative remedies have been exhausted or if the Executive Director determines that immediate and irreparable injury, loss, or damage will result if such violation or activity is not immediately restrained or enjoined. The Executive Director shall request the Attorney General of the Navajo Nation to bring an action to obtain an order to restrain or enjoin any such violation.

E. Records and reports. Pesticide dealers shall keep a record of each sale of restricted use pesticide at each sales outlet on forms provided by the Executive Director. All records and reports shall be submitted to the Executive Director as specified by the regulations promulgated pursuant to this Act.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.

CJY-46-86, July 17, 1986.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Environmental Law ☞747, 762.
Indians ☞32(13), 38.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 157, 163.

United States Code

Penalties, environmental pesticide control, see 7 U.S.C. § 136l.

§ 323. Judicial Review

A. Review in Navajo Nation District Court. Whenever the Executive Director takes final action without the opportunity for a hearing, such as in the case of a refusal to change a pesticide classification, review of such final action shall be had in the appropriate Navajo Nation District Court in Window Rock. In addition, any person subject to an administrative penalty under § 322(B) may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within thirty (30) days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Executive Director and the Attorney General. Within thirty (30) days thereafter the Executive Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Executive Director may seek to recover civil penalties ordered or assessed under this Section.

B. Review in Navajo Nation Supreme Court. Review of all other final actions of the Executive Director, including but not limited to promulgation of regulations, issuance of orders, including civil penalty orders, and denial, suspension or revocation of certificates and licenses, shall be had in the Navajo Nation Supreme Court. A petition for review shall be filed within sixty (60) days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or person required to be served, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within sixty (60) days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Executive Director at the time of the final action from which the appeal is taken.

C. Limitations on Review. If judicial review of a final action of the Executive Director could have been obtained under Subsection (A) or (B) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

4 N.N.C. § 323

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D. Standards for Review. In reviewing any final action of the Executive Director undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. Contrary to constitutional right, power, privilege or immunity;
3. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
4. Without observance of procedure required by law, such failure to observe such procedure is arbitrary or capricious; or
5. Unsupported by substantial evidence.

E. Any challenge to the lawfulness of any provision of this Act must be filed in accordance with Navajo law within ninety (90) days after the date of the enactment of this Act in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Act.

History

CJY-62-95, July 21, 1995.

Library References

Environmental Law ☞645, 686.
Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 324. License conditions

A. As a condition of obtaining a dealer's license, or qualification of a sales manager, said applicants shall consent to the jurisdiction of the Navajo Nation and shall agree to abide by all laws of the Navajo Nation.

B. All dealer license and qualification of sales manager application forms shall contain the consent to jurisdiction statement set forth at § 314 of this Act.

History

CJY-62-95, July 21, 1995.

Library References

Indians ☞32, 33.
Licenses ☞25.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Indians §§ 49, 51, 65, 93 to 95, 130,
132, 134.
C.J.S. Licenses §§ 41, 45 to 46.

§ 325. Use of funds

Monies derived from fees and penalties under this Act and regulations promulgated thereunder shall be available to the Executive Director to administer this Act and regulations. Such funds shall be deposited into a duly established revolving account and expended in accordance with the revolving

account Plan of Operation approved budget. Any monies contained in said revolving account at the end of any fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.

Library References

Indians ⌘32(4.1).
Westlaw Topic No. 209.

§ 326. Certification requirements for agricultural aircraft pilots

All agricultural aircraft pilots must possess a valid agricultural aircraft pilot certification issued by the Executive Director, pursuant to regulations promulgated hereunder, and a valid commercial pilot's certification issued by the Federal Aviation Administrator.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May 3, 1990.

Revision note. Sections 319 and 320 have been rearranged for purposes of statutory form.

Library References

Aviation ⌘122.
Indians ⌘32.
Westlaw Topic Nos. 48B, 209.

C.J.S. Aeronautics and Aerospace §§ 42 to 45, 56.
C.J.S. Indians §§ 49, 51.

§ 327. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected and to this end the provisions of this Code are declared to be severable.

History

CJY-62-95, July 21, 1995.
CMY-28-90, May3, 1990.

Library References

Statutes ⌘64.
Westlaw Topic No. 361.
C.J.S. Statutes § 83.

Chapter 5. Navajo Abandoned Mine Lands Reclamation Code [Recodified]

Historical and Statutory Notes

Chapter 5 of Title 4, consisting of §§ 500 to 544, was recodified as Title 18, Chapter 15. See now, 18 NNC §§ 1601 to 1644.

Chapter 7. Navajo Energy Development Administration

Section

- 701. Establishment
- 702. Purposes
- 703. Activities
- 704. Organization
- 705. Personnel
- 706. Conflict of interest
- 707. Amendments

History

Note. CMY-39-80, May 1, 1980 established the Executive Branch of the Navajo Nation government. NEDA has, since its creation, operated within the Navajo Energy Development Authority.

United States Code

Indian energy resources, see 25 U.S.C. § 3501 et seq.

§ 701. Establishment

The Navajo Energy Development Administration (NEDA) is a department of the Executive Branch of the Navajo Nation government within the Division of Economic Development.

History

ACJA-21-87, January 7, 1987.
CMY-39-80, May 1, 1980.

Note. Slightly reworded for purposes of statutory form.

§ 702. Purposes

A. The basic purpose of NEDA is to plan energy related projects and to spin off actual project development to the Commercial and Industrial Departments of the Economic Development Division, or other entities as determined by the Office of the President/Vice-President including but not limited to private enterprises. In addition, NEDA's purposes include:

1. To plan and develop the following resources:
 - a. Energy. In the absence of capability from the private sector, the goal is to eventually spin off the management to the private sector. These resources include but are not limited to solar, wind, and geothermal;

b. Industrial and non-industrial minerals. NEDA shall assist from a planning standpoint, in exploration, determination of resources characterization, and conducting feasibility studies of industrial and non-industrial minerals; and

C. Coal, oil, gas, uranium and their processed forms, including but not limited to synthetic fuel and gasoline. NEDA shall assist in the production, mining, processing, and distribution of these resources.

2. To initiate the preliminary negotiation format and provisions on agreements and contracts with private enterprises with the specific goals of maximizing financial returns and Navajo employment of promoting conservation, and of transferring the eventual control over resources from non-Navajo private enterprise to Navajo;

3. To promote efficient utilization of Navajo energy resources in a manner which is consistent with Navajo social and environmental concerns;

4. To represent the Navajo Nation in various state and federal activities, acting as an energy advisor to the Navajo Nation, in conjunction with other Navajo Nation programs; and

5. To promote the utilization of Navajo labor and businesses.

History

ACJA-21-87, January 7, 1987.
CMY-39-8, 3, May 1, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄7, 16.10, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 107 to 108.

§ 703. Activities

A. NEDA will be responsible for the following activities and services:

1. Prepare an overall energy development plan for the Navajo Nation.

2. Inventory the following resources:

a. Nonferrous minerals;

b. Industrial minerals;

c. Oil, gas, and coal; and

d. Alternative energy and other minerals.

3. Conduct feasibility studies for the areas of concentration of specified resources.

4. Receive and evaluate proposals from non-Navajo Nation government entities interested in developing the specified resources, in conjunction with other Navajo Nation programs.

5. Refer planned projects to the appropriate agencies within the Navajo Nation and federal Governments, and others for further project planning and development.

6. Assist Navajo entities who request technical assistance for project planning/development.

4 N.N.C. § 703

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7. Participate in evaluations concerning energy development projects, in conjunction with other agencies within the Navajo Nation and other governments.

8. Assist the Navajo Nation Negotiating Team with the provision of accurate information and technical assistance upon request.

9. Assist the Navajo Nation government in generating development financing for project planning and development, upon request.

10. Apply to the appropriate agencies of the state and the federal government for permits, licenses, or approval as maybe necessary or appropriate to carry out the above-specified activities; and construct, maintain and operate energy projects in accordance with such licenses or permits, in conjunction with other Navajo Nation programs.

History

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 704. Organization

NEDA will operate under the Executive Branch of the Navajo Nation government as a department within the Division of Economic Development.

History

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 705. Personnel

All personnel shall be hired pursuant to Personnel Policies and Procedures of the Navajo Nation.

History

ACJA-21-87, January 7, 1987.

CMY-39-80, May 1, 1980.

Library References

Indians ⇄32(6).

Westlaw Topic No. 209.

C.J.S. Indians § 51.

§ 706. Conflict of interest

All employees of Navajo Energy Development Administration shall comply with the Navajo Nation Ethics in Government Law.

History

ACJA-21-87, January 7, 1987.
CMY-39-80, May 1, 1980.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 707. Amendments

This Plan of Operation may be amended from time to time as deemed necessary by the Government Services Committee of the Navajo Nation Council upon the recommendation of the Economic Development Committee and the Resources Committee of the Navajo Nation Council.

History

ACJA-21-87, January 21, 1987.
CMY-39-80, May 1, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Chapter 9. Navajo Nation Environmental Policy Act

Subchapter 1. General Provisions

Section

- 901. Policy
- 902. Authority
- 903. Purposes
- 904. Navajo Nation government
- 905. Limitations
- 906. Severability

History

Note. Section headings have been added and part of the Navajo Nation Environmental Policy Act adopted by CAP-47-95, April 21, 1995. are not to be construed as interpretive of or as a

United States Code

National environmental policy, see 42 U.S.C. § 4321 et seq.

§ 901. Policy

It is the policy of the Navajo Nation to promote harmony and balance between the natural environment and people of the Navajo Nation, and to restore that harmony and balance as necessary. To this end, the Navajo Nation Council declares that the protection, restoration and preservation of the environment is a central component of the philosophy of the Navajo Nation; that the quality of life of the Navajo People is intimately related to the quality of the

4 N.N.C. § 901

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environment within the Navajo Nation; that all persons and entities, including agencies, departments, enterprises and other instrumentalities of the Navajo Nation itself and agencies of other governments, can and do affect the environment; and that it is the policy of the Navajo Nation to use all practicable means to create and maintain conditions under which humankind and nature can exist in productive harmony.

History

CAP-47-95, April 21, 1995.

Library References

Environmental Law ⇌577.
Indians ⇌7, 9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 67.

United States Code

Policies and goals, national environmental policy, see 42 U.S.C. § 4321 et seq.

§ 902. Authority

The Navajo Nation, acting through the Navajo Nation Environmental Protection Agency, shall exert to the fullest extent its authority to regulate, monitor and enforce performance with appropriate environmental standards throughout all of the Navajo Nation, including the exercise of its authority to limit or eliminate environmental contaminants emitted outside the Navajo Nation, but which may migrate into or otherwise adversely affect the lands, waters or air of the Navajo Nation. The Navajo Nation will employ any and all authority it may have pursuant to its inherent sovereign authority, delegations of authority from the United States and any cooperative arrangements entered into between the Navajo Nation and other governmental institutions where such arrangements are approved by the Navajo Nation or its duly authorized committee or committees.

History

CAP-47-95, April 21, 1995.

Cross References

Navajo Nation Environmental Protection Agency, 2 N.N.C. § 1921—1927.

Library References

Environmental Law ⇌572, 577.
Indians ⇌32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 903. Purposes

The Navajo Nation shall employ its governmental authority pursuant to § 902 hereof, using all practicable means consistent with other essential governmental functions, for the following purposes:

A. To fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

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4 N.N.C. § 904

B. To assure for all residents of and visitors to the Navajo Nation a safe, healthful, productive, aesthetically pleasing and culturally appropriate environment;

C. To promote to the fullest extent practicable recycling and the use of renewable resources to ensure that the level of use of renewable resources does not exceed that which is sustainable; to reduce or eliminate the waste of resources; to designate, conserve and protect unique ecosystems; to eliminate unnecessary destruction, depletion, degradation, and disturbance of natural resources in the extraction or use of other resources; and to attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable consequences;

D. To ensure that activities within the Navajo Nation that may substantially disturb the environment are conducted in a manner to minimize such disturbance to the extent feasible and practicable; to ensure that any person or entity doing business on or otherwise carrying on activities within the Navajo Nation is required to remediate any environmental damage caused in the course of business and to provide ample security for the costs of any such remedial actions in the event that such person or entity fails to satisfy such requirements;

E. To ensure that damage to or contamination of the environment which occurred in the past is remedied, and that the appropriate person or entity be held accountable for the costs of such remediation;

F. To preserve important cultural, religious, historic, and natural aspects of the Navajo Nation; and

G. To achieve and maintain, wherever possible, an environment which supports diversity, and to achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

History

CAP-47-95, April 21, 1995.

Library References

Environmental Law ⌘577.
Indians ⌘7, 9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 67.

§ 904. Navajo Nation government

A. All agencies, departments, enterprises and other instrumentalities of the Navajo Nation shall review their current Plans of Operation, charters, and policies and procedures to determine if they should be amended in order to better fulfill and promote the purposes set forth in § 903 hereof, and shall pursue such amendments pursuant to Navajo law.

B. All such agencies, departments, enterprises and other instrumentalities shall consider carefully in decision making, and prepare appropriate documentation of, any adverse environmental impacts which may occur as a result of any proposed action, the extent to which environmental impacts may be

4 N.N.C. § 904

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reduced or mitigated, and other alternatives, including no action, to the proposed action which may reduce or eliminate significant adverse environmental impacts.

History

CAP-47-95, April 21, 1995.

Note. Paragraph divided for statutory clarity.

Library References

Environmental Law ☞577.

Indians ☞32(4).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 51 to 52, 115.

§ 905. Limitations

Nothing in this Navajo Nation Environmental Policy Act is intended to, nor shall it be construed to:

A. Alter, amend or diminish in any way the sovereign immunity of the Navajo Nation or constitute a waiver of the sovereign immunity of the Navajo Nation, as defined in 1 N.N.C. § 551, et seq.;

B. Abrogate any authority conferred by the Navajo Nation Council upon any agency, enterprise or other instrumentality of the Navajo Nation;

C. Repeal in whole or in part any law or regulation duly promulgated by the Navajo Nation or any of its agencies;

D. Authorize or sanction the breach of any contractual duty or diminish any vested property rights; or

E. Provide the basis for a private cause of action by or against any person or entity, or confer jurisdiction upon any court for any cause of action predicated on this Act.

History

CAP-47-95, April 21, 1995.

Library References

Environmental Law ☞574.

Indians ☞32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49, 51.

§ 906. Severability

If any part of this Navajo Nation Environmental Policy Act is declared by a court of competent jurisdiction to be invalid, the other provisions shall not be affected, but shall continue to remain in force to the extent possible.

History

CAP-47-95, April 21, 1995.

Library References

Statutes ☞64.

Westlaw Topic No. 361.

C.J.S. Statutes § 83.

Chapter 11. Navajo Nation Air Pollution Prevention and Control Act

Subchapter 1. General Provisions

Section

- 1101. Definitions
- 1102. Declaration of policy
- 1103. Administration
- 1104. Air quality impact reports
- 1105. Emergency powers
- 1106. Severability and preservation of rights

Subchapter 2. Air Quality Control Programs

Part A. Tribal Implementation Plans

- 1111. Designation of air quality control program
- 1112. Tribal (Navajo Nation) implementation plans for national primary and secondary ambient air quality standards
- 1113. Regulation of fuels and motor vehicles

Part B. Prevention of Significant Deterioration of Air Quality

- 1114. Plan requirements
- 1115. Initial classification
- 1116. Increments and ceilings
- 1117. Area reclassification
- 1118. Pre-construction requirements

Part C. Protection of Visibility

- 1119. Visibility protection for federal class I areas
- 1120. Visibility transport regions and commissions

Part D. New Source Performance Standards

- 1121. Implementation and enforcement of standards of performance

Part E. Provisions for Nonattainment Areas and New Source Review

- 1122. Non-attainment plan provisions
- 1123. Additional provision for non-attainment areas for specific Pollutants
- 1124. Permit requirements

Part F. Control of Hazardous Air Pollutants

- 1125. Control of hazardous air pollutants
- 1126. List of hazardous air pollutants
- 1127. List of source categories
- 1128. Emission standards
- 1129. Hazardous air pollutant permit program
- 1130. Research program on hazardous air pollutants

Part G. Acid Deposition Control

- 1131. Acid deposition permits and compliance plans
- 1132. Special provisions related to nitrogen oxides
- 1133. Re-powered sources

Part H. Permits

- 1134. Permit programs
- 1135. Permit applications
- 1136. Permit requirements and conditions
- 1137. Notification to Administrator of the USEPA and contiguous tribes and states;
notification to public
- 1138. Permit transfers
- 1139. Permit fund
- 1140. Technical and environmental compliance assistance for small businesses

Subchapter 3. Enforcement

- 1151. Record keeping, inspections, monitoring and entry
- 1152. Orders to comply
- 1153. Conditional orders
- 1154. Judicial enforcement
- 1155. Administrative assessment of penalties
- 1156. Citizen suits

Subchapter 4. Rulemaking and Judicial Review

- 1161. Rulemaking and other administrative procedures
- 1162. Review in Navajo Nation courts

United States Code

Air pollution prevention and control, see 42 U.S.C. § 7401 et seq.

Subchapter 1. General Provisions

§ 1101. Definitions

A. For purposes of this Chapter:

1. “Administrator” means the Administrator of the United States Environmental Protection Agency (USEPA).

2. “Adverse human health effects” means, for purposes of Part F of Subchapter 2 of this Chapter, those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely or chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. “Adverse environmental effect” means, for purposes of Part F of Subchapter 2 of this Chapter, any significant and widespread detrimental effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. “Affected source” means, for purposes of Parts G and H of Subchapter 2 of this Chapter, a source that includes one or more affected units.

5. “Affected unit” means, for purposes of Part G of Subchapter 2 of this Chapter, a unit that is subject to emission reduction requirements or limitations under that Part and under Title IV of the Clean Air Act.¹

6. “Air pollutants” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administration of USEPA has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

7. “Air pollution” means the presence in the ambient air of one or more air pollutants or combinations thereof in sufficient quantities, which either alone or in connection with other substances, by reason of their concentration and duration, is or tends to be injurious to human, plant or animal life, causes damage to property, unreasonably interferes with the comfortable enjoyment of life or property of a substantial part of a community, obscures visibility, or in any way degrades the quality of the ambient air.

8. “Allowance” means an authorization, allocated to an affected unit by the Administrator of the USEPA under Title IV of the Clean Air Act,¹ to emit, during or after a specified calendar year, one ton of sulfur dioxide.

9. “Alternative method of compliance” means, for purposes of Part G of Subchapter 2 of this Chapter, a method of compliance in accordance with one or more of the following authorities:

- a. An alternative NO_x emission limitation, authorized in accordance with § 1132 of this Chapter or § 407 (d) of the Clean Air Act;²
 - b. NO_x emissions averaging, under § 1132 (D) of this Chapter or § 407(e) of the Clean Air Act;³ or
 - c. Repowering with a qualifying clean coal technology under § 1133 of this Chapter or § 409 of the Clean Air Act.⁴
10. “Area source” means, for purposes of Part F of Subchapter 2 of this Chapter, any stationary source of air pollutants that is not a major source. The term “area source” shall not include motor vehicles or nonroad vehicles subject to regulation under Title II of the Clean Air Act.⁵
11. “Attainment area” means any area that has been identified in regulations promulgated by the Administrator of the USEPA as being in compliance with national ambient air quality standards.
12. “Attorney General” means the Navajo Nation Attorney General.
13. “Baseline concentration” means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to Part B of Subchapter 2 of this Chapter, based on air quality data available to EPA or NNAQCP and on such monitoring data as the permit applicant is required to submit.
14. “Best available control technology” or “BACT” means, with respect to each pollutant subject to regulation under this Chapter, an emission limitation based on the maximum degree of emission reduction from a major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to § 111⁶ or § 112⁷ of the Clean Air Act or Parts (D) or (F) of Subchapter 2 of this Chapter.
15. “Building,” “structure,” “facility” or “installation” means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or of persons under common control, except that it shall not include the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).
16. “Carcinogenic” shall have the same meaning, for purposes of Part F of Subchapter 2 of this Chapter, as provided by the Administrator of the USEPA under Guidelines for Carcinogenic Risk Assessment as of the date of enactment of the Clean Air Act Amendments of 1990.

17. "Class I," "Class II" and "Class III" shall have the same meaning as provided under Part C of Title 1 of the Clean Air Act.⁸
18. "Clean Air Act" or "Act" means the federal Clean Air Act, as amended, that is set forth at 42 U.S.C. § 7401 et seq.
19. "Commence" means, as applied to construction of a source:
- a. For purposes other than for Part G of Subchapter 2 of this Chapter, that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal law and this Chapter and has done either of the following:
 - (1) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time, or
 - (2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.
 - b. For purposes of Part G of Subchapter 2 of this Chapter, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.
20. "Commenced commercial operation" means, for purposes of Part G of Subchapter 2 of this Chapter, to have begun to generate electricity for sale.
21. "Compliance plan" means, for purposes of Part G of Subchapter 2 of this Chapter, either a statement that the source will comply with all applicable requirements of that Part or, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of that Part.
22. "Construction" means any physical change in a source or change in the method of operation of a source, including fabrication, erection, installation, demolition or modification of a source, that would result in a change in actual emissions.
23. "Continuous Emission Monitoring System" or "CEMS" means the equipment required by § 412 of the Clean Air Act⁹ and the regulations thereunder and used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow expressed in pounds per million British Thermal units, pounds per hour or such other form as the Administrator of the USEPA prescribes by regulation.
24. "Designated representative" means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications and compliance plans for the unit.
25. "Director" means the Executive Director of the Navajo Nation Environmental Protection Agency.

26. "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard. The averaging time and test procedures for determining such excess emissions shall be as specified as part of the applicable emission standard.

27. "Existing solid waste incineration unit" means a solid waste incineration unit that is not a new or modified solid waste incineration unit.

28. "Existing source" means any stationary source that is not a new source.

29. "Existing unit" means, for purposes of Part G of Subchapter 2 of this Chapter, a unit (including units subject to § 111 of the Clean Air Act)⁶ that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990 that is modified, reconstructed or repowered after November 15, 1990 shall continue to be an existing unit for the purposes of Part G. Existing units shall not include simple combustion turbines, or units that serve a generator with a nameplate capacity of 25 MWe or less.

30. "Federal land manager" means the Secretary of the United States Department with authority over the federal class I area.

31. "Federally listed hazardous air pollutant" means any air pollutant listed pursuant to § 112 of the Clean Air Act⁷ and not deleted from the list pursuant to that Section.

32. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the Director has listed as a hazardous air pollutant pursuant to § 1126 of this Chapter.

33. "Lowest achievable emission rate" or "LAER" means, for any source, the rate of emissions that reflects:

a. The most stringent emission limitation that is contained in the implementation plan of any tribe or state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

b. The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

34. "Major emitting facility" means any of the following stationary sources of air pollutants that emit, or have the potential to emit, 100 tons per year or more of any air pollutant: fossil-fuel fired steam electric plants of more than 250 mBtu per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 50 tons of refuse per day, hydrofluoric, sulfuric and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production

facilities, chemical process plants, fossil-fuel boilers of more than 250 mBtu per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, and charcoal production facilities. Such term also includes any other source with the potential to emit 250 tons per year or more of any air pollutant.

35. "Major source" for purposes of Part F of Subchapter 2, means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator of the USEPA establishes a lesser quantity or, in the case of radionuclides, different criteria, as provided in § 112(a)(1) of the Clean Air Act¹⁰. For purposes of Part B of Subchapter 2, "major source" means "major stationary source," as defined in the USEPA regulations under Clean Air Act Title I, Part C. For purposes of all other parts of Subchapter 2, "major source" means any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator of the USEPA as provided in § 302(j) of the Clean Air Act),¹¹ or that is defined in Part D of Title I of the Clean Air Act¹² or the regulations thereunder or in regulations of the NNAQCP as a major source.

36. "Maximum achievable control technology" or "MACT" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this Chapter, including a prohibition on such emission where achievable, that the Director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by new or existing sources in the category or subcategory to which such standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

- a. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of material or other modifications;
- b. Enclose systems or processes to eliminate emissions;
- c. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;
- d. Are design, equipment, work practice, or operational standards, including requirements for operator training or certification, as provided in § 112 (h) of the Clean Air Act;¹³ or
- e. Are a combination of the above.

37. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air pollutants whether in motion or at rest.

38. "Modification" means, for purposes of Parts B, D, E and F of Subchapter 2 of this Chapter, a physical change in or change in the method of operation of a source that increases the actual emissions of any air pollutant (or, in the case of Part F, hazardous air pollutant) emitted by such source by more than a de minimis amount or that results in the emission of any air pollutant (or hazardous air pollutant) not previously emitted by more than such de minimis amount.

39. "Modified solid waste incineration unit" means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under § 129(a) of the Clean Air Act ¹⁴ if:

a. The cumulative cost of the modifications, over the life of the unit, exceed 50% of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs;

b. The modification is a physical change in or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under § 111 ⁷ or § 129 ¹⁵ of the Clean Air Act.

40. "Municipal solid waste" means refuse and refuse derived fuel collected from the general public and from residential, commercial, institutional and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and non-combustible materials such as metal, glass and rock, provided that:

a. The term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and

b. An incineration unit shall not be considered to be combusting municipal waste for purposes of § 111 ⁷ and § 129 ¹⁵ of the Clean Air Act and § 1121 of this Chapter if it combusts a fuel feed stream 30% or less of the weight of which is comprised, in aggregate, of municipal waste.

41. "Nation" means the Navajo Nation, and shall encompass the area defined in 7 N.N.C. § 254.

42. "National ambient air quality standard" or "NAAQS" means the ambient air pollutant concentration limits established by the Administrator of the USEPA pursuant to § 109 ¹⁶ of the Clean Air Act.

43. "Navajo Nation Air Quality Control Program" or "NNAQCP" means the program within the Navajo Nation Environmental Protection Agency responsible for implementing and enforcing this Chapter.

44. "New solid waste incineration unit" means a solid waste incineration unit the construction of which is commenced after the Administrator of the USEPA proposes requirements under § 129 of the Clean Air Act ¹⁵ establishing emissions standards or other requirements that would be applicable to such unit or to a modified solid waste incineration unit.

45. "New source" means, for purposes of § 1121 of this Chapter, any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, of proposed regulations) prescribing a standard of performance under § 111 of the Clean Air Act ⁶ that

will be applicable to such source. For purposes of Part F of Subchapter 2 of this Chapter, “new source” means a stationary source the construction or reconstruction of which is commenced after the Administrator of the USEPA first proposes regulations under § 112 of the Clean Air Act⁷ establishing an emission standard applicable to such source.

46. “New unit” means, for purposes of Part G of Subchapter 2 of this Chapter, a unit that commences commercial operation on or after November 15, 1990.

47. “Nonattainment area” means any area that is designated pursuant to § 107 of the Clean Air Act¹⁷ and where violations of national ambient air quality standards have been measured.

48. “Owner” or “operator” means any person who owns, leases, operates, controls, or supervises a source.

49. “Person” means any public or private corporation, company, partnership, firm, association or society of persons, the federal or state governments and any of their programs or agencies, the Nation and any of its agencies, programs, enterprises, companies or political subdivisions, as well as a natural person.

50. “Phase H” means, for purposes of Part G of Subchapter 2 of this Chapter, the period beginning January 1, 2000 and extending into the future.

51. “Portable source” means any stationary source that is capable of being transported and operated in more than one location.

52. “President” means the President of the Navajo Nation.

53. “Reasonable further progress” means, for purposes of Part E of Subchapter 2 of this Chapter, such annual incremental reductions in emissions of the relevant air pollutant as are required by Part E or may reasonably be required by the Director or the Administrator of the USEPA in order to ensure attainment of the applicable national ambient air quality standard by the applicable date.

54. “Reasonably available control technology” or “RACT” means devices, systems process modifications, or other apparatus or techniques that are reasonably available taking into account:

- a. The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard,
- b. The social, environmental and economic impact of such controls, and
- c. Alternative means of providing for attainment and maintenance of such standard.

55. A “repowering” means replacement of an existing coal-fired boiler with one of the clean coal technologies specified in §§ 402¹⁸ and 415¹⁹ of the Clean Air Act and in the regulations thereunder.

56. “Resources Committee” means the standing committee of the Navajo Nation Council with oversight authority over the Navajo Nation Environmental Protection Agency.

57. “Schedule of compliance” means, for purposes of Part H of Subchapter 2 of this Chapter, a schedule of remedial measures, including an

enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation or emission prohibition.

58. "Small business stationary source" means a stationary source that:

a. Is owned or operated by a person that employs 100 or fewer individuals;

b. Is a small business concern as defined in the Small Business Act, 42 U.S.C. § 631 et seq.;

c. Is not a major stationary source;

d. Emits fewer than 50 tons per year of any regulated pollutant; and

e. Emits fewer than 75 tons per year of all regulated pollutants combined, except as excluded by the Administrator of the USEPA pursuant to § 507(c)(3)(A) of the Clean Air Act²⁰ or as modified by the Director pursuant to § 1140 (A) of this Chapter.

59. "Solid waste incineration unit" means a distinct operating unit of any facility that combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels and motels). Such term does not include incinerators or other units required to have a permit under § 3005 of the Solid Waste Disposal Act, 42 U.S.C. § 6925. The term also does not include:

a. Materials recovery facilities (including primary or secondary smelters) that combust waste for the primary purpose of recovering metals;

b. Qualifying small power production facilities, as defined in 16 U.S.C. § 769(17)(C), or qualifying cogeneration facilities, as defined in 16 U.S.C. § 769 (18) (B), that burn homogeneous waste (such as units that burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or, in the case of qualifying cogeneration facilities, that burn homogeneous waste for the production of electric energy and steam or other useful forms of energy (such as heat) that are used for industrial, commercial, heating or cooling purposes; or

c. Air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by rule by the Administrator of the USEPA.

60. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution.

61. "Standard of performance" means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements) the Administrator of the USEPA determines has been adequately demonstrated.

62. “Stationary source” means any building, structure, facility, or installation that emits or may emit any air pollutant and that is not a nonroad engine under Title II of the Clean Air Act.²¹

63. “Tribal implementation plan” means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to the Administrator of the USEPA pursuant to § 110(o)²² and § 301(d)²³ of the Clean Air Act and Part A of Subchapter 2 of this Chapter.

64. “Unclassifiable area” means an area of the Navajo Nation for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

65. “Unit” means, for purposes of Part G of Subchapter 2 of this Chapter, a fossil fuel-fired combustion device.

66. “Utility unit” means, for purposes of Part G of Subchapter 2 of this Chapter:

a. A unit that serves a generator that produces electricity for sale, or a unit that, during 1985, served a generator that produced electricity for sale.

b. Notwithstanding subparagraph (a), a unit described in subparagraph (a) that was in commercial operation during 1985 but did not, during 1985, serve a generator that produced electricity for sale shall not be a utility unit for purposes of Part G.

c. A unit that cogenerates steam and electricity is not a “utility unit” for purposes of Part G unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies more than one third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

67. “Visibility Transport Region” means, whenever, upon the USEPA Administrator’s motion or by petition from the Governors of at least two affected States, the Administrator of the USEPA has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in Class I areas located in the affected States, the Administrator of the USEPA may establish a transport region for such pollutants that includes such States.

¹42 U.S.C. § 7651 et seq.

²42 U.S.C. § 7651f(d).

³42 U.S.C. § 7651f(e).

⁴42 U.S.C. § 7651h.

⁵42 U.S.C. § 7521 et seq.

⁶42 U.S.C. § 7411.

⁷42 U.S.C. § 7412.

⁸42 U.S.C. § 7470 et seq.

⁹42 U.S.C. § 7651k.

¹⁰42 U.S.C. § 7412(a)(1).

¹¹42 U.S.C. § 7602(j).

¹²42 U.S.C. § 7501 et seq.

¹³42 U.S.C. § 7412(h).

4 N.N.C. § 1101

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- ¹⁴42 U.S.C. § 7429(a).
- ¹⁵42 U.S.C. § 7429.
- ¹⁶42 U.S.C. § 7409.
- ¹⁷42 U.S.C. § 7407.
- ¹⁸42 U.S.C. § 7651a.
- ¹⁹42 U.S.C. § 7651n.
- ²⁰42 U.S.C. § 7661f(c)(3)(A).
- ²¹42 U.S.C. § 7521 et seq.
- ²²42 U.S.C. § 7410(o).
- ²³42 U.S.C. § 7601(d).

History

- CAP-12-04, April 22, 2004.
- CJY-58-95, July 20, 1995.

Library References

- Indians ⇨7, 32.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1102. Declaration of policy

A. Legislative findings and purposes:

1. The Navajo Nation Council finds that air pollution exists with varying degrees of severity within the Navajo Nation; is an increasing danger to the health and welfare of residents of the Navajo Nation; can cause physical discomfort and injury to property and property values, including injury to agricultural crops and livestock; discourages recreational and other uses of the Navajo Nation's resources; and is aesthetically unappealing.

2. The Navajo Nation Council, by enacting this Chapter, is creating a coordinated program to control present and future sources of air pollution on the Navajo Nation. This Chapter provides for the regulation of air pollution activities in a manner that ensures the health, safety and general welfare of all the residents of the Navajo Nation, protects property values and protects plant and animal life. The Council further is placing primary responsibility for air pollution control and abatement in the Navajo Nation Air Quality Control Program, a program of the Navajo Nation Environmental Protection Agency.

B. Maintenance of air quality. It is the policy of this Nation that no further significant degradation of the air in the Navajo Nation shall be tolerated, and that economic growth will occur in a manner consistent with the preservation of existing clean air resources. Those sources emitting pollutants in excess of the emission standards set by the Director of the Navajo Nation Environmental Protection Agency shall bring their emissions into conformity with the standards with all due speed. A new source shall not commence operation until it has secured a permit according to the provisions of this Chapter, the conditions of which require that operation of the source will not cause pollution in excess of the standards set by the Director.

C. Modular approach to air quality control programs:

1. The Navajo Nation is committed to providing for an air quality control program to ensure clean air for residents of the Navajo Nation. Pursuant to § 301 (d) of the Clean Air Act¹ and the regulations thereunder, however, it is discretionary with the Navajo Nation as to whether and which Clean Air Act programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment and the health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions, as provided in the regulations under § 301 (d) of the Clean Air Act. The Director shall not be required to develop any of the programs described in this Chapter by any particular time.

2. However, once the Director determines that a particular program or portion of a program should be developed, the Director and the NNAQCP must comply with all the relevant statutory and regulatory requirements for that program or portion of a program.

¹42 U.S.C. § 7601(d).

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌241.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1103. Administration

A. Regulations. The Director is authorized to prescribe such regulations as are necessary to carry out his/her functions under this Chapter, pursuant to the provisions of § 1161 of this Chapter. This shall include setting air quality standards, emission limitations and standards of performance for the prevention, control and abatement of air pollution in the Navajo Nation. In prescribing regulations, the Director shall give consideration to but shall not be limited to the relevant factors prescribed by the Clean Air Act¹ and the regulations hereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Air Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Authority of Director. In addition, in order to fulfill his/her obligations under this Chapter, the Director may:

1. Conduct investigations, inspections and tests to carry out the duties of this Chapter according to the procedures established by this Chapter;
2. Hold hearings related to any aspect of or matter within the duties of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;
3. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in the Navajo Nation;

4. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Chapter, including voluntary testing of actual or suspected sources of air pollution;

5. Subject to 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into voluntary compliance agreements with entities that otherwise may not be subject to the provisions of this Chapter, or as to which there is a dispute regarding the applicability of this Chapter, under which the entity would be regulated;

6. Make continuing determinations of the quantity and nature of emission of air pollutants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the Navajo Nation, the economic effect of remedial measures on the various areas of the Navajo Nation, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and property of air pollutants, and other matters necessary to arrive at a better understanding of air pollution and its control;

7. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo treasury to the account of the Air Quality Control Program, as authorized under Navajo law;

8. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Chapter;

9. Compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his/her direction;

10. Require, as specified in § 1151 of this Chapter, any source of air pollution to monitor, sample or perform other studies to quantify emissions of air pollutants or levels of air pollution that may reasonably be attributable to that source; and

11. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

C. Delegation of powers and duties. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he/she may deem necessary or expedient.

¹42 U.S.C. § 7401 et seq.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞242, 256.
Indians ☞32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 1104. Air quality impact reports

A. Contents of report. Whenever a Navajo agency proposes to carry out or approve a Navajo-funded project relating to transportation that may have a significant impact on air quality, the agency shall file with the Director a report that contains the following information:

1. A description of the proposed project;
2. Any significant impact on air quality of the proposed project;
3. Significant environmental effects that can not be avoided if the project is implemented, including any significant irreversible air quality changes that would be involved in the proposed project if it is implemented;
4. Mitigation measures proposed to minimize any significant air quality effects;
5. Alternatives to the proposed project;
6. The known views of any local groups concerning the proposed project; and
7. A statement briefly indicating the reasons for determining that various effects of a project are not significant and consequently have not been discussed in detail in the impact report.

B. Exemptions. This Section shall not apply to:

1. Emergency repairs to public service facilities that are necessary to maintain service;
2. Projects that are undertaken, carried out or approved to maintain, repair, restore, demolish or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been declared by the President;
3. Projects related to the interstate highway system; and
4. Projects that were already in existence before the date of enactment of this Chapter.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞273.
Indians ☞7, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

§ 1105. Emergency powers

A. Injunctive relief. Notwithstanding any permit granted pursuant to this Chapter, the Director, upon receipt of evidence that a pollution source or combination of sources (including mobile or portable sources) is presenting an imminent and substantial endangerment to public health or welfare or the environment, may bring suit on behalf of the Navajo Nation, pursuant to

4 N.N.C. § 1105

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§ 1154 of this Chapter, to immediately restrain any person causing or contributing to the alleged pollution to cease such emissions or to take such other action as may be necessary.

B. Orders of the Director:

1. If the Director determines that air pollution is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to Subsection (A) of this Section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, including but not limited to motor vehicles; retail, commercial, manufacturing and industrial activities; incinerators; and the burning or other consumption of fuels or other materials.

2. Any order issued by the Director under this Section shall be effective immediately upon issuance and shall remain in effect for a period of not more than sixty (60) days, unless the Director brings an action pursuant to Subsection (A) of this Section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional fourteen (14) days or for such longer period as may be authorized by the court in which such action is brought.

3. Orders of the Director shall be enforced by the NNAQCP, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

- a. Entering upon any property or establishment believed to be violating the order and demanding compliance;
- b. Stopping, detouring, rerouting and prohibiting vehicle traffic; and
- c. Terminating operations at incinerators or other types of combustion facilities.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞699.

Indians ☞7, 27, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 13, 46 to 47, 49, 51, 68, 89,

91, 97.

§ 1106. Severability and preservation of rights

A. Severability. If any provision of this Chapter, or the application of any provision of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the application of such provision to other persons or circumstances shall remain unaffected.

B. Preservation of rights. It is the purpose of this Chapter to provide additional and cumulative remedies to prevent, abate and control air pollution

in the Navajo Nation. Nothing contained in this Chapter shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under the common law or statutory law to suppress nuisances or to abate pollution.

History

CJY-58-95, July 20, 1995.

Library References

Statutes ☞64.
Westlaw Topic No. 361.
C.J.S. Statutes § 83.

Subchapter 2. Air Quality Control Programs

Part A. Tribal Implementation Plans

§ 1111. Designation of air quality control regions

A. Designations. The Director may request the President to submit to the Administrator of the USEPA a list of all areas in the Navajo Nation, designating, with regard to each pollutant for which a national ambient air quality standard exists, each such area as:

1. Nonattainment, if it does not meet (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant;
2. Attainment, if it meets the national primary or secondary ambient air quality standard for the pollutant; or
3. Unclassifiable, if it can not be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

B. Redesignations

1. If the President has submitted designations to the Administrator of the USEPA pursuant to Subsection (A) of this Section, and the Administrator of the USEPA promulgates a new or revised NAAQS pursuant to § 109 of the Clean Air Act,¹ the President may, and in the case of a revised NAAQS for which the President has submitted designations pursuant to Subsection (A) shall, submit to the Administrator of the USEPA a new list of designations not later than one (1) year after promulgation of the new or revised NAAQS.

2. The President also shall submit to the Administrator of the USEPA a redesignation of a particular area no later than one hundred twenty (120) days after receiving notification from the Administrator of the USEPA, pursuant to § 107(d) (3) of the Clean Air Act,² of the need to redesignate.

3. The Director may request the President, on his/her own motion, to submit to the Administrator of the USEPA for approval, pursuant to § 107 of

the Clean Air Act,³ a redesignation of any area within the Navajo Nation if air quality changes within such area. In the case of an area in the Nation which the Administrator of the USEPA finds may significantly affect air pollution concentrations in a state or another tribe, the Director may redesignate that area only with the consent of the states or tribes which the Administrator of the USEPA determines may be significantly affected.

4. The submission of a redesignation shall not affect the effectiveness or enforceability of the applicable tribal implementation plan.

C. Regulations. If the President decides to submit designations to the Administrator of the USEPA under this Section, the Director shall adopt regulations to implement this Section that both:

1. Describe the geographic extent of attainment, nonattainment or unclassified areas of the Navajo Nation for all pollutants for which a national ambient air quality standard exists; and

2. Establish procedures and criteria for redesignating such areas that include:

a. The technical bases for proposed changes, including ambient air quality data, types and distributions of sources of air pollution, population density and projected population growth, transportation system characteristics, traffic congestion, projected industrial and commercial development, meteorology, pollution transport and political boundaries; and

b. Provisions for review of and public comment on proposed changes to area designations.

¹42 U.S.C. § 7409.

²42 U.S.C. § 7407(d)(3).

³42 U.S.C. § 7407.

History

CJY-58-95, July 20, 1995.

United States Code

Air quality control regions, see 42 U.S.C. § 7407.

Library References

Environmental Law ☞255.
Indians ☞32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 1112. Tribal (Navajo Nation) implementation plans for national primary and secondary ambient air quality standards

A. Submission of and contents of plans. The Director may submit to the Administrator of the USEPA a tribal (Navajo Nation) implementation plan for any pollutant for which a national ambient air quality standard exists. The plan shall provide for implementation, maintenance and enforcement of such standard and protection of visibility in each air quality control region within the Navajo Nation. The plan shall be adopted by the Director according to the provisions of § 1161 of this Chapter and shall contain the following provisions:

1. Each Tribal implementation plan shall:
 - a. Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Chapter or the Clean Air Act;¹
 - b. Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator of the USEPA;
 - c. Include a program to enforce the measures described in Subparagraph (a) and regulate the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in Parts B and E of this Subchapter;
 - d. Contain adequate provisions:
 - (1) Prohibiting, consistent with the provisions of this Chapter, any source within the Navajo Nation from emitting any air pollutant in amounts that will:
 - (a) Contribute significantly to nonattainment in, or interfere with maintenance by, any neighboring state or tribe with respect to any such national primary or secondary ambient air quality standard; or
 - (b) Interfere with measures required to be included in an applicable implementation plan for any neighboring state or tribe under Part C of Title I of the Clean Air Act² to prevent significant deterioration of air quality or to protect visibility; and
 - (2) Insuring compliance with the applicable requirements of Subsection (C) of this Section (relating to interstate pollution abatement);
 - e. Provide:
 - (1) Necessary assurances that the Navajo Nation will have adequate personnel, funding, and authority under Navajo Nation law to carry out such implementation plan and that the NNAQCP is not prohibited by any provision of federal or tribal law from carrying out such implementation plan or portion thereof; and
 - (2) Necessary assurances that, where the Navajo Nation has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the Navajo Nation has responsibility for ensuring adequate implementation of such plan provision;
 - f. Require, as may be prescribed by the Administrator of the USEPA:
 - (1) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or

operators of stationary sources to monitor emissions from such sources;

(2) Periodic reports on the nature and amounts of emissions and emissions related data from such sources; and

(3) Correlation of such reports by the NNAQCP with any emission limitations or standards established pursuant to this Chapter, which reports shall be available at reasonable times for public inspection;

g. Provide for authority comparable to that in § 1105 of this Chapter and adequate contingency plans to implement such authority,

h. Provide for revision of such plan:

(1) From time to time as may be necessary to take account of revisions of national primary or secondary ambient air quality standards or the availability of improved or more expeditious methods of attaining such standards; and

(2) Whenever the Administrator of the USEPA finds, on the basis of information available to the Administrator of the USEPA and pursuant to the requirements of § 110 of the Clean Air Act³ and the regulations hereunder, that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act¹ or this Chapter.

i. In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of Part E of this Subchapter (relating to nonattainment areas);

j. Meet the applicable requirements of Subsection (D) of this Section (relating to public notification) and Parts B and C of this Subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

k. Provide for:

(1) The performance of such air quality modeling as the Administrator of the USEPA may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator of the USEPA has established a national ambient air quality standard; and

(2) The submission, upon request, of data related to such air quality modeling to the Administrator of the USEPA;

l. Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Chapter, a fee sufficient to cover:

(1) The reasonable costs of reviewing and acting upon any application for such a permit; and

(2) If the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee require-

ment is superseded with respect to such sources by the QSEPA Administrator's approval of a fee program under Title V of the Clean Air Act;⁴

m. Provide for consultation and participation by Navajo chapters, as defined in 2 N.N.C. § 4001, and any Navajo-created townships affected by the plan; and

n. Provide that in the case of any source which uses a supplemental or intermittent control system for purposes of meeting the requirements of an order under § 113(d) of the Clean Air Act,⁵ the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion-dependent control system.

B. Revisions to plans

1. The Director shall adopt regulations that describe procedures for revising tribal implementation plans as needed from time to time and as required by the Administrator of the USEPA, pursuant to the Clean Air Act¹ and the regulations thereunder, after promulgation of new or revised national ambient air quality standards.

2. If the Director has adopted and submitted to the Administrator of the USEPA a proposed plan revision which the Director determines:

a. Meets the requirements of this Section; and

b. Is necessary (i) to prevent the closing for one (1) year or more of any source of air pollution and (ii) to prevent substantial increases in unemployment which would result from such closing, and which the Administrator of the USEPA has not approved or disapproved under this Section within twelve (12) months of submission of the proposed plan revision, the Director may issue a temporary emergency suspension of the part of the applicable implementation plan that is proposed to be revised with respect to such source. The determination under Subparagraph (b) may not be made with respect to a source that would close without regard to whether or not the proposed plan revision is approved.

3. A temporary emergency suspension issued by the Director under this Subsection shall remain in effect for a maximum of four (4) months or such lesser period as may be specified in a disapproval order of the Administrator of the USEPA.

4. The Director may include in any temporary emergency suspension issued under this Subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under § 113 (d) of the Clean Air Act⁵ upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

C. Interstate pollution abatement. Each applicable implementation plan shall require each proposed new or modified major source that is subject to Part B of this Chapter or that may significantly contribute to levels of air pollution in excess of the NAAQS in any air quality control region outside the

Navajo Nation to provide written notice to all nearby states or tribes in which air pollution levels may be affected by such source at least sixty (60) days prior to the date on which commencement of construction is to be permitted. Each applicable plan shall also identify all major existing stationary sources that may significantly contribute to levels of air pollution in excess of the NAAQS in any area outside the Navajo Nation and shall provide for notice to all nearby states or tribes in which air pollution levels may be affected of the identity of such sources.

D. Public notification. Each plan shall contain measures that will be effective to notify the public on a regular basis of instances or areas in which any national primary ambient air quality standard is or was exceeded, to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures that can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Provisions shall be made to notify the public in both the Navajo and English languages.

E. Prohibition against modification of plan requirements. No order, suspension, plan revision or other action modifying any requirement of any applicable implementation plan maybe taken with respect to any stationary source except for those specifically allowed under the provisions of this Chapter and the Clean Air Act.¹

¹42 U.S.C. § 7401 et seq.

²42 U.S.C. § 7470 et seq.

³42 U.S.C. § 7410.

⁴42 U.S.C. § 7651 et seq.

⁵42 U.S.C. § 7413(d).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

United States Code

National primary and secondary ambient air quality standards, see 42 U.S.C. § 7409.

State implementation of plans for national primary and secondary ambient air quality standards, see 42 U.S.C. § 7410.

Library References

Environmental Law ⇌257.

Indians ⇌32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49, 51.

§ 1113. Regulation of fuels and motor vehicles

The provisions of §§ 177,¹ 211 (c), (k) and (m),² 246³ and 249⁴ of the Clean Air Act and the regulations hereunder, regarding fuels and motor vehicles, shall apply as required by the Clean Air Act⁵ in certain nonattainment areas or as adopted by the Navajo Nation.

¹42 U.S.C. § 7507.

²42 U.S.C. § 7445(c), (k) and (m).

³42 U.S.C. § 7586.

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4 N.N.C. § 1115

⁴42 U.S.C. § 7589.
⁵42 U.S.C. § 7401 et seq.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌273.
Indians ⇌32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

Part B. Prevention of Significant Deterioration of Air Quality

§ 1114. Plan requirements

Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each area designated pursuant to § 1111 of this Chapter and § 107 of the Clean Air Act ¹ as attainment or unclassifiable. The provisions of this part do not apply to hazardous air pollutants listed under Part F of this Subchapter.

¹42 U.S.C. § 7407.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌259.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Plan requirements, see 42 U.S.C. § 7471.

§ 1115. Initial classification

All areas in the Navajo Nation that are designated as attainment or unclassifiable pursuant to § 1111 of this Chapter and § 107 of the Clean Air Act ¹ shall be class II areas, as defined under Part C of Title I of the Clean Air Act, ² unless reclassified under § 1117 of this Chapter.

¹42 U.S.C. § 7407.
²42 U.S.C. § 7470 et seq.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌263.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Initial classifications, see 42 U.S.C. § 7472.

§ 1116. Increments and ceilings

A. Sulfur oxide and particulate matter. Each applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentration of, sulfur dioxide and particulate matter shall not be exceeded. The maximum allowable increases and concentrations and provisions affecting those increases and concentrations are specified in §§ 163¹ and 165(d)² of the Clean Air Act and the regulations thereunder.

B. Other pollutants. In the case of nitrogen oxides, each applicable implementation plan shall contain measures ensuring compliance with the maximum allowable increases set forth at 40 C.F.R. § 51.166. With respect to any air pollutant for which a NAAQS is established, other than sulfur oxides or particulate matter, an area classification plan shall not be required if the implementation plan adopted by the Navajo Nation and submitted for the USEPA Administrator's approval or promulgated by the Administrator of the USEPA under § 110(c) of the Clean Air Act³ contains other provisions that, when considered as a whole, the Administrator of the USEPA finds will carry out the purposes in § 110 of the Clean Air Act⁴ at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this Section applies.

¹42 U.S.C. § 7473.

²42 U.S.C. § 7475.

³42 U.S.C. § 7410(c).

⁴42 U.S.C. § 7410.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞277, 280.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Increments and ceilings, see 42 U.S.C. § 7473.

§ 1117. Area reclassification

A. Authority to reclassify areas. The President may reclassify, upon approval of the Navajo Nation Council, such areas as he deems appropriate as class I areas. The land comprising Canyon de Chelly National Monument, as established in 16 U.S.C. § 445, may be reclassified only as class I or II. An area may be reclassified as class III if:

1. Such reclassification will not cause or contribute to concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

2. Such reclassification otherwise meets the requirements of this Part.

B. Notice and hearing; disapproval of Administrator of the USEPA

1. Prior to reclassification of any area under this Part, notice shall be afforded and public hearings shall be conducted in areas proposed to be reclassified and in areas which maybe affected by the proposed reclassification. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed reclassification shall be prepared and made available for public inspection, and prior to any such reclassification the description and analysis of such effects shall be reviewed and examined by the Navajo Nation Council.

2. Prior to the issuance of notice under Paragraph (1) respecting the reclassification of any area under this Subsection, if such area includes any federal lands, the President shall provide for written notice to be given to the appropriate federal land manager and afford adequate opportunity (but not in excess of sixty (60) days) to confer with the President and to submit written comments and recommendations with respect to the intended notice of reclassification. In reclassifying any area under this Section with respect to which any federal land manager has submitted written comments and recommendations, the President shall publish a list of any inconsistency between such reclassification and such recommendations and an explanation of such inconsistency (together with the reasons for making such reclassification against the recommendation of the federal land manager).

3. Any reclassification is subject to disapproval by the Administrator of the USEPA pursuant to § 164(b) (2) of the Clean Air Act.¹

C. Resolution of disputes between the Navajo Nation and other Indian tribes or states. If any state or tribe is affected by the reclassification of an area by the Navajo Nation and if such party disagrees with such reclassification, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in the Navajo Nation which the governor of an affected state or governing body of an affected tribe, as the case may be, determines will cause or contribute to a cumulative change in air quality in excess of that allowed in the affected state or tribe, the Director shall enter into negotiations with the representative of such governor or other Indian governing body to attempt to resolve such dispute. If the parties are unable to reach an agreement, the Director shall request the USEPA Administrator's involvement pursuant to § 164(e) of the Clean Air Act.²

¹42 U.S.C. § 7474(b).

²42 U.S.C. § 7474(e).

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞263, 292.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Area redesignation, see 42 U.S.C. § 7474.

§ 1118. Preconstruction requirements

A. Major emitting facilities on which construction is commenced. No major emitting facility on which construction was commenced after August 7, 1977, may be constructed in any area to which this part applies unless:

1. A permit has been issued for such proposed facility in accordance with this Part (and Part H of this Subchapter) setting forth emission limitations for such facility which conform to the requirements of this Part;

2. The proposed permit has been subject to a review in accordance with this Section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator of the USEPA, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator of the USEPA to appear and submit written or oral presentations on the air quality impact of such source, alternatives to the proposed construction, control technology requirements, and other appropriate considerations;

3. The owner or operator of such facility demonstrates as required pursuant to § 110(j) of the Clean Air Act,¹ that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (a) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (b) national ambient air quality standard in any air quality control region, or (c) any other applicable emission standard or standard of performance under this Chapter;

4. The proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Chapter that is emitted from or results from such facility;

5. The proposed facility has complied with the provisions of Subsection (D) of this Section with respect to protection of class I areas, where applicable;

6. There has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

7. The person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this Part agrees to conduct such monitoring as may be necessary to determine the effect that emissions from any such facility may have, or are having, on air quality in any area that may be affected by emissions from such source; and

8. In the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under § 111 of the Clean Air Act² has been promulgated subsequent to August 7, 1977 for such source category, the Administrator of the USEPA has approved the determination of best available technology as set forth in the permit.

B. Exception. The demonstration pertaining to maximum allowable increases required under Subsection (A) (3) of this Section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility that was in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with Subsection (A) (4) of this Section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such Pollutants.

C. Permit applications. Any completed permit application under this part and the regulations hereunder for a major emitting facility in any area to which this part applies shall be granted or denied not later than one (1) year after the date of filing of such completed application.

D. Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

1. The Director shall transmit to the Administrator of the USEPA a copy of each permit application relating to a major emitting facility that he/she receives and provide notice to the Administrator of the USEPA of every action related to the consideration of such permit. The Administrator of the USEPA will provide notice of the permit application to the federal land manager and the federal official directly responsible for management of any lands within a class I area that may be affected by emissions from the proposed facility, pursuant to the requirements of § 165 (d) (2) of the Clean Air Act.³

a. In any case where the federal official charged with direct responsibility for management of any lands within a class I area, or the federal land manager of such lands, or the Administrator, of the USEPA, or the Governor of an adjacent state or governing body of a nearby tribe containing such a class I area files a notice alleging that emissions for a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

b. In any case where the federal land manager demonstrates to the satisfaction of the Director that the emissions for such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

c. In any case where the owner or operator of such facility demonstrates to the satisfaction of the federal land manager, and the federal land manager so certifies, that the emissions from such facility will have

no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the NNAQCP may issue a permit.

d. In the case of a permit issued pursuant to Paragraph (c), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides and particulates from the facility will not cause or contribute to concentrations of such pollutant which exceed the maximum allowable increases over the baseline concentration regulations thereunder.

e. In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under Paragraph (c) demonstrates to the satisfaction of the President, after notice and public hearing, and the President finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four (24) hours or less applicable to any class I area, the President, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this Subparagraph.

f. In any case in which the President recommends a variance under this Subsection in which the federal land manager does not concur, the recommendations of the President and the federal land manager shall be transmitted to the President of the United States, according to the provisions of § 165(d)(2)(D)(ii) of the Clean Air Act.⁴

g. In the case of a permit issued pursuant to Paragraphs (e) and (f), the facility shall comply with such emission limitations under the permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the maximum allowable increases for such areas over the baseline concentration of such pollutant, as prescribed in § 165(d)(2)(D)(iii) of the Clean Air Act⁵ and the regulations hereunder, and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of twenty-four (24) hours or less on more than eighteen (18) days during any annual period.

E. Analysis; continuous air quality monitoring data; regulations; model adjustments

1. The review provided for in Subsection (A) of this Section shall be preceded by an analysis in accordance with regulations of the Administrator of the USEPA, promulgated under § 165 of the Clean Air Act,⁶ which shall be conducted by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected

by emissions from the proposed facility for each pollutant subject to regulations under this Chapter which will be emitted from such facility.

2. The analysis required by this Subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the proposed facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this Part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the NNAQCP, in accordance with regulations promulgated by the Administrator of the USEPA, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

¹42 U.S.C. § 7410(j).

²42 U.S.C. § 7411.

³42 U.S.C. § 7475(d)(2).

⁴42 U.S.C. § 7475(d)(2)(D)(ii).

⁵42 U.S.C. § 7475(d)(2)(D)(iii).

⁶42 U.S.C. § 7475.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265, 268, 274.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Preconstruction requirements, see 42 U.S.C. § 7475.

Part C. Protection of Visibility

§ 1119. Visibility protection for federal class I areas

A. Plan requirements. In the case of an area listed by the Administrator of the USEPA under § 169A(a)(2) of the Clean Air Act ¹ that is located within the Navajo Nation or that could reasonably be anticipated to have impaired visibility due in part or in whole to emissions coming from within the Navajo Nation, each applicable tribal (Navajo Nation) implementation plan under Part A of this Subchapter shall contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility due to man-made air pollution in mandatory class I federal areas. Such provisions shall include:

1. Except as otherwise provided pursuant to § 169A(c) of the Clean Air Act,² regarding exemptions, a requirement that each major stationary source that was in existence on August 7, 1977, but was not in operation for more than fifteen (15) years prior to such date, and that as determined by the

Director (or the Administrator of the USEPA in the case of a federal implementation plan under § 110 (c) of the Clean Air Act),³ emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the Director or the Administrator of the USEPA, as the case may be, for controlling emissions from such source for the purpose of eliminating or reducing any such impairment; and

2. A long-term (ten (10) to fifteen (15) year) strategy for making reasonable progress toward meeting the national goal specified in the first paragraph of this Subsection (A) and in § 169A(a) (1) of the Clean Air Act.⁴

The Director shall make such determinations in accordance with regulations and guidelines promulgated by the Administrator of the USEPA pursuant to § 169(A) of the Clean Air Act.⁵ In the case of a fossil fuel-fired power plant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines promulgated by the Administrator of the USEPA under § 169(A)(b) (1) of the Clean Air Act.

B. Consultations with appropriate federal land managers. Before holding the public hearing required on a proposed promulgation of or revision to an applicable implementation plan to meet the requirements of this section, the Director shall consult in person with the appropriate federal land manager or managers and shall include a summary of the conclusions and recommendations of the federal land managers in the notice to the public.

¹42 U.S.C. § 7491(a)(2).

²42 U.S.C. § 7491(c).

³42 U.S.C. § 7410(c).

⁴42 U.S.C. § 7491(a)(1).

⁵42 U.S.C. § 7491(a).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞259, 268.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Visibility protection for Federal class I areas, see 42 U.S.C. § 7491.

§ 1120. Visibility transport regions and commissions

A. Visibility transport regions. The President, in conjunction with at least one other tribe or state, may petition the Administrator of the USEPA for a determination that current or projected transport of air pollutants from the Navajo Nation or from one or more other tribes or states contributes significantly to visibility impairment in class I areas located in the Navajo Nation or

in the other affected tribes or states and that a transport region for such pollutants that includes the Navajo Nation and such other tribes or states should be established. The President may also petition the Administrator of the USEPA to add or remove any state or tribe or portion thereof to a visibility transport region.

B. Visibility transport commissions. The President or his designee may be a member of a visibility transport commission established by the Administrator of the USEPA pursuant to § 169B of the Clean Air Act,¹ and as such shall participate in all activities required under that Section.

¹42 U.S.C. § 7492.

History

CJY-58-95, July 20, 1995.

Library References

Indians ☞7, 32.

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Visibility transport regions and commissions, see 42 U.S.C. § 7492.

Part D. New Source Performance Standards

§ 1121. Implementation and enforcement of standards of performance

A. Implementation and enforcement by Director. The Director may develop and submit to the Administrator of the USEPA a procedure for implementing and enforcing standards of performance for new sources located in the Navajo Nation. The Director is authorized under the Clean Air Act¹ to implement and enforce such standards upon delegation of such authority from the Administrator of the USEPA.

B. Standards of performance for existing sources. The Director may submit to the Administrator of the USEPA a plan that:

1. Establishes standards of performance for any existing source for any air pollutant:

a. For which air quality criteria have not been issued or that is not included on a list published under § 108 of the Clean Air Act² or emitted from a source category that is regulated under § 112 of the Clean Air Act,³ but

b. To which a standard of performance under § 111 of the Clean Air Act⁴ would apply if such existing source were a new source; and

2. Provides for the implementation and enforcement of such standards of performance.

3. In applying a standard of performance to any particular source under a plan submitted under this Paragraph, the Director may take into

consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

C. Solid waste incineration units

1. If existing solid waste incineration units of a category for which the Administrator of the USEPA has promulgated guidelines are operating within the Navajo Nation, the Director may submit to the Administrator of the USEPA for approval, pursuant to § 129(b)(2) of the Clean Air Act,⁵ a plan to implement and enforce the guidelines. The plan shall be at least as protective as the guidelines and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of § 129 of the Clean Air Act⁶ within three (3) years of the date that the plan is approved by the Administrator of the USEPA. The Director may modify and resubmit a plan that has been disapproved.

2. The Director may implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel-fired plant operators, if the Director has adopted a program that is at least as effective as the model program developed by the Administrator of the USEPA under § 129(d) of the Clean Air Act⁷ and has been authorized to do so by the Administrator of the USEPA.

3. Each solid waste incineration unit in the Navajo Nation in a category for which the Administrator of the USEPA has promulgated performance standards under §§ 111⁴ or 129⁶ of the Clean Air Act shall operate pursuant to a permit issued under this Subsection and Part H of this Subchapter, if the Navajo Nation has an approved permit program for such source. Such permits may be renewed according to the provisions of Part H of this Subchapter. Notwithstanding any other provision of this Chapter, each permit for a solid waste incineration unit that combusts municipal waste shall be issued for a period of up to twelve (12) years and shall be reviewed every five (5) years from the date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Director determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed five (5) years, and only after public comment and public hearing. No permit may be issued by any person who is also responsible, in whole or in part, for the design and construction or operation of the unit. Notwithstanding any other provision of this Paragraph, the Director may require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Director determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment.

4. The Director may adopt and enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than one in effect under the Clean Air Act,¹ and may establish any other requirements applicable to solid waste incineration units, including the authority to establish for any air pollutant an ambient air quality standard,

except that no solid waste incineration unit subject to performance standards under §§ 111⁴ and 129⁶ of the Clean Air Act shall be subject to standards under § 1128 of this Chapter.

5. A solid waste incineration unit shall not be a utility unit for purposes of Part G of this Subchapter, provided that more than 80% of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator of the USEPA, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

6. No requirement of an applicable implementation plan under §§ 1118 or 1122 of this Chapter may be used to weaken the standards in effect under this Subsection.

D. Prohibited acts. It shall be unlawful for any owner or operator of any new source (or any existing source for which standards of performance are established pursuant to Subsection (B) of this Sections) or any new or existing solid waste incineration unit to operate such source in violation of any standard of performance applicable to such source, as prescribed by the Administrator of the USEPA pursuant to §§ 111⁴ or 129⁶ of the Clean Air Act and the regulations hereunder and by the Director pursuant to this Section and the regulations thereunder.

E. Revision of regulations. The Director, with the approval of the President, may submit an application to the Administrator of the USEPA for revision of the regulations promulgated under § 111(f)(1) of the Clean Air Act.⁸ The application shall demonstrate that:

1. The Administrator of the USEPA has failed to specify in regulations under § 111 (f)(1) of the Clean Air Act⁸ any category of major stationary sources required to be specified under such regulations;

2. The Administrator of the USEPA has failed to include in the list under § 111 (b) (1) (A) of the Clean Air Act⁹ any category of stationary sources that contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources);

3. The Administrator of the USEPA has failed to apply properly the criteria required to be considered under § 111(f) (2) of the Clean Air Act;¹⁰ or

4. A new, innovative or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources and, as a result, the new source standard of performance in effect for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated.

¹42 U.S.C. § 7401 et seq.

²42 U.S.C. § 7408.

³42 U.S.C. § 7412.

⁴42 U.S.C. § 7411.

4 N.N.C. § 1121

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⁵42 U.S.C. § 7429(b)(2).
⁶42 U.S.C. § 7429.
⁷42 U.S.C. § 7429(d).
⁸42 U.S.C. § 7411(f)(1).
⁹42 U.S.C. § 7411(b)(1)(A).
¹⁰42 U.S.C. § 7411(f)(2).

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞268, 295. Westlaw Topic Nos. 149E, 209.
Indians ☞7, 32. C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Solid waste combustion, see 42 U.S.C. § 7429.

Part E. Provisions for Nonattainment Areas and New Source Review

§ 1122. Nonattainment plan provisions

A. Plan submissions. With respect to any area within the Navajo Nation that the Administrator of the USEPA designates as nonattainment for any NAAQS, pursuant to § 107 of the Clean Air Act,¹ the Director may submit a plan or plan revision meeting the applicable requirements prescribed in §§ 110(a)(2)² and 172(c)³ of the Clean Air Act and in Subsection (B) of this Section and § 1112 (A) of this Chapter and in the regulations promulgated hereunder.

B. Plan provisions. The plan shall provide for attainment of the national primary ambient air quality standards and shall also contain the following provisions:

1. A requirement for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology);
2. A requirement for reasonable further progress;
3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator of the USEPA may determine necessary to assure that the requirements of this Part are met;
4. An identification and quantification of the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with § 1124 (A) (1) (b) of this Chapter, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator of the USEPA that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the

applicable national ambient air quality standard by the applicable attainment date;

5. A requirement for permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with § 1124 of this Chapter;

6. Enforceable emission limitations and such other control measures, means or techniques (including economic incentives such as fees, marketable permits and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified by the Administrator of the USEPA pursuant to regulations issued under § 172(a)(2) and (b) of the Clean Air Act,⁴ as modified for Indian tribes by regulations issued under § 301 (d) of the Clean Air Act.⁵ The Director may apply to the Administrator of the USEPA for the use of equivalent modeling, emission inventory and planning procedures, if the proposed techniques are, in the aggregate, at least as effective as the methods specified by the Administrator of the USEPA; and

7. A requirement for the implementation of specific measures to be undertaken if the area fails to make reasonable, further progress or to attain the national primary ambient air quality standard by the applicable attainment date. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the Director or the Administrator of the USEPA.

C. Plan revision in response to finding of plan inadequacy. Any plan revision for a nonattainment area which is submitted in response to a finding by the Administrator of the USEPA pursuant to § 110(k)(5) of the Clean Air Act⁶ must correct the plan deficiencies specified by the Administrator of the USEPA and meet all other applicable plan requirements of § 1112 of this Chapter and this Part.

D. Planning procedures. For any ozone, carbon monoxide, or PM-10 nonattainment area for which the Director intends to submit a plan, the Director shall develop planning procedures pursuant to this Subsection. The organization preparing the plan shall be certified by the Director, and shall include elected officials from the affected area, representatives of the NNAQCP and representatives of any transportation planning agency and of any other organization with responsibilities for developing, submitting or implementing the plan under this Part. In the case of a nonattainment area that is also included within another tribe or state, the Navajo Nation may jointly with the other tribes or states, through intergovernmental agreement or otherwise, undertake and implement all or part of the planning procedures described in this Subsection.

E. Planning grants. The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA for grants for the planning activities required by this Section.

F. Maintenance plans. If the Director submits a request under § 1111(B) of this Chapter for redesignation of a nonattainment area as an area that has

attained the national primary ambient air quality standard for any air pollutant, the Director shall also submit a revision of the applicable implementation plan to provide for the maintenance of the standard for such air pollutant in the area concerned for at least ten (10) years after the redesignation. The plan shall contain such additional measures, if any, as maybe necessary to ensure such maintenance. Until a plan revision is approved and an area is redesignated as attainment, the requirements of this Part shall continue in force and effect with respect to such area. Moreover, eight (8) years after redesignation of any area as an attainment area under § 107(d) of the Clean Air Act,⁷ the Director shall submit to the Administrator of the USEPA an additional revision of the applicable implementation plan for maintaining the standard for an additional ten (10) years after the expiration of the 10-year period referred to above.

G. Contingency provisions. Each plan revision submitted under Subsection (F) shall contain such contingency provisions as the Administrator of the USEPA deems necessary to assure that the Director will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. Such provision shall include a requirement that the Director implement all measures with respect to the control of the air pollutant concerned that were contained in the implementation plan for the area before redesignation as an attainment area. The failure of an area to maintain the NAAQS concerned shall not result in a requirement that the Director revise the implementation plan unless the Administrator of the USEPA requires the Director to do so.

H. Interstate transport commissions. The President may petition the Administrator of the USEPA to establish an interstate transport commission under § 176A of the Clean Air Act⁸ and to add or remove the Navajo Nation or any other tribe or state or portion thereof to or from any such commission established under that Section.

¹42 U.S.C. § 7407.

²42 U.S.C. § 7410(a)(2).

³42 U.S.C. § 7502.

⁴42 U.S.C. § 7502(a)(2).

⁵42 U.S.C. § 7601(d).

⁶42 U.S.C. § 7410(k)(5).

⁷42 U.S.C. § 7407(d).

⁸42 U.S.C. § 7506a.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

United States Code

Nonattainment plan provisions in general, see 42 U.S.C. § 7502.

Library References

Environmental Law ☞263.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1123. Additional provision for nonattainment areas for specific pollutants

In the event any area of the Navajo Nation is designated nonattainment for any pollutant for which a NAAQS has been promulgated by the Administrator of the USEPA, the relevant provisions of §§ 181 through 192 of the Clean Air Act¹ pertaining to that pollutant and of the regulations hereunder shall apply, to the extent such provisions are applicable to the Navajo Nation and as modified by regulations promulgated by the Administrator of the USEPA under § 301(d) of the Clean Air Act.²

¹42 U.S.C. §§ 7511 to 7514a.

²42 U.S.C. § 7601(d).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞255, 263, 276.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1124. Permit requirements

A. General requirements. The Director may issue permits to construct and operate a proposed new or modified major stationary source if:

1. The Director determines, in accordance with regulations issued under § 173 of the Clean Air Act¹ and under this Section, that:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for such permit to construct or modify so as to represent, when considered together with the plan provisions required under § 1122 of this Chapter, reasonable further progress; or

b. In the case of a new or modified major stationary source that is located in a zone (within the nonattainment area) identified by the Administrator of the USEPA as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emission levels that exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under § 1122 of this Chapter and § 172 (c) of the Clean Air Act;²

2. The proposed source is required to comply with the lowest achievable emission rate;

3. The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in the Navajo Nation are subject to emission limitations

and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Chapter;

4. The Administrator of the USEPA has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified; and

5. An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

B. Any emission reduction required as a precondition to the issuance of a permit shall be federally enforceable before such permit may be issued.

C. Offsets

1. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this Part and Part D of Title 1 of the Clean Air Act³ for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the Director may allow the owner or operator to obtain such emission reductions in another nonattainment area if (a) the other area has an equal or higher nonattainment classification than the area in which the source is located, and (b) emissions from such other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located. Such emission reductions shall be in effect and enforceable by the time a new or modified source commences operation, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

2. Emission reductions otherwise required by this Chapter or by the Clean Air Act⁴ shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this Chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of Paragraph (1).

D. Control technology information

The Director shall provide that control technology information from permits issued under this Section will be promptly submitted to the Administrator of the USEPA for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other tribes and states and to the general public.

¹42 U.S.C. § 7503.

²42 U.S.C. § 7502(c).

³42 U.S.C. § 7501 et seq.

⁴42 U.S.C. § 7401 et seq.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265, 268.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Permit requirements, see 42 U.S.C. § 7503.

Part F. Control of Hazardous Air Pollutants

United States Code

Hazardous air pollutants, see 42 U.S.C. § 7412.

§ 1125. Control of hazardous air pollutants

A. In general. The Director may develop and submit to the Administrator of the USEPA for approval a program for the implementation and enforcement of emission standards and other requirements for hazardous air pollutants pursuant to § 112 of the Clean Air Act¹ or requirements for the prevention and mitigation of accidental releases pursuant to § 112(r) of the Clean Air Act,² or both. The program may provide for partial or complete delegation of the USEPA Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements.

B. Navajo standards. As part of the program developed under Subsection (A) of this Section, the Director may adopt and enforce regulations, requirements, limitations, or standards that are more stringent than those in effect under § 112 of the Clean Air Act¹ or that apply to a substance that is not subject to § 112 of the Clean Air Act, pursuant to §§ 1126, 1127 and 1128 of this Chapter. Any standards set by the Director shall be at least as stringent as those promulgated by the Administrator of the USEPA.

C. Grants. The Director, in accordance with Navajo Nation law, may apply to the Administrator of the USEPA, pursuant to § 112(1)(4) of the Clean Air Act,³ for grants to assist in developing and implementing a program under Subsection (A) of this Section.

¹42 U.S.C. § 7412.

²42 U.S.C. § 7412(r).

³42 U.S.C. § 7412(l)(4).

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞275.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1126. List of hazardous air pollutants

A. Contents of list. The hazardous air pollutants that are subject to regulation under this Part shall consist of

1. The federally listed hazardous air pollutants, as defined in § 1101 of this Chapter;
2. Hazardous air pollutants that are designated by the Director, pursuant to Subsection (B) of this Section.

B. Designation of hazardous air pollutants. The Director may, by regulation, designate hazardous air pollutants in addition to the federally listed hazardous air pollutants if the Director finds that the pollutants present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects or adverse environmental effects, whether through ambient concentration, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under § 112(r) of the Clean Air Act.¹ The Director shall rely on technical protocols appropriate for the development of a list of hazardous air pollutants and shall base any designation on credible medical and toxicological evidence that has been subjected to peer review. The Director shall not include any air pollutant that is listed under § 108 of the Clean Air Act,² except that he/she may include a pollutant that independently meets the listing criteria of this subsection and is a precursor to a pollutant listed under § 108(a) or to any pollutant in a class of pollutants listed under that Section. An adequate and reliable methodology must exist for quantifying emissions and ambient concentrations of a pollutant before that pollutant maybe listed under this Subsection. The Director shall not list elemental lead as a hazardous air pollutant under this subsection.

C. Review of list. The Director shall periodically review the list of hazardous air pollutants that are designated pursuant to Subsection (B) of this Section and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted. A current list of all hazardous air pollutants designated pursuant to Subsection (B) of this Section shall be kept on file at the NNAQCP office and shall be available for examination by the public during regular business hours.

D. Petitions to modify list. Any person may petition the Director to modify the list of hazardous air pollutants under Subsection (B) of this Section by adding or deleting substances. The petition must include a showing that there is adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition. The Director shall commence a rulemaking pursuant to § 1161 of this Chapter within six (6) months of receipt of the petition.

¹42 U.S.C. § 7412(r).

²42 U.S.C. § 7408.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞275.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1127. List of source categories

A. Contents of list. The categories and subcategories of major sources and area sources of hazardous air pollutants listed under § 1126 of this Chapter shall consist of:

1. Source categories listed by the Administrator of the USEPA pursuant to § 112 (c) of the Clean Air Act;¹ and
2. Categories and subcategories of sources that emit the hazardous air pollutants designated by the Director pursuant to § 1126 (B) of this Chapter.
3. The Director may list a major source or area source category under Paragraph (2) of this Subsection if the Director finds, through rulemaking pursuant to § 1161 of this Chapter, that emissions of hazardous air pollutants from that category present a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this Section. The Director shall periodically review the list of hazardous air pollutants that are designated pursuant to Paragraph (2) of this Subsection and, where appropriate, shall revise such list by rule, adding or deleting substances as warranted.

B. Petitions to modify list. Any person may petition the Director to modify the list of source categories under Subsection (A) (2) of this Section by adding or deleting categories. The petition must include a showing as to the lifetime risk of cancer to the most exposed individual in the affected population caused by the hazardous air pollutants emitted from such source category, the extent to which hazardous air pollutants emitted from such source category exceed or do not exceed a level which is adequate to protect public health with an ample margin of safety, the degree to which adverse environmental effects will or will not result from hazardous air pollutants emitted from such source category, or other evidence adequate to support the petition. The Director shall commence a rulemaking pursuant to § 1161 of this Chapter within six (6) months of receipt of the petition to add or delete the source category from the list under Subsection (A).

¹42 U.S.C. § 7412(c).

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞266.
Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1128. Emission standards

A. In general. The Director shall adopt the standards promulgated by the Administrator of the USEPA pursuant to § 112 (d), (e)(5), (f) and (n) of the

Clean Air Act¹ and, in addition, shall promulgate regulations establishing emissions standards for each category or subcategory listed by the Director pursuant to § 1127(A)(2) of this Chapter. The Director may distinguish among classes, types and sizes of sources within a category or subcategory in establishing such standards.

Notwithstanding the first sentence of this Subsection, the Director may adopt more stringent standards than those promulgated by the Administrator of the USEPA, except in the case of emissions of radionuclides from facilities licensed by the U.S. Nuclear Regulatory Commission. The Director shall comply with § 112(n)(4) of the Clean Air Act² with respect to the non-aggregation of emissions from oil and natural gas facilities and pipelines. Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, except as provided by regulation promulgated by the Director, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this Part, except as provided by regulation promulgated by the Director.

B. Criteria. Emissions standards promulgated by the Director under this Section shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this part (including a prohibition on such emissions, where achievable) that the Director, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
4. Are design, equipment, work practice or operational standards (including requirements for operator training or certification), as provided in § 112(h) of the Clean Air Act;³ or
5. Are a combination of the above.

C. New and existing sources. The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Director. Emission standards promulgated under this Section for existing sources in a category or subcategory maybe less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and maybe more stringent, than:

1. The average emission limitation achieved by the best performing twelve percent (12%) of the existing sources (for which the Administrator of the USEPA has emissions information), excluding those sources that have, within eighteen (18) months before the emission standard is proposed or within thirty (30) months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources; or

2. The average emission limitation achieved by the best performing five sources (for which the Administrator of the USEPA has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

D. Alternative standard for area sources. With respect to categories and subcategories of area sources listed pursuant to § 1127 the Director may, in lieu of the authorities provided in Subsection (B) of this Section, elect to promulgate standards or requirements applicable to sources in such categories or subcategories that provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

E. Compliance. For those standards promulgated by the Administrator of the USEPA that the Director adopts pursuant to Subsection (A) of this Section, the Director shall also adopt the same compliance dates. The Director shall establish compliance dates for each category or subcategory of existing sources for which the Director promulgates emissions standards under this Section. These dates shall provide for compliance as expeditiously as practicable, but not until ninety (90) days after the effective date of the standard, and no later than two (2) years after the effective date of such standard, except as provided in § 1129(D) of this Chapter.

¹42 U.S.C. § 7412(d), (e)(5), (f) and (n).

²42 U.S.C. § 7412(n)(4).

³42 U.S.C. § 7412(h).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law [⊕]249, 259.
Indians [⊕]7, 16.10, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51, 107 to 108.

§ 1129. Hazardous air pollutant permit program

A. In general. Permits issued to sources of hazardous air pollutants covered under § 1127 of this Chapter shall be issued pursuant to the provisions of Part H of this Chapter and subject to the requirements and conditions contained within this Section.

B. Construction, reconstruction and modifications. After the effective date of the permit program under Part H of this Subchapter, no person may obtain a permit or permit revision to modify, construct or reconstruct a major source of hazardous air pollutants or area source in a category listed under § 1127 of this Chapter unless the Director determines that the appropriate maximum achievable control technology emission limitation under this Part will be met. In the case of modifications, the appropriate emission limitation shall be that for existing sources; in the case of construction or reconstruction, for new sources, determined pursuant to § 1128(C) of this Part. In both cases, where the Administrator of the USEPA or the Director, as the case may be, has not established applicable emission limitations, the Director shall make such determination on a case-by-case basis.

C. Exemption from definition of modification. A physical change in a source or change in the method of operation of a source that results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant or pollutants from such source that is deemed more hazardous, pursuant to guidance issued by the Administrator of the USEPA under § 112(g)(1)(B) of the Clean Air Act.¹ The owner or operator of such source shall submit a showing to the Director that such increase has been offset under this Subsection.

D. Schedule for compliance. Once the Navajo Nation has an approved permit program under Part H of this Subchapter:

1. After the effective date of any emission standard, limitation, or regulation under § 112(d), (f), or (h) of the Clean Air Act² or under § 1128 of this Chapter, no person may construct any new major source or area source or reconstruct any existing major source or area source subject to such emission standard, regulation, or limitation unless the Director determines that such source, if properly constructed or reconstructed and operated, will comply with the standard, regulation, or limitation.

2. Notwithstanding Paragraph (1), a new source that commences construction or reconstruction after an applicable standard, limitation or regulation is proposed and before such standard, limitation, or regulation is promulgated shall not be required to comply with such promulgated standard until the date three (3) years after the date of promulgation if:

- a. The promulgated standard, limitation, or regulation is more stringent than the standard, limitation, or regulation proposed; and

- b. The source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

3. After the effective date of any emissions standard, limitation or regulation promulgated under § 112 (d), (f), or (h) of the Clean Air Act² or under § 1128 of this Chapter and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the source shall comply with the

emissions standard, limitation or regulation by the date set by the Administrator of the USEPA, pursuant to § 112(i) of the Clean Air Act, or by the Director, pursuant to this Section and § 1128 of this Chapter, as the case may be.

4. The Director may issue a permit that grants an extension permitting an existing source up to one (1) additional year to comply with standards under § 112(d) of the Clean Air Act³ or § 1128 of this Chapter if such additional period is necessary for the installation of controls. An additional extension of up to three (3) years may be added for mining waste operations if the compliance time required under § 112(i)(3) of the Clean Air Act⁴ and the regulations hereunder, together with the 1-year extension provided by the Director under this Paragraph, is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under § 112 (b) of the Clean Air Act.⁵

5. If the owner or operator of an existing source demonstrates that the source has achieved a reduction of at least ninety (90%) in emissions of hazardous air pollutants (at least ninety-five percent (95%) in the case of hazardous air pollutants that are particulates) before the otherwise applicable standard under § 112(d) of the Clean Air Act³ or § 1128 of this Chapter is first proposed, the Director shall issue a permit allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under § 112(d) of the Clean Air Act or § 1128 of this Chapter. The permit shall provide for an extension of six (6) years from the compliance date for the otherwise applicable standard. The Director may, through regulations, require greater reductions than those specified in this paragraph as a condition of granting this extension. The reduction shall be determined according to the provisions of § 112(i)(5)(C) of the Clean Air Act⁶ and the regulations hereunder.

6. The reduction in Paragraph (5) shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.

7. For each source granted an alternative emission limitation under Paragraph (5) above, the permit shall establish an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under paragraph (5). An alternative emission limitation shall not be available with respect to standards or requirements promulgated pursuant to § 112 (f) of the Clean Air Act.⁷

E. Equivalent emission limitation by permit. Once the Navajo Nation has an approved permit program under Part H of this Chapter:

1. If the Administrator of the USEPA fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to § 112 (e) (1) and (3) of the Clean Air Act,⁸ then beginning eighteen (18) months after that date (but not prior to the effective date of the Navajo permit

program), the owner or operator of any major source in such category or subcategory shall submit a permit application to the Director, pursuant to requirements established by the Administrator of the USEPA under § 112(j) of the Clean Air Act.⁹ If the owner or operator has submitted a timely and complete application for a permit, any failure to have a permit shall not be a violation of this requirement, unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application.

2. Permit applications submitted under this Subsection shall be reviewed and approved or disapproved according to the provisions of Part H of this Chapter. If the Director disapproves a permit application or determines that the application is incomplete, the applicant shall have up to six (6) months to revise the application to meet the objections of the Director.

3. The permit shall contain emission limitations for the hazardous air pollutants subject to regulation under this Section and emitted by the source that the Director determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under § 112 (d) of the Clean Air Act.³ In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of Subsection (D)(5) of this Section. For these purposes, the reduction required by Subsection (D)(5) shall be achieved by the date on which the relevant standard should have been promulgated under § 112 (d) of the Clean Air Act. No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and as expeditiously as practicable but no later than three (3) years after the permit is issued for existing sources, or such other compliance date as would apply under Subsection (D) of this Section.

4. If the Administrator of the USEPA promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to Paragraph (3), provided that the source shall have the compliance period provided under Subsection (D) of this Section. If the Administrator of the USEPA promulgates a standard under § 112 (d) of the Clean Air Act³ that would be applicable to the source in lieu of the emission limitation established by permit under this Subsection after the date on which the permit has been issued, the Director shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator of the USEPA, providing such source a reasonable time to comply but no longer than eight (8) years after such standard is promulgated or eight (8) years after the date on which the source is first required to comply with the emissions limitation established by Paragraph (3), whichever is earlier.

¹42 U.S.C. § 7412(g)(1)(B).

²42 U.S.C. § 7412(d), (f) or (h).

³42 U.S.C. § 7412(d).

⁴42 U.S.C. § 7412(i)(3).

- ⁵42 U.S.C. § 7412(b).
⁶42 U.S.C. § 7412(i)(5)(C).
⁷42 U.S.C. § 7412(f).
⁸42 U.S.C. § 7412(e)(1) and (3).
⁹42 U.S.C. § 7412(j).

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265, 266. Westlaw Topic Nos. 149E, 209.
 Indians ☞7, 32. C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1130. Research program on hazardous air pollutants

A. Research program. The NNAQCP may, in cooperation with the U.S. Environmental Protection Agency and the National Academy of Sciences, undertake a research program to evaluate the existing risk to public health from hazardous air pollutants and to provide options and recommendations for programs to control the release of hazardous substances into the ambient air. This research may include any or all of the following:

1. Identification of hazardous air pollutants that are or may be emitted into the ambient air in the Navajo Nation;
2. Identification and evaluation of methods for conducting ambient air monitoring, modeling, measuring emissions, and performing related analyses;
3. Surveying concentrations of hazardous air pollutants within the ambient air of the Navajo Nation and estimating contributions to those concentrations from permitted, nonpermitted and natural sources as well as background concentrations;
4. Identification and evaluation of residual risk after implementation of controls during the term of study, of actual risk from exposure to hazardous air pollutants and of alternative risk assessment methodologies;
5. Evaluation of the feasibility of, need for, and potential methods for establishing ambient air quality standards or health-based guidelines for hazardous air pollutants; and
6. Development of a public education program to provide information and increase public awareness of hazardous air pollutants.

B. Report. If the NNAQCP conducts any such research program, it shall submit a report of its findings and recommendations to the President and shall make such report available to the public.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞255, 260, 275. Westlaw Topic Nos. 149E, 209.
 Indians ☞32. C.J.S. Indians §§ 49, 51.

Part G. Acid Deposition Control

§ 1131. Acid deposition permits and compliance plans

A. Permit Program

1. The Director may submit a permit program for approval in accordance with Title V of the Clean Air Act¹ and Part H of this Subchapter to provide for permits for: new utility units required under § 403 (e) of the Clean Air Act² to have allowances; affected units or sources under § 405 of the Clean Air Act;³ and units subject to nitrogen oxide emission reductions under § 407 of the Clean Air Act.⁴

2. Any permit issued by the Director shall prohibit:

- a. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator of the unit or designated representative of the owners or operators hold for the unit;
- b. Violations of applicable emissions rates;
- c. The use of any allowance prior to the year for which it was allocated; and
- d. Contravention of any other provision of the permit.

3. Permits shall be issued for a period of five (5) years. No permit shall be issued that is inconsistent with the requirements of this Section and Title IV of the Clean Air Act⁵ and the regulations thereunder, and with the applicable provisions of Part H of this Subchapter and Title V of the Clean Air Act¹ and the regulations thereunder.

B. Compliance plans. Each affected source when submitting an initial permit application to the Director shall include a compliance plan for the source to comply with its requirements under Title IV of the Clean Air Act.⁵ Where an affected source consists of more than one affected unit, the compliance plan shall cover all such units, and for purposes of § 502 (c) of the Clean Air Act⁶ the source shall be considered a "facility". Nothing in this Section regarding compliance plans or in Part H of this Subchapter shall be construed as affecting allowances. Except as provided under § 408(c) (1) (B) of the Clean Air Act,⁷ submission of a statement by the owner or operator, or the designated representative thereof, of a unit subject to the emissions limitation requirements of §§ 405³ and 407⁴ of the Clean Air Act that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of § 405 of the Clean Air Act, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the compliance planning requirements of this section and Title V of the Clean Air Act,¹ except that, for any unit that will meet the requirements of Title IV of the Clean Air Act by means of an alternative method of compliance authorized under §§ 407(d) or (e),⁸ 409⁹ or 410¹⁰ of the Clean Air Act or §§ 1132 or 1133 of this Chapter, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator of the USEPA, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will

rely on one or more alternative methods of compliance in the manner and time authorized under Title IV of the Clean Air Act. Recordation by the Administrator of the USEPA of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Director may also require:

1. For a source, a demonstration of attainment of national ambient air quality standards; and
2. From the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

C. Phase II permits

1. The owner or operator or the designated representative thereof of each affected source under § 405 of the Clean Air Act³ that is located within the Navajo Nation shall submit a permit application and compliance plan for that source to the Director not later than January 1, 1996.

2. Not later than December 31, 1997, provided that the Navajo Nation has an approved acid deposition control permit program, the Director shall issue permits to the owner, operator, or designated representative thereof of affected sources under § 405 of the Clean Air Act³ that satisfy the requirements of Part H of this Subchapter and Title V of the Clean Air Act¹ and that submitted to the Director a permit application and compliance plan pursuant to Paragraph (1). The permit application and the compliance plan, including amendments thereto, shall be binding on the owner, operator, or designated representative and shall be enforceable as a permit for purposes of this Part and Part H of this Subchapter until a permit is issued by the Director for the affected source.

3. The permit issued in accordance with this Subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner, operator, or designated representative holds for the unit.

D. New units. The owner or operator of each source that includes a new utility unit that is located within the Navajo Nation shall submit a permit application and compliance plan to the Director not later than two (2) years before January 1, 2000, or the date on which the unit commences operation, whichever is later. The Director shall issue a permit to the owner, operator, or designated representative of the unit that satisfies the requirements of this Part and Part H of this Subchapter and of Titles IV⁵ and V¹ of the Clean Air Act.

E. Units subject to NOx emission limitations. The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under § 407 of the Clean Air Act⁴ and located within the Navajo Nation shall submit a permit application and compliance plan for such unit to the Director not later than January 1, 1998.

The Director shall issue a permit to the owner or operator that satisfies the requirements of Titles IV⁵ and V¹ of the Clean Air Act and this Part and Part H

of this Subchapter, including any appropriate monitoring and reporting requirements.

F. Amendment of application and compliance plan. At any time after the submission of an application and compliance plan under this Section, the applicant may submit a revised application and compliance plan in accordance with the requirements of this Section and the regulations hereunder. In considering any permit application and compliance plan under this Section, the Director shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

G. Prohibition

1. It shall be unlawful for an owner or operator, or designated representative thereof, required to submit a permit application or compliance plan under this Part to fail to submit such application or plan in accordance with the requirements specified in this Section or to otherwise fail to comply with regulations implementing this Section.

2. It shall be unlawful for any person to operate any source subject to this Section except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Director, provided that there is an approved Navajo Nation acid deposition permit program. For purposes of this Subsection, compliance, as provided in § 1136(E) of this Chapter, with a permit issued under Part H of this Subchapter which complies with this Part for sources subject to this Part shall be deemed compliance with this part as well as with § 1134(E) of this Chapter.

3. In order to ensure reliability of electric power, nothing in this Part or Part H of this Subchapter shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of Subchapter 3 of this Chapter.

H. Certificate of representation. No permit shall be issued under this Section to an affected unit until the designated representative of the owners or operators has filed, with the Administrator of the USEPA and the Director, a certificate of representation with regard to matters under Title IV of the Clean Air Act⁵ and this part, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Such certificate shall comply with the requirements of § 408(i) of the Clean Air Act¹¹ and the regulations hereunder, including where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, as those terms are defined under Title IV of the Clean Air Act⁵ and the regulations hereunder.

¹42 U.S.C. § 7661 et seq.

²42 U.S.C. § 7651b(e).

³42 U.S.C. § 7651d.

⁴42 U.S.C. § 7651f.

- ⁵42 U.S.C. § 7651 et seq.
- ⁶42 U.S.C. § 7661a(c).
- ⁷42 U.S.C. § 7651g(c)(1)(B).
- ⁸42 U.S.C. § 7651f(d) or (e).
- ⁹42 U.S.C. § 76f1h.
- ¹⁰42 U.S.C. § 7651i.
- ¹¹42 U.S.C. § 7651g(i).

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞269, 280.	Westlaw Topic Nos. 149E, 209.
Indians ☞7, 32.	C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Permits and compliance plans, acid deposition control, see 42 U.S.C. § 7651g.

§ 1132. Special provisions related to nitrogen oxides

A. Alternative emission limitations. Upon request by an owner or operator of a unit subject to § 407 of the Clean Air Act,¹ the Director shall authorize an emission limitation less stringent than the applicable limitation established under § 407(b) of the Clean Air Act upon a determination that:

1. A unit subject to § 407(b) (1) of the Clean Air Act² cannot meet the applicable limitation using low NOx burner technology, as defined in Title IV of the Clean Air Act³ and the regulations thereunder; or
2. A unit subject to § 407(b) (2) of the Clean Air Act³ cannot meet the applicable rate using the technology on which the Administrator of the USEPA based the applicable emission limitation.

B. Demonstration required. The Director shall base such determination upon a showing satisfactory to the Director, in accordance with regulations promulgated by the Administrator of the USEPA, that the owner or operator:

1. Has properly installed appropriate control equipment designed to meet the applicable emission rate;
2. Has properly operated such equipment for the period required by the Administrator of the USEPA in regulations and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and
3. Has specified emission rate that such unit can meet on an annual average basis.

C. Permit. The Director shall issue an operating permit for the unit in question in accordance with § 1131 of this Chapter that permits the unit during the demonstration period referred to in Paragraph (B)(2) above to emit at a rate in excess of the applicable emission rate. At the conclusion of the demonstration period, the Director shall revise the operating permit to reflect the alternative emission rate demonstrated in Paragraph (B)(2) and (3) above.

D. Emissions averaging

1. In lieu of complying with the applicable emission limitations under § 407(b)(1), (2) or (d) of the Clean Air Act,⁵ the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to those Sections may petition the Director for alternative contemporaneous annual emission limitations for such units that ensure that the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to § 407 (b) (1) and (2) of the Clean Air Act.⁶

2. If the Director determines in accordance with regulations promulgated by the Administrator of the USEPA, that the conditions in Paragraph (1) can be met, the Director shall issue operating permits for such units, in accordance with § 1131 of this Chapter, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while all such units continue operation under the conditions specified in their respective operating permits.

¹42 U.S.C. § 7651f.

²42 U.S.C. § 7651f(b)(1).

³42 U.S.C. § 7651 et seq.

⁴42 U.S.C. § 7651f(b)(2).

⁵42 U.S.C. § 7651f(b)(1) or (2) or (d).

⁶42 U.S.C. § 7651f(b)(1) and (2).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌281.

Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Nitrogen oxides emission reduction program, see 42 U.S.C. § 7651f.

§ 1133. Repowered sources

A. Eligibility. Not later than December 31, 1997, the owner or operator of an existing unit subject to the emission limitation requirements of § 405(b) or (c) of the Clean Air Act¹ may demonstrate to the Director, if the Navajo Nation has an approved acid deposition control permit program by that date, that one or more units will be repowered with a qualifying clean coal technology, as that term is defined in Title IV of the Clean Air Act² and the regulations hereunder, to comply with the requirements of § 405 of the Clean Air Act.³ The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract

for the majority of the equipment to repower such unit and such other information as is required by regulation under this Section and § 409 of the Clean Air Act.⁴

B. Extension. The Director shall grant to an owner or operator satisfying the requirements of Subsection (A) of this Section an extension of the emission limitation requirement compliance date for that unit from January 1, 2000 to December 31, 2003. The extension shall be specified in the permit issued to the source, together with any compliance schedule and other requirements necessary to meet Phase II requirements by the extended date. Any unit that is granted an extension under this Section shall not be eligible for a waiver under § 1110 of the Clean Air Act.

C. Control requirements. Any unit qualifying for an extension under this Section that does not increase actual hourly emissions for any pollutant regulated under this Chapter or the Clean Air Act⁵ shall not be subject to any standard of performance under § 1121 of this Chapter. Notwithstanding the preceding sentence, no new unit that is designated as a replacement for an existing unit, qualifies for an extension under this Section and is located at a different site than the existing unit shall receive an exemption from the requirements imposed under § 1121 of this Chapter.

D. Expedited permitting. The Director shall attempt to give expedited consideration to permit applications under Parts B and E of this Subchapter for any source qualifying for an extension under this Section.

E. Prohibition. It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirements of this Section, or any regulation or permit requirements to implement this Section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

¹42 U.S.C. § 7651d(b) or (c).

²42 U.S.C. § 7651 et seq.

³42 U.S.C. § 7651d.

⁴42 U.S.C. § 7651h.

⁵42 U.S.C. § 7401 et seq.

Library References

Environmental Law ⇌269, 280.

Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Repowered sources, see 42 U.S.C. § 7651h.

Part H. Permits

§ 1134. Permit programs

A. Submission and approval

1. The Director may develop and submit to the Administrator of the USEPA a permit program or portion thereof meeting the requirements of

Title V of the Clean Air Act¹ and the regulations thereunder. The Director may establish additional permitting requirements in regulations under this Section, provided that the additional requirements are not inconsistent with the requirements of Title V of the Clean Air Act. In addition, the Director shall submit to the Administrator of the USEPA a legal opinion from the Attorney General that the laws of the Navajo Nation provide adequate authority to carry out the program.

2. If the Administrator of the USEPA disapproves the permit program, in whole or in part, and notifies the Director of any revisions or modifications necessary to obtain approval, the Director may revise and resubmit the program for review under § 502 of the Clean Air Act.²

3. The Director may, subject to 2 N.N.C. § 824(B)(6), 2 N.N.C. § 164(B)(2) and 2 N.N.C. § 1005(C)(2), enter into a delegation agreement with USEPA providing for the Director to implement a CAA Title V operating permit program pursuant...

B. Requirements. The permit program shall contain the elements required by the Administrator of the USEPA by regulation pursuant to Title V of the Clean Air Act,¹ as well as such other elements as the Director may require by regulation, including but not limited to:

1. Requirements for permit applications, including a standard application form and criteria for processing permit applications and for determining in a timely fashion the completeness of applications;

2. Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing on permit applications and compliance plans and for expeditious review of permit actions, including applications, renewals, and revisions, and including an opportunity for judicial review in the Navajo Nation Court system of final permit actions (including review of failures to take timely action on permit applications or permit renewal applications, to require that action be taken on such permit applications without additional delay), by the permit applicant, any person who participated in the public comment process provided according to § 1137(D) of this Part, and any other person who could obtain judicial review under Navajo law;

3. Monitoring and reporting requirements;

4. Requirements for adequate personnel and funding to administer the program;

5. Provisions ensuring adequate authority to issue permits; assure compliance by all sources required to have a permit under this Part with each applicable standard, regulation or requirement under this Chapter; assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan; terminate, modify or revoke, and reissue permits for cause; enforce permits and permit requirements imposed pursuant to this Part; assure that no permit will be issued if the Administrator of the USEPA objects to its issuance in a

timely manner under this Part; and generally administer the permit program;

6. In the case of permits for major sources with a remaining term of three (3) or more years, a requirement that revisions be made to the permit to incorporate applicable standards and regulations promulgated under this Chapter or under the Clean Air Act³ after the issuance of such permit, as expeditiously as practicable and consistent with the procedures established under Paragraph (2) but not later than eighteen (18) months after the promulgation of such standards and regulations, except that no revision shall be required if the effective date of the standards or regulations is after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this part regarding renewals;

7. In the case of affected sources under the acid rain program, a requirement that revisions be made to the permit to incorporate applicable requirements under Part G of this Subchapter and Title IV of the Clean Air Act⁴ and the regulations hereunder;

8. Provisions to allow changes within a permitted facility or one operating pursuant to § 1135(D) of this Chapter or § 503(d) of the Clean Air Act⁵ without requiring a permit revision, if the changes are not modifications under any provision of Title 1 of the Clean Air Act³ and the changes do not exceed the emissions allowable under the permit (whether expressed as a rate of emissions or as total emissions), and if the facility provides the Director and the Administrator of the USEPA with written notification a minimum of seven (7) days in advance of the proposed changes according to the requirements of the regulations promulgated under § 502 (b)(10) of the Clean Air Act⁶ and under this Section;

a. A requirement that the owner or operator of a source required to obtain a permit under this Part pay a fee to a system of fees established by the Director under this Part and designed solely to cover all reasonable direct and indirect costs required to develop and administer the permit program under this Part and the small business assistance program under § 1140 of this Part (if such program is developed by the Director), including the reasonable costs of reviewing and acting upon permit applications; implementing and enforcing the terms and conditions of permits (not including costs associated with enforcement actions); performing emissions and ambient monitoring; preparing generally applicable regulations and guidance; conducting modeling, analyses and demonstrations; preparing inventories and tracking emissions; the general administrative costs of running the permit program; and the costs of providing direct and indirect support to sources under the small business assistance program in determining and meeting their obligations under this Part and the regulations hereunder (if such program is developed by the Director);

b. A requirement that the fee program result in the collection, in the aggregate, from all sources subject to fees, of an amount not less than twenty-five dollars (\$25.00) per ton of each regulated pollutant, as such

term is defined and as such amount is calculated in accordance with § 502 (b) (3) (B) of the Clean Air Act⁷ and the regulations hereunder, unless a lesser amount will meet the requirements of the preceding paragraph; and that the NNAQCP regulations prescribe procedure for increasing the fee each year by the percentage, if any, by which the Consumer Price Index for the immediately preceding calendar year exceeds the Consumer Price Index for calendar year 1989, as defined in § 502 (b) (3) (B) of the Clean Air Act, and provide that any fees collected shall be deposited in the fund established by § 1139 of this Chapter and used solely to cover the reasonable costs of the permit program; and

9. Authority, and reasonable procedures consistent with the need for expeditious action by the Director on permit applications and related matters, to make available to the public any permit application, compliance plan, permit and monitoring or compliance report under § 1135(E) of this Chapter, subject to the provisions of § 1151 (D) of this Chapter.

C. Effective date. The effective date of a permit program or partial or interim program approved under § 502 of the Clean Air Act² shall be the effective date of approval by the Administrator of the USEPA.

D. Interim approval. If a program, including a partial permit program, submitted under Subsection (A) of this Section receives interim approval from the Administrator of the USEPA, for the period of any such interim approval the provisions of Subsection (E) of this Section shall be suspended.

E. Violations. After the effective date of any permit program promulgated under this Part, it shall be unlawful for any person to violate any requirement of a permit issued under this Part or to operate an affected source or a major source, as those terms are defined under § 1101 of this Chapter, or any other source (including an area source) subject to regulation under Parts D and F of this Subchapter, any other source required to have a permit under Parts B or E of this Subchapter, or any other stationary source in a category designated in whole or in part by the Administrator of the USEPA or the Director as requiring a permit, except in compliance with a permit issued by the Director under this Part. If the Director designates a category in whole or in part under this Subsection he/she shall do so by regulation after notice and public comment and shall include a finding setting forth the basis for such designation. If the Administrator of the USEPA exempts a source category from the requirements of § 502(a) of the Clean Air Act,⁸ pursuant to that Subsection, the Director may, but is not required to, exempt that source category from the requirements of this Subsection. Nothing in this Subsection shall be construed to alter the applicable requirements of this Chapter that a permit be obtained before construction or modification.

F. Permits implementing acid deposition provisions. The requirements of this Part, including regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of Part G of this Subchapter except as modified by Part G. Nothing in the permits or compliance plans issued pursuant to this Part shall be construed as

affecting allowances under Part G of this subchapter or Title IV of the Clean Air Act.⁴

G. Minor source permits. Notwithstanding any other provisions under this Part, the Director shall establish by regulation a minor source permitting program, under which sources not classified as major sources or not otherwise subject to the provisions of this Part shall nevertheless be required to obtain operating permits, in order to control emissions, including fugitive emissions, from such sources. The Director shall promulgate regulations pursuant to this Subsection which shall identify the minor sources subject to this Subsection, provide for the filing of permit applications and compliance plans and for the payment of fees pursuant to Subsection (B) (9) of this Section, and require monitoring and reporting. Minor sources identified by the Director may include coal mines and uranium mines, in addition to such other sources as the Director identifies by regulation.

¹42 U.S.C. § 7661 et seq.

²42 U.S.C. § 7661a.

³42 U.S.C. § 7401 et seq.

⁴42 U.S.C. § 7651 et seq.

⁵42 U.S.C. § 7661b(d).

⁶42 U.S.C. § 7661a(b)(10).

⁷42 U.S.C. § 7661a(b)(3)(B).

⁸42 U.S.C. § 7661a(a).

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265, 268.

Indians ☞7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Permit programs, see 42 U.S.C. § 7661a.

§ 1135. Permit applications

A. Applicable date. Any source specified in § 1134(E) of this Part shall become subject to a permit program under this Part on the later of the following dates:

1. The effective date of a permit program or partial or interim permit program applicable to the source; or
2. The date such source becomes subject to § 1134 of this Chapter.

B. Deadline. Any person required to have a permit shall, not later than one (1) year after the date on which the source becomes subject to a permit program under this Part (including permit programs that have received interim approvals and partial permit programs), or such earlier date as the Director may establish, submit to the Director a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. Permit applications shall be filed in the manner and

according to the requirements prescribed by this Chapter and by the Director through regulation. The Director shall approve or disapprove a completed application and shall issue or deny the permit within eighteen (18) months after the date of receipt thereof, except that the Director shall establish, in conjunction with EPA Region 9, a phased schedule for acting on permit applications submitted within the first full year after the effective date of the permit program or the partial or interim program. This schedule shall ensure that all such applications will be acted on by the Director within five (5) years after such effective date. The Director shall establish reasonable procedures to review permit applications and to prioritize approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Chapter.

C. Permit applications

1. Each issued permit shall contain the following statement to which the permittee must agree and subscribe for the permit to be complete and as a condition precedent to the final issuance of any permit:

“Permittee consents to the jurisdiction of the Navajo Nation with respect to those activities conducted pursuant to this permit issued by the Director pursuant to the provisions of the Navajo Nation Air Pollution Prevention and Control Act. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors of permittee whose activities fall within the scope of the issued permit.”

2. Permittee shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued by the Director, and each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “permittee” as appropriate.

D. Compliance plan. The applicant shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Chapter. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the Director no less frequently than every six (6) months. In addition, the permittee shall periodically certify that the facility is in compliance with any applicable requirements of the permit, and promptly report any deviations from permit requirements to the Director, as provided in the regulations promulgated under this Part.

E. Timely and complete applications. Except for sources required to have a permit before construction or modification under this Chapter, if an applicant has submitted a timely and complete application for a permit required by this Part (including for a renewal) but final action has not been taken on such application, the source’s failure to have a permit shall not be a violation of this Chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application.

No source required to have a permit under this Part shall be in violation of § 1134 (E) of this Chapter before the date on which the source is required to submit an application under subsection (B) of this Section.

F. Availability to public. A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this Part, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under § 1151 (D) of this Chapter, the applicant or permittee may submit such information separately. The requirements of § 1151 (D) shall apply to such information. The contents of a permit shall not be entitled to protection under § 1151 (D) of this Chapter.

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌265.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Permit applications, see 42 U.S.C. § 7661b.

§ 1136. Permit requirements and conditions

A. In general. Permits shall be issued under this Part for fixed terms, not to exceed five (5) years, except that affected sources under Part G of this Subchapter must have 5-year fixed terms and solid waste incineration units under Part D of this Subchapter may have up to 12-year fixed terms. Each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the Director, no less often than every six (6) months, the results of any required monitoring, provisions under which the permit can be revised, terminated, modified, or reissued for cause, an identification of all alternative operating scenarios, and such other conditions as are necessary to assure compliance with applicable requirements of this Chapter and the regulations hereunder, including the requirements of the applicable implementation plan.

B. Inspection, entry, monitoring, certification and reporting. Each permit issued under this Part shall set forth inspection, entry, monitoring, compliance certification and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation promulgated under § 504(b) of the Clean Air Act.¹ Any report required to be submitted by a permit issued to a corporation under this Part shall be signed by a responsible corporate official, who shall certify its accuracy.

C. General permits. The Director may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under

4 N.N.C. § 1136

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this Subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under § 1135 of this Chapter.

D. Temporary sources. The Director may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under Parts B and C of this Subchapter. Any such permit shall in addition require the owner or operator to notify the Director in advance of each change in location. The Director may require a separate permit fee for operations at each location.

E. Permit shield. Compliance with a permit issued in accordance with this Part shall be deemed compliance with § 1134 of this Chapter. Except as otherwise provided by the Administrator of the USEPA by regulation, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Chapter that relate to the permittee if:

1. The permit includes the applicable requirements of such provisions;
or
2. The Director, in acting on the permit application, makes a determination relating to the permittee that such other provisions are not applicable and the permit includes the determination or a concise summary thereof.
3. Nothing in the preceding sentence shall alter or affect the provisions of § 1105 of this Chapter, including the authority of the Director under that Section.

¹42 U.S.C. § 7661c(b).

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌265.
Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Permit requirements and conditions, see 42 U.S.C. § 7661c.

§ 1137. Notification to Administrator of the USEPA and contiguous tribes and states; notification to public

A. Notice. Unless the following notification requirements are waived by the Administrator of the USEPA for a particular category of sources (other than major sources), pursuant to § 505(d) of the Clean Air Act ¹:

1. The Director shall:
 - a. Transmit to the Administrator of the USEPA a copy of each permit application (including any application for a permit modification

or renewal) or such portion thereof, including any compliance plan, as the Administrator of the USEPA may require to effectively review the application and otherwise carry out the USEPA Administrator's responsibilities under the Clean Air Act;² and

b. Provide to the Administrator of the USEPA a copy of each permit proposed to be issued and issued as a final permit.

2. The Director shall notify all states and tribes:

a. Whose air quality may be affected and that are contiguous to the Navajo Nation; or

b. That are within 50 miles of the source, of each permit application or proposed permit forwarded to the Administrator of the USEPA under this Section, and shall provide an opportunity for such states and tribes to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the Director, the Director shall notify the state or tribe submitting the recommendations and the Administrator of the USEPA in writing of his/her refusal to accept those recommendations and the reasons therefor.

B. Objection by USEPA. Unless the following requirements are waived by the Administrator of the USEPA for any particular category of sources (other than major sources), pursuant to § 505(d) of the Clean Air Act ¹:

1. The Director shall respond in writing to any objection by the Administrator of the USEPA to the issuance of a permit, pursuant to the provisions of § 505(b) of the Clean Air Act ³ and the regulations hereunder.

2. Upon receipt of an objection by the Administrator of the USEPA under § 505 of the Clean Air Act,⁴ the Director may not issue the permit unless it is revised and issued in accordance with Subsection (C) of this Section. If the Director has issued a permit prior to receipt of an objection by the Administrator of the USEPA under § 505(b)(2) of the Clean Air Act, the Director may issue a revised permit in accordance with Subsection (C) of this Section after the permit has been modified, terminated, or revoked by the Administrator of the USEPA.

C. Issuance or denial

1. The Director shall, within ninety (90) days after the date of an objection under § 505(b) of the Clean Air Act,³ submit a permit revised to meet the objection.

2. If the Administrator of the USEPA notifies the Director that cause exists to terminate, modify, or revoke and reissue a permit, the Director shall, within ninety (90) days after receipt of such notification, forward to the Administrator of the USEPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Director may request a 90-day extension for this submittal, in accordance with § 505(e) of the Clean Air Act.⁵

D. Notification to general public. The NNAQCP shall give notice of permit applications and proposed permits to the public, according to regulations

4 N.N.C. § 1137

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promulgated by the Director under this Part, providing an opportunity for public hearing and comment. Any person may petition the Administrator of the USEPA to veto a permit, pursuant to § 505(b) of the Clean Air Act,³ if the Administrator of the USEPA fails to object to the permit within the period prescribed by Title V of the Clean Air Act⁶ and the regulations thereunder. The objections in the petition must have been raised in the public comment period provided for in this Subsection, unless the petitioner shows that it was impracticable to have done so.

¹42 U.S.C. § 7661d(d).

²42 U.S.C. § 7401 et seq.

³42 U.S.C. § 7661d(b).

⁴42 U.S.C. § 7661d.

⁵42 U.S.C. § 7661d(e).

⁶42 U.S.C. § 7661 et seq.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265, 292.

Indians ☞32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49, 51.

United States Code

Notification to Administrator and contiguous States, see 42 U.S.C. § 7661d.

§ 1138. Permit transfers

A permit shall not be transferable, by operation of law or otherwise, from one location to another or from one source to another, except that a permit may be transferred from one location to another in the case of a mobile or portable source that has notified the NNAQCP in advance of the transfer, pursuant to regulations promulgated under this Section. A permit for a source may be transferred from one person to another if the person who holds the permit notifies the NNAQCP in advance in writing of the transfer, according to regulations promulgated by the Director, and if the Director finds that the transferee is capable of operating the source in compliance with the permit and the requirements of this Part and the regulations hereunder.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞265.

Indians ☞32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49, 51.

§ 1139. Permit fund

There is hereby established a Permit Fund in the Navajo Treasury, consisting of fees, penalties and interest collected pursuant to this Part, § 1153 of this

Chapter and Title V of the Clean Air Act. The fund shall be administered by the Director and shall be used to pay for all direct and indirect costs of developing and administering the permit program under this Part, as described in § 1135 of this Part, including the cost of issuing conditional orders under § 1153 of this Chapter. In addition, penalties collected pursuant to § 1154(D)(3) and § 1156(E) may be utilized for the purposes set out therein. The Permit Fund shall not be utilized for any purpose not authorized by this Chapter or the Clean Air Act.¹ The Director may invest money from the fund, and the money earned from investment shall be credited to the fund.

¹42 U.S.C. § 7401 et seq.

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Indians ☞32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

§ 1140. Technical and environmental compliance assistance for small businesses

A. Eligibility. This Section shall apply to small business stationary sources, as such term is defined in § 1101 of this Chapter, except that the Director may, upon petition by a source and after notice and opportunity for public comment, include as a small business stationary source a stationary source that does not meet the criteria of Paragraphs (c) to (e) of § 1101 (A) (58) but that does not emit more than 100 tons per year of all regulated pollutants combined. In addition, the Director may, in consultation with the Administrator of the USEPA and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, exclude from the definition any category or subcategory of sources that the Director determines to have sufficient technical and financial capabilities to meet the requirements of this Chapter and the Clean Air Act¹ without the application of this Section.

B. Content of program. The Director may, after reasonable notice and public hearings, adopt and submit to the Administrator of the USEPA as part of the tribal implementation plan or as a revision to the tribal implementation plan a program to provide technical and environmental compliance assistance to small business stationary sources. The program must include each of the following:

1. Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this Chapter and the Clean Air Act;¹
2. Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention,

including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;

3. A designated office within NNEPA to serve as ombudsman for small business stationary sources in connection with the implementation of this Chapter and the Clean Air Act;¹

4. A compliance assistance program for small business stationary sources that assists such sources in determining applicable requirements and in receiving permits under this Chapter and the Clean Air Act¹ in a timely and efficient manner;

5. Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this Chapter and the Clean Air Act¹ in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this Chapter or the Clean Air Act;

6. Adequate mechanisms for informing small business stationary sources of their obligations under this Chapter and the Clean Air Act,¹ including mechanisms for referring such sources to qualified auditors or, at the option of the Director, for providing audits of the operations of such sources to determine compliance with this Chapter and the Clean Air Act; and

7. Procedures for consideration of requests from a small business stationary source, made before any applicable compliance date, for modification of any work practice or technological method of compliance or modification of the schedule for implementing such work practice or method of compliance, based on the technological and financial capability of any such source. No such modification may be granted unless it is in compliance with the applicable requirements of this Chapter and the Clean Air Act,¹ including the requirements of the applicable implementation plan. Where such requirements are set forth in federal regulations, only modifications authorized in such regulations may be allowed.

C. Compliance advisory panel

1. A compliance advisory panel shall be established which shall:

a. Advise the Director on the effectiveness of the program operated pursuant to this Section, including on the difficulties encountered and the degree and severity of enforcement;

b. Review information developed by the program to ensure that it is understandable by the general public; and

c. Have the program develop and disseminate reports and advisory opinions concerning the findings made pursuant to Paragraphs (a) and (b) above.

2. The panel shall consist of five members, appointed for staggered terms, as follows:

a. Two members, who are not owners or representatives of owners of small business stationary sources, selected by the President to represent the general public;

b. Two members selected by the Speaker of the Navajo Nation Council who are owners or who represent owners of small business stationary sources; and

c. One member selected by the Director to represent NNEPA.

D. Fees. The Director may reduce any fee required under this Chapter to take into account the financial resources of small business stationary sources.

¹42 U.S.C. § 7401 et seq.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Indians ↻7, 32.

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

United States Code

Small business stationary source technical and environmental compliance assistance program, see 42 U.S.C. § 7661f.

Subchapter 3. Enforcement

United States Code

Federal enforcement, see 42 U.S.C. § 7413.

§ 1151. Record keeping, inspections, monitoring and entry

A. Requirements in orders or permits. The Director may require, by order or permit and on a one-time, periodic or continuous basis, any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Director believes may have information necessary for the purposes set forth in this Subsection, or who is subject to any requirement of this Chapter, to:

1. Establish and maintain such records;
2. Make such reports;
3. Install, use and maintain such monitoring equipment, and use such audit procedures or methods;
4. Sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator of the USEPA or the Director shall prescribe);
5. Keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;
6. Submit compliance certifications in accordance with Subsection (B) of this Section; and
7. Provide such other information as the Director may reasonably require.

B. Monitoring. The Director may require sources to monitor, sample or otherwise quantify their emissions as follows:

1. The Director may adopt regulations requiring sources to monitor, sample or otherwise quantify their emissions of air pollutants for which ambient air quality standards or emission, design, equipment, work practice or operational standards have been adopted. In the development of these regulations, the Director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

2. In prescribing monitoring, sampling or other quantification requirements under Subsection (A), the Director shall consider the relative cost and accuracy of any reasonable alternatives to such requirements. The Director may require monitoring, sampling or other quantifications under Subsection (A) if the Director determines in writing that the actual or potential emissions in question may adversely affect public health or the environment and the monitoring, sampling, or other quantification method to be required is technically feasible, reasonably accurate and reasonable in cost in light of the use to be made of the data.

3. The Director may require enhanced monitoring and submission of compliance certifications in cases where the Administrator of the USEPA has not already done so pursuant to § 114(a) (3) of the Clean Air Act.¹ Compliance certifications shall be subject to the same requirements as those prescribed under § 114 (a) (3) of the Clean Air Act and the regulations hereunder and, together with monitoring data, shall be subject to Subsection (D) of this Chapter. Submission of a compliance certification shall not limit the Director's authority to investigate or otherwise implement this Chapter.

C. Production of records. Whenever the Director has reasonable cause to believe that any person has violated or is in violation of any requirement of this Chapter or of any regulation hereunder or any requirement of a permit issued pursuant to this Chapter, he/she may require in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

D. Public availability of information. Any records, reports or information obtained under Subsections (A), (B) or (C) of this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or information, or any portion thereof (other than emission data), would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report, information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Chapter or when relevant to any proceeding under this Chapter.

¹42 U.S.C. § 7414(a)(3).

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌260, 265.
Indians ⇌32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

United States Code

Recordkeeping, inspections, monitoring and entry, see 42 U.S.C. § 7414.

§ 1152. Orders to comply

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, pursuant to the provisions of this Section;
2. Issue and serve on such person an administrative penalty in accordance with § 1155 of this Chapter;
3. Bring a civil action in accordance with § 1154 of this Chapter; and/or;
4. Bring a criminal action in accordance with § 1154 of this Chapter and/or refer any criminal enforcement action or portion of such action to the EPA Regional Administrator for the appropriate EPA region.

B. In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or permits, orders, plans (including tribal (Navajo Nation) implementation plans), waivers or fees issued or approved pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, the Director may issue an order prohibiting such person from continuing to operate a source within the Navajo Nation, and/or prohibiting such person from entering into any new contracts (including leases) that would permit such person to operate a source within the Navajo Nation.

C. Requirements for orders to comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1161 of this Chapter, if such hearing is requested in writing within thirty (30) days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the thirty (30) days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. In the case of a source required to obtain a permit pursuant to Part H of Subchapter 2 of this

Chapter and Title V of the Clean Air Act,¹ the order shall require compliance no later than one (1) year after the date the order is issued and shall be nonrenewable. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Navajo Nation from assessing any penalties nor otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

¹42 U.S.C. § 7661 et seq.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇄295.
Indians ⇄32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 1153. Conditional orders

A. Issuance. The Director may adopt regulations providing for the issuance of conditional orders to owners or operators of air pollution sources, which would allow sources to vary from provisions of this Chapter and regulations and plans adopted and permits issued pursuant to this Chapter. Such regulations shall allow owners and operators of sources to petition the Director for conditional orders, and shall specify the minimum requirements for such petitions and procedures for processing petitions and for public participation. For a conditional order that would vary from a requirement of a tribal (Navajo Nation) implementation plan, the regulations shall provide for submittal of the order to the Administrator of the USEPA pursuant to § 110(1) of the Clean Air Act¹ and shall provide for a public hearing on the petition. For a conditional order that would vary from a requirement of a permit issued pursuant to this Chapter, the regulations shall conform to the procedures established for permit revisions pursuant to Part H of Subchapter 2 of this Chapter. In all cases, the Director shall grant a petition for a conditional order only if he/she finds that:

1. There has been a breakdown of equipment or operations beyond the control of the petitioner, the source was in compliance before the breakdown and the breakdown can be corrected within a reasonable time; and
2. Issuance of the conditional order will not endanger public health or the environment, impede attainment of the national ambient air quality standards or cause significant deterioration of existing air quality.

B. Terms and conditions of orders. The requirements imposed as a basis for granting or renewing a conditional order shall include, but not be limited to:

1. A detailed plan for the completion of corrective steps needed to conform to the provisions of this Chapter, and the regulations adopted and permits issued hereunder;

2. A requirement that necessary construction shall begin as expeditiously as practicable; and

3. The right of the NNAQCP to make periodic inspections of the facilities for which the conditional order is granted.

C. Subject to the provisions of Subsection (D), conditional orders shall, be valid for no longer than one (1) year in the case of a source that is required to obtain a permit pursuant to Part H of Subchapter 2 of this Chapter and Title V of the Clean Air Act ² and no longer than three (3) years in the case of any other source. Any fees imposed by the Director in order to obtain a conditional order shall be deposited in the permit fund established under § 1139 of this Chapter.

D. Renewals. A holder of a conditional order may petition the Director for a renewal of such order. A petition for renewal may be filed not more than sixty (60) days nor fewer than thirty (30) days prior to the expiration of the order. The Director, within thirty (30) days of receipt of the petition, shall renew the conditional order for one (1) year if the petitioner is in compliance with the requirements imposed pursuant to Subsection (B). The total term of renewals shall not exceed three (3) years from the date of initial issuance of such order, except that if the petitioner is not in compliance with the requirements of the order after this 3-year period and the Director finds that such failure is due to conditions beyond the control of the petitioner, the Director may renew the order for a total term of two (2) additional years. The Director may also renew a conditional order for up to an additional 2-year term if the Director amends or adopts any regulation that requires the installation of additional or different air pollution control equipment on the source in question.

E. Suspension and revocation. If the terms of a conditional order are being or have been violated, the Director may seek to revoke or suspend the conditional order. In such event, the Director shall serve notice of such violation on the holder of the order, specifying the nature of the violation and the date on which a hearing will be held to determine whether the violation occurred and whether the order should be suspended or revoked.

¹42 U.S.C. § 7410(l).

²42 U.S.C. § 7661 et seq.

History

CAP-12-04, April 22, 2004.

CJY-58-95, July 20, 1995.

Library References

Environmental Law ⇌295.

Indians ⇌7, 32.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1154. Judicial Enforcement

A. Civil judicial enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary

injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties not more than thirty-two thousand five hundred dollars (\$32,500) per day, which amount shall increase automatically whenever the federal maximum civil penalty increases, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation or plan adopted pursuant this Chapter, a permit or order issued pursuant to this Chapter or a fee assessed under this Chapter;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities;
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment because of a release of air pollution, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Paragraphs (1) and (2).

B. Criminal penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter or a fee assessed under this Chapter;
2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required pursuant to this Chapter to be filed or maintained, including required by a permit issued pursuant to this Chapter; or
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less than ten thousand dollars (\$10,000) per day per violation or, if smaller, the largest amount permissible under applicable law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he/she may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1152 of this Chapter. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 1101(a)(49) of this Chapter, any responsible corporate officer.

C. Jurisdiction and venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this Chapter, and awarded any other appropriate relief.

D. Calculation of penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1155 or § 1156, if the Director has notified the source in writing of the violation and the Director or plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any, the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court shall not assess penalties for noncompliance with administrative subpoenas under § 1161 of this Chapter or actions under § 1151 of this Chapter where the violator had sufficient cause to violate or fail to refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in a special fund in the Navajo Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof

E. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 1156 of this Chapter, require the filing of a bond or equivalent security.

History

CAP-12-04, April 22, 2004.
CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞296, 699, 762.
Indians ☞27, 32(7, 13), 37.
Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 13, 22, 60 to 62, 68, 89, 91,
97, 139 to 143, 152, 157.

§ 1155. Administrative assessment of penalties

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a

person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation or plan adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter or a fee assessed under this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one (1) year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within thirty (30) days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per violation) may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.

D. Judicial review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within thirty (30) days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within thirty (30) days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceed-

ings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be 10% of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter.

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1154(D) of this Chapter.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞296.

Indians ☞32(4.1, 7), 37.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 60 to 62, 139 to 143, 152.

§ 1156. Citizen suits

A. Authority to bring civil action; jurisdiction

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his/her own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting Tribal enterprises) who is alleged to be in violation of an emission standard or limitation under this Chapter, an order issued by the Director or the President with respect to such a standard or limitation, or a permit of requirement to have a permit issued under this chapter.

2. The Navajo Nation Courts shall have jurisdiction to enforce such an emission standard or limitation, order or permit requirement and to apply any appropriate civil penalties.

B. Notice

1. An action may not be commenced under Subsection (A) (1) of this Section fewer than sixty (60) days after the plaintiff has given notice of the

alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in such an action.

C. Venue; intervention; service of complaint

1. Any action respecting a violation by a source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of costs. The Court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate.

E. Penalty fund. Penalties received under this Section shall be deposited in a special fund in the Navajo Nation Treasury for use by the Director to finance air compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞297.

Indians ☞32(7), 37.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 60 to 62, 139 to 143, 152.

United States Code

Citizen suits, see 42 U.S.C. § 7604.

Subchapter 4. Rulemaking and Judicial Review

United States Code

Administrative proceedings and judicial review, see 42 U.S.C. § 7607.

§ 1161. Rulemaking and other administrative procedures**A. Rulemaking**

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English language, data or arguments; and shall keep the docket open for twenty (20) days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative subpoenas

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Except for emissions data, upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Navajo Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's Courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt.

History

CJY-58-955, July 205 1995.

Library References

Environmental Law ⇨291, 292.
Indians ⇨32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1162. Review in Navajo Nation Courts

A. Petitions for review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards, issuance of orders, and issuance and denial of permits (but not including imposition of administrative penalties under § 1155), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within ninety (90) days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this chapter, except that if the petition is based solely on grounds arising after the ninetieth day, then the petition shall be filed within ninety (90) days after such grounds arise. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

B. Limitations on review

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three (3) months.

3. No interlocutory appeals shall be permitted with regard to procedural determinations made by the Director during rulemakings. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for review. In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

D. Challenge to any provisions. Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this Chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within ninety (90) calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Chapter.

History

CJY-58-95, July 20, 1995.

Library References

Environmental Law ☞642, 666, 683.
Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Chapter 13. Navajo Nation Clean Water Act

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- 1391. Rulemaking and other administrative procedures
- 1392. Review in Navajo Nation Supreme Court
- 1393. Challenge to facial validity of act
- 1394. Legislative oversight and amendments

History

Note. The Navajo Nation Clean Water Act Elimination System Act previously approved by amended the Navajo Nation Pollutant Discharge Navajo Nation Council Resolution CJA-16-96.

United States Code

Indian tribes, water pollution prevention and control, see 33 U.S.C. § 1377.

Subchapter 1. General Provisions

§ 1301. Title

This Act may be cited as the Navajo Nation Clean Water Act (“NNCWA”).

History

CJY-81-99, July 26, 1999.

§ 1302. Definitions

A. For the purposes of this Act:

- 1. “Administrator” means the Administrator of the U.S. Environmental Protection Agency.
- 2. “Best management practice” or “BMP” means methods, measures or practices selected by an agency to meet its nonpoint source control needs or, in the case of the National Pollutant Discharge Elimination System, schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of waters of the Navajo Nation. BMPs include, but are not limited to, structural and nonstructural controls, treatment requirements, operation and maintenance

procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage, and can be applied before, during, or after pollution-producing activities to reduce or eliminate the introduction of pollutants into waters of the Navajo Nation.

3. “Biological monitoring” means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants:

(a) By techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and

(b) At appropriate frequencies and locations.

4. “Chapter,” when used with reference to a governmental unit, means those community organizations duly certified and recognized as such by the Navajo Nation Council in CAP-34-98.

5. “Clean Water Act” means the Federal Water Pollution Control Act of 1972, as amended, 33 U.S.C. § 1251 *et seq.*

6. “Contaminant” means any physical, chemical, biological, or radiological substance or matter introduced by man or man’s actions in water.

7. “Director” means the Executive Director of the Navajo Nation Environmental Protection Agency.

8. “Discharge,” when used without qualification, means a discharge of pollutant(s).

9. “Discharge of pollutant(s)” means any addition of any pollutant to navigable waters from any point source.

10. “Disposal system” means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, septic tanks, and other systems.

11. “Domestic septage” means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receive only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

12. “Domestic sewage” means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

13. “Effluent limitation” means any restriction, requirement, or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, including schedules of compliance.

14. “Fundamentally different factors variance” means a variance from otherwise applicable technology-based effluent limitations under Subsections 301(b)(1)(A), 301(b)(2)(A) and (E), and 301(n) of the Clean Water Act.¹

15. "Industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category "Division D—Manufacturing," and such other classes of significant waste products as, by regulation, the Administrator deems appropriate.

16. "Load allocation" or "LA" means the portion of a receiving water's loading capability that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources.

17. "Medical waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes and potentially contaminated laboratory wastes, dialysis wastes, and such additional medical items as the Administrator shall prescribe by regulation.

18. "National Pollutant Discharge Elimination System" or "NPDES" means the regulatory program operated under Sections 307,² 318,³ 402⁴ and 405⁵ of the Clean Water Act (including pretreatment and sludge management) and under Subchapters 3, 4 and 5 of this Act.

19. "National pretreatment standard" means any regulation promulgated by the Administrator in accordance with Section 307(b) and (c) of the Clean Water Act⁶ which applies to industrial users, including prohibited discharges.

20. "Navajo Nation" or "Nation" means—

a. When referring to the body politic, except as the context may otherwise require, the same meaning as set forth in 1 N.N.C. § 501.

b. When referring to territorial jurisdiction, all lands and waters within the territorial boundaries of the Navajo Nation, including:

i. All lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of title thereto;

ii. All lands and waters held in trust by the United States for, or restricted by the United States, or otherwise set apart under the superintendence of the United States for, the use of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

iii. All other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

21. "Navigable waters" means waters of the Navajo Nation.

22. "New source" means any source (a building, structure, facility, or installation from which there is or may be a discharge of pollutants), the construction of which is commenced after publication by the Administrator of proposed regulations prescribing a standard of performance under section 306 of the Clean Water Act⁷ which will be applicable to such sources, if such

a standard is thereafter promulgated in accordance with section 306 of the Clean Water Act.

23. “New source performance standard” means a standard promulgated by the Administrator applicable to a category of new sources.

24. “Non-point source” means any source of water pollution that is not a point source, as defined herein.

25. “Person” means the Navajo Nation or any agency, entity or institution thereof, any chapter, township, political subdivision, public or private corporation, individual, partnership, association, federal agency, state, Indian Tribe, any interstate or intertribal body, municipality, commission or political subdivision of a state, or other entity, and includes any officer or governing or managing body of any chapter, township, political subdivision, or public or private corporation.

26. “Point source” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, landfill leachate collection system, container, rolling stock (except to the extent excluded from the NPDES program by Section 601 of the National and Community Service Act of 1990, P.L. 101-610, 104 Stat. 3185), concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges or return flows from irrigated agriculture.

27. “Pollution” means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the environment.

28. “Pretreatment program” means the program operated by the Navajo Nation Environmental Protection Agency and any publicly owned treatment works (whose program has been approved either by the Director or the Administrator) to implement national pretreatment standards to control pollutants which pass through or interfere with treatment processes in publicly owned treatment works or which may contaminate sewage sludge.

29. “Publicly owned treatment works” or “POTW” means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by the Navajo Nation, its political subdivisions or entities, or other state, municipality, or tribe; this term does not include such a facility owned or operated by the United States or a federal agency.

30. “Schedule of compliance” or “compliance schedule” means a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

31. “Section 404 permit” means a permit issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act⁸ or a permit issued by a tribe or state that is authorized by the U.S. Environmental Protection Agency to issue Section 404 permits.

32. "Sewerage system" means pipelines or conduits, pumping stations, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to a point of ultimate disposal.

33. "Sewage sludge" means solid, semi-solid, or liquid residues generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solid removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

34. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

35. "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.

36. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring.

37. "Treatment works" means any device, system, plant, disposal field, lagoon, dam, pumping station, incinerator, or other works subject to this Act used for the purpose of recycling, reclaiming, treating, stabilizing, or holding wastes.

38. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For the purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. The Director may designate any person subject to the standards for sewage sludge use and disposal established by the Administrator as a "treatment works treating domestic sewage."

39. "Underground injection" means the subsurface emplacement of fluids by well injection.

40. "United State Environmental Protection Agency" or "U.S. EPA" means the United States Environmental Protection Agency, its Administrator, Regional Administrator, or delegate.

41. "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions,

chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954,⁹ as amended), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) “sewage from vessels” within the meaning of Section 312 of the Clean Water Act;¹⁰ or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the Navajo Nation, and the Navajo Nation determines that such injection or disposal will not result in the degradation of ground or surface water resources.

42. “Wasteload allocation” or “WLA” means the portion of a receiving water’s loading capacity that is allocated to one of its existing or future point sources of pollution.

43. “Waters of the Navajo Nation” means all surface waters, including but not limited to portions of rivers, streams (including perennial, intermittent and ephemeral streams and their tributaries), lakes, ponds, dry washes, marshes, waterways, wetlands, mudflats, sandflats, sloughs, prairie potholes, wet meadows, playa lakes, impoundments, riparian areas, springs, and all other bodies or accumulations of water, surface, natural or artificial, public or private, including those dry during part of the year, that are within or border the Navajo Nation. This definition shall be interpreted as broadly as possible to include all waters that are currently used, were used in the past, or may be susceptible to use in interstate, intertribal or foreign commerce. Consistent with federal requirements, the Director may exclude from waters of the Navajo Nation certain waste treatment systems.

44. “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

¹33 U.S.C. § 1311(b)(1)(A), (b)(2)(A) and (E) and (n).

²33 U.S.C. § 1317.

³33 U.S.C. § 1328.

⁴33 U.S.C. § 1342.

⁵33 U.S.C. § 1345.

⁶33 U.S.C. § 1317(b) and (c).

⁷33 U.S.C. § 1316.

⁸33 U.S.C. § 1344.

⁹42 U.S.C. § 2011 et seq.

¹⁰33 U.S.C. § 1322.

History

CJY-81-99, July 26, 1999.

Library References

Indians ⇨ 16.5, 32.

Westlaw Topic No. 209.

C.J.S. Indians §§ 49, 51, 101 to 106.

§ 1303. Policy and Authority

A. Legislative purposes and intent

1. The Navajo Nation Council finds and declares that discharges of pollutants into the waters of the Navajo Nation from point and non-point sources, introduction of pollutants by industrial users into publicly owned treatment works and improper management of sewage sludge are potential hazards to the health, welfare and environment of the Navajo Nation and its residents and need to be addressed.

2. It is the policy of the Navajo Nation Council to protect the health, safety, welfare and environment of the Navajo Nation and its residents; to prevent, reduce and eliminate pollution of the waters of the Navajo Nation; and to plan the development and use (including restoration, preservation, and enhancement) of land and water resources within the Nation, by:

a. Providing for the establishment of water quality standards to protect fish and wildlife and the domestic, cultural, agricultural and recreational uses of the waters of the Navajo Nation;

b. Preventing the discharge of pollutants into waters of the Navajo Nation in amounts that would cause violations of water quality standards;

c. Providing for the issuance of permits and implementation of certification programs under this Act to control present and future point source discharges, introduction of pollutants by industrial users to publicly owned treatment works, and sludge management activities, using, to the extent practicable, a watershed basis;

d. Providing for the development of nonpoint source, clean lakes, and watershed protection programs, and for the implementation of these programs using, to the extent practicable, a watershed basis; and

e. Supporting research relating to water quality standards and planning, clean lakes, nonpoint sources, and watershed protection, and providing for tribal technical services and financial aid (to the extent funds are available and appropriated) to the Navajo Nation government and chapters in connection with these programs and their implementation.

3. The Navajo Nation Council also finds and declares that degradation of the waters of the Navajo Nation shall be minimized, and that economic growth should occur in a manner consistent with the preservation of existing clean Navajo Nation water resources.

4. It is further the policy of the Navajo Nation Council that the President, acting through such tribal organizations as he determines appropriate, shall take such action as may be necessary to encourage all surrounding governmental entities to take meaningful action regarding water quality standards and planning, permitting of discharges into surface waters, pretreatment of pollutants introduced into treatment works, clean lakes, non-point sources, and watershed protection for the achievement of goals regard-

ing these programs and the improvement of water quality to at least the same extent as the Navajo Nation does under its laws.

5. The Navajo Nation Council is placing primary responsibility for the implementation and enforcement of this Act with the Navajo Nation EPA.

B. Modular approach to water quality programs. The Navajo Nation is committed to providing for water quality standards and planning and implementing NPDES and other water quality management programs under this Act, to protect the health, safety, welfare and environment of the Navajo Nation. It is, however, discretionary with the Navajo Nation as to whether and which programs to implement, and in what order. The Director shall determine which programs are essential to the protection of the environment, health and welfare of the Navajo Nation, and of those programs shall determine which should be developed first. The Director may also determine that only parts of such programs are essential, and may develop these severable portions. The Director shall not be required to implement any of the programs described in this Act by any particular time. However, once the Director determines that a particular program or portion of a program should be developed, and sufficient funding exists, the Director must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

History

CJY-81-99, July 26, 1999.

United States Code

Congressional declaration of goals and policy, water pollution prevention and control, see 33 U.S.C. § 1377.

Library References

Environmental Law ⇌161.
Indians ⇌16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1304. General Authorities of the Director

A. Powers and Duties

1. Except as otherwise expressly provided in this Act, the Director shall be responsible for administering this Act.

2. In order to fulfill his or her obligations under this Act, the Director may:

a. Encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution as necessary for the discharge of duties assigned under this Act;

b. Hold hearings related to any aspect of or matters within the authorities of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;

c. Develop programs for the prevention, control, and abatement of new or existing pollution of waters of the Navajo Nation;

d. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes

of this Act, including voluntary testing of actual or suspected sources of surface water pollution;

e. Enforce regulations that have been promulgated by the Director, after review and approval by the Resources Committee of the Navajo Nation Council, consistent with the provisions of this Act, including but not limited to regulations concerning water quality standards and planning; discharges of pollutants into navigable waters; introduction of pollutants by industrial users; disposal of sewage sludge; construction of new control facilities or any parts of them or the modification of existing control facilities or any parts of them or the adoption of other remedial measures to prevent, control or abate water pollution; clean lakes; nonpoint sources; and watershed protection;

f. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out the purposes of this Act;

g. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

h. Compile and publish from time to time reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;

i. Require, as specified in § 1381 of this Act, any point source or non-point source discharger, industrial user or treatment works treating domestic sewage to monitor, sample or perform other studies to quantify effects of pollutants and sewage sludge to the environment;

j. Represent, consistent with the requirements of Title 2 of the Navajo Nation Code and after appropriate consultation with other Divisions, the Navajo Nation in all matters pertaining to water pollution and its control, abatement, and prevention; and

k. Perform such other activities appropriate for the Director to carry out his/her functions under this Act.

B. Regulations. The Director is authorized to promulgate such regulations as are necessary to carry out his or her functions under this Act, pursuant to the provisions of § 1391 of this Act, including, but not limited to, setting water quality standards, effluent limitations, standards of performance for point source discharges, industrial users and sludge management activities, and best management practices for non-point source discharges. In promulgating regulations, the Director shall give consideration to, but shall not be limited to, the relevant factors prescribed by the Clean Water Act¹ and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under the Clean Water Act, if there is an applicable minimum standard established therein. In promulgating regulations, the Director shall also give consideration to, but shall not be limited to, the relevant factors prescribed by Navajo Nation law. All regulations promul-

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gated under this Act shall be subject to review and approval by the Resources Committee of the Navajo Nation Council.

C. Delegation of Powers and Duties. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

¹33 U.S.C. § 1251 et seq.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌162.
Indians ⇌7, 16.5, 32(6).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47, 51, 101 to 106.

§ 1305. Plans, Specifications and Information

The Director, under such conditions as he or she may prescribe, may require the submission of such plans, specifications, and other information as he or she deems necessary to carry out the rules and regulations adopted pursuant to the provisions of this Act.

History

CJY-81-99, July 26, 1999.

Library References

Indians ⇌16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 1306. Severability and Preservation of Rights

A. Severability. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected.

B. Water Quantity Rights. The right of the Navajo Nation to certain quantities of water and the authority of the Navajo Nation to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. The Navajo Nation Environmental Protection Agency and local chapter governments are encouraged to cooperate with federal and state agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

C. Preservation of Rights and Construction. It is the purpose of this Act to provide additional and cumulative remedies to prevent, abate, and control pollution of waters of the Navajo Nation. The provisions of this Act shall be liberally construed to fulfill the intent and purpose of this Act and so as not to conflict with the applicable laws of the Navajo Nation and the United States. Nothing contained in this Act shall be construed to abridge or alter rights of

action or remedies in equity under treaties, the common law or statutory law, nor shall any provisions of this part or any act done by virtue thereof be construed as preventing the Navajo Nation or individuals from the exercise of their rights under treaties, the common law or statutory law to suppress nuisances or to abate pollution.

History

CJY-81-99, July 26, 1999.

Library References

Indians ☞16.5, 32.

Statutes ☞64.

Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 49, 51, 101 to 106.

C.J.S. Statutes § 83.

§ 1307. Applicability

A. Except as otherwise provided in this Section, the provisions of this Act shall apply to all persons and all property within the Navajo Nation.

B. Subject to the provisions of Subsections (C) and (D) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. Notwithstanding the provisions of Subsection (B) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to all property within the Navajo Nation owned or operated by such person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to the provisions of this Act.

D. If not otherwise applicable in accordance with Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 1308 of this Act.

E. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞173, 174.

Indians ☞16.5, 32(4.1, 8).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 29, 59, 101 to 106, 157.

§ 1308. Voluntary Compliance Agreement

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement

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with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be in writing, shall be for a term of not less than one (1) year, and may be subject to renewal for successive terms of not less than one (1) year. A voluntary compliance agreement may not vary the requirements of this Act or of any regulations promulgated pursuant to this Act, except that the consent required to be given in accordance with § 1341(B) of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act and shall be strictly limited to the term of the agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until approved by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞194, 204.
Indians ☞16.5, 32(8).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 29, 59, 101 to 106, 157.

Subchapter 2. Navajo Water Quality Standards and Planning

Part A. Water Quality Standards

United States Code

Water quality standards and implementation plans, see 33 U.S.C. § 1313.

§ 1311. Water Quality Standards

A. Promulgation of Standards. The Director shall promulgate water quality standards that protect the public health or welfare, enhance the quality of water and generally serve the purposes of this Act. The standards shall provide for the protection and propagation of fish, wildlife and livestock and protect agricultural, domestic and recreational uses of water, as well as protecting the cultural value and use of water. The standards shall consist of the designated uses for the waters of the Navajo Nation and the water quality criteria for such waters based upon such uses, and shall be applicable to all waters of the Navajo Nation. The standards shall also include the methods and analyses to be used to determine compliance with such standards. The Director may also promulgate regulations regarding compliance schedules, mixing zones, low flows, variances and such other matters as may be appropriate, including regulations implementing the anti-degradation policy set forth in § 1303(A)(2) of this Act.

B. Uses. The water quality standards shall establish designated uses for waters of the Navajo Nation, or segments thereof, taking into consideration their use and value for public water supplies, protection and propagation of fish and wildlife, recreational purposes, and agricultural (including livestock watering), industrial, and other purposes, and also taking into consideration their use and value for navigation and the cultural value and use of the water. The Director may remove a designated use that is not an existing use consistent with the requirements of Section 303(c) of the Clean Water Act¹ and the Administrator's implementing regulations.

C. Criteria. The criteria established by the Director shall protect the designated uses, be based on sound scientific rationale (which may include criteria documents of the Administrator), and include sufficient parameters or constituents to protect the designated use. For waters with multiple uses, the criteria shall protect the most sensitive use. The Director may establish criteria specifically applicable to wildlife or sediment. The criteria shall include:

1. Narrative criteria to protect all waters of the Navajo Nation from: the discharge of toxics in toxic amounts; objectionable odors, tastes, color or turbidity in or on the water; detrimental effects on edible plant or animal life that reside in or on the water; bottom deposits; floating debris; and any other protections determined by the Director to be warranted under the goals of this Act.

2. Numerical criteria for pollutants or pollutant parameters, including toxic pollutants and a thermal component (consistent with the requirements of the Clean Water Act),² the discharge or presence of which in the waters of the Navajo Nation the Director has determined could reasonably be expected to interfere with designated uses adopted by the Director. The numerical criteria shall support such designated uses. In setting numerical criteria the Director may consider the effect of local conditions on water quality, and may modify stream standards to reflect actual stream conditions when justified by sufficient data and need. Where such numerical criteria are not available, and the Director determines it is appropriate to protect designated

uses, the Director shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to Section 304(a)(8) of the Clean Water Act.³ Nothing in this Section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

3. Any other criteria the Director determines are necessary to protect the designated uses of the waters of the Navajo Nation.

D. **Methods Used.** The Director, in specifying the methods and analyses to be used to determine compliance with the water quality standards, may include biological monitoring and toxicity testing.

E. **Compliance Schedules.** The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five (5) years, for a person subject to an NPDES permit to comply with a new or more restrictive water quality-based effluent limitation based upon a water quality standard. The Director may establish by regulation, or on a case-by-case basis, a reasonable period of time, but no longer than five (5) years, for any person subject to a mechanism, including a best management practice applicable to a non-point source, to comply with a new or more restrictive requirement which implements a water quality standard.

¹33 U.S.C. § 1313(c).

²33 U.S.C. § 1251 et seq.

³33 U.S.C. § 1314(a)(8).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌187.

Indians ⇌16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 101 to 106.

§ 1312. Review of Water Quality Standards

The Director shall from time to time (but at least once each three (3) year period beginning with the date of enactment of this Act) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. The results of such review shall be provided to the Administrator. Whenever the Director revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌187.

Indians ⇌16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 101 to 106.

§ 1313. Water Quality Standards Implementation

The Director shall implement the water quality standards provisions of this Act through issuance of permits under Subchapter 5 of this Act, mechanisms provided under Subchapter 6 of this Act for non-point source discharges, mechanisms provided under Subchapter 7 of this Act for the clean lakes program, certification of federal licenses and permits (including permits issued by the U.S. Army Corps of Engineers pursuant to section 404 of the Clean Water Act)¹ as provided in § 1319 of this Act, and participation as an adjoining tribe for discharges that may affect the waters of the Navajo Nation (under section 401(a)(2) of the Clean Water Act).²

¹33 U.S.C. § 1344.

²33 U.S.C. § 1341(a)(2).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞187.
Indians ☞16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

Part B. Water Quality Planning and Management

§ 1314. Coordinated Water Quality Planning and Management

The Director may conduct water quality planning and management activities within the Navajo Nation in a coordinated fashion. Any such coordination shall be conducted consistent with this Act and the regulations promulgated hereunder and with applicable minimum federal requirements and may include, but is not limited to, identification of waters under § 1315 of this Act, development of total maximum daily loads and wasteload allocations/load allocations under § 1316 of this Act, and development of water quality monitoring, management plans and reports under § 1317 of this Act.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞162.
Indians ☞16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1315. Identification of Waters**A. Effluent limitations**

The Director shall identify those waters of the Navajo Nation for which the effluent limitations required by Sections 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act¹ are not stringent enough to implement a water quality standard applicable to such waters. The Director shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

4 N.N.C. § 1315

ENVIRONMENT

B. Thermal discharges

The Director shall identify those waters of the Navajo Nation for which controls on thermal discharges under Section 301 of the Clean Water Act² are not stringent enough to assure protection and propagation of a balanced indigenous population of fish and wildlife.

C. Approval by Administrator

The Director shall submit to the Administrator from time to time for approval the identifications made under this Section. If the Administrator approves any such identification, the Director shall incorporate it into the current plan under § 1308 of this Act. If the Administrator disapproves such identification and himself identifies certain waters of the Navajo Nation for which the effluent limitations and controls on thermal discharges are not stringent enough to implement the water quality standards applicable to such waters, the Director shall incorporate this identification into the Director's current plan under § 1308 of this Act. These actions shall be taken in parallel with actions under Subsection 1306(C) of this Act.

¹33 U.S.C. § 1311(b)(1)(A) and (B).

²33 U.S.C. § 1311.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇨173, 182.
Indians ⇨16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1316. Total Maximum Daily Loads and Wasteload Allocations/Load Allocations

A. Total maximum daily load. The Director shall establish for the waters identified under Subsection 1315(A) of this Act, and in accordance with the priority ranking, the total maximum daily load for those pollutants which the Administrator identifies under Section 304(a)(2) of the Clean Water Act¹ as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

B. Total maximum daily thermal load. The Director shall estimate for the waters identified in Subsection 1315(B) of this Act the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of

thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

C. Approval by Administrator. The Director shall submit to the Administrator from time to time for approval the loads established under this Section. If the Administrator approves such loads, the Director shall incorporate them into the current plan under § 1318 of this Act. If the Administrator disapproves such loads and himself establishes loads to implement the water quality standards applicable to such waters, upon such establishment the Director shall incorporate such loads into the Director's current plan under § 1318 of this Act. These actions shall be taken in parallel with actions under § 1315 of this Act.

D. Additional identification. For the specific purpose of developing information, the Director shall identify all waters of the Navajo Nation which were not identified under Subsections 1315(A) and (B) of this Act and estimate for such waters the total maximum daily load with seasonal variations and margins of safety for those pollutants which the Administrator identifies under Section 304(a)(2) of the Clean Water Act¹ as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish and wildlife.

¹33 U.S.C. § 1314(a)(2).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞192.
Indians ☞16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1317. Water Quality Monitoring, Management Plans and Reports

A. Monitoring. The Director shall establish and provide for the operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of the waters of the Navajo Nation, including biological monitoring, and provide for periodic updating of such data and the submission of such data to the Administrator. The Director may provide for such monitoring through water quality management plans and through regulations promulgated under § 1391 of this Act.

B. Management Plans. The Director may develop water quality management plans consistent with the requirements of Sections 205(j),¹ 208² and 303³ of the Clean Water Act and submit these plans to the Administrator; the Director may also periodically update these plans.

C. Reports. The Director may prepare water quality reports consistent with the requirements of section 305(b) of the Clean Water Act⁴ and submit these reports to the Administrator; the Director may also periodically update these reports.

¹33 U.S.C. § 1285(j).

²33 U.S.C. § 1288.
³33 U.S.C. § 1313.
⁴33 U.S.C. § 1315(b).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌207.
Indians ⇌16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

United States Code

State reports on water quality, see 33 U.S.C. § 1315.

§ 1318. Continuing Planning Process

A. Plan. The Director shall submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved) a proposed continuing planning process which is consistent with this Act and the Clean Water Act. The Director shall from time to time review the Navajo Nation’s approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act and the Clean Water Act.¹

B. Elements of Plan. The continuing planning process shall include, but not be limited to, the following:

1. Effluent limitations and schedules of compliance at least as stringent as those required by §§ 1322 and 1323 of this Act, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this Act and the Clean Water Act;¹
2. All elements of any applicable area wide waste management plans or applicable basin plans, established under Sections 208² and 209³ of the Clean Water Act, for which the submitting governmental entity had jurisdiction;
3. Total maximum daily load for pollutants in accordance with § 1316 of this Act;
4. Procedures for revision;
5. Adequate authority for intergovernmental cooperation;
6. Adequate implementation, including schedules of compliance, for revised or new water quality standards, under Part A of this Subchapter;
7. Controls over the disposition of all residual waste from any water treatment processing;
8. An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of § 1322 of this Act.

¹33 U.S.C. § 1251.
²33 U.S.C. § 1288.
³33 U.S.C. § 1289.

History

CJY-81-99, July 26, 1999.

Library References

Indians ⇐ 16.5, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

Part C. Certification of Compliance

§ 1319. Certification of Compliance with Federal Water Pollution Control Requirements

A. Certification of compliance. The Director may grant or deny certification that an applicant for a Navajo Nation or federal license or permit necessary to conduct any activity, including but not limited to the construction or operation of facilities, which may result in a discharge into waters of the Navajo Nation has satisfactorily shown that he or she will comply with Sections 301,¹ 302,² 303,³ 306⁴ and 307⁵ of the Clean Water Act. If there is no applicable effluent limitation or other limitation under Sections 301(b) and 302, and there is no applicable standard under Sections 306 and 307, for the activity in question, the Director shall so certify. The Director shall submit the application and any certification issued under this Section to the Administrator, pursuant to Section 401 of the Clean Water Act.⁶

B. Rules for grant or denial of certification. The Director shall promulgate rules, consistent with the provisions of Section 1391 of this Act, establishing the procedures that the Director will follow in granting or denying certifications under this Section. Such rules shall require public notice of an application for certification within an area no smaller than the chapter where the activity is located, opportunity for public participation in the decision-making process on an application for certification, and opportunity and procedures for contested hearings on applications for certification. Such rules also shall require an applicant to provide the Director with notice of proposed changes in the construction or operation of the facility or other activity in question and with plans for the operation of the facility or conduct of the activity in question. Such rules may also include fees to be charged by the Director for the review of applications and issuance of certifications.

C. Limitations and monitoring requirements. In any certification issued under this Section, the Director shall set forth effluent limitations, other limitations and monitoring requirements necessary to assure that the applicant will comply with applicable effluent and other limitations under Sections 301¹ or 302² of the Clean Water Act, standards of performance under Section 306 of the Clean Water Act,⁴ prohibitions, effluent standards or pretreatment standards under Section 307 of the Clean Water Act,⁵ and any other appropriate requirement of Navajo Nation law. These limitations and requirements shall become conditions on any permit subject to the provisions of Section 401 of the Clean Water Act.⁶

¹33 U.S.C. § 1311.
²33 U.S.C. § 1312.
³33 U.S.C. § 1313.
⁴33 U.S.C. § 1316.
⁵33 U.S.C. § 1317.
⁶33 U.S.C. § 1341.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞194.
Indians ☞16.5, 32(1, 4.1, 8).
Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 29, 49 to 51, 59, 101 to 106,
157.

United States Code

Certification, permits and licenses, see 33 U.S.C. § 1341.

**Subchapter 3. Surface Water Discharges
and Pretreatment Requirements**

Part A. Surface Water Discharges

§ 1321. Permit Required to Discharge into Surface Waters

A. Prohibitions

1. Except as provided in this Act or regulations promulgated hereunder, it is unlawful for any person to discharge a pollutant from a point source into waters of the Navajo Nation. Any such action is a public nuisance, as well as being subject to enforcement under Subchapter 9 of this Act.

2. No person may discharge any waste, pollutant or combination of pollutants from a point source into the waters of the Navajo Nation without a permit issued consistent with rules promulgated pursuant to this Subchapter and Subchapter 5 or, if no such permit program has been established, by the Administrator under Section 402 of the Clean Water Act.¹

3. It is unlawful for any person, without first securing a permit from the Director, to:

- a. Make any discharge of pollutants from a point source into waters of the Navajo Nation if not authorized under an existing valid permit; or
- b. Construct, install, modify, or operate any treatment works or part of any treatment works or any extension or addition to any treatment works, the operation of which is reasonably determined to result in a discharge due to runoff, flow or usage.

B. Exemptions. The following discharges do not require NPDES permits:

1. Discharges into waters of the Navajo Nation of dredged or fill materials that are regulated under Section 404 of the Clean Water Act.²

2. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 C.F.R. Part 300 or 33 C.F.R. § 153.10(e).

C. Grounds for issuance of permit. The Director may, after notice and opportunity for public hearing, issue a permit for the discharge of any waste, pollutant or combination of pollutants into navigable waters, for a period not to exceed five (5) years, upon condition that such discharge meets or will meet, subject to authorized schedules of compliance, all applicable Navajo Nation, adjoining tribe or state, and federal water quality standards and effluent standards and all other requirements of this Act.

D. Grounds for denial of permit. The Director shall deny a permit where:

1. The permit would authorize the discharge of any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste into navigable waters;

2. The permit would, in the judgment of the Secretary of the Army acting through the Chief of Engineers, result in the substantial impairment of anchorage and navigation of any navigable waters;

3. The permit is objected to in writing by the Administrator pursuant to any right to object provided to the Administrator by Section 402(d) of the Clean Water Act;³

4. The permit would authorize a discharge from a point source which is in conflict with a plan approved by the Administrator under Subsection 208(b) of the Clean Water Act,⁴ and for which the submitting government entity had jurisdiction;

5. The issuance of the permit would otherwise be inconsistent with the applicable requirements of other Navajo Nation laws or regulations promulgated thereunder; or

6. The issuance of the permit would otherwise be inconsistent with applicable requirements of the Clean Water Act⁵ or regulations promulgated thereunder.

E. General permit

The Director may issue a general permit within a geographical area to cover (1) storm water point sources, (2) a category of point sources, or (3) a category of treatment works treating domestic sewage. A facility covered by a general permit shall be subject to all provisions of this Act and regulations promulgated hereunder, except as otherwise provided by the Director by regulation in the case of certain application requirements.

F. Compliance

Compliance with a permit issued pursuant to this Act shall be deemed compliance, for the purposes of Subchapter 9 of this Act, with Sections 301,⁶ 302,⁷ 306⁸ and 307⁹ of the Clean Water Act, except for any standard imposed under Section 307 for a toxic pollutant injurious to human health.

¹33 U.S.C. § 1342.

²33 U.S.C. § 1344.

³33 U.S.C. § 1344(d).

⁴33 U.S.C. § 1288(b).

⁵33 U.S.C. § 1251 et seq.

⁶33 U.S.C. § 1311.

4 N.N.C. § 1321

ENVIRONMENT

⁷33 U.S.C. § 1312.
⁸33 U.S.C. § 1316.
⁹33 U.S.C. § 1317.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞196, 200.
Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

United States Code

Permits and licenses, water pollution prevention and control, see 33 U.S.C. § 1341 et seq.

§ 1322. Effluent Limitations Enforced in Issuance of Permits

A. Permit conditions. The Director shall require as permit terms, limitations and conditions the achievement of:

1. Effluent limitations based upon the application of such levels of treatment, technology and processes as are required under the Clean Water Act for which the Administrator has promulgated regulations under Sections 301,¹ 304,² 306³ and/or 318⁴ of the Clean Water Act for industrial or municipal dischargers and aquaculture projects;

2. Effluent limitations, best management practices, requirements for cooling water intake structures, alternative limitations for coal remining under Section 301(p) of the Clean Water Act,⁵ and/or a determination of maximum extent practicable, based upon the application of best professional judgment, in the absence of formally promulgated standards and limitations by the Administrator under the Clean Water Act,⁶ based upon the appropriate criteria contained in Sections 301,¹ 304(e),⁷ 316(b)⁸ and/or 402(a)(1)(B)⁹ of the Clean Water Act;

3. Toxic pollutant effluent standards or prohibitions promulgated by the Administrator under Section 307(a) of the Clean Water Act¹⁰ and contained within 40 C.F.R. Part 129, within the time frame for compliance provided by the Administrator, as well as the authority to modify existing permits to require compliance with such toxic pollutant effluent standards;

4. Effluent limitations, standards, or prohibitions on discharges from publicly owned treatment works and/or requirements of a pretreatment program based upon the requirements of Section 307 of the Clean Water Act¹¹ and the Administrator's implementing regulations;

5. For those treatment works treating domestic sewage and required to obtain a permit under Section 1321, appropriate conditions which are required in order to comply with regulations for sludge use and disposal promulgated by the Administrator under Section 405 of the Clean Water Act;¹²

6. Any more stringent effluent limitations necessary to meet water quality standards established pursuant to any Navajo Nation, adjoining state or tribe, or federal law or regulation, including water quality-related effluent

limitations established by the Administrator under Section 302 of the Clean Water Act;¹³ and/or

7. Any more stringent effluent limitations necessary to comply with the continuing planning process approved by the Administrator under Section 303(e) of the Clean Water Act.¹⁴

B. Time for compliance. Effluent limitations prescribed under this Section shall be achieved in the shortest reasonable period consistent with Navajo Nation law and the Clean Water Act,⁶ and with any regulations or guidelines promulgated or issued thereunder.

C. Variances

1. The Director may grant or deny requests for variances under Section 316(a) of the Clean Water Act¹⁵ for thermal pollution. The Director may implement any alternative limitations, terms or conditions established in a final decision on such a variance request.

2. The Director may deny, forward to the Administrator with a written concurrence, or submit to the Administrator without a recommendation, completed requests for variances under Subsections 301(c),¹⁶ 301(g),¹⁷ 301(n)¹⁸ (including fundamentally different factors variance requests from best practicable control technology currently available effluent limitations guidelines), or 302(b)(2)¹⁹ under the Clean Water Act. To the extent that the Director has forwarded a request to the Administrator with a written concurrence or without a recommendation, the Director may implement any alternative limitations, terms or conditions established by the Administrator in a final decision on such a variance request.

¹³3 U.S.C. § 1311.

²³3 U.S.C. § 1314.

³³3 U.S.C. § 1316.

⁴³3 U.S.C. § 1328.

⁵³3 U.S.C. § 1311(p).

⁶³3 U.S.C. § 1251 et seq.

⁷³3 U.S.C. § 1314(e).

⁸³3 U.S.C. § 1326(b).

⁹³3 U.S.C. § 1342(a)(1)(B).

¹⁰³3 U.S.C. § 1317(a).

¹¹³3 U.S.C. § 1317.

¹²³3 U.S.C. § 1345.

¹³³3 U.S.C. § 1312.

¹⁴³3 U.S.C. § 1313(e).

¹⁵³3 U.S.C. § 1326(a).

¹⁶³3 U.S.C. § 1311(e).

¹⁷³3 U.S.C. § 1311(g).

¹⁸³3 U.S.C. § 1311(n).

¹⁹³3 U.S.C. § 1312(b)(2).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌182, 194.

Indians ⇌16.5, 32(4.1).

4 N.N.C. § 1322

ENVIRONMENT

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

United States Code

Effluent limitations, see 33 U.S.C. § 1311.
Water quality related effluent limitations, see 33 U.S.C. § 1312.

§ 1323. Schedules of Compliance

The Director may set and revise schedules of compliance and include such schedules within the terms and conditions of permits for discharge of wastes or pollutants or for sludge use and disposal, consistent with Navajo Nation law, the Clean Water Act¹ and implementing regulations. The Director may establish interim compliance schedules in permits which are enforceable without showing a violation of an effluent limitation or harm to water quality.

¹33 U.S.C. § 1251 et seq.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌204.
Indians ⇌16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1324. Extension of Time to Meet Quality and Effluent Standards

A. Required findings. The Director may issue a reasonable extension to a point source discharger, industrial user, or treatment works treating domestic sewage, which extension shall not conflict with the Clean Water Act,¹ in which to meet water quality standards or other applicable effluent limitations or standards of the Navajo Nation or an adjoining state or tribe (to the extent allowable under the state or tribal law or regulations), if the Director determines that:

1. The violation was the result of actions or conditions outside the control of the discharger;
2. The discharger, industrial user, or treatment works treating domestic sewage has acted in good faith;
3. The extension would not result in the imposition of any additional controls on any point or non-point source; and
4. Facilities necessary for compliance are under construction and will be completed at the earliest date possible.

B. Excuse of noncompliance. Any extension of time granted under this Section will not compromise any right for enforcement available under Subchapter 9 which exists before the extension is granted.

¹33 U.S.C. § 1251 et seq.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞182, 187, 204.
Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1325. Recording, Reporting, and Inspection Conditions

The Director may prescribe terms and conditions for permits or other controls on industrial users to assure compliance with applicable Navajo Nation, adjoining state or tribe, and federal effluent standards and water quality standards (as set forth in § 1322 of this Act), including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection (as provided in § 1381 of this Act).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞197.
Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

United States Code

Records and reports, inspections, water pollution prevention and control, see 33 U.S.C. § 1318.

§ 1326. Disposal of Pollutants into Wells

The disposal of pollutants into wells shall be prohibited, unless the disposal is authorized by the federal underground injection control (UIC) program or by the Navajo Nation UIC program approved by the Administrator. The Director shall regulate any such discharges that are subject to the NPDES program through NPDES permits that incorporate appropriate federal or Navajo Nation UIC requirements. This authority shall enable the Navajo Nation to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞196.
Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

Part B. Pretreatment Requirements**United States Code**

Toxic and pretreatment effluent standards, water pollution prevention and control, see 33 U.S.C. § 1317.

§ 1327. Pretreatment Standards

The Director may promulgate rules specifying pretreatment standards to be applied to all industrial users of publicly owned treatment works for the introduction of pollutants into publicly owned treatment works, including pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works. Such standards shall not conflict with any pretreatment standard established under Subsection 307(b) of the Clean Water Act.¹

¹33 U.S.C. § 1317(b).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞181.

Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 101 to 106.

§ 1328. Conditions in Permits Issued for POTWs

A. Compliance with Clean Water Act. The Director or the owner or operator of a publicly owned treatment works, if it has an approved pretreatment program, shall implement all provisions of Section 307 of the Clean Water Act,¹ including issuing pretreatment industrial user permits or controlling discharges from significant industrial users by other appropriate means, such as discharge fees.

B. Other conditions. The Director shall include the following requirements as conditions in permits for the discharge of pollutants from publicly owned treatment works:

1. The identification, in terms of character and volume of pollutants, of any significant source introducing into such POTWs pollutants subject to pretreatment standards under Subsection 307(b) of the Clean Water Act;²
2. A program to assure compliance by each such source with pretreatment standards promulgated under Subsection 307(b) of the Clean Water Act² and § 1327 of this Act;
3. Adequate notice to the Navajo Nation EPA of:
 - a. New introductions into such works of pollutants from any source which would be a new source as defined in Section 306 of the Clean Water Act³ if such source were discharging pollutants,
 - b. New introductions of pollutants into such works from a source which would be subject to Section 301 of the Clean Water Act⁴ if it were discharging such pollutants, or
 - c. A substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such

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4 N.N.C. § 1329

change in the quantity or quality of effluent to be discharged from such publicly owned treatment works;

4. Compliance with any system of user charges required under Navajo law or the Clean Water Act or regulations promulgated thereunder; and

5. Compliance with record-keeping, reporting, sampling, monitoring and inspection requirements under Section 308 of the Clean Water Act⁵ and § 1381 of this Act.

¹33 U.S.C. § 1317.

²33 U.S.C. § 1317(b).

³33 U.S.C. § 1316.

⁴33 U.S.C. § 1311.

⁵33 U.S.C. § 1318.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞181, 197.

Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 101 to 106.

§ 1329. Other Authority of Director Regarding POTWs

In addition to other provisions specifically authorized in this Act, the Director shall have, but not be limited to, the following authority regarding publicly owned treatment works:

A. Issue decisions on requests by publicly owned treatment works for pretreatment program approval;

B. Act on requests for removal credits under Subsection 307(b) of the Clean Water Act;¹

C. Act on categorical determination requests;

D. Deny or make recommendations on requests for fundamentally different factors variances under Subsection 301(n) of the Clean Water Act;²

E. Make decisions on compliance deadline extension requests based on innovative technology under Subsection 307(e) of the Clean Water Act;³ and

F. Join the publicly owned treatment works as a defendant in an enforcement action under this Act against an industrial user.

¹33 U.S.C. § 1317(b).

²33 U.S.C. § 1311(n).

³33 U.S.C. § 1317(e).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞179, 181.

Indians ☞16.5.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 101 to 106.

Subchapter 4. Sewage Sludge

United States Code

Disposal or use of sewage sludge, water pollution prevention and control, see 33 U.S.C. § 1345.

§ 1331. Regulation of the Use and Disposal of Sewage Sludge

A. Establishment of program. The Director shall, by rulemaking consistent with Section 1391 of this Act, establish a program to regulate the use and disposal of sewage sludge.

B. Content of Regulations. In establishing a sewage sludge program, the Director shall:

1. Regulate all sludge use and disposal methods within the Navajo Nation;
2. Regulate the transportation and storage of sewage sludge in the Navajo Nation;
3. Ensure compliance with applicable sludge standards by all users or disposers of sewage sludge; and
4. Regulate the issuance of permits under §§ 1321 and 1332 of this Act for the disposal of sewage sludge, which regulations shall require the application to sewage sludge disposal of each criterion, factor, procedure and requirement applicable to a permit issued under § 1321 of this Act.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌176.
Indians ⇌16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1332. Permits

A. Permit requirement. In any case where the disposal of sewage sludge resulting from the operation of a treatment works (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering navigable waters, such disposal is prohibited except in accordance with a permit issued under Section 1321 of this Act or, if no such permit program has been established, by the Administrator under section 402 of the Clean Water Act.¹

B. Consistency with sewage sludge regulations. Any permit issued under § 1321 to a publicly owned treatment works or any other treatment works treating domestic sewage shall include requirements for the use and disposal of sludge that implement the regulations promulgated pursuant to § 1331 of this Act.

C. Applicability to all treatment works. In the case of a publicly owned treatment works or other treatment works treating domestic sewage that is not subject to § 1321 of this Act, the Director may issue a permit to such treatment works solely to impose requirements for the use and disposal of sludge that

implement the regulations established pursuant to § 1331 of this Act. The Director shall establish procedures for issuing permits pursuant to this subsection.

¹33 U.S.C. § 1342.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞176, 196.
Indians ☞16.5, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 101 to 106.

§ 1333. Recordkeeping, Reporting, and Inspections

Any treatment works treating domestic sewage is subject to applicable provisions of regulations issued by the Director regarding recordkeeping, reporting and inspections, including provisions of § 1381 of this Act. The Director may prescribe terms and conditions for permits issued under this part to assure compliance with applicable Navajo Nation and federal effluent, solid waste, and water quality standards, including requirements concerning recordkeeping, reporting, monitoring, entry and inspection, to the extent provided under this Act. The Director may establish regulations specifically establishing terms, limitations and conditions, including notification requirements, applicable to septage haulers.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞207.
Indians ☞16.5, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

Subchapter 5. Permits and Other Authorizations

Part A. Permits

United States Code

Permits and licenses, water pollution prevention and control, see 33 U.S.C. § 1341 et seq.

§ 1341. Conditions of Permits

A. Submission of information. The Director may prescribe conditions for (by issuing regulations and on a case-by-case basis) and require the submission of plans, specifications, and other information from a permittee, person applying for a permit, or person discharging without a permit, in connection with applications for or otherwise related to the issuance of permits, introduction of pollutants by an industrial user into a publicly owned treatment works, or activities of a treatment works treating domestic sewage.

B. Consent to jurisdiction. All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the

Director for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

“Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant.”

The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application.” Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, shall subject the applicant to civil penalty in accordance with this Act.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞197.
Indians ☞16.5, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 101 to 106.

§ 1342. Term of Permits

A. Fixed term. Each permit shall have a fixed term not exceeding five (5) years. Upon expiration of a permit, a new permit may be issued by the Director after notice and opportunity for public hearing and upon condition that the discharge or disposal (including of sludge) meets or will meet, subject to authorized schedules of compliance, all applicable requirements of this Act, including the conditions of any permit issued by the Director.

B. Renewals. When the permittee has made a timely and sufficient application for a renewal in accordance with Navajo Nation EPA rules, an existing permit for an activity of a continuing nature shall not expire until the application for renewal has been finally determined by the Director.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞194.
Westlaw Topic No. 149E.

§ 1343. Notice of Actions

The Director shall issue and implement rules to ensure:

A. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive notice of each application for a permit; be provided an opportunity for public hearing before ruling on each such application; and be provided an explanation in writing of the reasons why any recommendations submitted with regard to such application were not adopted;

B. That the public, appropriate government agencies, and any other tribe or state the waters of which may be affected, receive appropriate notice of activities of the pretreatment program and be provided an opportunity for public hearing before the Director rules on such activities, as provided by Section 307 of the Clean Water Act ¹ and the Administrator's implementing regulations; and

C. That the Administrator receives notice and a copy of each application for a permit.

¹33 U.S.C. § 1317.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞218.
Indians ☞32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1344. Issuance, Revocation, or Denial of Permits

The Director shall issue, suspend, revoke, modify, or deny permits consistent with provisions of this Subchapter and with rules issued by the Director consistent with the provisions of § 1391 of this Act.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞194.
Indians ☞16.5, 32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 101 to 106, 115.

§ 1345. Issuance of Permits and Grounds for Revocation, Modification, or Suspension of Permits

A. Grounds for revocation, modification or suspension. Any permit issued under this Part may be revoked, modified, or suspended in whole or in part during its term or upon request of the permit holder or any interested person, for cause including, but not limited to the following:

1. Violation of any condition of the permit;
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
3. Change in condition that requires either a temporary or permanent reduction or elimination of the permitted discharge or disposal operation, where "condition" does not include statutory or regulatory effluent limitations or standards enacted or adopted during the permit term, other than for toxic pollutants.

B. Notice and hearing. If the Director recommends issuance or denial of an application for a permit, or revokes, suspends, or modifies a permit, he or she shall give written notice of his or her action to the applicant or permittee, any interested person who has requested to be notified, as well as other entities as provided by this Act. The applicant, permittee or any interested person may request a hearing before the Director after issuance of the initial decision. Such hearing shall be held within thirty (30) calendar days after receipt of written request, or as soon thereafter as reasonably practical. The Director may affirm, modify or reverse his or her initial decision based upon the evidence presented.

C. Effective date. Issuance, modification, revocation, or suspension of a permit shall be effective thirty (30) calendar days after issuance of the initial decision, unless a later date is specified. If the holder or any interested person requests a hearing before the Director, the order of modification, revocation or suspension shall be effective thirty (30) calendar days after the final determination by the Director.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞199.
Indians ☞16.5, 32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 101 to 106, 115.

§ 1346. Conflict of Interest

A. The Director, or his or her delegate, shall not participate in a permit action which involves himself or herself, any discharger, industrial user or treatment works treating domestic sewage with which he or she is connected as a director, officer or employee, or in which he or she has a direct personal financial interest. Direct financial interest is defined as receiving, or having received during the previous two (2) years, a significant portion of income directly or indirectly from permit holders or applicants for permits.

B. To the extent not prohibited by Subsection (A) of this Section, the Director, or his or her delegate, shall not participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, except to the extent otherwise allowed under Navajo Nation law. In no case, shall the Director, or his or her delegate, participate in any proceeding as a consultant or in any other capacity on behalf of any discharger, industrial user or treatment works treating domestic sewage, that was instituted or ongoing during their tenure.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⌘220.
Indians ⌘32(6).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 51.

Part B. Other Authorizations

§ 1347. Approval of Construction Grant Projects and User Charges

A. Requirements for approval. The Director shall not approve (for those projects the Director has authority to approve or disapprove) any projects for any treatment works from a grant under Section 201(g)(1) of the Clean Water Act,¹ unless he or she shall first have determined that the applicant

1. Has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Director, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; and

2. Has legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Director. The Director may determine that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, by determining the system of charges is in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the waste, and other appropriate factors), including different rates for small non-residential and residential user classes. In defining small non-residential users, the Director shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he or she deems appropriate. A system of user charges which imposes a lower charge for low-income residential users (as defined by the Director) shall be deemed to be a user charge system meeting the requirements of clause (1) of this Paragraph if the

4 N.N.C. § 1347

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Director determines that such system was adopted after public notice and hearing.

B. Guidelines on Payment of Waste Treatment Costs. The Director may, after consultation with appropriate Navajo Nation, federal, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish:

1. Classes of users of such services, including categories of industrial users;
2. Criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and
3. Model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

C. Alternative systems of charges. A system of charges that meets the requirements of § 1347(A)(1) may be based on something other than metering the sewage or water supply flow of residential recipients of waste treatment services, consistent with Navajo Nation law. If the system of charges is based on something other than metering the Director shall require:

1. The applicant to establish a system by which the necessary funds will be available for the proper operation and maintenance of the treatment works; and
2. The applicant to establish a procedure under which the residential user will be notified as to that portion of his or her total payment which will be allocated to the costs of the waste treatment services.

¹33 U.S.C. § 1281(g).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞180.
Indians ☞16.5, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 101 to 106.

§ 1348. Clean Water Act Fund

Monies derived from fees and penalties imposed under this Act shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into a duly established Special Revenue Fund, called the Clean Water Act Fund, and shall be expended by the Director for the use of the Clean Water Act¹ programs in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the fund, including the sources and uses thereof. Any monies contained in said fund at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this Section.

¹33 U.S.C. § 1251 et seq.

History

CJY-81-99, July 26, 1999.

Library References

Indians ↻32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

Subchapter 6. Nonpoint Source Management Program

United States Code

Nonpoint source management programs, water pollution prevention and control, see 33 U.S.C. § 1329.

§ 1351. Nonpoint Source Assessment Report

A. Content of report. The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval (to the extent that it has not otherwise already been completed and approved), a report which:

1. Identifies those waters of the Navajo Nation which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act or the Clean Water Act;¹
2. Identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the waters of the Navajo Nation identified under Subsection (A)(1) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
3. Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under Subsection (A)(2) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
4. Identifies and describes Navajo Nation and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the waters of the Navajo Nation, including but not limited to those programs which are receiving federal assistance under Subsections 319(h) and (i) of the Clean Water Act.²

B. Basis for report. In preparing the report required by this Section, the Director may use all available information.

¹33 U.S.C. § 1251 et seq.

²33 U.S.C. § 1329(h) and (i).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ¶173, 189.
Indians ¶16.5, 32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 101 to 106, 115.

§ 1352. Nonpoint Source Management Program

A. Program submission. The Director shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program for controlling pollution added from nonpoint sources to the waters of the Navajo Nation and improving the quality of such waters, which program the Navajo Nation proposes to implement in the first four fiscal years beginning after the date of submission of the program. The Director may periodically revise the submission.

B. Program Contents. The management program proposed for implementation under this Section shall include the following:

1. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under § 1351(A)(2) of this Act, taking into account the impact of the practice on ground water quality.

2. An identification of programs within the Navajo Nation and adjoining tribes and states (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) designed to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under Subsection (B)(1) of this Section.

3. A schedule containing annual milestones for (i) utilization of the program implementation methods identified in Subsection (B)(2) of this Section, and (ii) implementation of the best management practices identified in Subsection (B)(1) of this Section by the categories, subcategories, or particular nonpoint sources designated under § 1351(A)(2) of this Act. Such schedule shall provide for utilization of the best management practices at the earliest practicable date, but no later than the time period provided in § 1311(E) of this Act.

4. Any other information required by Section 319(b) of the Clean Water Act.¹

C. Utilization of Local and Private Experts. In developing and implementing a management program under this Section, the Director shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

D. Development on Watershed Basis. The Director shall, to the maximum extent practicable, develop and implement a management program under this Part on a watershed-by-watershed basis within the Navajo Nation.

¹33 U.S.C. § 1329(b).

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞175.
Indians ☞16.5, 32(4).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 51 to 52, 101 to 106, 115.

United States Code

Nonpoint source management programs, water pollution prevention and control, see 33 U.S.C. § 1329.

Subchapter 7. Clean Lakes Program

United States Code

Clean lakes, water pollution prevention and control, see 33 U.S.C. § 1324.

§ 1361. Biennial Report

The Director may initiate a Clean Lakes program under this Subchapter. If the Director decides to develop such a program, the Director shall prepare and submit to the Administrator for approval a report containing the following information:

- A. An identification and classification according to eutrophic condition of all lakes within the Navajo Nation;
- B. A description of procedures, processes and methods (including land use requirements) to control sources of pollution of such lakes;
- C. A description of methods and procedures, in conjunction with appropriate federal agencies, to restore the water quality of such lakes;
- D. Methods and procedures to mitigate the harmful effects of high acidity, including innovative methods of neutralizing and restoring buffering capacity of lakes and methods of removing from lakes toxic metals and other toxic substances mobilized by high acidity;
- E. A list and description of those lakes within the Navajo Nation which are known to be impaired, including those lakes which are known not to meet applicable water quality standards or which require implementation of control programs to maintain compliance with applicable standards and those lakes in which water quality has deteriorated as a result of high acidity that may reasonably be due to acid deposition; and
- F. An assessment of the status and trends of water quality in lakes in the Navajo Nation, including but not limited to the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

4 N.N.C. § 1361

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This report shall be updated and submitted to the Administrator every two (2) years, for so long as the Director continues to operate a Clean Lakes program.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇨207.
Indians ⇨16.5.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 101 to 106.

§ 1362. Demonstration Program

The Director may establish and conduct a lake water quality demonstration program, in order to promote the following goals and activities:

- A. Develop cost effective technologies for the control of pollutants to preserve or enhance lake water quality while optimizing multiple lake uses;
- B. Control nonpoint sources of pollution which are contributing to the degradation of water quality in lakes;
- C. Evaluate the feasibility of implementing regional consolidated pollution control strategies;
- D. Demonstrate environmentally preferred techniques for the removal and disposal of contaminated lake sediments;
- E. Develop improved methods for the removal of silt, stumps, aquatic growth, and other obstructions which impair the quality of lakes;
- F. Construct and evaluate silt traps and other devices or equipment to prevent or abate the deposit of sediment in lakes; and
- G. Demonstrate the costs and benefits of utilizing dredged material from lakes in the reclamation of despoiled land.

History

CJY-81-99, July 26, 1999.

Library References

Indians ⇨16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 1363. Contracts and Interagency Agreements

The Director is authorized to enter into agreements with other public agencies and to contract with public and private agencies, organizations and individuals to develop and demonstrate new or improved methods for the prevention, removal, reduction and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation.

History

CJY-81-99, July 26, 1999.

Library References

Indians ☞16.5, 32.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 49, 51, 101 to 106.

Subchapter 8. Watershed Protection Program

§ 1371. Development of Program

The Director may develop a program to protect surface and ground water from pollution on a watershed basis, taking into account impacts on water quality from a variety of sources and considering cumulative impacts as well as discrete instances of contamination. In developing this program, the Director shall consult with other Navajo Nation agencies and departments, and with state and federal agencies and other entities having authority over activities which may impact water quality within the Navajo Nation (such as agriculture, livestock grazing, mining and timber operations and business development). The Director may conduct studies regarding watershed protection within the Navajo Nation, may develop guidelines and procedures to protect such watersheds and may promulgate regulations to implement the purposes of this subchapter, in accordance with the provisions of § 1391.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞173.
 Indians ☞16.5.
 Westlaw Topic Nos. 149E, 209.
 C.J.S. Indians §§ 101 to 106.

Subchapter 9. Enforcement

§ 1381. Records, Inspections, Monitoring and Entry

A. Record-keeping, reporting and monitoring. In order to carry out the purposes of this Act, including but not limited to developing or enforcing any water quality standard, water quality management plan, continuing planning process or best management practice under this Act, issuing certifications, granting approvals, and issuing permits or otherwise regulating point sources, treatment works and industrial users of POTWs under this Act, the Director may promulgate regulations requiring any person subject to the requirements of this Act to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, calibrate, use and maintain monitoring equipment or methods, including, where appropriate, biological monitoring;
4. Sample effluents (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe); and

5. Provide such other information as the Director may reasonably require.

B. Entry and inspections. The Director or his/her authorized representative (including an authorized contractor acting as a representative of the Director), upon presentation of his/her credentials,

1. Shall have a right of entry to, upon, or through any premises necessary to implement and enforce the provisions of this Act and the regulations promulgated hereunder, and

2. May at reasonable times have access to and copy any records, inspect any monitoring or sampling equipment or method under Subsection (A) above, inspect any treatment processes or equipment, sample any effluents which are being discharged into the waters of the Navajo Nation or are required to be or are sampled under Subsection (A), and perform such other inspection as is necessary to ensure compliance with this Act and the regulations promulgated hereunder.

Any records, reports or information obtained under this Section shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment or new source performance standards.

C. Availability of information to public. Any records, reports or other information obtained under this Section shall be available to the public, except that upon a showing satisfactory to the Director by any person that records, reports or other information or any particular part thereof (other than effluent data) to which the Director has access under this Section would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Director shall consider such record, report or other information or portion thereof confidential, except that such material may be disclosed to other officers, employees or authorized representatives of the Navajo Nation and of the United States concerned with carrying out this Act or when relevant to any proceeding under this Act. The Director shall deny claims of confidentiality for name and address of any permit applicant or permittee; permit applications; permits; and effluent data.

D. Confidential information. Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who discloses confidential information contrary to these provisions, except as otherwise provided by law, may be subject to dismissal, suspension, or other adverse personnel action. Any authorized representative of the Director (including an authorized contractor acting as a representative of the Director) who knowingly or willfully publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information that is required to be considered confidential under this Subsection shall be fined not more than one thousand dollars (\$1,000). Nothing in this Subsection shall prohibit the Director or an authorized representative of the Director (including any authorized contractor acting as a representative of the Director) from disclosing records, reports, or information to officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act. In any instance where the

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4 N.N.C. § 1382

Navajo Nation lacks jurisdiction over the person charged, the Director may refer the action to the appropriate USEPA Regional Administrator and/or U.S. Department of Justice official.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ⇌207.

Indians ⇌16.5, 32.

Searches and Seizures ⇌79.

Westlaw Topic Nos. 149E, 209, 349.

C.J.S. Indians §§ 49, 51, 101 to 106.

C.J.S. Searches and Seizures §§ 99 to 101,
189.

United States Code

Records and reports, inspections, water pollution prevention and control, see 33 U.S.C. § 1318.

§ 1382. General Enforcement Authority

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person (including the Navajo Nation and any instrumentality of the Navajo Nation, but only with regard to their role as a point or nonpoint source, industrial user of a publicly owned treatment works or a treatment works treating domestic sewage) has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, plans, programs or fees issued or developed pursuant to this Act, the Director may:

1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, including an emergency order to comply, pursuant to the provisions of this Section;
2. Issue and serve on such person an administrative penalty order in accordance with § 1384 of this Act;
3. Request that the Attorney General bring a civil action, including an action for injunctive relief, in accordance with § 1383(A) of this Act; and/or
4. Request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with § 1383(B) of this Act and/or refer any criminal enforcement action or portion of such action to the U.S. Environmental Protection Agency Regional Administrator for the appropriate EPA region.

B. Requirements for orders to comply. An order issued under Subsection (A)(1) or (A)(2) of this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1391 of this Act, if such hearing is requested in writing within thirty (30) calendar days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the thirty (30) calendar days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order

may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate U.S. EPA region and, if the order is issued to a corporation, to the appropriate corporate officers and registered agent of the corporation. No order to comply issued under this Section shall prevent the Navajo Nation from assessing any penalties or otherwise affect or limit the Navajo Nation's authority to enforce under other provisions of this Act, or affect any person's obligations to comply with any Section of this Act or with a term or condition of any permit or other requirements promulgated or approved under this Act.

C. Emergency compliance orders. Notwithstanding any permit issued under this Act, if the Director determines that discharge of pollutants into the waters of the Navajo Nation, into a POTW or a treatment works treating domestic sewage, pollution from a nonpoint source, or a combination of such sources, is presenting an imminent and substantial endangerment to public health or welfare or the environment and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to Subsection (E) of this Section, the Director may issue such orders as may be necessary to protect public health or welfare or the environment. Such orders may prohibit, restrict or condition any and all activities that contribute or may contribute to the emergency, shall be effective immediately upon issuance and shall remain in effect for a period of not more than sixty (60) days, unless the Director brings an action pursuant to Subsection (E) of this Section within the 60-day period. If the Director brings such an action, the order shall remain in effect for an additional fourteen (14) days or for such longer period as may be authorized by the court in which such action is brought.

D. Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Navajo Nation EPA, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Injunctive relief. The Director may seek injunctive relief pursuant to § 1383(A) of this Act to restrain any person who causes or contributes to an imminent and substantial threat to the public health or welfare or environment due to a discharge or other activity affecting the water quality of the Navajo Nation.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞204.	C.J.S. Indians §§ 13, 32, 49, 51, 68, 89, 91,
Indians ☞25, 27, 32.	97.
Westlaw Topic Nos. 149E, 209.	C.J.S. United States §§ 181 to 183.

United States Code

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

§ 1383. Judicial Enforcement

A. Civil judicial enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties of not less than five hundred dollars (\$500.00) and not more than twenty-five thousand dollars (\$25,000) per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) and (2).

B. Criminal penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act or a permit or an order issued pursuant to this Act;
2. Makes any false material statement, representation or certification in, or omits material from, or alters, conceals or fails to file or maintain any notice, application, record, report, plan or other document required to be filed or maintained pursuant to this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; or
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Act, regulations or plans adopted pursuant to this Act or a permit or an order issued pursuant to this Act; shall, upon conviction, be punished by a fine of not less than five hundred dollars (\$500.00) and not more than twenty-five thousand dollars (\$25,000) per day of violation or, if smaller, the largest amount permissible under applicable law, or imprisonment for not more than one (1) year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount

of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1352 of this Act. For the purpose of this Subsection, the term “person” includes, in addition to the entities referred to in § 1302(A)(26) of this Act, any responsible corporate officer.

C. Jurisdiction and venue. Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

D. Calculation of penalties.

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1384 or § 1385, if the Director has notified the source in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a penalty assessed under this Section, § 1384 or § 1385, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator’s full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. For purposes of this Section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. All penalties collected pursuant to this Section shall be deposited into the Clean Water Act Fund established pursuant to § 1348.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused or to perform community service, or both.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final

order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ¶223, 762.
Indians ¶25, 27, 32(7, 8, 13), 37, 38.
Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 13, 22, 29, 32, 59 to 62, 68,
89, 91, 97, 139 to 143, 152, 157, 163.
C.J.S. United States §§ 181 to 183.

United States Code

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

§ 1384. Administrative Assessment of Penalties

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Act, including, but not limited to, a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act. The Director's authority under this Subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one (1) year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing, pursuant to § 1391 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is

to be assessed and provide such person an opportunity to request a hearing within thirty (30) calendar days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed one thousand dollars (\$1,000) per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under Subsection (A) to the extent permissible under applicable law. The Director's authority under this Subsection, combined with action taken under Subsection (A), shall be limited in total amount by the provisions in Subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation under the provisions of Subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within thirty (30) calendar days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, is not required. Within thirty (30) calendar days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this section.

E. Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys' fees and costs of collection proceedings. Such person

shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 1383(D) of this Act.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞223.

Indians ☞32(4, 8), 37.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 29, 51 to 52, 59, 115, 157.

United States Code

Enforcement, water pollution prevention and control, see 33 U.S.C. § 1319.

§ 1385. Citizen Suits

A. Authority to bring civil action; jurisdiction.

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his or her own behalf against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who is alleged to be in violation of any provision, requirement or prohibition of this Act, including but not limited to a regulation or plan adopted pursuant to this Act, a permit or an order issued pursuant to this Act or a fee assessed under this Act.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, prohibition, regulation, plan, permit, order, fee or other requirement, to restrain such violation, to order such person to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice. An action may not be commenced under Subsection (A)(1) of this Section fewer than sixty (60) days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Act, except that any person may intervene as a matter of right in such an action.

C. Venue; intervention; service of complaint.

1. Any action under this Section may be brought only in the Navajo Nation District Court in Window Rock.

4 N.N.C. § 1385

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2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and/or the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever the court determines that such award is appropriate.

E. Use of penalties. All penalties collected pursuant to this Section shall be deposited into the Clean Water Act Fund established pursuant to § 1348.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞226.

Indians ☞32(7), 37.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 60 to 62, 139 to 143, 152.

United States Code

Citizen suits, water pollution prevention and control, see 33 U.S.C. § 1365.

Subchapter 10. Rulemaking and Judicial Review

United States Code

Administrative procedure and judicial review, water pollution prevention and control, see 33 U.S.C. § 1369.

§ 1391. Rulemaking and Other Administrative Procedures

A. Rulemaking

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and Navajo over local radio stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period

of at least thirty (30) calendar days; shall allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally, in the Navajo or English languages, their views, data or arguments; and shall keep the record open for at least ten (10) days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative hearings. The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under §§ 1382(B) (compliance orders) and 1384 (administrative penalties and field citations). Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to hear appeals taken under the above-cited Sections; provided, however, that the Director may, in his or her discretion, transfer other appeals allowed under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when necessary.

C. Administrative subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Claims of confidentiality shall be processed using the provisions of § 1381(C) of this Act and regulations promulgated thereunder.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in any other manner; in any such action, relief will be limited to declaratory relief.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞215.
Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 1392. Review in Navajo Nation Supreme Court

A. Petitions for review. A petition for review of any final action taken by the Director under this Act, including but not limited to promulgation of regulations, plans and standards, issuance of orders and issuance or denial of permits (but not including imposition of administrative penalties under Section 1384, which are subject to review under the provisions of Subsection 1384(D), or for challenge of an administrative subpoena, which is subject to review under the provisions of Subsection 1391(C)(3), shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within sixty (60) calendar days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Act, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within sixty (60) calendar days after such grounds arise. The date of adoption of any regulation promulgated pursuant to this Act shall be the date of its approval by the Resources Committee of the Navajo Nation Council. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and evidence that were before the Director at the time of the final action from which the appeal is taken.

B. Limitations on review.

1. If judicial review of a final action of the Director could have been obtained under subsection (a) of this section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Act or other notice and comment actions taken pursuant to this Act, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation or other action, the Director may convene a proceeding for reconsideration of the regulation or other action and provide the same procedural rights as would have been afforded had the information been available at the time the regulation or other action was proposed. If the Director declines to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation or other action, although it may be stayed by the Director or the court for up to three (3) months.

3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Act. In reviewing alleged procedural errors, the court

may invalidate the regulation or other action only if the errors were so serious and related to matters of such central relevance to the regulation or permitting action that there is a substantial likelihood that the regulation or other action would have been significantly changed if such errors had not been made.

C. Standards for review. In reviewing any final action of the Director undertaken pursuant to this Act, the court may reverse any such action that it finds to be:

1. arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. in excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. without observance of procedure required by law; or
4. unsupported by substantial evidence.

D. Challenge to any provisions. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner. In any such action, relief shall be limited to declaratory relief and the Navajo Nation Supreme Court shall have no jurisdiction to grant any other relief. The Navajo Nation Supreme Court shall have exclusive jurisdiction and venue over any action brought pursuant to this section, except as otherwise provided in this section.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞641, 661, 682.
Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 1393. Challenge to Facial Validity of Act

A. Any challenge to the lawful authority of the Navajo Nation Council to enact any provision of this Act must be filed in accordance with the laws of the Navajo Nation within ninety (90) calendar days after the date of enactment of such provision of this Act, in the Navajo Nation District Court in Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner.

B. For purposes of this Section, the date of enactment of each provision of this Act shall be the date of signature by the President of the Navajo Nation after its adoption by the Navajo Nation Council, or the date of its adoption by the Navajo Nation Council if the Navajo Nation Council overrides a veto by the President.

C. The Navajo Nation District Court in Window Rock shall have exclusive jurisdiction and venue over any action under this Section.

D. In any action brought pursuant to the provisions of this Section, relief shall be limited to declaratory relief.

4 N.N.C. § 1393

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E. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and not in any other manner.

History

CJY-81-99, July 26, 1999.

Library References

Environmental Law ☞668.

Indians ☞32(1, 7).

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to

143, 152.

§ 1394. Legislative Oversight and Amendments

The Resources Committee of the Navajo Nation Council shall serve as the legislative oversight committee for the Navajo Nation Environmental Protection Agency, 2 N.N.C. § 1926 *et seq.* The Navajo Nation Council may amend 2 N.N.C. §§ 1921—1926 upon recommendation from the Resources Committee pursuant to 2 N.N.C. § 1927 *et seq.*

History

CJY-81-99, July 26, 1999.

Library References

Indians ☞32(4.1).

Westlaw Topic No. 209.

Chapter 15. The Navajo Nation Underground Storage Tank Act

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Subchapter 1. General Provisions

§ 1501. Title

This chapter may be cited as the “Navajo Nation Underground Storage Tank Act.”

History

CO-82-98, October 20, 1998.

§ 1502. Definitions

For the purposes of this Chapter:

A. “Abandoned Underground Storage Tank” means an underground storage tank (UST) abandoned by the owner and operator for which no liability is imposed against the owner or operator or their guarantor for the removal of said UST or associated release under federal law, this Chapter, Navajo common law or contract law, or where it is impossible to require an owner or operator to remove a UST or remediate a release or collect damages from the owner or operator for their failure to remove a UST or remediate a release because the owner and operator have been determined by a court of competent jurisdiction to be bankrupt or otherwise unable to pay.

B. “Attorney General” means the Attorney General of the Navajo Nation.

C. “Corrective Action Plan (CAP)” means a document which is submitted to the regulatory agency for approval and which is based on the site characterization of an underground storage tank site. The CAP corrects soil, surface water and ground water contamination and is implemented in order to protect human health, safety, welfare and the environment.

D. “Director” means the Director of the Navajo Nation Environmental Protection Agency or his/her designee.

E. “Environmental Assessment (EA)” means an assessment done of an individual parcel of land for the purpose of evaluating the environmental impacts of a project and for making management decisions in accordance with the National Environmental Policy Act (NEPA). An EA is not as comprehensive as an Environmental Impact Statement (EIS) which is done for federal projects, nor is it commercially based like an ESA.

F. “Environmental Audit” means a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

G. “Environmental Site Assessment” or “ESA” means the process by which a person or entity seeks to determine if a particular parcel of property (including improvements) is subject to recognized environmental conditions.

H. “Exposure Assessment” means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum or a regulated substance from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or

potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

I. “Facility” means, with respect to any owner or operator, a single parcel of property or contiguous or adjacent property on which underground storage tanks and their associated piping are used for the storage of regulated substances. A facility may have one or more clusters of storage tanks at separate tank sites.

J. “Guarantor” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator as required by this Chapter.

K. “Navajo Nation” means:

1. When referring to the body politic, the same meaning as set forth in 1 N.N.C. § 552;
2. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:
 - a. all land within the exterior boundaries of the Navajo Indian Reservation, or of the Eastern Navajo Agency, or of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments;
 - b. all land held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for, the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and
 - c. all other land over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

L. “Navajo Nation Council” means the official legislative body of the Navajo Nation empowered to adopt policies and enact laws governing the Navajo Nation, as set forth in 2 N.N.C. § 102 *et seq.*

M. “Navajo Nation Environmental Protection Agency or Navajo EPA” means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. § 1921 *et seq.*, to carry out the environmental laws and regulations adopted by the Navajo Nation.

N. “Navajo Nation Underground Storage Tank Program or Navajo UST Program” means the program, including any successor program, regardless of name, within Navajo EPA that is responsible for implementing and enforcing this Chapter.

O. "Non-operational Storage Tank" means any underground storage tank into which regulated substances will not be deposited, or from which regulated substances will not be dispensed, after November 8, 1984.

P. "Operator" means any person in control of, or having responsibility for the daily operation of underground storage tanks.

Q. "Owner" means:

1. A person who owns an underground storage tank or a person who owned an underground storage tank immediately before the underground storage tank was taken out of operation. A person who acquires ownership or control of property (by lease, use or other means) where an underground storage tank is located is the owner of the underground storage tank, except that the person is not an owner if the following applies:

a. The person, after conducting a due diligence investigation immediately prior to acquiring ownership of the property, did not know and had no reason to know that the underground storage tank was located on the property. Due diligence shall consist of performing a phase I environmental assessment of the property which meets generally accepted commercial practices or standards for due diligence performed prior to the adoption of this standard.

2. A person who holds indicia of ownership primarily to protect a security interest in either the underground storage tank or in the property on which the underground storage tank is or was located but who does not participate in the management of the underground storage tank and who is not otherwise engaged in petroleum refining or marketing is not an owner for purposes of this Chapter.

3. A person who holds indicia of ownership as prescribed by Subsection (2) of this Section and who acquires ownership or control of a underground storage tank through foreclosure of the property where a underground storage tank is located shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release, if the person does all of the following:

a. Complies with the notification requirements prescribed by Subchapter 3.

b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.

c. Temporarily or permanently closes the underground storage tank as in accordance with this Chapter and regulations promulgated hereunder.

d. Divests itself of the property in a reasonably prompt manner using whatever commercially reasonable means are relevant or appropriate with respect to the property, taking into consideration all of the facts and circumstances.

4. The Navajo Nation shall not be deemed an owner and shall not be required to investigate a release or take corrective action in response to a release where it holds indicia of ownership due to bankruptcy, foreclosure,

tax delinquency condemnation, abandonment or similar means because of its status as a governmental entity (and is not otherwise operating said tank) and it:

- a. Complies with the notification requirements prescribed by Subchapter 3.
- b. Complies with the reporting requirements prescribed by § 1544 to the extent that the information is known to the person at the time of the report.
- c. Temporarily or permanently closes the underground storage tank as in accordance with this Chapter and regulations promulgated hereunder.

5. The federal government or any of its agencies shall not be deemed an owner or operator under this Chapter if prohibited by federal law.

R. "Person" means any individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

S. "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute pressure.

T. "Petroleum product" means petroleum, including crude oil, and/or fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of 42 U.S.C. § 9601(14), natural gas, natural gas liquids, liquified natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to Standard definitions of Petroleum statistics.

U. "Regulated Substance" means

1. Petroleum;
2. A substance defined in the Comprehensive Environmental Liability Act of 1980; P.L. 96-510, 94 Stat. 2767; 42 U.S.C. § 9601(14), but not including a substance regulated as a hazardous waste under the Solid Waste Disposal Act of 1984, P.L. 98-616, 98 Stat. 3221; 42 U.S.C. § 6921.

V. "Release" means any spilling, leaking, pumping, pouring, emptying, dumping, emitting, discharging, escaping, leaching, or disposing from any underground storage tank into groundwater, surface water or surface or subsurface soil.

W. "Resources Committee" means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 et seq. with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by Navajo Nation Council Resolution No. CAP-47-95.

X. "Site Characterization" at an underground storage tank site is the investigation and reporting of detailed information about soil, ground water, geology, conductivity, contaminants and other data for the purpose of implementing a corrective action plan (CAP).

Y. "Tank System" means an underground storage tank or tanks and ancillary equipment, including piping, which is used for the storage of regulated substances.

Z. "Underground Storage Tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; provided, however, that the owner or operator of such tanks shall comply with the leak/release reporting requirements of this Chapter (§ 1544) and such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks or releases. Moreover, in the event of a release the owner or operator of such tanks shall be subject to the corrective action requirements of this Chapter and regulations promulgated hereunder.

2. A single tank of 660 gallons or less or tank system of 1,320 gallons or less used for storing heating oil for consumptive use on the premises where stored; provided, however that the owner or operator of such tanks shall comply with the leak/release reporting requirements of this Chapter (§ 1544) and such tanks installed after the effective date of this Chapter shall comply with the best available design technology for preventing leaks or releases. Moreover, in the event of a release the owner or operator shall be subject to the corrective action requirements of this Chapter and regulations promulgated hereunder.

3. Septic tank.

4. Pipeline facility (including gathering lines)-

a. which is regulated under the Natural Gas Pipeline Safety Act of 1968; 49 U.S.C. Appx. §§ 1671 through 1686;

b. the Hazardous Liquid Pipeline Safety Act of 1968; 49 U.S.C. Appx. § 2001.

5. An intrastate pipeline facility regulated under Tribal law comparable to the provision under 4(a) and (b).

6. Surface impoundment, pit, pond, or lagoon.

7. Storm water or waste water collection system.

8. Flow-through process tank.

9. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

10. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

11. The term “underground storage tank” shall not include any pipes connected to any tank which is described in Subparagraphs (1) through (10).

History

CO-82-98, October 20, 1998.

Library References

Indians ☞9, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1503. Declaration of Policy

The Navajo Nation Council finds and declares that the release of petroleum products and other hazardous liquids from underground storage tanks presents a significant danger to the public health and the environment, by contaminating surface water, ground water and subsurface soils. Therefore, it is the intent of the Navajo Nation Council to establish a program for the regulation of underground storage tanks which implements stringent control of the installation, operation, retrofitting, upgrading, removal and abandonment of underground storage tanks, corrective action, closure and post closure care, and financial assurances consistent with the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 98 Stat. 3221; 42 U.S.C. § 6991(a) *et seq.*

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞9, 32(4.1).
Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 67.

§ 1504. Applicability; Exemptions

A. Except as otherwise provided in this Section, the provisions of this Act and regulations promulgated hereunder shall apply to all persons and all property within the Navajo Nation.

B. Except as otherwise provided in Subsection (C) of this Section, the provisions of this Act and/or regulation promulgated thereunder, in whole or in part, shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property.

C. The provisions of this Act and/or regulations promulgated thereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person where required by federal law or to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 1505 of this Act.

D. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1505. Voluntary Compliance Agreement

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Chapter and/or regulations promulgated thereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate which part or parts of this Chapter and/or regulations promulgated thereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be in writing, shall be for a term of not less than one (1) year, and may be subject to renewal for successive terms of not less than one (1) year. A voluntary compliance agreement may not vary the requirements of this Chapter, or of any regulations promulgated pursuant to this Act.

D. A voluntary compliance agreement shall not be effective unless and until final approval of the agreement is given by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interests of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination or admission by the Navajo Nation that such claim of exemption is valid.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 1506. General Authorities of the Director

A. Powers and Duties. In carrying out the intent of this Chapter, the Director is authorized to

1. Prescribe such regulations as are necessary to carry out his/her functions under this Chapter in accordance with the provision of § 1561(A) of this Chapter;
2. Enforce the provisions of this Chapter and the regulations promulgated hereunder, pursuant to the provisions of Subchapter 5 of this Chapter;
3. Require monitoring, sampling or other studies;
4. Assess fees for the inspection of underground storage tanks;
5. Issue compliance orders, civil penalties and citations to carry out the intent of this Chapter and regulations promulgated hereunder;
6. Conduct investigations, inspections and tests at underground storage tank sites to carry out the duties of this Chapter pursuant to the provisions of Subchapter 5 of this Chapter;
7. Hold hearings related to any aspect of or matter within the authority of this Section and, in connection therewith, compel the attendance of witnesses and the production of records;
8. Provide to the public pertinent educational materials and information regarding underground storage tank issues;
9. Issue guidelines and encourage voluntary cooperation with the provisions of this Chapter and the regulations promulgated hereunder;
10. Consistent with Title 2, Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Chapter, provided that all monies resulting therefrom shall be deposited in the Navajo Nation Treasury to the account of the Navajo UST Program, as authorized under Navajo law;
11. Require the owner and/or operator of an underground storage tank to perform or cause to be performed a tank and line system test to determine compliance with the standards established by this Chapter or regulations promulgated hereunder; and
12. Perform such other activities as the Director may find necessary to carry out his/her functions under this Chapter.

In prescribing regulations under this Chapter, the Director shall consider but shall not be limited to the requirements of Title VI of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-618, 98 Stat. 3221; 42 U.S.C. § 6991(a) *et seq.* and the regulations thereunder, except that the regulations prescribed by the Director shall be at least as stringent as those promulgated under said Act. All regulations promulgated under this Chapter shall be subject to approval by the Resources Committee of the Navajo Nation Council.

B. Delegation of Authority. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such powers and duties under this Chapter, except the making of regulations, as he or she may deem necessary or expedient.

C. Use of Funds. Monies derived from fees and penalties imposed under this Chapter shall be available solely for the administration and implementation of this Chapter and the regulations promulgated hereunder. Such funds shall

4 N.N.C. § 1506

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be deposited into a duly established UST Program Special Revenue Fund Account and expended by the Director for the use of the Underground Storage Tank Program in accordance with the UST Program Special Revenue Fund Account plan of operation pursuant to an approved budget. Any monies contained in said revolving account at the end of the fiscal year (not to exceed two hundred fifty and thousand dollars (\$250,000) shall not revert to the general fund and shall remain available for appropriation as provided in this Section. Any amount accumulated in excess of two hundred fifty thousand dollars (\$250,000) within a single fiscal year shall be deposited into the Navajo Nation General Fund Account.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞32(6).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 51.

§ 1507. Construction

This Chapter shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Chapter shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Chapter or regulations promulgated hereunder shall be construed to diminish, limit or otherwise adversely affect any right or remedy held or available to the Navajo Nation.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 1508. Compliance with other Laws and Regulations

Compliance with this Chapter and Regulations promulgated hereunder does not relieve a person of the obligation to comply with other applicable laws and regulations.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Westlaw Topic No. 149E.

§ 1509. Severability

If any provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter and the

application of such provision to other persons or circumstances shall remain unaffected.

History

CO-82-98, October 20, 1998.

Library References

Statutes \S 64.
Westlaw Topic No. 361.
C.J.S. Statutes \S 83.

Subchapter 2. Prohibited Acts

§ 1521. Prohibited Acts

- A. It shall be unlawful for any person:
1. To install an underground storage tank (or tank system) unless:
 - a. It is designed to prevent releases due to corrosion or structural failure for the operational life of the tank;
 - b. It is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with noncorrosive material or designed in a manner to prevent the release of a regulated substance;
 - c. It is equipped with spill and overfill prevention devices.
 - d. It is correctly installed in accordance with manufacture specifications and appropriate technical industry standards.
 - e. The material used in the construction or lining of the tank is compatible with the substance to be stored; and
 - f. The tank (or operation thereof) complies with all standards required by this Chapter and regulations promulgated hereunder.
 2. To fail to remove (or upgrade) an underground storage tank that does not comply with this Chapter and in accordance with the removal requirements of this Chapter and regulations promulgated hereunder.
 3. To fail to take corrective action for any leaking underground storage tank as required by this Chapter and in accordance with the requirements of this Chapter and regulations promulgated hereunder.
 4. To fail to maintain adequate financial responsibility assurances as required by this Chapter and regulations promulgated hereunder.
 5. To fail to comply with the notification, reporting, and recordkeeping requirements of this Chapter or regulations promulgated hereunder.
 6. To violate any duty to allow an inspection, entry or monitoring activities.
 7. To fail to inspect or monitor an underground storage tank or tank system as required by this Chapter or regulations promulgated hereunder.
 8. To violate any provision, requirement, prohibition, or duty under this chapter or regulations promulgated hereunder.
- B. It shall be unlawful for any person to:

4 N.N.C. § 1521

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1. Falsify documents or otherwise provide false information to the Director;
2. Divulge confidential information as prohibited by § 1546 of this Chapter.
3. Fail to notify the Navajo UST Program of the release of a regulated substance as required by this Chapter.

C. It shall be unlawful for any person:

1. To place (effective January 1, 1999) a regulated substance into an underground storage tank where the owner or operator is not in compliance with all the requirements of this Chapter or regulations promulgated hereunder.
2. To place a regulated substance into an underground storage tank where any tariff or fees imposed under this Chapter or regulations promulgated hereunder, including related interest or penalties have not been paid when due.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

United States Code

Release detection, prevention, and correction regulations, regulation of underground storage tanks, see 42 U.S.C. § 6991b.

Subchapter 3. Notification Requirements

United States Code

Notification, regulation of underground storage tanks, see 42 U.S.C. § 6991a.

§ 1531. Existing Tanks

Within ninety (90) days from the effective date of this Chapter, each owner or operator of an underground storage tank shall notify the Navajo UST Program, on a form to be provided by the Director, of the existence of such tank, specifying the:

1. Age,
2. Size,
3. Type,
4. Location,
5. Uses of such tank, and
6. The type of release detection system and the extent of any known soil or ground water contamination,
7. The material out of which the tank was constructed,

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4 N.N.C. § 1533

8. Factory tank design specifications,
9. Tank system schematic, and
10. Other pertinent information as may be determined by the Director.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇨417.
Westlaw Topic No. 149E.

§ 1532. Tanks Taken out of Operation

The owner or operator of an underground storage tank taken out of operation after January 1, 1974, but not removed from the ground, shall notify the Navajo UST Program, on a form to be provided by the Director, of the existence of such tank, within ninety (90) days from the effective date of this Chapter, specifying the:

1. Date the tank was taken out of operation,
2. Age of the tank taken out of operation,
3. Size,
4. Type,
5. Location,
6. Type and quantity of substance stored in the such tank immediately before it was taken out of operation,
7. Factory tank design specifications,
8. Tank system schematic, and
9. Other pertinent information as may be determined by the Director.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇨417.
Westlaw Topic No. 149E.

§ 1533. Tanks Taken out of Operations before January 1, 1974

The notice requirements of §§ 1531 and 1532 of this Subchapter do not apply to an owner of an underground storage tank taken out of operation on or before January 1, 1974; provided, however, that the owner or operator of said tanks (taken out of operation prior to January 1, 1974) shall notify (within six (6) months of the effective date of this Chapter) the Navajo UST Program of the existence and location of such tanks and other information (if available) as may be required by the Director.

History

CO-82-98, October 20, 1998.

Note. Slightly reworded for clarity.

Library References

Environmental Law ⌘417.
Westlaw Topic No. 149E.

§ 1534. Tanks Removed from a Facility

The notice requirements of §§ 1531 and 1532 of this subchapter do not apply to the owner of an underground storage tank which has been removed from the ground between January 1, 1974 and November 8, 1984, but the Director may require the owner of an underground storage tank removed from the ground after November 8, 1984 to notify the Navajo UST program of the age, location, uses of the tank and the date of its removal.

History

CO-82-98, October 20, 1998.
Note. Slightly reworded for clarity.

Library References

Environmental Law ⌘417.
Westlaw Topic No. 149E.

§ 1535. New Tanks

An owner or operator who brings an underground storage tank into operation after the effective date of this Chapter shall meet the notice requirements provided for in § 1531 of this Subchapter within thirty (30) days.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⌘417.
Westlaw Topic No. 149E.

§ 1536. Notification By Depositors

After the effective date of this Chapter and for twelve (12) months thereafter, any person who deposits regulated substances in an underground storage tank shall notify the owner or operator of the tank of the notification requirements of this Subchapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⌘417.
Westlaw Topic No. 149E.

§ 1537. Notification By Sellers

Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of the owner's notification requirements under § 1535 of this Subchapter.

History

CO-82-98, October 20, 1998.

Note. Slightly reworded for clarity.

Library References

Environmental Law ⇌417.

Westlaw Topic No. 149E.

§ 1538. Notification Requirements for Tanks Taken Out of Operation or Abandoned Prior to January 1, 1974

Any person who discovers the existence of a tank taken out of operation prior to January 1, 1974 shall notify the Navajo UST Program of the existence of such tank. This requirement shall become effective upon the effective date of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇌417.

Westlaw Topic No. 149E.

§ 1539. Inventory

The Director shall prepare and maintain an inventory of all underground storage tanks within the Navajo Nation. The inventory shall be based on the information collected pursuant to the notification requirements under this Subchapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇌417.

Westlaw Topic No. 149E.

§ 1540. Upgrades, Replacement Tanks and Tanks Which Change Use

An owner or operator shall notify the Navajo UST Program, within thirty (30) days, of any upgrade, underground storage tank replacement (providing the information required in § 1531) or any change in the use of an underground storage tank.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇌417.

Westlaw Topic No. 149E.

Subchapter 4. Release, Detection, Prevention, Reporting and
Corrective Action Regulations and Other Requirements

United States Code

Release detection, prevention, and correction regulations, regulation of underground storage tanks,
see 42 U.S.C. § 6991b.

**§ 1541. Release, Detection, Prevention, Reporting, Closure and Corrective
Action Regulations**

A. The Director, after notice and opportunity for public comment as provided for in this Chapter shall promulgate release detection, prevention, reporting, closure, and corrective action regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment. The regulations adopted pursuant to this Section shall be no less stringent than that required by federal law.

B. In promulgating regulations under this Section, the Director may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Director may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, proximity to drinking water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

C. The regulations promulgated pursuant to this Section shall include, but need not be limited to, the following requirements respecting all underground storage tanks:

1. Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
2. Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
3. Requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;
4. Requirements for performing an environmental assessment (EA) ;
5. Requirements for taking corrective action in response to a release from an underground storage tank;
6. Requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
7. Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden or gradual accidental releases arising from operating an underground storage tank;

8. Requirements for submitting health and safety plans and management plans as may be necessary to protect the public health and safety and the environment.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇨417, 441, 580.

Westlaw Topic Nos. 149E, 209.

Indians ⇨9, 32.

C.J.S. Indians §§ 49, 51, 67.

§ 1542. Interim Underground Storage Tank Requirements

Until the Director promulgates regulations authorized under § 1541 of this Chapter, the owner and operator of any underground storage tank shall comply with all applicable underground storage tank requirements of 42 U.S.C. § 6991 et seq. and federal regulations promulgated thereunder. In addition, the owner and operator of any underground storage tank shall comply with the following criteria:

1. Permanent closure of all underground storage tanks and product lines shall be accomplished by the removal and proper disposal of the tanks and product lines except that removal of an underground storage tank may not be required where said removal would result in the unnecessary destruction of a building/ structure or harm to potential cultural resources.
2. The owner and/or operator shall hire an independent third party certified consultant to perform removals, installations, upgrades, or remedial activity and shall provide proof of qualifications to NNEPA upon request. Qualifications shall include state certification of installation training (if applicable), field oversight by a qualified professional (Professional registered engineer or professional geologist or related science), reference list of similar projects completed, proof of liability insurance, proof of adherence to QA/QC protocol, proof of appropriate health and safety training, and proof of training and experience in tank removals (if applicable).
3. Upon hiring a UST consultant, the owner and/or operator shall direct a letter to the NNEPA authorizing under what circumstances the consultant may speak directly to the regulatory agencies on behalf of the owner.
4. Prior to any activity for which the ground surface will be excavated or drilled, the owner or operator or his/her authorized representative shall notify the Navajo Nation Historic Preservation Department to obtain a clearance if required to excavate or drill and provide proof of such clearance to the NNEPA.
5. The owner and/or operator shall make arrangements in advance of the planned activity to obtain clean fill material from a permitted facility if said fill material is taken from Navajo lands.
6. The owner and/or operator shall, in consultation with the consultant, provide a site-specific health and safety plan to the regulatory agencies prior to the planned activity, and shall conduct a health and safety meeting each day prior to commencing activity at the site.

7. The consultant shall contact the NNEPA to arrange for a date to conduct all installation and removal activity, and shall notify the NNEPA in writing of the arranged-for date at least thirty (30) days prior to the commencement of the activity.

8. Until such time as Navajo Nation clean-up standards and written guidelines are promulgated, the consultant shall determine, in advance of the activity, the possible alternatives for disposal and/or treatment of any contaminated soil and/or ground water and shall discuss these alternatives with the NNEPA prior to commencing activity. In the event of the discovery of a release, the consultant shall select the alternative treatment plan and present it in a Corrective Action Plan.

9. Contaminated soil may be temporarily stockpiled on-site only if permission is granted by the leasing agency of the Navajo Nation and the BIA or another agency as appropriate. The NNEPA shall review the plans and monitor the construction of the stockpile. The life span of the temporary stockpile shall be decided on a site-by-site basis by the appropriate oversight agencies.

10. The NNEPA UST Program shall not use risk assessment analysis as the only tool except in limited site specific corrective actions where it is convincingly proven and agreed upon by the Director that there is no other reasonable alternative.

11. The NNEPA can make policy decisions related to protection of the environment, but cannot make land use decisions. For instance, the technical oversight of land farms shall be done by NNEPA, but the land use decisions must be made by the proper agencies.

12. For purposes of these interim regulations, the NNEPA will act as a second responder only. As stated in § 1541(C)(3), regulations will be developed which designate the requirements for reporting of releases and corrective action. In the interim, all releases which impact the immediate health and safety of the Navajo people shall be reported to the Department of Emergency Management. Secondly, if any one release from an underground storage tank is greater than 25 gallons, that release shall be reported to the NNEPA and the U.S. EPA within twenty-four (24) hours as stated in the federal regulations.

13. NNEPA shall operate independently from the Division of Economic Development and other tribal departments and shall enforce against all entities equally. The NNEPA shall not review ESA's, land use documents, contractor bids, purchase requisitions, or other documents which are part of the property transfer process or for which review poses a conflict of interest, unless the review is necessary in order to determine liability for a release or as a follow up on a reported release. Should the Division of Economic Development or another department, or the Bureau of Indian Affairs need assistance in reviewing an ESA or other document, the NNEPA may do so only as a third party on technical matters.

14. The owner and/or operator shall immediately clean up a release of a regulated substance in accordance with applicable laws and regulations.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1543. Financial Responsibility Requirements

A. Financial responsibility required by this Subsection may be established in accordance with regulations promulgated by the Director by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Director. In promulgating requirements under this Subsection, the Director is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this Subchapter.

B. In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in tribal court or the Federal Courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

C. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Section. Nothing in this Subsection shall be construed to limit any other tribal or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this Subsection shall be construed to diminish the liability of any person under the Comprehensive Environmental Response Compensation and Liability Act of 1980, P.L. 96-510, 94 Stat. 2769; 42 U.S.C. § 9607 or § 9611 or other applicable law.

D.

1. The Director, in promulgating financial responsibility regulations under this Section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than one million dollars (\$1,000,000) for each occurrence with an annual aggregate of not less than one million dollars (\$1,000,000) for 1 to 100 petroleum USTs or

with an annual aggregate of not less than two million dollars (\$2,000,000) for 101 or more petroleum USTs.

2. The Director may set amounts lower than the amounts required by Subparagraph 1. of this Paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

3. In establishing classes and categories for purposes of this Paragraph, the Director may consider the following factors:

- a. The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.
- b. The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.
- c. The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
- d. The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.
- e. Such other factors as the Director deems pertinent.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.
Indians ☞9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1544. Reporting Releases of a Regulated Substance Requirements

A. The operator and owner of an underground storage tank shall notify the Navajo UST Program of each release or suspected release (of more than 25 gallons) of petroleum and any release of hazardous substance that equals or exceeds its reportable quantity under CERCLA from the tank as soon as practicable but no later than twenty-four (24) hours after the release or suspected release is detected. For releases of 25 gallons or less of petroleum and any release of a hazardous substance that is less than its reportable quantity, the owner or operator shall immediately clean up the spill or overflow, maintain records of each release for a period of five (5) years and shall report to Navajo EPA any cumulative releases of more than 25 gallons of petroleum or home heating oil during a five (5) year period.

B. The operator of an underground storage tank shall notify the owner of each release from the tank as soon as practicable but no later than twenty-four (24)hours after the release is detected.

C. Notice by the operator and owner required by this Section may be made orally or in writing but shall be followed within fourteen (14) days by a written report to the Navajo UST Program that a release or suspected release has been

detected. The written report shall specify to the extent known at the time of the report the nature of the release or suspected release, the regulated substance released, the quantity of the release, the period of time over which the release occurred, the initial response and the corrective action taken as of the date of the report and anticipated to be taken subsequent to the date of the report. In addition, the written report shall include additional information as may be required by the Director.

D. The Director shall prescribe by regulation the reporting, investigation and confirmation actions to be taken, in the event of a release or suspected release of a regulated substance from an underground storage tank. Any regulations adopted pursuant to this Section shall be no less stringent than that required by federal law. Until regulations adopted pursuant to this Subsection are in effect, reporting, investigation and confirmation actions shall be accomplished in a manner consistent with 40 CFR §§ 280.50 through 280.53.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞441.
Indians ☞9, 32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 1545. Right to Inspect Records, Tanks and Equipment

A. For the purposes of developing rules, conducting studies or enforcing the provisions of this Chapter, an owner or operator of an underground storage tank shall, on request of the Director:

1. Furnish to the Navajo UST Program information, relating to the tank and its associated equipment and contents.
2. Permit the Director to have access to the site to conduct monitoring and testing of tanks or surrounding soils, air, surface water or ground water.
3. Permit the Director to inspect and copy all records relating to tanks or which indicates that a release of a regulated substance has occurred.
4. Permit the Director to inspect and obtain samples of regulated substances contained in tanks.

B. Environmental site assessments (ESA) are generated as part of a property transfer and as such are generally not reviewable by Navajo EPA. Nonetheless, Navajo EPA shall have the right to review such documents upon request to ensure compliance with this Chapter and regulations promulgated hereunder.

C. The Director shall conduct all inspections permitted pursuant to Subsection (A) at a reasonable time and complete these inspections with reasonable promptness.

History

CO-82-98, October 20, 1998.

4 N.N.C. § 1545

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Library References

Environmental Law ⇌417.
Indians ⇌32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

United States Code

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

§ 1546. Confidentiality of Records

A. Records or other information furnished to or obtained by the Director concerning regulated substances are available to the public, except that any records and information which relate to the trade secrets, processes, operations, style of work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person are only for the confidential use of Navajo EPA in the administration of this Chapter unless the owner or operator expressly agrees in writing to their publication or availability to the public. This Section does not prohibit the appropriate governmental agency from publishing quantitative and qualitative statistics pertaining to the storage of regulated substances. Notwithstanding provisions to the contrary to this Section, information regarding the nature and quality of releases from underground storage tanks otherwise reportable pursuant to this Chapter shall be available to the public. Notwithstanding any provision of this Section, records, reports, documents or information may be disclosed to other officers, employees, or authorized representatives of the Navajo Nation or the United States government concerned with carrying out this Chapter or when relevant in any proceeding taken under Navajo or federal law.

B. Any person who knowingly and willfully divulges or discloses any information entitled to protection under this Section shall, upon conviction, be subject to a fine of not more than five thousand dollars (\$5,000) or to imprisonment not to exceed one (1) year or both.

History

CO-82-98, October 20, 1998.

Library References

Records ⇌30.
Westlaw Topic No. 326.
C.J.S. Records §§ 60, 62 to 63, 65, 93, 95.

United States Code

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

§ 1547. Authority of the Director to Take Corrective Action

A. Corrective Actions

The Director is authorized to:

1. Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of a regulated substance when the Director determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

2. Undertake corrective actions, utilizing available funds from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account established under § 1573 of this Chapter, with respect to any release of a regulated substance into the environment from an underground storage tank only if such action is necessary, in the judgment of the Director, to protect human health and the environment and one or more of the following situations exists:

a. No person can be found, within ninety (90) days or such shorter period as may be necessary to protect human health and the environment, who is:

- i. An owner or operator of the tank concerned,
- ii. subject to such corrective action regulations, and
- iii. capable of carrying out such corrective action properly.

b. A situation exists which requires prompt action by the Director to protect human health and the environment.

c. Corrective action costs at a facility exceed the amount of coverage required by the Director and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account are necessary to assure an effective corrective action.

d. The owner or operator of the tank has failed or refused to comply with an order of the Director under this Chapter to comply with the corrective action regulations.

3. Undertake the removal of an abandoned underground storage tank when, in the judgment of the Director, said removal is necessary to protect human health, safety or the environment and sufficient funds exist in the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account established under § 1573 of this Chapter.

B. Priority for Corrective Actions

The Director shall give priority in undertaking corrective actions under this Subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of regulated substances from underground storage tanks which pose the greatest threat to human health and the environment.

C. Corrective Action Orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out Subsection (A)(1) of this Section or to carry out this Chapter or regulations promulgated hereunder. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under § 1552 of this Chapter.

D. Allowable Corrective Actions

The corrective actions undertaken by the Director under Subsection (A)(1) may include temporary or permanent relocation of residents (or temporary closure of business where necessary to protect the public health) and the establishment of alternative household or public water supplies. In connection with the performance of any corrective action under Subsection (A)(1), the Director may undertake an exposure assessment. The costs of any such assessment may be treated as corrective action for purposes of Subsection (E) related to cost recovery.

E. Recovery of Costs

1. In General. Whenever costs have been incurred by the Director for undertaking corrective action or enforcement action with respect to the release of regulated substance from an underground storage tank, the owner or operator of such tank shall be liable to the Director. The liability under this Subsection shall be construed to be the standard of strict, joint and several liability and the Director may use funds from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to pursue the recovery of cost.

2. Recovery. In determining the equities for seeking the recovery of costs under Subsection (A)(1), the Director may consider the amount of financial responsibility required to be maintained under this Chapter and the regulations promulgated hereunder.

3. Effect on Liability

a. No Transfers of Liability. No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this Subsection, to any other person the liability imposed under this Subsection. Nothing in this Subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Section.

b. No Bar to Cause of Action. Nothing in this Subsection, including the provisions of Subsection (A) of this Subsection, shall bar a cause of action that an owner or operator or any other person subject to liability under this Section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

F. Emergency Procurement Powers

Notwithstanding any other provision of law, the Director may authorize the use of such emergency procurement powers as he or she deems necessary.

G. Facilities without Financial Responsibility, Facilities Owned by the Federal Government and Navajo Nation, Facilities not Subject to Tariffs and Facilities not in Compliance with the Tariff Requirements

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by this Chapter or regulations promulgated hereunder for whatever reason, facilities owned by the federal government, the Navajo Nation or its entities

(excluding tribal enterprises), any facility not subject to tariffs under this Chapter or any facility that has failed to pay any tariffs owed under this Chapter when due, the Director shall expend no monies from the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to clean up releases at such facility pursuant to the provisions of Subsection (A) of this Section. At such facilities the Director shall use the authorities provided in this chapter to order corrective action to clean up such releases. Notwithstanding the provisions of this Section, the Director may use monies from the fund to take the corrective actions authorized by Subsection (D) of this Section to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of Subsection (E)(1) of this Section and without consideration of the factors in Subsection (E)(2) of this Section. Nothing in this Section shall prevent the Director from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⚡417, 436.
Indians ⚡32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

United States Code

Inspections, monitoring, testing and corrective action, regulation of underground storage tanks, see 42 U.S.C. § 6991d.

Subchapter 5. Enforcement

United States Code

Federal enforcement, regulation of underground storage tanks, see 42 U.S.C. § 6991e.

§ 1551. Record-keeping, Inspections, Monitoring and Entry

A. Requirements in Orders. The Director may require, by order any owner or operator of an underground storage tank facility, or any other person who is subject to any requirement of this Chapter, to:

1. Establish and maintain records;
2. Prepare and submit reports;
3. Install, use and maintain monitoring equipment, and use such audit procedures or methods;
4. Monitor and sample emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Director shall prescribe)
5. Submit compliance certifications in accordance with Subsection (B) of this Section;

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6. Conduct site characterizations and complete corrective action plans as may be required; and

7. Provide such other information as the Director may reasonably require.

B. Production of Records. To ensure compliance with this Chapter or of any regulation hereunder, the Director may request in writing that such person produce all existing books, records and other documents evidencing tests, inspections or studies which may reasonably relate to compliance or noncompliance with such requirements.

C. Public Availability of Information. Any records, reports or information obtained under Subsections (A) or (B) of this Section shall be available to the public, subject to the confidentiality requirements under Subchapter 4.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417.

Indians ☞32.

Searches and Seizures ☞79.

Westlaw Topic Nos. 149E, 209, 349.

C.J.S. Indians §§ 49, 51.

C.J.S. Searches and Seizures §§ 99 to 101, 189.

§ 1552. General Enforcement Authority

A. In General. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, the Director may:

1. Issue and serve on such person an order requiring such person to comply with such requirement or prohibition, pursuant to the provisions of this section;

2. Issue and serve on such person an administrative penalty order in accordance with § 1554 of this Chapter;

3. Bring a civil action in accordance with § 1553(A) of this Chapter; and/or

4. Bring a criminal action in accordance with § 1553(B) of this Chapter and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for the appropriate EPA region.

In addition, when a person has consistently violated any requirements or prohibitions of this Chapter, the regulations promulgated under this Chapter, or orders issued pursuant to this Chapter, or refused to comply with any such requirements or prohibitions, such person shall be prohibited from continuing to operate an underground storage tank facility within the Navajo Nation, and/or from entering into any new contracts (including leases) that would permit such person to operate an underground storage tank facility within the Navajo Nation.

B. Requirements for Orders to Comply. An order to comply issued under this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to regulations promulgated by the Director under § 1561 of this Chapter, if such hearing is requested in writing within thirty (30) days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. The order shall become effective immediately upon the expiration of the thirty (30) days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the appropriate corporate officers. No order to comply issued under this Section shall prevent the Director from assessing any penalties nor otherwise affect or limit the Director's authority to enforce under other provisions of this Chapter, nor affect any person's obligations to comply with any Section of this Chapter or with a term or condition of any permit or implementation plan promulgated or approved under this Chapter.

C. Emergency Compliance Orders. Notwithstanding any other provision of this Section, the Director (after consultation with the Attorney General where feasible) may issue a compliance order that is effective immediately where there is an imminent and substantial threat to the public health, welfare or environment. Any person issued an order that is effective immediately may file a written request within thirty (30) days with the Director for a stay pending the outcome of any appeal taken under this Section in accordance with the procedures provided for in § 1552(B). The Director shall, by written notice, grant or deny the request for a stay within five (5) days receipt of a request for a stay. If the Director denies the request for a stay, the affected party has thirty (30) days to appeal the denial to the Window Rock District Court. Any person subject to an emergency compliance order may seek judicial review of a final agency determination as provided for in § 1554(D) of this Chapter.

D. Enforcement of Compliance Orders. Orders of the Director shall be enforced by the Navajo Nation Underground Storage Tank Program, the Navajo Department of Justice, Resources Enforcement and the Division of Public Safety. Those authorized to enforce the orders may take reasonable steps to assure compliance, including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating part or all operations at the underground storage tank facility.

E. Injunctive Relief. Notwithstanding any other provision of this Section, the Director may seek injunctive relief pursuant to § 1553(A) to restrain immediately any person from engaging in any unauthorized activity that is endangering or is causing danger to the public health or the environment or

enjoin any threatened or continuing violation of any requirements under this Chapter or regulations hereunder.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⌘456.
Indians ⌘32.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 49, 51.

§ 1553. Judicial Enforcement

A. Civil Judicial Enforcement. The Director shall request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including the assessment and recovery of civil penalties in an amount of not less than five hundred dollars (\$500.00) but not to exceed twenty five thousand dollars (\$25,000) per day per violation, in any of the following instances:

1. Whenever a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter;
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; and
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief, but not the assessment of penalties, unless the endangerment to the public health is caused by a violation, as specified in Subsection (1) and (2). Provided, however, that any person who fails to provide notice as required by Subchapter 3 or submits false information required under this Chapter or regulations promulgated hereunder shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each tank for which notification is not given or false information is submitted.

B. Criminal Penalties. Any person who intentionally:

1. Violates any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, a permit or order issued pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter;
2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, application, record, report or other document required pursuant to this Chapter; or
3. Falsifies, tampers with, renders inaccurate or fails to install any monitoring device or method required to be maintained or followed under this Chapter; shall, upon conviction, be punished by a fine in a maximum amount of not less than five hundred dollars (\$500.00) but not to exceed five

thousand dollars (\$5,000) per day per violation or imprisonment for not more than one hundred eighty (180) days per day per violation or both or be subject to any other penalty imposed by the court available under Navajo law. In any instance where the Navajo Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the appropriate EPA Regional Administrator pursuant to § 1552 of this Chapter. For the purpose of this Subsection, the term "person" includes, in addition to the entities referred to in § 1502 of this Chapter, any responsible corporate officer.

C. Suits for Costs. In addition to the above proceedings, the Director is authorized to initiate proceedings, separately or in connection with either a civil, criminal or exclusion proceeding brought under this Chapter, for any damages caused to the lands or other resources of the Navajo Nation as the result of any violation of this Chapter, including for payment of costs of all associated remedial actions taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings.

D. Jurisdiction and Venue. Any action under this Subsection may be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil penalties, collect any fees or noncompliance penalties owed the Navajo Nation under this Chapter, and award any other appropriate relief.

E. Calculation of Penalties

1. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this Section, § 1554 or § 1555, if the Director has notified the source in writing of the violation and a prima facie showing can be made that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice, each day of violation prior to such notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this Section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a civil penalty assessed under this Section, the court shall consider the history, seriousness and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any, resulting from the violation; and any other factors that the court deems relevant. The court

may assess penalties for noncompliance with administrative subpoenas under § 1561 of this Chapter or actions under Subchapter 2 of this Chapter where the violator does not have sufficient cause to violate or fail or refuse to comply with such subpoena or action.

3. All penalties collected pursuant to this Section shall be deposited in the UST Program Special Revenue Fund Account in the Navajo Treasury for use by the Director to finance the Underground Storage Tank Program compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

4. In lieu of or in addition to a monetary penalty, the Director may impose or may request the Attorney General to seek from the court a requirement to remediate the damage caused, perform community service, or conduct supplemental environmental projects.

F. Security. The court may, if a temporary restraining order or preliminary injunction is sought under this Section or § 1555 of this Chapter, require the filing of a bond or equivalent security.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ¶457, 699, 762.
Indians ¶32, 37, 38.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 22, 49, 51, 163.

§ 1554. Administrative Assessment of Penalties

A. Basis for Penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) for each tank for each day of violation whenever the Director finds that a person has violated, or is in violation of, any provision, requirement or prohibition of this Chapter, including, but not limited to, a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter. The Director's authority under this Subsection shall be limited to matters where the total penalty sought does not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one (1) year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) used for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing Requirement. The Director shall assess an administrative penalty under this Section by an order made after opportunity for a hearing. The Director shall promulgate rules for discovery and other procedures for hearings under this Section. Before issuing such an order, the Director shall give

written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within thirty (30) days of receipt of the notice.

C. Field Citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations assessing civil penalties not to exceed five thousand dollars (\$5,000) per day per facility may be issued by officers or employees designated by the Director, to the extent permissible under applicable law. Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation. If a timely request for a hearing is not made, the penalty shall be final. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Chapter if the violation continues.

D. Judicial Review. Any person subject to a civil penalty under Subsections (A) or (C) of this Section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock by filing a petition for review in such court within thirty (30) days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. Within thirty (30) days thereafter the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceedings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to Pay Penalty. If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director's enforcement expenses, including but not limited to attorneys fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be ten percent (10%) of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter of non-payment.

F. Calculation of Penalty. In determining the amount of any penalty to be assessed under this Section, the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 503(E) of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇌457.
Indians ⇌32, 37.

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 22, 49, 51.

§ 1555. Citizen Suits

A. Authority to Bring Civil Action; Jurisdiction

1. Except as provided in Subsection (B) of this Section, a person may commence a civil action in the Navajo Nation District Court in Window Rock on his own behalf:

(a) Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises or other similar businesses engaged in the wholesale or resale trade whether for profit or nonprofit) who is alleged to be in violation of any provision, requirement or prohibition of this Chapter, including but not limited to a regulation adopted pursuant to this Chapter, or order issued pursuant to this Chapter, or

(b) Against any person (except the Navajo Nation or any instrumentality of the Navajo Nation, but not excepting tribal enterprises) who has contributed or who is contributing any activity which may present an imminent and substantial endangerment to the public health or the environment.

2. The Navajo Nation courts shall have jurisdiction to enforce such provision, requirement, prohibition, regulation, or order and to take such other action as may be necessary and to apply any appropriate civil penalties.

B. Notice

1. An action may not be commenced under Subsection (A)(1)(a) of this Section fewer than sixty (60) days after the plaintiff has given notice of the alleged violation to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to require compliance with this Chapter, except that any person may intervene as a matter of right in such an action.

2. An action may not be commenced under Subsection (A)(1)(b) of this Section fewer than ninety (90) days after the plaintiff has given notice of the endangerment to the Director, the Navajo Nation and the alleged violator. In addition, an action may not be commenced if the Director has commenced and is diligently prosecuting a civil action in court to restrain or abate conditions which may have contributed or are contributing to the activities which may cause or lead to the alleged endangerment, except that any person

may intervene as a matter of right in such action if such person claims an interest relating to the subject of the action and is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest.

C. Venue; Intervention; Service of Complaint

1. Any action relating to a violation of any requirement of this Chapter or the regulations promulgated hereunder may be brought only in the Navajo Nation District Court in Window Rock.

2. The Director, if not already a party, may intervene as of right in any action brought under this Section.

3. Whenever any action is brought under this Section the plaintiff shall serve a copy of the complaint on the Attorney General and on the Director. No consent judgment may be entered in an action brought under this Section in which the Director is not a party prior to forty-five (45) days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Director, during which time the Attorney General and the Director may submit, on behalf of the Navajo Nation, their comments on the proposed consent judgment to the court and parties or the Director may intervene as a matter of right.

D. Award of Costs. The court, in issuing a final order in an action brought under this Section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

E. Penalty Fund. Penalties received under this Section shall be deposited in the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter for use by the Director to finance underground storage tank compliance and enforcement activities. The Director shall report annually to the Navajo Nation Council about the sums deposited into the fund, including the sources and the actual and proposed uses thereof.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞458.

Indians ☞32(7, 8), 37.

Westlaw Topic Nos. 149E, 209.

C.J.S. Indians §§ 22, 29, 59 to 62, 139 to 143,
152, 157.

§ 1556. Administrative Hearings

The Director shall, by regulation, establish a formal hearing review process which meets due process standards, to conduct hearings under § 1554(A) and (B) (administrative penalties), § 1554(C) (field citations) and § 1552(C) (emergency compliance orders). The Director may establish an informal review process to hear all other matters where a hearing is provided for under this

Chapter. Until the Director establishes a formal hearing review process, appoints a qualified presiding officer and certifies this in writing, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under §§ 1554(A) and (B), § 1554(C) and § 1552(C); provided, however, the Director may, at his/her discretion, transfer other hearings provided for under this Chapter and regulations promulgated hereunder to the Navajo Office of Hearings and Appeals where the need arises.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ⇌450.

Indians ⇌32(4.1).

Westlaw Topic Nos. 149E, 209.

Subchapter 6. Rulemaking and Judicial Review

§ 1561. Rulemaking and Other Administrative Procedures

A. Rulemaking

1. Notice of any proposed regulation shall be published in a newspaper of general circulation for the Navajo Nation. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period of at least thirty (30) calendar days; allow any person to submit written comments, data or documentary information; shall in addition give interested persons an opportunity to present orally their views, in the Navajo or English languages, data or arguments; and shall keep the docket open for twenty (20) calendar days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

2. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

B. Administrative Subpoenas

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Chapter, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Upon a showing satisfactory to the Director by the owner or operator of a source that it would divulge trade secrets or secret processes to make public such papers, books, documents or information or any portion thereof, the Director shall consider this information confidential, except that such information may be disclosed to other officers, employees or authorized representatives of the Nation concerned with carrying out this Chapter or when relevant in any proceeding under this Chapter.

3. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation's courts. In case of contumacy or refusal to obey a subpoena, the tribal court for the district in which such person is found, resides or transacts, business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation Window Rock District Court in his or her official capacity and not in any other manner; in any such action, relief shall be limited to declaratory relief.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞450.

Indians ☞32(4.1).

Westlaw Topic Nos. 149E, 209.

§ 1562. Review in Navajo Nation Supreme Court

A. Petitions for Review. A petition for review of any final action taken by the Director under this Chapter, including but not limited to promulgation of regulations and standards or issuance of orders (but not including imposition of administrative penalties under § 1554 which are subject to review under § 1554(D), or challenge of an administrative subpoena which are subject to review under § 1561(B)(3) shall be brought in the Navajo Nation Supreme Court. The petition shall be filed within sixty (60) days from the date that notice of such final action is first published, or, if notice is not published, first served upon the alleged violator or such other person required to be served under this Chapter, except that if the petition is based solely on grounds arising after the sixtieth day, then the petition shall be filed within sixty (60) days after such grounds arise.

B. Limitations on Review

1. If judicial review of a final action of the Director could have been obtained under Subsection (A) of this Section, that action shall not be subject to judicial review in judicial proceedings for enforcement.

2. With respect to any regulations promulgated under this Chapter, only an objection that was raised with reasonable specificity during the public comment period may be raised during judicial review. If the person raising

an objection can demonstrate to the Director that it was impracticable to raise the objection within such time or if the grounds for the objection arose after the public comment period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the regulation, the Director shall convene a proceeding for reconsideration of the regulation and provide the same procedural rights as would have been afforded had the information been available at the time the regulation was proposed. If the Director refuses to convene such a proceeding, the person may seek review of such refusal in the Navajo Nation Supreme Court. Such reconsideration shall not postpone the effectiveness of the regulation, although it may be stayed by the Director or the court for up to three (3) months.

3. Except as otherwise expressly allowed by Navajo law, no interlocutory appeals shall be permitted with regard to determinations made by the Director under this Chapter. In reviewing alleged procedural errors, the court may invalidate the regulation only if the errors were so serious and related to matters of such central relevance to the regulation that there is a substantial likelihood that the regulation would have been significantly changed if such errors had not been made.

C. Standards for Review

In reviewing any final action of the Director undertaken pursuant to this Chapter, the court may reverse any such action that it finds to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

D. Challenge to Provisions

Any challenge to the lawfulness of any provision of this Chapter must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this Chapter in the District Court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Any challenge to regulations promulgated under this Chapter must be filed within ninety (90) calendar days of their adoption. In any such action, relief shall be limited to declaratory relief. The District Court for the District of Window Rock shall have exclusive Jurisdiction and venue over any action challenging any provision of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞645, 661, 686.
Indians ☞32(7).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Subchapter 7. Funding

§ 1571. Annual Tank Fees

Each owner and/or operator of an underground storage tank which is subject to regulations under this Chapter shall pay annually to Navajo EPA a fee of one hundred twenty five dollars (\$125.00) for each tank. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞417, 434.
Indians ☞32(9).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1572. Underground Storage Tank Tariff

A. Effective January 1, 1998, there is imposed and the Director shall collect a tariff from the owner who is primarily responsible for submitting payment or operator (to be collected on an annual basis except as provided below for distributors) on the operation of underground storage tanks regulated under this Chapter measured by the quantity of regulated substances placed in a tank in any calendar year; provided, however, that the distributor of motor vehicle fuel, diesel fuel and aviation fuel shall be responsible and liable for submitting the tariff (on a monthly basis) to Navajo EPA where the owner or operator is not engaged in the bulk distribution of such fuels. In the event the distributor fails to submit the tariff, the owner and operator shall also remain jointly and severally liable for said tariff. The tariff shall be levied at the rate of one cent per gallon of regulated substance. In addition to providing monthly tariff payments, the distributor shall provide to Navajo EPA a monthly summary report on forms prescribed by the Director as well as an annual reconciliation report verifying payment of all tariffs owned.

B. For proper administration of this Section, and to prevent the evasion of the tariff imposed by this Chapter, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted by the Director, that all regulated substances which are motor vehicle fuel, aviation fuel and diesel and which are refined, manufactured, produced, compounded or blended within the Navajo Nation, or imported into the Navajo Nation will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it.

C. The tariff imposed by this Chapter does not apply to underground storage tanks operated by the United States or the Navajo Nation, its agencies (including Navajo Nation chapters not engaged in the wholesale or resale trade, whether for profit or not of motor fuel, aviation fuel or diesel fuel) or to underground storage tanks used for the purpose of storing, handling or distributing naphtha-type jet fuel or kerosene-type jet fuel. The tariff does, however,

apply to Navajo Nation enterprises and other Navajo Nation business entities who are engaged in the wholesale or resale trade, whether for profit or not, of motor vehicle fuel, aviation fuel or diesel fuel. The Director shall issue, within thirty (30) days of a request, an exemption certificate to those owners or operators of underground storage tanks exempted from the tariff requirements under the provision which shall be used for verifications of the tariff exemption.

D. The Director shall adopt and specify the forms of the return.

E. Subchapter 6 shall not apply to the temporary rules adopted pursuant to this Section. The temporary rules shall be effective for a period of one hundred eighty (180) days from the date of adoption. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty (180) days from the date the renewed temporary rules are adopted

F. The permanent rules adopted pursuant to this Section shall be adopted as provided in Subchapter 6.

G. Return and payment of tariff; due date.

1. The tariff levied under this Section is due and payable annually on or before March 31 for the preceding calendar year and is delinquent if not postmarked on or before that date or if not received by Navajo EPA on or before March 31 for tariff payers electing to file in person.

2. At the time the tariff is paid the tariff payer shall prepare and file with the tariff a return, on a form prescribed by the Director, showing the amount of tariff for which he is liable for the period covered by the return. The return shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the return is true, complete and correct according to the best belief and knowledge of the owner or operator filing the report.

H. Extensions; abatement.

The Director, for good cause, may extend the time for filing any return required by this Chapter and may grant such reasonable additional time within which to make the return as he deems proper if at least ninety percent (90%) of the tariff liability is paid when the extension is requested.

I. Audits.

The Director may require a person who is required to pay the tariff under this Section to appear, at reasonable times and on reasonable notice, at the Director's office and produce such records and information as are specified in the notice to determine compliance with this Section. The Director shall audit the records of a sufficient number of tariff payers under this Section to ensure general compliance with this Section.

J. Interest; penalty; lien.

1. If the tariff, or any portion of the tariff, is not Paid on or before the date prescribed for its payment, interest shall be imposed on any unpaid amount of tariff from the date the payment was due, without regard to any

extension of time or stay of payment, to the date payment is received. The rate shall be equal to the IRS rate.

2. If a tariff payer fails to file a return as required under this Section on or before the due date as extended by the Director, unless the failure is due to reasonable cause and not due to willful neglect, a penalty of five percent (5%) of the tariff found to be remaining due shall be added to the tariff for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five percent (25%) of the tariff remaining due. The penalty so added to the tariff is due and payable on notice and demand by the Director.

3. If any tariff, interest or penalty imposed by this Section is not paid when due, the unpaid amounts are a lien from the date the amounts became due on all real and personal property and rights to property belonging to the tariff payer. The lien may be perfected by recording a notice of lien in the county in which the property is located, the Navajo Division of Economic Development, the Navajo Land Department or the Bureau of Indian Affairs where appropriate. The notice shall specify the nature of the tariff, the amount of tariff, interest and penalty due, the tariff period for which the amounts are due and the name and last known address of the tariff payer who is liable for the amounts. In addition, it shall be unlawful for the owner, operator or distributor to place a regulated substance into an underground storage tank where said tariff, interest or penalty imposed has not been paid when due.

K. Remission and disposition of revenues. The Director shall promptly transmit to the Controller all monies collected under this Section. The Controller shall credit these payments to the UST Program Special Revenue Fund Account and the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account as follows:

1. Eighty percent (80%) of the net revenues shall be credited to the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account. Any amount accumulated in excess of three million dollars (\$3,000,000) in said account within a single fiscal year shall be deposited in the Navajo Nation General Fund Account. After five (5) years from the effective date of this Chapter, any amount accumulated in excess of one million dollars (\$1,000,000) within a single fiscal year shall be deposited into the Navajo Nation General Fund Account.

2. Twenty percent (20%) of the net revenues shall be deposited into the UST Program Special Revenue Fund Account for program implementation. Effective upon the date of this Chapter, any amount accumulated in excess of two hundred fifty thousand dollars (\$250,000) within a single fiscal year shall be deposited in the Navajo Nation General Fund Account.

L. Appeals. Any Appeals taken under this section shall be taken in the same manner as appeals taken under § 1554 (administrative penalties) of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞434.
Indians ☞32(9).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1573. Navajo Leaking Underground Storage Tank Revolving Trust Fund Account

There is hereby established a Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to be utilized by the Director at his/her discretion, but pursuant to an approved budget, to carry out corrective actions required under this Chapter, regulations promulgated hereunder and to remove abandoned tanks and clean up such sites. Monies shall be deposited into this trust fund from any tariffs authorized by this Chapter, appropriations authorized by the Navajo Nation Council, available state, federal or other grants, corrective action reimbursement cost, or donations. For a period of five (5) years upon the effective date of this Chapter, the Navajo Nation Council hereby authorizes a set aside of one-half (1/2) of all business site lease revenues (but, not to exceed two million dollars (\$2,000,000) within a single fiscal year) to be used for corrective actions, removal of abandoned underground storage tanks and clean ups associated with such removal. The monies collected from this set aside shall be transmitted by the Controller into the Navajo Leaking Underground Storage Tank Revolving Trust Fund Account to be used by the Director to carry out the intent of this section.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞437.
Indians ☞7, 32(4.1).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 46 to 47.

§ 1574. Tank Removal, Installation and Clean-Up Monitoring Fees

Each owner of an underground storage tank shall pay per tank to Navajo EPA a tank removal and installation field monitoring fee of one hundred fifty dollars (\$150.00) per day for each removal or installation. In the event that remediation is required, each owner of an underground storage tank shall pay an additional one hundred fifty dollars (\$150.00) field monitoring fee for each site per day. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by § 1506(C) of this Chapter.

History

CO-82-98, October 20, 1998.

ENVIRONMENT

4 N.N.C. § 1574

Library References

Environmental Law ☞434.
Indians ☞32(9).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1575. Registration Fee

Notwithstanding the definition of owner under § 1502, all owners and/or operators required to provide notice under Subchapter 3 shall pay to Navajo EPA a one-time registration fee of fifty dollars (\$50.00) for each tank. The fees collected shall be transmitted to the Controller for deposit into the UST Program Special Revenue Fund Account established by Section 1506(C) of this Chapter.

History

CO-82-98, October 20, 1998.

Library References

Environmental Law ☞434.
Indians ☞32(9).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians §§ 130 to 132, 134.

Title 5

Commerce and Trade

Chapter	Section
1. Industrial Development Program	1
2. Navajo Nation Business Opportunity Act	201
3. Control of Businesses within the Navajo Nation	401
4. Navajo Private Industry Council	501
5. Credit Services Department	601
7. Consumer Protection	1101
8. Housing	1301
9. Navajo Nation Enterprises	1501
10. Ordinance for the Regulation of Gaming Activities within the Navajo Nation	2001
11. Navajo Nation Business Site Leasing Act	2301
13. Regulation of Tourist Passenger Services	2501
15. Traders and Trading Posts	2701
17. Non-Navajo Guides	3001
19. Navajo Nation Corporation Code	3100

History

<p>Common or Contract Carriers previously codified at Chapter 19, §§ 3201–3203 has been redesignated to Title 5, Chapter 3, Subchapter 2, §§ 411–413. (1995)</p>	<p>Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401–3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421–432. (1995)</p>
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Library References

Indians ⇄24.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

Chapter 1. Industrial Development Program

Section

1. Participation in peripheral community programs
2. Agreements—Generally
3. Borrowing interim construction financing funds
4. Joint participation
5. Acquisition of land

§ 1. Participation in peripheral community programs

A. The President of the Navajo Nation is directed to advise peripheral communities of the willingness of the Navajo Nation to participate in peripheral community programs for development of industries where such industries will create payrolls for Navajos.

B. Participation in peripheral community programs may include negotiation of arrangements for Navajo Nation participation in provision for plant facilities for prospective industrial operators and training for Navajo workers.

5 N.N.C. § 1

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C. Negotiations shall provide adequate assurance covering employment for Navajos and shall be subject to approval of the Navajo Nation Council where the expenditure of Navajo Nation funds is contemplated.

History

CO-40-55, 1955 Ex. Vol. p. 332, October 15, 1955.
Development of industrial and business enterprises.
ACMY-131-69, May 15, 1969.
ACAP-100-69, April 14, 1969, Lukachukai, Arizona.
ACAU-162-68, August 16, 1968, Post Offices at Shiprock, Lukachukai and Teec Nos Pos.
ACN-216-67, November 20, 1967, amending ACO-212-67.
ACO-212-67, October 6, 1967, Navajo, New Mexico.

ACS-201-67, September 22, 1967, Padre Point.
ACJY-160-67, July 26, 1967, Window Rock Post Office.
ACJN-147-67, June 30, 1967, Black Creek Canyon Area.
CMA-40-66, March 3, 1966, Public Works and Economic Development Act of 1965.
ACMA-34-65, March 29, 1965, Post-Office facilities.
Revision note. Pursuant to CD-68-89, Resolve #9, references to "Chairman" changed to "President".

Library References

Indians \S 32(1, 4.1, 7, 10).
Westlaw Topic No. 209.

C.J.S. Indians $\S\S$ 49 to 51, 60 to 63, 139 to 143, 152.

§ 2. Agreements—Generally

The President of the Navajo Nation is authorized to negotiate, and with the approval of the appropriate oversight Committee of the Navajo Nation Council, to execute on behalf of the Navajo Nation, agreements with federal, state, municipal, or private agencies, including industrial operators and potential industrial operators, which in the President's opinion will further the policy of industrial development. Such agreements may or may not provide for expenditures of funds.

History

CD-68-85.
CD-44-55, \S 2, 1955 Res. p. 38, December 8, 1955.
Leases. CAU-40-63, August 22, 1963.
CAU-45-76, August 20, 1976.
CN-70-75, November 26, 1975.
CD-78-75, December 18, 1975.
CJA-15-74, January 24, 1974.
CJA-9-74, January 17, 1974.
CAU-63-73, August 31, 1973.
ACMY-189-71, May 12, 1971.
ACAP-69-67, April 13, 1967.
ACW-74-67, May 22, 1967.

CAU-47-73, August 30, 1973.
CMA-49-66, March 8, 1966
CMA-15-64.
CAP-54-66, April 20, 1966.
ACMA-34-66, March 23, 1966.
ACS-111-65, September 20, 1965.
CJA-1-65, January 8, 1965.
Revision note. Pursuant to CD-68-89, Resolve clause 9, reference to "Chairman" changed to "President". Previous reference to the "Government Services Committee" is changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Economic Development Committee, economic and business development, powers, see 2 N.N.C. \S 724(D).
Intergovernmental Relations Committee, contract powers, see 2 N.N.C. \S 824(B)(6).
Standing committee, authority to contract, see 2 N.N.C. \S 185(B).

Library References

Contracts ☞11.	C.J.S. Contracts § 32.
Indians ☞24, 32(1, 4.1, 7).	C.J.S. Indians §§ 12, 31, 49 to 51, 60 to 62, 139 to 143, 152.
Municipal Corporations ☞243.	C.J.S. Municipal Corporations § 911.
States ☞99.	C.J.S. States § 158.
United States ☞65.	C.J.S. United States § 112.
Westlaw Topic Nos. 95, 209, 268, 360, 393.	

§ 3. Borrowing interim construction financing funds

The President of the Navajo Nation is authorized to execute any and all instruments necessary to arrange for the borrowing of interim construction financing funds for Economic Development Administration projects which have been or may be specifically authorized by the appropriate oversight Committee of the Navajo Nation Council.

History

ACS-202-67, September 22, 1967. to “appropriate oversight Committee” pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)
Revision note. Previous reference to the “Government Services Committee” is changed

Cross References

Outside agreements, see 2 N.N.C. § 824(B)(6).

Library References

Bills and Notes ☞116.	C.J.S. Bills and Notes.
Contracts ☞194.	C.J.S. Letters of Credit § 79.
Indians ☞24, 32(4.1).	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos. 56, 95, 209.	

§ 4. Joint participation

A. The President of the Navajo Nation, subject to the approval of the appropriate oversight Committee of the Navajo Nation Council, is authorized to negotiate and execute agreements with industrial participants and such others for Navajo Nation assistance in the establishment and continuance of industrial operations contemplated and proposed by such participants, provided that reasonable safeguards are afforded for employment of Navajos in connection with such operations.

B. In the event such joint participation requires the participation of the Navajo Nation as a stockholder in one or more corporations, the members of the appropriate oversight Committee of the Navajo Nation Council and the President of the Navajo Nation are authorized to represent the Navajo Nation in such corporations as trustee stockholders on behalf of the Navajo Nation and its members.

History

CN-59-56, § 2, 1956 Res. p. 121, November 1, 1956, app. by Commissioner of Indian Affairs December 14, 1956. **Revision note.** Previous reference to the “Government Services Committee” is changed to “appropriate oversight Committee” pursuant

5 N.N.C. § 4

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to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Navajo Corporation Code, see 5 N.N.C. § 3100 *et seq.*

Library References

Contracts ☞189.

Indians ☞24, 32(1, 4, 8, 10).

Westlaw Topic Nos. 95, 209.

C.J.S. Contracts §§ 341 to 342.

C.J.S. Indians §§ 12, 29, 31, 49 to 52, 59, 63, 115, 157.

§ 5. Acquisition of land

A. The President of the Navajo Nation is authorized to enter into option agreements and lease agreements and acquire and accept deeds of land to the Navajo Nation as may be required in connection with execution of the industrialization program.

B. Agreements for the purchase of land for industrial purposes shall be subject to the availability of funds and prior approval of the appropriate oversight Committee of the Navajo Nation Council.

C. Agreements for the lease or option of lands for periods extending beyond one (1) year shall be subject to the prior approval of the appropriate oversight Committee of the Navajo Nation Council.

D. Agreements for the lease of lands for industrial purposes obligating Navajo Nation funds in an amount in excess of one dollar (\$1) per year for any period of more than ten (10) years shall receive prior approval of the Navajo Nation Council.

E. The Navajo Nation Council obligates itself to appropriate Navajo Nation funds in an amount not to exceed ten thousand dollars (\$10,000) annually for the purposes of this section and subject to the limitations of Navajo Nation law.

History

CM-39-56, 1956 Res. p. 123, May 25, 1956.

Revision note. Section 5(E), “this section” has been deleted, and in lieu thereof, “Navajo Nation Law” has been inserted pursuant to CD-68-89, Resolve 4, which “repeals and declares null and void rules, regulations and laws or parts thereof which are inconsistent with the

provisions of Title Two, Navajo Nation Code, as amended herein”. Previous reference to the “Government Services Committee” is changed to “appropriate oversight Committee” pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Acquisition of land generally, see 16 N.N.C. § 1 *et seq.*

Committee approval of Navajo Nation agreements, see Committee powers: generally, 2 N.N.C. § 185(B); Resources Committee, 2 N.N.C. § 695; Economic Development Committee, 2 N.N.C. § 724(D); and intergovernmental Relations Committee, 2 N.N.C. § 824(B)(6).

Library References

Contracts ☞16.

Deeds ☞3.

Indians ☞9, 24, 32.

Landlord and Tenant ☞22, 24, 92.

Vendor and Purchaser ☞18.

Westlaw Topic Nos. 95, 120, 209, 233, 400.

C.J.S. Contracts §§ 37 to 41, 44, 46, 55 to 56, 58. C.J.S. Landlord and Tenant §§ 79, 81(1), 88(2, 3, 4, 5, 6, 7, 8, 9, 10, 11), 184, 211(1).
 C.J.S. Deeds §§ 1 to 8. C.J.S. Vendor and Purchaser §§ 98, 115.
 C.J.S. Indians §§ 12, 31, 49, 51, 67.

Chapter 2. Navajo Nation Business Opportunity Act

Section

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History

CAP-37-02, April 19, 2002.
 CJY-59-85, July 30, 1985.

§ 201. Title; findings; legislative purpose and intent

A. This Act shall be known and cited as the Navajo Nation Business Opportunity Act; Title 5, Navajo Nation Code, §§ 201 through 216.

B. Whereas the Navajo Nation Council finds:

1. The Navajo Nation is comprised of more than 25,000 square miles of land;
2. The Navajo Nation population now exceeds 250,000 members, of which over 175,000 members reside within the Navajo Nation. In addition, residents of the Navajo Nation include approximately 8,000 non-Navajos;
3. The unemployment rate of the Navajo Nation is approximately fifty percent (50%);
4. In 1996, the United States Congress enacted the Personal Responsibility and Work Reconciliation Act of 1996 (P.L. 104-193 “Welfare Reform Act”). This Act will impact thousands of Navajo people. As a result, there is a need to accelerate the development of privately owned businesses and provide more employment opportunities; and,
5. There is a need within the Navajo Nation to accelerate business development and economic growth within the Navajo Nation.

5 N.N.C. § 201

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C. The purpose of this Act is to:

1. Promote the economic self-sufficiency of the Navajo Nation by granting “first opportunity” and/or preference in contracting to Navajo and/or Indian owned and operated businesses;

2. Promote competitive bidding and contracting opportunities among Navajo businesses;

3. Develop a dynamic and self-sustaining private sector for the Navajo Nation;

4. Increase Navajo business and employment opportunities for the Navajo people; and

5. Provide for business certification in accordance with current Navajo Nation laws.

D. It is not the intent of this Act to require the Navajo Nation to contract with non-qualified Navajo businesses.

E. It is the intent of this Act to grant first opportunity and contracting preference to qualified Navajo businesses for contracts, subcontracts, grants and subgrants sponsored by the Navajo Nation and all public and private entities.

F. The provisions of this Act shall be applied as an affirmative action law to promote economic development on the Navajo Nation.

G. The Navajo Nation shall determine the nature, composition, qualification, and preference certification of all businesses subject to the provisions of this Act.

History

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 1, July 30, 1985.

Library References

Civil Rights ☞1041, 1236.

Indians ☞24, 32.

Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights §§ 23, 64 to 65.

C.J.S. Indians §§ 12, 31, 49, 51.

§ 202. Definitions

For all purposes of this Act, the following definitions shall be applicable:

A. “Bid Shopping” is defined herein as any practice involving the solicitation or communication of any competitor’s bid prior to and after bid opening, thereby providing an unfair advantage and opportunity to underbid any competitor.

B. “Bidders” is defined as buyers and sellers of goods and services who offer to perform a contract for work and labor or to supply services and goods at a specified price.

C. “Broker” is defined as buyers and sellers of goods and services including agents/negotiators between buyer and seller, who do not have custody of

property or will not personally perform the contract to provide the goods or services.

D. “Dealer” is defined as one who buys to sell for resale, not one who buys to keep, or makes to sell.

E. “Established Business” is defined as an economic entity, firm or other organization, engaged in business activities with ownership, custody and control of an existing adequate inventory or providing professional services with a published address and telephone number and making significant contributions to the Navajo economy.

F. “Front” is defined as a business having fifty-one percent (51%) or more ownership of any commercial, industrial, or other economic entity or organization, but not having a material participation in decision-making role in operations, profit-sharing and actual management control.

G. “Navajo Indian” or “Navajo” is defined as a person who is an enrolled member of the Navajo Nation.

H. “Navajo Nation” shall have the same definition as used at 1 N.N.C. § 552 including:

1. When referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, including:

a. All lands within the exterior boundaries of the Navajo Indian Reservation, including the Navajo Partitioned Land, or of the Eastern Navajo portion of the Navajo Nation, including Alamo, Tohajilee, and Ramah, or of Navajo-dependent Indian Communities;

b. All lands held in trust by the United States for, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the use or benefit of the Navajo Nation, the Navajo Tribe, any Band of Navajo Indians, or any individual Navajo Indian; and

c. All other lands over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law or to which the Navajo Nation has ownership through the Treaty of 1868.

I. “Other Indian” is defined as an Indian other than Navajo who is an enrolled member of a federally recognized Indian Tribe within the United States.

J. “Owned and Controlled” is defined as having at least fifty-one percent (51%) or more ownership of any commercial, industrial, or other economic entity, firm or organization, provided that such ownership shall consist of active participation in decision-making role in operations, profit-sharing and actual management control.

K. “Prime Contractor” is defined as any party, or entity which undertakes, offers to undertake or purports to have the capacity to undertake contracting of a project for a specified price and is authorized and responsible for the

management, coordination, completion, supervision or subcontracting for the contracted project.

L. “Procuring Party” is defined as the party that initiates the proceeding to cause a project to be bid for contracting.

M. “Prospective bidders” is defined as potential buyers or sellers of goods and services who offer to perform a contract for work and labor or supply services and goods at a specific price.

N. “Subcontractor” is defined as any party or entity to which any contract is let by the prime contractor or its subcontractor for materials, equipment, transportation or other goods and services on that prime contract, regardless of tier.

History

CAP-37-02, April 19, 2002. and replaced by the Business Regulatory Department within the Division of Economic Development.
 CJY-59-85, Exhibit C, § 2, July 30, 1985.
Revision note. The Commerce Department was discontinued pursuant to the 1981 Budget

Library References

Civil Rights ⇌ 1041, 1236. C.J.S. Civil Rights §§ 23, 64 to 65.
 Indians ⇌ 1, 2, 24, 32. C.J.S. Indians §§ 2 to 4, 12, 23 to 29, 31, 38
 Westlaw Topic Nos. 78, 209. to 39, 49, 51, 94, 130, 156.

§ 203. Jurisdiction; Application; Compliance Requirements and Violations

A. General Jurisdiction. The Navajo Nation has the inherent sovereign authority to authorize and regulate business activities of business entities within the jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254.

B. Application. This Act shall apply uniformly to the Navajo Nation Government including its enterprises and political subdivisions and chapters and private business entities who acquire goods or services through contracts with the Navajo Nation. This Act shall apply to all procurement contracts exceeding fifty thousand dollars (\$50,000) and on a limited basis to those procurement contracts less than fifty thousand dollars (\$50,000), which will be governed by the rules and regulations of the Navajo Nation Procurement Code (12 N.N.C. §§ 301-317).

C. Inapplicability to Lease and Other Transactions. This Act shall not apply to the negotiation, execution, award, transfer, assignment or approval of business site leases, homesite leases, office space leases, shopping center leases, mineral or non mineral leases, subleases, permits, licenses and transactions that are governed by other applicable laws and regulations of the Navajo Nation and the United States. This Act shall not apply to activities of private persons who contract for goods or services for their individual use or benefit.

D. Implementing Federal Indian Preference Laws and Regulations. To the fullest reasonable extent, this Act and its rules and regulations shall be construed in accordance with federal Indian preference laws and regulations. If federal or state funded contracts provide for the application of Indian prefer-

ence rather than the provisions of this Act, the contract-letting or procuring entity shall attempt to negotiate an agreement to apply the provisions of this Act. If federal or state law expressly precludes the application of the provisions of the Act, the application of Indian preference shall be applied and shall not constitute a violation of this Act.

E. Required Navajo Business and Employment Preference Compliance. The Navajo Nation government, its political subdivisions, enterprises, and chapters whether located on or off the Navajo Nation shall comply with this Act and the Navajo Nation Preference in Employment Act. Subcontractors, brokers, agents, subsidiaries, successors and assigns shall also comply with this Act to the same extent as applicable to prime contractors.

F. Falsification or Concealment of Information; Sanctions and Penalties. Any person who authorizes, or knowingly or recklessly omits, or allows, or falsifies, or otherwise misrepresents any fact or matter material to any determination required by this Act, shall be subject to all applicable sanctions and penalties provided under this Act and any other applicable laws or regulations of the Navajo Nation.

G. Bid-Shopping. Bid shopping as defined in § 202(A) shall be prohibited.

H. Conflicts of Interest: Disqualification. No official or employee of the Navajo Nation government or entity of the Navajo Nation which is authorized to implement this Act shall promote, approve or participate in any matter pending before that agency or entity, in which such official or employee or any member of his or her immediate family has an economic or other special interest pursuant to the Navajo Nation Ethics in Government Law. The failure or refusal of such official or employee to abstain from such participation as required thereunder, shall render void any approval or action taken by the Navajo Nation Government or entity in which such official or employee participated, to the extent such action is favorable to the business entity in which such official or employee had an interest. The official(s) or employee(s) in conflict shall be subject to all applicable sanctions and penalties provided by law.

I. Other Compliance With Navajo Nation Business Requirements. No business shall operate within the Navajo Nation without prior authorization, license or permit as required by the Navajo Nation.

History

CAP-37-02, April 19, 2002. ACJN-112-85, Exhibit B, § 3.4, and Exhibit C, which recommended an “addition to § 3.4 [§ 203(D)]”, not a substitution.
 CJY-59-85, Exhibit C, § 3, July 30, 1985.
Revision note. CJY-59-85 inadvertently omitted the first paragraph of § 203(D). See

Library References

Civil Rights ⇌1041, 1236. C.J.S. Civil Rights §§ 23, 64 to 65.
 Indians ⇌16, 24, 32. C.J.S. Indians §§ 12, 31, 49, 51, 98.
 Westlaw Topic Nos. 78, 209.

§ 204. Required Business and Contracting Preference Priorities; Certification Requirements

A. Preference Priorities. The Navajo Nation shall certify all businesses pursuant to the following Navajo business opportunity priority classification:

1. Priority #1. Certification shall be granted to any one hundred percent (100%) Navajo-owned and controlled business, having its principal place of business on or off the Navajo Nation.

2. Priority #2. Certification shall be granted to any fifty-one percent (51%) to ninety-nine percent (99%) Navajo or fifty-one percent (51%) to one hundred percent (100%) other Indian owned and controlled business or one hundred percent (100%) Navajo Nation owned and controlled economic enterprise having its principal place of business on or off the Navajo Nation.

B. Obtaining a Priority Certification and Required Compliance. To receive a priority certification under this Act, the business must satisfactorily demonstrate that the business meets the requirements of § 204(A)(1) or (2).

C. Appeal of Priority Certification Determination. Any business denied a priority classification may appeal the determination pursuant to § 211 hereof.

D. Conditions and Requirements for Broker and Dealer Certification; Established Businesses. Brokers and dealers as defined in § 202 of this Act shall be certified for those activities which brokers and dealers normally conduct throughout the United States, subject to pre-qualification by the contract-letting, purchasing or procuring entity requesting such broker and/or dealer's services. Certification of brokers and dealers shall further be limited to those having an established business as defined in § 202 herein and certified only for the services being performed. Certification of any broker or dealer shall not qualify any other entity, firm or organization thereof. Such other entities, firms or organizations shall be individually subject to the provisions and conditions herein.

E. Partnership Certification. To be certified as eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the entire partnership business, as well as the project or transaction for which Navajo Business Opportunity is sought, regardless of the number of general or limited partners.

F. Joint Venture Certification. To be eligible for any Navajo Business Opportunity hereunder, Navajo or other Indian ownership and control must be at least fifty-one percent (51%) of the overall combined joint venture, as well as the project or transaction for which Navajo Business Opportunity is sought, with profits to be divided from each venture in proportion to such respective interest.

History

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 4, July 30, 1985.

Revision note. The Commerce Department was discontinued by the 1981 Budget and organization chart. See § C.

Library References

Civil Rights ☞1041.
Indians ☞24, 32.
Westlaw Topic Nos. 78, 209.

C.J.S. Civil Rights § 23.
C.J.S. Indians §§ 12, 31, 49, 51.

§ 205. Navajo Business Opportunity Procedures in Bidding and Procurement

A. Bid or Request for Proposal Solicitation. The procuring party shall first prepare a bid or request for proposal solicitation that shall include the following:

1. The goods or services being procured; and
2. The necessary qualifications of contractors or suppliers needed to provide the goods or services.

B. Advertisement and notice. After preparing a bid or request for proposal solicitation, the procuring entity shall:

1. Provide notice or invitation to bid in a newspaper having general circulation and distribution within the Navajo Nation; or
2. Provide notice or invitation to bid by mail or telefax to certified businesses listed on the Navajo Nation Business Source List compiled and maintained by the Business Regulatory Department; and
3. The notice or invitation to bid shall include:
 - a. The requirements and specifications of the goods or services requested;
 - b. The deadline dates for submission of bids or proposals, bid openings, award and any other significant dates; and
 - c. The necessary qualifications of the business to provide goods or services.

C. Initial Determination of Maximum Feasible Price or Cost by Contracting or Procuring Party. The determination of the maximum feasible price or cost, in accordance with appropriate Business Regulatory Department rules and regulations, shall be made by the contracting or procuring party prior to soliciting bids and proposals. The maximum feasible price or cost may take into account market price, budgetary constraints and prototype cost and may not be revealed until the award of the contract.

D. Notice to the Business Regulatory Department. Prior to bid openings, the procuring party shall provide to the Business Regulatory Department:

1. A copy of the bid solicitation;
2. A copy of the notice published in the newspaper; and
3. A list of all businesses notified, including the dates and manner of such notices.

E. Bid Opening Procedures and Requirements. The following procedures shall be used at bid openings when there is more than one priority business submitting a bid:

1. All bids submitted by Priority #1 businesses shall be opened first.

2. The procuring entity shall determine the qualifications of the bidders based on qualifications established in accordance § 205(A)(2). Bids submitted by businesses deemed non-qualified or non-responsive shall not be considered.

3. The award shall be made to the qualified Priority #1 bidder with the lowest responsive bid among the Priority #1 bidders provided the bid does not exceed the maximum feasible price or cost.

4. If there is no qualified Priority #1 bidder, or if there is no qualified Priority #1 bidder with a bid less than or equal to the maximum feasible price or cost, the bids of the Priority #2 businesses shall then be opened and award shall be given to the qualified Priority #2 bidder with the lowest responsive bid provided the bid is less than or equal to the maximum feasible price or cost.

5. If no qualified Priority #1 or Priority #2 bidder is entitled to award, bidding may then be open to all other bidders, subject to the same specifications, qualifications and maximum feasible price or cost.

6. Any modifications of the specifications, qualifications or maximum feasible cost or price made subsequent to bid opening and which does not result in a contract award shall be rebid pursuant to the above procedures.

7. Notwithstanding any provision of this Act, in the event that federal law prohibits bid or procurement opportunity or preference as provided herein or prohibits negotiations with a bidder other than the bidder with the lowest bid or price offer, the initial bidding shall be opened to all Priority #1 and #2 businesses; and award shall be made to the bidder offering the lowest price, provided that the bid is less than or equal to the maximum feasible cost or price.

F. Subcontracting Requirements. Prior to the bid opening, prime contractors shall submit to the Business Regulatory Department a subcontracting plan listing the following:

1. Subcontractors and suppliers to be used by the prime contractor;
2. Procedures used in selecting subcontractors and suppliers; and
3. Subcontracts or lease agreements for equipment to be used in performance of the contract.

G. Prime and Subcontractor Performance Bonding: Permitted Alternatives. The prime contractor shall obtain surety bonding or other performance security from subcontractors to secure their performance and wage obligations including, but not limited to cash bonds, letters of credit and cash monitoring systems such as retention, escrow and/or assignment of construction accounts. The prime contractor shall determine the form of performance security. The prime contractor shall maintain guaranteed security and be ultimately liable for performance of subcontractors.

H. Minimum Subcontract and Procurement Percentage Requirements. The Business Regulatory Department, subject to the approval of the Economic Development Committee, shall have the authority to require all procurement entities and prime contractors to comply with current minimum percentages

for procurement and subcontract awards to Navajo-owned and controlled entities, firms and organizations, based upon availability and qualifications of such entities to provide specific products and services.

I. Prior Approval of Modifications. Any contract modification that results in a higher cost or price in excess of twenty percent (20%) of the original amount of the contract or if the procuring party substantially modifies such project, activity or transaction, shall be subject to review and approval by the Business Regulatory Department, to ensure that such modifications are not contrary to the purposes, intent or other provisions of other applicable laws.

J. Required Adherence to Priority Certification. Procuring entities shall not award contracts to non-Navajo owned and controlled entities at a price equal to or greater than the price offered by an equally qualified Priority #1 or #2 business.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 5, July 30, 1985.

Cross References

Contracts, see 2 N.N.C. § 223.

Library References

Civil Rights ⇨1041.	C.J.S. Civil Rights § 23.
Contracts ⇨16 to 18, 236.	C.J.S. Contracts §§ 37 to 41, 44 to 46, 55 to 59, 407, 409 to 411.
Indians ⇨24.	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos. 78, 95, 209.	

§ 206. Waivers

No Waiver of any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 6, July 30, 1985.

Library References

Indians ⇨24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 207. Implementation and compliance with Navajo Nation Business Opportunity Provisions; Specific Duties and Responsibilities

A. Economic Development Committee. The Economic Development Committee of the Navajo Nation Council shall have the responsibility and authority to review, amend, modify and approve proposed rules and regulations for implementation of this Act.

B. Division of Economic Development. The Division of Economic Development of the Navajo Nation shall be responsible for administering, enforcing and implementing the provisions herein.

C. Business Regulatory Department. The Business Regulatory Department within the Division of Economic Development, shall be responsible for:

1. Developing and maintaining a certification program to determine the appropriate certification priority of business entities;

2. Promulgating rules and regulations to implement this Act. All proposed rules and regulations shall be published for public comments at least ninety (90) days prior to submission to the Economic Development Committee of the Navajo Nation Council for final review and approval;

3. Publishing, maintaining and making available approved rules, regulations, guidelines and forms including provisions of this Act, to ensure that all Navajo Nation entities, business entities and the Navajo People are kept fully informed of all current laws, rules, regulations and procedures for compliance hereto;

4. Regularly reviewing such rules and regulations in coordination with other Navajo Nation entities and agencies for applicability to economic and market conditions and their relevance to the interests of the Navajo People and the Navajo Nation and the intent of this Act;

5. Enforcing compliance with this Act, pursuant to the intent of this Act and the rules and regulations adopted hereto; requiring applicability of this Act to any proposed contract, subcontract or other transaction by or on behalf of the Navajo Nation, as part of required clearance procedures, prior to approval by the appropriate oversight committee or authority; and requiring prebid, preconstruction or pre-qualification requirements as needed and appropriate to comply with this Act;

6. Coordinating efforts with federal agencies that require Indian preference or maximum utilization of minority business enterprises;

7. Maintaining and publishing a current Source List of all certified Priority #1 and #2 business entities, persons, firms, enterprises or organizations. By including an entity on such a Source List, the Business Regulatory Department in no way certifies that the entity is qualified to perform in the category in which it is listed. The purpose of this Source List is to utilize such list as a source document only for contract-letting and procuring parties required to determine and notify available Navajo and other Indian-owned entities in the respective areas of commerce which are subject to the provisions of this Act; and

8. Providing, in accordance with its responsibilities, capabilities and available resources, in coordination with those of other responsible and appropriate Navajo Nation departments and entities, such community, governmental and business sector educational programs, information and advice as may be necessary and appropriate from time to time, to the continued understanding and awareness by such entities of the policies, objectives, and current procedural requirements for compliance with all provisions of this Act and the current rules and regulations adopted hereunder.

History

CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 7, July 30, 1985.
 CD-68-89, December 15, 1989.

Cross References

Contracts, generally, see 2 N.N.C. § 185(B).
 Contract signatures, see 2 N.N.C. § 222.

Library References

Civil Rights ⇨1041, 1236.	C.J.S. Civil Rights §§ 23, 64 to 65.
Indians ⇨24, 32.	C.J.S. Indians §§ 12, 31, 49, 51.
Westlaw Topic Nos. 78, 209.	

§ 208. Certification of Eligible Entities and Authorization of Business Activities

Establishment of Procedure. The Business Regulatory Department shall have the following duties, responsibilities and authority:

- A. Require timely submission of information and documentation on percentage of ownership and organization structure as required herein for certification or recertification eligibility;
- B. Deny certification if required information is not provided in a timely manner;
- C. Renew, suspend or decertify certifications. Annual, temporary or conditional certifications may be issued based on the circumstances. Certifications shall be reviewed based on new information or changes in organization or operations which materially affect eligibility for certification. Reviews shall be conducted in a manner so as to avoid any loss of eligibility to entities entitled hereto;
- D. Certified businesses entities shall be required to disclose changes in organization and/or ownership that may materially affect the eligibility for preference priority certification; and
- E. All certification information shall be kept confidential and shall not be disclosed except as necessary in a proceeding under this Act and other applicable laws.

History

CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 8, July 30, 1985.

Library References

Indians ⇨24, 32.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31, 49, 51.

§ 209. Monitoring and Enforcement

A. Navajo Nation Review and Approval Process. All proposed professional services, procurement and construction contracts shall be initially reviewed by the Business Regulatory Department for compliance with the Act.

5 N.N.C. § 209

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B. Procedure Upon Alleged Violation. To investigate alleged violations or noncompliance of this Act, the Business Regulatory Department shall:

1. Investigate any alleged violation and/or complaint under this Act upon receipt of a written document;
2. Prepare a written summary of facts constituting a violation of the Act or applicable rules, and provide all statements of witnesses along with the summary thereof; and
3. Initially seek voluntary compliance and appropriate remedial action pursuant to this Act.
4. If voluntary compliance or remediation is not possible, the Department shall render a decision pursuant to this Act.
5. A decision by the Business Regulatory Department may be appealed pursuant to § 211 of this Act.

C. Interim Project Suspension; Temporary Restraining Orders and Permanent Injunctive Relief from Navajo Nation Court.

1. In the event of a violation of or noncompliance with this Act presenting a probability of continuing material and irreparable harm which is greater than the harm from suspension of performance, the Executive Director of the Division of Economic Development shall, with assistance from the Department of Justice, on behalf of the threatened interests of the Navajo Nation and of innocent third parties, immediately apply to the District Court of the Navajo Nation for a temporary restraining order and an order to show cause why permanent injunctive relief should not be granted (including orders to permanently cease and desist such performance as determined appropriate) according to the Navajo Nation Rules of Appellate Procedure.
2. If a Navajo Nation Court orders suspension of performance, the Division of Economic Development shall take immediate remedial action as authorized by said Court to prevent or minimize material harm and damage to innocent third parties and to the interests of the Navajo Nation resulting or likely to result from such suspension of performance.

History

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 9, July 30, 1985.

Note. § 209(C)(1) reference to Navajo Nation Rules of Civil Appellate Procedure changed to the Navajo Nation Rules of Civil Procedure.

§ 210. Imposition of sanctions

Upon opportunity for hearing and determination as provided herein, the Administrative Hearing Officer may impose any and all of the following sanctions for violation of this Act or the rules and regulations lawfully promulgated hereunder:

- A. Civil monetary fines not to exceed five hundred dollars (\$500.00) per day, per violation.
- B. Suspension or termination of a party's authorization to engage in business activity on the Navajo Nation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the

Navajo Nation and to take such measures to facilitate the satisfaction or assumption of any contractual obligations it has.

C. Prohibit the party from engaging in future business activity on the Navajo Nation for a specified period or permanently, pursuant to applicable laws of the Navajo Nation.

D. Require the party to make such changes in its performance, organization or operations to comply with this Act.

E. Impose other sanctions as appropriate to ensure compliance and to remedy any harm or damages from violation of this Act pursuant to applicable laws.

F. Recommend disciplinary action for Navajo Nation employees found to be in violation or noncompliance with this Act pursuant to the applicable Navajo Nation Personnel Policies Manual.

G. Recommend corrective or remedial action to the President of the Navajo Nation, or the Navajo Nation Council or its appropriate standing committee for Navajo Nation entities in violation or noncompliance with this Act.

History

CAP-37-02, April 19, 2002.
 CJY-59-85, Exhibit C, § 10, July 30, 1985.

Library References

Civil Rights ☞1041.	C.J.S. Civil Rights § 23.
Indians ☞24, 32(4.1, 6, 8).	C.J.S. Indians §§ 12, 29, 31, 51, 59, 157.
Westlaw Topic Nos. 78, 209.	

§ 211. Appeals

A. Divisions Reviews. If a business is denied priority certification or a party is adversely affected by a decision herein, the business may appeal the decision for administrative resolution to the Director of the Business Regulatory Department (or successor agency or designee) by filing with the Director a notice of appeal within ten (10) days of the date of the written adverse decision. The written notice of appeal shall:

1. Identify the business that was denied certification or license or adversely affected by a decision made pursuant to this Act;
2. Provide a short statement indicating the nature and circumstances of the denial or decision;
3. State the basis for the appeal; and,
4. State the remedial action being sought by the business or party.

B. Appeals to the Hearing Officer. If the Director upholds the Department’s decision to deny certification to the affected business, the appealing party may appeal the Director’s decision to the Navajo Office of Hearings and Appeals for assignment to an Administrative Hearing Officer.

1. The hearing officer shall hear the appeal within thirty (30) days of receipt of the notice of appeal.

5 N.N.C. § 211

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2. Upon mutual agreement with the appealing party, time extensions in increments of not more than fifteen (15) days may be granted.

3. Notice shall be provided to the parties at least ten (10) days in advance of hearing date.

4. Each party at the hearing may be represented by legal counsel and shall have the opportunity to subpoena witnesses and documents, present evidence and examine witnesses.

5. After the hearing each party shall have ten (10) days to submit in writing proposed findings of facts and conclusions of law. The hearing officer may uphold or reverse the appealed decision(s) or any part thereof, but may not grant any other relief.

6. The hearing officer shall issue written findings of facts and conclusions of law that shall state the decision and grounds thereof.

C. Appeals to the Courts. The decision of the hearing officer may be appealed by the party adversely affected to the Navajo Nation Supreme Court pursuant to the Navajo Nation Rules of Civil Appellate Procedure. The court shall review the decision of the hearing officer and the administrative record only. The decision shall not be subject to de novo review on appeal. The court may substitute its judgment on those questions of law within its special competence but shall otherwise uphold the decision of the hearing officer where reasonable.

History

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 11, July 30, 1985.

Library References

Indians ⇐24, 32(4).

Westlaw Topic No. 209.

C.J.S. Indians §§ 12, 31, 51 to 52, 115.

§ 212. Other Navajo Nation Entities and Associated Agencies

All Navajo Nation entities, departments and other agencies involved in any stage of contracting, subcontracting or other procurement process shall comply with this Act in accordance with applicable law.

History

CAP-37-02, April 19, 2002.

CJY-59-85, Exhibit C, § 12, July 30, 1985.

Library References

Indians ⇐24.

Westlaw Topic No. 209.

C.J.S. Indians §§ 12, 31.

§ 213. Severability

If any provision of this Act or any rule or regulation adopted hereto is found invalid, the remainder of this Act and of the rules and regulations adopted hereto shall not be affected thereby.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 13, July 30, 1985.

Library References

Indians ⇌32(4.1).
Statutes ⇌64.
Westlaw Topic Nos. 209, 361.
C.J.S. Statutes § 83.

§ 214. Effective Date

The effective date of this Act shall be the date of its approval by the Navajo Nation Council.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 15, July 30, 1985.

§ 215. Prior inconsistent law superseded

Upon the effective date of this Act, all prior inconsistent enactments, laws, policies, ordinances and regulations of the Navajo Nation are hereby superseded.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 16, July 30, 1985.

Library References

Indians ⇌32(4.1).
Statutes ⇌157.
Westlaw Topic Nos. 209, 361.
C.J.S. Statutes § 282.

§ 216. Periodic review and amendments

This Act may be amended from time to time only by the Navajo Nation Council upon the recommendation of the Economic Development Committee.

History

CAP-37-02, April 19, 2002.
CJY-59-85, Exhibit C, § 18, July 30, 1985.

Chapter 3. Control of Businesses within the Navajo Nation

Subchapter 1. General Provisions

Section

- 401. Privilege of doing business—Authority to grant, deny or withdraw
- 402. Businesses presently operating within the Navajo Nation
- 403. Conditions for continuation
- 404. Revocation; modification or alteration of privilege

Subchapter 2. Common or Contract Carriers

- 411. License requirement
- 412. Issuance of license; terms and conditions
- 413. Navajo Police; exclusion of carriers; impounding equipment

Subchapter 3. Signs, Billboards, and Advertising Devices

- 421. Permits
- 422. Exceptions
- 423. Application for permit; approval; fees—Generally
- 424. Holders of business site leases
- 425. Granting of permits
- 426. Permit plate or tag
- 427. Restrictions on location
- 428. Character
- 429. Advertising copy; location; change
- 430. Revocation or termination of permit
- 431. Removal
- 432. Waiver of permit fee

History

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401–3412 to Title 5, Chapter 3, Subchapter 3, §§ 421–432. (1995)

Subchapter 1. General Provisions

§ 401. Privilege of doing business—Authority to grant, deny or withdraw

The Navajo Nation Council, in order to promote the further economic development of the Navajo people, and in order to clearly establish and exercise the Navajo Nation's authority to regulate the conduct and operations of business within the Navajo Nation, hereby declares that the Navajo Nation has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within the Navajo Nation, except where such authority is withdrawn from the Navajo Nation by the Constitution and applicable laws of the United States.

History

CMY-33-70, § 1, May 12, 1970.

Library References

Indians ⇐2, 32.
Westlaw Topic No. 209.

C.J.S. Indians §§ 4, 23 to 29, 38 to 39, 49, 51,
94, 130.

§ 402. Businesses presently operating within the Navajo Nation

The privilege of doing business is hereby expressly granted to those businesses presently operating within the Navajo Nation pursuant to leases or permits for the use of land, or pursuant to contractual agreements with the Navajo Nation, its enterprises, and agencies subject to the control or supervision of the Navajo Nation Council or the Economic Development Committee, or with the lessees of the Navajo Nation.

History

CMY-33-70, § 2, May 12, 1970.

Cross References

Economic Development Committee Plan of Operation, 2 N.N.C. § 721 *et seq.*, CD-68-89, December 15, 1989.

Library References

Indians ⇐16, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51, 98.

§ 403. Conditions for continuation

The grant of the privilege of doing business within the Navajo Nation contained in 5 N.N.C. § 402 is conditioned upon the business' compliance with the applicable laws of the Navajo Nation and upon the continuing effect or validity of prior leases, permits, or contracts authorizing the business to enter upon lands subject to the jurisdiction of the Navajo Nation.

History

CMY-33-70, § 3, May 12, 1970.

Library References

Indians ⇐16, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51, 98.

§ 404. Revocation; modification or alteration of privilege

The Navajo Nation Council reserves the right to revoke this grant of the privilege of doing business within the Navajo Nation; to modify, limit, or otherwise alter the extent of this grant; and to establish and enact such laws relating to the establishment or conduct of business within the Navajo Nation as it may deem desirable.

History

CMY-33-70, § 4, May 12, 1970.

Library References

Indians ☞32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

Subchapter 2. Common or Contract Carriers**History**

Redesignated. Common or Contract Carriers §§ 3201-3203 to Title 5, Chapter 3, Subchapter was moved from Title 5, Chapter 19, 2, §§ 411-413. (1995)

§ 411. License requirement

No common or contract carrier shall, by means of its agents or equipment, enter upon or make use of any lands belonging to the Navajo Nation with the intention of picking up ore produced from mines on Navajo Nation land or petroleum products or helium produced at wells on Navajo Nation lands for delivery inside of the Navajo Nation or for the purpose of picking up and transporting any articles whatever except United States mail from one point on Navajo Nation lands to another point on Navajo Nation lands, without first securing a license so to do from the President of the Navajo Nation.

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

Library References

Carriers ☞8, 24.	C.J.S. Carriers §§ 14 to 20, 85 to 86, 193, 356
Indians ☞16.10, 32(9).	to 366, 373 to 376, 378 to 381, 383 to 384.
Westlaw Topic Nos. 70, 209.	C.J.S. Indians §§ 107 to 108, 130 to 132, 134.
C.J.S. Aeronautics and Aerospace § 189.	

§ 412. Issuance of license; terms and conditions

A. The President of the Navajo Nation shall issue licenses permitting any common carrier or contract carrier to enter upon and use Navajo Nation lands for business purposes, as aforesaid, upon a showing by the applicant for such license that he or she is of good moral character and is financially responsible and upon receipt by the President of the following stipulation in writing from such applicant, together with a fee of three hundred dollars (\$300.00):

1. The carrier will maintain in force at all times while on Navajo Nation land a liability insurance policy with limits of not less than one hundred thousand dollars (\$100,000) for each person injured or a total of three hundred thousand dollars (\$300,000) for all personal injuries arising out of a single accident, and ten thousand dollars (\$10,000) for all property damage resulting from a single accident.

2. The carrier will pay to the Navajo Nation one percent (1%) of its annual gross revenue from shipments picked up on Navajo Nation lands, provided, however, that the three hundred dollars (\$300.00) initial fee and each subsequent annual fee of three hundred dollars (\$300.00) shall be credited against such percentage fees as they accrue.

3. The carrier will employ Navajos in all its operations on Navajo Nation land in all positions for which they are available and qualified and will establish such reasonable apprentice training program for Navajos in connection with its operations as the President may prescribe, it being understood that one percent (1%) of the actual costs of such apprenticeship or training program shall be deducted from the gross revenues of the carrier upon which said carrier shall be required to pay to the Navajo Nation the percentage fee herein above specified.

4. The carrier will comply with the Navajo Nation labor policy as the same may be set forth from time to time by the Navajo Nation Council, and with all other rules and regulations relating to its use of Navajo Nation land now or hereafter in force.

5. The carrier will pay an annual fee on or before the 31st day of January of each calendar year in the amount of three hundred dollars (\$300.00), which fee shall be credited against its percentage fees for the ensuing year as the same accrue, but no part of which shall be refunded if the percentage fees do not amount to three hundred dollars (\$300.00) during such year, or if the carrier ceases doing business on Navajo Nation land during the year.

6. The carrier will make such of its books and records as are necessary to determine the fees which may be due available to inspection of accountants employed by the Navajo Nation at all reasonable times and at a convenient place designated in advance by the carrier.

B. The President shall include the provisions of Subsection (A) in any license issued by him, and may include such other items and conditions as he deems advisable.

C. Licenses issued pursuant to this Section shall be for a term of not to exceed five (5) years.

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

Cross References

“Navajo Nation”, use of term, see 1 N.N.C. § 501.

Library References

Carriers ⇌ 8, 9.	C.J.S. Carriers §§ 351, 356 to 366, 373 to 376, 378 to 381, 383 to 384.
Indians ⇌ 16.10, 32(9).	C.J.S. Indians §§ 107 to 108, 130 to 132, 134.
Westlaw Topic Nos. 70, 209.	
C.J.S. Aeronautics and Aerospace § 189.	

5 N.N.C. § 413

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§ 413. Navajo Police; exclusion of carriers; impounding equipment

Any carrier required to be licensed who shall enter upon Navajo Nation land without a license duly issued by the President of the Navajo Nation as provided in 5 N.N.C. § 412, may be excluded from Navajo Nation lands pursuant the procedures set forth at 17 N.N.C. § 1901 *et seq.*

History

ACMA-59-59, March 27, 1959, app. May 19, 1959.

Library References

Carriers ⇨8, 20.

Indians ⇨16.10, 32(9, 13).

Westlaw Topic Nos. 70, 209.

C.J.S. Aeronautics and Aerospace § 189.

C.J.S. Carriers §§ 354, 356 to 366, 373 to 376, 378 to 381, 383 to 384.

C.J.S. Indians §§ 107 to 108, 130 to 132, 134, 157.

Annotations

1. **Treaty of 1868 between the Navajo Tribe of Indians and the United States, at Article II**

Dodge v. Nakai, 298 F. Supp. 26, (1969).

Subchapter 3. Signs, Billboards, and Advertising Devices

History

Redesignated. Signs, Billboards, and Advertising Devices was moved from Title 5, Chapter 21, §§ 3401-3412 to Title 5, Chapter 3, Subchapter 3, §§ 421-432. (1995)

§ 421. Permits

No person, firm, corporation, or association of any kind shall erect, attempt to erect, place or maintain any sign or signs, billboard or advertising device or matter of any kind upon any part or portion of the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation without first obtaining a permit.

History

ACJ-42-57, June 18, 1957.

AC-24-49, 1922-1951, p. 522, December 16, 1949.

Cross References

“Navajo Nation”, use of term, see 1 N.N.C. § 501.

Library References

Highways ⇨153.5.

Indians ⇨9, 32.

Licenses ⇨10.

Trade Regulation ⇨870.

Westlaw Topic Nos. 200, 209, 238, 382.

C.J.S. Indians §§ 49, 51, 67.

C.J.S. Licenses §§ 30 to 33.

§ 422. Exceptions

Directional and/or road signs, warning signs, and informative signs pointing out scenic and/or points of historical note and/or importance may be erected without a permit by Department of Interior or the State Commission having jurisdiction of the street, road and/or highway along which the same is to be erected, or by the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇨153.5.
Indians ⇨9, 32.

Westlaw Topic Nos. 200, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 423. Application for permit; approval; fees—Generally

A. Any person, firm, corporation, or association may make application to the Navajo Division of Economic Development, upon forms to be furnished by such Division, and shall obtain the approval of the Office of Navajo Land Administration and the road engineer of the subagency jurisdiction where the sign, billboard, or advertising device is to be located, and such other department or office as may have jurisdiction of and/or an interest in the area on the date of the application.

B. The applicant shall pay a five-year permit fee of three hundred dollars (\$300.00) for each permit except permits for directional, informative and/or road signs, which permit or any renewal thereof may be renewed for an additional five-year term, without the filing of a new application, by the payment of the five-year permit fee then in force at the time of such renewal, on or before January 31 of the year ensuing after the termination of the permit or any renewal thereof. Fees shall not be prorated for fractions of a year.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Revision note. References throughout this subchapter to the “Tribal Enterprise Department” have been changed to the “Division of

Economic Development”; similarly, references to the “Land Investigations Department” have been changed to “Office of Navajo Land Administration”.

Library References

Highways ⇨153.5.
Indians ⇨32.
Licenses ⇨10.

Westlaw Topic Nos. 200, 209, 238.
C.J.S. Indians §§ 49, 51.
C.J.S. Licenses §§ 30 to 33.

§ 424. Holders of business site leases

A. The holders of business site leases from the Navajo Nation may make application, as provided in 5 N.N.C. § 423, for a permit for the erection of an informative sign or signs on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation showing the location of and the type of

5 N.N.C. § 424

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business and/or accommodations furnished and/or operated by them, and shall pay a permit fee of one hundred twenty-five dollars (\$125.00) for a five-year period for each permit, which permit may be renewed as provided in 5 N.N.C. § 423. Such permit shall be for a sign of a design similar to one of the designs approved.

B. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag, as provided in 5 N.N.C. § 426, which shall be attached to the sign by the permittee as provided by such Section.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇨153.5.
Indians ⇨16.
Licenses ⇨10.
Trade Regulation ⇨870.

Westlaw Topic Nos. 200, 209, 238, 382.
C.J.S. Indians § 98.
C.J.S. Licenses §§ 30 to 33.

§ 425. Granting of permits

The President of the Navajo Nation, with the approval of the Area Director, shall grant permits for the erection and maintenance of signs, billboards or other advertising devices provided that all requirements set forth in this Chapter have been fully and strictly complied with.

History

ACS-101-58, September 10, 1958.

Revision note. The General Superintendent for the Bureau of Indian Affairs is now referred to as the Area Director.

Library References

Highways ⇨153.5.
Indians ⇨9, 32.
Licenses ⇨10.

Westlaw Topic Nos. 200, 209, 238.
C.J.S. Indians §§ 49, 51, 67.
C.J.S. Licenses §§ 30 to 33.

§ 426. Permit plate or tag

A. At the time the permit is granted, the Navajo Division of Economic Development shall furnish a numbered permit plate or tag showing the period for which the permit was issued, and which the permittee shall affix to the lower left hand corner of the sign, billboard, or advertising device.

B. Any sign, billboard or advertising device not bearing a permit plate or tag shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

§ 427. Restrictions on location

A. No permit to erect or maintain a sign, billboard or advertising device, or matter of any kind, except permits for directional, informative and/or road signs, shall be granted except for those areas bordering upon or adjacent to the following streets, roads, and/or highways running into, through or across the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation or any part thereof, to wit:

1. U.S. Highway 66;
2. New Mexico Highway 491;
3. New Mexico Highway 68;
4. Arizona Highway 89–Arizona State Highway 64; and
5. Glen Canyon Dam access highway and such other streets, roads and/or highways as the appropriate standing committee of the Navajo Nation Council shall from time to time designate and determine.

B. No permit shall be granted to erect or maintain a sign, billboard, or advertising device or matter of any kind, to wit:

1. Nearer than 50 feet to a street, road or highway right-of-way;
2. Nearer than 300 feet to an intersection or railroad crossing;
3. In a stream bed, wash, or arroyo;
4. Determined by the Navajo Division of Economic Development to be apt to obstruct or obscure the view of any person or persons lawfully using the street, road, or highway adjacent to which the same is placed;
5. Nearer than 500 feet to an existing sign;
6. Determined by the Navajo Division of Economic Development to, in any way, interfere with or be a menace to the public health, welfare, and safety of the inhabitants and/or residents of the Navajo Nation; or
7. Legally designated or established park.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Cross References

Committee powers, generally, see 2 N.N.C. § 102(G).
 Economic Development Committee, powers, see 2 N.N.C. § 724(B).
 Transportation and Community Development Committee, powers, see 2 N.N.C. § 423(E).

Library References

Highways ⇌ 153.5.	Westlaw Topic Nos. 200, 209.
Indians ⇌ 9, 32.	C.J.S. Indians §§ 49, 51, 67.

§ 428. Character

No permit shall be granted to erect or maintain a sign, billboard or advertising device, or matter of any kind, which is cheap, flimsy, or offensive to good taste and propriety, as determined by the Navajo Division of Economic Development.

5 N.N.C. § 428

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History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇌ 153.5.
Indians ⇌ 9, 32.

Westlaw Topic Nos. 200, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 429. Advertising copy; location; change

Advertising copy may be placed on both sides of a sign or signs, billboard, or advertising device or matter and may be changed at any time without the payment of an additional fee, provided the same is approved by the Navajo Division of Economic Development.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇌ 153.5.
Indians ⇌ 9, 32.

Westlaw Topic Nos. 200, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 430. Revocation or termination of permit

Any permit granted under the provisions of this Chapter may be revoked or terminated if the land upon which the sign or signs, billboard or advertising device is located in pursuance of such permit is or shall be required for the use of the Navajo Nation or any member thereof, or is determined by the Navajo Division of Economic Development to be required for a higher level of use, provided that the unearned portion of the permit fee is refunded to the permittee within a reasonable time after such revocation or termination.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇌ 153.5.
Indians ⇌ 9, 32.
Licenses ⇌ 38.
Westlaw Topic Nos. 200, 209, 238.

C.J.S. Agriculture § 4.5.
C.J.S. Indians §§ 49, 51, 67.
C.J.S. Licenses §§ 48, 50 to 63.

§ 431. Removal

Any sign, billboard, or advertising device or advertising matter found remaining on the Navajo Nation or any lands owned, leased or controlled by the Navajo Nation after January 31 following the expiration of the permit or any renewal thereof for the same, shall be removed and destroyed by the duly authorized agent or officer of the Navajo Nation.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Highways ⇨ 153.5.
Indians ⇨ 9, 32.

Westlaw Topic Nos. 200, 209.
C.J.S. Indians §§ 49, 51, 67.

§ 432. Waiver of permit fee

The President of the Navajo Nation, upon the recommendation of the Navajo Division of Economic Development and with the consent and concurrence of the Vice-President, may waive the payment of the permit fee on behalf of any established and recognized religious and/or charitable organization for the placing or erection of a sign soliciting support for the organization or showing the location of the same.

History

ACJ-42-57, June 18, 1957, app. September 11, 1957.

Library References

Indians ⇨ 32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

Chapter 4. Navajo Private Industry Council**Section**

- 501. Establishment
- 502. Purpose
- 503. Powers
- 504. Membership; selection; Chairman and Vice-Chairman; term of office
- 505. Meetings; procedure
- 506. Executive committee
- 507. Amendments

§ 501. Establishment

A. The Navajo Private Industry Council, hereinafter referred to as “NNPIC”, is established pursuant to Public Law 97-300, 29 USC §§ 1512 and 1513, Job Training Partnership Act (JTPA).¹

B. The NNPIC shall operate within the JTPA yearly funding cycle beginning July and ending June of each year.

¹ Repealed by Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Library References

Indians ↻7, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 502. Purpose

A. The Navajo Private Industry Council (NNPIC) is established for the following purposes:

1. Provide advice and guidance for involvement of Job Training Partnership Act (JTPA)¹ Programs, as administered by the Navajo Division of Human Resources (NDHR), in the private sector of the Navajo Nation economy;
2. Encourage and recommend creative uses of JTPA resources to assist in the development of the private sector;
3. Develop specific private sector employment and training projects in conjunction and coordination with NDHR and other Navajo Nation departments;
4. Advise and/or make recommendations to the Human Services Committee of the Navajo Nation Council to examine labor policies, standards, specifications, and regulatory elements so as to eliminate burdensome procedures in the development of training activities in the private sector;
5. Assist in the development of economic development plans which relate to the formation of job training activities and new job creation in conjunction with NDHR and other appropriate Navajo Nation departments;
6. Support local Navajo small business initiatives;
7. Promote both private and public development entities to become more responsible to the overall development of the private sector with the purpose of increasing Navajo Nation consumer expenditures; and
8. Develop and design private sector development plans by:
 - a. Analyzing availability of private sector jobs, including information of employer, occupation, industry, and location;
 - b. Surveying employment demands and training possibilities in the private sector, such as apprenticeships, in order to develop projections of short and long range labor needs;
 - c. Refining training and employment programming to accommodate current private sector labor needs;
 - d. Assessing and using current labor market information contained in all economic development plans;
 - e. Ensuring that NDHR job training plans are consistent with and complementary to programs funded by other federal agencies and administered by other Navajo Nation departments or non-Navajo Nation entities;
 - f. Evaluating NDHR/JTPA program and activities and making recommendations thereto;
 - g. Evaluating NDHR's OJT contracting activities and making recommendations in resolving various problem areas; and

h. Reporting on NNPIC activities to the Human Services Committee of the Navajo Nation Council on a quarterly basis.

¹ 29 U.S.C. § 1501 et seq., repealed by Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

History

ACN-218a-85, Exhibit A, November 14, 1985. **Revision note.** References to “Labor and Manpower Committee” throughout this chapter have been changed to “Human Services Committee” pursuant to the 1989 Title II amendments. CD-68-89. References to “Navajo Division of Labor NDOL” have been changed to “Navajo Division of Human Resources” pursuant to changes in Plans of Operation relating to organizational structure.

Library References

Indians ⇨8, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 503. Powers

A. The Navajo Private Industry Council (NNPIC) shall have all powers necessary and proper to carry out the purposes set forth in this Plan of Operation.

B. The NNPIC shall:

1. Review and recommend appropriations, allocations, cancellation and reappropriation of funds received under the Job Training Partnership Act (JTPA)¹ for private sector activities;
2. Review and provide recommendations on all draft plans that address job training and employment services in the private sector, after consulting with federal, state, Navajo Nation components, local organizations, institutions, and employers; and
3. Serve as the mediator in resolving any disputes regarding any contract, subcontract, agreement, or amendment between a service provider in the private sector and the Navajo Nation, if said dispute complaints could not be resolved by the NDHR Executive Director or his/her subordinates after review of the complaints.

¹ 29 U.S.C. § 1501 et seq., repealed by Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Cross References

Human Services Committee, powers, see 2 N.N.C. § 604(B).
Intergovernmental Relations Committee, powers, see 2 N.N.C. § 824(B)(6).

Library References

Indians ⇨7, 8, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 48.

§ 504. Membership; selection; Chairman and Vice-Chairman; term of office

A. Membership.

1. The Navajo Private Industry Council (NNPIC) shall consist of eight (8) members and shall consist of:

a. Representatives of the private sector, who shall constitute a majority of the membership of the council and who shall be owners of business concerns, chief executives or chief operating officers of non-governmental employers, or other private sector executives who have substantial management or policy responsibility; and

b. Representatives of educational agencies (representative of all educational agencies in the service delivery area), organized labor, rehabilitation agencies, community-based organizations, economic development agencies, and the public employment service.

2. Each member may pick an alternate with delegated voting power to serve whenever the member is absent from meetings. The purpose of the delegated voting power shall be to promote the inclusion and optimal representation in accordance with Job Training Partnership Act (JTPA), § 102(a)(1) and (2).¹ The alternate shall be designated to serve co-terminus with each delegator.

B. Selection.

1. All members of the NNPIC shall be appointed by the President of the Navajo Nation. A majority of the members must represent industries or establishments in the private sector.

2. Recommendation shall be made by the NNPIC to replace any member, including his alternate, who fails to attend for (3) consecutive scheduled meetings.

3. Should a NNPIC member be terminated because of being unable to attend the meetings, the NNPIC members may tentatively appoint that terminated member's alternate as a member pending the approval of the President of the Navajo Nation.

C. Chairman and Vice-chairman.

1. The Chairman and Vice-Chairman of the NNPIC shall be elected from among its members.

2. The Chairman of the NNPIC shall:

a. Preside over scheduled meetings; in the Chairman's absence, the Vice-Chairman shall preside; and

b. Act as the Chief Administrator over the purpose and objectives of the NNPIC.

D. Term of Office. The NNPIC members shall serve a term of office coinciding with the USDOL JTPA "designation" periods, which is every two (2) years beginning on July 1, 1995. The President of the Navajo Nation shall appoint members for replacements two (2) months prior to the expiration date. The term shall be staggered at intervals of one (1) year.

¹ 29 U.S.C. § 1512(a)(1) and (2), repealed by Pub.L. 105-220, Title I, § 199(b)(2), Aug. 7, 1998, 112 Stat. 1059.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Library References

Indians ☞32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 505. Meetings; procedure

A. Meetings. The Chairman of the Navajo Private Industry Council (NNPIC) shall call a regular meeting at least once every quarter. All meetings of NNPIC shall be open to the general public.

B. Procedure.

1. The NNPIC shall develop its own procedures for the conduct of meetings.

2. All meetings shall be recorded and minutes of each meeting shall be provided.

3. All official business of NNPIC will be transacted by majority vote of those provided.

4. Members of the NNPIC shall be reimbursed for meeting expenses for each meeting during which its assigned business was conducted.

C. Quorum. A quorum shall consist of 4 members or alternates.

History

ACN-218a-85, Exhibit A, November 14, 1985.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 506. Executive committee

A. The Navajo Private Industry Council (NNPIC) shall designate subcommittees when deemed necessary and appropriate.

B. A subcommittee shall consist of no less than three (3) members, appointed by the Chairman of the NNPIC.

C. Members of the subcommittees shall be reimbursed for expenses associated with each meeting, including per diem and mileage costs.

History

ACN-218a-85, Exhibit A, November 14, 1985.

§ 507. Amendments

This Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council upon the recommenda-

tion of the Human Services Committee and the Navajo Private Industry Council (NNPIC).

History

ACN-218a-85, Exhibit A, November 14, 1985.

Cross References

Standing committee authority over the NNPIC, redesignation pursuant to CD-68-89, December 15, 1989, see 2 N.N.C. § 341 *et seq.*, 2 N.N.C. § 601 *et seq.*

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Chapter 5. Credit Services Department

Subchapter 1. General Provisions

Section

- 601. Establishment
- 602. Purpose
- 603. Personnel and organization
- 604. Duties, responsibilities, and authority of the Credit Services Department
- 605. Office location and hours
- 606. Miscellaneous
- 607. Amendments to the Plan of Operation
- 608-637. [Rescinded]

History

ACF-21-88, February 4, 1988.

Former subchapters 1, 3, 5, 7 and 9 were rescinded by ACD-234-85, which consolidated and incorporated all resolutions regarding loan activities, and transferred administration of all loan activities to the Navajo Credit Department.

Former subchapter 1, entitled General Provisions, consisting of §§ 601-624, was derived from CJ-1-48 and ACJ-25-55, and related to the Revolving Credit Fund and loans generally.

Former subchapter 3, entitled Purchase, Construction or Major Repairs of Buildings, consisting of § 801-810, was derived from ACMA-64-59, related to policy governing loans made for the purchase, construction or major repairs of homes and other buildings.

Former subchapter 5, entitled Revolving Credit Program; Declaration of Policy and Plan of Operation, consisting of §§ 851-889, was de-

rived from ACMY-63-62, and later superseded by ACAU-102-82, related to loan procedures generally.

Former subchapter 7, entitled Navajo Small Business Emergency Loan Program, consisting of § 931-940, was derived from ACAU-102-82 and related to providing loan funds to Navajo businesses.

Former subchapter 9, entitled Navajo Personal Emergency Loan Program, consisting of § 981-989, was derived from ACJY-122-83 and related to providing loan funds to Navajo individuals.

Revision note. Resolution ACF-21-88 repealed ACD-234-85 which also involved the repeal of §§ 608-637, 2 N.N.C. § 374(B)(12) delegated the Budget and Finance Committee authority to oversee this loan program.

§ 601. Establishment

There is established the Credit Services Department within the Division of Finance of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988. CF-13-85.
 CO-50-87. **Revision note.** ACF-21-88 rescinded
 ACO-234-85. ACD-234-85 and §§ 608-637.

Library References

Indians ☞32(4.1).
 Westlaw Topic No. 209.

§ 602. Purpose

A. The purpose of the Credit Services Department shall be to provide administration and management of the Personal Loan Program (formerly known as the Emergency Personal Loan Program) and the Navajo Home Loan Program (formerly known as the Navajo Revolving Credit Program), and all of the assets and outstanding accounts receivable associated therein. Specifically the Credit Services Department shall:

1. Administer the Personal Loan Program and the Navajo Home Loan Program in accordance with all Navajo Nation law, and the Operating Policies and Guidelines for the respective programs, as approved by the Budget and Finance Committee of the Navajo Nation Council;
2. Service all accounts receivable associated with the Personal Loan Program and the Navajo Home Loan Program so as to protect the Navajo Nation’s interest in property pledged to secure any loans made under the program;
3. Implement collection efforts in regards to funds due and owing the Navajo Nation resulting from loans made under the respective programs;
4. Assist the Budget and Finance Committee of the Navajo Nation Council in the completion of their duties and responsibilities as set forth in their Plan of Operation, as approved by Resolution ACN-229-87; and
5. Disseminate information to the public regarding the respective programs and credit matters generally, and provide technical assistance as needed.

History

ACF-21-88, Exhibit B, February 4, 1988.

Cross References

Budget and Finance Committee Authority, see 2 N.N.C. § 374(B)(12) and (13).
 Business Industrial Development Funds, see 12 N.N.C. § 1701 *et seq.*

Library References

Bills and Notes ☞28, 116.	C.J.S. Bills and Notes.
Contracts ☞194.	C.J.S. Letters of Credit §§ 2 to 3, 7 to 9, 12, 22, 75, 79.
Indians ☞7, 24, 32(4.1).	C.J.S. Indians §§ 12, 31, 46 to 47.
Mortgages ☞1, 97.	C.J.S. Mortgages §§ 2 to 6, 135.
Westlaw Topic Nos. 56, 95, 209, 266.	

§ 603. Personnel and organization

A. There is established the position of Director of the Credit Services Department, and such other professional and support staff positions as may be approved by the Navajo Nation Office of Personnel Management and budgeted by the Navajo Nation Council. The Director shall have the authority to hire the Department's professional and support staff, pursuant to the Navajo Nation Personnel Policies and Procedures. All Department personnel shall be subject to the Navajo Nation personnel compensation, benefits, policies and procedures.

B. The Credit Services Department shall be administratively aligned within the Division of Finance, and under the supervision of the Group Director for Financial Management of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988.

Library References

Indians ⚡32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 604. Duties, responsibilities, and authority of the Credit Services Department

A. General. The Director shall have the authority necessary and proper to carry out the purposes set forth in § 602 of this Plan of Operation.

B. Specifics. Under general administrative supervision of the Division of Finance and the Group Director of the Financial Management, the Director, or his designee, shall have the authority to:

1. Accept, review, evaluate, and process applications for loans from the respective programs in accordance with operating policies and guidelines adopted by the Budget and Finance Committee;
2. Close approved loans in accordance with operating policies and guidelines approved by the Budget and Finance Committee and accounting policies and procedures of the Navajo Nation;
3. Manage and service loan accounts arising from loans made under the respective programs, and to take, or cause to be taken all appropriate actions to protect property interests of the Navajo Nation;
4. Initiate collection proceedings, including the referral of accounts to the Department of Justice for litigation or other appropriate action, for all sums due and owing the Navajo Nation arising from loans made under the respective programs;
5. Recommend policies and procedures to the Budget and Finance Committee of the Navajo Nation Council;
6. Prepare and present periodic accounting and operational reports to appropriate parties;

7. Execute documents on behalf of the Navajo Nation in regards to the closing of loans, and the placement and release of liens on personal property, and the release of leasehold mortgages pertaining to loans that have been paid in full;

8. Publish or cause to be published, public information material pertaining to the respective programs, and other credit and financing matters; and

9. Complete such other assignments, or take such other action as is necessary to protect the property and assets of the Navajo Nation associated with the respective programs, as may be directed by the Controller of the Navajo Nation.

History

ACF-21-88, Exhibit B, February 4, 1988.

Library References

Bills and Notes ⇄28, 116.

Contracts ⇄194.

Indians ⇄7, 24, 32(4).

Mortgages ⇄1, 97.

Westlaw Topic Nos. 56, 95, 209, 266.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 2 to 3, 7 to 9, 12, 22, 75, 79.

C.J.S. Indians §§ 12, 31, 46 to 47, 51 to 52, 115.

C.J.S. Mortgages §§ 2 to 6, 135.

§ 605. Office location and hours

A. The administrative office of the Credit Services Department shall be located in Window Rock, Navajo Nation (Arizona). The mailing address is as follows:

Credit Services Department
P.O. Box 2405
Window Rock, Navajo Nation (Arizona) 86515

B. The office shall be open Monday through Friday, between 8:00 A.M. and 5:00 P.M., or such other regular office hours as may be established for the Navajo Nation government.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 606. Miscellaneous

A. Within this Plan of Operation, the singular shall include the plural, and the masculine shall include the feminine, as is appropriate.

B. The Credit Services Department shall coordinate with all appropriate departments and offices of the Navajo Nation in the administration and management of the respective programs.

History

ACF-21-88, Exhibit B, February 4, 1988.

§ 607. Amendments to the Plan of Operation

This Plan of Operation may be amended by the Government Services Committee of the Navajo Nation Council, upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.

History

ACF-21-88, Exhibit B, February 4, 1988.
ACD-234-85, December 19, 1985, rescinding
§§ 801-810, 851-889, 931-940, and 981-989.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 608-637. [Rescinded]

History

ACF-21-88, Exhibit B, February 4, 1988.

Cross References

Business Industrial Development Fund Loans, see 12 N.N.C. § 1701 *et seq.*

Chapter 7. Consumer Protection

Subchapter 1. Unfair Trade Practices

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- 1125. Title
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- 1137. Title
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- 1145. Pawnbroker reports; records; delivery; violations
- 1146. Pawn ticket
- 1147. Default; disposition of pledged property
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Subchapter 6. Finance Charge Rates

- 1153. Title
- 1154. Purpose
- 1155. Retail Installment Contract Rates

1156. Private remedies

Subchapter 7. Motor Vehicle Deficiency Charges

- 1157. Title
- 1158. Purpose
- 1159. Definitions
- 1160. Limitation on Issuance of Deficiency Judgments for Used Motor Vehicles
- 1161. Limitation on the Amount of Deficiency Judgments for Motor Vehicles

Subchapter 1. Unfair Trade Practices

§ 1101. Title

This Subchapter may be cited as the Navajo Nation Unfair Consumer Practices Act.

History

CJY-71-99, July 21, 1999.

§ 1102. Purpose

The purpose of this Act is to protect consumers within the Navajo Nation from a wide range of unfair, deceptive and unconscionable sales practices by sellers of goods and services within the Nation.

History

CJY-71-99, July 21, 1999.

Library References

- | | |
|------------------------------|---|
| Consumer Protection ☞3. | C.J.S. Credit Reporting Agencies. |
| Indians ☞6.1, 23 to 24, 32. | C.J.S. Consumer Protection §§ 25 to 26, 28. |
| Westlaw Topic Nos. 92H, 209. | C.J.S. Indians §§ 12, 30 to 31, 49, 51. |

§ 1103. Definitions

As used in the Navajo Nation Unfair Consumer Practices Act:

A. "Person" includes, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "Seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or his representative solicits the sale by telephoning the prospective purchasers and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

1. In which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or
2. In which the purchaser is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "Trade" or "commerce" includes the advertising, offering for sale, sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of the Navajo Nation.

D. "Unfair or deceptive trade practice" means any false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by any person in the regular course of his trade or commerce, which may, tends to, or does, deceive or mislead any person and includes but is not limited to:

1. Representing goods or services as those of another when the goods or services are not the goods or services of another;
2. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
3. Causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;
4. Using deceptive representations or designations of geographic origin in connection with goods or services;
5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he or she does not have;
6. Representing that goods are original, new, or unused if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand, or if the goods have been used to an extent that is materially different from the fact;
7. Representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;
8. Disparaging the goods, services or business of another by false or misleading representations;
9. Indicating that goods or services will be supplied in greater quantity than the seller intends;
10. Offering goods or services with intent not to supply reasonable expectable public demand;
11. Making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of, or amounts of, price reduction;
12. Making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;
13. Packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;
14. Using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

15. Stating that a transaction involves a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies or obligations that it does not involve;

16. Stating that services, replacements or repairs are needed if they are not needed;

17. Failure to deliver the quality or quantity of goods or services contracted for;

18. Stating or suggesting that goods or services are available to the consumer for a reason that does not exist;

19. Stating or suggesting that goods or services have been supplied in accordance with a previous representation, if they have not;

20. Requiring the execution of any consent to storage, consent to repair, or consent to removal of property from the Navajo Nation as a contract condition.

E. "Unconscionable trade practice" means any act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services or in the extension of credit or in the collection of debts which to a person's detriment:

1. Takes advantage of the lack of knowledge, lack of formal education, ignorance, illiteracy, inability to read or understand the language of an agreement or the verbal representation made in connection to a transaction, or the ability, experience or capacity of a person to an unreasonably unfair degree; or

2. Results in a gross disparity between the value received by a person and the price paid; or

3. Results in a gross disparity between the price paid and the price at which similar property or services were readily obtainable in similar transactions by like consumers at the time the transaction was entered into; or

4. Results in a transaction in which the consumer is unable to receive a substantial benefit from the subject of the transaction at the time the transaction is entered into; or

5. Results in a transaction for which there was no reasonable probability of payment of the obligation in full at the time the transaction was entered into; or

6. Results in transaction which is substantially one-sided in favor of the supplier; or

7. Is based upon a misleading statement of opinion which the consumer was likely to rely upon to his or her detriment.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞ 1 to 12.
Indians ☞ 6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 23 to 31, 33 to 89, 91.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1104. Unfair or deceptive and unconscionable trade practices prohibited

Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ⌘4.	C.J.S. Consumer Protection §§ 29 to 31, 33 to 34, 36 to 39.
Indians ⌘6.1, 23 to 24, 32.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Trade Regulation ⌘861.	C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 380.
Westlaw Topic Nos. 92H, 209, 382.	
C.J.S. Credit Reporting Agencies.	

§ 1105. Chain referral sales technique; prohibited

The use or employment of any chain referral sales technique, plan, arrangement or agreement whereby the buyer is induced to purchase merchandise or services upon the seller’s representation or promise that if the buyer will furnish the seller names of other prospective buyers of like or identical merchandise that the seller will contact the named prospective buyers and the buyer will receive a reduction in the purchase price by means of a cash rebate, commission, credit toward balance due or any other consideration, is declared to be an unlawful practice within the meaning of the Unfair Consumer Practices Act.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ⌘12.	C.J.S. Credit Reporting Agencies.
Indians ⌘6.1, 23 to 24, 32.	C.J.S. Consumer Protection §§ 56 to 58.
Westlaw Topic Nos. 92H, 209.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1106. Misrepresentation of motor vehicles; penalty

A. The willful misrepresentation of the age or condition of a motor vehicle by any person including regrooving tires or performing chassis repair, without informing the purchaser of the vehicle that the regrooving or chassis repair has been performed, is an unlawful practice within the meaning of the Unfair Consumer Practices Act. Unless the alleged misrepresentation is based wholly on repair of damage, the disclosure of which was not required pursuant to Subsection (B) of this Section when there has been repair for which disclosure is required shall constitute prima facie evidence of willful misrepresentation.

B. Except as provided in Subsections (C) and (D) of this Section, a seller of a motor vehicle shall furnish at the time of sale of a motor vehicle an affidavit that:

1. Describes the vehicle; and

5 N.N.C. § 1106

COMMERCE AND TRADE

2. States to the best of the seller's knowledge whether there has been an alteration or chassis repair due to wreck damage.

C. No affidavit shall be required pursuant to this section if the flat rate manual cost of the alteration or chassis repair is less than six percent (6%) of the sales price of the vehicle.

D. In the case of a private-party sale of a vehicle, an affidavit shall not be furnished.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9.
Indians ☞6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 52 to 55, 64.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1107. Private remedies

A. A person likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person, is not required.

B. Any person who suffers any loss of money or property, real or personal, as a result of any employment by another person of a method, act or practice declared unlawful by the Unfair Consumer Practices Act may bring an action to recover actual damages or the sum of one thousand dollars (\$1,000), whichever is greater. Where the trier of fact finds that the party charged with an unfair or deceptive trade practice or an unconscionable trade practice has willfully engaged in the trade practice, the court may award up to three times actual damages or three thousand dollars (\$3,000), whichever is greater, to the party complaining of the practice.

C. The court shall award attorneys' fees and costs to the party complaining of an unfair or deceptive trade practice or unconscionable trade practice if he prevails. The court shall award attorneys' fees and costs to the party charged with an unfair or deceptive trade practice or an unconscionable trade practice if it finds that the party complaining of such trade practice brought an action for which there was no subjective good faith basis. Attorneys' fees shall be calculated using the Lodestar method.

D. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

E. In any class action filed under this Section, the court may award damages to the named plaintiffs as provided in Subsection (B) of this Section and may award members of the class such actual damages as were suffered by each member of the class as a result of the unlawful method, act or practice.

F. Proof of an unfair or deceptive trade practice or unconscionable trade practice shall be a defense and absolute bar to recovery to a claim on any contract or obligation filed with the courts of the Navajo Nation. A defendant who prevails on such a defense shall be awarded attorneys fees incurred through responding to the claim, which shall be calculated using the Lodestar method.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection §§ 30 to 42.	C.J.S. Consumer Protection §§ 32, 34 to 35, 95 to 117.
Indians §§ 27, 32(7).	
Westlaw Topic Nos. 92H, 209.	C.J.S. Indians §§ 13, 60 to 62, 68, 89, 91, 97, 139 to 143, 152.
C.J.S. Credit Reporting Agencies.	

§ 1108. Construction

The Unfair Consumer Practices Act neither enlarges nor diminishes the rights of parties in private litigation.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit §§ 4, 16.	C.J.S. Consumer Protection §§ 29 to 31, 33 to 39, 60 to 65.
Consumer Protection §§ 6.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians §§ 6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 92H, 209.	C.J.S. Consumer Credit §§ 280, 284 to 293, 302.
C.J.S. Credit Reporting Agencies.	

§ 1109. Door-to-door sales; contracts; requirements; prohibitions

A. In connection with any door-to-door sale, it constitutes an unfair or deceptive trade practice for any seller to:

1. Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution that is in the same language as that principally used in the oral sales presentation and that shows the date of the transaction and contains the name and address of the seller and, in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of ten points, a statement in substantially the following form:

“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.”

2. Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned “NOTICE OF CANCELLATION”, that shall be attached to the contract or receipt and easily detachable

5 N.N.C. § 1109

COMMERCE AND TRADE

and that shall contain in ten-point bold face type the following information and statements in the same language as that used in the contract:

“NOTICE OF CANCELLATION

Date

You may cancel this transaction, without any penalty or obligation, within three (3) business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within ten (10) business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within twenty (20) days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice or send a telegram to:

(Name of seller)

at _____

(Address of seller’s place of business)

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

(Date)

(Buyer’s signature)’’

3. Fail, before furnishing copies of the notice of cancellation to the buyer, to complete both copies by entering the name of the seller, the address of the seller’s place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

4. Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled

under this Section or 7 N.N.C. § 621, including specifically his right to cancel the sale in accordance with the provisions of this Section;

5. Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel;

6. Misrepresent in any manner the buyer's right to cancel;

7. Fail or refuse to honor any valid notice of cancellation by a buyer and, within ten (10) business days after the receipt of such notice, fail to:

a. Refund all payments made under the contract or sale;

b. Return in substantially as good condition as when received by the seller any goods or property traded in; and

c. Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

8. Negotiate, transfer, sell or assign any notice or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased; and

9. Fail to notify the buyer, within ten (10) business days of receipt of his notice of cancellation, whether the seller intends to repossess or to abandon any shipped or delivered goods.

B. The cancellation period provided for in this Section shall not begin until the buyer has been informed of his right to cancel and has been provided with copies of the notice of cancellation.

C. For the purposes of this section:

1. "Business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Washington's birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, Martin Luther King, Jr.'s birthday and any other legal public holiday of the Navajo Nation or the United States;

2. "Consumer goods or services" means goods or services other than perishable goods or agricultural products purchased, leased or rented primarily for personal, family or household purposes, including courses of instruction or training, regardless of the purpose for which they are taken;

3. "Door-to-door sale" means a sale, lease or rental of consumer goods or services with a purchase price of twenty-five dollars (\$25.00) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the primary place of business of the seller. A door-to-door sale includes seller initiated telephone sales and sales at periodic outdoor markets. A door-to-door sale does not include a transaction:

a. Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent

location where the goods are exhibited or the services are offered for sale on a continuing basis;

b. In which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. § 1635, or regulations issued pursuant thereto;

c. In which the buyer has initiated the contract and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three (3) business days;

d. In which the buyer has initiated the contract and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the buyer's personal property. If in the course of such a visit the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services would not fall within this exclusion;

e. Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker-dealer registered with the securities and exchange commission; or

f. In which a consumer acquires the use of goods under the terms of a rental-purchase agreement with an initial rental period of one week or less, by placing a telephone call to a lessor and by requesting that specific goods be delivered to the consumer's residence or such other place as the consumer directs and consummation of the rental-purchase agreement occurs after the goods are delivered; or

g. For the sale of handcrafts, including but not limited to jewelry, weavings, paintings, drawings, or other works of graphic art and ceramics, and food items or herbs and herbal remedies collected, processed or made, in any manner whatsoever, and offered for sale by an enrolled member of the Navajo Nation.

4. "Place of business" means the main or permanent branch office or local address of a seller;

5. "Purchase price" means the total price paid or to be paid for the consumer goods or services, including all interest and service charges; and

6. "Seller" means any person, partnership, corporation or association engaged in the door-to-door sale of consumer goods or services.

History

CJY-71-99, July 21, 1999.

§ 1110. Limitation of retail purchases unlawful

It is unlawful for any merchant to advertise or offer for sale any item of merchandise with a limitation upon the number of the item that any retail purchaser may purchase at the advertised price. It is further unlawful for any

merchant offering or advertising any item of merchandise in his place of business at any given price to refuse to sell to any prospective retail purchaser for cash the whole or any part of his stock of such item at such price. However, this Section shall not be applicable to a purchaser purchasing for resale. All remedies available under the Unfair Consumer Practices Act shall apply to violations of this Subsection.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection Ⓢ6, 7.	C.J.S. Consumer Protection §§ 29 to 31, 33 to 39, 59 to 65.
Indians Ⓢ23 to 24, 27, 32.	C.J.S. Indians §§ 12 to 13, 30 to 31, 49, 51, 68, 89, 91, 97.
Westlaw Topic Nos. 92H, 209.	
C.J.S. Credit Reporting Agencies.	

Subchapter 2. Pyramid or Multilevel Sales

§ 1111. Title

This Subchapter may be cited as the Navajo Nation Pyramid Promotional Schemes Act.

History

CJY-71-99, July 21, 1999.

§ 1112. Purpose

The purpose of this Act is to shield residents of the Navajo Nation from pyramid sales schemes and to provide authority to halt such schemes before residents of the Nation are subjected to financial loss.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection Ⓢ12.	C.J.S. Credit Reporting Agencies.
Indians Ⓢ6.1, 24, 32.	C.J.S. Consumer Protection §§ 56 to 58.
Westlaw Topic Nos. 92H, 209.	C.J.S. Indians §§ 12, 31, 49, 51.

§ 1113. Definitions

As used in the Pyramid Promotional Schemes Act:

A. "Compensation" includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment;

B. "Consideration" means the payment of cash or the purchase of goods, services or intangible property but does not include:

1. The purchase of goods or services furnished at cost to be used in making sales and not for resale; or

2. Time and effort spent in pursuit of sales or recruiting activities.

C. “Pyramid promotional scheme” means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person’s introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞12.

Indians ☞6.1, 24, 32.

Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 56 to 58.

C.J.S. Indians §§ 12, 31, 49, 51.

§ 1114. Prohibition; defenses excluded

A. A person shall not establish, operate, advertise or promote a pyramid promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme nor is it a defense under this article that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞12.

Indians ☞6.1, 24, 32.

Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 56 to 58.

C.J.S. Indians §§ 12, 31, 49, 51.

§ 1115. Private remedies

A. A person likely to be damaged by any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful may be granted an injunction against it under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

B. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court may award attorneys’ fees to a prevailing defendant if the party complaining of an unlawful practice has brought an action which he or she knew to be groundless.

C. The relief provided in this Section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of the Navajo Nation.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞30 to 42.
 Indians ☞27, 32(7).
 Westlaw Topic Nos. 92H, 209.
 C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 32, 34 to 35,
 95 to 117.
 C.J.S. Indians §§ 13, 60 to 62, 68, 89, 91, 97,
 139 to 143, 152.

§ 1116. Action by Attorney General

A. Whenever the Attorney General has reasonable belief that any person is using, has used or is about to use any method, act or practice which is declared by the Pyramid Promotional Schemes Act to be unlawful and that proceedings would be in the public interest, he may bring an action in the name of the Navajo Nation against that person to restrain, by temporary or permanent injunction, the use of such method, act or practice. The action may be brought in the district court of the district in which the person resides or has his principal place of business or in the district court in the district in which the person is using, has used or is about to use the practice which has been alleged to be unlawful under the Pyramid Promotional Schemes Act. The Attorney General acting on behalf of the Navajo Nation shall not be required to post bond when seeking a temporary or permanent injunction.

B. In any action brought under Subsection (A) of this Section, the court may, upon petition of the Attorney General, require that the person engaged in the unlawful practice make restitution to all persons of money, property or other things received from them in any transaction related to the unlawful practice; and it is further provided that if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by the Pyramid Promotional Schemes Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not exceeding ten thousand dollars (\$10,000) per violation.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞33, 50.
 Indians ☞27, 32(7, 13), 37.
 Westlaw Topic Nos. 92H, 209.
 C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 96, 109, 118
 to 122.
 C.J.S. Indians §§ 13, 22, 60 to 62, 68, 89, 91,
 97, 139 to 143, 152, 157.

Subchapter 3. Motor Vehicle Warranties

§ 1117. Title

This Subchapter may be cited as the Motor Vehicle Warranties Compliance Act.

History

CJY-71-99, July 21, 1999.

§ 1118. Purpose

The purpose of this Act is to provide a mechanism which ensures that consumers of new or used motor vehicles within the Navajo Nation are able to enforce warranty rights in those vehicles.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9.
Indians ☞6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 52 to 55, 64.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1119. Definitions

As used in the Motor Vehicle Quality Assurance Act:

A. “Collateral charges” means those additional charges to a consumer not directly attributed to a manufacturer’s suggested retail price label for a new motor vehicle and includes all taxes, license, title and registration fees and other governmental charges related to the purchase of the vehicle;

B. “Comparable motor vehicle” means an identical or reasonably equivalent motor vehicle;

C. “Consumer” means the purchaser, other than for purposes of resale, of a new or used motor vehicle normally used for personal, family or household purposes, any persons to whom such a motor vehicle has been transferred during the duration of an express warranty applicable to the motor vehicle and any other persons entitled by the terms of warranty to enforce the obligations of the warranty;

D. “Express warranty” means any written or oral affirmation of the fact of promise made by a manufacturer to a consumer in connection with the sale or new motor vehicles which relates to the nature of the material or workmanship or to a specified level of performance over a specified period of time, including any terms or conditions precedent to the enforcement of obligations pursuant to the warranty;

E. “Manufacturer” means any person engaged in the manufacturing, assembling, importing or distributing of a motor vehicle as a regular business;

F. “Motor vehicle” means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes, whose gross vehicle weight is less than ten thousand pounds; and

G. “Used motor vehicle” means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the

seller in a manner consistent with ownership, or that has a certified odometer reading of five thousand (5,000) miles or more.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9.
Indians ☞6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 52 to 55, 64.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1120. Conformation to express warranties for new motor vehicles

A. If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of two (2) years following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties.

B. If the manufacturer or its agent or authorized dealer, after a reasonable number of attempts, is unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new motor vehicle occurs. As used in this Subsection, a reasonable allowance for use shall be an amount equal to the number of miles driven by the consumer prior to his first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair multiplied by 30 cents per mile. Refunds shall be made to consumers or lienholders as their interests may appear.

C. It shall be presumed that a reasonable number of attempts as mentioned in Subsection (B) of this Section have been undertaken to conform a new motor vehicle to the applicable express warranties if:

1. The same uncorrected nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of two (2) years following the date or original delivery of the motor vehicle to a consumer, whichever is the earlier date, but the nonconformity continues to exist; or

2. The vehicle is in the possession of the manufacturer, its agent or authorized dealer for repair a cumulative total of thirty (30) or more business days during such term or during such period whichever is the earlier date, exclusive of down time for routine maintenance as prescribed by the manu-

facturer. The term of an express warranty, such one-year period and such 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, invasion, strike, fire, flood or other natural disaster. In no event shall the presumption herein provided apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and an opportunity to cure the defect alleged. The manufacturer shall provide written notice and instruction to the consumer, either in the warranty or a separate notice, of the ligation to file this written notification before invoking the remedies available pursuant to the Motor Vehicle Warranties Compliance Act.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9, 36.1.
Indians ☞6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 52 to 55, 64.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1121. Affirmative defenses

It shall be an affirmative defense to any claim under the Motor Vehicle Warranties Compliance Act that:

- A. An alleged nonconformity does not substantially impair the use and market value of the motor vehicle;
- B. A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle;
- C. A claim by a consumer was not filed in good faith; or
- D. Any other affirmative defense allowed by law.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9.
Indians ☞6.1, 23 to 24, 32.
Westlaw Topic Nos. 92H, 209.

C.J.S. Credit Reporting Agencies.
C.J.S. Consumer Protection §§ 52 to 55, 64.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.

§ 1122. Used motor vehicles; title; implied warranty of merchantability disclaimer; waiver; burden of proof; remedies

A. Unless the seller is a used motor vehicle dealer, before the seller attempts to sell a used motor vehicle the seller shall possess the title to the used motor vehicle and the title shall be in the seller's name.

B. A used motor vehicle dealer shall not exclude, modify or disclaim the implied warranty of merchantability or limit the remedies for a breach of that warrant, except as otherwise provided in this Section, before midnight of the

thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven fifteen hundred (1500) miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded. An attempt to exclude, modify or disclaim the implied warranty of merchantability or to limit the remedies for a breach of that warranty, except as otherwise provided in this Section, in violation of this Subsection renders a purchase agreement voidable at the option of the purchaser.

C. For the purposes of this Section, the implied warranty of merchantability is met if the motor vehicle functions in a safe condition and is substantially free of any defect that significantly limits the use of the motor vehicle for the ordinary purpose of transportation on any public highway. The implied warranty of merchantability expires at midnight of the thirtieth calendar day after delivery of a used motor vehicle or until a used motor vehicle is driven fifteen hundred (1500) miles after delivery, whichever is earlier. In calculating time under this Subsection, a day on which the warranty is breached is excluded and all subsequent days in which the motor vehicle fails to conform with the implied warranty of merchantability are also excluded. In calculating distance under this Subsection, the miles driven to obtain or in connection with the repair, servicing or testing of the motor vehicle that fails to conform with the implied warranty of merchantability are excluded.

D. The implied warranty of merchantability described in this Section does not extend to damage that occurs after the sale of the motor vehicle and that is the result of any abuse, misuse, neglect, failure to perform regular maintenance or to maintain adequate oil, coolant or other required fluid or lubricant or off road use, racing or towing.

E. If the implied warranty of merchantability described in this Section is breached, the consumer shall give reasonable notice to the seller before the purchaser exercises any remedies. The seller shall have a reasonable opportunity to repair the vehicle and the consumer shall pay one-half of the cost of the first two repairs necessary to bring the vehicle in compliance with the warranty. The consumer's payments are limited to a maximum payment of twenty-five dollars (\$25.00) for each repair. The seller shall pay the costs of all subsequent repairs.

F. The maximum liability of the seller under this Section is limited to the purchase price paid for the used motor vehicle.

G. An agreement for the sale of a used motor vehicle by a used motor vehicle dealer is voidable at the option of the consumer unless it contains on its face the following conspicuous statement printed in bold-faced ten point or larger type set off from the body of the agreement:

“The seller hereby warrants that this vehicle will be fit for the ordinary purposes for which the vehicle is used for thirty (30) days or one thousand five hundred (1500) miles after delivery, whichever is earlier, except with regard to particular defects disclosed on the first page of this agreement. You (the purchaser) will have to pay up to twenty-five dollars (\$25.00) for each of the first two repairs if the warranty is violated.”

H. The inclusion of the statement prescribed in Subsection (G) of this Section in the agreement does not create an express warranty.

I. A consumer of a used motor vehicle may waive the implied warranty of merchantability described in this Section only for a particular defect in the vehicle and only if all of the following conditions are satisfied:

1. The used motor vehicle dealer fully and accurately discloses to the consumer that because of circumstances unusual to the used motor vehicle dealer’s business, the used motor vehicle has a particular defect.

2. The consumer agrees to buy the used motor vehicle after disclosure of the defect.

3. Before the sale, the consumer indicates agreements to the waiver by signing and dating the following conspicuous statement that is printed on the first page of the sales agreement in bold-faced ten point or larger type and that is written in the language in which the presentation was made:

“Attention purchaser: Sign here only if the dealer told you that this vehicle has the following problem(s) and that you agree to buy the vehicle on those terms:

1. _____
2. _____
3. _____”

J. The dealer has the burden to prove by a preponderance of the evidence that the dealer complied with Subsection (I) of this Section.

K. For any breach of the implied warranty of merchantability described in this Section, the consumer may, once the seller has had a reasonable opportunity to repair as described in Subsection (E), bring an action to recover the purchase price paid. The court shall award attorneys’ fees, calculated using the Lodestar method, to a prevailing purchaser.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞9, 36.1.
 Indians ☞6.1, 23 to 24, 27, 32.
 Sales ☞267, 272.
 Westlaw Topic Nos. 92H, 209, 343.
 C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 52 to 55, 64.
 C.J.S. Indians §§ 12 to 13, 30 to 31, 49, 51,
 68, 89, 91, 97.
 C.J.S. Sales §§ 238, 254 to 256, 263 to 270.

§ 1123. Limitation of action

Any action brought to enforce the provisions of the Motor Vehicle Warranties Compliance Act shall be commenced within two (2) years following the date of original delivery of the motor vehicle to a consumer.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞37.	C.J.S. Consumer Protection § 104.
Indians ☞27(4), 32(7).	C.J.S. Indians §§ 17, 60 to 62, 95, 139 to 143, 152.
Sales ☞431.	C.J.S. Sales § 290.
Westlaw Topic Nos. 92H, 209, 343.	
C.J.S. Credit Reporting Agencies.	

§ 1124. Attorney fees

A consumer who prevails in an action brought to enforce the provisions of the Motor Warranties Compliance Assurance Act shall be entitled to receive attorneys’ fees, calculated using the Lodestar method, and court costs from the manufacturer. If a consumer does not prevail in such an action and brings that action for frivolous reasons or in subjective bad faith, the manufacturer shall be entitled to receive attorneys’ fees and court costs from the consumer.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Protection ☞42.	C.J.S. Consumer Protection §§ 115 to 117.
Indians ☞27(4), 32(7).	C.J.S. Indians §§ 17, 60 to 62, 95, 139 to 143, 152.
Westlaw Topic Nos. 92H, 209.	
C.J.S. Credit Reporting Agencies.	

Subchapter 4. Rental–Purchase Agreements

§ 1125. Title

This Subchapter may be cited as the Navajo Nation Rental–Purchase Agreement Act.

History

CJY-71-99, July 21, 1999.

§ 1126. Purpose

The purpose of this Act is to define the rights of consumers who enter into rental-purchase agreements and to protect their interest in those agreements or the property obtained pursuant to those agreements.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞4.
 Indians ☞6.1, 23 to 24, 32.
 Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.
 C.J.S. Interest and Usury.
 C.J.S. Consumer Credit §§ 280, 284 to 293.

§ 1127. Definitions

As used in the Rental-Purchase Agreement Act:

A. “Advertisement” means a commercial message in any medium that solicits a consumer to enter a rental-purchase agreement;

B. “Cash sale price” means the price stated in a rental-purchase agreement for which the lessor would have sold and the consumer would have bought the goods that are the subject matter of a rental-purchase agreement if the transaction had been a sale for cash and may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements;

C. “Consumer” means an individual who rents goods under a rental-purchase agreement to be used primarily for personal, family or household purposes;

D. “Consummation” means the date on which a consumer enters a rental-purchase agreement;

E. “Goods” means personal property of which a consumer acquires use under a rental-purchase agreement;

F. “Lessor” means a person who regularly provides the use of goods under rental-purchase agreements and to whom rental payments are initially payable on the face of the rental-purchase agreement; and

G. “Rental-purchase agreement” means an agreement for the use of goods by an individual for personal, family or household purposes, for an initial period of four (4) months or less, that is automatically renewable with each payment after the initial period, that does not obligate or require the consumer to continue renting or using the goods beyond the initial period and that permits the consumer to become the owner of the goods.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞4.
 Indians ☞6.1, 23 to 24, 32.
 Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.
 C.J.S. Interest and Usury.
 C.J.S. Consumer Credit §§ 280, 284 to 293.

§ 1128. Exempted transactions; relationship to other laws

The Rental-Purchase Agreement Act does not apply to the following

A. Rental-purchase agreements made primarily for business, commercial or agricultural purposes;

- B. A lease of a safe deposit box;
- C. A lease or bailment of personal property that is incidental to the lease of real property and provides that the consumer has no option to purchase the leased property;
- D. A lease of a motor vehicle; or
- E. A lease of a mobile home.

History

Revision note. For purposes of statutory format, “or” added at end of subsection (D). CJY-71-99, July 21, 1999.

Note. Section renumbered for consistent Code format. (2004).

Library References

Consumer Credit ◊4.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians ◊6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 209.	C.J.S. Consumer Credit §§ 280, 284 to 293.

§ 1129. General requirements of rental-purchase agreements

A. Each rental-purchase agreement shall be in writing, dated, signed by the consumer and lessor and completed as to all essential provisions.

B. The printed or typed portion of the rental-purchase agreement, other than instructions for completion, shall be in a size equal to at least eight-point type. The rental-purchase agreement shall be designated “rental-purchase agreement”.

C. The lessor shall deliver to the consumer, or mail to him at his address shown on the rental-purchase agreement, a copy of the agreement as accepted by the consumer. Until the lessor does so, a consumer who has not received delivery of the rented goods shall have the right to rescind his rental-agreement and receive a refund of all payments made. An acknowledgment by the consumer of delivery of a copy of the rental-purchase agreement shall be in a size equal to at least ten-point bold type and, if contained in the agreement, shall appear directly above the consumer’s signature.

D. The rental-purchase agreement shall contain the names of the lessor and consumer, the lessor’s business address and the residence or other address of the consumer as specified by the consumer.

E. The lessor shall disclose to the consumer the information required by § 1130 of the Rental-Purchase Agreement Act on the face of the rental-purchase agreement above the line for the consumer’s signature. The disclosures shall be made at or before consummation of the rental-purchase agreement. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures. If a disclosure becomes inaccurate as a result of any act, occurrence or any agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of the Rental-Purchase Agreement Act.

F. A lessor who provides an advertisement in any language other than English shall have rental-purchase agreements printed in each non-English

5 N.N.C. § 1129

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language of the advertisement and shall make those rental-purchase agreements available to consumers.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⚡4, 16.

Indians ⚡6.1, 23 to 24, 32.

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 280, 284 to 293, 302.

§ 1130. Disclosures

A. For each rental-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

1. Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the goods;
2. A statement that the consumer will not own the goods until the consumer has paid the total amount necessary to acquire ownership;
3. A statement advising the consumer whether the consumer is liable for loss or damage to the goods and, if so, a statement that the liability will not exceed the fair market value of the goods as of the time they are lost or damaged;
4. A brief description of the goods, sufficient to identify the goods to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the goods are new or used. A statement that indicates new goods are used is not a violation of the Rental-Purchase Agreement Act;
5. A statement of the cash sale price of the goods, but if one rental-purchase agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;
6. The total of initial payments paid or required at or before consummation of the rental-purchase agreement delivery of the goods, whichever is later;
7. A statement that the total amount of payments does not include other charges or fees and a statement of all other charges or fees;
8. A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the early purchase price;
9. A statement identifying the party responsible for maintaining or servicing the goods while they are being rented, together with a description of that responsibility and a statement that if any part of a manufacturer's express warranty covers the goods at the time the consumer acquires owner-

ship of them, it shall be transferred to the consumer, if allowed by the terms of the warranty;

10. A statement that the consumer may terminate the rental-purchase agreement without penalty by voluntarily surrendering or returning the goods in good repair, reasonable wear and tear excepted, along with any past due rental payments upon expiration of any rental period. This disclosure shall be in bold type; and

11. Notice of the right to reinstate a rental-purchase agreement, as provided in the Rental–Purchase Agreement Act; and

12. The following notice printed or typed in size equal to at least ten-point bold type:

“NOTICE TO THE CONSUMER

Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign.”

B. With respect to matters governed by the federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, compliance with that act satisfies the requirements of this section.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⇄16.

Indians ⇄6.1, 23 to 24, 32.

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit § 302.

§ 1131. Prohibited provisions

A rental-purchase agreement shall not contain:

A. A confession of judgment;

B. A negotiable instrument;

C. A security interest or any other claim of a property interest in any property of the consumer;

D. A wage assignment;

E. A waiver by the consumer of claims or defenses;

F. A provision authorizing the lessor or a person acting on the lessor’s behalf to enter upon the consumer’s premises unlawfully or to commit any breach of the peace in the repossession of goods;

G. A provision either waiving the terms of 7 N.N.C. § 621 or purporting to be an advance consent to the removal of property from the Navajo Nation. The provisions of 7 N.N.C. § 621 shall apply to all rental-purchase agreements;

H. A provision requiring the purchase of insurance or a liability damage waiver from the lessor for goods that are the subject of the rental-purchase agreement;

5 N.N.C. § 1131

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I. A provision that mere failure to return goods constitutes probable cause for a criminal action;

J. A provision requiring the consumer to make a payment in addition to regular periodic payments in order to acquire ownership of the goods or a provision requiring the consumer to make periodic payments totaling more than the dollar amount necessary to acquire ownership as disclosed pursuant to § 1125 of the Rental–Purchase Agreement Act;

K. A provision for more than one reinstatement fee on any one periodic payment, regardless of the period of time during which it remains unpaid; or

L. A provision of or a late charge or any other type of charge or penalty for reinstating a rental-purchase agreement, other than a reinstatement fee; however, a lessor may use the term “late charge” or a similar term to refer to a reinstatement fee.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⚡4, 10.1 to 15, 16.

Indians ⚡6.1, 23 to 24, 32.

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 280, 284 to 302.

§ 1132. Reinstatement

A. A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement without losing any rights or options that exist under the agreement by the payment of the following charges within five (5) days of the renewal date of an agreement with monthly periodic payments or within two (2) days of the renewal date of an agreement requiring periodic payments more frequently than monthly:

1. All past due rental charges;
2. If the goods have been picked up, the reasonable costs of pickup and redelivery; and
3. Any applicable reinstatement fee.

B. If a consumer has paid less than two-thirds of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven (7) days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than twenty-one (21) days after the date of the return of the goods.

C. If a consumer has paid two-thirds or more of the total of payments necessary to acquire ownership of the goods and has returned or voluntarily surrendered the goods within seven (7) days of the renewal date, other than through judicial process, the consumer may reinstate the rental-purchase agreement during a period of not less than thirty (30) days after the date of the return of the goods.

D. Nothing in this Section shall prevent a lessor from attempting to repossess property in conformity with 7 N.N.C. § 621 during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same goods, if available, or with substitute goods of comparable quality and condition.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⚡15.	C.J.S. Interest and Usury.
Indians ⚡6.1, 23 to 24, 32.	C.J.S. Consumer Credit § 301.
Secured Transactions ⚡228.	C.J.S. Secured Transactions §§ 151, 153 to 160, 180.
Westlaw Topic Nos. 92B, 209, 349A.	
C.J.S. Indians §§ 12, 30 to 31, 49, 51.	

§ 1133. Renegotiations and extensions

A. A renegotiation occurs when any term of a rental-purchase agreement that is required to be disclosed by § 1125 of the Rental-Purchase Agreement Act is changed by agreement between the lessor and consumer. A renegotiation creates a new rental-purchase agreement requiring the lessor to give all the disclosures required by § 1125 of the Rental-Purchase Agreement Act.

- B. A renegotiation shall not include:
1. Reinstatement of a rental-purchase agreement in accordance with § 1127 of the Rental-Purchase Agreement Act;
 2. A lessor's waiver or failure to assert any claim against the consumer;
 3. A deferral, extension or waiver of a portion of a periodic payment or of one or more periodic payments; or
 4. A change, made at the consumer's request, of the day of the week or month on which periodic payments are to be made.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⚡4.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians ⚡6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 209.	C.J.S. Consumer Credit §§ 280, 284 to 293.

§ 1134. Advertising

A. An advertisement that refers to or states the dollar amount of a periodic payment and the right to acquire ownership of a specific item shall also clearly and conspicuously state:

1. That the transaction advertised is a rental-purchase agreement;
2. The total number and total amount of periodic payments necessary to acquire ownership of the item; and

5 N.N.C. § 1134

COMMERCE AND TRADE

3. That the consumer acquires no ownership rights in the item unless the total amount necessary to acquire is paid.

B. Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable for failure to comply with the provisions of this Section.

C. The provisions of Subsection (A) of this Section shall not apply to an advertisement that does not refer to or state the amount of any payment or that is published in the yellow pages of a telephone directory or in any similar directory of business.

D. Every item displayed or offered under a rental-purchase agreement shall bear a tag or card that clearly and conspicuously indicates in Arabic numerals each of the following:

1. The cash price of the item;
2. The amount of the periodic payment; and
3. The total number and total amount of periodic payments necessary to acquire ownership.

E. An advertisement in any language other than English shall contain disclosures as required by this Section in the non-English language.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⚡4, 16.

Consumer Protection ⚡7.

Indians ⚡6.1, 23 to 24, 32.

Westlaw Topic Nos. 92B, 92H, 209.

C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection § 59.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 280, 284 to 293, 302.

§ 1135. Enforcement; remedies; limitations

A. A lessor who fails to comply with requirements of the Rental-Purchase Agreement Act is liable to the consumer damaged thereby in an amount equal to:

1. The actual damages sustained by the consumer as a result of the lessor's failure to comply and twenty-five percent (25%) of the total of payments necessary to acquire ownership, but not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000); and

2. The costs of the action and attorneys' fees, calculated using the Lodestar method, as determined by the court.

B. A consumer may not take any action to offset the amount for which a lessor is potentially liable under Subsection (A) of this Section against any amount owed by the consumer, unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action in which the lessor was a party. This Subsection does not bar a consumer then in default on an obligation from asserting a violation of the Rental-Purchase

Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

C. A consumer may assert a violation of the Rental–Purchase Agreement Act as an original action or as a defense or counterclaim to an action brought by a lessor against the consumer.

D. The remedies of a consumer, pursuant to the provisions of this Section, are in addition to any other rights or remedies available to a consumer pursuant to applicable laws or regulations.

E. No action under this Section may be brought in any court of competent jurisdiction more than two (2) years after the date the consumer made his last rental payment or more than two (2) years after the date of the occurrence of the violation that is the subject of the suit, whichever is later.

History

CJY–71–99, July 21, 1999.

Library References

Consumer Credit ☞17 to 18.	C.J.S. Interest and Usury.
Indians ☞6.1, 23 to 24, 32(7).	C.J.S. Consumer Credit §§ 303 to 312, 363 to 364.
Westlaw Topic Nos. 92B, 209.	
C.J.S. Indians §§ 12, 30 to 31, 60 to 62, 139 to 143, 152.	

§ 1136. Lessor’s defenses

A. If a lessor establishes by a preponderance of evidence that a violation of the Rental–Purchase Agreement Act was unintentional or the result of a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, the lessor shall not be subject to the provisions of § 1131 of the Rental–Purchase Agreement Act and the validity of the transaction is not affected. Examples of bona fide errors are clerical errors, calculation errors, errors due to unintentionally improper computer programming or data entry and printing errors, but do not include errors of legal judgment with respect to a lessor’s obligations under the Rental–Purchase Agreement Act.

B. A lessor is not subject to the provisions of § 1131 of the Rental–Purchase Agreement Act if, within sixty (60) days after discovering a failure to comply with a requirement of the Rental–Purchase Agreement Act and prior to the institution of an action for noncompliance and prior to the receipt of written notice of the noncompliance from the consumer, the lessor notifies the consumer of the noncompliance and makes whatever adjustments in the appropriate account are necessary to correct the noncompliance.

C. No provision of § 1131 of the Rental–Purchase Agreement Act applies to any action done or omitted in good faith in conformity with some provision of that act, notwithstanding that after the action or omission has occurred the provision is amended, rescinded or determined by judicial or other competent authority to be invalid for any reason.

History

Revision Note (2002). To correct a typographical error, in the first sentence of subsection (A), “adopted a avoid such errors” was changed to read “adopted to avoid such errors”.
CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞4, 16, 17.	C.J.S. Interest and Usury.
Indians ☞6.1, 23 to 24, 32.	C.J.S. Consumer Credit §§ 280, 284 to 293,
Westlaw Topic Nos. 92B, 209.	302 to 309, 363.
C.J.S. Indians §§ 12, 30 to 31, 49, 51.	

Subchapter 5. Pawn Transactions

§ 1137. Title

The provisions of this Subchapter may be cited as the Navajo Nation Pawn Regulation Act.

History

CJY-71-99, July 21, 1999.

§ 1138. Definitions

As used in the Pawn Regulation Act:

- A. “Pawnbroker” means a person engaged in the business of making pawn transactions;
- B. “Pawn service charge” means the sum of all charges, payable directly or indirectly by the pledger and imposed directly or indirectly by the pawnbroker as an incident to the pawn transaction;
- C. “Pawnshop” means the location or premises at which a pawnbroker regularly conducts his business;
- D. “Pawn transaction” means either the act between a pawnbroker and a person pledging a good of lending money or extending credit on the security or pledged goods or of purchasing tangible personal property with an express or implied agreement or understanding that it may be redeemed or repurchased by the seller at a stipulated price;
- E. “Person” means an individual, partnership, corporation, joint venture, trust, association or any other legal entity however organized;
- F. “Pledged goods” means tangible personal property other than choses in action, securities or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with the pawn transaction;
- G. “Local law enforcement agency” means the Navajo Department of Public Safety; and
- H. “Local government” or “local government authority” means a chapter or other local government.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians ☞6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 209.	C.J.S. Consumer Credit § 352.

§ 1139. Purpose

The purpose of the Pawn Regulation Act is to:

- A. Prevent frauds, unfair practices, discriminations against, impositions on, or abuses of, the citizens of the Navajo Nation;
- B. Exercise the police power of the Nation to insure a sound system of making pawn transactions and acquiring and disposing of tangible personal property by and through pawnshops and to prevent unlawful pawn transactions, particularly in stolen property, through regulating pawnbrokers and certain persons employed by or in pawnshops;
- C. Ensure financial responsibility to the Nation and to the public;
- D. Ensure compliance with federal, Navajo Nation and local laws, rules, regulations and ordinances;
- E. Assist local governments in the exercise of their police power; and
- F. To protect from exploitation, abuse or its own improvidence that segment of society within the Nation which relies from time to time for its need upon money or credit extended by pawnbrokers and given upon the security of art, handcraft or movable personal possessions.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians ☞6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 209.	C.J.S. Consumer Credit § 352.

§ 1140. Permits required, inspection fee; penalty

A. In addition to any occupational or other license required by the local government, every pawnbroker shall obtain a pawnbroker permit from his or her local government, and that permit shall be conspicuously displayed in the pawnbroker's place of business. Said permit will expire on July 1 of each year and must be renewed by that date. Upon obtaining the permit, every pawnbroker shall register with the local law enforcement agency.

B. The local government may impose upon pawnbrokers a pawnbroker permit fee, in an amount to be set by the local government, to cover the expense of administration of the Pawn Regulation Act. No person who has been convicted of a felony shall be eligible for a permit.

5 N.N.C. § 1140

COMMERCE AND TRADE

C. Doing business as a pawnbroker without a permit constitutes a violation of this Section and is subject to the general penalty provisions of the Pawn Regulation Act.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞6.

Indians ☞32(9).

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 353 to 357.

§ 1141. Administration; applicability of other laws

A. The local government may adopt such rules and regulations as necessary for the equitable administration of the Pawn Regulation Act;

B. Nothing in the Pawn Regulation Act shall be construed to prohibit a local government from enacting additional requirements governing pawnbrokers, not inconsistent with that Act.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5.

Indians ☞32(4.1).

Westlaw Topic Nos. 92B, 209.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit § 352.

§ 1142. Pawnbroker; bond required

No person shall engage in business as a pawnbroker without having executed and delivered a bond to his local government in the sum of five thousand dollars (\$5,000). The bond shall be in a form approved by the local government and shall be conditioned upon the conduct of the pawnbroker's business according to the provisions of the Pawn Regulation Act. The bond shall be for the benefit of each and every person damaged by a breach of any condition set forth in the bond. Every pawnbroker shall provide the local government with thirty (30) days' notice in writing of the cancellation of the bond.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞6.

Indians ☞32(9).

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 353 to 357.

§ 1143. Application for permit; requirements

A. Each application for an original or a renewal permit shall be submitted in writing to the local government and contain such information as is required

by the local government and be accompanied by the applicable permit fee amount.

B. Each application shall be accompanied by the name, social security number, address and date of birth of each agent, servant and employee of the applicant engaged in the business of pawn transactions. Changes in such list must be indicated on each renewal application.

C. Every pawnbroker shall furnish with each application for an original or renewal permit proof of execution and delivery of the bond to the local government.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ◊6.

Indians ◊32(9).

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 353 to 357.

§ 1144. Suspension or revocation of permit; notice; hearing

A. The local government authority may institute proceedings for the suspension or revocation of any permit issued pursuant to the Pawn Regulation Act upon the filing of a written complaint by the local law enforcement agency, the designated representative of that local law enforcement agency or the Attorney General, charging the permit holder or an employee thereof, of having violated any provision of the Pawn Regulation Act.

B. The local government authority shall serve written notice upon the permit holder of the alleged violation. The notice requirement is satisfied if personal service of the notice is had upon the holder of the permit or is posted in a conspicuous place upon the permit holder's place of business.

C. The local government authority shall set a date for hearing on the complaint not more than ten (10) days, nor less than five (5) days, after the date of notice unless waived by all parties thereto. The notice provided for in Subsection (B) of this Section shall specify the date and time of the hearing.

D. The permit holder and any other interested person shall have the right to appear at this administrative hearing and to produce evidence. The rules of evidence shall not apply. If, after holding this hearing, the local government authority determines that the permit holder is in violation of the provisions of the Pawn Regulation Act as charged in the complaint, the local government authority shall issue a written order. The order may suspend the permit for a stated period of time or permanently revoke the permit. The local government authority shall cause such order to be served upon the permit holder and filed in the administrative offices of the local government for public inspection within five (5) business days after the hearing. Service of the order on the permit holder shall be as specified in Subsection (B) of this Section, and the official serving the order shall have the authority to remove the permit from the

premises and deliver the permit to the local government authority. This hearing shall be the final administrative remedy.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ◊6.

Indians ◊32(9).

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 353 to 357.

§ 1145. Pawnbroker reports; records; delivery; violations

A. Every pawnbroker shall each day accurately complete a report of all used property of every kind received or purchased in a pawn transaction during the preceding business day on a form approved by the local law enforcement agency. Either a driver's license or other photo identification card shall be required of each person entering into a pawn transaction with a pawnbroker. Each item received shall be listed on a separate report form. Said report shall include the following:

1. Name of item;
2. Description of the item including make and model number, if any;
3. Serial number and other identifying marks, if any;
4. Date, time and type of pawn transaction;
5. Name and address of person offering the item;
6. Description of the persons offering the item including sex, complexion, hair color, approximate height and weight, and date of birth; and
7. Type of identification used by person offering item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance.

B. All reports required by this Section shall be completed accurately and be made available by 12 o'clock noon of the day following the day of the pawn transaction and shall be delivered or mailed to the local law enforcement agency within three (3) days of the pawn transaction.

C. Property purchased directly from another permit holder regulated by the Pawn Regulations who has already reported the item pursuant to this Section is exempt from the requirements of this Section.

D. Persistent or frequent erroneous or incomplete entries in or delays in the submitting of the above required reports shall constitute a violation of this Section and are subject to the general penalty provisions of the Pawn Regulations.

E. The reports and records of the permit holder required pursuant to this Section, as well as every item received in pawn, shall be available for inspection by the local government authority, the Attorney General, the local law enforcement agency or any sworn member of that law enforcement agency at all reasonable times.

F. Each item pledged to or purchased by the permit holder for which a report is required shall have attached to it a tag with an alphabetic or numerical identification system matching that item with its corresponding report and record.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5, 19.	C.J.S. Interest and Usury.
Indians ☞32(9).	C.J.S. Consumer Credit §§ 313 to 314, 352,
Westlaw Topic Nos. 92B, 209.	365.
C.J.S. Indians §§ 130 to 132, 134.	

§ 1146. Pawn ticket

A. Every pawnbroker shall at the time of each pawn transaction deliver to the person pawning any good, a ticket signed by the pawnbroker containing the substance of the entry required to be made in his report pursuant to § 1141 of the Pawn Regulation Act.

B. The holder of such ticket shall be presumed to be the person entitled to redeem the pledge and the pawnbroker shall deliver such article to the person so presenting such ticket on payment of principal and all lawful charges.

C. The pawn ticket required by this Section shall further contain all disclosures of credit terms required to be disclosed to the pledger by the federal Truth in Lending Act.¹

¹ 15 U.S.C. § 1601 et seq.

History

Revision Note (2002). Term “of” inserted between “holder” and “such” at subsection (B).
CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5.	C.J.S. Interest and Usury.
Indians ☞6.1, 23 to 24, 32(9).	C.J.S. Consumer Credit § 352.
Westlaw Topic Nos. 92B, 209.	
C.J.S. Indians §§ 12, 30 to 31, 130 to 132,	
134.	

§ 1147. Default; disposition of pledged property

A. Except as otherwise specified in this Section, upon default by the pledger, the pawnbroker shall comply with the requirements of §§ 9-501 through 9-507, Title 5A, Navajo Nation Code, in the disposition of the pledged goods.

B. Notwithstanding Subsection (A) of this Section, the pawnbroker shall not dispose of the pledged property, except by redemption, until at least ninety (90) days after the indebtedness has become due.

C. Notwithstanding Subsection (A) of this Section, if the pawnbroker disposes of the pledged property by sale in the regular course of his business, such

5 N.N.C. § 1147

COMMERCE AND TRADE

sale shall conform to the requirements of § 9-504, Title 5A, Navajo Nation Code, and if a surplus remains after sale of the pledged property the pawnbroker must make a record of the sale and the amount of the surplus and must notify the pledger by first class mail sent to the pledger's last known address of the amount of the surplus and the pledger's right to claim it at a specified location within ninety (90) days of the date of mailing of the notice if the surplus is one hundred dollars (\$100.00) or less, or within twelve (12) months of the date of the mailing of the notice if the surplus is greater than one hundred dollars (\$100.00). In the event that the first class mail addressed to any person is returned unclaimed to the pawnbroker, then the pawnbroker must post and maintain on a conspicuous public part of his premises an appropriately entitled list naming each such person. Ninety (90) days or twelve (12) months, as applicable, after the date of such mailing posting whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledger as his own property.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞7. C.J.S. Interest and Usury.
Indians ☞6.1, 23 to 24, 32(9). C.J.S. Consumer Credit §§ 358 to 362.
Westlaw Topic Nos. 92B, 209.
C.J.S. Indians §§ 12, 30 to 31, 130 to 132,
134.

§ 1148. Record of disposition of pledged property

Every pawnbroker shall keep a permanent record, fully itemized, of all pledged property disposed of following default by the pledger. The record shall include the following:

- A. The number of the pawn transaction;
- B. The name and address of the pledgor;
- C. The date of the pawn transaction and the date of the last payment received as service charge or on principal;
- D. The date of disposition of the pledged property pursuant to § 1147 of the Pawn Regulation Act;
- E. The method of disposition of the pledged property; and
- F. The amount and disposition of any surplus following disposition of the pledged property.

History

Revision Note (2004). Section referenced in § 1148(D) is corrected to conform with statutory intent. CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5. Indians ☞32(9).

Westlaw Topic Nos. 92B, 209.
C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Interest and Usury.
C.J.S. Consumer Credit § 352.

§ 1149. Pawn service charge

A. For the first 30-day period of the pawn transaction, a pawnbroker may charge seven dollars fifty cents (\$7.50) or ten percent (10%) of the amount loaned, whichever is greater, provided that such charge shall not be made on the refinancing of an existing loan or credit transaction. A loan or extension of credit shall be considered to be refinancing of an existing loan if any part of the proceeds of the subsequent loan is applied toward the payment of a prior loan with the same pawnbroker.

B. For the remaining period of the pawn transaction, including any refinancing, no pawnbroker shall charge directly, indirectly or by any subterfuge a pawn service charge in connection with any pawn transaction at a rate in excess of one and one-half percent (1½%) per month on the unpaid principal balance of the loan or extension of credit.

C. The foregoing pawn service charges are limiting maximums and nothing herein shall be construed to prohibit a pawnbroker from contracting for or receiving a lesser rate than here established.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ◊5.
Indians ◊6.1, 23 to 24, 32(9).
Westlaw Topic Nos. 92B, 209.
C.J.S. Indians §§ 12, 30 to 31, 130 to 132,
134.

C.J.S. Interest and Usury.
C.J.S. Consumer Credit § 352.

§ 1150. Prohibited practices

A pawnbroker shall not:

A. Knowingly enter into a pawn transaction with a person under the age of eighteen (18) years or under the influence of alcohol, any narcotic, drug, stimulant or depressant;

B. Make any agreement requiring the personal liability of a pledger in connection with the pawn transaction;

C. Accept any waiver, in writing or otherwise, of any right or protection accorded a pledger under the Pawn Regulation Act;

D. Fail to exercise reasonable care to protect pledged goods from loss or damage;

E. Fail to return a pledged good to a pledger upon payment of the full amount due to the pawnbroker on the pawn transaction. In the event a pledged good is lost or damaged while in the possession of the pawnbroker, the pawnbroker shall compensate the pledger for the reasonable value of the lost or damaged good;

5 N.N.C. § 1150

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- F. Make any charge for insurance in connection with a pawn transaction;
- G. Purchase or otherwise receive any item of property from which the manufacturer's name plate, serial number or identification mark has been obviously defaced, altered, covered or destroyed;
- H. Purchase or otherwise receive any item of property which the permit holder knows is not lawfully owned by the person offering the same;
- I. Enter into a pawn transaction in which the unpaid principle balance exceeds two thousand dollars (\$2,000);
- J. Require that any of the proceeds of any cash loan be spent at the pawnbroker's place of business or in any other manner directed by the pawnbroker; or
- K. Make any agreement in which the pledged property is a motor vehicle.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞5.
Indians ☞6.1, 23 to 24, 32(9).
Westlaw Topic Nos. 92B, 209.
C.J.S. Indians §§ 12, 30 to 31, 130 to 132,
134.
C.J.S. Interest and Usury.
C.J.S. Consumer Credit § 352.

§ 1151. General penalties

Any pawnbroker or permit holder who is found guilty of a violation of any provision of the Pawn Regulation Act shall be guilty of an offense. Any pawnbroker or permit holder who is not a member of the Navajo Nation and who is found guilty of a violation of the Act may be excluded from the Nation pursuant to 17 N.N.C. § 1901. Any pawnbroker or permit holder who violates any provision of the Pawn Regulation Act shall be subject to having his permit revoked or suspended by the local government pursuant to the provisions of § 1140 of the Pawnbrokers Act. Revocation or suspension of such permit will not bar prosecution of the permit holder under the penal provisions of the Pawn Regulation Act. Criminal prosecution will not bar proceedings to revoke or suspend the holder's permit.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞6, 19, 20.
Indians ☞32(9, 13), 38.
Westlaw Topic Nos. 92B, 209.
C.J.S. Indians §§ 130 to 132, 134, 157, 163.
C.J.S. Interest and Usury.
C.J.S. Consumer Credit §§ 313 to 316, 353 to
357, 365.

§ 1152. Forfeiture

The violation of any provision of the Pawn Regulation Act in any covered transaction shall be deemed a forfeiture of the entire amount of the pawn

service charge contracted for or allowable under the transaction. In the event a pawn service charge in excess of the amounts allowable under the Pawn Regulation Act has been paid in any covered transaction, the person by who it has been paid, or his or her legal representative, may recover back by civil action triple the amount of service charge paid, or one thousand dollars (\$1,000), whichever is greater. The court shall also award attorneys' fees, calculated by the Lodestar method. Any civil action under this Section shall be commenced within two (2) years from the date the usurious transaction was consummated.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞18, 19.	C.J.S. Interest and Usury.
Indians ☞6.1, 24, 32(7).	C.J.S. Consumer Credit §§ 310 to 314, 364 to 365.
Westlaw Topic Nos. 92B, 209.	
C.J.S. Indians §§ 12, 31, 60 to 62, 139 to 143, 152.	

Subchapter 6. Finance Charge Rates

§ 1153. Title

The provisions of this Subchapter may be cited as the Navajo Nation Finance Charge Rate Limitation Act.

History

CJY-71-99, July 21, 1999.

§ 1154. Purpose

The purpose of this Act is to ensure against the lending of money within the Navajo Nation at unconscionable, excessive or usurious rates of interest. The Act also prevents the enforcement of contracts within the Nation, regardless of where they are entered into, which charge usurious interest rates.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞10.	C.J.S. Indians §§ 12, 31.
Indians ☞6.1, 24.	C.J.S. Interest and Usury.
Westlaw Topic Nos. 92B, 209.	C.J.S. Consumer Credit § 293.

§ 1155. Retail Installment Contract Rates

A. In any retail installment contract, including retail installment accounts, a seller may contract for and if so contracted for, the holder thereof may charge, receive, and collect a finance charge which shall not exceed one and one-half

5 N.N.C. § 1155

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percent (1½%) per month multiplied by the number of months, including any fraction in excess of more than fifteen (15) days as one (1) month, elapsing between the date of such contract and the due date of the last installment. In the case of retail installment accounts, the finance charge shall not exceed this rate on the outstanding balances from month to month.

B. For purposes of this Act, the term “finance charge” shall include all charges which are incident to, or a condition of, the extension of credit.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⇌10.

Indians ⇌6.1, 24, 32.

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit § 293.

§ 1156. Private remedies

A. It shall be a complete defense to any claim on a retail installment contract that the rate charged is in excess of the rate authorized by this Act. No amount of charges in excess of those authorized by this Act may be reduced to judgment.

B. Any seller who contracts for a finance charge in excess of the rates authorized by this Act shall be liable for a penalty of three times the amount of the finance charge which is in excess of the rate authorized by this Act, but in any event not less than one thousand dollars (\$1,000).

C. The court shall award attorneys’ fees, calculated using the Lodestar method, to any consumer who prevails on a defense or claim under this Act. Any claim under this Act must be brought within two (2) years of the date on which the claim is created.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⇌10, 17, 18, 19.

Indians ⇌6.1, 24, 32.

Westlaw Topic Nos. 92B, 209.

C.J.S. Indians §§ 12, 31, 49, 51.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 293, 303 to 314, 363 to 365.

Subchapter 7. Motor Vehicle Deficiency Charges

§ 1157. Title

This Subchapter may be cited as the Motor Vehicle Consumer Protection Act.

History

CJY-71-99, July 21, 1999.

§ 1158. Purpose

A. The purpose of the Motor Vehicle Consumer Protection Act is to protect buyers of new or used motor vehicles both inside and beyond the territorial boundaries of the Navajo Nation.

B. The Act is designed to help remedy problems faced by buyers when used motor vehicles break down shortly after their purchase, leaving buyers with no recourse against the seller, and when deficiency judgments are issued against buyers that do not fairly reflect the detriment suffered by the seller, but which create enormous and unjust burdens for the buyers.

C. The protections offered by this Act should be effected by limiting the relief offered by Navajo Nation courts to the seller of a motor vehicle if that seller fails to offer the buyer such protections as are detailed herein.

History

Revision Note (2002). For purposes of statutory format, this section was designated by subsections. C.J.Y-71-99, July 21, 1999.

Library References

Consumer Credit ↔4.	C.J.S. Consumer Protection §§ 52 to 55, 64.
Consumer Protection ↔9.	C.J.S. Indians §§ 12, 30 to 31, 49, 51.
Indians ↔6.1, 23 to 24, 32.	C.J.S. Interest and Usury.
Secured Transactions ↔240.	C.J.S. Consumer Credit §§ 280, 284 to 293.
Westlaw Topic Nos. 92B, 92H, 209, 349A.	C.J.S. Secured Transactions §§ 164 to 166,
C.J.S. Credit Reporting Agencies.	168 to 169, 172, 174 to 175, 180 to 183.

§ 1159. Definitions

As used in the Motor Vehicle Consumer Protection Act:

A. “Deficiency” means the difference between the contract sales price of a motor vehicle, as contracted for between buyer and seller (including all interest or financing costs charged to the buyer, less any unearned finance charges rebated according the accounting rule of 78ths), and the sum of (a) all payments made toward that contract sales price by the purchaser, and (b) any sum acquired by the seller for the resale of the motor vehicle at auction for the purpose of recouping the contract sales price;

B. “Motor vehicle” means a passenger motor vehicle including an automobile, pickup truck, motorcycle or van normally used for personal, family or household purposes which is legally registered for use on the Navajo Nation, and whose gross vehicular weight is less than ten thousand pounds;

C. “Used motor vehicle” means any motor vehicle that, at the time of purchase by the buyer, has been previously owned by or has been used by the seller in a manner consistent with ownership, or that has a certified odometer reading of five thousand (5,000) miles or more;

D. “Seller” means any person or entity in the business of selling motor vehicles at the rate of five motor vehicles or more per year in the three hundred sixty-five (365) days preceding an action governed by this Subchapter and who

is a plaintiff in an action governed by this Subchapter, and does not include individuals who are the sellers of motor vehicles previously used for their own personal, family or household purposes, and who have sold less than five motor vehicles in the year preceding an action governed by this Subchapter;

E. “Buyer” means any person subject to the laws of the Navajo Nation who has bought a motor vehicle and who is the defendant in an action governed by this Subchapter, and may include any cosigner, surety or guarantor to a motor vehicle sales contract;

F. “Principal” means any amount due, on a motor vehicle sales contract or retail installment sales contract, as consideration for the item tendered to the buyer by the seller, exclusive of financing charges;

G. “Financing charges” means any amount due on a retail sales contract as consideration for the extension of credit on a contract, exclusive of the cost of the principal.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ☞4.	C.J.S. Consumer Protection §§ 52 to 55, 64.
Consumer Protection ☞9.	C.J.S. Indians §§ 12, 31.
Indians ☞24.	C.J.S. Interest and Usury.
Secured Transactions ☞240.	C.J.S. Consumer Credit §§ 280, 284 to 293.
Westlaw Topic Nos. 92B, 92H, 209, 349A.	C.J.S. Secured Transactions §§ 164 to 166,
C.J.S. Credit Reporting Agencies.	168 to 169, 172, 174 to 175, 180 to 183.

§ 1160. Limitation on Issuance of Deficiency Judgments for Used Motor Vehicles

A. No court of the Navajo Nation shall have jurisdiction to enter a judgment, or to recognize or enforce a judgment of a foreign court, requiring a defendant to pay a deficiency on a motor vehicles sales contract or a motor vehicle retail installment sales contract, without first having obtained sufficient evidence of the following:

1. That the seller of the used motor vehicle agreed:
 - a. In writing and at the time of sale;
 - b. To accept the return of the used motor vehicle at any time during the duration of a ten (10) day “grace” period beginning the day following the delivery of the vehicle to the buyer, on the basis of any complaint whatsoever regarding the quality, condition, or price of the vehicle, for a full and immediate refund of all monies paid by the buyer; and
 - c. Had the buyer sign an acknowledgment of this agreement; and
 - d. That such acknowledgment form provided sufficient notification of the buyer’s rights under this subchapter; and
 - e. That seller provided a copy of such form to the buyer at the time and place of delivery; and

2. That the buyer failed to return the used motor vehicle within that grace period.

B. In the event the vehicle is returned during the grace period, the seller may charge the buyer a reasonable rate for mileage actually used by the buyer, not to exceed 30 cents (.30) per mile.

C. The grace period does not apply to the sale of new motor vehicles.

D. For the purposes of this Section, it will be insufficient evidence for a seller merely to affirm the offer of the required grace period by statement in pleading, unless such pleadings are accompanied by a copy of the written agreement to such a grace period that bears the buyer's signature of acknowledgment dated at the time of sale.

E. In cases where the buyer's English language skills are sufficiently limited to prevent a thorough understanding of written forms or spoken English instructions, as shown by a preponderance of the evidence, the written agreement to the grace period that bears the buyer's signature of acknowledgment must also be accompanied by a certification that a translator assisted to fully explain the agreement.

F. This protection may not be waived by buyers at any time; any attempt to waive these rights shall be considered a nullity by the court despite evidence of consideration paid for the signing of such waiver.

G. In any claim or action brought by a seller in which the seller claims a deficiency which is not authorized by the terms of this Subchapter, the court shall award attorneys' fees, calculated using the Lodestar method, to a buyer who prevails on a defense that the deficiency was not authorized by this Act.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ↯4.	C.J.S. Consumer Protection §§ 52 to 55, 64.
Consumer Protection ↯9.	C.J.S. Indians §§ 12, 31, 60 to 62, 139 to 143, 152.
Indians ↯6.1, 24, 32(7).	C.J.S. Interest and Usury.
Secured Transactions ↯240.	C.J.S. Consumer Credit §§ 280, 284 to 293.
Westlaw Topic Nos. 92B, 92H, 209, 349A.	C.J.S. Secured Transactions §§ 164 to 166, 168 to 169, 172, 174 to 175, 180 to 183.
C.J.S. Credit Reporting Agencies.	

§ 1161. Limitation on the Amount of Deficiency Judgments for Motor Vehicles

A. A judgment against a buyer ordering the payment of a deficiency on a motor vehicle sales contract or a motor vehicle retail installment sales contract shall be calculated to allow only the recovery of the seller's actual costs and projected profits, and therefore shall be limited to an amount not to exceed the sum of:

1. A percentage, calculated as the current prime lending rate plus two percent (2%), of either the seller's original purchase costs for the motor

vehicle, if any, or the manufacturer's suggested retail price, whichever in the court's estimation is a more accurate means of discovering the seller's projected profits from the motor vehicle's sale in a given case; plus

2. The seller's original costs to purchase the motor vehicle, if any, minus any amount paid by the buyer toward the principal to the date of the court's order, minus any amount gained by the seller from the resale of the vehicle at auction subsequent to the vehicle's repossession, for the recoupment of the seller's purchase costs; plus

3. Financing charges due under the contract from the date of sale to the date of the court's order, minus any amount paid by the buyer toward the financing charges to the date of the court's order; plus

4. Reasonable documented repossession costs, if any; plus

5. Reasonable documented attorney's fees, if any.

B. The seller's costs must be established by a preponderance of the evidence; however, statistical evidence of costs will not be a substitute for evidence specific to the complaint.

C. In cases where a motor vehicle retail installment contract has been assigned to a party other than the seller, the assignee shall have the same rights and liabilities as would the seller for purposes of recovery under this Act, and the buyer has the same rights and liabilities against that assignee as they would against the seller.

D. For the purposes of this Section, payments made pursuant to motor vehicle retail installment sales contracts are to be allotted to principal and interest according to the accounting method agreed to by the motor vehicle retail installment sales contract.

History

CJY-71-99, July 21, 1999.

Library References

Consumer Credit ⇌4.

Consumer Protection ⇌9.

Indians ⇌6.1, 24, 32(7).

Secured Transactions ⇌240.

Westlaw Topic Nos. 92B, 92H, 209, 349A.

C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 52 to 55, 64.

C.J.S. Indians §§ 12, 31, 60 to 62, 139 to 143, 152.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit §§ 280, 284 to 293.

C.J.S. Secured Transactions §§ 164 to 166, 168 to 169, 172, 174 to 175, 180 to 183.

Chapter 8. Housing

Subchapter 1. Manufactured Housing

Section

1301. Title

1302. Definitions

1303. Purpose

1304. Powers and duties of program

Section

- 1305. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers
- 1306. License required; classification; examination
- 1307. Licensure; exemption
- 1308. License; application; issuance
- 1309. Qualifying party; examination; certificate
- 1310. Program fees
- 1311. Suspension and revocation
- 1312. Hearing officer
- 1313. Committee and program; consumer complaints; orders; suspension; revocation
- 1314. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties
- 1315. Committee or program; powers of injunctions; mandamus
- 1316. Penalties

§ 1301. Title

This Subchapter may be cited as the “Navajo Nation Manufactured Housing Act”.

History

CJA-13-99, January 27, 1999.

§ 1302. Definitions

As used in the Manufactured Housing Act:

A. “Broker” means any person who, for a fee, commission or valuable consideration, lists, sells, offers for sale, exchanges, offers to exchange, rents or leases or offers to rent or lease pre-owned manufactured homes for another person or who negotiates, offers to negotiate, locates or brings together a buyer and a seller or offers to locate or bring together a buyer and a seller in conjunction with the sale, exchange, rental or lease of a pre-owned manufactured home. A broker may or may not be an agent of any party involved in the transaction. No person shall be considered a broker unless engaged in brokerage activities related to the sale, exchange or lease-purchase of two or more pre-owned manufactured homes to consumers in any consecutive 12-month period;

B. “Certificate of qualification” means a certificate issued by the program to a qualifying party;

C. “Committee” means the Economic Development Committee of the Navajo Nation Council;

D. “Consumer” means any person who seeks or acquires by purchase, exchange or lease-purchase a manufactured home;

E. “Dealer” means any person engaged in the business of buying for resale, selling or exchanging manufactured homes or offering manufactured homes for sale, exchange or lease-purchase to consumers. No person shall be considered a dealer unless engaged in the sale, exchange or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period. A

dealer may also engage in any brokerage activities included under the definition of broker in this section; provided, “dealer” shall not include:

1. Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;
2. Public officers while performing their duties as such officers; and
3. Finance companies, banks and other lending institutions covering sales of repossessed manufactured houses;

F. “Director” means the director of the manufactured housing program;

G. “Inspection agency” means any firm, partnership, corporation, association or other legal entity or any combination thereof approved in accordance with regulations adopted by the program as having the personnel and equipment available to adequately inspect for the proper construction of manufactured homes or house trailers not used exclusively for recreational purposes;

H. “Inspector” means a person appointed by the program as being qualified to adequately inspect the construction, electrical installations and mechanical installations of manufactured homes and their repair and modification, as well as the installation, tiedowns, blocking, skirting, water, gas and sewer connections of any manufactured homes within the Navajo Nation;

I. “Installer” means any person who installs manufactured homes for remuneration;

J. “Installation” means, but is not limited to, preparation by an installer of a manufactured home site, construction of tie-down facilities and connection to on-site utility terminals;

K. “Manufacturer” means any person who manufactures or assembles manufactured homes or any component of manufactured homes;

L. “Manufactured home” means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit.

“Manufactured home” does not include recreational vehicles or modular or premanufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property.

“Manufactured home” includes any movable or portable housing structure over twelve feet in width and forty feet in length which is used for nonresidential purposes;

M. “Permit” means a certificate issued by the program to the dealer or installer of a manufactured home indicating that the manufactured home meets the minimum requirements for occupancy provided for by codes or regulations of the program;

N. “Person” includes an individual, firm, partnership, corporation, association or other legal entity or any combination thereof;

O. “Program” means the manufactured housing program of the Business Regulatory Department of the Division of Economic Development;

P. “Qualifying party” means any individual who submits to the examination for a license, other than a broker’s or salesperson’s license, to be issued under the Manufactured Housing Act to a licensee, other than an individual, and who after passing such an examination is responsible for the licensee’s compliance with the requirements of that Act and with the rules, regulations, codes and standards adopted and promulgated in accordance with the provisions of the Manufactured Housing Act;

Q. “Repairman” means any person who, for remuneration or consideration, modifies, alters or repairs the structural, mechanical or electrical systems of a manufactured home; and

R. “Salesperson” means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured homes to consumers as an employee or agent of a dealer.

History

CJA-13-99, January 27, 1999.

§ 1303. Purpose

It is the intent of the Navajo Nation Council that the large and growing manufactured housing industry within the Navajo Nation be supervised and regulated by the Business Regulatory Department of the Division of Economic Development. The purpose of the Manufactured Housing Act is to insure the purchasers and users of manufactured homes of the essential conditions of health and safety which are their right and to provide that the business practices of the industry are fair and orderly among the members of the industry with due regard to the ultimate consumers in this important area of human shelter.

History

CJA-13-99, January 27, 1999.

Library References

Consumer Protection ☞6, 11.	C.J.S. Landlord and Tenant §§ 3, 5, 30 to 34,
Indians ☞32(9, 10).	203 to 205, 207 to 210, 258(1), 326 to 327,
Landlord and Tenant ☞370 to 395.	337, 366(1), 367, 368(1), 394(1), 402, 404,
Westlaw Topic Nos. 92H, 209, 233.	417(1, 2), 418(1), 419 to 421, 427, 434, 440,
C.J.S. Credit Reporting Agencies.	443(1), 447 to 448, 466 to 468, 470 to 471,
C.J.S. Consumer Protection §§ 29 to 31, 33 to	552, 606, 608, 620, 627, 716, 729 to 731,
39, 60 to 73, 91.	734, 736 to 737, 744, 758 to 759, 780,
C.J.S. Indians §§ 63, 130 to 132, 134.	551.2.

§ 1304. Powers and duties of program

The program shall:

5 N.N.C. § 1304

COMMERCE AND TRADE

A. Prepare, administer and grade examinations for licensure under the classification sought by each applicant;

B. Issue licenses and certificates of qualification in accordance with the provisions of the Manufactured Housing Act;

C. Establish and collect fees authorized to be collected by the program pursuant to the Manufactured Housing Act;

D. Subject to the approval of the committee, adopt rules and regulations relating to the construction, repair, modification, installation, tie-down, hook-up and sale of all manufactured homes, which regulations shall be uniform throughout the Navajo Nation and shall be enforced by inspectors for the program to insure minimum standards of safety within the Navajo Nation and any of its political subdivisions. Ordinances of any political subdivision of the Navajo Nation relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas, electricity, sanitary plumbing and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the program pursuant to the Manufactured Housing Act;

E. Adopt a budget and submit it as designated by law for approval;

F. Make regular reports to the Executive Director of the Division of Economic Development concerning the operations of the program. The report shall contain the program's recommendations for legislation it deems necessary to improve the licensing and the ethical and technical practices of the manufactured housing industry and to protect the public welfare;

G. Subject to the approval of the committee, adopt such rules, regulations, codes and standards as are necessary to carry out the provisions of the Manufactured Housing Act;

H. Prepare a uniform manufacturer's warranty and require its adoption as a condition of licensure by all manufacturers of manufactured homes doing business within the Navajo Nation;

I. Subject to the approval of the committee, adopt by regulation the mobile home construction and safety standards contained in the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended;

J. Subject to the approval of the committee, adopt by regulation the mobile home procedural and enforcement regulations, 24 C.F.R. 3282, as amended, promulgated by the Department of Housing and Urban Development pursuant to the National Mobile Home Construction and Safety standards Act of 1974, 42 U.S.C. 5401 *et seq.*, as amended;

K. Issue permits and provide for a single inspection of every installation within the Navajo Nation regardless of the location;

L. Subject to the approval of the committee, adopt regulations prescribing standards for the installation or use of electrical wiring, the installation of all fixtures, plumbing, consumer's gas pipe, including natural gas, liquefied petro-

leum gas and synthetic natural gas, appliances and materials installed in the course of mechanical installation and the construction, alteration, installation and repair of all manufactured homes intended for use in flood or mudslide areas. The regulations shall give due regard to standards prescribed by the federal insurance administration pursuant to regulation 1910, Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 5757, all as amended, and shall give due regard to physical, climatic and other conditions peculiar to the Navajo Nation;

M. Conduct "inspector schools" so that each inspector under the program's jurisdiction is capable of giving a complete one-time inspection for the sufficiency of unit installation, construction and mechanical and electrical systems;

N. Enter into cooperative agreements with federal agencies relating to manufactured housing and accept and use federal grants, matching funds or other financial assistance to further the purposes of the Manufactured Housing Act. The program may enter into agreements with chapters and other local governments to provide for the inspection of manufactured homes by employees of chapters and other local governments, to be performed under the supervision and control of the program. The program may allow all or a portion of the inspection fee collected by a local public body to be retained by the local public body. The portion of the fee retained shall be determined by the program and shall be related to the completeness of the inspection performed;

O. Administer oaths through any member of the program, the director or a hearing officer;

P. Subject to the approval of the committee, adopt rules and regulations for the conduct of hearings and the presentation of views, consistent with the regulations promulgated by the Department of Housing and Urban Development, 24 C.F.R. 3282.151 through 3282.156, as amended;

Q. Subject to the approval of the committee, adopt by regulations a requirement that dealers, repairmen and installers provide to consumers warranties on their product and work and prescribe by regulation minimum requirements of such warranties;

R. Coordinate with the qualifying inspectors for any multiple inspection program provided by Navajo Nation Housing Services or Navajo Housing Authority for inspection of manufactured homes; and

S. Subject to the approval of the committee, adopt regulations codes and standards for manufactured homes used for nonresidential purposes; provided such manufactured home being used for nonresidential purposes on the effective date of this act shall not be required to meet Uniform Building Code standards, except as to requirements for access to the handicapped, but manufactured homes being used for nonresidential purposes after the effective date shall be required to meet Uniform Building Code standards.

History

CJA-13-99, January 27, 1999.

Library References

Consumer Protection ☞6, 11.	C.J.S. Landlord and Tenant §§ 3, 5, 30 to 34,
Indians ☞32(9, 10).	203 to 205, 207 to 210, 258(1), 326 to 327,
Landlord and Tenant ☞370 to 395.	337, 366(1), 367, 368(1), 394(1), 402, 404,
Licenses ☞10.	417(1, 2), 418(1), 419 to 421, 427, 434, 440,
Westlaw Topic Nos. 92H, 209, 233, 238.	443(1), 447 to 448, 466 to 468, 470 to 471,
C.J.S. Credit Reporting Agencies.	552, 606, 608, 620, 627, 716, 729 to 731,
C.J.S. Consumer Protection §§ 29 to 31, 33 to	734, 736 to 737, 744, 758 to 759, 780,
39, 60 to 73, 91.	551.2.
C.J.S. Indians §§ 63, 130 to 132, 134.	C.J.S. Licenses §§ 30 to 33.

§ 1305. Bonding requirements; dealers, brokers, salespersons, manufacturers, repairmen and installers

A. The program with the approval of the committee, may by regulation require each dealer, broker, salesperson, manufacturer, repairman and installer to furnish and maintain with the program a consumer protection bond underwritten by a corporate surety in a sum to be determined by regulation and in such form, and with either unit or blanket coverage, as required by regulations, to be conditioned upon the dealer, broker, salesperson, manufacturer, repairman or installer complying with the provisions of the Manufactured Housing Act and any other law applying to the licensee, and also as indemnity for any loss sustained by any person damaged:

1. As a result of a violation by the licensee of any provision of the Manufactured Housing Act or of any regulation of the program adopted pursuant to that Act;
 2. As a result of a violation of any regulation adopted by the program;
 3. By fraud of a licensee in the execution or performance of a contract;
- or
4. By misrepresentation or the making of false promises through the advertising or the agents of a licensee.

B. The consumer protection bond may include provisions for the indemnification for any loss sustained by any consumer as the result of the refusal, failure or inability to transfer good and sufficient legal title to the consumer by the transferor or any other party claiming title.

C. The committee may attach and disburse for cause any consumer protection bond furnished to the program pursuant to this section. The program, subject to the approval of the committee, shall adopt the necessary rules and regulations to administer the provisions of this Section.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ☞3.	Licenses ☞26.
Indians ☞32(9, 10).	

Westlaw Topic Nos. 65, 209, 238.
C.J.S. Brokers §§ 14 to 24.

C.J.S. Indians §§ 63, 130 to 132, 134.
C.J.S. Licenses § 42.

§ 1306. License required; classification; examination

A. No person shall engage in business as a manufacturer, dealer, broker, repairman, installer or salespersons of manufactured homes unless licensed as provided in the Manufactured Housing Act.

B. The committee shall adopt regulations creating a system of license classifications covering the occupations of dealer, broker, manufacturer, repairman, installer and salesperson and providing for the qualifications and examination for each class of license.

C. No person shall import for sale or exchange, or engage in the business of selling leasing or exchanging or offering for sale, lease or exchange, any manufacturer home manufactured by any person who is not licensed as a manufacturer under the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ⇨3.
Indians ⇨32(9, 10).
Licenses ⇨10.
Westlaw Topic Nos. 65, 209, 238.

C.J.S. Brokers §§ 14 to 24.
C.J.S. Indians §§ 63, 130 to 132, 134.
C.J.S. Licenses §§ 30 to 33.

§ 1307. Licensure; exemption

The provisions of § 1306 shall not apply to licensed real estate brokers or salesmen acting as agents for another person in the sale of real property on which is located one or more manufactured homes whose installation has been approved as provided in regulations of the committee.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ⇨3.
Indians ⇨32(9, 10).
Licenses ⇨19.
Westlaw Topic Nos. 65, 209, 238.

C.J.S. Brokers §§ 14 to 24.
C.J.S. Indians §§ 63, 130 to 132, 134.
C.J.S. Licenses §§ 35 to 36.

§ 1308. License; application; issuance

A. Application for a license required under § 1306 for one of the classified occupations, or for a certificate of qualification of a qualifying party of a licensee other than an individual licensee, shall be submitted to the program on forms prescribed and furnished by the program. The application shall contain such information and be accompanied by such attachments as are required by regulations of the program. The forms shall be accompanied by the prescribed fee.

5 N.N.C. § 1308

COMMERCE AND TRADE

B. No license shall be issued by the program to any person unless the program is satisfied that he is or has in his employ a qualifying party who is qualified for the classification for which the application is made and who has satisfied the requirements of Subsection C of this Section.

C. An applicant for licensure shall:

1. Demonstrate financial responsibility as required by regulations of the committee;
2. Be of good reputation;
3. Not have engaged illegally in the licensed classification that he is applying for within one (1) year prior to making the application;
4. Demonstrate familiarity with the rules and regulations adopted by the committee concerning the classification for which application is made;
5. If a corporation, have complied with the laws of the Navajo Nation regarding qualifications for doing business within the Nation or have been incorporated in and have and maintain a registered agent and a registered office in the Navajo Nation;
6. If an individual or partnership, have maintained residence or street address in the Navajo Nation for at least thirty (30) days preceding the date of application; and
7. Personally or through the applicant's qualifying party successfully pass an examination administered by the program in the license classification for which application is made.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ☞3.	C.J.S. Brokers §§ 14 to 24.
Indians ☞32(9, 10).	C.J.S. Indians §§ 63, 130 to 132, 134.
Licenses ☞22.	C.J.S. Licenses § 43.
Westlaw Topic Nos. 65, 209, 238.	

§ 1309. Qualifying party; examination; certificate

A. Except as provided in Subsection C of this Section, no certificate of qualification shall be issued to any individual desiring to be a qualifying party until he or she has passed with a satisfactory score an examination prepared, administered and graded by the program.

B. The examination where applicable shall consist of:

1. General business knowledge, the rules and regulations of the program and committee and the provisions of the Manufactured Housing Act;
2. Technical knowledge and familiarity with the prescribed codes and minimum standards, which may be prepared and administered by an employee of the program who is expert in the particular classification for which certification is sought; and
3. General knowledge of the statutes of the Navajo Nation relating to the sale, exchange or lease of manufactured homes, contracts of sale, agency and brokerage.

C. If a licensee is subject to suspension by the committee for failure of the licensee to have a qualifying party in his employ, and the employment of the qualified party is terminated without fault of the licensee, then an employee of the licensee who is experienced in the classification for which the certificate of qualification was issued and who has been employed two (2) or more years by the licensee shall be issued without examination a temporary certificate of qualification in the classification for which the licensee is licensed. The temporary qualifying party shall be subject to passing the examination as set forth in this section within one (1) year from the date of the temporary certificate's issuance.

D. A certificate of qualification is not transferable.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ↻3.	C.J.S. Brokers §§ 14 to 24.
Indians ↻32(9, 10).	C.J.S. Indians §§ 63, 130 to 132, 134.
Licenses ↻20, 22.	C.J.S. Licenses §§ 39 to 41, 43.
Westlaw Topic Nos. 65, 209, 238.	

§ 1310. Program fees

The program shall by regulation establish reasonable annual license fees, fees for examinations and inspection and permit fees. Fees shall be set to reflect the actual cost of licensing and regulation, and in the case of the examination they shall reflect the actual cost of preparing and administering the examination. All fees shall be paid to the Controller for deposit and transfer.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ↻3.	C.J.S. Brokers §§ 14 to 24.
Indians ↻32(9).	C.J.S. Indians §§ 130 to 132, 134.
Licenses ↻27.	C.J.S. Licenses §§ 64 to 65.
Westlaw Topic Nos. 65, 209, 238.	

§ 1311. Suspension and revocation

Any license or certificate of qualification issued by the program shall be suspended for a definite period or revoked by the committee for any of the following causes:

- A. If a licensee or a qualifying party of a licensee violates any provision of the Manufactured Housing Act or any regulations adopted by the program or Committee pursuant to that Act;
- B. False, misleading or deceptive advertising;
- C. Knowingly contracting or performing a service beyond the scope of the license;

5 N.N.C. § 1311

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D. Misrepresentation of a material fact by the applicant in obtaining a license or certificate;

E. Misrepresentation or commission of a material fact in any manufactured home transaction;

F. Failure to comply with the warranty requirements of the Manufactured Housing Act or any regulation of the committee pursuant to those requirements;

G. Failure by manufacturer or dealer to transfer good and sufficient title to the purchaser of a manufactured home;

H. Failure by a broker or dealer to provide the buyer and the seller of a preowned manufactured home with a closing statement as required by regulation of the committee;

I. Conviction of a licensee or a qualifying party of a licensee in any court of competent jurisdiction of a felony or any offense involving moral turpitude; or

J. Failure by a dealer or broker in the transfer of a preowned manufactured home not owned at the time of the transaction by the dealer or broker to comply with title transfer provisions set forth by regulation of the program.

History

CJA-13-99, January 27, 1999.

Library References

Brokers ⇨3.

Indians ⇨32(9, 10).

Licenses ⇨38.

Westlaw Topic Nos. 65, 209, 238.

C.J.S. Agriculture § 4.5.

C.J.S. Brokers §§ 14 to 24.

C.J.S. Indians §§ 63, 130 to 132, 134.

C.J.S. Licenses §§ 48, 50 to 63.

§ 1312. Hearing officer

The Navajo Nation Office of Hearings and Appeals shall preside over and take evidence at any hearing held pursuant to the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

Library References

Indians ⇨32(10).

Westlaw Topic No. 209.

C.J.S. Indians § 63.

§ 1313. Committee and program; consumer complaints; orders; suspension; revocation

In addition to the other duties imposed on the committee and program under the Manufactured Housing Act, the committee and program shall receive complaints from any consumer who claims to be harmed by any licensee and shall attempt to have the complaints adjusted to the reasonable satisfaction of the consumer. If the committee or program cannot secure a proper adjust-

ment, the committee or program shall prepare a formal complaint for the consumer, and the committee shall determine whether the licensee is in violation of the Manufactured Housing Act or of rules and regulations promulgated under that Act. If the licensee is in violation of the Manufactured Housing Act or of the rules and regulations promulgated under that Act, the committee may order him to comply, may suspend his license until such time as the licensee complies with the order of the committee or may revoke his license.

History

CJA-13-99, January 27, 1999.

Library References

Indians ☞32(9, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 63, 130 to 132, 134.

§ 1314. Unlicensed dealers, brokers, salespersons, repairmen, manufacturers and installers; penalties

It is unlawful for any person to act in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer within the meaning of the Manufacturer Housing Act without a license required by that Act. Any person who conspires with any person to violate any provision of that Act requiring a dealer, broker, salesperson, repairman, manufacturer or installer to obtain a license and maintain a license in good standing is guilty of an offense and upon conviction shall be punished by a fine of not less than one thousand dollars (\$1,000) or ten percent (10%) of the dollar value of the contracted work performed while acting in the capacity of a dealer, broker, salesperson, repairman, manufacturer or installer without having been issued a dealer’s, broker’s, salesperson’s, repairman’s, manufacturer’s, or installer’s license, whichever is greater.

History

CJA-13-99, January 27, 1999. have been issued” was changed to “without having been issued”.
Revision Note (2003). To correct a typographical error, in the second sentence, “without

Library References

Brokers ☞3.	C.J.S. Brokers §§ 14 to 24.
Indians ☞32(9, 10).	C.J.S. Indians §§ 63, 130 to 132, 134.
Licenses ☞39 to 41.	C.J.S. Licenses §§ 74 to 76, 78 to 83.
Westlaw Topic Nos. 65, 209, 238.	C.J.S. Trading Stamps and Coupons § 6.
C.J.S. Agriculture § 4.5.	

§ 1315. Committee or program; powers of injunctions; mandamus

The program or committee may enforce the provisions of the Manufactured Housing Act through the Attorney General by injunction, mandamus or any proper legal proceeding in the district court of the district in which the offense was committed.

5 N.N.C. § 1315

COMMERCE AND TRADE

History

CJA-13-99, January 27, 1999.

Library References

Brokers ☞3.	C.J.S. Brokers §§ 14 to 24.
Consumer Protection ☞50.	C.J.S. Credit Reporting Agencies.
Indians ☞32(7, 10).	C.J.S. Consumer Protection §§ 109, 118 to 122.
Licenses ☞40 to 41.	C.J.S. Indians §§ 60 to 63, 139 to 143, 152.
Westlaw Topic Nos. 65, 92H, 209, 238.	C.J.S. Licenses §§ 78 to 83.
C.J.S. Agriculture § 4.5.	C.J.S. Trading Stamps and Coupons § 6.

§ 1316. Penalties

A. Any person who knowingly and willfully violates a provision of the Manufactured Housing Act or any rule, regulation or administrative order of the committee or program in a manner that threatens the health or safety of any purchaser or consumer commits an offense and on conviction shall be fined not more than one thousand dollars (\$1,000) or shall be confined not longer than one (1) year or both.

B. In any action brought to enforce any provision of the Manufactured Housing Act, the Attorney General, upon petition to the court, may recover on behalf of the Navajo Nation a civil penalty not to exceed one thousand dollars (\$1,000) for each violation, except that the maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one (1) year from the date of the first violation.

C. Failure by a manufacturer or dealer to comply with warranty provisions of the Manufactured Housing Act or any implied warranties or the violation of any provision of the Manufactured Housing Act by any person is an unfair or deceptive trade practice in addition to those practices defined in the Unfair Consumer Practices Act and is actionable pursuant to the Unfair Consumer Practices Act. As such, the venue provisions and all remedies available in the Unfair Consumer Practices Act apply to and are in addition to the remedies in the Manufactured Housing Act.

History

CJA-13-99, January 27, 1999.

Library References

Consumer Protection ☞30 to 42, 50.	C.J.S. Consumer Protection §§ 32, 34 to 35, 95 to 122.
Indians ☞32(8)-32(10, 13), 37, 38(7).	C.J.S. Indians §§ 22, 29, 59, 63, 130 to 132, 134, 157, 163.
Licenses ☞42.	C.J.S. Licenses § 85.
Westlaw Topic Nos. 92H, 209, 238.	
C.J.S. Credit Reporting Agencies.	

Chapter 9. Navajo Nation Enterprises

Subchapter 1. Navajo Arts and Crafts Enterprise

Section

- 1501. Establishment
- 1502. History and purposes
- 1503. Organization
- 1504. Legislative Oversight
- 1505. Amendments
- 1506. [Reserved]
- 1507. [Reserved]
- 1508. [Reserved]
- 1509. [Reserved]
- 1510. [Reserved]
- 1511. [Reserved]
- 1512. [Reserved]

Subchapter 3. [Reserved]

1551–1568. [Reserved]

Subchapter 5. Navajo Agricultural Products Industry

- 1601. Establishment; place of business; subsidiary offices
- 1602. Seal
- 1603. Purposes
- 1604. Board of Directors; Powers and duties
- 1605. Indemnification of officers, employees and members of Board
- 1606. Membership on Board of Directors; Qualifications; Term of office; Removal or resignation
- 1607. Meetings; Notice; Quorum; Board of Directors actions; Minutes and resolutions; Per diem and reimbursement; Prohibited contracts and transactions; Conflict of interest; Meeting procedure
- 1608. Principal officers; Duties; Election; Term of office; Removal; Resignation; Vacancies; Other officers and agents
- 1609. General manager; Duties
- 1610. Navajo Nation investment
- 1611. Accounting system; Fiscal year
- 1612. Books, records, and property; Inspection
- 1613. Audits
- 1614. Insurance
- 1615. Training of Navajos
- 1616. Immunity from suit
- 1617. Compliance with Navajo Nation law
- 1618. Amendment
- 1619–1636. [Reserved]

Subchapter 6. Native Broadcast Enterprises

- 1651. Establishment
- 1652. Purpose
- 1653. Organization
- 1654. Legislative Oversight
- 1655. Amendments
- 1656–1686. [Reserved]

Subchapter 7. [Rescinded]

- 1801–1809. [Rescinded]

Subchapter 9. Navajo Nation Hospitality Enterprise

- 1841. Establishment as independent enterprise
- 1842. Purpose
- 1843. Organization
- 1844. Legislative Oversight
- 1845. Amendments
- 1846–1857. [Reserved]

Subchapter 11. [Superseded]

- 1901–1919. [Superseded]

Subchapter 13. Navajo Engineering and Construction Authority

- 1971. Establishment; place of business; commencement and duration
- 1972. Purpose and powers
- 1973. Board of directors and officers; number, appointment, composition term and removal, employment of general manager
- 1974. Compliance with Navajo law
- 1975. Indemnification of directors, officers and employees
- 1976. Bylaws, meetings, compensation
- 1977. Executive Committee
- 1978. Inspection of books, records and reports
- 1979. Private property exempt
- 1980. Sovereign Immunity
- 1981. Amendments

Subchapter 15. Board Member Compensation

- 1991. Board member compensation; conflicts of interest; meetings

Subchapter 17. DINETECHS Enterprise

Subchapter 1. Navajo Arts and Crafts Enterprise

Cross References

General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of the Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

United States Code

Indian Arts and Crafts Board, 25 U.S.C. § 305 *et seq.*
Counterfeiting Indian Arts and Crafts Board trade-mark, 18 U.S.C. § 1158.

Code of Federal Regulations

Affixation of government certificate of genuineness to Navajo all-wool woven fabrics, see 25 CFR § 307.1 *et seq.*
Regulations for use of certificates of Indian Arts and Crafts Board, see 25 CFR § 308.1 *et seq.*
Standards governing Navajo, Pueblo, and Hopi silver and turquoise products, see 25 CFR § 301.1 *et seq.*
Use of government mark on Navajo, Pueblo, and Hopi silver, see 25 CFR § 304.1 *et seq.*

§ 1501. Establishment

There is established an enterprise of the Navajo Nation known as the Navajo Arts and Crafts Enterprise, hereafter called the “Enterprise”.

History

CJY-33-03, July 23, 2003, deletes Subsections (B) and (C).
CN-87-72, Plan, §§ I, II, IV, November 9, 1972.
CJY-49-98, July 21, 1998.

Library References

Indians ⇨23, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 1502. History and purposes

A. The Navajo people have excelled in various crafts for hundreds of years, and by the mid-eighteenth century were specially noted for their weaving, baskets and pottery. The Navajo people also learned ironsmithing and later adapted this craft into silversmithing and a wide variety of silver items developed. Today Navajo handwoven rugs, silver jewelry, baskets, pottery, paintings and other crafts are in high demand worldwide.

Over time some Navajo artisans become so adept at their craft that they produced extra crafts for sale as a means to support their family and to augment cattle, horse and sheep sales and other trading activities. As skills and markets developed for these artisans, competing products began appearing in the market and placed the Navajo craftsman in jeopardy.

5 N.N.C. § 1502

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Tribal leaders recognized the need to be better represented in the market-place, and in 1941 chartered the Navajo Arts and Crafts Guild to better market Navajo-made product and counter the increasing supply of imitation items. The “Guild” was changed to “Enterprise” in 1971 and exists today as the only Navajo Nation-owned business enterprise engaged in the purchase and sale of Navajo arts and crafts, and through this marketing channel functions as a defense against competing products flooding the market place and eroding the livelihood of the Navajo artisan and craftsman.

B. The purposes of NACE are:

1. To showcase the artistry and crafts of the Navajo Nation and to be represented in the market place;
2. To establish outlets as may be cost effective for the sale of Navajo arts and crafts and related merchandise on or near the Navajo Nation, throughout the United States and around the world;
3. To provide a source of raw materials at a fair price to Navajo artisans for use in the creation of Navajo arts and crafts;
4. To purchase at fair-market rates finished products at a fair price from Navajo artisans and craftspeople, and from such other sources as may be necessary to provide a fully integrated arts and crafts facility; and
5. To promote Navajo arts and crafts in any and all other ways deemed by NACE to be in the best interests of the Navajo Nation.

History

CJY-33-03, July 23, 2003, amended Subsection (A) and added new Subsections (B)(1) and (B)(2), renumbered prior Subsections (B)(1) and (B)(2) to (B)(3) and (B)(4) and deleted prior Subsection (B)(3) and (B)(4).

CJY-49-98, July 21, 1998.

CN-87-72, Plan, § III(1.2), November 9, 1972.

Library References

Indians ⇄23.
Westlaw Topic No. 209.
C.J.S. Indians § 30.

§ 1503. Organization

The business and affairs of NACE shall be conducted by a Board of Directors composed of five (5) members, with one (1) member representing a Navajo Nation Craftspeople Association and one (1) member represented by a Navajo Nation Council Delegate. Three (3) members are needed to form a quorum and to conduct business.

A. The NACE Board of Directors shall set policy including, but not limited to, establishing procurement policy, personnel policy, general discount rates and financial policies for NACE.

B. The NACE Board of Directors shall set policy including, but not limited to, establishing procurement policy, personnel policy, general discount rates and financial policies for NACE.

C. The NACE Board of Directors shall be appointed by the President of the Navajo Nation subject to confirmation by the Economic Development of the Navajo Nation Council.

History

CJY-33-03, July 23, 2003, deleted prior Section 1503. Powers, created new Section 1503, Organization and included thereunder amended Subsection (A) and a new Subsection (B). CJY-49-98, July 21, 1998. ACAP-54-84, § 1, April 13, 1984 which amended CN-87-72, Plan, § V, November 9, 1972.

Cross References

Confirmation of enterprise Board members, see 2 N.N.C. § 724(E)(1).
 General limitation on compensation of members of boards of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

§ 1504. Legislative Oversight

NACE shall operate under the legislative oversight of the Economic Development Committee of Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NACE shall operate pursuant to a Plan of Operation recommended by the NACE Board of Directors and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-03, July 23, 2003, amended generally. Formerly § 1505. CN-87-72, Plan, § VI, November 9, 1972. CJY-49-98, July 21, 1998.

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

§ 1505. Amendments

Sections 1501 through 1505 may be amended from time to time by the Economic Development Committee of the Navajo Nation Council upon recommendation of the Board of Directors of NACE.

History

CJY-33-03, July 23, 2003, Amended generally, formerly § 1506. CN-87-72, Plan, § XIII, November 9, 1972. CJY-49-98, July 21, 1998. **Note.** This section was previously 5 N.N.C. § 1508.

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

5 N.N.C. § 1506

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§ 1506. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1507.”
CJY-49-98, July 21, 1998.

CN-87-72, Plan, § VIII, November 9, 1972.
Note. This section was previously 5 N.N.C. § 1509.

Cross References

Economic Development Committee powers, see 2 N.N.C. § 724.
Budget and Finance Committee authority, see 2 N.N.C. § 374(B)(5).

§ 1507. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1508.”
CJY-49-98, July 21, 1998.

CN-87-72, Plan, § IX, November 9, 1972.
Note. This section was previously 5 N.N.C. § 1510.

Cross References

Budget and Finance Committee powers, see 2 N.N.C. § 374(B)(1).
Economic Development Committee powers, see 2 N.N.C. § 724.

§ 1508. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1509.”
CJY-49-98, July 21, 1998.
CN-87-72, Plan, § X, November 9, 1972.
Note. CO-67-78 provided a commercial line of credit for the Navajo Arts and Crafts Enter-

prise, authorized by the Navajo Tribal Council and in an amount not to exceed five hundred thousand dollars (\$500,000).
Note. This section was previously 5 N.N.C. § 1511.

§ 1509. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1510.”
CJY-49-98, July 21, 1998.

CN-87-72, Plan, § XI, November 9, 1972.
Note. This section was previously 5 N.N.C. § 1512.

§ 1510. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1511.”
CJY-49-98, July 21, 1998.

§ 1511. [Reserved]

History

CJY-33-03, July 23, 2003, deleted the “former §1512.”
CJY-49-98, July 21, 1998.

Subchapter 3. [Reserved]

§§ 1551 to 1568. [Reserved]

History

Note. Navajo Forest Products Industries' plan of operation codified at 5 N.N.C. §§ 1551—1568 was rescinded and deleted from the Navajo Nation Code by Resolution CAP-23-02, April 17, 2002.

CAP-23-02, April 17, 2002.

ACJY-137-89, July 7, 1989.

ACS-208-76, September 16, 1976.

ACJY-19-70, July 14, 1970.

ACS-210-69, September 3, 1969.

CO-109-66, October 7, 1966.

CF-9-61, February 9, 1961.

ACMA-39-61, March 7, 1961.

CN-68-60, November 21, 1960

ACS-174-60, September 20, 1960.

CJ-38-58, § 3, July 23, 1958.

CF-14-58.

ACF-19-57, February 26, 1957.

CA-42-52, August 12, 1952.

1922-1951 Res. p. 616, July 12, 1951.

Subchapter 5. Navajo Agricultural Products Industry

§ 1601. Establishment

There is hereby established the Navajo Agricultural Product Industry (NAPI), as an enterprise of the Navajo Nation.

History

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACO-232-75, § 2, October 16, 1975.

ACMA-77-72, § 1, March 16, 1972.

ACAP-123-70, Plan, § 2, April 16, 1970.

Cross References

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc. of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

§ 1602. Purpose

NAPI is organized to operate a profitable commercial farm in accordance with its plan of operation and applicable laws and regulations, separate and distinct from the Navajo Indian Irrigation Project.

History

CJY-60-01, July 20, 2001.

CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 3, April 16, 1970.

Library References

Agriculture ⇨4, 6.

Indians ⇨9, 32.

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 129 to 132, 137 to 158.

C.J.S. Indians §§ 49, 51, 67.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

5 N.N.C. § 1603

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§ 1603. Organization

A. A Board of Directors for NAPI shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council.

B. The Board of Directors shall set policy including, but not limited to, establishing personnel policies, procurement policies and financial policies for NAPI. The Board of Directors shall hire and supervise the General Manager.

C. The General Manager shall administer the daily operations of NAPI. The General Manager shall be responsible and accountable to the Board of Directors and shall employ necessary personnel in accordance with personnel policies applicable to NAPI.

D. No elected official of the federal, state or Navajo Nation government shall be a member of the Board of Directors. No employee of the federal, state or Navajo Nation government shall be a member of the Board of Directors.

History

CJY-60-01, July 20, 2001, deleted section on NAPI's purposes.
ACAP-123-70, Plan, § 3, April 16, 1970.
CJY-50-97, July 22, 1997.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1604. Legislative oversight

The Navajo Agricultural Products Industry shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council, pursuant to 2 N.N.C. § 724(E). NAPI shall operate pursuant to a Plan of Operation recommended by the NAPI Board of Directors in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CJY-60-01, July 20, 2001, deleted section on NAPI's powers.
ACD-353-71, § 1, December 15, 1971.
ACAP-123-70, Plan, § 7, April 16, 1970.
CJY-50-97, July 22, 1997.

Cross References

Economic Development Committee powers, see 2 N.N.C. § 724(E).

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1605. Amendments

Sections 1601 through 1605 may be amended from time to time by the Navajo Nation Council upon the recommendation of the Economic Develop-

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5 N.N.C. § 1610

ment Committee of the Navajo Nation Council after consultation with the Navajo Agricultural Products Industry Board of Directors and the President of the Navajo Nation.

History

CJY-60-01, July 20, 2001, deleted Section of Indemnification of Officers, Employees and Members of Board. CJY-50-97, July 22, 1997. ACAP-123-70, Plan, § 7, par. 5, April 16, 1970.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1606. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on Board Membership. ACAP-123-70, April 16, 1970. CJY-50-97, July 22, 1997.

§ 1607. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on meetings. ACO-418-73, § 1, October 10, 1973. CJY-50-97, July 22, 1997. ACAP-123-70, April 16, 1970.

§ 1608. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on NAPI officers. ACAP-123-70, April 16, 1970. CJY-50-97, July 22, 1997.

§ 1609. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on the General Manager. ACAP-123-70, April 16, 1970. CJY-50-97, July 22, 1997.

§ 1610. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on Navajo Nation Investment. ACAP-123-70, April 16, 1970. CJY-50-97, July 22, 1997.

5 N.N.C. § 1611

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§ 1611. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on the accounting system.
CJY-50-97, July 22, 1997.

ACAP-123-70, Plan, § 13, passed April 16, 1970, as amended by ACD-217-89, December 8, 1989, amending ACAP-123-70, April 16, 1970.

§ 1612. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on books and records.
CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1613. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on audits.
CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1614. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on insurance.
CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1615. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on training of Navajos.
CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1616. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on immunity from suits.
CJY-50-97, July 22, 1997.

ACAP-123-70, April 16, 1970.

§ 1617. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on compliance with Navajo Nation law.
CJY-50-97, July 22, 1997.

§ 1618. [Reserved]

History

CJY-60-01, July 20, 2001, deleted Section on amendments.
 CJY-50-97, July 22, 1997.

§ 1619-1636. [Reserved]

Subchapter 6. Native Broadcast Enterprises

History

Redesignated. KTNN Radio Station Enterprise was previously codified at 21 N.N.C. §§ 601-617. CAP-23-03, April 24, 2003, amended KTNN's enabling legislation, renamed the enterprise and moved enacted enabling legislation for Native Broadcast Enterprises to Title 5, Chapter 9, Subchapter 6, §§ 1651-1655.

§ 1651. Establishment

There is hereby established the Native Broadcast Enterprises (NBE) as an enterprise of the Navajo Nation.

History

CAP-23-03, April 24, 2003.

§ 1652. Purpose

The NBE is organized to operate KTNN (AM), a clear channel 50,000 watts commercial radio station operating on 660 kilohertz, and KWRK (FM), a 100,000 watts commercial radio station operating on 96.1 megahertz, and any other business ventures the enterprise may undertake to further this purpose. This enterprise shall operate as a commercial, profit-making, quasi-independent entity of the Navajo Nation subject to the Federal Communication Commission's Rules and Regulations.

History

CAP-23-03, April 24, 2003.

Library References

Indians ☞32.	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞381 to 442.	Television §§ 147 to 150, 153 to 188, 192,
Westlaw Topic Nos. 209, 372.	211.
C.J.S. Indians §§ 49, 51.	

§ 1653. Organization

A. A management board for NBE shall be appointed by the President of the Navajo Nation and confirmed by the Economic Development Committee of the Navajo Nation Council. The management board shall be held to the same standards and governed by the same laws as the board of directors of a private corporation.

5 N.N.C. § 1653

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B. The management board for NBE shall set policy, including but not limited to, establishing personnel policies, procurement policies and financial policies for NBE.

C. The general manager shall administer the daily operations of NBE. The general manager shall be responsible and accountable to the management board and shall employ necessary personnel in accordance with the personnel policies applicable to NBE.

History

CAP-23-03, April 24, 2003.

Library References

Indians ☞32.

Telecommunications ☞381.

Westlaw Topic Nos. 209, 372.

C.J.S. Indians §§ 49, 51.

C.J.S. Telegraphs, Telephones, Radio, and
Television § 147.

§ 1654. Legislative Oversight

The Native Broadcast Enterprise shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NBE shall operate pursuant to a plan of operation recommended by the NBE management board in consultation with the President of the Navajo Nation and adopted by the Economic Development Committee of the Navajo Nation Council.

History

CAP-23-03, April 24, 2003.

Library References

Indians ☞32(4.1).

Westlaw Topic No. 209.

§ 1655. Amendments

This enabling legislation may be amended from time to time by the Navajo Nation Council upon recommendation of the NBE management board in consultation with the President of the Navajo Nation and approval by the Economic Development Committee of the Navajo Nation Council.

History

CAP-23-03, April 24, 2003.

Library References

Indians ☞32(4.1).

Westlaw Topic No. 209.

§§ 1656 to 1686. [Reserved]

History

CAP-23-03, April 24, 2003.

Subchapter 7. [Rescinded]

§§ 1801 to 1809. [Rescinded]**History**

CAP-8-83, § 1, April 19, 1983.

Subchapter 9. Navajo Nation Hospitality Enterprise

§ 1841. Establishment as independent enterprise

A. The Navajo Nation Hospitality Enterprise “NNHE” is hereby continued and established as a Navajo enterprise of the Navajo Nation.

B. NNHE is a constituent part of the Navajo Nation and is and shall be wholly owned by the Navajo Nation.

C. NNHE has and shall possess all of the attributes of Navajo sovereignty, including but not limited to immunity from suit, freedom from levy and execution, and exemption from state, federal and tribal taxes, unless, by either contract approved by NNHE in conformity with its plan of operation or by resolution of the Navajo Nation Council any such attribute of sovereignty is expressly waived or abrogated as to NNHE or to any transaction involving NNHE.

History

CD-79-02, December 30, 2002.

ACAU-157-89, August 3, 1989.

ACJY-127-85, July 10, 1985.

Historical Revision note. ACAP-84-87 amended ACJY-127-85, Exhibit B, § I, July 10, 1985 changing “Window Rock Motor Inn Enterprise” to “Navajo Nation Hospitality Enterprise”

and changed the name of the “Window Rock Motor Inn” to “Navajo Nation Inn”. Former Plan of Operation of Window Rock Motor Inn, derived from ACO-118-82 codified at §§ 1841-1853, was expressly rescinded by ACJY-127-85, and by which a new Plan of Operation was adopted and codified at §§ 1841-1857.

Cross References

Enterprise reorganization, see 2 N.N.C. § 724(E)(1).

General limitation on compensation of members of boards of enterprises, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

Library References

Indians ⇄32.

Westlaw Topic No. 209.

C.J.S. Indians §§ 49, 51.

§ 1842. Purpose

NNHE is organized to:

A. Work in conjunction with government agencies of the Navajo Nation to expand employment training and management opportunities for the Navajo people, and to stimulate economic development throughout Navajo Indian country;

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B. Establish and maintain an independent, profitable, growing, financially self-sustaining and successful Navajo Nation-owned business enterprise;

C. Generate revenue for the Navajo Nation; and

D. Provide professional motel and restaurant, retail, wholesale, and recreational (including gaming as authorized by the Navajo Nation in accordance with applicable Navajo and federal law) services and qualify facilities to the public.

History

CD-79-02, December 30, 2002.
ACAU-157-89, August 3, 1989.

ACJY-4-87, January 14, 1986, amending
ACJY-127-85, Exhibit B, § III, July 10, 1985.

Library References

Indians ☞7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 1843. Organization

A. The business and affairs of NNHE shall be managed by a five-person Board of Directors, the members of which shall meet the qualifications established in NNHE's plan of operation. The Board of Directors shall conduct its business in a similar manner as boards of directors of successful corporations in the hospitality business, to the extent feasible and permitted under NNHE's plan of operation and other applicable Navajo law.

B. The Board of Directors shall set the policies for NNHE and ensure compliance with such policies. The Board of Directors shall hire the Chief Operating Officer of NNHE under a written contract, and shall supervise, adjust the compensation for, and otherwise reward and discipline such Chief Operating Officer consistent with such contract and any applicable Navajo law.

C. The Chief Operating Officer shall manage and administer the day-to-day operations of NNHE. The Chief Operating Officer shall be responsible and accountable to the Board of Directors.

History

CD-79-02, December 30, 2002.
ACAU-157-89, August 3, 1989.
ACJY-127-85, Exhibit B, § IV, July 10, 1985.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1844. Legislative Oversight

NNHE shall operate under the legislative oversight of the Economic Development Committee of the Navajo Nation Council pursuant to 2 N.N.C. § 724(E). NNHE shall operate pursuant to a plan of operation recommended by the NNHE Board of Directors in consultation with the President of the Navajo Nation and the Board of Directors of NNHE.

History

CD-79-02, December 30, 2002.
ACAU-157-89, August 3, 1989.
ACJY-127-85, July 10, 1985.

Cross References

Economic Development Committee confirmation, see 2 N.N.C. § 724(E).

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1845. Amendments

The NNHE enabling legislation, 5 N.N.C. §§ 1841-1845, may be amended from time to time by the Navajo Nation Council upon the recommendations of the Economic Development Committee of the Navajo Nation Council, after consultation between such Committee and the President of the Navajo Nation and the Board of Directors of NNHE.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§§ 1846 to 1857. [Reserved]

Note. CD-79-02, December 30, 2002, generally amended §§ 1841-1857

Subchapter 11. [Superseded]

§§ 1901 to 1919. [Superseded]

History

CD-68-89, December 15, 1989. Authorities of Navajo Housing and Development Enterprises were re delegated in 1989 to various standing committees or to the Navajo Nation Council, including the Transportation and Community Development Committee, the Human Services Committee, and the Economic Development Committee.

Subchapter 13. Navajo Engineering and Construction Authority

§ 1971. Establishment; place of business; commencement and duration

A. There is established an enterprise of the Navajo Nation known as the Navajo Engineering and Construction Authority (NECA), hereafter called the "Authority."

B. The Authority's main office and principal place of business shall be in Shiprock, Navajo Nation (New Mexico), but other offices and places for

5 N.N.C. § 1971

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conducting business, both within and without the Navajo Nation, may be established from time to time by the Board of Directors.

C. The time of commencement of this Authority shall be the date on which the Navajo Nation Council passes a resolution to that effect and the duration of the Authority shall be perpetual.

History

CN-67-89, November 30, 1989 amending CAU-80-74, August 1, 1974.
CJN-56-72, Plan, §§ I, II, IV, June 13, 1972.
CJN-37-75, June 16, 1975.

Cross References

General limitation on compensation of board members of enterprise, industries, authorities, colleges, etc., of Navajo Nation, conflicts of interest, number of meetings, see 5 N.N.C. § 1991.

Library References

Indians ⇄ 7 to 8, 9, 24, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31, 46 to 49, 51, 67.

§ 1972. Purpose and powers

A. The purposes for which NECA is organized are as follows:

1. To engage in the general engineering and heavy construction industry;
2. To train Navajo people in the engineering and construction industry, including training in the management of the Authority;
3. To provide employment to the Navajo Nation, its enterprises and individual members, in engineering and construction and related businesses;
4. To be the premier heavy construction contractor serving the Navajo Nation and the public sector of the Four Corners area, emphasizing the values of excellence, service and employee development; and
5. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes set forth herein consistent with all applicable laws or regulations, and this plan of operation.

B. Subject to applicable federal and Navajo laws and regulation, the Board of Directors of the Authority shall exercise the following powers and duties:

1. The Board shall have authority and responsibility for the management and operation of the Authority.
2. The Board is authorized to direct the operations of the Authority to accomplish the purposes and to exercise the powers set forth herein without previous authorization or subsequent approval and all parties dealing with the Authority shall have the right to rely upon action taken by the Board pursuant to such authorization.
3. The Board shall exercise full power and shall be ultimately responsible for the custody and management, operation, inventory and maintenance of all property of the Authority; the bidding, planning, design and construc-

tion of all projects undertaken by the Authority, and the planning, construction and operation of all new facilities to be acquired by the Authority.

4. The Board shall be responsible for making investment decisions, subject to the limitations contained herein, or limitations as may be included in advance of funds; for the establishment and maintenance of effective operating policies; for the creation of and delegation of Board authority to subcommittees of the Board; for the selection of management personnel; and for continuous supervision of the performance of the Authority.

5. The Board shall exercise its authority in the best interests of the Navajo Nation and within the limits of responsible business judgment, with the limitation that it shall not incur obligations in excess of the ability of the Authority to pay or perform. Nothing in this Plan of Operation shall be construed as authorizing the Authority to mortgage or encumber trust or restricted property without the consent of the Navajo Nation Council or its authorized committee.

6. To elect or appoint or hire by contract as provided in this Section, officers, agents, auditors, attorneys, and such professional consultants as in the opinion of the Board may be needed from time to time. The Board, at Authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safety of funds, property or other assets of the Authority or the Navajo Nation.

7. To act as agent in any state, territory, districts or possessions of the United States, or in any foreign country on behalf of the Authority, within the scope of duties authorized, and subject to applicable law.

8. To deal in real property. To acquire, hold, own, utilize, improve, manage, operate, exchange, sell, deal in, dispose of, and to negotiate leases, or mortgages of, either alone or in conjunction with others, real estate of every kind, character and description or any interest therein, necessary or incidental to the purposes set forth herein. The Authority shall comply with all federal and Navajo law governing real property transactions.

9. To deal in personal property. To acquire, hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and commodities of every kind, character and description necessary or incidental to the purposes set forth herein.

10. To deal in inventories, copyrights and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire, or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor.

11. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Authority, to the extent that such guaranty is made pursuant to the purposes set forth herein, provided, that property subject to restrictions

on alienation or otherwise held in trust status may not be used as security of any sort without the consent of the Navajo Nation Council or a delegated committee of the Navajo Nation Council with authority to consent thereto, and the consent of the Secretary of the Interior or his authorized representative.

12. To make contracts. To enter into, make, perform, and carry out, or cancel, or rescind contracts for any lawful purposes set forth in 5 N.N.C. § 1972 including contracting for funds from whatever source without prior or subsequent approval or authorization by the Navajo Nation and to delegate so much of this authority as may be advisable to the General Manager or to the Chairman of the Board of Directors. It is understood that any contract hiring or retaining an attorney is subject to applicable federal or Navajo Nation laws, rules and regulations, and that nothing in this section shall be construed as a waiver of the sovereign immunity of the Authority or the Navajo Nation.

13. To borrow money, make and issue bonds and notes. To borrow money, make and issue notes, obligations and bonds of the Authority for any of its purposes, and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income or contracts. The Navajo Nation Council hereby states that with respect to any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the Authority issued for the purposes of the Authority, that it obligates itself not to limit or alter the rights or powers vested in the Authority until all such notes or bonds at any time issued, together with interest hereon, are fully met, paid and discharged.

14. To the extent necessary to carry out the business of the Authority, to lend money, to purchase, acquire, own, hold, guarantee, sell, assign, transfer, mortgage, pledge, or otherwise dispose of and deal in shares, bonds, notes, debentures or other securities or evidences of indebtedness of any other person, corporation or whether domestic or foreign, and whether now or hereafter organized or existing; and while the holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

15. With the approval of the appropriate oversight committee of the Navajo Nation Council, to enter into management agreements, joint ventures, limited partnerships and/or general partnership agreements with any corporation, association, syndicate, partnership, entity, person or governmental, municipal or public authority, domestic or foreign, in the carrying on of any business which the Authority is authorized to carry on, or any business or transaction deemed necessary, convenient, or incidental to carrying out the purposes of the Authority.

16. To acquire, by purchase or otherwise the goodwill, business, property rights, franchises and assets of every kind, with or without undertaking either wholly or in part the liabilities of any person, firm, association or corporation, and to acquire any related business as a going concern or otherwise by purchase of the assets thereof wholly or in part, or by acquisition of the shares or any part thereof, or in any other manner, and to pay for

the same in cash or in the bonds or other evidences or indebtedness of this Authority, or otherwise; to hold, maintain and operate, or in any manner dispose of the whole or any part of the goodwill, business, rights, and property so acquired, and to conduct in any lawful manner the whole or any part of any related business so acquired; and to exercise all the powers necessary or convenient in and about the management of such business.

17. In its sole discretion, to declare a dividend out of the surplus earnings of the Authority to the Navajo Nation. Any such declaration shall require the unanimous vote of the Board.

18. To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any of the objects herein before enumerated, either alone or in association with other authorities, corporations, firms and individuals, as principal, agent, broker, contractor, trustee, partner or otherwise, and in general to engage in any and all lawful business that may be necessary or convenient in carrying on the business of said Authority and for the purposes pertaining thereto, and to do any and every other act or acts, thing or things, incidental to, growing out of, or connected with said business, or any part or parts thereof.

History

EDCD-118-92, December 21, 1992.
 CN-67-89, November 30, 1989.
 CJN-56-72, Plan, § III, June 13, 1972, as amended by ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972.
 ACO-373-72, §§ 1a, 1b, 1c, October 13, 1972 amended CJN-56-72, Plan § III, June 13, 1972.
Revision notes. Section 1972(B)(12) includes new language pursuant to Resolution

EDCD-118-92. See Navajo Nation Attorney Generals Opinions dated April 26, 1992. (2004).
 Previous reference to the "Government Services" at § 1972(B)(15) changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004).

Cross References

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

Library References

Indians ⇨ 7 to 8, 9, 24, 32.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31, 46 to 49, 51, 67.

§ 1973. Board of directors and officers; number, appointment, composition term and removal, employment of general manager

A. The business and affairs of the Authority are to be conducted by a Board of Directors of nine (9) members. The President of the Navajo Nation or his designee shall serve as a non-voting *ex officio* member.

B. The presence of five members of the Board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present, shall be the act of the Board. All actions, with the exception of procedural motions, shall be recorded and documented in written resolutions certified by the presiding Chairman.

C. The Board of Directors shall be appointed by the President of the Navajo Nation with the consent of the appropriate oversight committee of the Navajo

5 N.N.C. § 1973

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Nation Council. Any new member shall be appointed to the Board for a two (2) year term, and the terms of his reappointment thereafter, if any, shall be alternating four and two (2) year terms. Present Board members shall serve out their present terms before this provision applies to them.

D. At least six (6) members of the Board shall be enrolled members of the Navajo Nation, four of whom shall be members of the Navajo Nation Council. At least three (3) members of the Board shall be professionals with experience in the engineering, construction, architectural, legal, accounting, management, or other construction related field.

E. Vacancies on the Board of Directors may be filled by the President of the Navajo Nation for the remainder of the term of the vacating member.

F. Any director may be removed at a duly called meeting of the appropriate oversight committee of the Navajo Nation Council, by a two-thirds vote of the full membership thereof, for just cause only. Just cause shall include, but not be limited to, failure to attend three consecutive meetings of the Board.

G. A President, Vice-President, Secretary and Treasurer of the Board shall be elected at the annual meeting of the Board of Directors as provided for in this plan of operation. All such officers must be members of the Board of Directors, and such officers and directors shall hold office until their successors are elected and qualified. Any such Officer may be removed from office by the Board of Directors in such manner as shall be provided for in the bylaws of the Authority.

H. A General Manager shall be employed under contract approved by the Board of Directors. The Board of Directors shall have the authority to set salary, benefits, incentives, bonuses, and other provisions of such a contract. The General Manager shall be the Chief Operations Officer of Authority, and shall direct, supervise and manage all of the operations of the Authority. He shall be responsible to the Board of Directors as a Chief Operations Officer of a corporation would be. He shall render reports to the Board and prepare periodical strategic business plans and perform all other functions and duties specified herein.

History

CN-67-89, November 30, 1989.

ACD-256-75, § 1, December 10, 1975.
ACD-256-75 added Vice-Chairman of the Navajo Tribal Council to the board in subsection (A).

CJN-56-72, Plan, § V, June 13, 1972.
ACO-373-72, § 1(d), October 13, 1972.

Note. Previous references to the "Government Services Committee" at § 1973(C) and (E) are changed to "appropriate oversight committee" pursuant to CN-67-89, Resolved Clause 2, November 30, 1989. (2004)

Cross References

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

Library References

Indians ⚡32(4.1, 6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1974. Compliance with Navajo law

The Authority, its Board members, officers, and employees shall conduct the business of the Authority in compliance with the laws of the Navajo Nation, including but not limited to, the Navajo Nation Ethics in Government Law and the Navajo Preference in Employment Act.

History

CN-67-89, November 30, 1989.
CJN-56-72, Plan, § V, June 13, 1972.
ACO-373-72, § 1(d), October 13, 1972.

Library References

Indians ☞32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1975. Indemnification of directors, officers and employees

Any person made a party to any action, suit or proceedings by reason of the fact that he, his testator or intestate, is or was a director, officer or employee of the Authority or of any corporation which he served as such at the request of the Authority, shall be indemnified by the Authority against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for misconduct in the performance of his duties or was acting outside the scope of his authority and employment by the Authority.

History

CN-67-89, November 30, 1989.
CJN-56-72, Plan, § XIII, June 13, 1972.

Library References

Corporations ☞308(1).	C.J.S. Corporations §§ 490, 530 to 531, 533, 536.
Indians ☞32(6).	C.J.S. Employer-Employee Relationship § 153.
Master and Servant ☞72.5.	C.J.S. Indians § 51.
Westlaw Topic Nos. 101, 209, 255.	

§ 1976. Bylaws, meetings, compensation

A. The Board of Directors shall adopt bylaws for the Authority and such bylaws may be amended or repealed as provided therein. The bylaws of the Authority shall provide among other things for the time and place of the annual meeting of the Board of Directors. The Board shall hold four regular meetings per year, one of which shall be the annual meeting, plus such other special meetings as may be called by the Board.

B. The bylaws shall further provide for notice of meetings, waiver of notice, the compensation and/or reimbursement of members of the Board, creation of

5 N.N.C. § 1976

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and delegation of Board authority to subcommittees, and for all other matters necessary for the orderly and efficient operation and management of the affairs and dealings of the Authority.

History

CN-67-89, November 30, 1989.
CJN-56-72, Plan, § XIII, June 13, 1972.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1977. Executive Committee

The Board of Directors may designate from its number an Executive Committee of not less than three (3) members which shall, in the intervals between meetings of the Board of Directors and to the extent provided by the bylaws of the Authority, exercise the powers of the Board of Directors in the management of the affairs and business of the Authority insofar as such powers may lawfully be delegated to a committee.

History

CN-67-89, November 30, 1989.
CJN-56-72, Plan, § XIII, June 13, 1972.

Library References

Indians ⇄32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1978. Inspection of books, records and reports

A. The Authority shall open to the inspection of the President of the Navajo Nation and the Attorney General of the Navajo Nation or their authorized representative, the accounts, books and papers of the Authority at all regular business hours. The accounts and records of the Authority shall be maintained in the Navajo Nation and audited at the close of each fiscal year. Copies of the audit report shall be furnished to the President of the Navajo Nation, the Budget and Finance Committee of the Navajo Nation Council and to such other persons or entities as the President of the Navajo Nation or chairperson of the Economic Development Committee of the Navajo Nation Council shall direct.

B. The Authority shall prepare and deliver to the Navajo Nation Council, annual financial and progress reports of the Authority and such other reports to the committees of the Navajo Nation Council as may be required by the committee or by law.

History

CJN-56-72, Plan, § VIII, June 13, 1972 as
amended by CN-67-89, passed November 30,
1989.

Cross References

Economic Development Committee authority, see 2 N.N.C. § 724(E)(1).

Library References

Indians ⇐32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 115.

§ 1979. Private property exempt

The private property of each and every officer and director of the Authority, real or personal, tangible, or intangible, now owned or hereafter acquired by any of them, is and shall be forever exempt from all debts and obligations of the Authority of any kind whatsoever.

History

CN-67-89, November 30, 1989.
CJN-56-72, June 13, 1972.

Library References

Indians ⇐32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 1980. Sovereign Immunity

A. The Authority and its Board of Directors and Officers and employees while acting in their official capacities are immune from suit, and the assets and other property of the Authority are exempt from any levy or execution, except as provided:

1. In the Navajo Sovereign Immunity Act (1 N.N.C. § 551 *et seq.*); or

2. When the Authority's Board of Directors has, in any particular matter by duly adopted Resolution, waived the Authority's immunity from suit so as to permit suit against the Authority in the Courts of the Navajo Nation, the courts of the United States or of any state as may be appropriate and agreed to by the Board of Directors. A decision by the Board of Directors to agree to state or federal court jurisdiction with respect to any such matter shall be valid only if such decision has been reviewed and approved by the Navajo Nation Council on a case-by-case basis.

B. The acts or omissions of the Authority (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability, obligation or indebtedness either of the Navajo Nation or payable out of assets, revenues or income of the Navajo Nation, and only the assets, revenues and income held by or in the name of the Authority shall be subject (to the extent otherwise permitted herein or by law) to the debts, obligations or other liabilities created or incurred by the Authority.

C. Any waiver of immunity by the Authority shall not be construed to waive any immunity of the Navajo Nation or other person or entity, nor shall the

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provisions of the Navajo Sovereign Immunity Act, (1 N.N.C. § 551 *et seq.*) be deemed altered or amended.

D. The Navajo Nation Council directs that this section of the plan of operation of the Authority shall not be amended so as to diminish any existing rights of owners, sureties or other person with whom the Authority has a contractual relationship at the time of such amendment, and, to that extent, the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend plans of operation of the Authority is limited.

E. In the event the Authority is sold, dissolved or merged to or into any other entity, the provisions of this Subsection and the rights created hereunder shall survive such sale, dissolution or merger.

History

CN-67-89, November 30, 1989, and “appropriate oversight committee” pursuant to CO-46-88, October 28, 1988. CN-67-89, Resolved clause 2, November 30,

Note. Previous reference to the “Government Services Committee” at § 1980(D) changed to 1989. (2004)

Cross References

Navajo Nation Sovereign Immunity, see 2 N.N.C. § 554(c).
Economic Development Committee powers, see 2 N.N.C. § 724(E)(1).

Library References

Indians ⇨27(1), 32(1).
Westlaw Topic No. 209.

C.J.S. Indians §§ 13 to 15, 19, 42, 49 to 51,
53, 55, 68, 89, 91 to 92, 94 to 95, 97.

§ 1981. Amendments

This Plan of Operation may be amended from time to time by the Board of Directors of NECA with the approval by the appropriate oversight committee and final approval by the Navajo Nation Council. Provided however, that §§ 1972(B)(17) and 1973(F) of this Plan of Operation shall not be amended except by the Navajo Nation Council, and to that extent the authority of the appropriate oversight committee of the Navajo Nation Council to adopt and amend plans of operation is limited.

History

CN-67-89, November 30, 1989.

Note. Previous references to the “Government Services Committee” are changed to “appropriate oversight committee” pursuant to CN-67-89, Resolved clause 2, November 30, 1989. (2004)

Cross References

Economic Development Committee process, see 2 N.N.C. § 724(E)(1).

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

Subchapter 15. Board Member Compensation

§ 1991. Board member compensation; conflicts of interest; meetings

A. No enterprise (including the various industries, authorities, colleges, Office of Navajo Economic Opportunity, etc.) shall pay any Board member more than two hundred fifty dollars (\$250) per day/plus actual travel and lodging expense.

B. Without the prior approval of the President of the Navajo Nation, no enterprise shall hold more than one meeting per month nor more than ten per year, provided that two additional sessions shall be allowed on an emergency or special meeting basis.

C. No member of any enterprise management board shall serve as an employee or consultant to that enterprise or as an employee or officer of any entity with a contract with that enterprise.

D. Any member of an enterprise management board who is such an employee or consultant or officer or employee of a contracting entity shall sever such relationship or resign from the enterprise management board within thirty (30) days after approval of this resolution.

History

CN-59-87, November 18, 1987, amended ACMY-35-79, §§ 1-4, May 15, 1979; CN-59-87 amended § 1991(A). CJN-56-72, Plan, § XI, June 13, 1972. **Revision note.** Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Subchapter 17. DINETECHS Enterprise

History

ACMA-66-89 authorized the creation of Dinetechs Enterprise and approved a Joint Venture agreement with the Navajo Nation. No Navajo Nation Council approved Plan of Operation was adopted.

Chapter 10. Ordinance for the Regulation of Gaming Activities within the Navajo Nation

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Section

2001. Legislative Findings
2002. Purposes

Subchapter 2. Definitions

2003. Definitions

Subchapter 3. Tribal Ownership and Use of Net Revenues

2004. Tribal Ownership of Gaming Activities
2005. Use of Net Revenues

Subchapter 4. Navajo Gaming Regulatory Office

2006. Establishment of the Gaming Regulatory Office
2007. Personnel
2008. Powers and Duties of the Gaming Regulatory Office
2009. Issuance of Regulations
2010. Petition for Self-Regulation
2011. Independence of Gaming Regulatory Offices
2012. Relation to Gaming Management

Subchapter 5. Gaming Facility Operator's License

2013. Requirement of License
2014. Standards of Suitability

Subchapter 6. Gaming Manager's License

2015. Requirement of License
2016. Standards of Suitability

Subchapter 7. Manufacturers Suppliers License

2017. Requirement of License
2018. Standard of Suitability

Subchapter 8. Gaming Employee's License

2019. Requirement of License
2020. Standard of Suitability

Subchapter 9. License Application Procedure

2021. Application Requirements; Processing
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- 2023. License Terms
- 2024. [Reserved]
- 2025. Non-transferability of License

Subchapter 10. Background Investigations; Notifications

- 2026. Background Investigations
- 2027. Criminal History Checks
- 2028. Notification to the National Indian Commission

Subchapter 11. Gaming Facility License

- 2029. Requirement of License
- 2030. Standards for Issuance of License
- 2031. Application for a New or Amended Gaming Facility License; Procedure
- 2032. Fees
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Subchapter 12. Facility Inspection; Notice of Violation; Complaints; Judicial Review

- 2034. Facility Inspection
- 2035. Notice of Violation
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Subchapter 13. Gaming Operation

- 2038. Scope of Permissible Gaming
- 2039. Hours, Days, Other Standards
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- 2041. Management; Security
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- 2045. Patron Disputes
- 2046. Play by Employees
- 2047. Small Bingo Games and Raffles
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Subchapter 14. Violations and Remedies

- 2049. Violations
- 2050. Civil Penalties
- 2051. Civil Remedies

Subchapter 15. Amendments and Compliance
with Applicable Laws

- 2052. Amendments
- 2053. Compliance with the Compact and the Act
- 2054. Severability
- 2055. Non-liability
- 2056. Navajo Preference
- 2057. Prior Inconsistent Law

History

- CAP-34-02, April 18, 2002.
- CO-75-01, October 16, 2001.

Subchapter 1. Finding and Purposes

§ 2001. Legislative Findings

The Navajo Nation Council of the Navajo Nation hereby finds:

A. That the orderly and honest conduct of gaming activities within the Navajo Nation will be of vital importance to the economy of the Nation, and to the general welfare of its members;

B. That the growth and success of gaming within the Navajo Nation is dependent upon public confidence and trust that such activities are conducted honestly and that they are free from criminal and corrupt elements, and that the facilities in which such activities are conducted are designed and maintained to assure the safety and comfort of patrons of the gaming activities;

C. That such public confidence and trust can only be maintained by the comprehensive regulation of all persons, practices, and activities related to the operation of the Nation's gaming facilities; and

D. All of the Nation's establishments where gaming is conducted, and all persons holding positions of responsibility with respect to any such activity, must therefore be licensed, and their activities monitored to assure that the public health safety and general welfare of the inhabitants of the Nation and the patrons of its gaming facilities are fully protected, and so as to assure the economic success of gaming activities within the Nation.

History

- CO-75-01, October 16, 2001.

Library References

- Indians ☞32(12).
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 64, 168.

§ 2002. Purposes

This Ordinance is enacted, and shall be interpreted, so as to accomplish the following purposes:

- A. The maintenance of the highest standards of honesty and integrity in the operation of any and all gaming activities within the Navajo Nation;
- B. The maintenance of public confidence and trust in the honesty and integrity of such gaming activities, and in the persons engaged in such activities;
- C. The maximum reasonable economic return to the Navajo Nation as the owner of gaming facilities within the Nation consistent with the fair and reasonable expectations of patrons of such activities and the assurance of their safety and comfort in participating in gaming activities; and
- D. Compliance with all applicable laws of the Navajo Nation and the United States of America, including but not limited to the Indian Gaming Regulatory Act of 1988.¹

¹ 25 U.S.C. § 2701 et seq.

History

CO-75-01, October 16, 2001.

Library References

Gaming ⇨1.
Indians ⇨32(12).

Westlaw Topic Nos. 188, 209.
C.J.S. Indians §§ 64, 168.

Subchapter 2. Definitions

§ 2003. Definitions

For Purposes of this Ordinance:

- A. “Act” means the Indian Gaming Regulatory Act of 1988, Public Law 100-497, 25 U.S.C. §§ 2701-2721 and 18 U.S.C. §§ 1166-1168, and all regulations promulgated pursuant thereto.
- B. “Class I Gaming” means all forms of gaming defined as Class I in section 4(6) of the Act, 25 U.S.C. § 2703(6).
- C. “Class II Gaming” means all forms of gaming defined as Class II in section 4(7) of the Act, 25 U.S.C. § 2703(7).
- D. “Class III Gaming” means all forms of gaming as defined in section 4(8) of the Act, 25 U.S. C. § 2703(8).
- E. “Commission” means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704.
- F. “Compact” means a Tribal-State Compact entered into between the Navajo Nation and a State pursuant to Section 11(d) of the Act, 25 U.S.C. § 2710(d), for purposes of regulating Class III gaming activities conducted within the Nation, and all amendments and modifications thereto.
- G. “Distributor” means a person who distributes Class II and Class III Gaming devices and/or component parts thereof.

H. “Executive Director” means the Executive Director of the Gaming Regulatory Office.

I. “Gaming Activity” means all forms of Class II and Class III Gaming owned and operated by the Nation and conducted within the territorial jurisdiction of the Nation.

J. “Gaming Device” or “Electronic Game of Chance” means a microprocessor-controlled electronic device which allows a player to play games of chance, some of which are affected by skill, which device is activated by the insertion of a coin, currency, tokens or by the use of a credit, and which awards game credits, cash, tokens or replays, or a receipt that can be redeemed by the player for any of the foregoing. Game play may be displayed by:

1. Video facsimile; or
2. Mechanical rotating reels whereby the software of the device predetermines the stop positions and the presence, or lack thereof, of a winning combination and pay out, if any.

K. “Gaming Employee” means any person employed as a primary management official or key employee of a gaming operation of the Nation and any person employed in the operation or management of a gaming operation, including but not limited to, any person whose employment duties require or authorize access to restricted areas of a gaming facility not otherwise open to the public. Gaming employee does not mean janitors, cooks, waitresses or waiters, and other employees not directly involved in the gaming operation within a gaming facility.

L. “Gaming Facility” means the buildings or structures licensed and approved by the Nation in which gaming activities are conducted.

M. “Gaming Facility Operator” means the Nation, a wholly owned tribal enterprise, or such other entity of the Nation as the Nation may from time to time designate as the wholly-owned tribal entity having full authority and responsibility for the operation and management of Class II or Class III gaming activities.

N. “Gaming Operation” means any gaming activity conducted within a gaming facility.

O. “Gaming Ordinance” means this Ordinance which governs the conduct of gaming activities within the Navajo Nation, all amendments thereto, and all regulations promulgated thereunder.

P. “Gaming Services” means the providing of any goods or services, except for legal services, to a Gaming Facility Operation in connection with the operation of Class II or Class III gaming, including but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance or security services for the gaming facility in an amount in excess of ten thousand dollars (\$10,000) in any single month.

Q. “Indian Lands” means land as defined in 25 U.S.C. § 2703(4)(A) and (B), subject to the provisions of 25 U.S.C. § 2719.

R. “Key Employee” means a gaming employee who performs one or more of the following functions:

1. Bingo caller;
2. Counting room supervisor;
3. Chief of security;
4. Custodian of gaming supplies; or
5. Floor Manager;
6. Custodian of gaming devices including persons with access to cash and accounting records within such devices;
7. Dealer;
8. Pit boss;
9. Croupier;
10. Approval of Credit; or

If not otherwise included, any other person whose total cash compensation from the gaming operation is in excess of fifty thousand dollars (\$50,000) per year; or, if not otherwise included, the four most highly compensated persons in the gaming operation.

S. “Management Contractor” means a management contract within the meaning of 25 U.S.C. §§ 2710(d)(9) and 2711.

T. “Management Contractor” means a natural person or entity that has entered into a management contract with the Nation or a gaming facility operator which has been approved pursuant to 25 U.S.C. §§ 2710(d)(9) and 2711.

U. “Manufacturer” means a natural person or entity that manufactures Gaming devices and/or component parts thereof as defined by this Ordinance for use or play in the gaming facilities.

V. “Nation” means the Navajo Nation.

W. “Navajo Nation Council” means the Navajo Nation Council of the Navajo Nation.

X. “Net Revenue” means the gross revenues of any gaming activity less amounts paid out as, or paid for, prizes and total gaming related operating expenses, excluding management fees.

Y. “Office of Attorney General” means the Office of the Attorney General of the Navajo Nation.

Z. “Person” includes a corporation, company, partnership, firm, association or society as well as a natural person. When “person” is used to designate the violator or offender of any law, it includes a corporation, company, partnership, firm, association, or society of persons.

AA. “Primary Management Official” means the person having management responsibility under a management contract; or any person who has authority to hire and fire employees or to set up working policy for a gaming operation; or the chief financial officer or other person who has financial management responsibility for a gaming operation.

BB. “Principal” means with respect to any entity:

1. Each of its officers and directors;
2. Each of its principal management employee, including any chief executive officer, chief financial officer, chief operating officer, or general manager;
3. Each of its owners or partners, if an unincorporated business;
4. Each of its shareholders who own more than five percent (5%) of the shares of the corporation; and
5. Each person other than a banking institution who has provided financing for the entity constituting more than five percent (5%) of the entity; and
6. Each of the beneficiaries, or trustee of a trust.

CC. “Privacy Act” means the Privacy Act of 1974, as amended (P.L. 93-579, as amended; 5 U.S.C. § 552(a), and the obligations and responsibilities placed on the United States government under the Privacy Act as applied to the Commission pursuant to the Indian Gaming Regulatory Act.

DD. “Public Employee” means a public employee within the meaning of the Navajo Nation Ethics in Government Law, 2 N.N.C. § 3751, *et seq.*

EE. “Public Official” means a public official within the meaning of the Navajo Ethics in Government Law, 2 N.N.C. § 3751 *et seq.*

FF. “State” means the State of Arizona, New Mexico, or Utah and any of their authorized officials, agents and representatives.

GG. “Tribal Gaming Enterprise” means the Nation, an enterprise of the Nation, or such other entity of the Nation designated by the Navajo Nation Council to conduct a gaming operation.

History

CAP-34-02, April 18, 2002, amended Subsection (X).

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).

Westlaw Topic No. 209.

C.J.S. Indians §§ 64, 168.

Subchapter 3. Tribal Ownership and Use of Net Revenues

§ 2004. Tribal ownership of Gaming Activities

All gaming activities within the Nation shall be owned entirely by the Nation and conducted and operated by a Tribal Gaming Enterprise, with the following exceptions:

- A. Class I Gaming; and
- B. Small bingo games and raffles as provide in § 2047 of this Ordinance.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2005. Use of Net Revenues

All net revenues received by the Nation from all gaming activities shall be utilized according to applicable Navajo Nation laws and in accordance with the National Indian Gaming Regulatory Act¹ and CFR 25.

¹ 25 U.S.C. § 2701 et seq.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 4. Navajo Gaming Regulatory Office

§ 2006. Establishment of the Gaming Regulatory Office

There is hereby established the Navajo Gaming Regulatory Office within the Executive Branch of the Navajo Nation Government, with legislative oversight by the Economic Development Committee of the Navajo Nation Council, and shall have overall civil regulatory authority over gaming activities within the Nation as specifically provided herein.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2007. Personnel

A. The Navajo Gaming Regulatory Office (hereinafter “the Gaming Regulatory Office”), shall consist of an Executive Director, Inspectors and such assistants and other staff as the Executive Director shall determine are required from time to time, subject to funding provided by the Navajo Nation Council.

1. No employee of the Gaming Regulatory Office shall:
 - a. be employed by a gaming facility operator,

b. have an immediate family member employed by a Gaming Facility Operator.

2. No former employee of the Gaming Regulatory Office shall be employed by a gaming facility operator within six (6) months of leaving employment of the Gaming Regulatory Office.

3. No employee of the Gaming Regulatory Office shall be employed by or hold, directly or indirectly, a financial interest in an organization or entity which,

a. has entered into a Management Contract with the Nation or a gaming facility operator;

b. is a distributor;

c. provides gaming services; or

d. provides financing to the Nation or a gaming facility operator for purposes of conducting gaming operations within the Nation.

B. The Executive Director of the Gaming Regulatory Office shall be retained by contract by the President of the Navajo Nation, such contract being approved by the Navajo Nation Council for a four (4) year term, and such contract being executed by the President. The job performance of the Executive Director shall be reviewed periodically by the President who shall submit a written report of each such review to the Speaker of the Navajo Nation Council. The Executive Director of the Gaming Regulatory office shall be removable only for breach of contract.

C. The Executive Director shall be a person of the utmost honesty and integrity, shall not have been convicted of a felony or a misdemeanor involving theft, embezzlement or a crime involving moral turpitude, whose prior activities, reputation, habits and associations shall not pose a threat to the public interest or to the effective regulation of gaming, or create or, enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming.

D. The contract of the Executive Director shall require the Executive Director to be the Nation's designated agent for service of any official determination, order or notice of the Commission. The contract shall further require the Executive Director to have a bachelor's degree in business administration or related field and at least six (6) years of experience in gaming management and/or regulation, or the contract shall require the Executive Director to have a master's degree in business administration or related field and at least four (4) years of experience in gaming management and/or regulation.

E. Inspectors shall act under the authority and supervision of the Executive Director. Inspectors shall have the right to inspect any gaming facility at any time and shall have immediate and unrestricted access to any and all areas of a gaming facility.

F. The background of every employee, Inspector, and the Executive Director of the Gaming Regulatory Office shall be investigated by the Nation's Personnel Department to ensure qualification for employment in the Gaming Regulatory Office. Except for the Executive Director, who shall be subject to Section

2007(C), no person shall be employed by the Gaming Regulatory Office if the Nation's Personnel Department determines that such person:

1. Has been convicted of any felony within the past ten (10) years or any gaming offense;
2. Has knowingly and willfully provided materially important false statements for information on his or her license application; or
3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

History

CO-75-01, October 16, 2001.

Library References

Indians ⇄32(6, 12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 64, 168.

§ 2008. Powers and Duties of the Gaming Regulatory Office

Subject to all of the provisions of this Ordinance, the Gaming Regulatory Office shall have the following powers and duties, which it may exercise directly or through such agents or employees as it deems appropriate:

- A. To have and to exercise full authority and responsibility for the regulation of gaming activities within the Nation, as provided in this Ordinance and the Act.
- B. To enter at any time any gaming facility within the Nation for the purpose of inspecting the facility, its employees and operations, its equipment and supplies, and its business records, book of account, and any and all other financial records or documents pertaining to the business operations of the facility, and to make such summaries or copies of any and all such documents or other records for the purpose of ensuring compliance with the provisions of this Ordinance or the Act.
- C. To issue subpoenas and compel the attendance of witnesses at any place within the Nation, to administer oaths and to require testimony under oath;
- D. To seize and remove from any gaming facility and impound any equipment, supplies, documents or records for the purpose of examination in connection with an investigation.
- E. To review for compliance with all applicable laws and regulations and to make recommendations thereon to the Department of Justice for their approval:
 1. the terms of any and all proposed contracts between the Navajo or a Tribal Gaming Enterprise and any person or entity which provide for the management or operation of any gaming facility within the Nation:

2. the provisions of any and all gaming services; and
3. the terms of any lease of land which is the site or proposed site of such gaming facility;

F. To investigate any aspect of gaming activities within the Nation in order to protect the public interest in the integrity of such gaming activities and to prevent improper or unlawful conduct in the course of such gaming activities, and to investigate any report of a failure of any gaming operation within the Nation to comply with the provisions of this Ordinance or the Act and to require such gaming operation to take any corrective action deemed necessary by the Gaming Regulatory Office upon such terms and conditions as the Gaming Regulatory Office may determine appropriate;

G. To establish a list of persons who, because of their criminal history or association with career offenders or career offender organizations pose a threat to the integrity of the gaming activities of the Nation, or are barred from any gaming operation within the Nation pursuant to § 2049(F) of this Ordinance;

H. To approve the rules of each game of chance operated by the Nation pursuant to § 2004 of this Ordinance;

I. To require that all contracts for supplies, services, of concessions in an amount in excess of ten thousand dollars (\$10,000) annually (except contracts for professional legal or accounting services) relating to such gaming be subject to annual audits by an independent certified public accountant licensed in a state;

J. To perform background investigations on every applicant for a Gaming Facility operator's license, a gaming manager's license, a manufacturer's/supplier's license, a gaming employee's license and every applicant for a position of primary management official or key employee with a gaming facility operator;

K. To approve or deny applications for licenses or to limit, condition, restrict, revoke or suspend any license which it has granted;

L. To issue licenses and employee identification cards on such forms as may be designated by the Gaming Regulatory Office.

M. To issue a notice of violation to, or impose a civil penalty upon, any person or entity for violation(s) of any provision(s) of this Ordinance or the Act;

N. To detain persons who may be involved in illegal activities for purposes of notifying and summoning appropriate law enforcement authorities; and

O. To do all other things reasonably necessary for the proper and efficient fulfillment of the powers and responsibilities of the Gaming Regulatory Office under this Ordinance or the Act.

P. To create and establish a revolving account to deposit the fees collected from the license applicants. The account shall be used to pay for the expenses of operating the office including, but not limited to the salaries of additional personnel, equipment, vehicles, travel, and other expenses related to the operation of the office. The plan of operation for the revolving account shall be

approved by the Economic Development Committee and Budget and Finance Committee of the Navajo Nation Council.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2009. Issuance of Regulation

A. The Gaming Regulatory Official shall from to time promulgate and issue regulations governing any aspect of its responsibilities under this Ordinance, which so long as they are in furtherance of and not in conflict with any provision of this Ordinance, shall have the force of law. Without limitation, the matters to be addressed by such regulations may include the following:

1. The time and manner for applying for a gaming operator's license under this ordinance, and the specific information to be provided in connection with such application, including information necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed;
2. The procedure by which applicants for licenses under this Ordinance shall apply for such licenses, including the information to be provided by the applicant necessary for adequate assessment of the applicant's background, and the manner in which such applications will be processed; and
3. The specific types of accounting, security, record keeping and reporting measures required by this Ordinance or the Act to be in place and functioning at any gaming facility licensed under this Ordinance.

B. Except in emergency situations addressed in Subsection (C) below, prior to promulgating a final regulation the Gaming Regulatory Office shall publish the regulation in proposed form. The proposed regulation shall be provided directly to the President of the Nation, the Speaker of the Navajo Nation Council, the Chairperson and each member of the Economic Development Committee of the Navajo Nation Council, the Office of the Attorney General, and to any other interested person or interested office or agency of the Nation. The proposed regulation shall be accompanied by a notice stating that the Gaming Regulatory Office will accept written comments for no less than thirty (30) days following the date of publication. As provided in this Section, "publish" shall mean publication in newspaper(s) of general circulation within the Nation. In the event of significant public interest with respect to any regulation, the Gaming Regulatory Office may hold a public hearing prior to issuing a final regulation. Notice of such hearing shall be given as set forth above, and in addition shall be mailed directly to any person submitting comments on the proposed regulation. Except as provided in Subsection (C) of this Section, no final regulation shall be issued until the Gaming Regulatory Office has reviewed all comments received by the close of the comment period,

as well as all presentations made at any hearing held pursuant to this Subsection.

C. In the event the Gaming Regulatory Office determines that an immediate rule-making is necessary to avoid serious jeopardy to the integrity of any gaming activity within the Nation, or otherwise to deal with an emergency situation affecting the responsibilities of the Gaming Regulatory Office, the Gaming Regulatory Office may, upon making an express written finding as to such emergency, issue a final regulation to take effect immediately; provided, that the Gaming Regulatory Office shall publish notice and request comments on such regulation in the same manner as is provided above and upon consideration of any comments received, shall make such amendments to such final regulation as the Gaming Regulatory Office deems appropriate.

D. All final regulations adopted by the Gaming Regulatory Office shall be officially filed with the Reporting Section of the Navajo Nation Council, the Office of the President, the Office of the Attorney General, and Records and Communications.

History

CO-75-01, October 15, 2001.

§ 2010. Petition for Self-Regulation

Upon the Gaming Regulatory Office's determination that the Nation is eligible therefor, the Gaming Regulatory Office may submit to the Commission an application for a certificate of Self-Regulation, under the provisions of 25 U.S.C. § 2710(C)(4). The Gaming Regulatory Office shall do everything necessary and appropriate to obtain such certificate and to maintain the certificate in good standing.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2011. Independence of Gaming Regulatory Office

The Gaming Regulatory Office is constituted as an independent regulatory agency of the Nation. The Gaming Regulatory Office shall not be subject to political direction or influence in the performance of its duties from any public official or public employee of the Nation.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12). Westlaw Topic No. 209.

C.J.S. Indians §§ 64, 168.

§ 2012. Relation to Gaming Management

Neither the Executive Director of the Gaming Regulatory Office nor any other public official or public employee of the Nation (individually or collectively) shall have any role in the management of any licensed gaming establishment. Aside from the specific duties of the Executive Director, as defined in this ordinance, all decisions, policies, and actions with regard to the operation of any licensed gaming establishment are the prerogative and responsibility of the gaming management as described in Subchapters 5 and 6 of this Ordinance.

History

CO-75-01, October 15, 2001.

Library References

Indians ⇄32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 5. Gaming Facility Operator's License

§ 2013. Requirement of License

Each Tribal Gaming Enterprise established by the Navajo Nation Council to conduct a Gaming operation within the territorial jurisdiction of the Nation shall obtain a Gaming Facility operator's License from the Gaming Regulatory Office before the Tribal Gaming Enterprise may commence operation of a Gaming Activity. Each appointee for the position of member of the Board of Directors of such Tribal Gaming Enterprise shall also obtain a Gaming Facility Operator's License from the Gaming Regulatory Office before submission of the appointment to the Navajo Nation Council for approval.

History

CO-75-01, October 15, 2001.

Library References

Indians ⇄32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2014. Standards of Suitability

A. Tribal Gaming Enterprise. No tribal gaming enterprise shall be issued a gaming facility operator's license by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that the tribal gaming enterprise is established and organized pursuant to a plan of operation adopted by the Navajo Nation Council.

B. Board of Directors. No member of the Board of Directors of a tribal gaming enterprise established by the Navajo Nation Council to conduct a gaming operation shall be issued a gaming facility operator's license or have his license renewed by the Gaming Regulatory Office if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a treat to the public interest or to the effective regulation and control gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or
4. Has a conflict of interest or a potential for a conflict of interest if a member of the Board of Directors. Any public official or public employee of the Nation shall be deemed to have a conflict of interest.

History

CO-75-01, October 15, 2001.

Library References

Indians ⚡32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 6. Gaming Manager's License

§ 2015. Requirement of License

No person, corporation, partnership, or other entity shall manage any gaming operation as the general manager of a tribal gaming enterprise without first obtaining a gaming manager's license from the Gaming Regulatory Office. In the case of a corporation, partnership or other entity, each principal of the corporation, partnership or other entity must also obtain a gaming manager's license from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

Library References

Indians ⚡32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2016. Standards of Suitability

A. Individuals. No person shall be issued a gaming manager's license or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or
4. Has a conflict of interest or a potential for a conflict of interest if a gaming manager. Any public official or public employee of the Nation shall be deemed to have a conflict of interest.

B. Corporations, Partnerships, and other Entities.

1. No corporation, partnership, or other entity shall be issued a gaming manager's license or have its license renewed by the Gaming Regulatory Office unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

- a. Is an organization and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;
 - b. Is in sound financial condition, as shown by a financial status;
 - c. Is not now and has not been in the past five (5) years the subject of any criminal investigation by any tribal, federal, or state law enforcement authority, as shown by an affidavit of principals of the organization having personal knowledge thereof;
 - d. Has established a reputation for financial integrity and sound business practices, or if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter.
 - e. Has established that any person having a role in the formation or acting as a principal of the organization is not a public official or public employee of the Nation; and
 - f. In all other respects will be reliable and trustworthy, and whose involvement in gaming activities within the Nation will be in the best interests of the Nation.
2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity:
- a. Maintain an office within the Nation; and

b. Give notice to the Gaming Regulatory Office within ten (10) days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its principals.

History

CO-75-01, October 15, 2001. “or have its license re-need” was changed to
Note (2003). To correct a typographical error in the first sentence of Subsection (B)(1), read “or have its license renewed”.

Library References

Indians ☞32(12).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 64, 168.

Subchapter 7. Manufacturers/Suppliers License

§ 2017. Requirement of License

Each manufacturer and each distributor of gaming devices, and each supplier of gaming services shall be licensed by the Gaming Regulatory Office prior to the sale or lease of any gaming devices or gaming services to a gaming facility operator licensed under this Ordinance. In addition, any person, corporation, partnership or other entity extending or guarantying financing for the gaming operation or the gaming facilities shall be licensed by the Gaming Regulatory Office, unless such person, corporation, partnership or entity is an agency of the United States or a lending institution licensed and regulated by the State or the United States.

History

CO-75-01, October 15, 2001.

Library References

Gaming ☞4.
 Indians ☞32(12).
 Westlaw Topic Nos. 188, 209.
 C.J.S. Indians §§ 64, 168.

§ 2018. Standard of Suitability

A. Individuals. No person shall be issued a license or have his license renewed under this Chapter if the Gaming Regulatory Office determines that such person:

1. Has been convicted of any felony or gaming offense;
2. Has knowingly and willfully provided materially important false statements or information on his license application;
3. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulations and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods,

and activities in the conduct of gaming or carrying on of the business and financial arrangements incidental hereto; or

4. Has a conflict of interest or a potential for a conflict of interest. Any public official or public employee of the Nation shall be deemed to have a conflict of interest.

B. Corporations, Partnerships, and Other Entities

1. No corporation, partnership, or other entity shall be issued a license or have its license renewed under this Subchapter unless the Gaming Regulatory Office is satisfied that such corporation, partnership or other entity:

a. Is organized and in good standing under the laws of the jurisdiction where it was established, and is qualified to do business within the Nation and the State;

b. Is in sound financial condition, as shown by a financial statement certified by a certified public accountant to be a current, complete and accurate depiction of the organization’s financial status;

c. Is not now and has not been in the past five (5) years the subject of any criminal investigation by an tribal, federal, or state law enforcement authorities, as shown by an affidavit of principals of the organization having personal knowledge thereof;

d. Has established a reputation for financial integrity and sound business practices, or, if the organization was recently formed, that all persons having any role in its formation, including persons supplying financing, are persons qualified to be licensed individually under the terms of this Subchapter;

e. Has established that any person having a role in the formation or acting as a principal of the organization is not a public official or public employee of the Nation; and

f. Is in all other respects reliable and trustworthy, and whose involvement in gaming activities within the Nation will be in the best interests of the Nation as set forth in this Ordinance.

2. As a condition of any such license, the Gaming Regulatory Office shall require that any licensed corporation, partnership or other entity give notice to the Gaming Regulatory Office within ten (10) days of any material change in any information disclosed in the application for which prior notice was not feasible, including but not limited to, any change in its Principals.

History

CO-75-01, October 15, 2001.

Note (2003). To correct a typographical error in Section (A) and subsection (B)(1), “re-need” was changed to read “renewed”.

Library References

Gaming ⇨4.

Indians ⇨32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

Subchapter 8. Gaming Employee's License

§ 2019. Requirement of License

Every gaming employee of a Gaming Facility Operator shall be licensed by the Gaming Regulatory Office prior to commencement of employment.

History

CO-75-01, October 15, 2001.

Library References

Gaming ☞4.

Indians ☞32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

§ 2020. Standards of Suitability

No person shall be issued a gaming employee's license or have his license renewed under this Subchapter if the Gaming Regulatory Office determines that such person:

A. Has been convicted of any felony within the past ten (10) years or any gaming offense;

B. Has knowingly and willfully provided materially important false statements or information on his or her license or employment application; or

C. Has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

D. Has a conflict of interest or a potential for a conflict of interest if a gaming employee. Any public official or public employee of the Nation shall be deemed to have a conflict of interest.

History

CO-75-01, October 15, 2001.

Note (2003). To correct a typographical error in Section 2020, first sentence, "re-need" was changed to "renewed".

Library References

Gaming ☞4.

Indians ☞32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

Subchapter 9. License Application Procedures

§ 2021. Application Requirements; Processing

A. Each application for a license under Subchapters 5, 6, 7 or 8 of this Ordinance must be submitted to the Gaming Regulatory Office on forms

prescribed by the Gaming Regulatory Office, and must be accompanied by the required fee and such supporting information as the Gaming Regulatory Office prescribes by regulation which shall include:

1. In the case of individual persons:
 - a. Full name, including any aliases by which applicant has ever been known;
 - b. Social security number;
 - c. Date and place of birth, gender, current citizenship, and all languages spoken or written;
 - d. Currently and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;
 - e. The names and current addresses of at least three personal references, including one personal reference who was acquainted with, the applicant during each period of residence listed under paragraph 1(d) of this Subsection (A);
 - f. Education history;
 - g. Current business or employment and residence telephone numbers;
 - h. A description of any existing and previous business relationships with Indian tribes including ownership interests in those businesses;
 - i. Description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
 - j. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
 - k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
 - l. All criminal proceedings, except for minor traffic offenses, to which the applicant has been a party including description of the charge, the name and address of the court involved and the date and disposition;
 - m. A set of fingerprints;
 - n. A current photograph; and
 - o. A complete and current financial disclosure statement.
2. In the case of corporations, partnerships or other entities applying for a license under Subchapters 5, 6, 7 or 8 of this Ordinance:
 - a. The name, address, and other additional pertinent background information on each of the principals;
 - b. The name, address, and other additional pertinent background information on each of its related, associated, affiliated, parent or subsidiary corporations, partnerships, entities or individuals;
 - c. A description of any previous experience that each principal has had with other Indian tribes involving gaming, any management con-

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tract, or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had contact relating to gaming; and

d. A complete financial statement of each principal.

B. The Gaming Regulatory Office and its staff may assist any applicant in assembling all information required for processing of the application, but no application will be processed until it is complete. The Gaming Regulatory Office staff may at any time after an application is submitted request the applicant in writing to supply additional information to enable the Gaming Regulatory Office to complete the processing of the application, which request must be complied with forthwith.

C. The application forms used by the Gaming Regulatory Office shall contain the Privacy Act notice and the notice regarding false statements, and in the form required by the Commission, pursuant to 25 C.F.R. Part 556, and each applicant shall consent in writing to the release of any information that may be relevant to the Gaming Regulatory Office's inquiry into the applicant's background from any person or entity. Any and all information obtained by the Gaming Regulatory Office in the course of reviewing an application will remain confidential, and will not be released by the Gaming Regulatory Office to any other person or agency (other than the commission if disclosure is required under the Act) without the applicant's consent, or pursuant to an order of court or other body of competent jurisdiction.

D. The Gaming Regulatory Office shall issue a decision on the application in writing. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office on such application. In the event any application for a license is denied, the decision shall specify the reason for such denial.

History

CO-75-01, October 15, 2001.

Library References

Indians ⇄32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2022. Fees

The Gaming Regulatory Office shall collect the following fees in connection with the processing of applications and the issuance of licenses:

- A. Gaming Facility Operator's License:
1. Initial application fee:
 - a. Tribal Gaming Enterprise: fifty thousand dollars (\$50,000).
 - b. Member, Board of Directors: five hundred dollars (\$500.00).
 2. Annual renewal fee:
 - a. Tribal Gaming Enterprise fifteen thousand dollars (\$15,000).

- b. Member, Board of Directors: one hundred dollars (\$100.00).
- B. Gaming Manager's License:
 - 1. Initial application fee: one thousand dollars (\$1,000).
 - 2. Annual renewal fee: five hundred dollars (\$500.00).
- C. Manufacturer's/Supplier's License:
 - 1. Initial application fee:
 - a. Manufacturer/Distributor of Gaming Devices: one thousand dollars (\$1,000.00).
 - b. Supplier of Gaming Services: one hundred dollars (\$100.00).
 - c. Third Party Financier one thousand dollars (\$1,000).
 - 2. Annual renewal fee:
 - a. Manufacturer/Distributor of Gaming Devices: five hundred dollars (\$500.00).
 - b. Supplier of Gaming Services: fifty dollars (\$50.00).
 - c. Third Party Financier: five hundred dollars (\$500.00).
- D. Gaming Employee's License:
 - 1. Initial application fee of twenty-five dollars (\$25.00)
 - 2. Annual renewal fee of ten dollars (\$10.00).
- E. Other Fees. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

History

CO-75-01, October 15, 2001.

Library References

Indians ⇨32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2023. License Terms: Renewal

A. Each gaming facility operator's license, gaming manager's license, manufacturers/suppliers license and gaming employee's license issued by the Gaming Regulatory Office hereunder shall have a primary term of one (1) year. Such license may be renewed for subsequent one-year periods upon proper application therefor, on forms specified by the Gaming Regulatory Office, but no licensee shall have any vested right to renewal of any license issued hereunder.

B. The Gaming Regulatory Office shall issue a temporary license within sixty (60) days of the receipt of a completed application for licensing pursuant to Subchapters 5, 6, 7 and 8 of this Ordinance unless the background investigation undertaken by the Gaming Regulatory Office discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to this Ordinance are apparent on the face of the application. The temporary license shall become void and be of no effect upon either the issuance of a license or upon the issuance of notice of denial of the license in accordance with the provisions of this Ordinance.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2024. [Reserved]**§ 2025. Non-transferability of License**

Each gaming facility operator's license, gaming manager's license manufacturer's/supplier's license, and gaming employee's license issued by the Gaming Regulatory Office hereunder is valid only for the person or entity at the place of business shown on the license. The license is not transferable or otherwise assignable without prior approval from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 10. Background Investigations; Notifications**§ 2026. Background Investigations**

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and a state, the Gaming Regulatory Office shall at all times have in place, and shall regularly update and improve, a system for conducting background investigations of every applicant for licensing under the ordinance. Such system shall comply with the requirements of this Ordinance and the Act, and shall include, at a minimum, utilization of records of all available tribal, state and federal law enforcement agencies, resources of the Commission, communications with other Indian tribes engaged in gaming activities, and any and all other sources of information accessible to the Gaming Regulatory Office for this purpose. Such system shall ensure that all applicants are notified of their rights under the Privacy Act as specified in 25 C.F.R. Part 556.

B. Every applicant for licensing under this Ordinance shall be subjected to a thorough background investigation, and such investigations shall be updated upon application for renewal of a license, and at such other times as the Gaming Regulatory Office may determine appropriate.

C. The Gaming Regulatory Office shall prepare a background investigation report on every applicant for licensing under the ordinance which shall include all of the following:

1. Steps taken in conducting a background investigation;
2. Results obtained;
3. Conclusions reached; and
4. The bases for those conclusions.

D. The cost of performing the background investigations on Gaming Employees shall be an expense of the gaming facility operator who has hired or proposes to hire the employee.

E. The Gaming Regulatory Office shall at all times maintain files containing the results of any background investigations conducted by it. Such files shall be retained for no less than three (3) years from the date of termination of employment or expiration of the license. Such files shall contain systems designed to safeguard the identities of confidential informants from inadvertent disclosure.

History

CO-75-01, October 15, 2001.

Library References

Gaming ☞4.

Indians ☞32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

§ 2027. Criminal History Checks

A. Unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will take fingerprints when required and send them to the NIGC. The NIGC will send the fingerprints to the FBI which will review them for any federal criminal activity including all felonies and misdemeanors. The FBI will send the fingerprints back to the NIGC along with a report stating any recorded federal criminal activity, and the NIGC will return the reviewed fingerprints with the FBI report to the Navajo Nation Department of Public Safety.

B. As part of the background investigation, the applicant will be required to disclose whether they have ever been prosecuted or convicted of a felony or a misdemeanor. In addition, unless otherwise provided in a tribal-state compact entered into between the Navajo Nation and the State of New Mexico or the State of Arizona, the Navajo Nation Department of Public Safety will review the records of the Tribal Court and also the statewide district, supreme and superior courts for New Mexico and Arizona for any criminal records as prospective employee may have.

History

CAP-4-02, April 18, 2002, added a new Section.

CO-75-01, October 15, 2001.

Library References

Gaming ☞4.

Westlaw Topic Nos. 188, 209.

Indians ☞32(12).

C.J.S. Indians §§ 64, 168.

§ 2028. Notification to the Gaming Commission

A. Within the time requirements established by the Commission the Gaming Regulatory Office shall transmit to the Commission a complete copy of license applications or such other information as may be required by the Commission. After completion of the background check of the applicant, and within the time requirements established by the Commission, the Gaming Regulatory Office shall provide to the Commission a complete report on the results of the background investigation. In the event the Gaming Regulatory Office receives any information from the Commission concerning the applicant, such information shall be taken into account by the Gaming Regulatory Office in its action on the application. The Gaming Regulatory Office shall notify the Commission if the Gaming Regulatory Office does not license an applicant.

B. Upon issuance of a license under this ordinance, the Gaming Regulatory Office shall give notice thereof to the Commission. Should the Gaming Regulatory Office receive information from the commission indicating that a primary management official or key employee does not meet the standard established in this Ordinance or in the Act for issuance of such a license, the Gaming Regulatory Office shall immediately suspend such license and give written notice thereof to the licensee. The Gaming Regulatory Office shall also notify the licensee that the licensee has fifteen (15) days following receipt of the notice of suspension to request that the Gaming Regulatory Office reconsider the notice of suspension. Upon such request for reconsideration, the Gaming Regulatory Office shall consider such oral statement(s) or written documentation as the licensee may present to the Gaming Regulatory Office at the time and place designated by the Gaming Regulatory Office. Within fifteen (15) days of receipt of such statement(s) or documentation, or the licensee's request for reconsideration, whichever is later, the Gaming Regulatory Office shall issue a written decision. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office. The Gaming Regulatory Office shall notify the Commission of its decision.

History

CO-75-01, October 15, 2001.

Library References

Indians ☞32(12).

Westlaw Topic No. 209.

C.J.S. Indians §§ 64, 168.

Subchapter 11. Gaming Facility License

§ 2029. Requirement of License

No person or entity may commence any gaming activities subject to regulation hereunder at any facility or location within the Nation until such facility or location has received a gaming facility license under the provisions of this Subchapter, nor shall any person or entity offer any new or different gaming activities, as defined by regulations to be issued by the Gaming Regulatory Office, at any facility or location that is already licensed, without first obtaining an amended license for, such new and different Gaming Activities from the Gaming Regulatory Office.

History

CO-75-01, October 15, 2001.

Library References

Gaming ↻4.

Indians ↻32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

§ 2030. Standards for Issuance of License

The Gaming Regulatory Office shall not issue a gaming facility license for any facility or location at which gaming activities are to be offered within the Nation unless the gaming facility meets the following requirements:

A. The physical facility within which the gaming activities are to be conducted is constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety;

B. The gaming activities to be conducted with the facility will lawfully be carried on by the Nation under the Act, and that the facilities are appropriate to the carrying on of such activities;

C. The gaming facility operator will adequately staff and equip the facility to ensure the safety, comfort and convenience of the patrons thereof, and that the gaming facility operator has taken adequate measures to provide for traffic, emergency service accessibility, food, drink and sanitary needs for patrons and employees, security, law enforcement and other concerns raised by the type of gaming activity proposed to be undertaken in compliance with this Ordinance and the Act;

D. The Nation or tribal gaming enterprise has agreed to a management contract or has made provision for management of the facility under terms and provisions that ensure that the activities will be carried out in a manner consistent with the requirements of this Ordinance, that the contracting party or parties have received appropriate licenses issued under the provisions of this Ordinance, and that all employees hold gaming employee's licenses issued under the provisions of this Ordinance; and

E. In all other relevant respects, the facility will be operated in a way that is fully consistent with the provisions of this Ordinance, and that its operation will

further the interests of the Nation with respect to its operation of gaming activities.

History

CAP-34-02, April 18, 2002, amended Subsection (A).

CO-75-01, October 15, 2001.

Library References

Gaming ☞4.

Indians ☞32(12).

Westlaw Topic Nos. 188, 209.

C.J.S. Indians §§ 64, 168.

§ 2031. Application for a New or Amended Gaming Facility License Procedure

A. An application for a new or amended gaming facility license shall be submitted by the tribal gaming enterprise prior to the commencement of operations at the facility or the commencement of the new activity at the facility for which an amended license is required.

B. The Gaming Regulatory Office shall prescribe the information required to be submitted with such applications, but at a minimum, such application for licensing a new facility shall include the following:

1. The name, specific position and job description of all persons to be employed as primary management officials or key employees at the facility;
2. Job descriptions for every other position in which persons will be employed at the facility;
3. A detailed description of each gaming activity to be engaged in at the facility, together with expected payouts to winners.
4. A description of the internal controls, plan of organization and all coordination methods and measures for the safeguarding of assets, ensuring the accuracy and reliability of its accounting data, promoting operational efficiency and encouraging adherence to prescribed managerial policies;
5. Detailed plans for the facility, including landscaping, traffic controls, parking, food and drink services, and other physical aspects of the building.
6. A detailed description of how security will be maintained at the facility, identifying the persons, agencies or entities that will provide such security;
7. A detailed description of how gaming proceeds will be accounted for and disposed of on a daily basis;
8. A copy of any proposed management contract or other contractual arrangement by which the activities at the facility are to be managed.
9. A description of provisions for dealing with fire or other potential emergencies at the facility;
10. A detailed description of how sewage and other waste products from the facility will be handled and disposed of; and
11. Any other information relevant to the proposed operation of the facility or requested by the Gaming Regulatory Office as part of the application.

C. An application for an amended license to conduct new or different gaming activities at a licensed location or to otherwise alter the terms or conditions of an existing license, shall, at a minimum, include the following information:

1. Any change in information previously provided in the original license application or any previous application for an amended license for the facility;
2. A detailed description of the changes in the facility or in the activities to be carried on therein for which the amended license is required, together with a statement of the reasons for such change;
3. If a proposed change will require any change in the existing management contract with respect for the facility, a copy of the proposed amendment to such contract or new contract; and
4. Any other information relevant to the changes or new activities requiring the amendment.

D. In its decision to license any facility, or to amend any existing license to permit the conduct of new or different Gaming Activities at a licensed facility, the Gaming Regulatory office may specify, consistent with the provisions of the Ordinance, terms or conditions it believes necessary or appropriate to ensure the health and safety of patrons and employees of any such facility, the integrity of the gaming activities carried on at such facility, and the security of gaming proceeds. If dissatisfied with any such condition, the applicant may request that the Gaming Regulatory Office reconsider its determination. Upon such request for reconsideration, the Gaming Regulatory Office shall issue a written decision within fifteen (15) days of its receipt of the request for reconsideration. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

History

CO-75-01, October 16, 2001.

Library References

Indians ⇄32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2032. Fees

The Gaming Regulatory Office shall collect the following fees in connection with the processing of application and the issuance of licenses:

- A. Gaming Facility License:
 1. Annual fee of thirty thousand dollars (\$30,000).
 2. Application for amendment of an existing gaming facility license: fifteen thousand dollars (\$15,000).
- B. The annual fee shall be payable in equal quarterly installments, the first of which shall be payable within fifteen (15) days of receipt of notice of

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approval of the gaming facility license. The remaining installments shall be paid on the first day of each succeeding calendar quarter.

C. The Gaming Regulatory Office may by regulation prescribe such other fees as it deems appropriate.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2033. License Terms; Renewal

Each gaming facility license issued by the Gaming Regulatory Office shall be for a term of two (2) years. Such license may be renewed for subsequent three (3) year terms upon proper application on forms specified by the Gaming Regulatory Office.

Subchapter 12. Facility Inspection; Notice of Violation; Complaints; Judicial Review

§ 2034. Facility Inspection

The Gaming Regulatory Office shall, no less than monthly and at such other times as it believes are warranted, cause detailed inspections to be made of each gaming facility licensed under the provisions of this ordinance, to assure that such facility is being operated in accordance with the terms of the license and of the provisions of this Ordinance and the Act.

History

CO-75-01, October 16, 2001.

Library References

Gaming ☞4. Westlaw Topic Nos. 188, 209.
Indians ☞32(12). C.J.S. Indians §§ 64, 168.

§ 2035. Notice of Violation

A. The Executive Director of the Gaming Regulatory Office shall issue a notice of violation to any person or entity determined by the Gaming Regulatory Office to be in violation of any provision of this Ordinance or the Act.

B. A notice of violation shall contain:

1. A citation to the ordinance, regulation of federal law that has been or is being violated;
2. A description of the circumstances surrounding the violation, set forth in common and concise language;

3. The action which must be taken to correct the violation;
4. Notice that the violation must be corrected within fifteen (15) days from receipt of the notice of violation;
5. Notice of a civil fine or other enforcement action that will or may be imposed if the violation is not corrected;
6. Notice that a written response to the notice of violation must be submitted to, and received by, the Gaming Regulatory Office within fifteen (15) days of the receipt of the notice of violation; and
7. Notice that the cited violation shall be the written decision of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

C. In the event the violation is not corrected, or a written response to the notice of violation is not made within fifteen (15) days following receipt of the notice of violation, the Gaming Regulatory Office may take one or more of the following actions:

1. Suspend or revoke the license of the person or entity to whom the notice of violation was directed;
2. Assess a civil penalty in accordance with the provisions of this Ordinance;
3. Forcibly eject the violator from the premises of the Gaming Facility;
4. Seize the gaming facility and all equipment, records, and proceeds of gaming activities located within the gaming facility; or
5. Upon consultation with the Nation's Attorney General, initiate in the District Court of the Navajo Nation a civil action or criminal complaint to enforce the Ordinance, regulations of the Gaming Regulatory Office or the Act.

D. Each person or entity to whom a notice of violation is issued shall submit a written response to the Gaming Regulatory Office together with any additional written information the person believes the Gaming Regulatory Office should consider. Such response and supporting documentation must be received by the Gaming Regulatory Office within fifteen (15) days of the receipt of the notice of violation. Upon receipt of the written response, the Gaming Regulatory Office shall issue a written decision within fifteen (15) days. Such written decision shall constitute final action of the Gaming Regulatory Office with respect to such notice of violation. No action to enforce the notice of violation shall be taken by the Gaming Regulatory Office until the Gaming Regulatory Office issues its written decision; provided that, the Gaming Regulatory Office may summarily suspend any license issued under this Ordinance or take such other immediate action if the continued licensing of, or conduct by, a person or entity constitutes an immediate threat to the public health, safety or welfare. The notice of violation is the final action of the Gaming Regulatory Office if no written response to the notice of violation is submitted to the Gaming Regulatory Office within the time prescribed in § 2035(B)(6).

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E. The Gaming Regulatory Office may employ a Hearing Officer to hear and decide matters to be heard by the Gaming Regulatory Office in accordance with the provisions of this Ordinance; provided, sufficient funds are appropriated or made available for a Hearing Office and appropriate staff.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2036. Investigation of Complaints

A. The Gaming Regulatory Office shall investigate all sworn complaints that are filed with the Gaming Regulatory Office alleging that a licensee is acting in violation of the terms of any license, or a gaming facility is not being maintained in accordance with the terms of any license or does not adequately protect the health, safety and welfare of the employees or patrons.

B. The Gaming Regulatory Office shall give written notice of and provide a copy of the sworn complaint to the licensee. The licensee shall file with the Gaming Regulatory Office a written reply to the complaint within fifteen (15) days of receipt of the notice and complaint.

C. Following receipt of the licensee's response to the complaint, the Gaming Regulatory Office shall cause a full investigation to be made of the allegations. If the Gaming Regulatory Office determines that a violation of the Ordinance or the Act has occurred or is occurring, the Executive Director shall issue a notice of violation in accordance with the provisions of the Chapter.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2037. Judicial Review

A. Any person or entity who has been issued a notice of violation by the Executive Director of the Gaming Regulatory Office and who has submitted a written response to the Gaming Regulatory Office in compliance with the provisions of § 2035(D) of this Subchapter, may apply to the District Court of the Navajo Nation for review of such notice of violation. Any applicant for a license under this Ordinance, and any person or entity licensed pursuant to this Ordinance, and any patrol of a gaming operation may apply to this District Court of the Navajo Nation for review of a final action of the Gaming Regulatory Office.

B. Any such application for court review must be made within fifteen (15) days of receipt of notice of the final action of the Gaming Regulatory Office. The person or entity requesting judicial review shall be the moving party and shall have the burden of proof by clear and convincing evidence.

C. The reviewing court shall decide all relevant questions of law presented, interpret statutory provisions, and determine the basis for the action of the Gaming Regulatory Office. The reviewing court shall uphold the action of the Gaming Regulatory Office unless the court determines that such action was:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. Contrary to statutory right, power, privilege, or immunity;
3. In excess of statutory jurisdiction, authority, or limitations, or in violation of statutory right;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 13. Gaming Operation

§ 2038. Scope of Permissible Gaming

The Gaming Activity permitted to be conducted in a licensed Gaming Facility are those which may lawfully be carried on by the Nation under applicable provisions of federal law including, but not limited to the Act, subject to any limitations which may be imposed by this Ordinance.

History

CO-75-01, October 16, 2001.

Library References

Gaming ☞1 to 21. C.J.S. Indians §§ 64, 168.
Indians ☞32(12). C.J.S. Trading Stamps and Coupons §§ 4 to 5.
Westlaw Topic Nos. 188, 209.

§ 2039. Hours, Days, Other Standards

A. For all activities on Indian lands located outside the State of New Mexico the Gaming Regulatory Office may by regulation establish the permissible hours and days of operation of gaming activities. The regulations may authorize a licensed gaming facility.

B. For all activities on Indian lands located within the State of New Mexico, the following standards shall apply:

1. The Navajo Nation shall take all necessary action to impose on its gaming operation standards and requirements equivalent to or more stringent than those contained in the federal Fair Labor Standards Act of 1938,¹ the federal Occupational Safety and Health Act of 1970,² and any other federal laws relating to wages, hours of work and conditions of work, and the regulations issued thereunder;

2. On any construction project involving any gaming facility or related structure that is funded in whole or in part by federal funds, all workers will be paid wages meeting or exceeding the standards established for New Mexico under the federal Davis-Bacon Act;³

3. The Navajo Nation, the gaming enterprise and a management contractor shall not discriminate in the employment of persons to work for the gaming enterprise or in the gaming facility on the grounds of race, color, national origin, gender, sexual orientation, age or handicap. This provision shall not be deemed to prohibit the application of the Navajo Preference in Employment Act.

4. All employees of a gaming establishment shall be provided employment benefits, including, at a minimum, sick leave, life insurance, paid annual leave and medical and dental insurance as well as providing unemployment insurance and workers compensation insurance through participation in programs offering benefits at least as favorable as those provided by comparable programs of the State of New Mexico.

5. A grievance process shall be provided for an employee in cases of disciplinary or punitive action taken against an employee that includes a process for appeals to persons of greater authority than the immediate supervisor of the employee;

6. New Mexico State Department of Environment inspectors shall be permitted to inspect gaming facilities' food service operations during normal gaming facility business hours to assure that standards and requirements equivalent to New Mexico' Food Service Sanitation Act⁴ are maintained;

7. Gaming enterprises are prohibited from cashing any paycheck or any type of government assistance check, including Social Security, AFDC, pension and other similar checks, for any patron.

8. Gaming enterprise are prohibited from extending credit by accepting IOUs or markers from its patrons;

9. Odds shall be posted on each electronic and electromechanical gaming device.

10. Automatic teller machines on gaming facility premises shall be programmed so that the machines will not accept cards issued by New Mexico to AFDC recipients for access to AFDC benefits.

11. Each electronic or electromechanical gaming device in use at the gaming facility shall pay out a mathematically demonstrable percentage of all amounts wagered, which must not be less than eighty percent (80%);

12. No later than ninety (90) days after this compact takes effect, all gaming machines on the premises of the gaming facility will be connected to a central computerized reporting and auditing system on the gaming facility premises, which shall collect on a continual basis the activity of each gaming machine in use at the gaming facility, and that such data shall be electronically accessible to New Mexico gaming representative upon entry of appropriate security codes;

13. Employees of a gaming facility are prohibited from selling, serving, giving or delivering an alcoholic beverage to an intoxicated person or from procuring or aiding in the procurement of any alcoholic beverage for an intoxicated person at the gaming facility.

14. Gaming facility employees that dispense, sell, serve or deliver alcoholic beverages shall attend alcohol server education classes similar to those classes provided for in the New Mexico Liquor Control Act;

15. Gaming facility operators shall purchase and maintain a liquor liability insurance policy that will provide, at a minimum, personal injury coverage of one million dollars (\$1,000,000) per incident and two million dollars (\$2,000,000) aggregate per policy year;

16. Alcoholic beverages shall not be sold, served, delivered or consumed in that part of a gaming facility where gaming is allowed;

17. The tribal gaming enterprise shall spend an amount that is no less than one-quarter of one percent (.25%) of its net win as that term is defined herein annually to fund or support programs for the treatment and assistance of compulsive gambling;

18. Governing any management contract regarding its Class III gaming activity such that it conforms to the requirements of tribal law and the IGRA and the regulations issued thereunder;

19. The operation of any class III Gaming shall be prohibited for at least four (4) consecutive hours daily, Monday through Thursdays (except federal holidays);

20. Gaming facility operators and the Navajo Nation shall not provide, allow, contract to provide or arrange to provide alcoholic beverages, food or lodging for no charge or at reduced prices at a gaming facility or lodging facility as an incentive or enticement for patrons to game; and

21. The Navajo Nation, the Navajo Gaming Regulatory Office or a management contractor shall be prohibited from contributing directly, or through an agent, representative or employee, revenue for a gaming enterprise owned by the Navajo Nation, or anything of value acquired with that revenue, to a candidate, political committee or person holding an office elected or to be elected at an election covered by New Mexico's Campaign Reporting Act.

¹ 29 U.S.C. § 201 et seq.

² 29 U.S.C. § 651 et seq.

³ 40 U.S.C. § 276a et seq., repealed by Pub.L. 107-217, § 6(b), Aug. 21, 2002, 116 Stat. 1308. See, now, 40 U.S.C. § 3141 et seq.

⁴ 4 N.M.S.A. 1978, § 25-1-1 et seq.

5 N.N.C. § 2039

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History

CO-75-01, October 16, 2001.

Library References

Gaming ☞1 to 21.	C.J.S. Indians §§ 64, 168.
Indians ☞32(12).	C.J.S. Intoxicating Liquors §§ 33, 213 to 214, 218, 222 to 226, 228, 232, 235 to 236.
Intoxicating Liquors ☞110 to 116.	C.J.S. Labor Relations §§ 1141 to 1142.
Labor Relations ☞1268.	C.J.S. Trading Stamps and Coupons §§ 4 to 5.
Westlaw Topic Nos. 188, 209, 223, 232A.	

§ 2040. Employee and Player Age Limit

No person under twenty-one (21) year of age shall be permitted to place any wager, directly or indirectly, in any gaming activity. No person under eighteen (18) years of age shall be employed by a gaming facility operator or by the Gaming Regulatory Office. The Gaming Regulatory Office shall by regulation establish measures by which licensees shall enforce the provisions of this Section.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).	C.J.S. Indians §§ 64, 168.
Infants ☞13, 14.	C.J.S. Infants §§ 5, 92 to 93, 95 to 99.
Westlaw Topic Nos. 209, 211.	

§ 2041. Management Security

A. The Gaming facility operator shall have the responsibility for the on-site operation, management and security of the gaming facility, and shall comply with all requirements of this Ordinance and the Act. The gaming facility operator shall adopt reasonable procedures, consistent with this Ordinance and the Act, designed to provide for the following: the physical safety of its employees; the physical safety of patrons in the Gaming Facility; the physical safeguarding of assets transported to and from the gaming facility and cashier's cage department; and the protection of the patrons' and the gaming operation's property from illegal activity.

B. The gaming facility operator shall designate an agent for service of any official determination, order or notice of the Commission.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2042. Internal Controls

A. The Gaming Regulatory Office shall by regulation establish and the gaming facility operators shall implement minimum standards of internal controls to be in place at each licensed gaming facility, which shall include systems of accounting and administrative controls. Internal controls include the plan of organization and all of the coordinate methods and measures adopted within a gaming operation to safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency and encourage adherence to prescribed managerial policies.

B. The system of accounting controls shall provide a plan of organization and a description of procedures and records that will permit reasonable assurance that the following objectives will be maintained:

1. Safeguarding of assets;
2. Reliability of financial records;
3. Execution of transaction in accordance with management's general or specific authorization;
4. Recording of transactions as necessary to permit recording of gaming revenue and to maintain accountability for assets;
5. Access to assets only in accordance with management's authorization; and
6. Comparison of records of assets with existing assets at reasonable intervals with provision for appropriate action with respect to any differences.

C. The system of administrative controls shall include a complete plan of organization that will provide appropriate segregation of functional responsibilities and sound practices to be followed in the performance of those duties by competent and qualified personnel. The plan of organization shall be diagrammatic and narrative describing the interrelationship of functions and the division of responsibilities upon which the system of internal control relative to gaming operations is based.

D. Upon written application to the Gaming Regulatory Office, the licensee may request any material change in the internal control system it determines appropriate. The Gaming Regulatory Office shall notify the licensee in writing that such application is accepted or rejected, within thirty (30) days of receiving such application. The written decision of the Gaming Regulatory Office shall constitute final action of the Gaming Regulatory Office.

E. The system of accounting controls shall include a detailed system for counting cash receipts at least daily, and shall be appropriate to the types of gaming activities carried on at the facility and the physical characteristics of the system utilized for collecting cash.

F. The Gaming Regulatory Office shall require that all bank accounts maintained by the operators of the gaming facility shall be identified by bank and account number and that all signatories to such accounts be identified by name.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2043. Annual Independent Audit

A. Each licensed gaming facility operator shall provide at its own expense an audited financial statement for its licensed gaming facility to the Gaming Regulatory Office at least annually, on a date to be established by the Gaming Regulatory Office, and at such other times as the Gaming Regulatory Office may require.

B. The audit shall be conducted by an independent certified public accountant licensed in a state, who shall submit an audit report expressing an unqualified or qualified opinion or if appropriate, disclaim an opinion on the statement taken as a whole in accordance with generally accepted auditing standards of the accounting profession. The examination and audit shall disclose whether the accounts, records, and internal controls and accounting procedures maintained by the licensed gaming facility are in compliance with this Ordinance and the Act. To facilitate the completion of such audits, each licensed gaming facility operator shall make and maintain complete, accurate and legible records of all transactions pertaining to any gaming activities and any other revenue producing activities conducted by the licensee at or in conjunction with any licensed gaming facility. Such records as well as all original entry transaction records shall be maintained for at least five (5) years from the date on which they are made, and during the pendency of any litigation arising thereunder. Such records shall be maintained on the licensed premises or at a location approved by the Gaming Regulatory Office.

C. Each licensed gaming facility operator shall maintain general accounting records on a double entry system of accounting with detailed, supporting subsidiary, records sufficient to furnish the information required for the standard financial reports to adequately reflect gross income and expenses related to gaming and subsidiary operations.

D. The Gaming Regulatory Office shall from time to time prescribe a uniform chart of accounts and accounting classifications in order to assure consistent and effective disclosure of financial information.

E. The Gaming Regulatory Office, when it deems necessary, may request additional information from either the licensee, or its independent accountant through the licensee, regarding either the financial statements, the audit or both. The licensee shall provide to the Gaming Regulatory Office copies of all letters from the independent accountant to the licensee regarding internal control matters within thirty (30) days after receipt by the licensee.

F. The Gaming Regulatory Office shall provide copies of all annual audits of gaming activities and licensees to the Commission as required under the Act,

within the time requirements established by the Commission, and shall cooperate with the Commission with respect to any additional information required.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2044. Public Disclosure of Payouts

A schedule of payout information as to all gaming activities carried on within a licensed gaming facility shall be displayed at all times within the facility at a location clearly visible to patrols, and shall be updated regularly.

History

CO-75-01, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2045. Patron Disputes

A. Refusal to Pay Winnings. Whenever the Gaming Facility Operator refuses payment of alleged winnings to a patron, and the Gaming Facility Operator and the patron are unable to resolve the dispute to the satisfaction of the patron and if the dispute involves:

1. At least five hundred dollars (\$500.00), the gaming facility operator shall notify the Gaming Regulatory Office as soon as possible; or
2. Less than five hundred dollars (\$500.00), the Gaming Facility Operator shall inform the patron of his or her right to request that the Gaming Regulatory Office conduct an investigation. The Gaming Regulatory Office shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

B. Notice to Patrons. The Gaming Regulatory Office shall mail written notice by certified mail, return receipt requested, to the gaming facility operator and the patron of its decision resolving the dispute within thirty (30) days after the date that the Gaming Regulatory Office first receives notification from the gaming facility operator or a request to conduct an investigation from the patron.

C. Effective Date of Decision. The decision of the Gaming Regulatory Office is effective on the date it is received by the aggrieved party as reflected on the return receipt.

D. Review of Decision. Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Gaming

5 N.N.C. § 2045

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Regulatory Office requesting a review of the decision. The Gaming Regulatory Office may set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patrol and the gaming facility operator. The Gaming Regulatory Office shall then issue a written decision and mail it to the parties pursuant to the procedures set forth in § 2045(B). The written decision of the Gaming Regulatory Office shall be the final decision of the Gaming Regulatory Office.

History

CO-75-01, October 16, 2001.

Library References

Gaming ⇨22 to 40.
Indians ⇨32(12).

Westlaw Topic Nos. 188, 209.
C.J.S. Indians §§ 64, 168.

§ 2046. Play by Employees

No primary management official, key employee, member or staff of the board of directors of a tribal gaming enterprise, management contractor, employee of a gaming facility, and no employee of the Gaming Regulatory Office shall play or be permitted to play either in person or through an agent in any gaming activity carried on in any gaming facility licensed by the Gaming Regulatory Office pursuant to this Ordinance.

History

CO-75-01, October 16, 2001.

Library References

Gaming ⇨5.
Indians ⇨32(12).

Westlaw Topic Nos. 188, 209.
C.J.S. Indians §§ 64, 168.

§ 2047. Small Bingo Games and Raffles

Any non-profit organization, upon proper application to the Gaming Regulatory Office, may conduct or operate a small bingo game or raffle within the territorial jurisdiction of the Nation, in accordance with the regulatory provisions of the Indian Gaming Regulatory Act and the regulations issued by the Gaming Regulatory Office specifying the manner in which such games may be conducted.

History

CAP-34-02, April 18, 2002, amended the Section and deleted Subsection (A),(B),(C) and (D).
CO-75-01, October 16, 2001.

Library References

Gaming ⇨6 to 7, 62 to 81.
Indians ⇨32(12).
Lotteries ⇨3.
Westlaw Topic Nos. 188, 209, 247.

C.J.S. Commerce § 139.
C.J.S. Indians §§ 64, 168.
C.J.S. Lotteries §§ 2 to 7, 11.
C.J.S. Trading Stamps and Coupons §§ 4 to 5.

§ 2048. Processing of Contracts

The Department of Justice shall review the recommendation of the Gaming Regulatory Office and, if in compliance with applicable law and regulation, approve the terms of any and all proposed contracts between the Nation or a tribal gaming enterprise and any person or entity which provide for the management or operation of any gaming facility within the Nation, the provision of any and all games services, as well as the terms of any lease of land which is the site or proposed site of such gaming facility.

Library References

Indians ⇨32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

Subchapter 14. Violations and Remedies

§ 2049. Violations.

It shall be a violation of this Ordinance for any person to:

- A. Conduct or operate any gaming activities within the Nation except as provided in this Ordinance;
- B. Receive, distribute, apply or direct any property, funds, proceeds or other asset of any gaming activity to the benefit of any individual or other person except as authorized by this Ordinance or by any duly enacted resolution of the Navajo Nation Council;
- C. Tamper with any equipment used in the conduct of gaming activities with the intent to cause any person to win or lose any wager other than in accordance with the publicly announced rules of such gaming activities;
- D. Do any other act in connection with the conduct of any gaming activities with the intent to affect the outcome of any wager other than in accordance with the publicly announced rules of such gaming activities;
- E. Participate as a player in any gaming activities if such person is prohibited under § 2046 from participating in such gaming activities; or
- F. Participate as a player in any gaming activities while such person is listed as a person barred from the Nation's Gaming Facilities as provided in § 2008(G).

History

CO-75-02, October 16, 2001.

Library References

Indians ⇨32(12, 13).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 157, 168.

5 N.N.C. § 2050

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§ 2050. Civil Penalties

Any person who violates any provision of this Ordinance or the Act shall be subject to civil penalties including exclusion from employment by a gaming facility operator, exclusion from attendance at any gaming facility, exclusion from the Nation if the person is a nonmember of the Nation, or a civil fine of not more than ten thousand dollars (\$10,000) for each such violation.

History

CO-75-02, October 16, 2001.

Library References

Gaming ☞51 to 57.
Indians ☞32(12).

Westlaw Topic Nos. 188, 209.
C.J.S. Indians §§ 64, 168.

§ 2051. Civil Remedies

The Gaming Regulatory Office may in the name of the Nation bring a civil action in the courts of the Nation to enforce the provisions of this Ordinance or the Act or to enjoin or otherwise prevent any violation of this Ordinance or the Act occurring within the territorial jurisdiction of the Nation.

History

CO-75-02, October 16, 2001.

Library References

Indians ☞32(7, 12).
Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 64, 139 to 143,
152, 168.

Subchapter 15. Amendments; Compliance with Applicable Laws; etc.

§ 2052. Amendments

This Ordinance may be amended by action of the Navajo Nation Council.

History

CO-75-02, October 16, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 2053. Compliance with the Act

All Gaming Activities conducted pursuant to this Ordinance shall comply with the terms and conditions of the Act.

History

CO-75-02, October 16, 2001.

Library References

Indians ☞32(12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 64, 168.

§ 2054. Severability

If any Section, provision, or portion of this Ordinance is adjudged to be invalid by a court of competent jurisdiction, the remainder of this Ordinance will remain valid.

History

CO-75-02, October 16, 2001.

§ 2055. Non-liability

The Nation declares that there is no liability on the part of the Nation, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformity with the requirements of this Ordinance. The Nation by adoption of this Ordinance does not waive its sovereign immunity in any respect.

History

CO-75-02, October 16, 2001.

Library References

Indians ☞32(1, 4.1, 12).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51, 64, 168.

§ 2056. Navajo Preference

Preference in employment and contracting at licensed gambling establishments shall be in compliance with the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., and the Navajo Nation Business Preference Law, 5 N.N.C. § 201 et seq.

History

CO-75-02, October 16, 2001.

Library References

Civil Rights ☞1041, 1236. C.J.S. Civil Rights §§ 23, 64 to 65.
Indians ☞32(12). C.J.S. Indians §§ 64, 168.
Westlaw Topic Nos. 78, 209.

§ 2057. Prior Inconsistent Law

All prior laws inconsistent with this Ordinance are, hereby expressly repealed to the extent of their inconsistency.

History

CO-75-02, October 16, 2001.

Chapter 11. Navajo Nation Business Site Leasing Act**Subchapter 1. Generally****Section**

2301.	Title; policy
2302.	Navajo Business Site Leasing Regulations of 2000
2303.	Definitions
2304.	Severability
2305.	Review of authority
2306.	Prior inconsistent law(s)
2310–2321.	Rescinded

History

CJA–12–01, January 26, 2001.	CAP–31–65, April 13, 1965.
CAU–42–87, August 12, 1987.	ACAU–124–65, § 1, August 2, 1962.
CAP–34–71, April 15, 1971.	ACMA–38–60, § 3, March 9, 1960.
CMY–43–70, May 19, 1970.	ACF–12–60, § 1, February 9, 1960.
CAU–59–65, August 4, 1965.	ACAU–58–57, August 23, 1957.
	CS–33–54, September 9, 1954.

Cross References

Trading Post site leases, see 2701 *et seq.* of this title.

Annotations

See annotations under Licenses and Permits in digest.

§ 2301. Title; policy

A. This chapter shall be known and cited as the Navajo Nation Business Site Leasing Act of 2000; 5 N.N.C. §§ 2301–2305.

B. It shall be the policy of the Navajo Nation that its business site leasing system should accomplish the following goals:

1. To establish streamlined process for the Navajo Business Site Leasing;
2. To authorize the Economic Development Committee to promulgate Navajo Business Site Leasing Regulations;
3. To authorize the Economic Development Committee of the Navajo Nation Council to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation according to rules and regulations governing such delegations and rescission of such delegations as developed and approved by the Committee;
4. To protect Navajo land and resources by regulating and limiting types of land use and impacts;
5. To protect public health and welfare by establishing terms and conditions for business activities and by prescribing sanctions for violations of those terms and conditions;
6. To promote self-determination and encourage economic self-sufficiency, including economic development that increases employment, business activities and standard of living for members of the Navajo Nation; and

7. To encourage business development within the Navajo Nation, and in particular, to encourage Navajos to enter and develop successful business ventures by developing streamlined leasing procedures and providing appropriate incentives and opportunities.

History

CJA-12-01, January 26, 2001, amended Sub-section A, B, C and D.

CAU-42-87, August 12, 1987.

Library References

Indians ↔9.

Westlaw Topic No. 209.

C.J.S. Indians § 67.

§ 2302. Navajo Business Site Leasing Regulations of 2000

A. This Act is an enabling legislation that authorizes the Economic Development Committee to promulgate the Navajo Business Site Leasing Regulations; provided, however, that the Business Site Leasing Regulations contain factors that:

1. Protect and preserve Navajo trust assets from loss, damage, unlawful alienation, waste and depletion;
2. Promote the Navajo Nation control, interest of the Navajo Nation and support the use of the trust assets;
3. Provide asset management system that prudently oversees the management, tracking and inventory of tribal assets;
4. Account for and timely identify, collect, deposit and distribute income from the trust assets or reinvest income or monies into economic development activities or projects;
5. Provide for records and recording system for accounts and leases and other operational and information system; and
6. Provide other provisions that promote modern and up-to-date leasing practices.

B. The Act also authorizes the Economic Development Committee to delegate its approval authority to the Division of Economic Development of the Executive Branch, an entity or chapters of the Navajo Nation provided that the boundaries and principles of the delegation of authorities are appropriately created.

C. According to the authority of promulgating Navajo Business Site Leasing Regulations, the Economic Development Committee shall adopt Navajo Business Site Leasing Regulations governing Navajo trust lands, separate and apart, from Navajo Business Site Leasing regulations governing Navajo fee lands or other types of Navajo lands.

D. A copy of the Business Site Leasing Regulations promulgated under this Act shall be filed with the Central Records Office of the Navajo Nation and any amendments thereof.

5 N.N.C. § 2302

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History

CJA-12-01, January 26, 2001.
CAU-42-87, August 12, 1987.

Library References

Indians ☞10, 16.
Westlaw Topic No. 209.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,
77 to 80, 98.

§ 2303. Definitions

A. “Economic Development Committee” means a standing committee of the Navajo Nation Council established pursuant to Navajo Nation Council Resolution CD-68-89. See 2 N.N.C. § 721 *et seq.*

B. “Secretary” means the Secretary of the Interior or his authorized representative acting under delegated authority.

C. “Navajo Nation Land” means land or any interest therein held by the United States in trust for the Navajo Nation and land that is held by the Navajo Nation subject to federal restrictions against alienation or encumbrance, excluding allotment lands. Navajo Nation land also means Navajo fee land.

D. “Business purposes” means any person, partnership, association, cooperative, company, corporation or other legal entity lawfully engaged in employment, occupation, profession, commercial or industrial activity for gain or livelihood.

E. “Regulations” means the rules and regulations duly adopted by the Economic Development Committee to govern the leasing, permitting and licensing of Navajo Nation land for business purposes under the provisions of this Act, and to govern delegation of authority.

F. “Lease” means business site lease, permits and licenses granting land use privileges in Navajo Nation land for business purposes.

G. “Asset management system” means a system that is designed for the purposes of leasing, renting, operating and maintaining the premises, managing the demised premises and structures affixed to the premises, and a system that accounts, provides for inventory of and tracking of income or money, lands and other property.

History

CJA-12-01, January 26, 2001.
CAU-42-87, August 12, 1987.

Note. CD-62-89 inserted for CJA-1-87, see subsection (A).

Library References

Indians ☞16.
Westlaw Topic No. 209.
C.J.S. Indians § 98.

§ 2304. Severability

The provisions of this Act are severable and if any provision of this Act, or its application to any person or circumstance is held invalid by a final judgment of

the Navajo Nation Court, such decision shall not affect the validity of the remaining portions of this Act.

History

CJA-12-01, January 26, 2001. Previous § 2304 was rescinded and this new § 2304 was previously codified as § 2318 of this Subchapter. CAU-42-87, August 12, 1987.

§ 2305. Review of authority

The Economic Development Committee and the Chief of the Office of Business and Economic Development or its successor shall, from time to time, review the authority granted to them under this Act and propose amendments and additions thereto to the Navajo Nation Council in order to improve and streamline the business site leasing process.

History

CJA-12-01, January 26, 2001.
CAU-42-87, August 12, 1987.

Library References

Indians ⇨16, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians § 98.

§ 2306. Prior inconsistent law(s)

Upon the effective date of this Navajo Nation Business Site Leasing Act of 2000, all prior inconsistent laws, rules, policies, ordinances, and regulations of the Navajo Nation branches, divisions, departments, offices and political subdivisions thereof, are hereby superseded and/or amended to comply herewith.

History

CJA-12-01, January 26, 2001.
CAU-42-87, August 12, 1987.

§§ 2310 to 2321. [Rescinded]

History

CJA-12-01, January 26, 2001.

Chapter 13. Regulation of Tourist Passenger Services

Section

- 2501. Permits
- 2502. Adoption of regulations
- 2503. Revocation of permit
- 2504. Operation without permit
- 2505. Separability clause

§ 2501. Permits

A. No person, firm, association or corporation shall, either directly or indirectly, furnish, provide or conduct passenger transportation for hire, for the purposes of touring, visiting, sightseeing or like activities within the Navajo Nation, unless said person, firm, association or corporation shall first obtain a permit from the Division of Economic Development of the Navajo Nation to perform such activities within the Navajo Nation.

B. Any person, firm, association or corporation desiring to obtain such permit shall deliver to the Division of Economic Development of the Navajo Nation a true copy of the articles of association, partnership, incorporation or organization, whichever the case may be, together with a verified statement showing the rates to be charged for the activity involved, and the basis therefor; and a proposed schedule of routes, distances, and times to be covered by such activity.

C. At the time of filing a statement under Subsection (B) of this Section, each person, firm, association or corporation shall pay the Office of the Controller of the Navajo Nation a fee in accordance with the following schedule:

- 1. A Daily permit: (one (1) to five (5) days) at five dollars (\$5.00) per day
- 2. Educational, Student and Charitable Groups Only
 - Thirty (30) days One hundred dollars (\$100.00)
 - Sixty (60) days Two hundred dollars (\$200.00)
 - Ninety (90) days Three hundred dollars (\$300.00)
 - Annual Five hundred dollars (\$500.00)

D. The fee requirement of Subsection (C) of this Section shall not apply to any person, firm, association or corporation owned by an enrolled member of the Navajo Nation for the first year such enrolled member shall engage in such passenger tourist services, if it shall be determined by the Division of Economic Development of the Navajo Nation, upon information submitted to such department, that payment of such fee shall be prohibitive to engaging in said services by such enrolled member. Such exemption from the payment of the required fee shall not extend beyond the first year of operation of such services by such enrolled member.

E. Nothing in this Section shall relieve any applicant from any other requirements of this Chapter.

F. Upon payment of the required fee and upon satisfaction of the Division of Economic Development of the quality of the activity, the Division of Economic Development shall issue to the applicant a permit to perform such activities within the Navajo Nation. Provided, however, no such permit shall be issued unless the applicant shall first undertake in writing to hold the Navajo Nation harmless for any damages occasioned by the activities of such permittee within the Navajo Nation, and to indemnify the Navajo Nation for any liability which might accrue because of the activities of such permittee within the Navajo

Nation. Such permit shall expire on the day specified on the permit and may be renewed by payment of the fee as referred to, and the filing of the copy and verified statement referred to, in Subsections (B) and (C) of this Section.

History

CN-82-72, Exhibit A, §§ 1-3, 5, November 2, 1972.

Notes. 1. References to the "Commerce Department" are referred to as the Division of Economic Development for the purposes of this Chapter.

2. "Treasurer's Office" was repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" to have been changed to the Office of the Controller. See generally 12 N.N.C. § 201 *et seq.*

Library References

Carriers ⇨8.

Indians ⇨32(9).

Westlaw Topic Nos. 70, 209.

C.J.S. Aeronautics and Aerospace § 189.

C.J.S. Carriers §§ 356 to 366, 373 to 376, 378 to 381, 383 to 384.

C.J.S. Indians §§ 130 to 132, 134.

§ 2502. Adoption of regulations

The Division of Economic Development is authorized and directed to adopt, publish and enforce such reasonable rules, regulations and directives as are necessary or convenient to implement this Chapter and to ensure that all facilities, services, vehicles and personnel engaged in the described activities conducted within the Navajo Nation are of such quality as will not discredit the Navajo Nation. The Division of Economic Development is granted such authority as is necessary to ensure compliance with this Chapter and with the rules, regulations and directives adopted and published pursuant to this Chapter.

History

CN-82-72, Exhibit A, § 4, November 2, 1972.

Notes. 1. "Commerce Department" was discontinued by the 1981 Budget and Organization chart. References to the "Commerce Department" are referred to the "Division of Economic Development" for the purposes of this chapter.

2. "Treasurer's Office" repealed by CF-5-73, February 1, 1973. References to the "Treasurer's Office" have been changed to the "Office of the Controller." See generally 12 N.N.C. § 201 *et seq.*

Library References

Indians ⇨32(4.1, 9).

Westlaw Topic No. 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 2503. Revocation of permit

A. If, during the period of any permit, the Division of Economic Development shall determine that any person, firm, association, or corporation holding a permit shall have failed to abide by the reasonable rules, regulations or directives adopted and published by the Division of Economic Development, a notification of such discrepancy shall be forwarded by the Division of Economic Development to such person, firm, association or corporation, requiring correction of the discrepancy within the ten (10) days. If such discrepancy is

not corrected within ten (10) days, then, upon adequate notice and fair hearing in accordance with rules of procedures to be established by the Division of Economic Development, such permit shall be revoked and the applicable person, firm, association or corporation shall not be permitted to conduct such activities within the Navajo Nation until such discrepancies are corrected. After correction of such discrepancies, application for a new permit may be submitted.

B. Upon denial or revocation of license, an aggrieved party may appeal such denial or revocation, within fifteen (15) days, to the Supreme Court of the Navajo Nation for review, which Court is hereby specifically granted jurisdiction to hear such appeals. Review by the Supreme Court of the Navajo Nation shall be limited to questions of abuse of discretion and lack of reasonable basis for denial or revocation. After hearing the appeal, the Supreme Court of the Navajo Nation may either affirm or remand for further hearings by the Division of Economic Development in accordance with the decision of the Supreme Court of the Navajo Nation. Evidence or information not presented to the Division of Economic Development shall not be admissible before, or considered by the Supreme Court of the Navajo Nation. Appeals taken to the Supreme Court of the Navajo Nation found to be frivolous or not based on reasonable grounds shall be considered in bad faith, and any party found by the Supreme Court of the Navajo Nation to have made an appeal in bad faith shall be subject to a fine not exceeding five hundred dollars (\$500.00). Appeals found to be in bad faith shall not be heard by the Supreme Court of the Navajo Nation.

C. All decisions of the Division of Economic Development shall be final and binding unless such appeal as herein above allowed is taken within fifteen (15) days of the decisions of the Division of Economic Development.

History

CN-82-72, Exhibit A, §§ 6-8, November 2, 1972.

2. Division of Economic Development, see 2 N.N.C., Subchapter 21.

Notes. 1. Navajo "Court of Appeals" is referred to as the Supreme Court of the Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

Library References

Carriers ☞8.

Indians ☞32(9).

Westlaw Topic Nos. 70, 209.

C.J.S. Aeronautics and Aerospace § 189.

C.J.S. Carriers §§ 356 to 366, 373 to 376, 378 to 381, 383 to 384.

C.J.S. Indians §§ 130 to 132, 134.

§ 2504. Operation without permit

A. Any person, firm, association or corporation who shall furnish, provide or conduct any of the prescribed activities without first obtaining and without having in its possession a valid permit therefor shall be subject to exclusion from the Navajo Nation under the provisions of 17 N.N.C. § 1901 *et seq.* and with due process of law.

B. Irrespective of any exclusion proceedings, the Division of Economic Development is hereby authorized to initiate an action in the District Court of

the Navajo Nation, at the discretion of the Division of Economic Development and when circumstances warrant, to recover on behalf of the Navajo Nation an amount not exceeding five hundred dollars (\$500.00) for each separate occurrence. Jurisdiction over such actions is hereby specifically granted to the District Court of the Navajo Nation.

History

CN-82-72, Exhibit A, §§ 9, 10, November 2, 1972. Navajo Nation. See generally 7 N.N.C. § 201 *et seq.*

Note. References to “Trial Court” have been changed to the appropriate District Court of the

Library References

Carriers ⇨8, 18 to 20.	C.J.S. Carriers §§ 279, 353 to 354, 356 to 366, 372 to 384.
Indians ⇨32(7, 9), 37.	C.J.S. Indians §§ 22, 60 to 62, 130 to 132, 134, 139 to 143, 152.
Westlaw Topic Nos. 70, 209.	
C.J.S. Aeronautics and Aerospace § 189.	

§ 2505. Separability clause

If any provision of this Chapter or the application of such provision to any person, firm, association or corporation or circumstances shall be held invalid, the remainder of the Chapter and the application of such provision to persons, firms, associations or corporations or circumstances other than those as to which it is held invalid shall not be affected thereby.

History

CN-82-72, Exhibit A, § 11, November 2, 1972.

Library References

Indians ⇨32(4.1).	Westlaw Topic Nos. 209, 361.
Statutes ⇨64.	C.J.S. Statutes § 83.

Chapter 15. Traders and Trading Posts

Subchapter 1. Leasing Regulations Generally

Section

2701.	Authority of Economic Development Committee—Generally
2702-2704.	[Superseded]
2705.	Multiple ownership
2706-2711.	[Superseded]
2712.	Books and records
2713.	Legal tender
2714.	Check cashing
2715.	Influencing of Navajo Nation elections
2716.	[Superseded]

Subchapter 3. Fact Finding Board [Superseded]

United States Code

Traders with Indians, see 25 U.S.C. §§ 261–264.

Code of Federal Regulations

Licensed Indian traders, see 25 CFR §§ 140.1 to 140.26.0136.
 Peddler's permits, see 25 CFR § 141.12.

Subchapter 1. Leasing Regulations Generally

§ 2701. Authority of Economic Development Committee—Generally

A. The Economic Development Committee is authorized and empowered by and with the advice of the Navajo Nation Department of Justice to fix and determine the final terms and conditions for settling disputes, terminating leases for any cause, and any and all other matters of whatsoever kind or character in regard to trading-post site leases, and to add any other terms or conditions deemed necessary or advisable to protect the best interest of the Navajo Nation, subject to approval of the Secretary of the Interior or his authorized representative.

B. The Economic Development Committee shall adopt such regulations or procedures as are deemed necessary to expedite the leasing of trading posts on the Navajo Nation.

History

Subsection (A): CJ–38–54, § 3, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955; subsection (B): ACN–42–54, § 10, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

CF–14–54, 1954 Res. p. 139, February 12, 1954, contained substantially the same provisions as CJ–38–54, but it was returned by the Indian Office for reconsideration May 27, 1954.

CO–73–53, 1953 Res. p. 180, October 9, 1953, authorized consideration of proposed Trading Site Lease Regulations.

CJ–7–53, 1953 Res. p. 175, January 14, 1953; CJ–2–52, 1952 Res. p. 92, January 17, 1952; 1922–1951 Res. p. 523, October 19, 1950; 1922–1951 Res. p. 514, December 2, 1949;

1922–1951 Res. p. 513, December 2, 1949; 1922–1951 Res. p. 511, December 2, 1949; 1922–1951 Res. p. 510, December 2, 1949; 1922–1951 Res. p. 508, December 2, 1949; 1922–1951 Res. p. 507, December 2, 1949; 1922–1951 Res. p. 506, December 2, 1949; 1922–1951 Res. p. 505, December 9, 1948; 1922–1951 Res. p. 503, June 28, 1948; 1922–1951 Res. p. 496, March 20, 1948; 1922–1951 Res. p. 494, July 11, 1947; 1922–1951 Res. p. 554, September 15, 1938, authorized various rules and regulations governing licenses or permits to traders.

Revision note. Navajo Nation Business Site Leasing Act of 1987 gave authority to the Economic Development Committee 5 N.N.C. § 2301 *et seq.*; see also, Economic Development Committee powers, 2 N.N.C. § 724(B)(1).

Cross References

Business leases, permits and licenses, see § 2301 *et seq.* of this title.

Library References

Indians ☞16, 24, 32(4.1).	9, 10), 203, 206 to 210, 211(1, 2), 212 to
Landlord and Tenant ☞20 to 35.	216, 220 to 222, 223(1, 2, 3, 5, 6), 224 to
Westlaw Topic Nos. 209, 233.	225, 226(1, 2), 227, 228(1, 2), 229(1, 2, 3),
C.J.S. Indians §§ 12, 31, 98.	230(1, 2, 3, 4, 5), 251, 503.
C.J.S. Landlord and Tenant §§ 27, 184 to 195,	
196(1, 2, 3, 4), 197 to 201, 202(1, 2, 3, 4, 5,	

United States Code

Lease of restricted lands, see 25 U.S.C. § 635 (see Acts of Congress in Appendix of N.N.C.).

Code of Federal Regulations

Leases and permits, see 25 CFR § 162.100 et seq.

§ 2702–2704. [Superseded]

History

Superseded. CAU–42–87, codified at 5 N.N.C. § 2301, *et seq.* 1922–1951 Res. p. 507, December 2, 1949, established position of Trading Supervisor, set forth the compensation and duties thereof, and provided for clerical assistance.

ACAU–196–87 established the Division of Economic Development which abolished the Trading Superior’s Office.

CD–43–54, § 3, 1954 Res. p. 164, December 9, 1954, app. by Acting General Superintendent, app. by Indian Office January 17, 1955.

Cross References

Changes in location of mission and trading post sites, see note under 16 N.N.C. § 1151.

§ 2705. Multiple ownership

Whenever the Economic Development Committee finds that the ownership of three or more trading posts tends to create monopoly in trading on the Navajo Nation or in any trading area of the Navajo Nation, it may issue a short term lease, or leases, for any such posts in excess of one for not less than three (3) years; subject to the condition that at the expiration of such three-year term the Economic Development Committee may order the disposition of one or more such posts within the ensuing four (4) years.

History

CJ–38–54, § 2, 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Cross References

Navajo Business Site Leasing Act of 1987, see 5 N.N.C. § 2301 *et seq.*

Library References

Indians ☞16.	C.J.S. Indians § 98.
Landlord and Tenant ☞30.	C.J.S. Landlord and Tenant § 227.
Westlaw Topic Nos. 209, 233.	

5 N.N.C. § 2706

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§ 2706. [Superseded]

History

CAU-42-87, August 12, 1987.

This is governed by 5 N.N.C. § 2301 *et seq.*, the Navajo Nation Business Site Leasing Act of 1987.

§ 2707. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2311.

§ 2708. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

§ 2709. [Superseded]

History

CAU-42-87, August 12, 1987. See 22 N.N.C. § 1101 *et seq.*, the Navajo Nation Water Code.

§ 2710. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2316.

§ 2711. [Superseded]

History

CAU-42-87, August 12, 1987. See 5 N.N.C. § 2317.

§ 2712. Books and records

A. The duly authorized representatives of the Navajo Nation shall have the right to inspect or audit the books and records of each lessee at any reasonable time. Lessees shall keep such records and books of account as are ordinarily kept by operators of similar businesses. In the event of failure or refusal to keep records adequate for the purpose of complying with the lease, the Division of Economic Development may require the keeping of approved records and books of account, and refusal or failure to comply with such requirement shall constitute cause for termination of the lease.

B. Lessees whose books and records are regularly kept and maintained at a place other than the trading site shall notify the Nation's representatives of the place where they may be inspected and audited, provided, however, that such place shall be in a town bordering the Navajo Nation.

History

CJ-38-54, § 1(d), 1954 Res. p. 143, June 3, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Library References

Indians ⇌16.
Westlaw Topic No. 209.
C.J.S. Indians § 98.

§ 2713. Legal tender

No tin money or other substitutes of any character for the currency of the United States shall be used as legal tender in lieu of money in any trading post leased pursuant to the provisions of this Subchapter.

History

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Library References

Indians ⇌16, 32.	C.J.S. Indians §§ 49, 51, 98.
Payment ⇌10, 11, 12.	C.J.S. Payment §§ 12 to 13.
United States ⇌34.	C.J.S. United States §§ 162 to 163.
Westlaw Topic Nos. 209, 294, 393.	

§ 2714. Check cashing

Whenever checks are cashed at trading posts, leased pursuant to the provisions of this Subchapter, the entire proceeds of such checks shall be paid in cash to the payee.

History

ACN-42-54, § 9, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Library References

Bills and Notes ⇌427.	C.J.S. Bills and Notes.
Indians ⇌16, 24, 32.	C.J.S. Letters of Credit § 233.
Westlaw Topic Nos. 56, 209.	C.J.S. Indians §§ 12, 31, 49, 51, 98.

§ 2715. Influencing of Navajo Nation elections

A. No non-Navajo lessee shall, directly or indirectly, influence or seek to influence, the action of any Navajo Nation election or the election or defeat of any candidate for office by any method whatsoever.

B. Any such attempt on the part of any employee or agent of the lessee shall be conclusively presumed to be the action of the lessee. Violation of the provisions of this Section shall be deemed cause for termination of lessee's lease, or refusal to grant a lease for more than three (3) years at the discretion of the Economic Development Committee.

5 N.N.C. § 2715

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History

ACN-42-54, § 8, 1954 Res. p. 147, November 17, 1954, app. by General Superintendent, app. by Indian Office January 17, 1955.

Cross References

Causes for termination of lease generally, see § 2710 of this title.
Elections generally, see 11 N.N.C. § 1 *et seq.*
Influencing elections, see 11 N.N.C. § 209 and §§ 361-364.

Library References

Indians ↻16, 32(6).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 98.

§ 2716. [Deleted and superseded]

History

CO-73-90, see 15 N.N.C. § 601 *et seq.*, Navajo Preference in Employment Act.

Subchapter 3. Fact Finding Board [Superseded]

History

Revision note. Subchapter 3. Fact Finding Navajo Nation Business Site Leasing Act of Board has been superseded by 6 N.N.C. § 2301, 1987.

Chapter 17. Non-Navajo Guides

Section

- 3001. License requirement
- 3002. Issuance of license; term; fees
- 3003. Rules and regulations; authority to adopt

§ 3001. License requirement

It shall be unlawful and a trespass for any person other than a Navajo Indian to act as a guide for hire or to conduct any tourist upon Navajo Nation lands for a consideration without first obtaining a license for that purpose from the Navajo Parks Commission.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.

Amendments 1962. CD-74-62, § 9, December 6, 1962, amended this section and §§ 3002 and 3003 of this Title by substituting "Navajo Parks Commission" for "Chairman of the Navajo Trib-

al Council", wherever the words appeared. CF-31-57, February 16, 1957, which had amended the section to substitute "Navajo Park Commission" for "Chairman of the Navajo Tribal Council" was repealed by CD-74-62, § 10.

Amendments 1957. CM-32-56 was amended by CF-31-57, § 7, which substituted words "Navajo Tribal Park Commission" for words

“Chairman of the Navajo Tribal Council” whenever they appeared.

Cross References

Navajo Tribal Parks Commission generally, see 19 N.N.C. § 201 *et seq.*

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Licenses ☞11(1).	C.J.S. Licenses § 34.
Westlaw Topic Nos. 209, 238.	

§ 3002. Issuance of license; term; fees

The Navajo Parks Commission may issue a license to any person of good moral character and of adequate finances to act as a guide for tourists on Navajo Nation lands. Such license shall be for a term not to exceed five (5) years and shall provide for the payment to the Navajo Nation of ten percent (10%) of the receipts of such person on account of acting as a guide or conductor of tourists on Navajo Nation lands. A minimum advance fee of one hundred dollars (\$100.00), which shall be credited against the percentage fees, shall be collected before any such license shall be issued.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22, 1956, app. by General Superintendent, June 1, 1956.	Amendment 1962. See Note under § 3001 of this title.
	Amendment 1957. See Note under § 3001 of this title.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Licenses ☞11(1), 29.	C.J.S. Licenses §§ 34, 66.
Westlaw Topic Nos. 209, 238.	

§ 3003. Rules and regulations; authority to adopt

The Navajo Parks Commission is authorized to adopt rules and regulations and do all things necessary to implement or supplement the provisions of this Chapter.

History

CD-74-62, §§ 9 and 10, December 6, 1962 and CF-31-57, § 7, February 16, 1957 amended CM-32-56, § 1, 1956, Res. p. 166, May 22,	1956, app. by General Superintendent, June 1, 1956.
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Library References

Indians ☞32(4.1, 9).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 130 to 132, 134.

Chapter 19. Navajo Nation Corporation Code

Subchapter 1. General Corporation Law

Section

3100. Policy and purpose

Article 1. Title; Definitions; Purposes

- 3101. Short title
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- 3103. Authorized purposes for organization of corporation
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- 3106. Incorporators
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- 3110. Power to issue shares
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5 N.N.C. § 3003

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- 3137. Books and records; requirements for right to examine and make extracts therefrom
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- 3145. Procedure in liquidation of corporation by Court
- 3146. Filing of claims in liquidation proceedings
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- 3156. Articles of incorporation; procedure for filing
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- 3163. Department; duties and functions

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- 3203. Mandatory provisions of articles of incorporation
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5 N.N.C. § 3003

- 3213. Limitation of liability
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- 3217. Merger of close corporations
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- 3311. Board of directors
- 3312. Number, election and classification and removal of directors
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- 3324. Filing of articles of incorporation
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- 3327. Right to amend articles of incorporation
- 3328. Procedures to amend articles of incorporation
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Subchapter 1. General Corporation Law

§ 3100. Policy and purpose

The Navajo Nation Corporation Code is hereby enacted:

A. The purpose of this Code is to permit the formation of various corporate entities and require registration of foreign corporations; and to regulate such entities so as to promote economic growth and further the exercise of tribal sovereignty in the governance of its territory and citizens.

B. This Code is based upon the American Bar Association's Model Business Corporation Act, the Model Close Corporation Act and the Model Code, and the various agricultural cooperative acts of several states. The interpretation of this Code shall be based on Navajo Nation Court interpretation and such interpretation shall give the utmost respect in deciding the meaning and purpose of this Code to the unique traditions and customs of the Navajo people. General decisional law interpreting similar provisions of the above Model Acts and state agricultural cooperative acts may be used as guidance.

C. Unless otherwise expressly provided by law, the sovereign immunity of the Navajo Nation shall not extend to corporate entities organized under this Code, nor shall such entities be considered a subdivision, entity or enterprise of the Navajo Nation, nor shall the Navajo Nation be liable for the debts or obligations of any kind of such entities.

D. The provisions of this Code shall be fully implemented within one hundred eighty (180) days of the date of its adoption by the Navajo Nation Council; provided however, the issuance of certificates of incorporation shall be issued on the date of adoption. The Division of Economic Development through its Business Regulatory Department shall administer the provisions of this Code. The Division of Economic Development is directed to prepare an appropriate supplemental budget for carrying out its responsibilities under this Code.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞1 to 12.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 2 to 27, 30 to 31, 62.

C.J.S. Indians §§ 49 to 51.

Article 1. Title; Definitions; Purposes

§ 3101. Short title

This Chapter shall be known and may be cited as the “Navajo Nation Corporation Act.”

History

CJA-2-86, January 30, 1986.

§ 3102. Definitions

A. “Articles of Incorporation” include the original articles of incorporation, articles of merger or consolidation and all amendments thereto.

B. “Attorney General” means the Attorney General of the Navajo Nation.

C. “Authorized shares” means the aggregate number of shares, whether with or without par value, which the corporation is authorized to issue.

D. “Capital surplus” means the entire surplus of a corporation other than its earned surplus.

E. “Corporation” or “domestic corporation” means a for profit or non-profit corporation subject to the provisions of this Chapter, except a foreign corporation.

F. “Court”, except where otherwise specified, means the Navajo Nation District Court having jurisdiction over civil actions.

G. “Department” means the Department of Commerce within the Division of Economic Development or its designated successor.

H. “Earned surplus” means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital, and capital surplus to the extent such distribution and transfers are made out of earned surplus. Earned surplus shall also include any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

I. “Foreign corporation” means a corporation for profit or not for profit organized under laws other than the laws of the Navajo Nation.

5 N.N.C. § 3102

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J. “Incorporator” means a signer of the original articles of incorporation.

K. “Insolvent” means that the total liabilities of the corporation exceed a fair valuation of its total assets.

L. “Navajo Indian Country” has the same meaning as in 7 N.N.C. § 254.

M. “Non-profit corporation” means a corporation, no part of the income or profit of which is distributable to its members, directors or officers, except this Chapter shall not be construed as prohibiting the payment of reasonable compensation for services rendered or a distribution upon dissolution or liquidation as permitted by Subchapter 2.

N. “Person” means both natural persons, either Navajo or non-Navajo, and foreign and domestic corporations and tribal governments and their political subdivisions.

O. “Registered office” means that office maintained by the corporation within Navajo Indian Country, the address of which is on file with the department.

P. “Shareholder” means one who is a holder of record of shares in a corporation.

Q. “Shares” are the units into which the shareholders’ right to participate in the control of the corporation, in its surplus or profits, or in the distribution of its assets, are divided.

R. “Stated capital” means, at any particular time, the sum of:

1. The par value of all shares of the corporation having a par value that have been issued;

2. The amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law; and

3. Such amounts not included in subdivisions 1 and 2 of this Paragraph as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as has been effected in a manner permitted by law.

4. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a for profit foreign corporation shall be determined on the same basis and in the same manner as stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this Chapter.

S. “Subscriber” means one who subscribes for shares in a corporation, whether before or after incorporation.

T. “Treasury shares” means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be “issued” shares but not “outstanding” shares.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞2 to 3, 31, 60 to 159, 632.	C.J.S. Corporations §§ 5 to 7, 45 to 46, 62, 122 to 251, 253 to 286, 293 to 304, 883.
Indians ☞32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

Annotations

- 1. Non-profit**
 “NHA formed Cabinets as a subsidiary of NHA to operate the cabinet business referenced in the lease with the Navajo Nation. Resolution No. NHA-3016-98, Whereas clause nos. 3, 4 (March 5, 1998). Cabinets incorporated as a non-profit entity under the Navajo Nation Non-Profit Corporation Act, 5 N.N.C. § 3301 et seq.” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 5 (Nav. Sup. Ct. February 11, 2004).

§ 3103. Authorized purposes for organization of corporation

Corporations for profit may be organized under this Chapter for any lawful purpose or purposes.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞14.	C.J.S. Corporations §§ 28 to 29.
Indians ☞32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3104. General powers

- A. Each corporation shall have the power:
1. To have perpetual succession of its corporate name unless a limited period of duration is stated in its articles of incorporation;
 2. To sue and be sued, complain and defend, in its corporate name;
 3. To have a corporate seal, which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced, provided however corporate seals shall not duplicate or closely resemble the seals of the Navajo Nation or its entities;
 4. To purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, including shares or other interests in, or obligations of, other domestic or foreign corporations, non-profit corporations, associations, partnerships, limited partnerships, or individuals or governmental units or bodies, wherever situated;
 5. To redeem, acquire, cancel reacquired shares, reacquire and restore to the status of authorized but unissued, shares of stock issued by the corporation, but subsequently acquired by the corporation;
 6. To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;
 7. To lend money to, and otherwise assist, its employees;

5 N.N.C. § 3104

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8. To make contracts including contracts of guaranty, suretyship and indemnification and incur liabilities; to borrow money, to issue its notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property or income, except for property or income held in trust subject to legal restrictions on hypothecation;

9. To invest its surplus funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned;

10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Chapter outside of Navajo Indian Country and to exercise in any reservation, state, territory, district, or possession of the United States, or in any foreign country the powers granted by this Chapter subject to the laws of such jurisdictions;

11. To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation;

12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of the Nation, for the administration and regulation of the affairs of the corporation;

13. To make contributions to charitable organizations;

14. To cease its corporate activities and surrender its corporate franchise; and

15. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed.

B. Corporations organized under this Chapter shall not have the power to engage in banking business.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞ 370 to 487.

Indians ☞ 9, 23, 24, 32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 69 to 71, 73, 77, 84, 86, 554 to 699, 701, 703, 706.

C.J.S. Indians §§ 12, 30 to 31, 49 to 51, 67.

C.J.S. Wills §§ 93 to 94, 96.

§ 3105. Corporate name

A. The corporate name of a domestic corporation:

1. Shall contain the word “corporation”, “company”, “incorporated”, or “limited”, or shall contain an abbreviation of one of such words;

2. Shall not include the words “trust” or “trust company”, separately or in combination to indicate or convey the idea that the corporation is engaged in trust business unless such corporation is to be and becomes actively and substantially engaged in trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in trust business;

3. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

4. Shall not be the same as, or deceptively similar to, the name of any other entity organized or registered under this Code; and

5. Shall not contain the words “Navajo Nation” or “Navajo Tribe”, nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity, unless the Navajo Nation is a majority stockholder.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞43 to 50.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 98 to 105.

C.J.S. Indians §§ 49 to 51.

Article 2. Organic Documents

§ 3106. Incorporators

One or more persons may act as incorporators of a corporation by signing and filing in duplicate with the department articles of incorporation. Upon filing of the articles of incorporation and compliance with applicable regulations, the department shall issue a certificate of incorporation.

History

CJA-2-86, January 30, 1986.

Note. The “Department”, as referred to in this Subchapter, is the Business Regulatory De-

partment within the Division of Economic Development.

Library References

Corporations ☞5, 12, 26.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 25 to 27, 30 to 31.

C.J.S. Indians §§ 49 to 51.

§ 3107. Contents of articles of incorporation

A. The articles of incorporation shall set forth:

1. The name of the corporation;
2. The period of duration, which may be perpetual;
3. The purpose or purposes for which the cooperation is organized;
4. A brief statement of the character of the business which the corporation initially intends to conduct;
5. The class and aggregate number of shares which the corporation shall have the authority to issue and the par value of each of said shares, or a statement that all of said shares are without par value;

5 N.N.C. § 3107

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6. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation;

7. The address, including street and number, if any, of its principal office, and the name of its initial registered agent at such address;

8. The number of directors constituting the initial board of directors and the names and addresses, including street and number, if any, of the persons who are to serve as directors until the first annual meeting of shareholders; or until their successors are elected and qualified. The minimum number of directors constituting the initial board shall be one (1);

9. The name and address, including street and number, if any, of each incorporator; and

10. A provision stating that the corporation will agree to abide by all criminal, civil and regulatory laws of the Navajo Nation.

B. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Chapter. Whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

C. The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞12, 32.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 25 to 27, 48.

C.J.S. Indians §§ 49 to 51.

Annotations

1. Construction and application

“We believe the Navajo Nation possesses the same authority over corporations organized under Navajo law, as such corporations elected to incorporate under Navajo law, and therefore must abide by Navajo law as a condition of their

existence. *Cf.* 5 N.N.C. § 3107(A)(10) (requiring explicit agreement by for-profit corporations to abide by Navajo law in articles of incorporation).” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 7 (Nav. Sup. Ct. February 11, 2004).

§ 3108. Effect of issuance of certificate of incorporation

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Chapter, except as against the Navajo Nation in a proceeding to cancel or revoke the certificate of incorporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘32, 35.
 Indians ⌘32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 48, 51.
 C.J.S. Indians §§ 49 to 51.

§ 3109. Bylaws

The power to make, alter, amend, or repeal the bylaws of the corporation shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘53.
 Indians ⌘32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 111.
 C.J.S. Indians §§ 49 to 51.

Article 3. Stock and Stockholders

§ 3110. Power to issue shares

Each corporation shall have the power to create and issue the number of shares in its articles of incorporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘62, 69.
 Indians ⌘32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 126, 128 to 129, 148 to 151.
 C.J.S. Indians §§ 49 to 51.

§ 3111. Subscriptions, considerations, payment for shares, and determination of amount of stated capital

Subscriptions, consideration, payment for shares and determination of amount of stated capital, shall be governed consistent with the provisions of the Model Business Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws).

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘69 to 88.
 Indians ⌘32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 129, 131 to 132, 138 to 139, 144 to 147, 152 to 157, 159 to 162, 180 to 181, 184 to 211.

5 N.N.C. § 3111

COMMERCE AND TRADE

C.J.S. Indians §§ 49 to 51.

§ 3112. Transfer of stock

Stock shall be freely alienable except to the extent restricted by the articles of incorporation or bylaws, and except that this Section shall not be construed to restrict the operations of applicable blue sky or securities laws. No public offering of a security may be made without proof to the Department of compliance with such applicable blue sky or securities laws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞111.

Indians ☞32(1).

Securities Regulation ☞1, 241.

Westlaw Topic Nos. 101, 209, 349B.

C.J.S. Corporations § 217.

C.J.S. Indians §§ 49 to 51.

C.J.S. Securities Regulation §§ 2, 4, 366.

§ 3113. Denial or restriction of voting rights

A corporation may deny or restrict the voting rights of any of its stock, in its articles of incorporation, so long as it does not restrict or deny voting class shareholders' right to cumulative voting and preemptive right to acquire additional shares of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞197.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 373, 375 to 378.

C.J.S. Indians §§ 49 to 51.

§ 3114. Expenses of organization, reorganization, and financing

The reasonable charges and expenses of organization or reorganization of a corporation may be paid out of the consideration received by the corporation in payment for its shares without thereby rendering such shares not fully paid.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞88.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Indians §§ 49 to 51.

§ 3115. Stock certificates; representation of shares; signers; restrictions or limitations on transferability; contents

A. The shares of a corporation shall be represented by certificates signed by the president. In case any officer who has signed such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by

the corporation with the same effect as if such officer had not ceased to hold such office at the date of its issue.

B. Every certificate representing shares, the transferability of which is restricted or limited, shall set forth a summary statement of any such restriction or limitation upon the transferability of such shares, on its face, and shall set forth on the back thereof a full statement of any such restriction or limitation upon the transferability of such shares, or shall state that the corporation will furnish to any shareholder upon request and without charge such statement.

C. Each certificate representing shares shall also state:

1. That the corporation is organized under the laws of the Navajo Nation;
2. The name of the person to whom issued;
3. The number and class of shares which such certificate represents; and
4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

D. No certificate shall be issued for any share until such share is fully paid.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞94 to 95, 99.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 163, 169, 172, 174.
 C.J.S. Indians §§ 49 to 51.

§ 3116. Liability of subscribers and shareholders

A. A holder or a subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued, which, as to shares having a par value, shall be not less than the par value thereof, except as set forth in Subsection (C) below. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid, shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

B. No person holding shares as executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall be personally liable as a shareholder, but the shareholder estate and funds in the hands of said executor, administrator, conservator, guardian, trustee, assignee, or receiver shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

C. A holder or subscriber to shares of a corporation is presumed not to be personally liable for the debts of the corporation, but may be personally liable to the corporation in proportion to their ownership interest, after all assets of the corporation have been applied to claims of creditors, and the debts,

obligations and liabilities of the corporation are not thereafter paid and discharged, to the extent determined by the court based upon the application of general decisional law relating to the piercing of the corporate veil, pursuant to 7 N.N.C. § 204. The court may consider in making shareholders liable hereunder, whether under the circumstances giving rise to claims of creditors, the acts or omissions by the corporation involved:

1. Fraud;
2. Misrepresentation;
3. Thin-capitalization;
4. Ultra-hazardous activities;
5. Violation of applicable consumer protection laws;
6. Criminal wrong-doing;
7. Failure to maintain a reasonable amount of liability insurance coverage for the acts or omissions of its directors, officers, employees or agents; or
8. Failure to comply with any provision of this Code.

D. No right to contribution shall exist between the shareholders and no liability under this Section shall be asserted more than one (1) year from the later of the time a creditor's claim in tort or contract accrued or the date such claim should have been discovered.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞ 170 to 190, 215 to 280.
Indians ☞ 32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 305 to 361, 414 to 432.
C.J.S. Indians §§ 49 to 51.

§ 3117. Voting of shares; exclusion of shares or corporation's own stock; determination of number of outstanding shares

A. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

B. Shares of treasury stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

C. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his/her duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his/her personal representatives or assigns; but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold, until the contract of pledge or sale is fully executed.

D. In all elections for directors every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by him/her, for as many persons as there are directors to be elected, or to cumulate said shares, and give one candidate as many votes as the number of such directors multiplied by the number of his/her shares shall equal, or to distribute such votes on the same principle among any number of such candidates.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ195 to 201.

Indians Ⓒ32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 368 to 373, 375 to 396.

C.J.S. Indians §§ 49 to 51.

§ 3118. Certain holders; proxy presumed valid

A. Shares outstanding in the name of another corporation may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. A proxy purporting to be executed by a corporation shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

B. Shares outstanding in the name of a deceased person may be voted by his/her administrator or executor, either in person or by proxy. Shares outstanding in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy, but no guardian, conservator, or trustee shall be entitled, as such fiduciary, to vote shares held by him/her without evidence of the guardian, conservator, or trust relationship with the shareholder.

C. Shares outstanding in the name of a receiver or a trustee in bankruptcy may be voted by such a receiver or trustee, and shares held by or under the control of a receiver or a trustee in bankruptcy may be voted by such receiver or trustee without the transfer thereof into his/her name, if authority to do so be contained in an appropriate order of the court, by which such receiver or trustee in bankruptcy was appointed.

D. Shares outstanding in the name of a partnership may be voted by any partner. A proxy purporting to be executed by a partnership shall be presumed to be valid and the burden of proving invalidity shall rest on any challenger.

E. Shares outstanding in the name of two or more persons as joint tenants, or tenants in common, or tenants by the entirety, may be voted in person or by proxy by any one or more of such persons. If more than one of such tenants shall vote such shares, the vote shall be divided among them in proportion to the number of such tenants voting in person or proxy unless a different apportionment by such tenants is requested in writing prior to the vote.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞197, 198, 201.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 373, 375 to 378, 385,
395 to 396.
C.J.S. Indians §§ 49 to 51.

§ 3119. Stockholders' meetings

A. The bylaws of a corporation shall provide for an annual meeting of stockholders.

B. Meetings of shareholders may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation.

C. Special meetings of the shareholders may be called by the president, the secretary, the board of directors, the holders of not less than one-fifth of all the outstanding shares entitled to vote, or by such other officers or persons as may be provided in the articles of incorporation, or the bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞191 to 196.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 362 to 372, 374, 383.
C.J.S. Indians §§ 49 to 51.

§ 3120. Notice

A. Except as provided herein, written or printed notice stating the place, day, and hour of the meeting, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall, in the absence of a provision in the bylaws specifying a different period of notice, be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting.

B. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his/her address as it appears on the records of the corporation, with postage thereon prepaid.

C. Notice may be waived in writing by any shareholder, and will be deemed to be waived by any shareholder attending the meeting in person.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨194.
 Indians ⇨32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 364 to 367.
 C.J.S. Indians §§ 49 to 51.

§ 3121. Quorum of shareholders required

A. Unless otherwise provided in the articles of incorporation, or bylaws, a majority of the outstanding shares having voting power, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders; provided, that in no event shall a quorum consist of less than one-third of the outstanding shares having voting power.

B. The shareholders present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

C. If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, at which time any business may be transacted that may have been transacted at the meeting as originally called.

D. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number is required by this Chapter, or the articles of incorporation; provided however, that in elections of directors, those receiving the greatest number of votes shall be deemed elected even though not receiving a majority.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨195.
 Indians ⇨32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 370, 383.
 C.J.S. Indians §§ 49 to 51.

§ 3122. Dividends declaration and payment on outstanding shares; restrictions on payment on dividends

The board of directors of a corporation may declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, subject to the following provisions:

A. No dividend shall be declared or paid at a time when the corporation is insolvent or its net assets are less than its stated capital, or when payments thereof would render the corporation insolvent or reduce its net assets below its stated capital;

B. Dividends may be paid out of earned surplus or surplus arising from the surrender to the corporation of any of its shares, provided that the source of such dividends shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof. The limitations of this para-

graph shall not limit nor be deemed to conflict with the provisions of this Chapter in respect of the distribution of assets as a liquidating dividend;

C. If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated par value of the shares to be issued as a dividend;

D. If a dividend is declared payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred from earned surplus to stated capital at the time such dividend is paid, an amount of surplus equal to the aggregated value so fixed in respect of such shares. The amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends, concurrently with payment thereof;

E. A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this Section;

F. No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation; and

G. Subject to any restrictions contained in its articles of incorporation, the directors of any corporation engaged in the exploitation of wasting assets (oil, gas or other minerals) may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such wasting assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation, and may pay dividends from the net profits so determined by the directors.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004)

Library References

Corporations ☞152 to 154.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 295 to 299, 301, 304.

C.J.S. Indians §§ 49 to 51.

§ 3123. Stockholders' right on inspection

A stockholder of a corporation or his/her agent may inspect and copy during usual business hours any records or documents of the corporation relevant to its business and affairs, including any:

- A. Bylaws;
- B. Minutes of the proceedings of the stockholders and directors;
- C. Annual statement of affairs;
- D. Stock ledger; and
- E. Books of account.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ⌘181.

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 331 to 332.

C.J.S. Indians §§ 49 to 51.

§ 3124. Statement of affairs

A. Once during each calendar year, one or more stockholders of a corporation may present to any officer of the corporation a written request for a statement of its affairs.

B. Within twenty (20) days after a request is made for a statement of corporation's affairs, the corporation shall prepare and have available on file at its principle office a statement, verified under oath by its president or treasurer or its vice-president or assistant treasurer, which sets forth fairly and accurately, in reasonable detail, the corporation's assets and liabilities as of a reasonable current date. This statement once prepared, shall fulfill the request for such a statement made by any shareholder for the following twelve (12) months.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘181(7).

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 339.

C.J.S. Indians §§ 49 to 51.

Article 4. Board of Directors; Officers**§ 3125. Organization meeting of Directors**

Unless otherwise provided in the articles of incorporation, after the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within the United States, at the call of a majority of the directors so named, for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least five (5) days notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting; provided however, that if all the directors shall waive notice in writing and fix a time and place for said organization meeting, no notice shall be required of such meeting.

History

CJA-2-86, January 30, 1986.

5 N.N.C. § 3125

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Library References

Corporations ⇨56, 283 to 284, 298.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 113 to 115, 119, 373,
434 to 443, 445 to 446, 462.
C.J.S. Indians §§ 49 to 51.

§ 3126. Board of Directors; powers authorized; qualifications

A. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be shareholders in the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. Unless otherwise provided in the articles of incorporation or bylaws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any director, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers, or otherwise.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨282, 308.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 447 to 448, 490, 530.
C.J.S. Indians §§ 49 to 51.

§ 3127. Number; election

The number of directors shall be fixed by the bylaws, except as to the number constituting the first board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of share holders or until their successors shall have been elected and qualified. Each director shall hold office for the term for which he/she is elected or until his/her successor shall have been elected and qualified.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨283, 291.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 434 to 435, 450 to
451.
C.J.S. Indians §§ 49 to 51.

§ 3128. Classification

The bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second

annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. Absent any such classifications the term of a director shall be for one (1) year. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘291.

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 450 to 451.

C.J.S. Indians §§ 49 to 51.

§ 3129. Vacancies

Any directorship to be filled by reason of an increase in the number of directors may be filled by election at an annual meeting or at a special meeting of shareholders entitled to vote called for that purpose. Any vacancy occurring in the board of directors for any cause other than by reason of an increase in the number of directors may be filled by an affirmative vote of a majority of the remaining directors, unless the articles of incorporation otherwise provide. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘281, 283, 291, 295.

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 433 to 435, 450 to 451.

C.J.S. Indians §§ 49 to 51.

§ 3130. Quorum

A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

History

CJA-2-86, January 30, 1986.

5 N.N.C. § 3130

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Library References

Corporations ⌘298(5).
Indians ⌘32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 466.
C.J.S. Indians §§ 49 to 51.

§ 3131. Executive committee; powers

If the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the business and affairs of the corporation, but, the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘299.
Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.
C.J.S. Indians §§ 49 to 51.

§ 3132. Place of meetings; special meetings

Meetings of the board of directors, regular or special, may be held at such place within or without the boundaries of Navajo Indian Country as may be provided in the bylaws or by resolution adopted by a majority of the board of directors.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘298(2).
Indians ⌘32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 463.
C.J.S. Indians §§ 49 to 51.

§ 3133. Notice of meetings; waiver of notice

Meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨298(3).
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 464.
C.J.S. Indians §§ 49 to 51.

§ 3134. Officers; powers authorized

A. The officers of a corporation shall consist of at least a president and secretary, and may additionally consist of one or more vice-presidents and a treasurer, as may be prescribed by the bylaws. Each officer shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. If the bylaws so provide, any two or more offices may be held by the same person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨296, 300 to 306, 310, 312.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 460, 468 to 475, 491,
537 to 538, 540, 544 to 545, 547, 549.
C.J.S. Indians §§ 49 to 51.

§ 3135. Removal

Any officer or agent elected or appointed by the board of directors may be removed by a majority vote of the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨294.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 454 to 457.
C.J.S. Indians §§ 49 to 51.

§ 3136. Execution of documents

Notwithstanding any contrary provision of law, an individual who holds more than one office in a corporation may act in more than one capacity to execute, acknowledge, or verify any instrument required to be executed, acknowledged, or verified by more than one officer.

History

CJA-2-86, January 30, 1986.

Library References

Acknowledgment ☞11.

Corporations ☞297 to 305.

Indians ☞24, 32(1).

Westlaw Topic Nos. 12, 101, 209.

C.J.S. Acknowledgments §§ 24 to 28.

C.J.S. Corporations §§ 460 to 467, 469 to 474.

C.J.S. Indians §§ 12, 31, 49 to 51.

§ 3137. Books and records; requirements for right to examine and make extracts therefrom

A. Each corporation shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of its shareholders and board of directors, and shall keep at its principal place of business or at the office, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Nothing herein contained shall impair the power of the court upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him/her, to compel by mandamus or otherwise the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞181.

Indians ☞32(1).

Mandamus ☞129.

Westlaw Topic Nos. 101, 209, 250.

C.J.S. Corporations §§ 331 to 332.

C.J.S. Indians §§ 49 to 51.

C.J.S. Mandamus §§ 258, 266 to 267.

§ 3138. Liability of directors in certain cases

A. In addition to any other liabilities imposed by law upon directors of a corporation:

1. Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation, shall be jointly and

severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Chapter or the restrictions in the articles of incorporation;

2. Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this Chapter; and

3. The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter under Subsection (A) is taken shall be presumed to have assented to the action taken unless his/her dissent shall be entered in the minutes of the meeting or unless he/she shall file his/her written dissent to such action with the secretary of the meeting before the adjournment thereof, or shall forward such dissent by registered or certified mail to the secretary of the corporation before five o'clock in the afternoon of the next day which is not a holiday or a Saturday after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

C. A director shall not be liable under Subsection (A) if he/she relied and acted in good faith upon financial statements of the corporation represented to him/her to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he/she be so liable if in good faith in determining the amount available for any such dividend or distribution he/she considered the assets to be fairly valued at their book value.

D. Any director against whom a claim shall be asserted under or pursuant to this Section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing or who should have reasonably known that such dividend or distribution to have been made in violation of this Chapter, in proportion to the amounts received by them.

E. Any director against whom a claim shall be asserted under or pursuant to this Section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

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F. No liability under this Section shall be asserted more than one (1) year from the later of the time the claim accrued or the date such claim should have been discovered.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞310 to 320.

Indians ☞27(4), 32(1, 7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 475 to 489, 491 to 524, 526, 529.

C.J.S. Indians §§ 17, 49 to 51, 60 to 62, 95,

139 to 143, 152.

Article 5. Merger and Dissolution

§ 3139. Voluntary dissolution, consolidation, merger, or transfer of assets

A voluntary dissolution, consolidation, merger or transfer of assets of a corporation shall be made in a manner consistent with the provisions applicable to domestic corporations under the corporation laws in the Model Business Corporation Act and Model Non-profit Corporation Act (as revised and approved as of January 1, 1986, by the American Bar Association Committee on Corporate Laws). However, approval of any proposed voluntary dissolution, consolidation, merger or transfer of assets under this Chapter requires the affirmative vote of at least a majority of stockholders of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞581, 583, 610.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 792 to 798, 835, 837.

C.J.S. Indians §§ 49 to 51.

§ 3140. Involuntary dissolution by shareholders

Any stockholder of a corporation may petition the court for dissolution of the corporation on the ground that there is such internal dissension among the stockholders of the corporation that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞611.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 835.

C.J.S. Indians §§ 49 to 51.

§ 3141. Involuntary dissolution by Attorney General of the Navajo Nation

A corporation may be dissolved involuntarily by a judgment of the court in an action filed against it by the Attorney General when any one of the following is established:

- A. The corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder;
- B. The corporation procured its formation through fraudulent misrepresentation or concealment of material fact;
- C. The corporation has violated the laws of the Navajo Nation;
- D. The corporation has failed to file the statement of change of registered agent required by this Chapter within thirty (30) days after such change is duly authorized by the corporation; or
- E. The corporation has continued or persisted over a period of time to conduct its business in a fraudulent or otherwise illegal manner.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ☞592 to 599, 613.
Indians ☞32(1, 13).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 811 to 816, 818 to 819, 821 to 826, 830 to 831, 840.
C.J.S. Indians §§ 49 to 51, 157.

§ 3142. Revocation by Department

A. The articles of incorporation of a corporation may be revoked by the Department if the corporation has failed to comply with the provisions of this Code or regulations promulgated thereunder.

B. The articles of incorporation shall not be revoked by the Department unless:

- 1. It shall have given the corporation not less than sixty (60) days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business; and
- 2. Specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the Department shall:

- 1. Issue a certificate of revocation in duplicate;
- 2. File one such certificate in its office; and
- 3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation.

D. Upon the issuance of such certificate of revocation, the existence of such corporation shall terminate, subject to the provisions of Subsection (E) of this Section. If the corporation has not applied for reinstatement within the six (6)

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month period following the issuance of a certificate of revocation, the Department shall release the corporate name for use by any proposed domestic corporation, any foreign corporation applying for authority to do business within Navajo Indian Country or for use by a person intending to register the name as a trade name.

E. A corporation may apply for reinstatement within six (6) months from the date a certificate of revocation is issued by the department. If none of the conditions set forth in Subsection (A) of this Section exists at the time of such application of reinstatement and, if such corporation has paid all fees, penalties, and costs incurred by the Department, the Department shall issue a certificate of reinstatement.

F. The Department shall make available to the public a list, compiled annually, of the corporations whose articles of incorporation were revoked during the preceding year.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞592, 613, 615.5.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 811, 813 to 816, 818, 821, 824, 830 to 831, 840, 860.

C.J.S. Indians §§ 49 to 51.

§ 3143. Venue and process

Actions by the Attorney General for the involuntary dissolution of a corporation shall be commenced either in the court in which the known place of business or registered agent of the corporation is situated, or if the corporation has failed to maintain a registered agent or known place of business, then in the court of Window Rock. Process shall issue and be served as in other civil actions.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞609, 613(2).

Indians ☞32(7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 841.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 3144. Jurisdiction of Court to liquidate assets and business of corporation

The Court shall have full power to liquidate the assets and business of a corporation. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞537 to 569, 609, 611.
 Indians ☞32(7).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 740 to 791, 835, 841.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 3145. Procedure in liquidation of corporation by Court

A. In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

B. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sales. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

C. The court shall have power to allow from time to time as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

D. A receiver of a corporation appointed under the provisions of this Section shall have authority to sue and defend in all courts in his/her own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction over the corporation and its property, wherever situated.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞551 to 569, 611 to 629.
 Indians ☞32(1, 7).
 Westlaw Topic Nos. 101, 209.
 C.J.S. Corporations §§ 756 to 791, 835 to
 836, 840, 842 to 878, 882.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to
 143, 152.

§ 3146. Filing of claims in liquidation proceedings

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four (4) months from the date of the order, as the last day of the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ565, 626.
Indians Ⓒ32(1, 7).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 872, 874.
C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

§ 3147. Discontinuance of liquidation proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ611.
Indians Ⓒ32(1, 7).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 835.
C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

§ 3148. Judgment of involuntary dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a judgment dissolving the corporation, whereupon the existence of the corporation shall cease.

History

CJA–2–86, January 30, 1986.

Note. The “Department” as referred to in this section is the Business Regulatory Depart-

ment within the Division of Economic Development.

Library References

Corporations ☞613(7), 617.
 Indians ☞32(7).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 843, 852.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 3149. Filing of judgment of dissolution

When the court enters a judgment dissolving a corporation, the clerk of such court shall cause a certified copy of the judgment to be filed with the department. No filing fee shall be charged by the department.

History

CJA–2–86, January 30, 1986.

Note. The “department” as referred to in this section is the Business Regulatory Depart-

ment within the Division of Economic Development.

Library References

Corporations ☞613(7).
 Indians ☞32(7).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 843.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 3150. Deposit with Division of Finance of amount due certain shareholders

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Division of Finance and shall be paid over to such creditor or shareholder or to his/her legal representative upon proof satisfactory to the Division of Finance of his/her right thereto, and shall escheat to the Navajo Nation if unclaimed for a period of not less than five (5) years.

History

CJA–2–86, January 30, 1986.

Library References

Corporations ☞568, 628 to 629.
 Deposits in Court ☞1 to 12.
 Escheat ☞3.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 123, 152, 209.

C.J.S. Corporations §§ 874 to 878.
 C.J.S. Deposits in Court §§ 1, 4 to 40.
 C.J.S. Escheat §§ 4, 6.
 C.J.S. Indians §§ 49 to 51.

§ 3151. Survival of remedy after dissolution

The dissolution of a corporation either by the issuance of a certificate of dissolution or revocation by the department, or dissolution of a judgment of the court, or by expiration of its period of duration, shall not take away or impair

any remedy available to or against such corporation, its directors, officers or shareholders, for any right to claim existing, or any liability incurred, prior to such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of corporation at any time within five (5) years of the expiration of its period of duration.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞617 to 630.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 852 to 859, 861 to 879, 882.

C.J.S. Indians §§ 49 to 51.

Article 6. Registered Agent

§ 3152. Registered agent required

Each corporation shall have and continuously maintain within Navajo Indian Country a registered agent, which agent may be either an individual resident within Navajo Indian Country or a corporation authorized by its own articles of incorporation to act as such agent and authorized to transact business within Navajo Indian Country.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞392.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 580.

C.J.S. Indians §§ 49 to 51.

§ 3153. Change of registered agent

A. A corporation may change its registered agent by filing with the department a statement setting forth:

1. The name of the corporation;
2. The name and address of its then-registered agent;
3. The name and address of its successor registered agent;
4. The date upon which such change shall take effect; and
5. That such change was authorized by resolution duly adopted by its board of directors or was authorized by an officer of the corporation duly empowered to make such change.

B. Such statement shall be executed in duplicate by the corporation and delivered to the department. If the department finds that such statement conforms to the provisions of this Chapter, it shall:

1. Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the corporation or its representative.

C. The change of registered agent shall become effective upon the filing of such statement by the department.

D. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the department, which shall forthwith mail one copy thereof to the corporation at its principal office as shown on the records of the department. The appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the department or upon the appointment of a successor agent becoming effective, whichever ever occurs first. No fee or charge of any kind shall be imposed with respect to a filing under this Subsection.

E. A registered agent may change his/her address by filing with the department a statement setting forth:

1. The name of the registered agent;
2. The present address, including street and number, if any, of such registered agent;
3. The names of the corporation or corporations represented by such registered agent at such address;
4. The address, including street and number, if any, to which the office of such registered agent is to be changed; and
5. The date upon which such change will take place.

F. Such statement shall be executed in duplicate by such registered agent in his/her individual name, but if such agent is a corporation, domestic or foreign, such statement shall be executed by such corporation by its president or vice-president and delivered to the department. However, if the registered agent represents more than one corporation, he/she shall file an additional copy for such additional corporation. If the department finds that such statement conforms to law, it shall, when all fees and charges have been paid as prescribed in this Chapter:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Return the other duplicate original to the registered agent.

G. The change of address of such registered agent as to the domestic corporation or corporations named in such statement shall become effective upon the filing of such statement by the department, or on the date set forth in

such statement as the date on which such change of location of such registered office will take place, whichever is later.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ392.

Indians Ⓒ32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 580.

C.J.S. Indians §§ 49 to 51.

§ 3154. Registered agent as an agent for service; service when no registered agent

A. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom process against the corporation may be served, and upon whom any notice or demand required or permitted by law to be served upon the corporation may be served. Service of any process, notice, or demand upon a corporate agent, as such agent, may be made by delivering a copy of such process, notice, or demand to any officer, director or managing agent of the corporation, in lieu of the registered agent.

B. Whenever a corporation shall fail to appoint or maintain a registered agent within Navajo Indian Country, or whenever any such registered agent cannot with reasonable diligence be found at his/her office within Navajo Indian Country or whenever the articles of incorporation of any domestic corporation shall be revoked, then the department shall be an agent of such corporation upon whom any process against such corporation may be served and upon whom any notice or demand required or permitted by law to be served upon such corporation may be served. Service upon the department of any such process, notice, or demand shall be made by delivering to and leaving with the department, or with any clerk having charge of its office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is so served, the department shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office.

C. The department shall keep a permanent record of all processes, notices, and demands served upon it under this Section, and shall record therein the time of such service and its action with respect thereto.

D. Service of process upon the department as agent, pursuant to this Section shall not constitute an action against or service upon the Navajo Nation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ507.

Indians Ⓒ27(5), 32(7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 721.
 C.J.S. Indians §§ 16, 18, 42 to 43, 60 to 62,
 139 to 143, 146, 152.

§ 3155. Failure to maintain registered agent

Any corporation incorporated or reincorporated under this Code which fails or refuses to maintain a registered agent within Navajo Indian Country, in accordance with the provisions of this Chapter, shall be subject to a civil sanction in the amount of two hundred fifty dollars (\$250.00). The Attorney General upon the recommendation of the department shall seek the imposition of such in the Window Rock District Court.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨392, 396.	C.J.S. Corporations §§ 580, 585.
Indians ⇨32(1, 7).	C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to
Westlaw Topic Nos. 101, 209.	143, 152.

Article 7. Filings; Amendments

§ 3156. Articles of incorporation; procedure for filing

A. Duplicate originals of the articles of incorporation shall be delivered to the department. If the department finds that the articles of incorporation conform to law, it shall, when all fees have been paid as to this Chapter prescribed:

1. Endorse on each of such duplicate originals the word “Filed” and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Issue a certificate of incorporation to which it shall affix the other duplicate original. Such certificate of incorporation may be evidenced by the signature of the director of the department or his/her designee on the duplicate original of the articles of incorporation.

B. The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the department shall be delivered to the incorporators or their representatives.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨22.	C.J.S. Corporations §§ 37, 39.
Indians ⇨32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3157. Amendment of articles of incorporation; contents restricted; purposes

A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired; provided, that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or any exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation are stated.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨40.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
C.J.S. Indians §§ 49 to 51.

§ 3158. Procedures before acceptance of subscription to shares

Amendments to the articles of incorporation before any subscriptions to shares have been accepted by the board of directors shall be made in the following manner:

A. Amended articles of incorporation modifying, changing, or altering the original articles of incorporation shall be signed by all of the living or competent incorporators who signed the original articles of incorporation and filed with the department. Such amended articles of incorporation shall contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amended articles of incorporation;

B. Such amended articles of incorporation shall be delivered in duplicate original to the department. If the department finds that such amended articles of incorporation conform to law, it shall, when all fees have been paid as in this Chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;
2. File one of such duplicate originals in its office; and
3. Issue an amended certificate of incorporation, to which it shall affix the other duplicate original. Such certificate may be evidence in the same manner as provided in § 3156(A)(3);

C. The amended certificate of incorporation with the duplicate original of the amended articles of incorporation affixed thereto shall be delivered to the corporation or its representative; and

D. Upon the issuance of the amended certificate of incorporation, the amended articles of incorporation shall become effective and shall take the place of the original articles of incorporation.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ⌘40.

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.

C.J.S. Indians §§ 49 to 51.

§ 3159. Procedures after acceptance of subscription to shares

Amendments to the articles of incorporation after acceptance of any subscriptions to shares shall be made in the following manner:

A. The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

B. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effective thereby shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary shall be included in the notice of such annual meeting;

C. At such meeting a vote of the shareholders entitled to vote shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote; and

D. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ⌘40.

Indians ⌘32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.

C.J.S. Indians §§ 49 to 51.

§ 3160. Articles of amendment; contents

A. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and shall be set forth:

1. The name of the corporation;
2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders;
4. The number of shares outstanding and the number of shares entitled to vote;

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5. The number of shares voted for and against such amendment, respectively:

6. If such amendment provides for an exchange, reclassification, or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and

7. If such amendment effects a change in the amount of stated capital, or paid-in surplus, or both, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of capital surplus, either stated capital or paid-in surplus, as changed by such amendment.

B. If issued shares without par value are changed into the same or a different number of shares having par value, the aggregate par value of the shares into which the shares without par value are changed shall not exceed the sum of:

1. The amount of stated capital represented by such shares without par value;

2. The amount of surplus, if any, transferred to stated capital on account of such change; and

3. Any additional consideration paid for such shares with par value and allocated to stated capital.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨40, 60 to 68.

Indians ⇨32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 38, 122 to 128, 130, 148 to 151, 177 to 183.

C.J.S. Indians §§ 49 to 51.

§ 3161. Procedure for filing

A. Duplicate originals of the articles of amendment shall be delivered to the department. If it appears to the department that the articles of amendment conform to law, it shall, when all fees have been paid as in this Chapter prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof,

2. File one of such duplicate originals in its office; and

3. Issue a certificate of amendment to which it shall affix the other duplicate original. Such certificate may be evidenced in the same manner as provided in § 3156(A)(3).

B. The certificate of amendment with the duplicate original of the articles of amendment affixed thereto shall be delivered to the corporation or its representative.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨40.
 Indians ⇨32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
 C.J.S. Indians §§ 49 to 51.

§ 3162. Effect of certificate of amendment

A. Upon the issuance of the certificate of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall effect any existing cause of action in favor of or against such corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨40.
 Indians ⇨32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
 C.J.S. Indians §§ 49 to 51.

Article 8. Department; Fees and Charges

§ 3163. Department; duties and functions

A. The department shall be charged with the administration and enforcement of this Code. Said department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. Every certificate and other document or paper executed by the department, in pursuance of any authority conferred upon it by this Chapter, and sealed with the seal of the Navajo Nation, and all copies of such papers as well as of documents and other papers filed in accordance with the provisions of this Chapter, when certified by it and authenticated by said seal, shall have the same force and effect as evidence as would the originals thereof in any action or proceedings in any court and before a public officer, or official body.

C. The department is authorized to promulgate, upon the review and approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations to effectuate the policies and purposes of this Code, or to modify or vary any provision of this Code incorporating by reference any Model Corporation Act. Provided, the department shall set forth in such regulations what specific policy or purpose is purported to be furthered by such regulation.

5 N.N.C. § 3163

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History

CJA-2-86, January 30, 1986.

Library References

Indians ⇌32(1, 4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51.

§ 3164. Fees and charges

The department shall impose fees and charges in accordance with schedules promulgated by regulation pursuant to § 3163, provided however, the initial fee for filing of articles of incorporation shall be ten dollars (\$10).

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇌19.
Indians ⇌32(9).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 44.
C.J.S. Indians §§ 130 to 132, 134.

§ 3165. Non-payment of fees; sanctions

A. The department shall not file any articles, statements, certificates, reports, applications, notices, or other papers relating to any corporation organized under the provisions of this Chapter until all fees and charges provided to be paid in connection therewith shall have been paid to it or while the corporation is in default in the payment of any fees charges, or sanctions herein provided to be paid by or assessed against it. Nothing in this Section shall prevent the filing, without the payment of all such fees, charges, and sanctions, of a written notice of resignation by a registered agent of a corporation.

B. No corporation required to pay a fee, charge, or sanction under this Chapter shall maintain within Navajo Indian Country any civil action until all such fees, charges, and sanctions have been paid in full.

C. The Navajo Nation shall have the right to offset any amounts due and owing from a corporation under this Code against payments due from the Navajo Nation to such corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇌19.
Indians ⇌32(9).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 44.
C.J.S. Indians §§ 130 to 132, 134.

Article 9. Foreign Corporation

§ 3166. Admission of foreign corporation

A. No foreign corporation shall have the right to transact business within Navajo Indian Country until it shall have been authorized to do so as provided in this Chapter. No foreign corporation shall be authorized under this Chapter to transact within Navajo Indian Country any business which a corporation organized under this Chapter is not permitted to transact. A foreign corporation shall not be denied authority by reason of the fact that the laws under which such corporation is organized governing its organization and internal affairs differ from the laws of this Chapter, and nothing in this Chapter shall be construed to authorize regulation of the organization or the internal affairs of such corporation.

B. Without excluding other activities which may not constitute transacting business within Navajo Indian Country, a foreign corporation shall not be considered to be transacting business within Navajo Indian Country, for the purposes of this Chapter, by reason of carrying on within Navajo Indian Country any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
3. Maintaining checking or savings accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;
5. Effecting sales through independent contractors;
6. Soliciting or receiving orders outside Navajo Indian Country in pursuance of letters, circulars, catalogs or other forms of advertising or solicitation and accepting such orders outside Navajo Indian Country and filling them with goods shipped into Navajo Indian Country;
7. Creating as borrower or lender, or acquiring indebtedness, mortgages or other security interests in real or personal property; or
8. Securing or collecting debts or enforcing any rights in property securing the same.

C. The provisions of this Section shall not apply to the question of whether any foreign corporation is subject to service of process and suit within Navajo Indian Country.

D. The department may promulgate regulations governing the registration and regulation of unincorporated associations, consistent with the policies and purposes contained herein.

5 N.N.C. § 3166

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History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞636, 642, 643, 648.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 897, 899 to 900, 903,
905, 907, 942 to 943.
C.J.S. Indians §§ 49 to 51.

§ 3167. Powers of foreign corporation

A foreign corporation authorized to transact business under this Chapter shall, until withdrawal as provided in this Chapter, enjoy the right to engage in any lawful activities, and shall be subject to the applicable provisions of this Chapter.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞654 to 657.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.
C.J.S. Corporations §§ 885, 890 to 892, 919
to 920.

C.J.S. Indians §§ 49 to 51.
C.J.S. Wills § 95.

§ 3168. Corporate name of foreign corporation

No authority shall be given a foreign corporation unless the corporate name of such corporation:

A. Shall contain the word “association”, or “bank”, “corporation”, “company”, “incorporated”, or “limited”, or shall contain an abbreviation of one of such words, or such corporation shall, for use within Navajo Indian Country, add at the end of its name one of such words or an abbreviation thereof;

B. Shall not contain any word or phrase likely to mislead the public or which indicates or implies that it is organized for any purpose other than any specific purpose contained in its articles of incorporation;

C. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Navajo Nation, or any foreign corporation authorized to transact business within Navajo Indian Country, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Chapter or any trade name, except that this provision shall not apply if the foreign corporation applying for authority files with the department any one of the following:

1. A resolution of its board of directors adopting a fictitious name for use in transacting business within Navajo Indian Country which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business within Navajo Indian Country of any trade name;

2. The written consent of such other corporation or holder of a reserved or trade name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

3. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name within Navajo Indian Country.

D. Notwithstanding the provisions of Subsection (A)(1) of this Section, shall not include the words “bank”, “trust”, or “trust company” separately or in combination to indicate or convey the idea that the corporation is engaged in banking or trust business unless such corporation is to be and becomes actively and substantially engaged in banking or trust business or such corporation is a holding company holding substantial interest in companies actively and substantially engaged in banking or trust business; and

E. Shall not contain the words “Navajo Nation” or “Navajo Tribe”, nor in any way imply that it is associated with the Navajo Nation government or a Navajo Nation entity.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Banks and Banking ☞7, 31.
 Corporations ☞643, 648.
 Indians ☞32(1).
 Westlaw Topic Nos. 52, 101, 209.

C.J.S. Banks and Banking §§ 19, 42, 748.
 C.J.S. Corporations §§ 900, 903.
 C.J.S. Indians §§ 49 to 51.

§ 3169. Change of name by foreign corporation

Whenever a foreign corporation which is authorized to transact business within Navajo Indian Country shall change its name to one under which authority would not be granted to it on application therefore, it shall not thereafter transact any business within Navajo Indian Country until it has changed its name to a name which is available to it under the laws of the Navajo Nation, or has otherwise complied with the provision of this Chapter.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞643, 648, 651.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 900, 903, 919.
 C.J.S. Indians §§ 49 to 51.

§ 3170. Application for authority to transact business

A foreign corporation, in order to procure authority to transact business within Navajo Indian Country, shall make application therefor in accordance with regulations promulgated by the department.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞648.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 903.

C.J.S. Indians §§ 49 to 51.

§ 3171. Known place of business and registered agent of foreign corporation

Each foreign corporation authorized to transact business within Navajo Indian Country shall have and continuously maintain within Navajo Indian Country:

A. A known place of business which shall be the office of its registered agent, unless otherwise designated in its application for authority; and

B. A registered agent, which agent may be either an individual resident of the Navajo Nation, a domestic corporation, or a foreign corporation authorized to transact business within Navajo Indian Country.

C. Notification of any change of the known place of business or registered agent of a foreign corporation shall be in accordance with regulations promulgated by the department.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ☞645, 646.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 902.

C.J.S. Indians §§ 49 to 51.

§ 3172. Service of process on foreign corporation

A. The registered agent so appointed by a foreign corporation authorized to transact business within Navajo Indian Country shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served, and which, when so served, shall be lawful personal service on the corporation. Process, notice or demand may be served upon an officer, director or managing agent of the corporation in lieu of the registered agent.

B. Whenever a foreign corporation authorized to transact business within Navajo Indian Country shall fail to appoint or maintain a registered agent at the address shown on the records of the department, the department shall make available to any person the last known address of such corporation, its shareholders and officers upon whom any such process, notice or demand may be served. The litigant instituting an action shall be responsible for serving the corporation with process, in accordance with the Navajo Rules of Civil Procedure.

C. Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞668.
 Indians ☞27(5), 32(1, 7).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 952.
 C.J.S. Indians §§ 16, 18, 42 to 43, 49 to 51,
 60 to 62, 139 to 143, 146, 152.

§ 3173. Revocation of authority

A. The authority of a foreign corporation to transact business within Navajo Indian Country may be revoked by the department if the corporation fails to comply with the provisions of this Code or regulations promulgated thereunder.

B. The authority of a foreign corporation shall not be revoked by the department unless:

1. It shall have given the corporation not less than sixty (60) days notice thereof by mail addressed to the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate; and

2. It specifies the violation and gives the corporation a reasonable opportunity to comply or cure said violation.

C. Upon such revocation, the department shall:

1. Issue a certificate of revocation in duplicate;
2. File one such certificate in its office; and

3. Mail to such corporation at the address set forth on its most recently filed annual report, or if no annual report has been filed, then to its last known place of business a certificate of revocation. Upon the issuance of such certification of revocation, the existence of such corporation shall terminate.

D. The department shall make available to the public a list, compiled annually, of the foreign corporations for which authority to transact business within Navajo Indian Country has been revoked during the preceding year.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞651.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 919.
 C.J.S. Indians §§ 49 to 51.

§ 3174. Transacting business without authority

A. No foreign corporation transacting business within Navajo Indian Country without authority shall be permitted to maintain any action, suit or proceeding in any Navajo Nation Court, until such corporation shall have been authorized to transact business. Nor shall any action, suit or proceeding be maintained in any such court by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation within Navajo Indian Country, until authority to transact business has been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

B. The failure of a foreign corporation to obtain authority to transact business within Navajo Indian Country shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any Navajo Nation Court.

C. A foreign corporation which transacts business within Navajo Indian Country without authority shall be liable to the Navajo Nation, for the years or portions thereof during which it transacted business within Navajo Indian Country without authority, in an amount equal to all fees which would have been imposed by this Chapter upon such corporation had it duly applied for, and received authority to transact business within Navajo Indian Country as required by this Chapter and thereafter filed all reports required by this Chapter, plus all penalties imposed by this Chapter for failure to pay such fees. The Attorney General shall have authority to bring proceedings to recover all amounts due the Navajo Nation under the provisions of this Section.

D. The Attorney General or any other person may bring and maintain an action to enjoin any foreign corporation from transacting business within Navajo Indian Country without authority. Upon a foreign corporation obtaining authority such action shall be dismissed but the plaintiff therein shall recover his/her costs and reasonable attorneys' fees. A determination by a court that a party to the action is a foreign corporation which was requested to, but, failed to qualify as a foreign corporation under this Chapter shall be prima facie evidence against such foreign corporation in any other action brought by or against it by any other person of such requirement to and failure to qualify.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞642 to 648, 660, 661, 662.
Indians ☞32(1, 7, 9).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 900 to 904, 907 to 918, 920 to 921, 941 to 943, 945.

C.J.S. Indians §§ 49 to 51, 60 to 62, 130 to 132, 134, 139 to 143, 152.

Article 10. Reports and Filing

§ 3175. Annual report of domestic and foreign corporations

Each domestic corporation, and each foreign corporation authorized to transact business within Navajo Indian Country, shall file with the department an annual report and accounting in accordance with regulations promulgated by the department.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞391, 649.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 580, 583, 901.

C.J.S. Indians §§ 49 to 51.

§ 3176. Civil liability for false statements

A. If, as required by regulation, any report, certificate or other statement made, or public notice given by the officers or directors of a corporation is false in a material representation, or if any book, record or account of the corporation is knowingly or wrongfully altered, the officers, directors or agents knowingly or wrongfully authorizing, signing or making the false report, certificate, other statement or notice or authorizing or making the wrongful alteration are in their person jointly and severally liable to a person who has become a creditor or share holder of the corporation upon the faith in the false, material representation or alteration therein for all damages resulting therefrom.

B. An action for the liability imposed by this Section shall be commenced within two (2) years after discovery of the false representation or alteration and within six (6) years after the certificate, report, public notice or other statement or the alteration has been made or given by the officers, directors or agents of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞391, 396, 649, 652.

Indians ☞27(4), 32(1, 7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 580, 583, 585, 901,
919 to 920, 923.

C.J.S. Indians §§ 17, 49 to 51, 60 to 62, 95,
139 to 143, 152.

§ 3177. Civil investigatory demand or signature violations; corporate records; classification

A. A person who knowingly fails or refuses within the time prescribed by this Chapter to answer truthfully and fully any civil investigatory demand propounded to him/her by the department in accordance with this Chapter, or who signs any articles, statement, report, application or other document filed

5 N.N.C. § 3177

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with the department which is known to the person as false in any material respect, is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six (6) months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

B. A person who with the intent to defraud or deceive knowingly falsifies, alters, steals, destroys, mutilates, defaces, removes or secretes the books, records or accounts of a corporation is guilty of a misdemeanor and is subject to a civil sanction of five hundred dollars (\$500.00), or a sentence not to exceed six (6) months in jail, or both, and, in the case of a non-Indian is subject to such civil sanction and exclusion from Navajo Indian Country.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞391, 396, 529, 536, 649 to 652, 653, 678.	C.J.S. Corporations §§ 580, 583, 585, 736, 901, 904 to 906, 919 to 920, 922 to 923, 962.
Indians ☞32(1, 13), 37, 38(7).	C.J.S. Indians §§ 22, 49 to 51, 157, 163.
Westlaw Topic Nos. 101, 209.	

§ 3178. Civil investigative demands by the Department

The department may propound to any corporation, domestic or foreign, subject to the provisions of this Chapter, and to any director, officer, shareholders or employee thereof, such civil investigative demands as may be reasonably necessary and proper to enable it to ascertain whether such corporation has complied with all the provisions of this Chapter or applicable regulations promulgated thereunder. The department may also depose directors, officers, shareholders or employees for the same purpose. The department by regulations shall specify the manner and method of responding to such civil investigative demands.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞391, 394, 643.	C.J.S. Corporations §§ 580, 582 to 583, 900.
Indians ☞32(1, 4.1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3179. Public records; information disclosed by annual reports; certificates of disclosures civil investigative demands

Articles of Incorporation, amendments thereto, dissolution and certificates of incorporation, dissolution, revocation or reinstatement shall be maintained on file by the department and available for public inspection and copying. Annual reports or information received in response to regulations or civil investigative demands propounded by the department shall not be open to public inspection, nor shall the department disclose any facts or information obtained therefrom,

except as the same are to be made public or in the event such civil investigative demands or the answers are required for evidence in any court proceeding.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞395, 650.

Indians ☞32(1, 4.1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 584, 904 to 906.

C.J.S. Indians §§ 49 to 51.

Article 11. Miscellaneous

§ 3180. Jurisdiction of Navajo Nation Courts

A. The Court shall have original jurisdiction to the extent permitted by due process over any action against, or by, any domestic or foreign corporation, or for actions arising under this Chapter including actions by an aggrieved party contesting acts or omissions by the department, under this Chapter. In the case of contests of department acts or omissions, the department shall provide for informal hearings within thirty (30) days of a written request. Such written request shall be filed within ten (10) days of the alleged act or omission giving rise to the contested issue. Timely filing of such shall be jurisdictional to any subsequent court proceeding. A decision by the department on the contested issue shall be rendered in writing within thirty (30) days from the date of such hearing. Failure to render such decision within thirty (30) days shall constitute denial of the requested relief.

B. Within thirty (30) days of a written decision or a denial of requested relief or a failure to act on a written request after sixty (60) days of receipt of such request an aggrieved party may bring an action *de novo*, either in the court where the principle place of business is located or in the court in Window Rock, to compel, by injunctive or mandamus relief, the department to discharge its statutory obligations or to refrain from violating such party's legal rights.

C. Nothing in this Section shall be construed as an exception to or repeal of the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as may be amended from time to time.

History

CJA-2-86, January 30, 1986.

Library References

Courts ☞510, 512.

Indians ☞32(1, 4.1, 7).

Westlaw Topic Nos. 106, 209.

C.J.S. Courts §§ 222 to 223, 225.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

§ 3181. Certified copies to be received in evidence

All copies of documents except for annual reports or responses to civil investigatory demands delivered to and filed by the department in accordance

5 N.N.C. § 3181

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with the provisions of this Chapter when certified by it, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the department under seal, as to the existence or nonexistence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History

CJA-2-86, January 30, 1986.

Library References

Evidence ☞325, 333, 338 to 349, 366 to 383.	939, 949, 957, 959 to 962, 964, 976, 982 to
Indians ☞27(6), 32(1, 7).	983, 986, 988, 992 to 994, 998, 1000 to
Westlaw Topic Nos. 157, 209.	1006, 1008, 1010 to 1022, 1026 to 1036.
C.J.S. Evidence §§ 813, 818 to 822, 824 to	C.J.S. Indians §§ 13, 49 to 51, 60 to 62, 95,
840, 845 to 850, 856, 862, 870 to 904, 908,	139 to 143, 152.
916 to 919, 923 to 924, 932 to 933, 935 to	C.J.S. Patents § 179.

§ 3182. Greater voting requirements

Whenever with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation or bylaws require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this Subchapter with respect to such action, the provisions of the articles of incorporation or bylaws shall control.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞195.	C.J.S. Corporations §§ 370, 383.
Indians ☞32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3183. Action by shareholders without a meeting

A. Any action required by this Chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting, if a consent in writing setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

B. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the department under this Chapter.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞191, 199.	Westlaw Topic Nos. 101, 209.
Indians ☞32(1).	

C.J.S. Corporations §§ 362, 374, 379.
C.J.S. Indians §§ 49 to 51.

§ 3184. Unauthorized assumption of corporate powers

All persons who assume to act as a corporation without authority to do so, or who procured incorporation through fraudulent misstatements or omissions of material fact in documents filed with the department, shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. Ratification of preincorporation acts constitute authority to act in a corporate capacity as used herein.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘30, 42.
Indians ⌘32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 67.
C.J.S. Indians §§ 49 to 51.

§ 3185. Indemnification of officers, directors, employees and agents

A corporation shall have power to indemnify any person who was or is a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, if he/she acted, or failed to act, in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the corporation, but, with respect to any criminal action or proceeding, the corporation shall not pay criminal fines for which a person is personally liable.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⌘308(1).
Indians ⌘32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 490, 530 to 531, 533,
536.
C.J.S. Indians §§ 49 to 51.

§ 3186. Defense of ultra vires

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act, or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

A. In a proceeding by a shareholder against the corporation to enjoin the doing of any act, or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the

5 N.N.C. § 3186

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performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;

B. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

C. In a proceeding by the Attorney General, as provided in this Chapter, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from the transaction of unauthorized business.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨385.

Indians ⇨15, 23, 24, 27, 32(1, 7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 576.

C.J.S. Indians §§ 12 to 13, 30 to 31, 49 to 51,
60 to 62, 68, 89 to 95, 97, 99 to 100, 117,
139 to 143, 152.

Subchapter 2. Close Corporations

History

[Subchapter 2 redesignated] Common or Con- §§ 3201-3203 has been redesignated to Title 5,
tract Carriers previously codified as Chapter 19, Chapter 3, Subchapter 2, §§ 411-413.

§ 3201. Short title

This Chapter shall be known and may be cited as the “Navajo Nation Close Corporation Act”.

History

CJA-2-86, January 30, 1986.

§ 3202. Definitions

A. “Capital units” means the proportions of the proprietary interest in the corporation owned by the investors;

B. “Corporation” or “closed corporation” means a corporation for profit organized pursuant to the provisions of this Chapter;

C. “Good faith” or “in good faith” means an act or thing done when it is in fact done honestly, whether it be done negligently or not;

D. “Investor” means one who is the owner of capital units in a close corporation; and

E. “Manager” means the person or persons named in the articles of incorporation, either originally or by amendment thereto, in the capacity of manager or assistant manager, and does not include any person who is not so named.

History

CJA-2-86, January 30, 1986.

§ 3203. Mandatory provisions of articles of incorporation

A. The articles of incorporation of a close corporation shall set forth:

1. The name of the corporation which shall contain the words “close corporation” or an abbreviation thereof;
2. The name and address of the manager or managers of the corporation;
3. The names, addresses and amount of initial contribution of capital units of each of the original investors. The number of original investors shall not exceed thirty (30);
4. The aggregate amount in dollars of the initial capital units to be paid to be the corporation; and
5. The name and address of the corporation’s initial registered agent.

B. It shall not be necessary to set forth in the articles of incorporation any corporate powers or any corporate purposes.

History

CJA-2-86, January 30, 1986.

Note. Section renumbered for consistent Code format. (2004).

Library References

Corporations ☞18.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 26, 33 to 35, 41, 559.

C.J.S. Indians §§ 49 to 51.

§ 3204. Optional provisions of articles of incorporation

The articles of incorporation of a close corporation may set forth any of the following:

- A. The period of duration, if less than perpetual;
- B. Any restrictions on the authority of the manager or managers of the close corporation;
- C. Any reservations of authority to the investors;
- D. Any restriction on the power of any investor to sell, transfer or to create a security interest in his/her capital units. No restriction on the power to sell, transfer or create a security interest shall be binding except as to persons who have actual knowledge thereof unless such restriction is set forth in the articles of incorporation;
- E. Any restriction on the subsequent issuance of additional capital units;

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F. Whether the corporation will have the power to acquire its capital units and if so any restrictions or limitations thereon. If no power to acquire its capital units is set forth in the articles of incorporation, the corporation may not acquire any of its outstanding capital units;

G. Any provisions which provide for arbitration or other non-judicial procedure seeking resolution of any dispute as provided in § 3206;

H. Any provisions for replacement or succession of a manager inconsistent with § 3205(D);

I. Any provision which either relieves the manager entirely of the obligation to make accountings to investors or which modifies the period or form of such accounting in a manner inconsistent with § 3205(E);

J. Any provision for annual or other periodic meetings of investors. If no such provision is set forth in the articles of incorporation, there shall be no requirement for meetings for investors;

K. Any requirement for bond or other security to be given to the corporation by a manager to secure the faithful performance of his/her duties;

L. Any restrictions upon competition by investors directly or indirectly with the business of the corporation;

M. Any provision for delegation of his/her authority by a manager;

N. Any provision for a dissolution option pursuant to § 3207;

O. Any provision for varying relationships among investors as to relative rights in capital units; and

P. Any other provisions consistent with law which the incorporators elect to set forth.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨18.

Indians ⇨32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 26, 33 to 35, 41, 559.

C.J.S. Indians §§ 49 to 51.

§ 3205. Managers

A. All managers shall be natural persons. It is the purpose of this Chapter that the corporation be operated on a day-to-day basis by one manager, by managers having divided functions or by assistant managers who can serve either as alternates to the manager or assume some portion of managerial responsibility. As among the corporation, its investors, and any manager, there shall be no limitations on the authority of a manager unless specifically limited by provisions of the articles of incorporation, the written employment contract of such manager, or the records of the corporation evidencing the acts of the investors. Any person other than manager or investor who deals in good faith with the corporation will not be subject to any limitation on the authority of any

manager, even though such manager's authority is expressly limited in the articles of incorporation.

B. No manager may delegate any of his/her authority to any other agent, employee or representative of a corporation unless authority to do so is contained in the articles of incorporation or is granted by act of the investors.

C. Any manager shall have the same rights, duties, obligations and privileges as a person who is both a director and officer of a corporation for profit under the provisions of Subchapter 1, except as specifically modified in this Chapter.

D. Any manager may be replaced or succeeded by a new manager at any time by a majority of the votes of the investors, unless otherwise provide by the articles of incorporation. Such replacement shall be effective when a certificate of change of manager, sworn under oath by an investor is filed with the department stating the name of the replaced manager and the name and address of the new manager and that such new manager was elected by the required vote.

E. Unless the articles of incorporation or vote of the investors provided otherwise, a manager shall mail to each investor an annual accounting and annual report. Such annual accounting and report shall be mailed or delivered to the investors within thirty (30) days after the date filing is required.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ↯282, 291 to 295, 296, 305, 306, 307 to 324, 325 to 369.	C.J.S. Corporations §§ 435, 447 to 448, 450 to 457, 460, 468 to 469, 473 to 553.
Indians ↯32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3206. Settlement of disputes; arbitration

The articles of incorporation may provide for arbitration of any deadlock or dispute involving the internal affairs of the corporation.

History

CJA-2-86, January 30, 1986.

Library References

Arbitration ↯3.	C.J.S. Arbitration § 11.
Indians ↯32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 33, 209.	

§ 3207. Option to dissolve

A. The articles of incorporation of any corporation may include a provision granting to any investor or investors an option to have the corporation dissolved at will or upon the performance or occurrence of any specified event or contingency. Whenever any such option to dissolve is exercised, the investor

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or investors exercising such option shall give written notice thereof to all other investors. After the expiration of thirty (30) days following the mailing of such notice, the dissolution of the corporation shall proceed as if the required vote had consented to the dissolution of the corporation as provided by § 3139.

B. If the articles of incorporation as originally filed do not contain a provision authorized by Subsection (A) of this Section, the articles of incorporation may be amended to include such provision if adopted by the affirmative vote of all investors. If the articles of incorporation as originally filed contain a provision authorized by Subsection (A) of this Section, such provision may be amended only by the affirmative vote of all investors.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞610(2), 614.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 837, 844.
C.J.S. Indians §§ 49 to 51.

§ 3208. Purposes

Close corporations may be organized under this article for any lawful purpose or purposes.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞14.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 28 to 29.
C.J.S. Indians §§ 49 to 51.

§ 3209. Capital units, transfer and encumbrances

A. Until a statement substantially in the form set forth in Subsection (B) of this Section has been filed with the department, any transfer, hypothecation, other voluntary encumbrance of security interest in, or of any capital unit or units shall be void as to creditors and subsequent purchasers for valuable consideration without notice.

B. The state of transfer, hypothecation or other voluntary encumbrance or security interest in or of any capital unit or units in a close corporation shall be acknowledged and be substantially in one of the following forms:

1. Transfer:

On the ___ day of _____, _____, the undersigned
(name of transferor) transferred to (name of transferee), whose address is
(address of transferee) (all or a stated percentage) of the undersigned's interest
in the capital units of (name of corporation), a Navajo close corporation.

(Signature of transferor)

acknowledgment

2. Hypothecation, other voluntary encumbrance or security interest:

On the ___ day of _____, _____, the undersigned (name of debtor) hypothecated and voluntarily encumbered to (name of creditor) (all or a stated percentage) of the undersigned's interest in the capital units of (name of corporation), a Navajo close corporation.

(Signature of debtor)

acknowledgment

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨111 to 142.
 Indians ⇨23, 32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 217 to 251, 253 to 283.
 C.J.S. Indians §§ 30, 49 to 51.

§ 3210. Definition of relative rights of capital units

“Relative rights of capital units” means all the rights, privileges, obligations and duties of the capital units and may include, but are not limited to, disproportionate variations of the following:

- A. Participation in dividends or distributions from operating income;
- B. Participation in dividends or distributions from income other than operating income;
- C. Participation in distributions of the proceeds of a sale of all or substantially all of the assets of the corporation with further disproportionate variation depending upon the degree of gain or loss;
- D. Participation in distribution upon liquidation or dissolution;
- E. Voting rights;
- F. Restrictions of limitations on transfer;
- G. The obligation to perform services or provide goods or other property to the corporation;
- H. The obligation to devote time and energies which are collateral to corporate purposes; and
- I. Assessments, if any.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨151 to 157, 170 to 190, 197.
 Indians ⇨32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 158, 293 to 361, 373, 375 to 378.

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C.J.S. Indians §§ 49 to 51.

§ 3211. Changes in investor relationship

Unless otherwise provided by the articles of incorporation, any redemption, termination or cancellation of capital units, acquisition of capital units by the corporation, issuance of additional units or any change in the relative rights of capital units other than transfers or encumbrances provided for in § 3209, shall be effective only upon an amendment of the articles of incorporation. The unanimous vote of all outstanding capital units shall be required to amend the articles of incorporation to create or to change the relative rights in capital units.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨40.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
C.J.S. Indians §§ 49 to 51.

§ 3212. Variable relative rights

The articles of incorporation may provide for varying relationships among investors as to relative rights in capital units. It is not necessary that each close corporation provide in its articles of incorporation for variable relative rights of capital units as encumbered in this Section. Only those variable relative rights of capital units set forth in the articles of incorporation shall apply to the particular close corporation. When no provision is made in the articles of incorporation concerning a particular relative right of capital units, then that particular relative right of capital units shall be proportionate to the dollar amount of the capital units.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨18, 63, 174, 182.3.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 26, 33 to 35, 41, 127,
307, 344, 559.
C.J.S. Indians §§ 49 to 51.

§ 3213. Limitation of liability

The investor shall not be liable for the debts, obligations or liabilities of the close corporation, except that investors will be held in the same standards as subscribers and shareholders as set forth in § 3116(C).

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞215 to 280.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 414 to 432.
 C.J.S. Indians §§ 49 to 51.

§ 3214. Appointment of conservator

A. The court in which the known place of business or registered agent of the corporation is situated, may in an action by an investor, appoint a conservator or interim manager of the corporation if the court finds that a deadlock or dispute involving the internal affairs of the corporation impairs or threatens to impair the value of the assets or the continued conduct of the business of the corporation. Upon or subsequent to appointing such a conservator or interim manager, the court may enter orders, which, despite any contract or provision of the articles of incorporation to the contrary:

1. Suspend, revoke or nullify the authority, in whole or in part, of any existing manager or managers or any conservator or interim manager appointed in any arbitration pursuant to § 3206;
2. Define the authority of such conservator or interim manager;
3. Set the compensation of such conservator or interim manager to be paid by the corporation; and/or
4. Resolve, partially resolve or aid in the resolution of any such deadlock or dispute.

B. When any order or appointment is issued pursuant to Subsection (A) of this Section, the clerk of the court shall immediately supply a copy thereof to the department.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞310, 393, 553(5).
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 475, 581, 760.
 C.J.S. Indians §§ 49 to 51.

§ 3215. Involuntary dissolution or liquidation pursuant to court order

The court shall have full power to liquidate the assets and business of a close corporation.

A. In an action filed by an investor when the court finds:

1. That a deadlock or dispute involving the internal affairs of the corporation, continues to impair or threatens to impair the value of the assets or the continued conduct of the business of the corporation, notwithstanding bona fide attempts to utilize the arbitration provisions in the articles of incorporation if available and the provisions of § 3214;
2. That a deadlock or dispute involving the internal affairs of the corporation, impairs or threatens to impair the value of the assets, or the continued conduct of the business of the corporation, and no provision is

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contained in the articles of incorporation for arbitration of such disputes and that it would be a useless effort to invoke the provisions of § 3214;

3. That the investors are so divided respecting the manager of the business and affairs of the corporation that either the corporation is suffering or will suffer irreparable injury, or the business and affairs of the corporation can no longer be conducted to the advantage of the investors generally, and the provisions of §§ 3206 and 3214 are inapplicable; or

4. That the corporation has abandoned its business and has failed within a reasonable period of time to take steps to dissolve and liquidate its affairs and distribute its assets.

B. In an action filed by the Attorney General in the manner provided by § 3141.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞393, 553(5), 592, 611.

Indians ☞32(1, 7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 581, 760, 811, 813 to 816, 818, 821, 824, 830 to 831, 835.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

§ 3216. Court relief other than dissolution, liquidation or appointment of conservator

A. The court in an action filed by an investor seeking relief under § 3215, shall have full power to make any such order or grant any such relief other than dissolution or liquidation as in its discretion it may deem appropriate including but not limited to:

1. Canceling, altering or amending any provisions contained in the articles of incorporation of such close corporation;

2. Directing, prohibiting or enjoining any act of the corporation or other persons who are parties to the court action; or

3. Providing for the purchase by the corporation or by other investors at their fair market value the capital units of the person bringing such action.

B. Relief under this Section may be granted even though the court does not find any of the elements prescribed for relief under § 3215.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞393.

Indians ☞32(1, 7).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 581.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

§ 3217. Merger of close corporations

Any two or more Navajo close corporations may merge as may be provided for pursuant to § 3139.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞581.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 792 to 797.

C.J.S. Indians §§ 49 to 51.

§ 3218. Conversion of corporate status

A. A close corporation may convert its status to that of a corporation organized pursuant to Subchapter 1 by amending its articles of incorporation to delete therefrom all reference to the term “close corporation”, including its use in the name of the corporation, and to comply with § 3107. Such an amendment shall be adopted by a two-thirds vote of the voting rights of the capital units unless the articles of incorporation require a greater vote to convert. The articles of incorporation as amended shall also provide for the cancellation of capital units and the basis on which shares will be issued in lieu thereof.

B. The conversion of a close corporation is affected if there has been substantial compliance in good faith with the requirements of Subsection (A) of this Section.

C. A corporation organized pursuant to Subchapter 1 having thirty (30) or fewer shareholders may convert its status to that of a close corporation and be subject to the provisions of this article by amending its articles of incorporation to comply with § 3203. A resolution so amending its articles of incorporation shall be adopted by the unanimous vote of all shareholders whether otherwise entitled to vote or not. The resolution amending the articles of incorporation shall provide for the cancellation of all issued outstanding shares of stock and state the relative rights of capital units.

D. No conversion pursuant to this Section shall be deemed a termination or dissolution of the corporate entity or a sale or exchange of the shares of capital units.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞573 to 580.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Indians §§ 49 to 51.

§ 3219. Application of General Corporation Law

Close corporations organized pursuant to this Subchapter are subject to the provisions of Subchapter 1 except insofar as this Subchapter modifies or differs

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from such provision, in which case this Chapter prevails. This Chapter shall be applicable to all close corporations except as otherwise provided. This Chapter shall be construed to simplify the management, structure, and operations of close corporations.

History

CJA-2-86, January 30, 1986.

Library References

Indians ⇨32(1, 4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51.

Subchapter 3. Non-Profit Corporations

§ 3301. Short title

This Chapter shall be known and may be cited as the “Navajo Nation Non-Profit Corporation Act”.

History

CJA-2-86, January 30, 1986.

§ 3302. Definitions

The definitions of Subchapter 1 are applicable in this Chapter.

History

CJA-2-86, January 30, 1986.

§ 3303. Conversion of corporate status prohibited

No non-profit corporation organized under this Chapter may convert its status to a corporation organized for profit, either foreign or domestic, or merge or consolidate with a domestic corporation or foreign corporation organized for profit, unless the corporation surviving the merger or consolidation is a non-profit corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨572 to 573, 581.	C.J.S. Corporations §§ 792 to 797.
Indians ⇨32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 101, 209.	

§ 3304. Purposes

Corporations maybe organized under this Chapter for any lawful purpose or purposes, including without limitation any of the following purposes:

A. Charitable;

- B. Benevolent;
- C. Eleemosynary,
- D. Educational;
- E. Civic;
- F. Patriotic;
- G. Political;
- H. Religious;
- I. Social;
- J. Fraternal;
- K. Literary;
- L. Cultural;
- M. Athletic;
- N. Scientific;
- O. Agricultural;
- P. Horticultural;
- Q. Animal husbandry; or
- R. Professional, commercial, industrial or trade associations.

History

CJA-2-86, January 30, 1986.

Library References

Beneficial Associations ↻1.	C.J.S. Beneficial Associations §§ 2 to 3.
Charities ↻1.	C.J.S. Charities §§ 2 to 3.
Corporations ↻14(1).	C.J.S. Corporations §§ 28 to 29.
Indians ↻32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 54, 75, 101, 209.	

§ 3305. Members

A. A non-profit corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of each class shall be set forth in the articles of incorporation or bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or bylaws. A corporation may issue certificates evidencing membership rights, voting rights, or ownership rights, as authorized in the articles of incorporation or bylaws.

B. Members are not liable for the debts, obligations or liabilities of the corporation.

C. A corporation formed under this Chapter by a recognized chapter of the Navajo Nation shall have one class of members, and any Navajo eighteen (18) years or older who is entitled to vote within said chapter in Navajo Nation or

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chapter elections shall be entitled to be a member of said corporation, and shall be entitled to vote on matters on which members are entitled to vote.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞170, 197, 215 to 280.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 305, 308 to 309, 312, 314, 317, 373, 375 to 378, 414 to 432.
C.J.S. Indians §§ 49 to 51.

§ 3306. Bylaws

The power to make, alter, amend, or repeal the bylaws of the non-profit corporation shall be vested in the board of directors unless reserved to the members by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law, or the articles of incorporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞53.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 111.
C.J.S. Indians §§ 49 to 51.

§ 3307. Meetings of members

A. Meetings of members may be held at such place within or without Navajo Indian Country as stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings shall be held at the known place of business of the non-profit corporation.

B. An annual meeting of the voting members, if any, shall be held at such time as stated in or fixed in accordance with the bylaws. If the annual meeting is not held within any thirteen (13) month period the court may, on the application of any voting member, order a meeting to be held. Failure to hold such annual meeting shall not work as a forfeiture of the corporate charter or dissolution of the corporation.

C. Special meetings of the voting members, if any, may be called by the board of directors, the members having at least one-tenth of the votes entitled to be cast at such meeting or any other person as may be authorized in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞191 to 197.
Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 362 to 378, 383.
C.J.S. Indians §§ 49 to 51.

§ 3308. Notice of members' meetings

Unless otherwise provided in the articles of incorporation or bylaws, written notice stating the place, day and hour of the meeting, and in case of a special meeting, the purpose for which the meeting is called, shall be mailed or delivered not less than ten nor more than fifty (50) days before the date of the meeting by an officer of the non-profit corporation, at the direction of the person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be addressed to the member at his/her address as it appears on the records of the corporation. When a meeting is adjourned to another time or place, unless the bylaws otherwise require, notice need not be given at the adjourned meeting if the time and place of the meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which may have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞194.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 364 to 367.
C.J.S. Indians §§ 49 to 51.

§ 3309. Voting

A. Except for a non-profit corporation formed by a chapter of the Navajo Nation, the right of the members or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

B. A member entitled to vote may vote in person or, unless the articles of incorporation or bylaws otherwise provide, by proxy executed in writing by the member or by his/her duly authorized attorney in fact. No proxy may be valid after eleven (11) months from the date of its execution.

C. If directors or officers are to be elected, the bylaws may provide that the elections be conducted by mail.

D. If a corporation has no members or its members have no right to vote, the directors have the sole voting power, unless otherwise provided in the articles of incorporation or bylaws.

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History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞197, 198, 283, 284.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 373, 375 to 378, 385,
434 to 435, 443.
C.J.S. Indians §§ 49 to 51.

§ 3310. Quorum

The bylaws may provide the number or percentage of members entitled to vote, present or represented by proxy, or the number or percentage of votes entitled to be cast by members present or represented by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provisions, members present or represented by proxy, holding one-tenth of the votes entitled to be cast shall constitute a quorum.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞195.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 370, 383.
C.J.S. Indians §§ 49 to 51.

§ 3311. Board of directors

A. The affairs of a non-profit corporation shall be managed by a board of directors except as may be otherwise provided in Subsection (B). Directors need not be members of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

B. The articles of incorporation may vest the management of the affairs of the corporation in its members or may limit the authority of the board of directors to whatever extent is set forth in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞282, 310.
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 447 to 448, 475.
C.J.S. Indians §§ 49 to 51.

§ 3312. Number, election and classification and removal of directors

A. Unless the articles of incorporation provide otherwise, a non-profit corporation may have only one director. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or bylaws. The number of directors may be increased or decreased by amendment to, or in

the manner provided, in the articles of incorporation or bylaws, but no decrease in number may have the effect of shortening the term of any incumbent director. If the number of directors has not been fixed by, or in the manner provided, in the articles of incorporation or bylaws, the number shall be the same as the number of initial directors.

B. The person(s) constituting the initial board of directors shall be named in the articles of incorporation to hold office until the first annual election of directors, or for any other period as may be specified in the articles of incorporation or bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or bylaws. In the absence of a provision prescribing the manner of election or appointment of directors, the members having voting rights shall elect the directors, or, if a corporation has no members or no members having voting rights, the directors are elected or appointed by the incumbent directors or by the officer, representative body of any organization or society or other person designated in the articles of incorporation or bylaws. In the absence of a provision fixing the term of office, the term of office of a director is one (1) year.

C. Directors may be divided into classes, and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he/she is elected or appointed, and until his/her successor is elected or appointed and qualified, or until his/her earlier death, resignation or removal. Any director may resign at any time upon written notice to the corporation.

D. A director may be removed from office pursuant to any procedure provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations Ⓒ283 to 294.

Indians Ⓒ32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 373, 434 to 446, 449 to 459.

C.J.S. Indians §§ 49 to 51.

§ 3313. Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of directors when his/her successor is elected and qualified. Any newly created directorship shall be deemed a vacancy. Unless otherwise provided in the articles of incorporation or bylaws, when one or more directors resigns from the board, effective at a future time, a majority of the directors then in office, including those who have so resigned, may fill such vacancy, the vote on the vacancy to take effect when such resignation becomes effective. Each director so chosen shall hold office as provided for the filling of

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other vacancies. If by reason of death, resignation or otherwise, a non-profit corporation has no directors in office, any officer or members may call a special meeting of members for the purpose of electing the board of directors unless otherwise provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞283, 295.

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 434 to 435.

C.J.S. Indians §§ 49 to 51.

§ 3314. Quorum of directors

A majority of the number of directors fixed pursuant to the articles of incorporation or bylaws constitutes a quorum unless otherwise provided in the articles of incorporation or bylaws, but in no event may a quorum consist of less than one-third of the total number of directors.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞298(5).

Indians ☞32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 466.

C.J.S. Indians §§ 49 to 51.

§ 3315. Committees of the board of directors

A. A majority of the full board of directors may designate from among the directors one or more committees each of which, to the extent provided in the articles of incorporation or bylaws, may be given all the authority of the board of directors, except no such committee may exercise the authority of the board of directors in reference to the following matters:

1. Submission to the members of any matter that requires an act of the members;
2. Filling vacancies on the board of directors or on any committee of the board of directors;
3. Adoption, amendment or repeal of bylaws; or
4. Fixing compensation of directors.

B. The board of directors, with or without cause, may dissolve any such committee or remove any director from the committee at anytime. The designation of any such committee and the delegation of authority shall not operate to relieve the board of directors or any director of any responsibility imposed by law.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞299.
Indians ☞32(1).

Westlaw Topic Nos. 101, 209.
C.J.S. Indians §§ 49 to 51.

§ 3316. Place and notice of directors' meeting

A. Meetings of the board of directors, regular or special, shall be held at least annually either within or without Navajo Indian Country, and may be held by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any regular or special meeting of the board of directors need not be specified in the notice or waiver of notice of such meeting unless required by the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞298(2, 3).
Indians ☞32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 463 to 464.
C.J.S. Indians §§ 49 to 51.

§ 3317. Officers

A. The officers of a non-profit corporation shall consist of a president, a secretary and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Other officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the one person.

B. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as provided in the bylaws or determined by resolution of the board of directors not inconsistent with the bylaws.

C. The articles of incorporation or bylaws may provide that any one or more officers of the corporation shall be *ex officio* members of the board of directors.

D. The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨284, 300 to 305, 310.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 443, 469 to 475.
C.J.S. Indians §§ 49 to 51.

§ 3318. Removal of officers

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the non-profit corporation will be served by the removal, but such removal shall be without prejudice to the contract rights, if any, of the person removed. Election or appointment of an officer or agent shall not in itself create contract rights.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇨294.
Indians ⇨32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 454 to 457.
C.J.S. Indians §§ 49 to 51.

§ 3319. Books and records

A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees of the board of directors. Each corporation shall keep at its registered agent's office, or its known place of business within Navajo Indian Country, a record of the name and addresses of its members entitled to vote. Books, records and minutes shall be in written form, or in any other form capable of being converted into written form within a reasonable time.

B. Each member entitled to vote, upon written demand stating the purpose of the examination, may examine, in person or by agent or attorney, at any reasonable time for any proper purpose, the corporation's relevant books and records of account, minutes and record of members and may make copies of or extracts from the books, records or minutes.

C. Nothing contained in this Section shall impair the power of any court of competent jurisdiction, upon proof by a member of proper purpose, to compel the production for examination or copying by such member of the books and records of account, minutes and record of members of a corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞181, 391.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 331 to 332, 580, 583.
 C.J.S. Indians §§ 49 to 51.

§ 3320. Shares of stock and dividends prohibited

A non-profit corporation shall not have or issue shares of stock. No dividend may be paid and no part of the income or profit of such corporation may be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount of its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this Chapter, but no such payment benefit or distribution may be deemed to be a dividend or a distribution or income or profit.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞12, 62, 151 to 157, 177, 308,
 629.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 25 to 27, 126, 128, 148
 to 151, 158, 293 to 304, 315, 490, 530, 875
 to 878.
 C.J.S. Indians §§ 49 to 51.

§ 3321. Loans to directors and officers prohibited

A non-profit corporation shall not lend money to or use its credit to assist its directors, officers or employees. Any director, officer or employees who assents to or participates in the making of any such loan shall be personally liable to the corporation for the amount of such loan together with interest at eighteen percent (18%) per annum until the repayment of the loan.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞316.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 507.
 C.J.S. Indians §§ 49 to 51.

§ 3322. Incorporators

One or more persons capable of contracting may act as incorporators of a corporation by signing and delivering to the department an original and one or more copies of articles of incorporation for such corporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞5, 15 to 22.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 26, 30 to 35, 37, 39,
 41 to 44, 559.
 C.J.S. Indians §§ 49 to 51.

§ 3323. Articles of Incorporation

A. The articles of incorporation shall state:

1. The name of the corporation;
2. The period of duration, if less than perpetual;
3. The purpose or purposes for which the corporation is organized, which may be stated to include conducting any or all lawful affairs for which corporations may be incorporated under this Subchapter;
4. A brief statement of the character of affairs which the corporation initially intends to actually conduct in this state. Such statement shall not limit the character of affairs which the corporation ultimately conducts;
5. The name and address of its initial registered agent;
6. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual election of directors or until their successors are elected and qualify;
7. The name and address of each incorporator; and
8. Any other provision not inconsistent with law which the incorporators elect to set forth.

B. It is not necessary to state in the articles of incorporation any of the corporate powers enumerated in this Chapter.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞14, 18.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 26, 28 to 29, 33 to 35,
 41, 559.
 C.J.S. Indians §§ 49 to 51.

§ 3324. Filing of articles of incorporation

A. When the articles of incorporation have been delivered for filing, the department shall determine that the articles:

1. Set forth the information required by § 3323; and
2. Do not adopt as the name of the corporation a name which is in violation of § 3105.

B. Upon making such determinations, the department shall proceed with filing the articles.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞22.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 37, 39.
 C.J.S. Indians §§ 49 to 51.

§ 3325. Effect of filing articles of incorporation

Upon the filing of the articles of incorporation, the corporate existence begins, and the filing is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the non-profit corporation has been incorporated under this Subchapter, except as against the Navajo Nation in a proceeding for involuntary dissolution of the corporation or revocation of the articles of incorporation.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞29, 32 to 35, 611.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 47 to 51, 63, 65 to 66,
 835.
 C.J.S. Indians §§ 49 to 51.

§ 3326. Organization meeting

A. After delivery of the articles of incorporation for filing, an organization meeting of the initial board of directors shall be held at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three (3) days notice of the meeting by mail to each director so named, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of a majority of the directors upon at least three (3) days notice for those purposes as stated in the notice of the meeting.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞283 to 284, 298.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 373, 434 to 443, 445
 to 446, 462.
 C.J.S. Indians §§ 49 to 51.

§ 3327. Right to amend articles of incorporation

A corporation may amend its articles of incorporation in any lawful respect.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞40.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
 C.J.S. Indians §§ 49 to 51.

§ 3328. Procedures to amend articles of incorporation

A. Amendments to the articles of incorporation shall be made in the following manner:

1. If there are members entitled to vote on the proposed amendment, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each member entitled to vote at the meeting within the time and in the manner provided in this Subchapter for the giving of notice of meetings of members. The proposed amendment may be adopted only by act of the members; or

2. If there are no members or no members entitled to vote on the proposed amendment, an amendment may be adopted by act of the board of directors.

B. Any number of amendments may be submitted and voted upon at any one meeting.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞40.
 Indians ☞32(1).
 Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.
 C.J.S. Indians §§ 49 to 51.

§ 3329. Articles of amendment

The articles of amendment shall be executed by the non-profit corporation in duplicate and shall state:

- A. The name of the corporation;
- B. The amendments adopted;
- C. The date of the adoption of the amendments; and
- D. That the amendments were duly adopted by act of the members or of the board of directors.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞40.
 Indians ☞32(1).

Westlaw Topic Nos. 101, 209.
 C.J.S. Corporations § 38.

C.J.S. Indians §§ 49 to 51.

§ 3330. Filing of articles of amendment; effect of amendment

A. When the articles of amendment have been delivered for filing, the department shall determine that the articles set forth the information required by § 3329.

B. Upon making such determination, the department shall proceed with the filing the articles.

C. Upon the delivery of the articles of amendment to the department, the amendment shall become effective and the articles of incorporation shall be deemed to be amended, except that, if the determination of the requirements of this Chapter for filing are not satisfied completely, the articles of amendment shall not be filed, the amendment shall not become effective and the articles of incorporation shall not be deemed to have been amended.

D. No amendment may affect any existing claim in favor of or against the non-profit corporation or any pending action or proceeding to which the corporation is a party or the existing rights of persons other than members. If the corporate name is changed by amendment, no action or proceeding brought by or against the corporation under its former name may abate for that reason.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ⇌40.

Indians ⇌32(1).

Westlaw Topic Nos. 101, 209.

C.J.S. Corporations § 38.

C.J.S. Indians §§ 49 to 51.

§ 3331. Sale, lease, exchange, mortgage or pledge of assets

A. A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a non-profit corporation may be made only upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as are authorized in the following manner:

1. If there are members entitled to vote on the matter, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of those members, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of the corporation shall be given to each member entitled to vote at such meeting within the time and the manner provided by this Subchapter for the giving of notice of meetings, the members may authorize such sale, lease exchange, mortgage, pledge or other disposition and may fix or may authorize the board

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of directors to fix, any or all of the terms and conditions and the consideration to be received by the corporation. Such authorization shall require an act of the members; or

2. If there are no members or no members entitled to vote on the matter, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the assets of a corporation may be authorized by act of the board of directors.

B. If the authorization provides, the board of directors may abandon the sale, lease, exchange, mortgage, pledge or other disposition subject to the contractual rights of third parties.

History

CJA-2-86, January 30, 1986.

Library References

Corporations ☞439 to 446, 449 to 487.
Indians ☞15, 16, 23, 24, 32(1).
Westlaw Topic Nos. 101, 209.

C.J.S. Corporations §§ 649, 651 to 698.
C.J.S. Indians §§ 12, 30 to 31, 49 to 51, 90 to 95, 98 to 100, 117.

§ 3332. Application of general corporation law

The provisions of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder, where applicable, shall apply to non-profit corporations organized hereunder, except when in conflict with the provisions of this Chapter.

History

CJA-2-86, January 30, 1986.

Library References

Indians ☞32(1, 4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51.

Subchapter 4. Agricultural Cooperatives

History

[Subchapter 4 redesignated] Signs, Billboards, and Advertising Devices previously codified as Chapter 21, §§ 3401-3412 has been redesignated to Title 5, Chapter 3, Subchapter 3, §§ 421-432.

CJA-2-86, January 30, 1986.

Note. Issuance of Chapter. CMY-38-69, May 22, 1969, Northern Arizona Livestock Association, Inc.

Annotations

See annotations under Licenses and Permits, and under Taxation in digest.

§ 3401. Short title

This Subchapter shall be known and may be cited as the “Navajo Agricultural Cooperative Act”.

History

CJA-2-86, January 30, 1986.

§ 3402. Definitions

A. The term “agricultural products” shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bees, and any farm and ranch products;

B. The term “member” shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock;

C. The term “association” means any corporation organized under this Chapter of any association organized under the cooperative marketing acts of any other tribe or state. Associations organized hereunder shall be deemed non-profit because as they are organized not to make profit for themselves or for their members but only for their members as producers.

History

CJA-2-86, January 30, 1986.

§ 3403. Organizers

A. Five or more persons engaged in the production of agricultural procedures may form an association under this Subchapter.

B. An agricultural cooperative organized under this Chapter by recognized chapters of the Navajo Nation shall permit as members entitled to hold common stock, or if organized without common stock, as members entitled to vote, all Navajos eighteen (18) years or older who are entitled to vote within said chapter in Navajo Nation or chapter elections.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3404. Purpose

An association may be organized to engage in any activity in connection with the production, cultivation, marketing or selling of agricultural products produced by and marketed for its members, or in the harvesting, preserving, drying, processing, canning, storing, handling, shipping or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities. Provided, however, any such activities may extend to nonmembers and to the production, cultivation of lands owned or cultivated by them and their products.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞24, 32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 12, 31, 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3405. Powers

Associations organized under this Chapter shall have all of the powers granted to corporations organized under Subchapter 1, and in addition shall specifically have the following powers:

A. To engage in any activity in connection with the production, cultivation of farm products, including the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members, or the production, manufacturing or marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities; or in any one or more of the activities specified in this Subchapter;

B. To borrow money and make advances to members;

C. To act as the agent or representative of any member or members in any of the above-mentioned activities;

D. To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association; including the power to subscribe, pay for and own the capital stock of Banks for Cooperatives organized under the "Farm Credit Act of 1933" passed by the Congress of the United States and approved June 16, 1933;

E. To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

F. To buy, hold and exercise privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

G. To extend its activities to the products and supplies of non-members;

H. To consolidate with the consent of individual permittees land use permits and grazing permits under long-term agricultural business land leases with the Navajo Nation;

I. To enter into leasehold assignments, approved by the Navajo Nation, and the Secretary of the Interior or his/her authorized designee, with suppliers of agricultural production credit; and

J. To enter into management contracts and joint venture agreements for the mutual benefit of its members.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 12, 31, 49 to 51, 67.
Indians ☞9, 24, 32(1).	C.J.S. Industrial Co-operative Societies §§ 2 to 19.
Westlaw Topic Nos. 23, 209.	
C.J.S. Agriculture §§ 138 to 158.	

§ 3406. Members

A. Under the terms and conditions prescribed in its bylaws, an association may admit as members, or issue common stock to only persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

B. If a member of a non-stock association be other than a natural person, such member may be represented by an individual, associate officer or member thereof, duly authorized in writing.

C. Any association as defined in § 3402(C) may become a member or stockholder of any other association or associations organized hereunder.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 49 to 51.
Indians ☞32(1).	C.J.S. Industrial Co-operative Societies §§ 2 to 19.
Westlaw Topic Nos. 23, 209.	
C.J.S. Agriculture §§ 138 to 158.	

§ 3407. Liability for debts

The stockholders or members of an association organized under this Chapter shall not be individually liable for the debts of such association except as they may be held liable under provisions of Subchapter 1.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 12, 31, 49 to 51.
Indians ☞24, 32(1).	C.J.S. Industrial Co-operative Societies §§ 2 to 19.
Westlaw Topic Nos. 23, 209.	
C.J.S. Agriculture §§ 138 to 158.	

§ 3408. Articles of incorporation

Each association formed under this Chapter must prepare and file articles of incorporation, setting forth:

- A. The name of the association;
- B. The purpose for which it is formed;
- C. The place where its principal business will be transacted;
- D. The term for which it is to exist, which may be perpetual;
- E. The number of directors thereof, which must not be less than five (5) and may be any number in excess thereof, and the term of the office of such directors;
- F. If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the property rights and interests of each member shall be set forth by the general rule or rules applicable to all members by which the property rights and interest, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended or repealed except by the written consent or the vote of three-fourths of the members; and
- G. If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided into preferred and common stock. If so divided, the articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the nature and extent of the preferences and privileges granted to each. The incorporators must sign and file in duplicate the articles in accordance with the provisions of the general non-profit corporation law of the Navajo Nation; and when so filed the said articles of incorporation, or certified copies thereof, shall be received in the courts, and other places, as prima facie evidence of the facts contained therein, and of the incorporation of such association. No part of such capital stock shall be required to be subscribed and/or paid in as a prerequisite to the filing of such articles of incorporation; provided further that such association may, from time to time sell and issue to their members or stockholders, shares of capital stock in such manner as provided in the bylaws.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.
 Indians ☞32(1).
 Westlaw Topic Nos. 23, 209.
 C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.
 C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3409. Amendments to articles of incorporation

The articles of incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds vote of the directors and then adopted by a vote representing a majority of all the members of the association. Amendments to the articles of incorporation when so adopted shall be filed in accordance with the provisions of the general non-profit corporation law of the Navajo Nation.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3410. Bylaws

Each association incorporated under this Chapter must, within thirty (30) days after its incorporation, adopt for its regulation and the management of its affairs, bylaws, not inconsistent with the powers granted by this Chapter. A majority vote of the members or common stockholders is necessary to adopt such bylaws. Each association, under its bylaws, may also provide for any or all of the following matters:

- A. The time, place and manner of calling and conducting its meetings;
- B. The number of stockholders or members constituting a quorum;
- C. The right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner and effects of such vote and the method and manner in which an association which is a member may cast its vote;
- D. The number of directors constituting a quorum;
- E. The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof;
- F. Penalties for violations of the bylaws;
- G. The amount of entrance, organization and membership fees, if any, the manner and method of collection of the same, and the purposes for which they must be used;
- H. The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stockholder for services rendered by the association to him/her and the time of payment and the manner of collection; the marketing contract between the association to him/her and the time of payment and the manner of collection; and the

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marketing contract between the association and its members or stockholders which every member of stockholder may be required to sign;

I. The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership or common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock, the manner of assignment and transfer of the interest of members and of shares of common stock, and conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he/she ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his/her membership, or at the option of the association by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his/her property interest in the association and shall fix the amount thereof in money, which shall be paid to him/her within one (1) year after such expulsion or withdrawal; and

J. The distribution of earned surplus to members and nonmembers on the basis of patronage and land contribution.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3411. Meetings; notice; election of directors and officers

Meetings, notice and election of directors and officers shall be governed by the provisions of Subchapter 3 pertaining to non-profit corporations.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3412. Stock-membership certificates

A. When a member of an association established without capital stock, has paid his/her membership fee in full, he/she shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the

association as full or partial payment. The association shall hold the stock as security for the payment of the notice, but such retention as security shall not affect the members' right to vote.

B. Except for debts lawfully contracted between him/her and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his/her membership, fee or his/her subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

C. No stockholder or a cooperative association shall own more than one-fifth of the issued common stock of the association; and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-fifth of the issued common stock.

D. No member or stockholder shall be entitled to more than one vote.

E. Any association organized with stock under this Subchapter may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retrievable by the association on such terms and conditions as may be provided for by the articles of incorporation and printed on the face of the certificate.

F. The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

G. The association may at any time, except when the debts of the association exceed fifty percent (50%) of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one (1) year thereafter.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ⌘6.

Indians ⌘23, 24, 32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 12, 30 to 31, 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3413. Removal of officer or director

A. Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association; by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy.

B. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall

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have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; the person or persons bringing the charges against him/her shall have the same opportunity.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3414. Referendum

Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership of the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3415. Marketing contract

A. The association and its members may make and execute marketing contracts requiring the members to sell, for a period of time, not over ten (10) years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, if any, and other proper reserves; and interest not exceeding eight percent (8%) per annum upon common stock.

B. The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him/her of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts. In the event of any breach or threatened breach of such marketing contract by the member, the association

shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof.

C. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 12, 31, 49 to 51.
Indians ☞24, 32(1).	C.J.S. Industrial Co-operative Societies §§ 2
Westlaw Topic Nos. 23, 209.	to 19.
C.J.S. Agriculture §§ 138 to 158.	

§ 3416. Patronage distributions including land rentals

The earned surplus of an association organized under this Chapter, including revenues received from land rentals, shall be apportioned, distributed, and paid periodically on the basis of patronage and land use rights contributed to the association as the bylaws shall provide.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 49 to 51, 67.
Indians ☞9, 32(1).	C.J.S. Industrial Co-operative Societies §§ 2
Westlaw Topic Nos. 23, 209.	to 19.
C.J.S. Agriculture §§ 138 to 158.	

§ 3417. Preferred stock

An association organized hereunder may issue preferred capital stock for any purpose so long as fair value is received therefore.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 49 to 51.
Indians ☞32(1).	C.J.S. Industrial Co-operative Societies §§ 2
Westlaw Topic Nos. 23, 209.	to 19.
C.J.S. Agriculture §§ 138 to 158.	

§ 3418. Annual reports

Each association formed under this Chapter shall prepare and make out an annual report on forms furnished by the department containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock

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paid up and the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3419. Bond

Each and all officers, employees and agents, handling funds, or property of the corporation or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond of indemnity, indemnifying the corporation and members against any fraudulent, dishonest or unlawful act on the part of such officers and employees and other acts as provided in the bylaws of the association. In case the officers and directors of any corporation authorized to be created under the provisions of this Chapter, shall fail to have all officers, employees and agents handling such funds or property execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure and which might have been recovered on said bond.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.

Indians ☞32(1).

Westlaw Topic Nos. 23, 209.

C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.

C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3420. Interest in other corporations or associations

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engage in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or by the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of the Navajo Nation, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 12, 31, 49 to 51.
Indians ☞24, 32(1).	C.J.S. Industrial Co-operative Societies §§ 2 to 19.
Warehousemen ☞11.	C.J.S. Warehousemen and Safe Depositaries §§ 23, 26 to 29.
Westlaw Topic Nos. 23, 209, 403.	
C.J.S. Agriculture §§ 138 to 158.	

§ 3421. Contracts and agreement with other associations

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in the Navajo Nation or other tribal government or any other state for the cooperative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Indians §§ 12, 31.
Indians ☞24.	C.J.S. Industrial Co-operative Societies §§ 2 to 19.
Westlaw Topic Nos. 23, 209.	
C.J.S. Agriculture §§ 138 to 158.	

§ 3422. Association heretofore organized

Any corporation association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this Chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the department, to the effect that the corporation or association has, by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this Subchapter. Articles of incorporation shall be filed as required in § 3407 of this Chapter except that they shall be signed by the members of the board of directors.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6.	C.J.S. Agriculture §§ 138 to 158.
Indians ☞32(1).	C.J.S. Indians §§ 49 to 51.
Westlaw Topic Nos. 23, 209.	

5 N.N.C. § 3422

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C.J.S. Industrial Co-operative Societies §§ 2 to 19.

§ 3423. Breach of contract or false reports

Any person or person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association, or who maliciously and knowingly spreads false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6. 92, 94 to 95, 97, 139 to 143, 152 to 153,
Indians ☞24, 27(1, 7), 32(1, 7, 8). 157.
Westlaw Topic Nos. 23, 209. C.J.S. Industrial Co-operative Societies §§ 2
C.J.S. Agriculture §§ 138 to 158. to 19.
C.J.S. Indians §§ 12 to 15, 19 to 20, 29, 31,
42, 49 to 51, 53, 55, 59 to 62, 68, 89, 91 to

§ 3424. Associations not in restraint of trade

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this Subchapter, be considered illegal or in restraint of trade.

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ☞6. C.J.S. Indians §§ 49 to 51.
Indians ☞32(1). C.J.S. Industrial Co-operative Societies §§ 2
Monopolies ☞8, 11. to 19.
Westlaw Topic Nos. 23, 209, 265. C.J.S. Monopolies §§ 19, 26 to 27, 62 to 63,
C.J.S. Agriculture §§ 138 to 158. 147.

§ 3425. Application of general corporation law

The provision of the general corporation laws of the Navajo Nation, and all powers, rights and duties thereunder shall apply to associations organized hereunder except when in conflict with the provisions of this Subchapter. Provided, however, that any cooperative marketing association incorporated under the laws of the Navajo Nation may apply for and be granted a permit to do business as a foreign corporation under laws organized for a similar purpose. Provided further, that such foreign cooperative marketing associations shall not be required to have a paid-up capital or any portion of the capital paid-up in order to be entitled to such permit.

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5 N.N.C. § 3425

History

CJA-2-86, January 30, 1986.

Library References

Agriculture ↗6.
Indians ↗32(1).
Westlaw Topic Nos. 23, 209.
C.J.S. Agriculture §§ 138 to 158.

C.J.S. Indians §§ 49 to 51.
C.J.S. Industrial Co-operative Societies §§ 2
to 19.

Title 5A

Navajo Uniform Commercial Code

Article	Section
Description of Articles	
1. General Provisions	1-101
2. Sales	2-101
3. Commercial Paper	3-101
4. [Reserved]	4-101
5. [Reserved]	5-101
6. [Reserved]	6-101
7. [Reserved]	7-101
8. [Reserved]	8-101
9. Secured Transactions; Sales of Accounts and Chattel Paper	9-101

Note. The numbering of Navajo Uniform Commercial Code sections remains as close to the original Uniform Commercial Code as possible to maintain the principle of uniformity.

Description of Articles

Article 1

Article 1 of the UCC is a general article which defines terms which are used throughout the UCC. (This section of the Navajo UCC has been substantially unchanged with the exception of the addition of § 1-110 which excludes certain types of barter transactions from the Navajo UCC.)

Article 2

Article 2 of the UCC governs the sale of personal property (“goods”). Goods means all things which are moveable at the time of their identification in the contract of sale. Goods do not include: (i) intangibles, such as patent rights; (ii) real property, such as houses and land; or (iii) services such as legal or accounting work.

Article 2 codifies contract law as applied to the sales of personal property. It deals with the four basic questions of contract law: (1) Is there sufficient agreement to be a contract?; (2) What are the terms of the contract?; (3) Have the parties properly performed their duties under the contract?; and (4) What are the remedies for breach of those duties? Although Article 2 establishes some rules which apply to all sales contracts, for the most part the rules in Articles 2 apply only where the parties themselves have not made their intentions clear. For example, one rule which applies to all contracts under Article 2 is that contracts for goods valued at more than five hundred dollars (\$500.00) must be in writing to be enforceable (the Navajo UCC exempts certain barter transactions from this requirement under § 1-110).

Article 2 governs the formation of the contract, such as when an offer to sell or purchase has been made, how to change such an offer and how to accept it.

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For example, if a business makes an offer by mail to sell shoes and does not specify how the offer can be accepted, the offer can be accepted by any “reasonable means”. Thus, the offer could be accepted by mail, telegram or even a telephone call if those methods were found to be reasonable.

Article 2 governs certain of the terms in a contract if the parties have not agreed on that term or have failed to provide for a situation. These terms include price, time of delivery, the point at which the risk of loss passes, warranties concerning the goods and remedies for failure to perform. For example, if the parties fail to agree upon or forget to include the place and time of delivery for the goods, the UCC states that the goods will be delivered at the seller’s place of business and the time allowed for delivery will be “a reasonable time” as determined by prior dealings between the parties and industry custom.

Article 2 also governs the performance of the obligations under the contract. The questions which arise in this area concern the seller’s obligation to deliver “conforming” goods, the buyer’s obligation to accept “conforming” goods, the buyer’s right to inspect the goods and the buyer’s obligation to pay for the goods. For example, unless the parties agree otherwise, the buyer is obligated to pay for the goods at the time and place the goods are received.

Finally, Article 2 sets out the remedies for either party upon the failure of the other party to adequately perform its obligations. The remedies must deal with situations, for the seller, in which the buyer refuses to accept delivery, cancels the order, refuses to pay or becomes insolvent. For the buyer, these situations include those in which the seller has failed to deliver, has delivered “non-conforming” goods, or has delivered goods which causes an injury. For example, unless otherwise agreed by the parties, if during the course of several shipments the buyer refuses to make a payment when due: (i) the seller may withhold future delivery; (ii) may resell the remaining goods and sue to recover damages; or (iii) may sue to recover the full purchase price.

Article 3

Article 3 of the UCC deals with negotiable instruments, which include drafts, business and personal checks, certificates of deposits and promissory notes. Article 3 does not apply to money, documents of title or investment securities such as stocks and bonds. Commercial paper is frequently used as a cash substitute. Thus, a check could be used as a medium of payment instead of cash or a note may be used as a deferred methods of payment.

Article 3 sets out the obligations and liabilities of the persons who issue negotiable instruments and those who are involved in their transfer. In the case of a check, they would include the person who writes the check, his bank, the banks who process the check, the bank which finally accepts the check and the person or company to whom the check is written. The type of situations for which Article 3 sets out rules include those in which the check is drawn on insufficient funds or the signature is forged.

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Article 9

Article 9 of the UCC governs the creation and enforcement of security interests. A security interest is an interest of a creditor in specific property (“collateral”) owned by a debtor. A security interest permits the secured creditor after default to sell particular collateral and to apply the proceeds of its sales to the payment of his secured debt. In contrast to a secured creditor, an “unsecured” creditor (i.e., a creditor without a security interest) has only general rights against the property of the debtor after the secured creditors have been paid, and an unsecured creditor has no rights against any particular property of a debtor. The most common examples of a security interest arise from the purchase of a vehicle such as a car or tractor by an individual. However, security interests are very important for business in financing the acquisition of capital equipment, such as machines, as well as the purchasing of inventory and selling goods on credit.

Article 9 facilitates the purchase of goods by improving the chances of a creditor’s being repaid and thus encouraging him to sell goods on credit or, in the case of a bank, to lend money. It represents a comprehensive scheme of regulation of security interests in personal property. Article 9 does not regulate transactions in land or improvements. The Article establishes a central filing system so that creditors can determine the extent of the obligations of a debtor to other creditors and establishes procedures for a creditor to enforce a security interest in the case of a debtor’s failure to pay. (The enactment of this article does not affect Navajo repossession law.)

A large part of Article 9 is concerned with establishing the priority of secured parties against each other or other creditors of the debtor. For example, if two creditors are depending on the same “collateral” of the debtor to “secure” their loans, then, generally, the first creditor to “file” a notice of his interest will have the right to have his loan repaid first from the sale of the collateral. However, Article 9 establishes special priority rules for secured parties who loan the money to “purchase” the collateral. This rule encourages the purchase of capital equipment by giving priority protection to loans or credit extended for the initial purchase of goods.

History

CJA-1-86 January 29, 1986.

Note. A “Background and Executive Summary of the Proposed NUCC” which included “The NUCC Development Process” and “The

Purpose of the NUCC” was incorporated in CJA-1-86. However, for codification purposes, only the “Description of Articles 1, 2, 3 and 9” has been provided.

Article 1. General Provisions

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

Section

1-101. Short title

Section

- 1-102. Purposes; rules of construction; variation by agreement
- 1-103. Supplementary general principles of law applicable
- 1-104. Construction against implicit repeal
- 1-105. Territorial application of the Code; parties' power to choose applicable law
- 1-106. Remedies to be liberally administered
- 1-107. Waiver or renunciation of claim or right after breach
- 1-108. Severability
- 1-109. Section captions
- 1-110. Special limitations on the application of the Code
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Part 2. General Definitions and Principles of Interpretation

- 1-201. General definitions
- 1-202. Prima facie evidence by third party documents
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- 1-204. Time; reasonable time; "seasonably"
- 1-205. Course of dealing and usage of trade
- 1-206. Statute of Frauds for kinds of personal property not otherwise covered
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- 1-208. Option to accelerate at will
- 1-209. Subordinated obligations

Part 1. Short Title, Construction, Application, and Subject Matter of the Code

§ 1-101. Short title

This Navajo Uniform Commercial Code (5A N.N.C. § 1-101 *et seq.*) shall be known and may be cited as the "Navajo Uniform Commercial Code".

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The Code makes no substantive change to this section except deleting references to Articles not adopted by the Navajo Nation. **Commentary.** Each Article of the Code (except this article) may also be cited by its own short title. See §§ 2-101, 3-101 and 9-101.

Special Plain Language Comment

This provision provides a method of naming parts of the Navajo Uniform Commercial Code (the "Code").

§ 1-102. Purposes; rules of construction; variation by agreement

A. The Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. Underlying purposes and policies of the Code are:

1. To simplify, clarify and modernize the law governing commercial transactions;
2. To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
3. To make uniform the law of commercial transactions throughout the Navajo Nation.

C. The effect of provisions of this Code may be varied by agreement, except as otherwise provided in this Code and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Code may not be disclaimed by agreement, but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

D. The presence in certain provisions of this Code of the words “unless otherwise agreed” or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (C).

E. In this Code unless the context otherwise requires:

1. Words in the singular number include the plural, and in the plural include the singular; and
2. Words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

F. The “Official Comments” and the “Special Plain Language Comments” are informational only and not binding on the courts, since they do not purport to be comprehensive statements of the meaning and effect of the statute to which they refer.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The Code adds a new section, “Special Plain Language Comments”, to facilitate use of the Code, but new subsection (F) makes clear that such comments and the Official Comments are not the law.

Commentary. 1. Subsections (A) and (B) are intended to make it clear that:

This Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in this Code to be developed by the courts in the light of unforeseen and new circumstances and practices. However, the proper construction of the Code requires that its interpretation and application be limited to its reason.

The Code should be construed in accordance with its underlying purposes and policies. The

text of each section should be read in the light of the purpose and policy of the rule or principle in question, as well as of the Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Subsection (C) states affirmatively at the outset that freedom of contract is a principle of the Code: “the effect” of its provisions may be varied by “agreement”. The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Code seeks to avoid the type of interference with evolutionary growth found in *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in § 3-104; nor can they change the meaning of such terms as “bona fide

purchaser”, “holder in due course”, or “due negotiation”, as used in this Code. But an agreement can change the legal consequences which would otherwise flow from the provisions of the Code. “Agreement” here includes the effect given to course of dealing, usage of trade and course of performance by §§ 1-201, 1-205 and 2-208; the effect of an agreement on the rights of third parties is left to specific provisions of this Code and to supplementary principles applicable under the next section. The rights of third parties under § 9-301 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Code and to the general exception stated here. The specific exceptions vary in explicitness: the Statute of Frauds found in § 2-201, for example, does not explicitly include oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the “contract” made unenforceable; § 9-501 (C), on the other hand, is quite explicit. Under the exception for “the obligations of good faith, diligence, reasonableness and care prescribed by this Code”, provisions of the Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due dili-

gence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, § 1-205 incorporating into the agreement prior course of dealing and usages of trade is of particular importance.

3. Subsection (D) is intended to make it clear that, as a matter of drafting, words such as “unless otherwise agreed” have been used to avoid controversy as to whether the subject matter of a particular Section does or does not fall within the exceptions to subsection (C), but absence of such words contains no negative implications since under subsection (C) the general and residual rule is that the effect of all provisions of the Code may be varied by agreement, subject to the prior comments.

4. Subsection (F) is intended to clarify the status of the “Special Plain Language Comments”. These comments are only to assist the lay reader and are not to be used by parties to interpret the Code. The Official Comments have been adapted from the “Official Comments” of the Commissioners On Uniform State Laws to the corresponding sections of the Uniform Commercial Code as adopted by the States. The Official Comments to this Code do not attempt to describe the respects in which they depart from those other “Official Comments”.

Special Plain Language Comment

This section describes the basic principles of the Code and how it relates to other laws. The section also describes generally the extent to

which the Code may be varied by agreement by the parties to a contract.

Cross References

N.U.C.C. § 1-110.

§ 1-103. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this Code or other applicable Navajo law, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating cause shall supplement its provisions. The adoption of the Code does not preempt the consumer protection laws of the states which continue to apply to appropriate transactions pursuant to 7 N.N.C. § 204 to the extent that such laws would be applicable.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. Except as stated in this paragraph, this section is intended to have the same meaning and effect as § 1-103 of the Uniform Commercial Code as adopted by the states. In addition, since the Uniform Sales Code was never adopted by the Navajo Nation, the Navajo Nation has adopted certain statutory provisions regarding capacity to contract. The final sentence has been added to clarify the status of consumer protection laws after the adoption of the Code.

Commentary. 1. This section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Code.

2. The general law of capacity will be limited by any Navajo statute or ordinance which

limits the capacity of a non-complying person to sue. These limits are equally applicable to contracts of sale to which such person is a party.

3. The listing given in this section is merely illustrative; no listing could be exhaustive. Nor is the fact that in some sections particular circumstances have led to express reference to other fields of law intended at any time to suggest the negation of the general application of the principles of this section.

4. Except as provided in § 1-110, the Code does not preempt the consumer protection laws of the states which apply to a transaction pursuant to 7 N.N.C § 204. However, the application of such state laws to transactions governed by this Code may be varied or preempted by subsequent Navajo legislation.

Special Plain Language Comment

The Code does not settle all questions in commercial law. A person or a court must depend

on other bodies of law to aid in the interpretation of its provisions.

§ 1-104. Construction against implicit repeal

This Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-104 of the Uniform Commercial Code as adopted by the states.

Commentary. This section is intended to express the policy that no Code which bears evidence of carefully considered permanent regu-

lative intention should lightly be regarded as impliedly repealed by subsequent legislation. This Code, carefully integrated and intended as a uniform codification of permanent character covering an entire "field" of law, is to be regarded as particularly resistant to implied repeal.

Special Plain Language Comment

The Code should not be considered repealed by later laws unless no other interpretation is possible.

§ 1-105. Territorial application of the Code: parties' power to choose applicable law

A. Except as provided hereafter in this section, when a transaction bears a reasonable relation to the Navajo Nation and also to another state or nation, the parties may agree that the law either of the Navajo Nation or of such state or nation shall govern their rights and duties. Failing such agreement, this Code applies to transactions bearing an appropriate relation to the Navajo Nation.

B. Where one of the following provisions of this Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified: Rights of creditors against sold goods. Section 2-402. Perfection provisions of the Article on Secured Transactions. Section 9-103.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-105 of the Uniform Commercial Code as adopted by the states, except that deletions were made to conform the Code to the legal status of the Navajo Nation.

Commentary. 1. Subsection (A) states affirmatively the right of the parties to a multi-jurisdiction transaction or a transaction involving foreign trade to choose their own law. That right is subject to the firm rules stated in the sections listed in subsection (B), and is limited to jurisdictions to which the transaction bears a "reasonable relation". In general, the test of "reasonable relation" is similar to that laid down by the Supreme Court in *Seeman v. Philadelphia Warehouse Co.*, 274 U.S. 403, 47 S.Ct. 626, 71 L.Ed. 1123 (1927). Ordinarily, the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs. But an agreement as to choice of law may sometimes take effect as a short-hand expression of the intent of the parties as to matters governed by their agreement, even though the transaction has no significant contact with the jurisdiction chosen.

2. Where there is no agreement as to the governing law, the Code is applicable to any transaction having an "appropriate" relation to the Navajo Nation. Of course, the Code applies to any transaction which takes place in its entirety in the Navajo Nation. But the mere fact that suit is brought in the Navajo Nation does not make it appropriate to apply the substantive law of the Navajo Nation. Cases where a relation to the Navajo Nation is not "appropriate" include, for example, those where the parties have clearly contracted on the basis of some other law, as where the law of the place of contracting and the law of the place of contemplated performance are the same and are contrary to the law under the Code.

3. Where a transaction has significant contacts with the Navajo Nation and also with other jurisdictions, the question what relation is "appropriate" is left to judicial decision. In deciding that question, the court is not strictly bound by precedents established in other contexts. Thus, a conflict-of-laws decision refusing to apply a purely local statute or rule of law to a particular multi-jurisdiction transaction may not be valid precedent for refusal to apply the Code in an analogous situation. Application of the Code in such circumstances may be justified by its comprehensiveness, by the policy of uniformity, and by the fact that it is in large part a reformulation and restatement of the law merchant and of the understanding of a business community which transcends Navajo Nation, state and even national boundaries. (Compare *Global Commerce Corp. v. Clark-Babbitt Industries, Inc.*, 239 F.2d 716, 719 (2d Cir. 1956).) In particular, where a transaction is governed in large part by the Code, application of another law to some detail of performance because of an accident of geography may violate the commercial understanding of the parties.

4. Choice of law decisions often appropriately rest on policies of giving effect to agreements and of uniformity of result, regardless of where suit is brought. To the extent that such policies prevail, the relevant considerations are similar in such a court to those outlined above.

5. Subsection (B) spells out essential limitations on the parties' right to choose the applicable law. Especially in Article 9, parties taking a security interest or asked to extend credit which may be subject to a security interest must have sure ways to find out whether and where to file and where to look for possible existing filing.

6. Section 9-103 should be consulted as to the rules for perfection of security interests and the effects of perfection and non-perfection.

Special Plain Language Comment

Persons who make a commercial agreement may choose the law of either the Navajo Nation or another state or nation if their agreement has sufficient connection to the place they choose.

Where the parties do not choose which law to use, the Code will apply if the transaction has enough contacts with the Navajo Nation.

Library References

Contracts	§§ 2, 129(1), 144, 206.	C.J.S. Contracts	§§ 13 to 23, 25, 229, 238 to 240, 359.
Indians	§ 24.	C.J.S. Indians	§§ 12, 31.
Westlaw Topic Nos.	95, 209.	C.J.S. Joint Ventures	§ 15.
C.J.S. Conflict of Laws	§§ 86 to 87, 91 to 93.		

Research References

What constitutes “reasonable” or “appropriate” relation to a transaction within the meaning of Uniform Commercial Code § 1-105(1), 63 A.L.R.3d 341 (1975).

§ 1-106. Remedies to be liberally administered

A. The remedies provided by this Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential nor special nor penal damages may be had except as specifically provided in this Code or by other rule of law.

B. Any right or obligation declared by this Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-106 of the Uniform Commercial Code as adopted by the states.

Commentary. Subsection (A) is intended to effect three things:

1. First, to negate the unduly narrow or technical interpretation of some remedial provisions of prior commercial statutes in other States by providing that the remedies in this Code are to be liberally administered to the end stated in the section. Second, to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Code elsewhere makes it clear that damages must be minimized. Cf. §§ 1-203, 2-706(A), and 2-217(B). The third purpose of subsection (A) is to reject any doctrine that damages must

be calculable with mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. § 2-204(C).

2. Under subsection (B) any right or obligation described in this Code is enforceable by court action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. §§ 1-103, 2-716.

3. “Consequential” or “special” damages and “penal” damages are not defined terms in the Code, but are used in the sense given them by the leading cases on the subject.

Cross References

5A N.N.C. §§ 1-103, 1-203, 2-204(C), 2-701, 2-706(A), 2-712(B), and 2-716.

Definitional Cross References

“Action”. Section 1-201.
 “Aggrieved party”. Section 1-201.
 “Party”. Section 1-201.
 “Remedy”. Section 1-201.
 “Rights”. Section 1-201.

Special Plain Language Comment

Remedies for breaking an agreement or failing to perform a promise under the Code should be applied in a way which puts both parties, as much as possible, in the same position as they

would have been if the agreement had not been breached. The Code also limits the ability to recover damages greater than the loss.

Library References

Action ⇨3.

Indians ⇨24.

Westlaw Topic Nos. 13, 209.

C.J.S. Actions §§ 22 to 25, 28.

C.J.S. Indians §§ 12, 31.

§ 1-107. Waiver or renunciation of claim or right after breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-107 of the Uniform Commercial Code as adopted by the states.

Commentary. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where such renunciation is in writing and signed and delivered by the aggrieved party. Its provi-

sions, however, must be read in conjunction with the section imposing an obligation of good faith (§ 1-203). There may, of course, also be an oral renunciation or waiver sustained by consideration but subject to Statute of Frauds provisions and to the section of Article 2 on Sales dealing with the modification of signed writings (§ 2-209). As is made express in the latter Section, this Code fully recognizes the effectiveness of waiver and estoppel.

Cross References

5A N.N.C. §§ 1-203, 2-201 and 2-209. And see 5A N.N.C. § 2-719.

Definitional Cross References

“Aggrieved party”. Section 1-201.

“Rights”. Section 1-201.

“Signed”. Section 1-201.

“Written”. Section 1-201.

Library References

Contracts ⇨316.

Indians ⇨24.

Westlaw Topic Nos. 95, 209.

C.J.S. Contracts § 557.

C.J.S. Indians §§ 12, 31.

§ 1-108. Severability

If any provision or clause of this Code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-108 of the Uniform Commercial Code adopted by the states.

Commentary. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

Definitional Cross References

“Person”. Section 1-201

Library References

Contracts ⇨316.
Indians ⇨24.
Westlaw Topic Nos. 95, 209.

C.J.S. Contracts § 557.
C.J.S. Indians §§ 12, 31.

§ 1-109. Section captions

Section captions are parts of the Code.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-109 of the Uniform Commercial Code adopted by the states.

Commentary. To make explicit in all jurisdictions that section captions are a part of the text of this Code and not mere surplusage.

§ 1-110. Special limitations on application of Code

Notwithstanding any other provision of this Code to the contrary, this Code shall not apply to any exclusively barter transaction in which the aggregate market value of all the goods and services involved in the transaction does not exceed ten thousand dollars (\$10,000) at the time of the transaction. Such transactions shall be governed by the customs and usages of the Navajo Nation.

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section does not appear in the Uniform Commercial Code as adopted by the states. It has been added in order to prevent the Code from interfering in the types of transactions found in the traditional Navajo econo-

my. This section preempts state law, including state consumer protection statutes, for these transactions which will be governed solely by the customs and usages of the Navajo Nation. See § 1-103, Comment 4.

Special Plain Language Comment

This section exempts certain transactions in the traditional Navajo economy from the Code.

Library References

Indians ☞23, 24, 32(2, 3).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 30 to 31, 54, 56 to 59.

§ 1-111. Administration of the NUCC; regulations

A. The Department of Commerce within the Division of Economic Development, or its designated successor, shall be charged with the administration of this Code. Said Department is authorized to employ such personnel as may be necessary for the administration of this Code.

B. The Department of Commerce within the Division of Economic Development, or its designated successor, is authorized to promulgate, upon the review and approval of the Attorney General and the Economic Development Committee of the Navajo Nation Council, regulations regarding those matters designated to be set by regulation herein. Provided, the Department shall set forth in such regulations the specific section herein to which they relate.

History

CD-61-86, December 11, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 49, 51.

Part 2. General Definitions and Principles of Interpretation**§ 1-201. General definitions**

Subject to additional definitions contained in the subsequent Articles of this Code which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Code:

A. "Action" in the sense of a judicial proceeding including recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

B. "Aggrieved party" means a party entitled to resort to a remedy.

C. "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Code (§§ 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this Code, if applicable; otherwise by the law of contracts (§ 1-103). (Compare "Contract".)

D. "Bank" means any person engaged in the business of banking.

E. "Barter" means to exchange goods without exchanging money.

F. "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

G. "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air way bill.

H. "Branch" includes a separately incorporated foreign branch of a bank.

I. "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

J. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale, but does not include a transfer in bulk or as security for, or in total or partial satisfaction of a money debt.

K. "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

L. "Contract" means the total legal obligation which results from the parties' agreement as affected by this Code and any other applicable rules of law. (Compare "Agreement".)

M. "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

N. "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

O. "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

P. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document

of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

Q. "Fault" means wrongful act, omission or breach.

R. "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Code to the extent that under a particular agreement or document unlike units are treated as equivalents.

S. "Genuine" means free of forgery or counterfeiting.

T. "Good faith" means honesty in fact in the conduct or transaction concerned.

U. "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or his order or to bearer or in blank.

V. To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

W. "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

X. A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

Y. "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

Z. "Navajo Indian Country" means the territory defined in 7 N.N.C. § 254. Certain communities within the exterior boundaries of "Navajo Indian Country" are excepted from the definition of "Navajo Indian Country" if they are predominantly non-Indian in character. 7 N.N.C. § 254(D).

AA. A person has "notice" of a fact when:

1. He has actual knowledge of it; or
2. He has received a notice or notification of it; or
3. From all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Code.

BB. A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary

course whether or not such other actually comes to know of it. A person “receives” a notice or notification when:

1. It comes to his attention; or
2. It is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

CC. Notice, knowledge or a notice of notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

DD. “Organization” includes a corporation, government or governmental subdivision, agency or tribal enterprise, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

EE. “Party”, as distinct from “third party”, means a person who has engaged in a transaction or made an agreement within this Code.

FF. “Person” includes an individual or an organization (see § 1-102).

GG. “Presumption” or “presumed” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

HH. “Purchase” includes taking by sale, barter, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

II. “Purchaser” means a person who takes by purchase.

JJ. “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

KK. “Representative” includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

LL. “Rights” includes remedies.

MM. “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (§ 2-401) is limited in effect to a reservation of a “security interest”. The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods

on identification of such goods to a contract for sale under § 2-401 is not a “security interest”, but a buyer may also acquire a “security interest” by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a “security interest” but a consignment is in any event subject to the provisions on consignment sales (§ 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (1) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (2) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

NN. “Send” in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

OO. “Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

PP. “Surety” includes guarantor.

QQ. “Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

RR. “Term” means that portion of an agreement which relates to a particular matter.

SS. “Unauthorized” signature or indorsement means one made without actual, implied or apparent authority and includes forgery.

TT. “Value”. Except as otherwise provided with respect to negotiable instruments (§ 3-303), a person gives “value” for rights if he acquires them:

1. In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or
2. As security for or in total or partial satisfaction of a pre-existing claim; or
3. By accepting delivery pursuant to a pre-existing contract for purchase; or
4. Generally, in return for any consideration sufficient to support a simple contract.

UU. “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

VV. “Written” or “writing” includes printing, typewriting or any other intentional reduction to tangible form.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. Except as stated in this paragraph, this section is intended to have the same meaning and effect as § 1-201 of the Uniform Commercial Code as adopted by the states. The phrase "tribal enterprise" has been added to the definition of "Organization". The word "barter" has been added to the definition of "Purchase". The definitions of the words "Barter" and "Navajo Indian Country" have been added.

Commentary. A-B. [Omitted]

C. "Agreement". As used in this Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Code to displace a stated rule of law.

D-I. [Omitted]

J. "Buyer in ordinary course of business". The definition clarifies the type of person protected. Its major significance lies in § 2-403 and in the Articles on Secured Transactions (Article 9).

The reference to minerals and the like makes clear that a buyer in ordinary course buying minerals under the circumstances described takes free of a prior mortgage created by the sellers. See Comment to § 9-103.

A pawnbroker cannot be a buyer in ordinary course of business because the person from whom he buys goods (or acquires ownership after foreclosing an initial pledge) is typically an ordinary user and not a person engaged in selling goods of that kind.

K. "Conspicuous". This is intended to indicate some of the methods of making a term attention-calling. But the test is whether attention can reasonably be expected to be called to it.

L-N. [Omitted]

O. "Delivery" refers to physical possession.

P. "Document of title". By making it explicit that the obligation of designation of a third party as "bailee" is essential to a document of title, this definition clearly rejects any such result which treats a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one (1) day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their desti-

nation. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title". The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

The goods must be "described", but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this article.

The definition is broad enough to include an airway bill.

Q. [Omitted]

R. "Fungible". Fungibility of goods "by agreement" has been added for clarity and accuracy.

S. [Omitted]

T. "Good faith". "Good faith", whenever it is used in the Code, means at least what is here stated. In certain Articles, by specific provision, additional requirements are made applicable. See, e.g., § 2-103(A)(2). To illustrate, in the Article on Sales, § 2-103, good faith is expressly defined as including in the case of a merchant observance of reasonable commercial standards of fair dealing in the trade, so that throughout that Article wherever a merchant appears in the case an inquiry into his observance of such standards is necessary to determine his good faith.

U-W. [Omitted]

X. "Insolvent". The three tests of insolvency—"ceased to pay his debts in the ordinary course of business", "cannot pay his debts as they become due", and "insolvent within the meaning of the federal bankruptcy law"—are expressly set up as alternative tests and must be approached from a commercial standpoint.

Y. "Money". The test adopted is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

Z. "Navajo Indian Country". This definition was added to clarify the scope of the Code.

AA. "Notice". Under the definition a person has notice when he has received a notification of the fact in question. But by the last sentence the Code leaves open the time and circumstances under which notice or notification may cease to be effective. Therefore, such cases as *Graham v. White-Phillips Co.*, 296 U.S. 27, 56 S.Ct. 21, 80 LEd. 20 (1935), are not overruled.

BB. "Notifies". This is the word used when the essential fact is the proper dispatch of the notice, not its receipt. Compare "Send". When the essential fact is the other party's receipt of the notice, that is stated. The second sentence states when a notification is received.

CC. This makes clear that reason to know, knowledge, or a notification, although "received" for instance by a clerk in Department A of an organization, is effective for a transaction conducted in Department P only from the time when it was or should have been communicated to the individual conducting that transaction.

DD. "Organization". This is the definition of every type of entity or association, excluding an individual, acting as such. The definition of "organization" given here includes a number of entities or associations not specifically mentioned in prior definition of "person", namely, government, governmental subdivision (including tribal enterprise) or agency, business trust, trust and estate.

EE. "Party". Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to his principal, particular account is taken of that situation.

FF. "Person". See Comment to definition of "Organization". The reference to § 1-102 is to subsection (E) of that section.

GG. [Omitted]

HH. "Purchase" includes acquisition of property by barter. Barter transfers of property within the "traditional economy" of the Navajo People are purchases under this Code. See also § 1-110.

II. [Omitted]

JJ. "Remedy". The purpose is to make it clear that both remedy and rights (as defined) include those remedial rights of "self help" which are among the most important bodies of rights under this Code, remedial rights being those to which an aggrieved party can resort on his own motion.

KK. [Omitted]

LL. "Rights". See Comment to "Remedy".

MM. "Security Interest". The present definition is elaborated, in view especially of the complete coverage of the subject in Article 9. Notice that in view of the Article the term includes the interest of certain outright buyers of certain kinds of property. The last two sentences give guidance on the question whether reservation of title under a particular lease of personal property is or is not a security interest.

NN. "Send". Compare "notifies".

OO. "Signed". The inclusion of authentication in the definition of "signed" is to make clear that as the term is used in this Code a complete signature is not necessary. Authentication maybe printed, stamped or written; it maybe by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible authentications can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to authenticate the writing.

PP-RR. [Omitted]

SS. "Value". Commercial usage has tended to define value as any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a pre-existing claim. Subsections (A), (B) and (D) in substance continue the definitions of "value" in such commercial usage. Subsection (C) makes explicit that "value" is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingency into a fixed obligation.

This definition is not applicable to Article 3. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is "immediately available" within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

TT. "Warehouse receipt". Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

Special Plain Language Comment

When reading any sections in this Code, it is very important to check to see if any of the terms are defined and to read the definitions of

those terms. Unless one reads the definitions, the full meaning of a statute may not be understood.

§ 1-202. Prima facie evidence by third party documents

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-202 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. This section is designed to supply judicial recognition for documents which have traditionally been relied upon as trustworthy by participants in commercial dealings.

2. This section is concerned only with documents which have been given a preferred status by the parties themselves, who have required their procurement in the agreement, and for this reason the applicability of the section is

limited to actions arising out of the contract which authorized or required the document. The documents listed are intended to be illustrative and not all inclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

Definitional Cross References

"Bill of lading". Section 1-201.

"Contract". Section 1-201.

"Genuine". Section 1-201.

Special Plain Language Comment

Certain types of documents have special meaning and are presumed to be what they look

like. Reliance on such documents is generally presumed to be reasonable.

Library References

Evidence ⇨369.

Indians ⇨24, 32(7).

Westlaw Topic Nos. 157, 209.

C.J.S. Evidence § 819.

C.J.S. Indians §§ 12, 31, 60 to 62, 139 to 143, 152.

§ 1-203. Obligation of good faith

Every contract or duty within this Code imposes an obligation of good faith in its performance or enforcement.

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-203 of the Uniform Commercial Code as adopted by the states.

Commentary. This section sets forth a basic principle running throughout this Code. The

principle involved is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. Particular applications of this general principle appear in specific provisions of the Code such as the option to accelerate at will

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(§ 1-208), the right to cure a defective delivery of goods (§ 2-508), the duty of a merchant buyer who has rejected goods to effect salvage operations (§ 2-603), substituted performance (§ 2-614), and failure of presupposed conditions (§ 2-615). The concept, however, is broader than any of these illustrations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Code. It is further imple-

mented by § 1-205 on course of dealing and usage of trade.

It is to be noted that under the Sales Article definition of good faith (§ 2-103), contracts made by a merchant have incorporated in them the explicit standard not only of honesty in fact (§ 1-201), but also of observance by the merchant of reasonable commercial standards of fair dealing in the trade.

Cross References

Sections 1-201; 1-205; 1-208; 2-103; 2-508; 2-603; 2-614; 2-615.

Definitional Cross References

“Contract”. Section 1-201.

“Good faith”. Section 1-201; 2-103.

Library References

Contracts ⇨168.

Indians ⇨24.

Westlaw Topic Nos. 95, 209.

C.J.S. Contracts §§ 346 to 347.

C.J.S. Indians §§ 12, 31.

§ 1-204. Time; reasonable time; “seasonably”

A. Whenever this Code requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable maybe fixed by agreement.

B. What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

C. An action is taken “seasonably” when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-204 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Subsection (A) recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The par-

ties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. Under the section, the agreement which fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of “agreement” (§ 1-201) the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

Definitional Cross References

“Agreement”. Section 1-201.

Library References

Contracts ⇨212.

Indians ⇨24.

Westlaw Topic Nos. 95, 209.
 C.J.S. Contracts § 582.
 C.J.S. Indians §§ 12, 31.

§ 1-205. Course of dealing and usage of trade

A. A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

B. A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing, the interpretation of the writing is for the court.

C. A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

D. The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other, but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

E. An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

F. Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-205 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. This Code rejects both the "lay-dictionary" and the "conveyancer's" reading of a commercial agreement. Instead, the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. Course of dealing under subsection (A) is restricted, literally, to a sequence of conduct between the parties previous to the agreement. However, the provisions of the Code on course of performance make it clear that a sequence of conduct after or under the agreement may have equivalent meaning. (§ 2-208.)

3. "Course of dealing" may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

4. This Code deals with "usage of trade" as a factor in reading the commercial meaning of the agreement which the parties have made. The language used is to be interpreted as mean-

ing what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term "usage of trade" this Code expresses its intent to reject those cases which see evidence of "custom" as representing an effort to displace or negate "established rules of law". A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold "unless otherwise agreed" but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

5. A usage of trade under subsection (B) must have the "regularity of observance" specified. The ancient English tests for "custom" are abandoned in this connection. Therefore, it is not required that a usage of trade be "ancient or immemorial", "universal" or the like. Under the requirement of subsection (B), full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

6. The policy of this Code controlling explicit unconscionable contracts and clauses (§§ 1-203, 2-302) applies to implicit clauses which rest on usage of trade and carries forward the policy underlying the ancient requirement that a custom or usage must be "reason-

able". However, the emphasis is shifted. The very fact of commercial acceptance makes out a prima facie case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

7. Subsection (C), giving the prescribed effect to usages of which the parties "are or should be aware", reinforces the provision of subsection (B) requiring not universality but only the described "regularity of observance" of the practice or method. This subsection also reinforces the point of subsection (B) that such usages may be either general to trade or particular to a special branch of trade.

8. Although the terms in which this Code defines "agreement" include the elements of course of dealing and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare § 1-102(D).

9. In cases of a well established line of usage varying from the general rules of this Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

10. Subsection (F) is intended to insure that this Code's liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

Cross References

Point 1: Sections 1-203, 2-104 and 2-202.
 Point 2: Section 2-208.
 Point 4: Section 2-201 and Part 3 of Article 2.
 Point 6: Sections 1-203 and 2-302.
 Point 8: Sections 1-102 and 1-201.
 Point 9: Section 2-204(C).

Definitional Cross References

"Agreement". Section 1-201.
 "Contract". Section 1-201.
 "Party". Section 1-201.
 "Term". Section 1-201.

Special Plain Language Comment

This section recognizes that words in a contract acquire meaning from the way the parties have acted toward each other as well as by how people in that type of situation usually deal with each other.

Library References

Contracts ☞170.	C.J.S. Contracts § 340.
Customs and Usages ☞1, 9.	C.J.S. Customs and Usages §§ 1, 15.
Indians ☞24.	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos. 95, 113, 209.	

§ 1-206. Statute of Frauds for kinds of personal property not otherwise covered

A. Except in the cases described in subsection (B) of this section, a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

B. Subsection (A) of this section does not apply to contracts for the sale of goods (§ 2-201) nor to security agreements (§ 9-203).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-206 of the Uniform Commercial Code as adopted by the states.

Commentary. To fill the gap left by the Statute of Frauds provisions for goods (§ 2-201) and security interests (§ 9-203). The principal gap relates to sale of the "general intangibles" defined in Article 9 (§ 9-106) and to transactions excluded from Article 9 by § 9-104. Typical are the sale of bilateral contracts, royalty

rights or the like. The informality normal to such transactions is recognized by lifting the limit for oral transactions to five thousand dollars (\$5,000). In such transactions there is often no standard of practice by which to judge, and values can rise or drop without warning; troubling abuses are avoided when the dollar limit is exceeded by requiring that the subject matter be reasonably identified in a signed writing which indicates that a contract for sale has been made at a defined or stated price.

Definitional Cross References

"Action". Section 1-201.
 "Agreement". Section 1-201.
 "Contract". Section 1-201.
 "Contract for sale". Section 2-106.
 "Goods". Section 2-105.
 "Party". Section 1-201.
 "Sale". Section 2-106.
 "Signed". Section 1-201.
 "Writing". Section 1-201.

Library References

Frauds, Statute of ☞81 to 96.	Westlaw Topic Nos. 185, 209.
Indians ☞23, 24.	C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 68, 71.

§ 1-207. Performance or acceptance under reservation of rights

A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest” or the like are sufficient.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-207 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment “without prejudice”, “under protest”, “under reserve”, “with reservation of all our rights”, and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made “subject to satisfaction of our purchaser”, “subject to acceptance by our customers”, or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as he makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of this Code such as those under which the buyer’s remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other feels to be unwarranted.

Cross References

Section 2-607.

Definitional Cross References

“Party”. Section 1-201.

“Rights”. Section 1-201.

Special Plain Language Comment

If there is a dispute about a deal, the person who wants to object will not lose the right to do so, if he states that he makes payment or other-

wise performs “without prejudice” or “under protest”.

Library References

Accord and Satisfaction ⇨11(3).

Contracts ⇨305, 316.

Estoppel ⇨90.

Indians ⇨23 to 24.

Westlaw Topic Nos. 8, 95, 156, 209.

C.J.S. Accord and Satisfaction §§ 51 to 59.

C.J.S. Contracts §§ 557, 587 to 588, 596 to 597.

C.J.S. Estoppel §§ 68 to 69, 134 to 135.

C.J.S. Indians §§ 12, 30 to 31.

§ 1-208. Option to accelerate at will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or “when he deems himself insecure” or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-208 of the Uniform Commercial Code as adopted by the states.

Commentary. The increased use of acceleration clauses either in the case of sales on credit or in time paper or in security transactions has led to some confusion in the cases as to the effect to be given to a clause which seemingly grants the power of an acceleration at the whim and caprice of the party. This section is intended to make clear that despite language which can be so construed and which further might be

held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the clause means that the option is to be exercised only in the good faith belief that the prospect of payment or performance is impaired.

Obviously, this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an agreement or to paper which in the first instance is payable at a future date.

Definitional Cross References

“Burden of establishing”. Section 1-201.

“Good faith”. Section 1-201.

“Party”. Section 1-201.

“Term”. Section 1-201.

Special Plain Language Comment

Some contract forms provide that one party has the power to demand that the other act or pay quicker than normally contemplated, rely-

ing upon words like those used in the statute. This section somewhat limits that right to avoid abuse of that power.

Library References

Bills and Notes ☞129.

Contracts ☞213 to 214.

Indians ☞24.

Secured Transactions ☞221.

Westlaw Topic Nos. 56, 95, 209, 349A.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 86 to 89, 91 to 99.

C.J.S. Contracts §§ 578 to 579, 581, 584.

C.J.S. Indians §§ 12, 31.

C.J.S. Secured Transactions §§ 144, 151.

§ 1-209. Subordinated obligations

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate his right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 1-209 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other "insider" interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms "subordinated obligation", "subordination", and "subordinated creditor".

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor are turned over to the superior creditor. This "turn-over" practice has on occasion been explained in terms of "equitable lien", "equitable assignment", or "constructive trust", but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction "intended to create a security interest", a "sale of accounts, contract rights or chattel paper", or a "security interest credit by

contract", within the meaning of § 9-102. On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

3. The last sentence of this section is intended to negate any implication that the section changes the law. It is intended to be declaratory of pre-existing law. Both the history and the test of Article 9 make it clear that it was not intended to cover subordination agreements. The provisions of § 9-203 for signature by the "debtor" would be entirely unworkable if read to require signature by public holders of subordinated investment securities. The priorities, filing provisions and remedies on default provided by Article 9 would also be largely inappropriate in many situations. The precautionary language § 9-316 preserving subordination of priority by agreement between secured parties points to the conclusion that similar arrangements among unsecured lenders are not covered unless otherwise within the scope of the Article.

4. The enforcement of subordination agreements is largely left to supplementary principles under § 1-103. If the fact of subordination is noted on a negotiable instrument, a holder under §§ 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Section 3-302(C)(1) and 3-306 severely limit the rights of levying creditors of a subordinated creditor in such cases.

Definitional Cross References

"Agreement". Sections 1-201.
 "Creditor". Section 1-201.
 "Debtor". Section 9-105.
 "Person". Section 1-201.
 "Rights". Section 1-201.
 "Security interest". Section 1-201.

Special Plain Language Comment

This section recognizes that two or more creditors may agree among themselves who should be paid first, who has first rights to collateral, and who should have the greatest

risk of loss, if the debtor is unable to pay all of them. Such agreements are not subject to regulation under Article 9 as security interests.

Library References

Indians ⇌24.
 Secured Transactions ⇌147.
 Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 31.
 C.J.S. Secured Transactions § 108.

Article 2. Sales

Part 1. Short Title, General Construction and Subject Matter

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- 2-508. Cure by seller of improper tender of delivery, replacement
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Part 1. Short Title, General Construction, and Subject Matter

§ 2-101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Sales.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-101 of the Uniform Commercial Code adopted by the states.

Commentary. The arrangement of the present Article is in terms of contract for sale and the various steps of its performance. The legal consequences are stated as following directly from the contract and action taken under it

without resorting to the idea of when property or title passed or was to pass as being the determining factor. The purpose is to avoid making practical issues between practical men and women turn upon the location of an intangible something, the passing of which no man or woman can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible character.

§ 2-102. Scope; certain security and other transactions excluded from this article

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-102 of the Uniform Commercial Code adopted by the states. Certain federal and Navajo statutes regulating trade with Indians should be reviewed to determine their applicability. Transactions with Indians or Indian tribes may also require approval under certain federal and tribal statutes. See 25 U.S.C. §§ 81, 196, 261, 396 *et seq.* (1976); 25 C.F.R. § 162 (1984); 7 N.N.C. § 204; and titles 3, 5, 18, and 24 of the Navajo Nation Code. "Security transaction" is used in the same sense as in the Article on Secured Transactions (Article 9).

Cross References

NUCC Article 9.

Definitional Cross References

"Contract". Section 1-201.
 "Contract for sale". Section 2-106.
 "Present sale". Section 2-106.
 "Sale". Section 2-106.

Special Plain Language Comment

This section limits the scope of this article to transactions in "goods" (see § 2-105 for the definition of "goods") and distinguishes it from Article 9 which governs "secured transactions" or contracts for services. It also clearly states that special statutes relating to consumers and other groups are not repealed by the Code although the Code may effect such transactions governed by such statutes in areas not regulated by specific statutes.

Library References

Indians ⇄ 23, 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄ 3.	C.J.S. Sales §§ 3 to 4.
Westlaw Topic Nos. 209, 343.	

§ 2-103. Definitions and index of definitions

- A. In this article unless the context otherwise requires:
1. "Buyer" means a person who buys or contracts to buy goods.
 2. "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 3. "Receipt" of goods means taking physical possession of them.
 4. "Seller" means a person who sells or contracts to sell goods.
 5. "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

6. "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

B. Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

- "Acceptance". Section 2-606.
 - "Banker's credit". Section 2-325.
 - "Between merchants". Section 2-104.
 - "Cancellation". Section 2-106(D).
 - "Commercial unit". Section 2-105.
 - "Confirmed credit". Section 2-325.
 - "Conforming to contract". Section 2-106.
 - "Contract for sale". Section 2-106.
 - "Cover". Section 2-712.
 - "Entrusting". Section 2-403.
 - "Financing agency". Section 2-104.
 - "Future goods". Section 2-105.
 - "Goods". Section 2-105.
 - "Identification". Section 2-501.
 - "Installment contract". Section 2-612.
 - "Letter of Credit". Section 2-325.
 - "Lot". Section 2-105.
 - "Merchant". Section 2-104.
 - "Overseas". Section 2-323.
 - "Person in position of seller". Section 2-707.
 - "Present sale". Section 2-106.
 - "Sale". Section 2-106.
 - "Sale on approval". Section 2-326.
 - "Sale or return". Section 2-326.
 - "Termination". Section 2-106.
- C. The following definitions in other Articles apply to this article:
- "Check". Section 3-104.
 - "Consumer goods". Section 9-109.
 - "Dishonor". Section 3-507.
 - "Draft". Section 3-104.

D. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The Definitions of “consignee” and “consignor” have been added to the definitions in this section since they are used in Article 2, but normally defined in Article 7 of the Uniform Commercial Code which has not been adopted by the Navajo Nation.

Commentary. 1. The phrase “any legal successor in interest of such person” is not included in the definition of buyer and seller since § 2-210 of this article, which limits some types of delegation of performance on assignment of a sales contract, makes it clear that not every such successor can be safely included in the

definition. In every ordinary case, however, such successors are as of course included.

2. “Receipt” must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to “deliver” even though the buyer may never “receive” the goods. Delivery with respect to documents of title is defined in Article I and requires transfer of physical delivery. Otherwise the many divergent incidents of delivery are handled incident by incident.

Cross References

Point 1: See § 2-210 and Comment thereon.

Point 2: Section 1-201.

Definitional Cross References

“Person”. Section 1-201.

§ 2-104. Definitions: “merchant”; “between merchants”; “financing agency”

A. “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill maybe attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. The definition of merchant shall not include individual artists.

B. “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§ 2-707).

C. “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-104 of the Uniform Commercial Code adopted by the states except that individual artists are not considered merchants. The official comments establish standards for determining whether a farmer or rancher is a merchant.

Commentary. 1. This article assumes that transactions between professionals in a given field require special and clear rules which may not apply to a casual or inexperienced seller or buyer. It thus adopts a policy of expressly stating rules applicable “between merchants” and “as against a merchant”, wherever they are needed instead of making them depend upon the circumstances of each case as in the statutes cited above. This section lays the foundation of this Policy by defining those who are to be regarded as professionals or “merchants” and by stating when a transaction is deemed to be “between merchants”.

2. The term “merchant” as defined here roots in the “law merchant” concept of a professional in business. The professional status under the definition may be based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized knowledge as to both and which kind of specialized knowledge may be sufficient to establish the merchant status is indicated by the nature of the provisions.

The special provisions as to merchants appear only in this article and they are of three kinds. Sections 2-201(B), 2-205, 2-207 and 2-209 dealing with the Statute of Frauds, firm offers, confirmatory memoranda and modification rest on normal business practices which are or ought to be typical of and familiar to any person in business. For purposes of these sections almost every person in business would, therefore, be deemed to be a “merchant” under the language, “who . . . by his occupation holds himself out as having knowledge or skill peculiar to the practices . . . involved in the transaction . . .”, since the practices involved in the transaction are non-specialized business practices such as answering mail. In this type of provision, banks or even universities, for example, well may be “merchants”. But even these sections only apply to a merchant in his mercantile capacity; a lawyer or bank president buying fishing tackle for his own use is not a merchant.

On the other hand, in § 2-314 on the warranty of merchantability, such warranty is implied only “if the seller is a merchant with respect to

goods of that kind”. Obviously this qualification restricts the implied warranty to a much smaller group than everyone who is engaged in business and requires a professional status as to particular kinds of goods. Similarly in § 2-312(C) the warranty that the goods are delivered free of any rightful claim of a third party is limited to those who are dealing in the goods of that kind. The exception in § 2-402(B) for retention of possession by a merchant-seller falls in the same class; as does § 2-403(B) on entrusting of possession to a merchant “who deals in goods of that kind”.

A third group of sections includes § 2-103(A)(2), which provides that in the case of a merchant, “good faith” includes observance of reasonable commercial standards of fair dealing in the trade; §§ 2-327(A)(3), 2-603 and 2-605, dealing with responsibilities of merchant buyers to follow seller’s instructions, etc.; 2-509 on risk of loss, and 2-609 on adequate assurance of performance. This group of sections applies to persons who are merchants under either the “practices” or the “goods” aspect of the definition of merchant.

3. Individual artists generally do not have the familiarity with business customs such as firm offer (§ 2-205) and confirmatory memorandum (§ 2-207) which is assumed by § 2-104(A). Accordingly, individual artists are not considered merchants.

The determination of whether a farmer (or a rancher) is a merchant under the Code should consider the following factors: quantity and dollar amount of the transactions, the frequency and length of time which the farmer (or rancher) had engaged in selling the crops (or livestock) in the transaction, whether it was his principal crop (or type of livestock), and the farmer’s (or rancher’s) familiarity with the market in which the crop (or livestock) is sold. A farmer (or rancher) shall not be considered a merchant under the Code if the transaction involves the isolated sale of his own crops (or livestock). See *Fear Ranches, Inc. v. Berry*, 470 F.2d 905 (10th Cir. 1972).

4. The “or to whom such knowledge or skill may be attributed by his employment of an agent or broker . . .” clause of the definition of merchant means that even persons such as universities, for example, can come within the definition of merchant if they have regular purchasing departments or business personnel who are familiar with business practices and who are equipped to take any action required.

Cross References

Point 1: See Sections 1-102 and 1-203.

Point 2: See Sections 2-314, 2-315 and 2-320 to 2-325, of this article, and Article 9.

Definitional Cross References

“Bank”. Section 1-201.
 “Buyer”. Section 2-103.
 “Contract for sale”. Section 2-106.
 “Document of title”. Section 1-201.
 “Draft”. Section 3-104.
 “Goods”. Section 2-105.
 “Person”. Section 1-201.
 “Purchase”. Section 1-201.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section defines merchants as those who are either: (i) familiar with general business practices; or (ii) familiar with a particular good because they deal in it regularly. Merchants are generally held to higher standards of conduct. A person’s status as a merchant depends on the type of transaction and the goods involved.

Library References

Indians ⇄23, 24.
 Sales ⇄3.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 3 to 4.

§ 2-105. Definitions: “transferability”; “goods”; “future goods”; “lot”; “commercial unit”

A. “Goods” means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (§ 2-107).

B. Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are “future” goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

C. There may be a sale of a part interest in existing identified goods.

D. An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller’s interest in the bulk be sold to the buyer who then becomes an owner in common.

E. “Lot” means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

F. “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit maybe a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-105 of the Uniform Commercial Code adopted by the states. In certain circumstances goods attached to the land may be considered trust property and thus subject to certain trusteeship obligations of the federal government.

Commentary. 1. The definition of "goods" is based on the concept of movability. It is not intended to deal with things which are not fairly identifiable as moveables before the contract is performed.

Growing crops are included within the definition of goods since they are frequently intended for sale. The young of animals are also included expressly in this definition since they, too, are frequently intended for sale and may be contracted for before birth. The period of gestation of domestic animals is such that the provisions of the section of identification can apply as in the case of crops to be planted. The reason for this definition also leads to the inclusion of a wool crop or the like as "goods" subject to identification under this article.

The exclusion of "money in which the price is to be paid" from the definition of goods does not mean that foreign currency which is included in the definition of money may not be the subject matter of a sales transaction. Goods is intended to cover the sale of money when money is being treated as a commodity but not to include it when money is the medium of payment.

As to contracts to sell timber, minerals, or structures to be removed from the land § 2-107(A) controls.

The use of the word "fixtures" is avoided in view of the diversity of definitions of that term. This article in including within its scope "things attached to realty" adds the further test that they must be capable of severance without material harm thereto. As between the parties any

identified things which fall within that definition become "goods" upon the making of the contract for sale. "Things attached to realty" may be considered, in some instances, trust property and thus subject to certain limitations on transfer by the federal government. See 25 U.S.C. §§ 81, 196, 261, 396, 406, 407, 635, 2101 (1984) See also F. Cohen, Handbook of federal Indian Law (1982).

"Investment securities" are expressly excluded from the coverage of this article. It is not intended by this exclusion, however, to prevent the application of a particular section of this article by analogy to securities when the reason of that section makes such application sensible and the situation is not governed by Article 8 of the Uniform Commercial Code (Article 8 of the Uniform Commercial Code has not been adopted by the Navajo Nation); the rights of parties which would be governed under Article 8 are governed by Navajo law pursuant to 7 N.N.C. § 204.

2. References to the fact that a contract for sale can extend to future or contingent goods and that ownership in common follows the sale of apart interest have been omitted here as obvious without need for expression; hence no inference to negate these principles should be drawn from their omission.

3. Subsection (D) does not touch the question of how far an appropriation of a bulk of fungible goods may or may not satisfy the contract for sale.

4. Subsections (E) and (F) on "lot" and "commercial unit" are introduced to aid in the phrasing of later Sections.

5. The question of when an identification of goods takes place is determined by the provisions of § 2-501 and all that this section says is what kinds of goods may be the subject of a sale.

Cross References

Point 1: Section 2-107, 2-201 and 2-501.

Point 5: Section 2-501.

See also § 1-201.

Definitional Cross References

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Fungible". Section 1-201.

"Money". Section 1-201.

"Present sale". Section 2-106.

“Sale”. Section 2-106.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section defines “goods”, which are the subject of Article 2. The definition is based on the “movability” of the goods. The Code distinguishes between goods presently in existence and identifiable and those either not presently

in existence or not identifiable; the latter, “future” goods, are not insurable and may not be claimed by the buyer upon the seller’s insolvency.

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 9, 67, 180(1).
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 12, 15, 93, 192.

§ 2-106. Definitions: “contract”; “agreement”; “contract for sale”; “sale”; “present sale”; “conforming to contract”; “termination”; “cancellation”

A. In this article, unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (§ 2-401). A “present sale” means a sale which is accomplished by the making of the contract.

B. Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

C. “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

D. “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of termination except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-106 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A): “Contract for sale” is used as a general concept throughout this article, but the rights of the parties do not vary according to whether the transaction is a present sale or a contract to sell unless the Article expressly so provides. See § 2-501.

2. Subsection (B): It is in general intended to continue the policy of requiring exact performance by the seller of his obligations as a condition to his right to require acceptance. However, the seller is in part safeguarded against surprise as a result of sudden technicality on the buyer’s part by the provisions of § 2-508 on seller’s cure of improper tender or delivery. Moreover usage of trade frequently permits commercial leeway in performance and the language of the agreement itself must be

read in the light of such custom or usage and also, prior course of dealing, and in a long term contract, the course of performance.

3. Subsections (C) and (D): These subsections are intended to make clear the distinction

carried forward throughout this article between termination and cancellation.

Cross References

Point 2: Sections 1-203, 1-205, 2-208 and 2-508.

Definitional Cross References

“Agreement”. Section 1-201.

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Goods”. Section 2-105.

“Party”. Section 1-201.

“Remedy”. Section 1-201.

“Rights”. Section 1-201.

“Seller”. Section 2-103.

Special Plain Language Comment

The definition of agreement and contract limit the application of Article 2 to contracts involving goods, rather than all contracts. The next definition, “conforming goods”, expresses the

rule that sellers must provide the goods exactly as ordered (although certain exceptions are later found in the Code).

Library References

Indians ⇄ 23 to 24.

Sales ⇄ 3, 84.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 3 to 4, 108, 119.

§ 2-107. Goods to be severed from realty: recording

A. A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance, a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

B. A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (A) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

C. The provisions of this section are subject to the trust responsibilities of the federal government. The provisions of this section are also subject to any third party rights provided by the law relating to realty records. The contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer’s rights under the contract for sale.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-107 of the Uniform Commercial Code adopted by the states. Contracts relating to this type of goods may require approval by the federal government as part its trust responsibilities.

Commentary. 1. Notice that subsection (A) applies only if the minerals or structures “are to be severed by the seller”. If the buyer is to sever, such transactions are considered contracts affecting land and all problems of the Statute of Frauds and of land rights apply to them. Therefore, the Statute of Frauds section of this article does not apply to such contracts though they must conform to the Statute of Frauds affecting the transfer of interests in land.

2. “Things attached” to the realty which can be severed without material harm are goods within this article regardless of who is to effect the severance. The word “fixtures” has been avoided because of the diverse definitions of this term, the test of “severance without material harm” being substituted. In some cases fix-

tures may be considered trust property and, thus, subject to the trust obligation and regulations of the federal government. The federal government may have to approve certain contracts relating to such goods. (For minerals see 25 U.S.C. §§ 396-400a, 635 and 2101 *et seq.*, and 18 N.N.C. § 1 *et seq.*; for timber see 25 U.S.C. §§ 196, 406 and 407) See generally 25 U.S.C. §§ 81, 261 (1976) See also § 9-313 and F. Cohen, *Handbook of federal Indian Law* (1982).

The provision in subsection (C) for recording such contracts is within the purview of this article since it is a means of preserving the buyer’s rights under the contract of sale.

3. The security phases of things attached to or to become attached to realty are dealt with in the Article on Secured Transactions (Article 9) and it is to be noted that the definition of goods in that Article differs from the definition of goods in this article. However, both Articles treat as goods growing crops and also timber to be cut under a contract of severance.

Cross References

Point 1: Section 2-201.
Point 2: Section 2-105.
Point 3: Articles 9 and 9-105.

Definitional Cross References

“Buyer”. Section 2-103.
“Contract”. Section 1-201.
“Contract for sale”. Section 2-106.
“Goods”. Section 2-105.
“Party”. Section 1-201.
“Present sale”. Section 2-106.
“Rights”. Section 1-201.
“Seller”. Section 2-103.

Special Plain Language Comment

This section provides that only minerals severed by the seller are subject to this article, but that timber and growing crops are subject to this article whether severed by the seller or buyer.

Library References

Indians ⇨23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇨10, 11.	C.J.S. Sales §§ 12 to 16.
Westlaw Topic Nos. 209, 343.	

Part 2. Form, Formation and Readjustment of Contract

§ 2-201. Formal requirements; Statute of Frauds

A. Except as otherwise provided in this section a contract for sale of goods for the price of five hundred dollars (\$500.00) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

B. Between merchants if within reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (A) against such party unless written notice of objection to its contents is given within ten (10) days after it is received . .

C. A contract which does not satisfy the requirements of subsection (A) but which is valid in other respects is enforceable:

1. If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

2. If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

3. With respect to goods for which payment has been made and accepted or which have been received and accepted (§ 2-606).

D. This section does not apply to certain types of transactions involving solely barter (see § 1-110).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-201 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The required writing need not contain all the material terms of the contract and such materials terms as are stated need not be precisely stated. All that is required is that the writing afford a basis for believing that the offered oral evidence rests on a real transaction. It may be written in lead

pencil on a scratch pad. It need not indicate which party is the buyer and which the seller. The only term which must appear is the quantity term which need not be accurately stated but recovery is limited to the amount stated. The price, time and place of payment or delivery, the general quality of the goods, or any particular warranties may all be omitted.

Special emphasis must be placed on the permissibility of omitting the price term in view of the insistence of some courts on the express

inclusion of this term even where the parties have contracted on the basis of a published price list. In many valid contracts for sale the parties do not mention the price in express terms, the buyer being bound to pay and the seller to accept a reasonable price which the trier of fact may well be trusted to determine. Again, frequently the price is not mentioned since the parties have based their agreement on a price list or catalogue known to both of them and this list serves as an efficient safeguard against perjury. Finally, "market" prices and valuations that are current in the vicinity constitute a similar check. Thus if the price is not stated in the memorandum it can normally be supplied without danger of fraud. Of course if the "price" consists of goods rather than money the quantity of goods must be stated.

Only three definite and invariable requirements as to the memorandum are made by this subsection. First, it must evidence a contract for the sale of goods; second, it must be "signed", a word which includes any authentication which identifies that party to be charged; and third, it must specify a quantity.

2. "Partial performance" as a substitute for the required memorandum can validate the contract only for the goods which have been accepted or for which payment has been made and accepted.

Receipt and acceptance either of goods or of the price constitutes an unambiguous overt admission by both parties that a contract actually exists. If the court can make a just apportionment, therefore, the agreed price of any goods actually delivered can be recovered without a writing or, if the price has been paid, the seller can be forced to deliver an apportionable part of the goods. The overt actions of the parties make admissible evidence of the other terms of the contract necessary to a just apportionment. This is true even though the actions of the parties are not in themselves inconsistent with a different transaction such as a consignment for resale or a mere loan of money.

Part performance by the buyer requires the delivery of something by him that is accepted by the seller as such performance. Thus, part payment may be made by money or check, accepted by the seller. If the agreed price consists of goods or services, then they must also have been delivered and accepted.

3. Between merchants, failure to answer a written confirmation of a contract within ten (10) days of receipt is tantamount to a writing under subsection (B) and is sufficient against both parties under subsection (A). The only effect, however, is to take away from the party who fails to answer the defense of the Statute of Frauds; the burden of persuading the trier of fact that a contract was in fact made orally prior to the written confirmation is unaffected. Compare the effect of a failure to reply under § 2-207.

4. Failure to satisfy the requirements of this section does not render the contract void for all purposes, but merely prevents it from being judicially enforced in favor of a party to the contract. For example, a buyer who takes possession of goods as provided in an oral contract which the seller has not meanwhile repudiated is not a trespasser. Nor would the Statute of Frauds provisions of this section be a defense to a third person who wrongfully induces a party to refuse to perform an oral contract, even though the injured party cannot maintain an action for damages against the party so refusing to perform.

5. The requirement of "signing" is discussed in the comment to § 1-201.

6. It is not necessary that the writing be delivered to anybody. It need not be signed or authenticated by both parties but it is, of course, not sufficient against one who has not signed it. Prior to a dispute no one can determine which party's signing of the memorandum may be necessary but from the time of contracting each party should be aware that to him it is signing by the other which is important.

7. If the making of a contract is admitted in court, either in a written pleading, by stipulation or by oral statement before the court, no additional writing is necessary for protection against fraud. Under this section it is no longer possible to admit the contract in court and still treat the statute as a defense. However, the contract is not thus conclusively established. The admission so made by a party is itself evidential against him of the truth of the facts so admitted and of nothing more; as against the other party, it is not evidential at all.

8. Most transactions within the traditional Navajo culture are based on oral agreements. To maintain this tradition, certain barter transactions are exempted from the Code.

Cross References

See Sections 1-201, 2-202, 2-207, 2-209 and 2-304.

Definitional Cross References

"Action". Section 1-201.

"Between merchants". Section 2-104.

"Buyer". Section 2-103.

“Contract”. Section 1-201.
 “Contract for sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Notice”. Section 1-201.
 “Party”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Sale”. Section 2-106.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section is meant to reduce disputes over the existence of oral agreements by requiring that certain types of agreements be in writing to be enforceable in court. All contracts for the sale of goods with a price greater than five hundred dollars (\$500.00) must have three characteristics to be enforceable in court: (1) they must be in writing, (2) they must be signed by the party against whom enforcement is sought, and (3) they must include the quantity

of goods sold. The section also sets up a special rule to confirm transactions between merchants and two exceptions to the requirement of writing: (1) where there is partial performance of the contract and, (2) where goods have been “specially manufactured”. Because of the oral traditions of the Navajo Nation, transactions involving only barter are not subject to this restriction.

Library References

Frauds, Statute of 81 to 96, 97 to 118.	C.J.S. Indians §§ 12, 30 to 31.
Indians 23 to 24.	C.J.S. Sales §§ 68, 71.
Westlaw Topic Nos. 185, 209.	

§ 2-202. Final written expression: parol or extrinsic evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- A. By course of dealing or usage of trade (§ 1-205) or by course of performance (§ 2-208); and
- B. By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-202 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section definitely rejects:

- A. Any assumption that because a writing has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon;
- B. The premise that the language used has the meaning attributable to such language by

rules of construction existing in the law rather than the meaning which arises out of the commercial context in which it was used; and

C. The requirement that a condition precedent to the admissibility of the type of evidence specified in subsection (A) is an original determination by the court that the language used is ambiguous.

2. Subsection (A) makes admissible evidence of course of dealing, usage of trade and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding

of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what they intended the writing to mean.

3. Under subsection (B), consistent additional terms not reduced to writing may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms. If the additional terms are such that, if agreed upon, they would certainly have been included in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact.

Cross References

Point 3: Sections 1-205, 2-207, 2-302 and 2-316.

Definitional Cross References

“Agreed” and “agreement”. Section 1-201.
 “Course of dealing”. Section 1-205.
 “Parties”. Section 1-201.
 “Term”. Section 1-201.
 “Usage of trade”. Section 1-205.
 “Written” and “writing”. Section 1-201.

Special Plain Language Comment

A written agreement which is agreed to be “final” will supersede any evidence of simultaneous oral agreements. This section also provides that written contracts will be interpreted in light of the customs or practices of the particular industry.

Library References

Evidence ⇨ 384 to 469.

Indians ⇨ 23 to 24.

Westlaw Topic Nos. 157, 209.

C.J.S. Evidence §§ 1132 to 1186, 1188 to 1298.

C.J.S. Indians §§ 12, 30 to 31.

§ 2-203. Seals inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

History

CJA-1-86, January 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-203 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section makes it clear that every effect of the seal which relates to “sealed instruments” as such is wiped out insofar as contracts for sale are concerned. However, the substantial effects of a seal, except extension of the period of limitations, may be had by appropriate drafting as in the case of firm offers (see § 2-205).

2. This section leaves untouched any aspects of a seal which relate merely to signatures or to authentication of execution and the like. Thus, a statute providing that a purported signature gives prima facie evidence of its own authenticity or that a signature gives prima facie evidence of consideration is still applicable to sales transactions even though a seal may be held to be a signature within the meaning of such a statute. Similarly, the authorized affixing of a corporate seal bearing the corporate name to a contractual writing purporting to be made by the corpo-

ration may have effect as a signature without any reference to the law of sealed instrument.

Cross References

Point 1: Section 2-205.

Definitional Cross References

“Contract for sale”. Section 2-106.

“Goods”. Section 2-105.

“Writing”. Section 1-201.

Library References

Indians ⇄23 to 24.

Sales ⇄28.

Seals ⇄1.

Westlaw Topic Nos. 209, 343, 347.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 68 to 73.

C.J.S. Seals §§ 2 to 3.

§ 2-204. Formation in general

A. A contract for sale of goods maybe made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

B. An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

C. Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is reasonably certain basis for giving an appropriate remedy.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-204 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) continues without change the basic policy of recognizing any manner of expression of agreement, oral, written or otherwise. The legal effect of such an agreement is, of course, qualified by other provisions of this article.

2. Under subsection (A) appropriate conduct by the parties may be sufficient to establish an agreement. Subsection (B) is directed primarily to the situation where the interchanged correspondence does not disclose the exact point at which the deal was closed, but the actions of the parties indicate that a binding obligation has been undertaken.

3. Subsection (C) states the principle as to “open terms” underlying later Sections of the

Article. If the parties intend to enter into a binding agreement, this subsection recognizes that agreement as valid in law, despite missing terms, if there is any reasonably certain basis for granting a remedy. The test is not certainty as to what the parties were to do nor as to the exact amount of damages due the plaintiff. Nor is the fact that one or more terms are left to be agreed upon enough in itself to defeat an otherwise adequate agreement. Rather, commercial standards on the point of “indefiniteness” are intended to be applied, this Code making provision elsewhere for missing terms needed for performance, open price, remedies and the like.

4. The more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement, but their actions may be frequently conclusive on the matter despite the omissions.

Cross References

Subsection (A): Sections 1-103, 2-201 and 2-302.
 Subsection (B): Sections 2-205 through 2-209.
 Subsection (C): See Part 3.

Definitional Cross References

“Agreement”. Section 1-201.
 “Contract”. Section 1-201.
 “Contract for Sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Party”. Section 1-201.
 “Remedy”. Section 1-201.
 “Term”. Section 1-201.

Special Plain Language Comment

This section emphasizes that two parties may demonstrate an agreement in a variety of ways and that once an “agreement” is found to have been made the Code will attempt to resolve any unclear terms.

Library References

Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales \Leftrightarrow 1, 22, 23.	C.J.S. Sales §§ 2, 29 to 31, 33.
Westlaw Topic Nos. 209, 343.	

§ 2-205. Firm offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-205 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is intended to modify the former rule which required that “firm offers” be sustained by consideration in order to bind, and to require instead that they must merely be characterized as such and expressed in signed writings.

2. The primary purpose of this section is to give effect to the deliberate intention of a merchant to make a current firm offer binding. The deliberation is shown in the case of an individualized document by the merchant’s signature to the offer, and in the case of an offer included on a form supplied by the other party to the transaction by the separate signing of the particular clause which contains the offer.

“Signed” here also includes authentication but the reasonableness of the authentication where-in allowed must be determined in the light of the purpose of the section. The circumstances surrounding the signing may justify something less than a formal signature or initialing but typically the kind of authentication involved here would consist of a minimum of initialing of the clause involved. A handwritten memorandum on the writer’s letterhead purporting in its terms to “confirm” a firm offer already made would be enough to satisfy this section, although not subscribed, since under the circumstances it could not be considered a memorandum of mere negotiation and it would adequately show its own authenticity. Similarly, an authorized telegram will suffice, and this is true even though the original draft contained only a typewritten signature. However, despite

settled courses of dealing or usages of the trade whereby firm offers are made by oral communication and relied upon without more evidence, such offers remain revocable under this article since authentication by a writing is the essence of this section.

3. This section is intended to apply to current “firm” offers and not to long term options, and an outside time limit of three (3) months during which such offers remain irrevocable has been set. The three-month period during which firm offers remain irrevocable under this section need not be stated by days or by date. If the offer states that it is “guaranteed” or “firm” until the happening of a contingency which will occur within the three-month period, it will remain irrevocable until that event. A promise made for a longer period will operate under this section to bind the offeror only for the first three (3) months of the period but may

of course be renewed. If supported by consideration it may continue for as long as the parties specify. This section deals only with the offer which is not supported by consideration.

4. Protection is afforded against the inadvertent signing of a firm offer when contained in a form prepared by the offeree by requiring that such a clause be separately authenticated. If the offer clause is called to the offeror’s attention and he separately authenticates it, he will be bound; § 2-302 may operate, however, to prevent an unconscionable result which otherwise would flow from other terms appearing in the form.

5. Safeguards are provided to offer relief in the case of material mistake by virtue of the requirement of good faith and the general law of mistake.

Cross References

Point 1: Section 1-102.
Point 2: Section 1-102.
Point 3: Section 2-201.
Point 5: Section 2-302.

Definitional Cross References

“Goods”. Section 2-105.
“Merchant”. Section 2-104.
“Signed”. Section 1-201.
“Writing”. Section 1-201.

Special Plain Language Comment

Normally an offer may be revoked prior to acceptance unless something of value is received to keep the offer open. Merchants, however, are held to a higher standard of conduct and must keep their promise to keep an offer open even without consideration, if the offer is

in writing and signed by the merchant. The section protects merchants making such offers by limiting the duration that the operation will remain open to a “reasonable period” but not more than three (3) months.

Library References

Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales \Leftrightarrow 22(2, 5), 23(2, 5).	C.J.S. Sales §§ 32, 34.
Westlaw Topic Nos. 209, 343.	

§ 2-206. Offer and acceptance in formation of contract

A. Unless otherwise unambiguously indicated by the language or circumstances:

1. An offer or make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
2. An order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

B. Where the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-206 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Any reasonable manner of acceptance is intended to be regarded as available unless the offeror has made quite dear that it will not be acceptable. Former technical rules as to acceptance, such as requiring that telegraphic offers be accepted by telegraphed acceptance, etc., are rejected and a criterion that the acceptance be "in any manner and by any medium reasonable under the circumstances", is substituted. This section is intended to remain flexible and its applicability to be enlarged as new media of communication develop or as the more time-saving present-day media come into general use.

2. Either shipment or a prompt promise to ship is made a proper means of acceptance of an offer looking to current shipment. In accordance with ordinary commercial understanding the section interprets an order looking to current shipment as allowing acceptance either by actual shipment or by a prompt promise to ship and rejects the artificial theory that only a single mode of acceptance is normally envisaged by an offer. This is true even though the language of the offer happens to be "ship at once" or the like. "Shipment" is here used in the same sense as in § 2-504; it does not include

the beginning of delivery by the seller's own truck or by messenger. But loading on the seller's own truck might be a beginning of performance under subsection (B).

3. The beginning of performance by an offeree can be effective as acceptance so as to bind the offeror only if followed within a reasonable time by notice to the offeror. Such a beginning of performance must unambiguously express the offeree's intention to engage himself. For the protection of both parties it is essential that notice follow in due course to constitute acceptance. Nothing in this section however bars the possibility that under the common law performance begun may have an intermediate effect of temporarily barring revocation of the offer, or at the offeror's option, final effect in constituting acceptance.

4. Subsection (A) (2) deals with the situation where a shipment made following an order is shown by a notification of shipment to be referable to that order but has a defect. Such a non-conforming shipment is normally to be understood as intended to close the bargain, even though it proves to have been at the same time a breach. However, the seller by stating that the shipment is non-conforming and is offered only as an accommodation to the buyer keeps the shipment or notification from operating as an acceptance.

Definitional Cross References

"Buyer". Section 2-103.

"Conforming". Section 2-106.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Notifies". Section 1-201.

"Reasonable time". Section 1-204.

Special Plain Language Comment

To ensure maximum flexibility an offer may be accepted in any "reasonable" way unless the offer requires a specific method of acceptance. An order for goods maybe accepted by shipping or promising to ship the goods. If the goods requested are not available, the shipper may deliver other "non-conforming" goods as a substitute although no agreement is formed by such shipment and the person ordering goods may

accept or reject the "non-conforming" goods. Where an offer invites acceptance by beginning performance, the person accepting the offer must notify the offeror of his acceptance by beginning the performance or the offeror will not be bound (offers which require completion of a certain performance are not governed by this rule and are only accepted upon completion of the performance).

Library References

Indians ☞23 to 24.

Sales ☞22, 23.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 29 to 31, 33.

§ 2-207. Additional terms in acceptance or confirmation

A. A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

B. The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

1. The offer expressly limits acceptance to the terms of the offer;
2. They materially alter it; or
3. Notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

C. Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Code.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-207 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is intended to deal with two typical situations. The one is the written confirmation, where an agreement has been reached either orally or by informal correspondence between the parties and is followed by one or both of the parties sending formal memoranda embodying the terms so far as agreed upon and adding terms not discussed. The other situation is offer and acceptance, in which a wire or letter expressed and intended as an acceptance or the closing of an agreement adds further minor suggestions or proposals such as "ship by Tuesday", "rush", "ship draft against bill of lading inspection allowed", or the like. A frequent example of the second situation is the exchange of printed purchase order and acceptance (sometimes called "acknowledgment") forms. Because the forms are oriented to the thinking of the respective drafting parties, the terms contained in them often do

not correspond. Often the seller's form contains terms different from or additional to those set forth in the buyer's form. Nevertheless, the parties proceed with the transaction.

2. Under this article a proposed deal which in commercial understanding has in fact been closed is recognized as a contract. Therefore, any additional matter contained in the confirmation or in the acceptance falls within subsection (B) and must be regarded as a proposal for an added term unless the acceptance is made conditional on the acceptance of the additional or different terms.

3. Whether or not additional or different terms will become part of the agreement depends upon the provisions of subsection (B). If they are such as materially to alter the original bargain, they will not be included unless expressly agreed to by the other party. If, however, they are terms which would not so change the bargain they will be incorporated unless notice of objection to them has already been given or is given within a reasonable time.

4. Examples of typical clauses which would normally “materially alter” the contract and so result in surprise or hardship if incorporated without express awareness by the other party are: a clause negating such standard warranties as that of merchantability or fitness for a particular purpose in circumstances in which either warranty normally attaches; a clause requiring a guaranty of ninety percent (90%) or one hundred percent (100%) deliveries in a case such as a contract by cannery, where the usage of the trade allows greater quantity leeways; a clause reserving to the seller the power to cancel upon the buyer’s failure to meet any invoice when due; a clause requiring that complaints be made in a time materially shorter than customary or reasonable.

5. Examples of clauses which involve no element of unreasonable surprise and which therefore are to be incorporated in the contract unless notice of objection is seasonably given are: a clause setting forth and perhaps enlarging slightly upon the seller’s exemption due to supervening causes beyond his control, similar to those covered by the provision of this article on merchant’s excuse by failure of presupposed conditions or a clause fixing in advance any reasonable formula of proration under such circumstances; a clause fixing a reasonable time for complaints within customary limits, or in the case of a purchase for sub-sale, providing for inspection by the sub-purchaser; a clause providing for interest on overdue invoices or fixing the seller’s standard credit terms where they are within the range of trade practice and do not limit any credit bargained for; a clause limiting the right of rejection for defects which

fall within the customary trade tolerances for acceptance “with adjustment” or otherwise limiting remedy in a reasonable manner (see §§ 2-718 and 2-719).

6. If no answer is received within a reasonable time after additional terms are proposed, it is both fair and commercially sound to assume that their inclusion has been assented to. Where clauses on confirming forms sent by both parties conflict each party must be assumed to object to a clause of the other conflicting with one on the confirmation sent by himself. As a result, the requirement that there be notice of objection which is found in subsection (B) is satisfied and the conflicting terms do not become a part of the contract. The contract then consists of the terms originally expressly agreed to, terms on which the confirmations agree, and terms supplied by this Code, including subsection (B). The written confirmation is also subject to § 2-201. Under that section a failure to respond permits enforcement of a prior oral agreement; under this section a failure to respond permits additional terms to become part of the agreement.

7. In many cases, as where goods are shipped, accepted and paid for before any dispute arises, there is no question whether a contract has been made. In such cases, where the writings of the parties do not establish a contract, it is not necessary to determine which act or document constituted the offer and which the acceptance. See § 2-204. The only question is what terms are included in the contract, and subsection (C) furnishes the governing rule.

Cross References

See generally § 2-302.

Point 5: Sections 2-513, 2-602, 2-607, 2-609, 2-612, 2-614, 2-615, 2-616, 2-718 and 2-719.

Point 6: Sections 1-102 and 2-104.

Definitional Cross References

“Between merchants”. Sections 2-104.

“Contract”. Section 1-201.

“Notification”. Section 1-201.

“Reasonable time”. Section 1-204.

“Seasonably”. Section 1-204.

“Send”. Section 1-201.

“Term”. Section 1-201.

“Written”. Section 1-201.

Library References

Indians ⇄23 to 24.

Sales ⇄22(4), 23(4).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 38 to 40, 223.

§ 2-208. Course of performance or practical construction

A. Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportuni-

ty for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

B. The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (§ 1-205).

C. Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

History

CJA-1-86, January 19, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-208 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The parties themselves know best what they have meant by their words of agreement and their action under that agreement is the best indication of what that meaning was. This section thus rounds out the set of factors which determines the meaning of the “agreement” and therefore also of the “unless otherwise agreed” qualification to various provisions of this article.

2. Under this section a course of performance is always relevant to determine the meaning of the agreement. Express mention of course of performance elsewhere in this article

carries no contrary implication when there is a failure to refer to it in other Sections.

3. Where it is difficult to determine whether a particular act merely sheds light on the meaning of the agreement or represents a waiver of a term of the agreement, the preference is in favor of “waiver” whenever such construction, plus the application of the provisions on the reinstatement of rights waived (see § 2-209), is needed to preserve the flexible character of commercial contracts and to prevent surprise or other hardship.

4. A single occasion of conduct does not fall within the language of this section but other sections such as the ones on silence after acceptance and failure to specify particular defects can affect the parties’ rights on a single occasion (see §§ 2-605 and 2-607).

Cross References

Point 1: Section 1-201.

Point 2: Section 2-202.

Point 3: Sections 2-209, 2-601 and 2-607.

Point 4: Sections 2-605 and 2-607.

Library References

Indians ☞23 to 24.

Sales ☞54.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 82 to 83, 85 to 87, 108.

§ 2-209. Modification, rescission and waiver

A. An agreement modifying a contract within this article needs no consideration to be binding.

B. A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as

between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

C. The requirements of the Statute of Frauds section of this article (§ 2-201) must be satisfied if the contract as modified is within its provisions.

D. Although an attempt at modification or rescission does not satisfy the requirements of subsection (B) or (C) it can operate as a waiver.

E. A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-209 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section seeks to protect and make effective all necessary and desirable modifications of sales contracts without regard to technicalities.

2. Subsection (A) provides that an agreement modifying a sales contract needs no consideration to be binding.

However, modifications made thereunder must meet the test of good faith imposed by this Code. The effective use of bad faith to escape performance on the original contract terms is barred, and the extortion of a "modification" without legitimate commercial reason is ineffective as a violation of the duty of good faith. Nor can a mere technical consideration support a modification made in bad faith.

The test of "good faith" between merchants or as against merchants includes "observance of reasonable commercial standards of fair dealing in the trade" (§ 2-103), and may in some situations require an objectively demonstrable reason for seeking a modification. But such matters as a market shift which makes performance come to involve a loss may provide such a reason even though there is no such unforeseen difficulty as would make out a legal excuse from performance under §§ 2-615 and 2-616.

3. Subsections (B) and (C) are intended to protect against false allegations of oral modifi-

cations. "Modification or rescission" includes abandonment or other change by mutual consent, it does not include unilateral "termination" or "cancellation" as defined in § 2-106.

The Statute of Frauds provisions of this article are expressly applied to modifications by subsection (C). Under those provisions the "delivery and acceptance" test is limited to the goods which have been accepted, that is, to the past. "Modification" for the future cannot therefore be conjured up by oral testimony if the price involved is five hundred dollars (\$500.00) or more since such modification must be shown at least by an authenticated memo. And since a memo is limited in its effect to the quantity of goods set forth in it, there is safeguard against oral evidence.

Subsection (B) permits the parties in effect to make their own Statute of Frauds as regards any future modification of the contract by giving effect to a clause in a signed agreement which expressly requires any modification to be by signed writing. But note that if a consumer is to be held to such a clause on a form supplied by a merchant it must be separately signed.

4. Subsection (D) is intended, despite the provisions of subsections (B) and (C), to prevent contractual provisions excluding modification except by a signed writing from limiting in other respects the legal effect of the parties' actual later conduct. The effect of such conduct as a waiver is further regulated in subsection (E).

Cross References

Point 1: Section 1-203.

Point 2: Sections 1-201, 1-203, 2-615 and 2-616.

Point 3: Sections 2-106, 2-201 and 2-202.

Point 4: Sections 2-202 and 2-208.

Definitional Cross References

“Agreement”. Section 1-201.
 “Between merchants”. Section 2-104.
 “Contract”. Section 1-201.
 “Notification”. Section 1-201.
 “Signed”. Section 1-201.
 “Term”. Section 1-201.
 “Writing”. Section 1-201.

Library References

Frauds, Statute of ☞131(1).	Westlaw Topic Nos. 185, 209, 343.
Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞89.	C.J.S. Sales §§ 109 to 114, 117.

§ 2-210. Delegation of performance: assignment of rights

A. A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party of delegating of any duty to perform or any liability for breach.

B. Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

C. Unless the circumstances indicate the contrary, a prohibition of assignment of “the contract” is to be construed as barring only the delegation to the assignee of the assignor's performance.

D. An assignment of “the contract” or of “all my rights under the contract” or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

E. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (§ 2-609).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-210 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Generally, this section recognizes both delegation of performance and assignability as normal and permissible incidents of a contract for the sale of goods.

2. Delegation of performance, either in conjunction with an assignment or otherwise, is provided for by subsection (A) where no substantial reason can be shown as to why the delegated performance will not be as satisfactory as personal performance.

3. Under subsection (B) rights which are no longer executory such as a right to damages for breach or a right to payment of an "account" as defined in the Article on Secured Transactions (Article 9) may be assigned although the agreement prohibits assignment. In such cases no question of delegation of any performance is involved. The assignment of a "contract right" as defined in the Article on Secured Transactions (Article 9) is not covered by this subsection.

4. The nature of the contract or the circumstances of the case, however, may bar assignment of the contract even where delegation of performance is not involved. This article and this section are intended to clarify this problem, particularly in cases dealing with output requirement and exclusive dealing contracts. In the first, place the section on requirement and exclusive dealing removes from the construction of the original contract most of the "personal discretion" element by substituting the reasonably objective standard of good faith operation of the plant or business to be supplied. Secondly, the section on insecurity and assurances, which is specifically referred to in subsection E) of this section, frees the other party from the doubts and uncertainty which may afflict him under an assignment of the character in question by permitting him to demand adequate

assurance of due performance without which he may suspend his own performance. Subsection (E) is not in any way intended to limit the effect of the section on insecurity and assurances and the word "performance" includes the giving of orders under a requirements contract. Of course, in any case where a material personal discretion is sought to be transferred, effective assignment is barred by subsection (B).

5. Subsection (D) lays down a general rule of construction distinguishing between a normal commercial assignment, which substitutes the assignee for the assignor both as to rights and duties, and a financing assignment in which only the assignor's rights are transferred.

This article takes no position on the possibility of extending some recognition or power to the original parties to work out normal commercial readjustments of the contract in the case of financing assignments even after the original obligor has been notified of the assignment. This question is dealt with in the Article on Secured Transactions (Article 9).

6. Subsection (E) recognizes that the non-assigning original party has a stake in the reliability of the person with whom he has closed the original contract, and is, therefore, entitled to due assurance that any delegated performance will be properly forthcoming.

7. This section is not intended as a complete statement of the law of delegation and assignment but is limited to clarifying a few points. Particularly, neither this section nor this article touches directly on such questions as the need or effect of notice of the assignment, the rights of successive assignees or any question of the form of an assignment, either as between the parties or as against any third parties. Some of these questions are dealt with in Article 9.

Cross References

Point 3: Article 9.
 Point 4: Sections 2-306 and 2-609.
 Point 5: Article 9, §§ 9-317 and 9-318.
 Point 7: Article 9.

Definitional Cross References

"Agreement". Section 1-201.
 "Buyer". Section 2-103.
 "Contract". Section 1-201.
 "Party". Section 1-201.
 "Rights". Section 1-201.
 "Seller". Section 2-103.
 "Term". Section 1-201.

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 86, 220.

Westlaw Topic Nos. 209, 343.
 C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 88 to 89, 230.

Part 3. General Obligation and Construction of Contract

§ 2-301. General obligation of parties

The obligation of the Seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-301 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section uses the term “obligation” in contrast to the term “duty” in order to provide for the “condition” aspects of delivery and payment insofar as they are not modified by other sections of this article such as

those on cure of tender and replaces the general provisions of that Code on the effect of conditions. In order to determine what is “in accordance with the contract” under this article, usage of trade, course of dealing and performance, and the general background of circumstances must be given due consideration in conjunction with the lay meaning of the words used to define the scope of the conditions and duties.

Cross References

Sections 1-106.

See also §§ 1-205, 2-208, 2-209, 2-508 and 2-612.

Definitional Cross References

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Party”. Section 1-201.

“Seller”. Section 2-103.

Library References

Indians ☞ 23 to 24.

Sales ☞ 150, 177, 183.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 151, 162, 167, 189, 194, 197 to 198, 208 to 209.

§ 2-302. Unconscionable contractor clause

A. If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

B. When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-302 of the Uniform Commercial Code adopted by the states.

Commentary. This section is intended to make it possible for the courts to police explicitly against the contracts or clauses which they find to be unconscionable. In the past such policing has been accomplished by adverse construction of language, by manipulation of the rules of offer and acceptance or by determinations that the clause is contrary to public policy or to the dominant purpose of the contract. This section is intended to allow the court to pass directly on the unconscionability of the contract or particular clause therein and to make a conclusion of law as to its unconscionability. The basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract.

Subsection (B) makes it dear that it is proper for the court to hear evidence upon these questions. The principle is one of the prevention of oppression and unfair surprise (*Cf. Campbell Soup Co. v. Wentz*, 172 F.2d 80, 3d Cir. 1948) and not of disturbance of allocation of risks because of superior bargaining power.

2. Under this section the court, in its discretion, may refuse to enforce the contract as a whole if it is permeated by the unconscionability, or it may strike any single clause or group of clauses which are so tainted or which are contrary to the essential purpose of the agreement, or it may simply limit unconscionable clauses so as to avoid unconscionable results.

3. The present section is addressed to the court, and the decision is to be made by it. The commercial evidence referred to in subsection (B) is for the court's consideration, not the jury's. Only the agreement which results from the court's action on these matters is to be submitted to the general triers of the facts.

Definitional Cross References

"Contract". Section 1-201.

Special Plain Language Comment

This section provides an exception to the general principle of freedom of contract under the Code. It recognizes that in some cases the lack of bargaining power of one party compared to that of the other party will result in an oppressive contract. In the past courts had refused to enforce such contracts or provisions by manipulating legal rules about contracts—this section allows courts to do openly what they had previously done under cover. Although "unconscionability" is not defined because of the variety of the behavior which can be unconscionable, provisions or contracts which are found to be unconscionable fall into certain categories: (1) the agreement of one party was obtained due to his ignorance or carelessness which was known to the other party; (2) the agreement was difficult to read or deceptively

arranged, (3) parts of the agreement nullify the core duty of the contract; (4) the price is excessively high by several times the value of the goods; or (5) the seller has unduly enlarged or unduly restricted the remedies of the buyer. Unconscionability is determined at the time the contract was made—it does not apply to situations where the value of the goods has changed over time. A court has considerable freedom to act to rectify an unconscionable contract—it may refuse to enforce the whole contract, a part of the contract, cancel further payments or demand refund of certain payments. Although the scope of unconscionability is broad, it should not be seen as a way of avoiding contractual duties—it is used only to adjust the most oppressive and unjust contracts.

Library References

Indians ☞ 23 to 24.
Sales ☞ 1(1).
Specific Performance ☞ 51.
Westlaw Topic Nos. 209, 343, 358.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 2, 9, 29, 48.
C.J.S. Specific Performance §§ 48 to 49.

§ 2-303. Allocation or division of risks

Where this article allocates a risk or a burden as between the parties “unless otherwise agreed”, the agreement may not only shift the allocation but may also divide the risk or burden.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-303 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is intended to make it clear that the parties may modify or allocate “unless otherwise agreed” risks or burdens imposed by this article as they desire,

always subject, of course, to the provisions on unconscionability. Compare § 1-102(D).

2. The risk or burden may be divided by the express terms of the agreement or by the attending circumstances, since under the definition of “agreement” in this Code, the circumstances surrounding the transaction, as well as the express language used by the parties enter into the meaning and substance of the agreement.

Cross References

Point 1: Sections 1-102, 2-302.

Point 2: Section 1-201.

Definitional Cross References

“Party”. Section 1-201.

“Agreement”. Section 1-201.

Special Plain Language Comment

The Code divides risks between the parties but the parties can alter this division of risks in the agreement in any manner they wish. However, the parties may not in their agreement change certain duties under the Code. Those

duties include those of good faith, diligence, reasonableness and care, nor may the parties waive the application of the doctrine of unconscionability to their agreement.

Library References

Indians ⇄23 to 24.

Sales ⇄217.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

§ 2-304. Price payable in money, goods, realty, or otherwise

A. The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

B. Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller’s obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor’s obligations in connection therewith.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-304 of the Uniform Commercial Code adopted by the states. The transfer of real property on the Navajo Indian Country may be affected by the federal government's trust responsibilities.

Commentary. 1. Under subsection (A) the provisions of this article are applicable to transactions where the "price" of goods is payable in something other than money. This does not mean, however, that this whole Article applies automatically and in its entirety simply because an agreed transfer of title to goods is not a gift. The basic purposes and reasons of the Article must always be considered in determining the applicability of any of its provisions.

2. Subsection (B) lays down the general principle that when goods are to be exchanged for realty, the provisions of this article apply only to those aspects of the transaction which

concern the transfer of title to goods but do not affect the transfer of the realty since the detailed regulation of various particular contracts which fall outside the scope of this article is left to the courts and other legislation. However, the complexities of these situations may be such that each must be analyzed in the light of the underlying reasons in order to determine the applicable principles. Transactions involving real property on the Navajo Nation are affected by the trust responsibility of the federal government. See § 2-107. Navajo statutes dealing with realty are not to be lightly disregarded or altered by language of this article. In contrast, this article declares definite policies in regard to certain matters legitimately within its scope though concerned with real property situations, and in those instances the provisions of this article control.

Cross References

Point 2: Sections 1-102, 1-103, 1-104 and 2-107.

Definitional Cross References

"Goods". Section 2-105.
 "Money". Section 1-201.
 "Party". Section 1-201.
 "Seller". Section 2-103.

Special Plain Language Comment

Article 2 governs not only the most common type of sale, goods exchanged for cash, but also goods exchanged for goods, goods exchanged for services and even goods exchanged for realty. In barter transactions a person may be both

a buyer and seller; a "buyer" of the goods he or she obtains and a "seller" of the goods he or she exchanges. The status of a person as a "seller" is important for the purposes of warranties. See §§ 2-312 to 2-315.

Library References

Indians ⇨ 23 to 24.
 Sales ⇨ 74, 189.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 94 to 96, 208.

§ 2-305. Open price term

A. The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

1. Nothing is said as to price; or
2. The price is left to be agreed by the parties and they fail to agree; or
3. The price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

B. A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

C. When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

D. Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed, there is no contract. In such a case the buyer must return any goods already received or if unable to do so must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-305 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section applies when the price term is left open on the making of an agreement which is nevertheless intended by the parties to be a binding agreement. This article rejects in these instances the formula that "an agreement to agree is unenforceable" if the case falls within subsection (A) of this section, and rejects also defeating such agreements on the ground of "indefiniteness". Instead this article recognizes the dominant intention of the parties to have the deal continue to be binding upon both. As to future performance, since this article recognizes remedies such as cover (§ 2-712), re-sale (§ 2-706) and specific performance (§ 2-716) which go beyond any mere arithmetic as between contract price and market price, there is usually a "reasonably certain basis for granting an appropriate remedy for breach" so that the contract need not fail for indefiniteness.

2. Under some circumstances the postponement of agreement on price will mean that no deal has really been concluded, and this is made express in the preamble of subsection (A) ("*The parties if they so intend*") and in subsection (D). Whether or not this is so is, in most cases, a question to be determined by the trier of fact.

3. Subsection (B), dealing with the situation where the price is to be fixed by one party, rejects the uncommercial idea that an agreement that the seller may fix the price means that he may fix any price he may wish by the express qualification that the price so fixed

must be fixed in good faith. Good faith includes observance of reasonable commercial standards of fair dealing in the trade if the party is a merchant. (§ 2-103). But in the normal case a "posted price", or a future seller's or buyer's "given price", "price in effect", "market price", or the like satisfies the good faith requirement.

4. The section recognizes that there may be cases in which a particular person's judgment is not chosen merely as a barometer or index of a fair price but is an essential condition to the parties' intent to make any contract at all. For example, the case where a known and trusted expert is to "value" a particular painting for which there is no market standard differs sharply from the situation where a named expert is to determine the grade of cotton, and the difference would support a finding that in the one the parties did not intend to make a binding agreement if that expert were unavailable whereas in the other they did so intend. Other circumstances would of course affect the validity of such a finding.

5. Under subsection (C), wrongful interference by one party with any agreed machinery for price fixing in the contract may be treated by the other party as a repudiation justifying cancellation, or merely as a failure to take cooperative action thus shifting to the aggrieved party the reasonable leeway in fixing the price.

6. Throughout the entire Section, the purpose is to give effect to the agreement which has been made. That effect, however, is always conditioned by the requirement of good faith action which is made an inherent part of all contracts within the Code. (§ 1-203).

Cross References

Point 1: Section 2-204(C), 2-706, 2-712 and 2-716.

Point 3: Section 2-103.

Point 5: Sections 2-311 and 2-610.

Point 6: Section 1-203.

Definitional Cross References

"Agreement". Section 1-201.
 "Burden of establishing". Section 1-201.
 "Buyer". Section 2-103.
 "Cancellation". Section 2-106.
 "Contract". Section 1-201.
 "Contract for sale". Section 2-106.
 "Fault". Section 1-201.
 "Goods". Section 2-105.
 "Party". Section 1-201.
 "Receipt of goods". Section 2-103.
 "Seller". Section 2-103.
 "Term". Section 1-201.

Special Plain Language Comment

This section, along with 2-306, 2-309 and 2-310, fills in terms left undecided in the agreement by the two parties. This section provides a method of determining the price of goods if not specified in the agreement. The section protects parties to which price is a crucial term since it does not apply to situations where the parties did not intend to be bound by an agreement if the price was not fixed (§ 2-305 (D)).

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 1(3), 74.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 25 to 26, 94 to 96.

§ 2-306. Output, requirements and exclusive dealings

A. A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

B. A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes, unless otherwise agreed, an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-306 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) of this section, in regard to output and requirements, applies to this specific problem the general approach of this Code which requires the reading of commercial background and intent into the language of any agreement and demands good faith in the performance of that agreement. It applies to such contracts of nonproducing es-

tablishments such as dealers or distributors as well as to manufacturing concerns.

2. Under this article, a contract for output or requirements is not too indefinite since it is held to mean the actual good faith output or requirements of the particular party. Nor does such a contract lack mutuality of obligation since, under this section, the party who will determine quantity is required to operate his plant or conduct his business in good faith and according to commercial standards of fair dealing in the trade so that his output or re-

quirements win approximate a reasonably foreseeable figure. Reasonable elasticity in the requirements is expressly envisaged by this section and good faith variations from prior requirements are permitted even when the variation may be such as to result in discontinuance. A shut-down by a requirements buyer for lack of orders might be permissible when a shut-down merely to curtail losses would not. The essential test is whether the party is acting in good faith. Similarly, a sudden expansion of the plant by which requirements are to be measured would not be included within the scope of the contract as made but normal expansion undertaken in good faith would be within the scope of this section. One of the factors in an expansion situation would be whether the market price had risen greatly in a case in which the requirements contract contained a fixed price. This article takes no position as to whether a requirements contract is a provable claim in bankruptcy.

3. If an estimate of output or requirements is included in the agreement, no quantity unreasonably disproportionate to it may be tendered or demanded. Any minimum or maximum set by the agreement shows a clear limit on the intended elasticity. In similar fashion, the agreed estimate is to be regarded as a center around which the parties intend the variation to occur.

4. When an enterprise is sold, the question may arise whether the buyer is bound by an existing output or requirements contract. That question is outside the scope of this article, and is to be determined on other principles of law. Assuming that the contract continues, the output or requirements in the hands of the new owner continue to be measured by the actual good faith output or requirements under the normal operation of the enterprise prior to sale. The sale itself is not grounds for sudden expansion or decrease.

5. Subsection (B), on exclusive dealing, makes explicit the commercial rule embodied in this Code under which the parties to such contracts are held to have impliedly, even when not expressly, bound themselves to use reasonable diligence as well as good faith in their performance of the contract. Under such contracts the exclusive agent is required, although no express commitment has been made, to use reasonable effort and due diligence in the expansion of the market or the promotion of the product, as the case may be. The principal is expected under such a contract to refrain from supplying any other dealer or agent within the exclusive territory. An exclusive dealing agreement brings into play all of the good faith aspects of the output and requirement problems of subsection (A). It also raises questions of insecurity and right to adequate assurance under this article.

Cross References

Point 4: Section 2-210
Point 5: Sections 1-203 and 2-609.

Definitional Cross References

“Agreement”. Section 1-201.
“Buyer”. Section 2-103.
“Contract for sale”. Section 2-106.
“Good faith”. Section 1-201.
“Goods”. Section 2-105.
“Party”. Section 1-201.
“Term”. Section 1-201.
“Seller”. Section 2-103.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞71(4).	C.J.S. Sales §§ 178 to 180.
Westlaw Topic Nos. 209, 343.	

§ 2-307. Delivery in single lot or several lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender, but where the circumstances give either party the right to make or demand delivery in lots the price, if it can be apportioned, may be demanded for each lot.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-307 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section applies where the parties have not specifically agreed whether delivery and payment are to be by lots.

2. Where the actual agreement or the circumstances do not indicate otherwise, delivery in lots is not permitted under this section and the buyer is properly entitled to reject for a deficiency in the tender, subject to any privilege in the seller to cure the tender.

3. The "but" clause of this section goes to the case in which it is not commercially feasible to deliver or to receive the goods in a single lot as for example, where a contract calls for the shipment of ten carloads of coal and only three cars are available at a given time. Similarly, in a contract involving brick necessary to build a building the buyer's storage space may be limited so that it would be impossible to receive the entire amount of brick at once, or it may be necessary to assemble the goods as in the case of cattle on the range, or to mine them.

In such cases, a partial delivery is not subject to rejection for the defect in quantity alone, if the circumstances do not indicate a repudiation or default by the seller as to the expected bal-

ance or do not give the buyer ground for suspending his performance because of insecurity under the provisions of § 2-609. However, in such cases the undelivered balance of goods under the contract must be forthcoming within a reasonable time and in a reasonable manner according to the policy of § 2-503 on manner of tender of delivery. This is reinforced by the express provisions of § 2-608 that if a lot has been accepted on the reasonable assumption that its nonconformity will be cured, the acceptance may be revoked if the cure does not seasonably occur. The section approves the result in *Lynn M. Ranger, Inc. v. Gildersleeve*, 106 Conn. 372, 138 A. 142 (1927) in which a contract was made for six carloads of coal then rolling from the mines and consigned to the seller but the seller agreed to divert the carloads to the buyer as soon as the car numbers became known to him. He arranged a diversion of two cars and then notified the buyer who then repudiated the contract. The seller was held to be entitled to his full remedy for the two cars diverted because simultaneous delivery of all the cars was not contemplated by either party.

4. Where the circumstances indicate that a party has a right to delivery in lots, the price may be demanded for each lot if it is apportionable.

Cross References

Point 1: Section 1-201.

Point 2: Sections 2-508 and 2-601.

Point 3: Sections 2-503, 2-608 and 2-609.

Definitional Cross References

"Contract for sale". Section 2-106.

"Goods". Section 2-105.

"Lot". Section 2-105.

"Party". Section 1-201.

"Rights". Section 1-201.

Library References

Indians ☞ 23 to 24.

Sales ☞ 163.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales § 181.

§ 2-308. Absence of specified place for delivery

Unless otherwise agreed:

A. The place for delivery of goods is the seller's place of business or if he has none his residence; but

B. In a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

C. Documents of title maybe delivered through customary banking channels.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-308 of the Uniform Commercial Code adopted by the states. Since the Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code at this time, the obligations of banks relating to drafts and letters of credit which would be governed under such Articles will be governed by Navajo law under 7 N.N.C. § 204.

Commentary. 1. Subsections (A) and (B) provide for those non-commercial sales and for those occasional commercial sales where no place or means of delivery has been agreed upon by the parties. Where delivery by carrier is "required or authorized by the agreement", the seller's duties as to delivery of the goods are governed not by this section but by § 2-504.

2. Under subsection (B) when the identified goods contracted for are known to both parties to be in some location other than the seller's place of business or residence, the parties are presumed to have intended that place to be the place of delivery. This subsection also applies (unless, as would be normal, the circumstances show that delivery by way of documents is intended) to a bulk of goods in the possession of a

bailee. In such a case, however, the seller has the additional obligation to procure the acknowledgment by the bailee of the buyer's right to possession.

3. Where "customary banking channels" call only for due notification by the banker that the documents are on hand, leaving the buyer himself to see to the physical receipt of the goods, tender at the buyer's address is not required under subsection (C). But that paragraph merely eliminates the possibility of a default by the seller if "customary banking Channels" have been properly used in giving notice to the buyer. Since the Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code relating to Bank Deposits and Collections, and Letters of Credit, the obligations of banks relating to such documents which would be governed under such Articles will be governed by Navajo law pursuant to 7 N.N.C. § 204.

4. The rules of this section apply only "unless otherwise agreed". The surrounding circumstances, usage of trade, course of dealing and course of performance, as well as the express language of the parties, may constitute an "otherwise agreement".

Cross References

- Point 1: Sections 2-504 and 2-505.
- Point 2: Section 2-503.
- Point 3: Section 2-512.

Definitional Cross References

- "Contract for sale". Section 2-106.
- "Delivery". Section 1-201.
- "Document of title". Section 1-201.
- "Goods". Section 2-105.
- "Party". Section 1-201.
- "Seller". Section 2-103.

Special Plain Language Comment

Most commercial sales involve shipment of goods, in which payment is governed by §§ 2-503, 2-504 and 2-505. This section is employed only if the parties have not agreed in

the contract on a place of delivery and the place of delivery is not established through previous transactions nor through the common practices in the industry.

Library References

Indians ☞23 to 24.
 Sales ☞79.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales § 168.

§ 2-309. Absence of specific time provisions; notice of termination

A. The time shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

B. Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

C. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-309 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) requires that all actions taken under a sales contract must be taken within a reasonable time where no time has been agreed upon. The reasonable time under this provision turns on the criteria as to "reasonable time" and on good faith and commercial standards set forth in §§ 1-203, 1-204 and 2-103. It thus depends upon what constitutes acceptable commercial conduct in view of the nature, purpose and circumstances of the action to be taken. Agreement as to a definite time, however, may be found in a term implied from the contractual circumstances, usage of trade or course of dealing or performance as well as in an express term. Such cases fall outside of this subsection since in them the time for action is "agreed" by usage.

2. The time for payment, where not agreed upon is related to the time for delivery; the particular problems which arise in connection with determining the appropriate time of payment and the time for any inspection before payment which is both allowed by law and demanded by the buyer are covered in § 2-513.

3. The facts in regard to shipment and delivery differ so widely as to make detailed provision for them in the text of this article impracticable. The applicable principles, however, make it clear that surprise is to be avoided, good faith judgment is to be protected, and

notice or negotiation to reduce the uncertainty to certainty is to be favored.

4. When the time for delivery is left open, unreasonably early offers of or demands for delivery are intended to be read under this article as expressions of desire or intention, requesting the assent or acquiescence of the other party, not as final positions which may amount without more to breach or to create breach by the other side. See §§ 2-207 and 2-609.

5. The obligation of good faith under this Code requires reasonable notification before a contract may be treated as breached because a reasonable time for delivery or demand has expired. This operates both in the case of a contract originally indefinite as to time and of one subsequently made indefinite by waiver.

When both parties let an originally reasonable time go by in silence, the course of conduct under the contract may be viewed as enlarging the reasonable time for tender or demand of performance. The contract may be terminated by abandonment.

6. Parties to a contract are not required in giving reasonable notification to fix, at peril of breach, a time which is in fact reasonable in the unforeseeable judgment of a later trier of fact. Effective communication of a proposed time limit calls for a response, so that figure to reply will make out acquiescence. Where objection is made, however, or if the demand is merely for information as to when goods will be delivered or will be ordered out, demand for assurances on the ground of insecurity maybe made under

this article pending further negotiations. Only when a party insists on undue delay or on rejection of the other party's reasonable proposal is there a question of flat breach under the present section.

7. Subsection (B) applies a commercially reasonable view to resolve the conflict which has arisen in the cases as to contracts of indefinite duration. The "reasonable time" of duration appropriate to a given arrangement is limited by the circumstances. When the arrangement has been carried on by the parties over the years, the "reasonable time" can continue indefinitely and the contract will not terminate until notice.

8. Subsection (C) recognizes that the application of principles of good faith and sound commercial practice normally call for such noti-

fication of the termination of a going contract relationship as will give the other party reasonable time to seek a substitute arrangement. An agreement dispensing with notification or limiting the time for the seeking of a substitute arrangement is, of course, valid under this subsection unless the results of putting it into operation would be the creation of an unconscionable state of affairs.

9. Justifiable cancellation for breach is a remedy for breach and is not the kind of termination covered by the present subsection.

10. The requirement of notification is dispensed with where the contract provides for termination on the happening of an "agreed event". "Event" is a term chosen here to contrast with "option" or the like.

Cross References

Point 1: Sections 1-203, 1-204 and 2-103.

Point 2: Sections 2-320, 2-321, 2-504 and 2-511 through 2-514.

Point 5: Section 1-203.

Point 6: Section 2-609.

Point 7: Section 2-204.

Point 8: Sections 2-106, 2-318, 2-610 and 2-703.

Definitional Cross References

"Agreement". Section 1-201.

"Contract". Section 1-201.

"Notification". Section 1-201.

"Party". Section 1-201.

"Reasonable time". Section 1-204.

"Termination". Section 2-106.

Library References

Indians \S 23 to 24.

Sales \S 81(2), 84, 107, 127.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians \S 12, 30 to 31.

C.J.S. Sales \S 108, 119, 141 to 143, 204.

§ 2-310. Open time for payment or running of credit; authority to ship under reservation

Unless otherwise agreed:

A. Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery, and

B. If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (§ 2-513); and

C. If delivery is authorized and made by way of documents of title otherwise than by subsection (B) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

D. Where the seller is required or authorized to ship the goods on credit, the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-310 of the Uniform Commercial code adopted by the states. Since the Navajo Nation has not adopted Article 4 of the Uniform Commercial Code, the obligations of banks relating to drafts which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. This section is drawn to reflect modern business methods of dealing at a distance rather than face to face. Subsection (A) provides that payment is due at the time and place "the buyer is to receive the goods" rather than at the point of delivery except in documentary shipment cases (subsection (C)). This grants an opportunity for the exercise by the buyer of his preliminary right to inspection before paying, even though under the delivery term the risk of loss may have previously passed to him or the running of the credit period has already started.

2. Subsection (B), while providing for inspection by the buyer before he pays, protects the seller. He is not required to give up possession of the goods until he has received payment, where no credit has been contemplated by the parties. The seller may collect through a bank by a sight draft against an order bill of lading "hold until arrival; inspection allowed". Since the Navajo Nation has not adopted Article 4 of the Uniform Commercial Code relating to Banker's Deposits and Collections, the obligations of banks which would be governed under that Article are governed by Navajo law pursuant to 7

N.N.C. § 204. In the absence of a credit term, the seller is permitted to ship under reservation and if he does payment is then due where and when the buyer is to receive the documents.

3. Unless otherwise agreed, the place for the receipt of the documents and payment is the buyer's city but the time for payment is only after arrival of the goods, since under subsection (B), and §§ 2-512 and 2-513 the buyer is under no duty to pay prior to inspection.

4. Where the mode of shipment is such that goods must be unloaded immediately upon arrival, too rapidly to permit adequate inspection before receipt, the seller must be guided by the provisions of this article on inspection which provide that if the seller wishes to demand payment before inspection, he must put an appropriate term into the contract. Even requiring payment against documents will not of itself have this desired result if the documents are to be held until the arrival of the goods. But under subsections (B) and (C) if the terms are C.I.F., C.O.D., or cash against documents, payment may be due before inspection.

5. Subsection (D) states the common commercial understanding that an agreed credit period runs from the time of shipment or from the dating of the invoice which is commonly recognized as a representation of the time of shipment. The provision concerning any delay in sending forth the invoice is included because such conduct results in depriving the buyer of his fifth notice and warning as to when he must be prepared to pay.

Cross References

Point 1: Section 2-509.
 Point 2: Section 2-505, 2-511, 2-512, 2-513.
 Point 3: Sections 2-308(B), 2-512, and 2-513.
 Point 4: Section 2-513 (C) (2).

Definitional Cross References

"Buyer". Section 2-103.
 "Delivery". Section 1-201.
 "Document of title". Section 1-20 1.
 "Goods". Section 2-105.
 "Receipt of goods". Section 2-103.
 "Seller". Section 2-103.

“Send”. Section 1-201.
 “Term”. Section 1-201.

Library References

Indians ⇄23 to 24.
 Sales ⇄82.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales § 208.

§ 2-311. Options and cooperation respecting performance

A. An agreement for sale which is otherwise sufficiently definite (§ 2-204(C)) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

B. Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (A)(3) and (C) of § 2-319 specifications or arrangements relating to shipment are at the seller's option.

C. Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

1. Is excused for any resulting delay in his own performance; and
2. May also either proceed to perform in any reasonable manner or after the time for a material part if his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-311 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) permits the parties to leave certain detailed particulars of performance to be filled in by either of them without running the risk of having the contract invalidated for indefiniteness. The party to whom the agreement gives power to specify the missing details is required to exercise good faith and to act in accordance with commercial standards so that there is no surprise and the range of permissible variation is limited by what is commercially reasonable. The “agreement” which permits one party so to specify may be found as well in a course of dealing, usage of trade, or implication from circumstances as in explicit language used by the parties.

2. Options as to assortment of goods or shipping arrangements are specifically reserved to

the buyer and seller respectively under subsection (B) where no other arrangement has been made. This section rejects the test which mechanically and without regard to usage or the purpose of the option gave the option to the party “first under a duty to move” and applies instead a standard commercial interpretation to these circumstances. The “unless otherwise agreed” provision of this subsection covers not only express terms but the background and circumstances which enter into the agreement.

3. Subsection (C) applies when the exercise of an option or cooperation by one party is necessary to or materially affects the other party's performance, but it is not seasonably forthcoming; the subsection relieves the other party from the necessity for performance or excuses his delay in performance as the case may be. The contract-keeping party may at his option under this subsection proceed to perform in any

commercially reasonable manner rather than wait. In addition to the special remedies provided, this subsection also reserves "all other remedies". The remedy of particular importance in this connection is that provided for insecurity. Request may also be made pursuant to the obligation of good faith for a reasonable indication of the time and manner of performance for which a party is to hold himself ready.

4. The remedy provided in subsection (C) is one which does not operate in the situation which falls within the scope of § 2-614 on substituted performance. Where the failure to cooperate results from circumstances set forth in that section, the other party is under a duty to proffer or demand (as the case may be) substitute performance as a condition to claiming rights against the non-cooperating party.

Cross References

Point 1: Sections 1-201, 2-204 and 1-203.
 Point 3: Sections 1-203 and 2-609.
 Point 4: Section 2-614.

Definitional Cross References

"Agreement". Section 1-201.
 "Buyer". Section 2-103.
 "Contract for sale". Section 2-106.
 "Goods". Section 2-105.
 "Party". Section 1-201.
 "Remedy". Section 1-201.
 "Seasonably". Section 1-204.
 "Seller". Section 2-103.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄ 1(4), 64, 83, 154.	C.J.S. Sales §§ 74 to 75, 82, 157.
Westlaw Topic Nos. 209, 343.	

§ 2-312. Warranty of title and against infringement; buyer's obligation against infringement

A. Subject to subsection (B) there is in a contract for sale a warranty by the seller that:

1. The title conveyed shall be good, and its transfer rightful; and
2. The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

B. A warranty under subsection (A) will be excluded or modified only by specific language or by circumstances which give the buyer reasons to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

C. Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-312 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) makes provision for a buyer's basic needs in respect to a title which he in good faith expects to acquire by his purchase, namely that he receive a good, clean title transferred to him also in a rightful manner so that he will not be exposed to a lawsuit in order to protect it.

The warranty extends to a buyer whether or not the seller was in possession of goods at the time the sale or contract to sell was made.

The warranty of quiet possession is abolished. Disturbance of quiet possession, although not mentioned specifically, is one way, among many, in which the breach of the warranty of title may be established.

The "knowledge" referred to in subsection (A) (2) is actual knowledge as distinct from notice.

2. The provisions of this article requiring notification to the seller within a reasonable time after the buyer's discovery of a breach apply to notice of a breach of the warranty of title, where the seller's breach was innocent. However, if the seller's breach was in bad faith he cannot be permitted to claim that he has been misled or prejudiced by the delay in giving notice. In such case the "reasonable" time for notice should receive a very liberal interpretation. Whether the breach by the seller is in good or bad faith § 2-725 provides that the cause of action accrues when the breach occurs. Under the provisions of that section the breach of the warranty of good title occurs when tender of delivery is made since the warranty is not one which extends to "future performance of the goods".

3. When the goods are part of the seller's normal stock and are sold in his normal course of business, it is his duty to see that no claim of infringement of a patent or trademark by a third

party will mar the buyer's title. A sale by a person other than a dealer, however, raises no implication in its circumstances of such a warranty. Nor is there such an implication when the buyer orders goods to be assembled, prepared or manufactured on his own specifications. If, in such a case, the resulting product infringes a patent or trademark, the liability will run from buyer to seller. There is, under such circumstances, a tacit representation on the part of the buyer that the seller will be safe in manufacturing according to the specifications, and the buyer is under an obligation in good faith to indemnify him for any loss suffered.

4. This section rejects the cases which recognize the principle that infringements violate the warranty of title but deny the buyer a remedy unless he has been expressly prevented from using the goods. Under this article "eviction" is not a necessary condition to the buyer's remedy since the buyer's remedy arises immediately upon receipt of notice of infringement; it is merely one way of establishing the fact of breach.

5. Subsection (B) recognizes that sales by sheriffs, executors, foreclosing lienors and persons similarly situated are so out of the ordinary commercial course that their peculiar character is immediately apparent to the buyer and therefore no personal obligation is imposed upon the seller who is purporting to sell only an unknown or limited right. This subsection does not touch upon and leaves open all questions of restitution arising in such cases, when a unique article so sold is reclaimed by a third party as the rightful owner.

6. The warranty of subsection (A) is not designated as an "implied" warranty, and hence is not subject to § 2-316(C). Disclaimer of the warranty of title is governed instead by subsection (B), which requires either specific language or the described circumstances.

Cross References

Point 1: Section 2-403.
 Point 2: Sections 2-607 and 2-725.
 Point 3: Section 1-203.
 Point 4: Sections 2-609 and 2-725.
 Point 6: Section 2-316.

Definitional Cross References

"Buyer". Section 2-103.
 "Contract for sale". Section 2-106.
 "Goods". Section 2-105.
 "Person". Section 1-201.
 "Right". Section 1-201.
 "Seller". Section 2-103.

Special Plain Language Comment

This section implements the policy that a buyer should normally obtain clear ownership rights, “title” to goods he buys. Such rights should allow him to hold the goods he receives without concern about substantial claims attacking those rights. The seller promises in each sale of goods that the buyer will receive “title”, free of any substantial claims by third parties that they own the property. This promise also includes other types of claims which

could limit a buyer’s right to use the goods, such as security interests (see Article 9). The seller may avoid these obligations in only two ways: (1) specifically denying them in the contract or (2) in circumstances which give the buyer reason to know about the limited rights being transferred. Such circumstances would include a sheriff’s sale or foreclosure sale where it is clear to the buyer that the seller may not have good title.

Library References

Indians ⇨23 to 24.

Sales ⇨263.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 261, 272.

§ 2-313. Express warranties by affirmation, promise, description, sample

A. Express warranties by the seller are created as follows:

1. Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

2. Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

3. Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

B. It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-313 of the Uniform Commercial Code adopted by the states.

Commentary. 1. “Express” warranties rest on “dickered” aspects of the individual bargain, and go so clearly to the essence of that bargain that words of disclaimer denying such warranty in a form agreement are repugnant to the basic dickered terms. “Implied” warranties rest so clearly on a common factual situation or set of conditions that no particular language or action is necessary to evidence them and they will

arise in such a situation unless unmistakably negated. This section reverts to the older case law insofar as the warranties of description and sample are designated “express” rather than “implied”.

The warranties under this section are also effected for consumer transactions by a federal statute, the Magnuson-Moss Warranty Act-Federal Trade Commission Improvement Act, 15 U.S.C. § 2301 et seq. (1976).

2. Although this section is limited in its scope and direct purpose to warranties made by the seller to the buyer as part of a contract for

sale, the warranty sections of this article are not designed in any way to disturb those lines of case law growth which have recognized that warranties need not be confined either to sales contracts or to the direct parties to such a contract. They may arise in other appropriate circumstances such as in the case of bailments for hire, whether such bailment is itself the main contract or is merely a supplying of containers under a contract for the sale of their contents. The provisions of § 2-318 on third party beneficiaries expressly recognize this case law development within one particular area. Beyond that, the matter is left to the case law with the intention that the policies of the Code may offer useful guidance in dealing with further cases as they arise.

3. The present section deals with affirmations of fact by the seller, descriptions of the goods or exhibitions of samples, exactly as any other part of a negotiation which ends in a contract is dealt with. No specific intention to make a warranty is necessary if any of these factors is made part of the basis of the bargain. In actual practice affirmations of fact made by the seller about the goods during a bargain are regarded as part of the description of those goods; hence no particular reliance on such statements need be shown in order to weave them into the fabric of the agreement. Rather, any fact which is to take such affirmations, once made, out of the agreement requires clear affirmative proof. The issue normally is one of fact.

4. In view of the principle that the whole purpose of the law of warranty is to determine what it is that the seller has in essence agreed to sell, the policy is adopted of those cases which refuse, except in unusual circumstances, to recognize a material deletion of the seller's obligation. Thus, a contract is normally a contract for a sale of something describable and described. A clause generally disclaiming "all warranties, express or implied" cannot reduce the seller's obligation with respect to such description and therefore cannot be given literal effect under § 2-316.

This is not intended to mean that the parties, if they consciously desire, cannot make their own bargain as they wish. But in determining what they have agreed upon good faith is a factor and consideration should be given to the fact that the probability is small that a real price is intended to be exchanged for a pseudo-obligation.

5. Subsection (A) (2) makes specific some of the principles set forth above when a description of the goods is given by the seller.

A description need not be by words. Technical specifications, blueprints and the like can afford more exact description than mere language and if made part of the basis of the bargain goods must conform with them. Past

deliveries may set the description of quality, either expressly or impliedly by course of dealing. Of course, all descriptions by merchants must be read against the applicable trade usages with the general rules as to merchantability resolving any doubts.

6. The basic situation as to statements affecting the true essence of the bargain is no different when a sample or model is involved in the transaction. This section includes both a "sample" actually drawn from the bulk of goods which is the subject matter of the sale, and a "model" which is offered for inspection when the subject matter is not at hand and which has not been drawn from the bulk of the goods.

Although the underlying principles are unchanged, the facts are often ambiguous when something is shown as illustrative, rather than as a straight sample. In general, the presumption is that any sample or model just as any affirmation of fact is intended to become a basis of the bargain. But there is no escape from the question of fact. When the seller exhibits a sample purporting to be drawn from the existing bulk, good faith of course requires that the sample be fairly drawn. But in mercantile experience the mere exhibition of a "sample" does not of itself show whether it is merely intended to "suggest" or to "be" the character of the subject matter of the contract. The question is whether the seller has so acted with reference to the sample as to make him responsible that the whole shall have at least the values shown by it. The circumstances aid in answering this question. If the sample has been drawn from an existing bulk, it must be regarded as describing values of the goods contracted for unless it is accompanied by an unmistakable denial of such responsibility. If, on the other hand, a model of merchandise not on hand is offered, the mercantile presumption that it has become a literal description of the subject matter is not so strong, and particularly so if modification on the buyer's initiative impairs any feature of the model.

7. The precise time when words of description or affirmation are made or samples are shown is not material. The sole question is whether the language or samples or models are fairly to be regarded as part of the contract. If language is used after the closing of the deal (as when the buyer when taking delivery asks and receives an additional assurance), the warranty becomes a modification, and need not be supported by consideration if it is otherwise reasonable and in order (§ 2-209).

8. Concerning affirmations of value or a seller's opinion or commendation under subsection (B), the basic question remains the same: What statements of the seller have in the circumstances and in objective judgment become part of the basis of the bargain? As indicted above,

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all of the statements of the seller do so unless good reason is shown to the contrary. The provisions of subsection (B) are included, however, since common experience discloses that some statements or predictions cannot fairly be

viewed as entering into the bargain. Even as to false statements of value, however, the possibility is left open that a remedy may be provided by the law relating to fraud or misrepresentation.

Cross References

Point 1: Section 2-316.
Point 2: Sections 1-102(C) and 2-318.
Point 3: Section 2-316(B)(2)
Point 4: Section 2-316.
Point 5: Sections 1-205(D) and 2-314.
Point 6: Section 2-316.
Point 7: Section 2-209.
Point 8: Section 1-103.

Definitional Cross References

“Buyer”. Section 2-103.
“Conforming”. Section 2-106.
“Goods”. Section 2-105.
“Seller”. Section 2-103.

Special Plain Language Comment

If the seller makes specific promises about the goods to the buyer and the buyer bought the goods on account of such promises, the seller must live up to those promises since they form an “express warranty”. However, certain types of promises, such as those that are only opinions or general positive comments, do not give rise to an express warranty. Unlike the implied warranties in §§ 2-314 or 2-315, express war-

ranties can not be excluded or modified in the agreement. However, a buyer might not be able to enforce oral promises which conflict with the written terms of the contract due to the limitation on proof regarding oral evidence. (See §§ 2-202 and 2-316). In commercial transactions the buyer must give notice of the breach of warranties to the seller to preserve his rights (see § 2-607).

Library References

Indians ⇨23 to 24.
Sales ⇨259.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales § 242.

§ 2-314. Implied warranty. merchantability, usage of trade

A. Unless excluded or modified (§ 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

B. Goods to be merchantable must be at least such as:

1. Pass without objection in the trade under the contract description; and
2. In the case of fungible goods, are of fair average quality within the description; and
3. Are fit for the ordinary purposes for which such goods are used; and
4. Run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
5. Are adequately contained, packaged, and labeled as the agreement may require; and

6. Conform to the promises or affirmations of fact made on the container or label if any.

C. Unless excluded or modified (§ 2-316) other implied warranties may arise from course of dealing or usage of trade.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-314 of the Uniform Commercial Code adopted by the states. However, the limits on the definition of merchants in § 2-104 may limit the scope of this section.

Commentary. 1. The seller's obligation applies to present sales as well as to contracts to sell subject to the effects of any examination of specific goods. (§ 2-316(B)). Also, the warranty of merchantability applies to sales for use as well as to sales for resale.

2. The question when the warranty is imposed turns basically on the meaning of the terms of the agreement as recognized in the trade. Goods delivered under an agreement made by a merchant in a given line of trade must be of a quality comparable to that generally acceptable in that line of trade under the description or other designation of the goods used in the agreement. The responsibility imposed rests on any merchant-seller.

3. A specific designation of goods by the buyer does not exclude the seller's obligation that they be fit for the general purposes appropriate to such goods. A contract for the sale of second-hand goods, however, involves only such obligation as is appropriate to such goods for that is their contract description. A person making an isolated sale of goods is not a "merchant" within the meaning of the full scope of this section, and, thus, no warranty of merchantability would apply. His knowledge of any defects not apparent on inspection would, however, without need for express agreement and in keeping with the underlying reason of the present section and the provisions on good faith, impose an obligation that known material but hidden defects be fully disclosed.

4. Although a seller may not be a "merchant" as to the goods in question, if he states generally that they are "guaranteed" the provisions of this section may furnish a guide to the content of the resulting express warranty. This has particular significance in the case of second-hand sales, and has further significance in limiting the effect of the fine-print disclaimer clauses where their effect would be inconsistent with large-print assertions of "guarantee".

5. The second sentence of subsection (A) covers the warranty with respect to food and drink. Serving food or drink for value is a sale, whether to be consumed on the premises or elsewhere. Cases to the contrary are rejected. The principal warranty is that stated in subsections (A) and (B) (3) of this section.

6. Subsection (B) does not purport to exhaust the meaning of "merchantable" nor to negate any of its attributes not specifically mentioned in the text of the statute, but arising by usage of trade or through case law. The language used is "must be at least such as . . ." and the intention is to leave open other possible attributes of merchantability.

7. Subsection (B)(1) and (2) are to be read together. Both refer, as indicated above, to the standards of that line of the trade which fits the transaction and the seller's business. "Fair average" is a term directly appropriate to agricultural bulk products and means goods centering around the middle belt of quality, not the least or the worst that can be understood in the particular trade by the designation, but such as can pass "without objection". Of course a fair percentage of the least is permissible but the goods are not "fair average" if they are all of the least or worst quality possible under the description. In cases of doubt as to what quality is intended, the price at which a merchant closes a contract is an excellent index of the nature and scope of his obligation under the present section.

8. Fitness for the ordinary purposes for which goods of the type are used is a fundamental concept of the present section and is covered in paragraph (3). As stated above, merchantability is also a part of the obligation owing to the purchaser for use. Correspondingly, protection, under this aspect of the warranty, of the person buying for resale to the ultimate consumer is equally necessary, and merchantable goods must therefore be "honestly" resalable in the normal course of business because they are what they purport to be.

9. Paragraph (4) on evenness of kind, quality and quantity follows case law. But precautionary language has been added as a reminder of the frequent usages of trade which permit substantial variations both with and without an

allowance or an obligation to replace the varying units.

10. Paragraph (5) applies only where the nature of the goods and of the transaction require a certain type of container, package or label. Paragraph (6) applies, on the other hand, wherever there is a label or container on which representations are made, even though the original contract, either by express terms or usage of trade, may not have required either the labeling or the representation. This follows from the general obligation of good faith which requires that a buyer should not be placed in the position of reselling or using goods delivered under false representations appearing on the package or container. No problem of extra consideration arises in this connection since, under this article, an obligation is imposed by the original contract not to deliver mislabeled articles, and the obligation is imposed where mercantile good faith so requires and without reference to the doctrine of consideration.

11. Exclusion or modification of the warranty of merchantability, or of any part of it, is dealt with in the section to which the text of the present section makes explicit precautionary references. That Section must be read with particular reference to its subsection (D) on limitation of remedies. The warranty of merchantability, wherever it is normal, is so com-

monly taken for granted that its exclusion from the contract is a matter threatening surprise and therefore requiring special precaution.

12. Subsection (C) is to make explicit that usage of trade and course of dealing can create warranties and that they are implied rather than express warranties and thus subject to exclusion or modification under § 2-316. A typical instance would be the obligation to provide pedigree papers to evidence conformity of the animal to the contract in the case of a pedigreed dog or blooded bull.

13. In an action based on breach of warranty, it is of course necessary to show not only the existence of the warranty but the fact that the warranty was broken and that the breach of the warranty was the proximate cause of the loss sustained. In such an action an affirmative showing by the seller that the loss resulted from some action or event following his own delivery of the goods can operate as a defense. Equally, evidence indicating that the seller exercised care in the manufacture, processing or selection of the goods is relevant to the issue of whether the warranty was in fact broken. Action by the buyer following an examination of the goods which ought to have indicated the defect complained of can be shown as matter bearing on whether the breach itself was the cause of the injury.

Cross References

Point 1: Section 2-316.
 Point 3: Sections 1-203 and 2-104.
 Point 5: Section 2-315.
 Point 11: Section 2-316.
 Point 12: Sections 1-201, 1-205 and 2-316.

Definitional Cross References

“Agreement”. Section 1-201.
 “Contract”. Section 1-201.
 “Contract for sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Merchant”. Section 2-104.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section requires that goods sold by a “merchant” (someone who deals regularly in goods of that kind, for example a garage mechanic would probably be a merchant for the sale of automobile parts, but not for the sale of his furniture) must be of average quality. In other words the goods should be fit for normally expected uses. The warranty also extends to the packages in which goods are shipped, so for

example this section would apply to soda bottles which explode. This warranty is limited to “sales” by merchants (although courts have used it to analogize to leasing and other transactions). Merchants may limit and deny the warranty in the agreement but the limitation must be in writing and conspicuous, (see § 2-316(A)).

Library References

Indians ⇄23 to 24.

Sales ⇄272.

Westlaw Topic Nos. 209, 343.
 C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 254 to 256.

§ 2-315. Implied warranty: fitness for particular purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-315 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Whether or not this warranty arises in any individual case is basically a question of fact to be determined by the circumstances of the contracting. Under this section the buyer need not bring home to the seller actual knowledge of the particular purpose for which the goods are intended or of his reliance on the seller's skill and judgment if the circumstances are such that the seller has reason to realize the purpose intended or that the reliance exists. The buyer, or course, must actually be relying on the seller.

2. A "particular purpose" differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to uses which are customarily made of the goods in question. For example, shoes are generally used for the purpose of walking upon ordinary ground, but a seller may know that a particular pair was selected to be used for climbing mountains.

A contract may of course include both a warranty of merchantability and one of fitness for a particular purpose.

The provisions of this article on the cumulation and conflict of express and implied warranties must be considered on the question of inconsistency between or among warranties. In such a case any question of fact as to which warranty was intended by the parties to apply must be resolved in favor of the warranty of fitness for particular purpose as against all other warranties except where the buyer has taken upon himself the responsibility of furnishing the technical specifications.

3. In connection with the warranty of fitness for a particular purpose the provisions of this article on the allocation or division of risks are particularly applicable in any transaction in which the purpose for which the goods are to be used combines requirements both as to the quality of the goods themselves and compliance with certain laws or regulations. How the risks are divided is a question of fact to be determined, where not expressly contained in the agreement, from the circumstances of contracting, usage of trade, course of performance and the like, matters which may constitute the "otherwise agreement" of the parties by which they may divide the risk or burden.

4. Although normally the warranty will arise only where the seller is a merchant with the appropriate "skill or judgment", it can arise as to non-merchants where this is justified by the particular circumstances.

5. Under this section the existence of a patent or other trade name and the designation of the article by that name, or indeed in any other definite manner, is only one of the facts to be considered on the question of whether the buyer actually relied on the seller, but it is not of itself decisive of the issue. If the buyer himself is insisting on a particular brand he is not relying on the seller's skill and judgment and so no warranty results. But the mere fact that the article purchased has a particular patent or trade name is not sufficient to indicate non-reliance if the article has been recommended by the seller as adequate for the buyer's purposes.

6. The specific reference forward in the present section to the following section on exclusion or modification of warranties is to call attention to the possibility of eliminating the warranty in any given case. However it must be noted that under the following section the warranty of fitness for a particular purpose must be excluded or modified by a conspicuous writing.

Cross References

Point 2: Sections 2-314 and 2-317.
 Point 3: Section 2-303.
 Point 6: Section 2-316.

Definitional Cross References

“Buyer”. Section 2-103.
 “Goods”. Section 2-105.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section provides that if the seller is aware of the special needs of buyer and the buyer’s reliance upon the seller’s judgment to meet those needs, the seller warrants or guarantees that the goods will meet these needs. This warranty may in some cases be broader than that of the warranty of merchantability in § 2-314, although it may overlap with that warranty. It is not limited to merchants and it may extend to uses of the goods which are not “ordinary”. For example, if a buyer tells a seller that he needs a wrench which will not cause sparks

because he is working in an explosive atmosphere, in selling the buyer a wrench the seller guarantees that the wrench he sells the buyer will not cause sparks. Since the requirement of “sparkless” operation goes beyond the ordinary use standard of “merchantability”, the implied warranty of fitness for a particular use is broader than the warranty of merchantability. This warranty may also be limited or denied in accordance with § 2-316, but any such limitation must be in writing and conspicuous.

Library References

Indians ⇨23 to 24.
 Sales ⇨273.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales § 258.

§ 2-316. Exclusion or modification of warranties

A. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (§ 2-202) negation or limitation is inoperative to the extent that such construction is unreasonable. Any oral waiver or creation of an express warranty must be in language comprehensible to the purchaser.

B. Subject to subsection (C), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof”.

C. Notwithstanding subsection (B):

1. Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, “with all faults”, or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty; and
2. When the buyer, before entering into the contract, has examined the goods or the sample or model as fully as he desired or has refused to examine

the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

3. An implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade;

4. With respect to the sale of cattle, goats, sheep, pigs, turkeys, horses, or poultry, there shall be no implied warranty that the animals are free from disease or sickness. This exemption shall not apply when the seller knowingly sells animals which are diseased or sick.

D. Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (§§ 2-718 and 2-719).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-316 of the Uniform Commercial Code adopted by the states, except that subsection (A) has been modified to clarify that any oral creation or negation of an express warranty must be comprehensible to the purchaser and subsection (C)(4) has been added to delete the implied warranty relating to the health of animals in a sale unless the seller knowingly sells diseased animals.

Commentary. 1. This section is designed principally to deal with those frequent clauses in sales contracts which seek to exclude "all warranties, express or implied". It seeks to protect a buyer from unexpected and unbar-gained language of disclaimer by denying effect to such language when inconsistent with language of express warranty and permitting the exclusion of implied warranties only by conspicuous language or other circumstances which protect the buyer from surprise. The effect of this section on warranties in consumer transactions has been modified by a federal statute, the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. 15 U.S.C. § 2301 *et seq.* (1976).

2. The seller is protected under this article against false allegations of oral warranties by its provisions on parol and extrinsic evidence and against unauthorized representations by the customary "lack of authority" clauses. This article treats the limitation or avoidance of consequential damages as a matter of limiting remedies for breach, separate from the matter of creation of liability under a warranty. If no warranty exists, there is of course no problem of limiting remedies for breach of warranty. Under subsection (D) the question of limitation of remedy is governed by the sections referred to rather than by this section.

3. Disclaimer of the implied warranty of merchantability is permitted under subsection (B), but with the safeguard that such disclaimers must mention merchantability and in case of a writing must be conspicuous.

4. Unlike the implied warranty of merchantability, implied warranties of fitness for a particular purpose may be excluded by general language, but only if it is in writing and conspicuous.

5. Subsection (B) presupposes that the implied warranty in question exists unless excluded or modified. Whether or not language of disclaimer satisfies the requirements of this section, such language may be relevant under other sections to the question whether the warranty was ever in fact created. Thus, unless the provisions of this article on parol and extrinsic evidence prevent, oral language of disclaimer may raise issues of fact as to whether reliance by the buyer occurred and whether the seller had "reason to know" under the section on implied warranty of fitness for a particular purpose.

6. The exceptions to the general rule set forth in subsection (C)(1)-(3) are common factual situations in which the circumstances surrounding the transaction are in themselves sufficient to call the buyer's attention to the fact that no implied warranties are made or that a certain implied warranty is being excluded.

7. Subsection (C)(1) deals with general terms such as "as is", "as they stand", "with all faults", and the like. Such terms in ordinary commercial usage are understood to mean that the buyer takes the entire risk as to the quality of the goods involved. The terms covered by paragraph (1) are in fact merely a particularization of paragraph (3) which provides for exclusion or modification of implied warranties by usage of trade.

8. Under Subsection (C) (2) warranties may be excluded or modified by the circumstances where they buyer examines the goods or a sample or model of them before entering into the contract. "Examination" as used in this paragraph is not synonymous with inspection before acceptance or at any other time after the contract has been made. It goes rather to the nature of the responsibility assumed by the seller at the time of the making of the contract. Of course if the buyer discovers the defect and uses the goods anyway, or if he unreasonably fails to examine the goods before he uses them, resulting injuries may be found to result from his own action rather than proximately from a breach of warranty. See § 2-314 and 2-715 and comments thereto.

In order to bring the transaction within the scope of "refused to examine" in paragraph (2), it is not sufficient that the goods are available for inspection. There must in addition be a demand by the seller that the buyer examine the goods fully. The seller by the demand puts the buyer on notice that he is assuming the risk of defects which the examination ought to reveal. The language "refused to examine" in this paragraph is intended to make clear the necessity for such demand.

Application of the doctrine of "caveat emptor" in all cases where the buyer examines the goods regardless of statements made by the seller is, however, rejected by this article. Thus, if the offer of examination is accompanied by words as to their merchantability or specific attributes and the buyer indicates clearly that he is relying on those words rather than on his examination, they give rise to an "express" warranty. In such cases the question is one of fact as to whether a warranty of merchantability has been expressly incorporated in the agreement.

Disclaimer of such an express warranty is governed by subsection (A) of the present section.

The particular buyer's skill and the normal method of examining goods in the circumstances determine that defects are excluded by the examination. A failure to notice defects which are obvious cannot excuse the buyer. However, an examination under circumstances which do not permit chemical or other testing of the goods would not exclude defects which could be ascertained only by such testing. Nor can latent defects be excluded by a simple examination. A professional buyer examining a product in his field will be held to have assumed the risk as to all defects which a professional in the field ought to observe, while a non-professional buyer will be held to have assumed the risk only for such defects as a layman might be expected to observe.

9. The situation in which the buyer gives precise and complete specifications to the seller is not explicitly covered in this section, but this is a frequent circumstance by which the implied warranties may be excluded. The warranty of fitness for a particular purpose would not normally arise since in such a situation there is usually no reliance on the seller by the buyer. The warranty of merchantability in such a transaction, however, must be considered in connection with the next section on the cumulation and conflict of warranties. Under paragraph (3) of that section in case of such an inconsistency, the implied warranty of merchantability is displaced by the express warranty that the goods will comply with the specifications. Thus, where the buyer gives detailed specifications as to the goods, neither of the implied warranties as to quality will normally apply to the transaction unless consistent with the specifications.

Cross References

Point 2: Sections 2-202, 2-718 and 2-719.

Point 7: Sections 1-205 and 2-208.

Definitional Cross References

"Agreement". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Course of dealing". Section 1-205.

"Goods". Section 2-105.

"Remedy". Section 1-201.

"Seller". Section 2-103.

"Usage of trade". Section 1-205.

Special Plain Language Comment

Once the seller makes an "express" warranty (see § 2-312) he may not deny that warranty. However, if the express warranty was made

orally and not included in the written contract, the buyer may not be able to prove that the oral warranty was made because of the rule against

oral testimony where a “final” written document exists (see § 2-202). Before relying on any permits to purchase the buyer should have the promise put into writing as part of the agreement. This section also seeks to limit the denial (“disclaimer”) of the “implied warranties” of merchantability and fitness for a particular purpose. Such denials must generally be in writing and conspicuous. However, other

circumstances may prove effective to deny such warranties such as an opportunity by the buyer to examine the goods before sale or words which will make clear to the buyer the risks he or she is assuming. Even if a warranty exists the seller may limit the remedies of a buyer to recover under such warranty, (see §§ 2-718 and 2-719).

Library References

Indians ☞ 23 to 24.

Sales ☞ 260, 267.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 238, 247 to 248, 263 to 270.

§ 2-317. Cumulation and conflict of warranties express or implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

A. Exact or technical specifications displace an inconsistent sample or model or general language of description.

B. A sample from an existing bulk displaces inconsistent general language of description.

C. Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-317 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The present section rests on the basic policy of this article that no warranty is created except by some conduct (either affirmative action or failure to disclose) on the part of the seller. Therefore, all warranties are made cumulative unless this construction of the contract is impossible or unreasonable.

2. The rules of this section are designed to aid in determining the intention of the parties as to which of inconsistent warranties which have arisen from the circumstances of their transaction shall prevail. These rules of intention are to be applied only where factors making for an

equitable estoppel of the seller do not exist and where he has in perfect good faith made warranties which later turn out to be inconsistent. To the extent that the seller has led the buyer to believe that all of the warranties can be performed, he is estopped from setting up any essential inconsistency as a defense.

3. The rules in subsections (A), (B) and (C) are designed to ascertain the intention of the parties by reference to the factor which probably claimed the attention of the parties in the first instance. These rules are not absolute but may be changed by evidence showing that the conditions which existed at the time of contracting make the construction called for by the section inconsistent or unreasonable.

Cross References

Point 1: Section 2-315

Definitional Cross References

“Party”. Section 1-201.

Library References

Indians ↻23 to 24.
 Sales ↻277.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 238, 249, 283.

§ 2-318. Third party beneficiaries of warranties express or implied

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-318 of the Uniform Commercial Code adopted by the states. The Navajo Nation has adopted Alternative C of those provided by the Official Text of the Uniform Commercial Code.

Commentary. 1. The last sentence of this section does not mean that a seller is precluded from excluding or disclaiming a warranty which might otherwise arise in connection with the sale provided such exclusion or modification is permitted by § 2-316. Nor does that sentence preclude the seller from limiting the remedies of his own buyer and of any beneficiaries, in any manner provided in §§ 2-718 or 2-719. To the extent that the contract of sale contains provisions under which warranties are excluded or modified, or remedies for breach are limited, such provisions are equally operative against beneficiaries of warranties under this section. What this last sentence forbids is exclusion of liability by the seller to the persons to whom the warranties which he has made to his buyer would extend under this section.

2. The purpose of this section is to give certain beneficiaries the benefit of the same warranty which the buyer received in the contract of sale, thereby freeing any such beneficiaries from any technical rules as to "privity". It seeks to accomplish this purpose without any derogation of any right or remedy resting on negligence. It rests primarily upon the merchant-seller's warranty under this article that the goods sold are merchantable and fit for the ordinary purposes for which such goods are used rather than the warranty of fitness for a particular purpose. Implicit in the section is that any beneficiary of a warranty may bring a direct action or breach of warranty against the seller whose warranty extends to him.

3. This alternative, the third of those presented in the Official Code text goes further, following the trend of modern decisions as indicated by the Restatement of Torts 2d § 402A (Tentative Draft No. 10, 1965), in extending the rule beyond injuries to the person. This rule eliminates horizontal and vertical privity and extends the right to sue on warranty claims to corporations as well as natural persons.

Cross References

Point 1: Sections 2-316, 2-718 and 2-719.
 Point 2: Section 2-314.

Definitional Cross References

"Buyer". Section 2-103.
 "Goods". Section 2-105.
 "Seller". Section 2-103.

Special Plain Language Comment

This section eliminates certain technical requirements of "privity" — a specific type of direct contractual commitment between two parties-to allow a lawsuit based on warranty claims. Persons or corporations who are injured by goods may now sue not only the retail-

er, but the manufacturer as well, even though no direct contract was ever made between the manufacturer and the injured person or corporation.

Library References

Contracts ☞187.	C.J.S. Contracts §§ 612 to 622, 624 to 629.
Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞255, 278.	C.J.S. Sales §§ 240 to 241, 284, 288 to 289.
Westlaw Topic Nos. 95, 209, 343.	

§ 2-319. F.O.B. and F.A.S. terms

A. Unless otherwise agreed the term a F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which:

1. When the term is a F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (§ 2-504) and bear the expense and risk of putting them into the possession of the carrier; or

2. When the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (§ 2-503);

3. When under either (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (§ 2-323).

B. Unless otherwise agreed the term F.A.S. vessel (which means “free alongside”) at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must:

1. At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

2. Obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

C. Unless otherwise agreed in any case falling within subsection (A) (1) or (3) or subsection (B), the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B., the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (§ 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

D. Under the term F.O.B. vessel or F.A.S. unless otherwise agreed, the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-319 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The section is intended to negate the uncommercial line of decision which treats an "F.O.B." term as "merely a price term". The distinctions taken in subsection (A) handle most of the issues which have on occasion led to the unfortunate judicial language just referred to. Other matters which have led to sound results being based on unhappy language in regard to F.O.B. clauses are dealt with in this Code by § 2-311 (B) (seller's option regarding arrangements relating to shipment) and §§ 2-614 and 615 (substituted performance and seller's excuse).

2. Subsection (A)(3) not only specifies the duties of a seller who engages to deliver "F.O.B. vessel", or the like, but ought to make clear that no agreement is soundly drawn when it looks to reshipment from San Francisco or New York, but speaks merely of "F.O.B." the place.

3. The buyer's obligations stated in subsection (A)(3) and subsection (C) are as shown in the text, obligations of cooperation. The last sentence of subsection (C) expressly, though perhaps unnecessarily, authorizes the seller, pending instructions, to go ahead with such preparatory moves as shipment from the interior to the named point of delivery. The sentence presupposes the usual case in which instructions "fail"; a prior repudiation by the buyer, giving notice that breach was intended, would remove the reason for the sentence, and would normally bring into play, instead, the second sentence of § 2-704, which duly calls for lessening damages.

4. The treatment of "F.O.B. vessel" in conjunction with F.A.S. fits, in regard to the need for payment against documents, with standard practice and case law; but "F.O.B. vessel" is a term which by its very language makes express the need for an "on board" document. In this respect, that term is stricter than the ordinary overseas "shipment" contract (C.I.F., etc., § 2-320).

Cross References

Sections 2-311(C), 2-323, 2-503 and 2-504.

Definitional Cross References

"Agreed". Section 1-201.
 "Bill of lading". Section 1-201.
 "Buyer". Section 2-103.
 "Goods". Section 2-105.
 "Seasonably". Section 1-204.
 "Seller". Section 2-103.
 "Term". Section 1-201.

Special Plain Language Comment

Sections 2-319-2-322 concern standard methods of shipment. The sections determine when the risk of loss in the goods will pass from one party to the other and other rights of the parties. These other rights can be quite impor-

tant: for example shipment under C.I.F. and C. & F. terms, the buyer must pay upon the delivery of the appropriate documents and may not inspect the goods prior to the payment.

Library References

Indians ⇨ 23 to 24.

Sales ⇨ 77, 79, 83, 161, 201(4).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 26, 96 to 98, 157, 164, 167 to 168, 174 to 175, 224 to 227.

§ 2-320. C.I.F. and C. & F. terms

A. The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named estimation. The term C.

& F. or C.F. means that the price so includes cost and freight to the named destination.

B. Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

1. Put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and
2. Load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and
3. Obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and
4. Prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and
5. Forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

C. Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligation and risks as a C.I.F. term except the obligation as to insurance.

D. Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-320 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The C.I.F. contract is not a destination but a shipment contract with risk of subsequent loss or damage to the goods passing to the buyer upon shipment if the seller has properly performed all his obligations with respect to the goods. Delivery to the carrier is delivery to the buyer for purposes of risk and "title". Delivery of possession of the goods is accomplished by delivery of the bill of lading, and upon tender of the required documents the buyer must pay the agreed price without awaiting the arrival of the goods and if they have been lost or damaged after proper shipment he

must seek his remedy against the carrier or insurer. The buyer has no right of inspection prior to payment or acceptance of the documents.

2. The seller's obligations remain the same even though the C.I.F. term is "used only in connection with the stated price and destination".

3. The insurance stipulated by the C.I.F. term is for the buyer's benefit, to protect him against the risk of loss or damage to the goods in transit. A clause in a C.I.F. contract "insurance-for the account of sellers" should be viewed in its ordinary mercantile meaning that the sellers must pay for the insurance and not that it is intended to run to the seller's benefit.

4. A bill of lading covering the entire transportation from the port of shipment is explicitly required but the provision on this point must be read in the light of its reason to assure the buyer of as full protection as the conditions of shipment reasonably permit, remembering always that this type of contract is designed to move the goods in the channels commercially available. To enable the buyer to deal with the goods while they are afloat the bill of lading must be one that covers only the quantity of goods called for by the contract. The buyer is not required to accept his part of the goods without a bill of lading because the latter covers a larger quantity, nor is he required to accept a bill of lading for the whole quantity under a stipulation to hold the excess for the owner. Although the buyer is not compelled to accept either goods or documents under such circumstances he may of course claim his rights in any goods which have been identified to his contract.

5. The seller is given the option of paying or providing for the payment of freight. He has no option to ship "freight collect" unless the agreement so provides. The rule of the common law that the buyer need not pay the freight if the goods do not arrive is preserved.

Unless the shipment has been sent "freight collect" the buyer is entitled to receive documentary evidence that he is not obligated to pay the freight; the seller is therefore required to obtain a receipt "showing that the freight has been paid or provided for". The usual notation in the appropriate space on the bill of lading that the freight has been prepaid is a sufficient receipt, as at common law. The phrase "provided for" is intended to cover the frequent situation in which the carrier extends credit to a shipper for the freight on successive shipments and receives periodical payments of the accrued freight charges from him.

6. The requirement that unless otherwise agreed the seller must procure insurance "of a kind and on terms then current at the port for shipment in the usual amount, in the currency of the contract, sufficiently shown to cover the same goods covered by the bill of lading" applies to both marine and war risk insurance. As applied to marine insurance, it means such insurance as is usual or customary at the port for shipment with reference to the particular kind of goods involved, the character and equipment of the vessel, the route of the voyage, the port of destination and any other considerations that affect the risk. It is the substantial equivalent of the ordinary insurance in the particular trade and on the particular voyage and is subject to agreed specifications of type or extent of coverage. The language does not mean that the insurance must be adequate to cover all risks to which the goods may be subject in transit.

There are some types of loss or damage that are not covered by the usual marine insurance and are excepted in bills of lading or in applicable statutes from the causes of loss or damage for which the carrier or the vessel is liable. Such risks must be borne by the buyer under this article. Insurance secured in compliance with a C.I.F. term must cover the entire transportation of the goods to the named destination.

7. An additional obligation is imposed upon the seller in requiring him to procure customary war risk insurance at the buyer's expense. This changes the common law on the point. The seller is not required to assume the risk of including in the C.I.F. price the cost of such insurance, since it often fluctuates rapidly, but is required to treat it simply as a necessary for the buyer's account. What war risk insurance is "current" or usual turns on the standard forms of policy or rider in common use.

8. The C.I.F. contract calls for insurance covering the value of the goods at the time and place of shipment and does not include any increase in market value during transit or any anticipated profit to the buyer on a sale by him.

The contract contemplates that before the goods arrive at their destination they maybe sold again and again on C.I.F. terms and that the original policy of insurance and bill of lading will run with the interest in the goods by being transferred to each successive buyer. A buyer who becomes the seller in such an intermediate contract for sale does not thereby, if his sub-buyer knows the circumstances, undertake to insure the goods again at an increased price fixed in the new contract or to cover the increase in price by additional insurance, and his buyer may not reject the documents on the ground that the original policy does not cover such higher price. If such a sub-buyer desires additional insurance he must procure it for himself.

Where the seller exercise an option to ship "freight collect" and to credit the buyer with the freight against the C.I.F. price, the insurance need not cover the freight since the freight is not at the buyer's risk. On the other hand, where the seller prepays the freight upon shipping under a bill of lading requiring prepayment and providing that the freight shall be deemed earned and shall be retained by the carrier "ship and/or cargo lost or not lost", or using words of similar import, he must procure insurance that will cover the freight, because notwithstanding that the goods are lost in transit the buyer is bound to pay the freight as part of the C.I.F. price and will be unable to recover it back from the carrier.

9. Insurance "for the account of whom it may concern" is usual and sufficient. However, for a valid tender the policy of insurance must be one which can be disposed of together

with the bill of lading and so must be "sufficiently shown to cover the same goods covered by the bill of lading". It must cover separately the quantity of goods called for by the buyer's contract and not merely insure his goods as part of a larger quantity in which others are interested, a case provided for in American mercantile practice by the use of negotiable certificates of insurance which are expressly authorized by this section. By usage these certificates are treated as the equivalent of separate policies and are good tender under C.I.F. contracts. The term "certificate of insurance", however, does not of itself include certificates or "cover notes" issued by the insurance broker and stating that the goods are covered by a policy. Their sufficiency as substitutes for policies will depend upon proof of an established usage or course of dealing. The present section rejects the rule that not only brokers' certificates and "cover notes" but also certain forms of American insurance certificates are not the equivalent of policies and are not good tender under a C.I.F. contract.

The seller's failure to tender a proper insurance document is waived if the buyer refuses to make payment on other and untenable grounds at a time when proper insurance could have been obtained and tendered by the seller if timely objection had been made. Even a failure to insure on shipment may be cured by seasonable tender of a policy retroactive in effect; e.g., one insuring the goods "lost or not lost". The provisions of this article on cure of improper tender and on waiver of buyer's objections by silence are applicable to insurance tenders under a C.I.F. term. Where there is no waiver by the buyer as described above, however, the fact that the goods arrive safely does not cure the seller's breach of his obligations to insure them and tender to the buyer a proper insurance document.

10. The seller's invoice of the goods shipped under a C.I.F. contract is regarded as a usual and necessary document upon which reliance may properly be placed. It is the document which evidences points as of description, quality and the like which do not readily appear in other documents. This article rejects those statements to the effect that the invoice is a usual but not a necessary document under a C.I.F. term.

11. The buyer needs all of the documents required under a C.I.F. contract, in due form and with necessary endorsements, so that before the goods arrive he may deal with them by negotiating the documents or may obtain prompt possession of the goods after their arrival. If the goods are lost or damaged in transit the documents are necessary to enable him promptly to assert his remedy against the carrier or insurer. The seller is therefore obligated

to do what is mercantilely reasonable in the circumstances and should make every reasonable exertion to send forward the documents as soon as possible after the shipment. The requirement that the documents be forwarded with "commercial promptness" expresses a more urgent need for action than that suggested by the phrase "reasonable time".

12. Under a C.I.F. contract the buyer, as under the common law, must pay the price upon tender of the required documents without first inspecting the goods, but his payment in these circumstances does not constitute an acceptance of the goods nor does it impair his right of subsequent inspection or his options and remedies in the case of improper delivery. All remedies and rights for the seller's breach are reserved to him. The buyer must pay before inspection and assert his remedy against the seller afterward unless the non-conformity of the goods amounts to a real failure of consideration, since the purpose of choosing this form of contract is to give the seller protection against the buyer's unjustifiable rejection of the goods at a distant port of destination which would necessitate taking possession of the goods and suing the buyer there.

13. A valid C.I.F. contract may be made which requires part of the transportation to be made on land and part on the sea, as where the goods are to be brought by rail from an inland point to a seaport and thence transported by vessel to the named destination under a "through" or combination bill of lading issued by the railroad company. In such a case shipment by rail from the inland point within the contract period is a timely shipment notwithstanding that the loading of the goods on the vessel is delayed by causes beyond the seller's control.

14. Although subsection (B) stating the legal effects of the C.I.F. term is an "unless otherwise agreed" provision, the express language used in an agreement is frequently a precautionary, fuller statement of the normal C.I.F. terms and hence not intended as a departure or variation from them. Moreover, the dominant outlines of the C.I.F. term are so well understood commercially that any variation should, whenever reasonably possible, be read as falling within those dominant outlines rather than as destroying the whole meaning of a term which essentially indicates a contract for proper shipment rather than one for delivery at destination. Particularly careful consideration is necessary before a printed form or clause is construed to mean agreement otherwise and where a C.I.F. contract is prepared on a printed form designed for some other type of contract, the C.I.F. terms must prevail over printed clauses repugnant to them.

15. Under subsection (D) the fact that the seller knows at the time of the tender of the documents that the goods have been lost in transit does not affect his rights if he has performed his contractual obligations. Similarly, the seller cannot perform under a C.I.F. term by purchasing and tendering landed goods.

16. Under the C. & F. term, as under the C.I.F. term, title and risk of loss are intended to pass to the buyer on shipment. A stipulation in a C. & F. contract that the seller shall effect insurance on the goods and charge the buyer with the premium (in effect that he shall act as the buyer's agent for that purpose) is entirely in keeping with the pattern. On the other hand, it

often happens that the buyer is in a more advantageous position than the seller to effect insurance on the goods or that he has in force an "open" or "floating" policy covering all shipments made by him or to him, in either of which events the C. & F. term is adequate without mention of insurance.

17. It is to be remembered that in a French contract the term "C.A.F." does not mean "Cost and Freight" but has exactly the same meaning as the term "C.I.F." since it is merely the French equivalent of that term. The "A" does not stand for "and", but for "assurance" which means insurance.

Cross References

Point 4: Section 2-323.

Point 6: Section 2-509(A)(1).

Point 9: Sections 2-508 and 2-605(A)(1).

Point 12: Sections 2-321 (C), 2-512 and 2-513(C).

Definitional Cross References

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Rights". Section 1-201.

"Seller". Section 2-103.

"Term". Section 1-201.

Library References

Indians $\S\S$ 23 to 24.

Sales $\S\S$ 77(2).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians $\S\S$ 12, 30 to 31.

C.J.S. Sales $\S\S$ 96 to 98.

§ 2-321. C.I.F. or C. & F.: "net landed weights"; "payment on arrival"; warranty of condition on arrival

Under a contract containing a term C.I.F. or C. & F.:

A. Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

B. An agreement described in subsection (A) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

C. Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary

inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-321 of the Uniform Commercial Code adopted by the states.

Commentary. This section deals with two variations of the C.I.F. contract which have evolved in mercantile practice but are entirely consistent with the basic C.I.F. pattern. Subsections (A) and (B), which provide for a shift to the seller of the risk of quality and weight deterioration during shipment, are designed to conform the law to the best mercantile practice and usage without changing the legal consequences of the C.I.F. or C. & F. term as to the passing of

marine risks to the buyer at the point of shipment. Subsection (C) provides that where under the contract documents are to be presented for payment after arrival of the goods, this amounts merely to a postponement of the payment under the C.I.F. contract and is not to be confused with the "no arrival, no sale" contract. If the goods are lost, delivery of the documents and payment against them are due when the goods should have arrived. The clause for payment on or after arrival is not to be construed as such a condition precedent to payment that if the goods are lost in transit the buyer need never pay and the seller must bear the loss.

Cross References

Section 2-324.

Definitional Cross References

"Agreement". Section 1-201.
 "Contract". Section 1-201.
 "Delivery". Section 1-201.
 "Goods". Section 2-105.
 "Seller". Section 2-103.
 "Term". Section 1-201.

Library References

Indians ⇨ 23 to 24.
 Sales ⇨ 168, 183, 201(4).
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 151, 185, 188, 208 to 209, 224 to 227.

§ 2-322. Delivery "ex-ship"

A. Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

B. Under such a term unless otherwise agreed:

1. The seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

2. The risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-322 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The delivery term, "ex-ship", as between seller and buyer, is the reverse of the F.A.S. term covered.

2. Delivery need not be made from any particular vessel under a clause calling for delivery "ex-ship", even though a vessel on which shipment is to be made originally is named in the contract, unless the agreement by appropriate language restricts the clause to delivery from a named vessel.

3. The appropriate place and manner of unloading at the port of destination depend upon the nature of the goods and the facilities and usages of the port.

4. A contract fixing a price "ex-ship" with payment "cash against documents" calls only for such documents as are appropriate to the contract. Tender of a delivery order and of a receipt for the freight after the arrival of the carrying vessel is adequate. The seller is not required to tender a bill of lading as a document of title nor is he required to insure the goods for the buyer's benefit, as the goods are not at the buyer's risk during the voyage.

Cross References

Point 1: Section 2-319(B).

Definitional Cross References

"Buyer". Section 2-103.

"Goods". Section 2-105.

"Seller". Section 2-103.

"Term". Section 1-201.

Library References

Indians ⇄23 to 24.

Sales ⇄77(2), 83, 161, 201(4).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 96 to 98, 157, 164, 167, 174 to 175, 224 to 227.

§ 2-323. Form of bill of lading required in overseas shipment: "overseas"

A. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

B. Where in a case within subsection (A) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

1. Due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (§ 2-508(A)); and

2. Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

C. A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the

commercial, financing or shipping practices characteristic of international deep water commerce.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-323 of the Uniform Commercial Code adopted by the states. Article 5 of the Uniform Commercial Code relating to "Letters of Credit" has not been adopted by the Navajo Nation. The rights of parties which would be governed under Article 5 are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. Subsection (A) follows the "American" rule that a regular bill of lading indicating delivery of the goods at the dock for shipment is sufficient, except under a term "F.O.B. vessel". See § 2-319 and comment thereto.

2. Subsection (B) deals with the problems of bills of lading covering deep water shipments, issued not as a single bill of lading but in a set of parts, each part referring to the other parts and the entire set constituting in commercial practice and at law a single bill of lading. Commercial practice in international commerce is to accept and pay against presentation of the

first part of a set if the part is sent from overseas even though the contract of the buyer requires presentation of a full set of bills of lading provided adequate indemnity for the missing parts is forthcoming.

This subsection codifies that practice as between buyer and seller. Article 5 of the Uniform Commercial Code which has not been adopted by the Navajo Nation and the rules concerning banks' presentations of drafts under letters of credit which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204. This subsection means that the buyer must accept and act on drafts by banks issued under letters of credit to give indemnities against missing parts if he in good faith deems them adequate. But neither this subsection nor Article 5 decides whether a bank which has issued a letter of credit is similarly bound. The issuing bank's obligation under a letter of credit is independent and depends on its own terms.

Cross References

Section 2-508(B).

Definitional Cross References

"Bill of lading". Section 1-201.
 "Buyer". Section 2-103.
 "Contract". Section 1-201.
 "Delivery". Section 1-201.
 "Financing agency". Section 2-104.
 "Person". Section 1-201.
 "Seller". Section 2-103.
 "Send". Section 1-201.
 "Term". § 1-201.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄ 161, 162, 201(4).	C.J.S. Sales §§ 164, 167, 172 to 175, 224 to 227.
Shipping ⇄ 106.	C.J.S. Shipping §§ 256 to 257.
Westlaw Topic Nos. 209, 343, 354.	

§ 2-324. "No arrival, no sale" term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed:

A. The seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

B. Where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (§ 2-613).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-324 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The “no arrival, no sale” term in a “destination” overseas contract leaves risk of loss on the seller but gives him an exemption from liability for non-delivery. Both the nature of the case and the duty of good faith require that the seller must not interfere with the arrival of the goods in any way. If the circumstances impose upon him the responsibility for making or arranging the shipment, he must have a shipment made despite the exemption clause. Further, the shipment made must be a conforming one, for the exemption under a “no arrival, no sale” term applies only to the hazards of transportation and the goods must be proper in all other respects.

The reason of this section is that where the seller is reselling goods bought by him as shipped by another and this fact is known to the buyer, so that the seller is not under any obligation to make the shipment himself, the seller is entitled under the “no arrival, no sale” clause to exemption from payment of damages for non-delivery if the goods do not arrive or if the goods which actually arrive are non-conforming. This does not extend to sellers who arrange shipment by their own agents, in which case the clause is limited to casualty due to marine hazards. But sellers who make known that they are contracting only with respect to what will be delivered to them by parties over whom they assume no control are entitled to the full quantum of the exemption.

2. The provisions of this article on identification must be read together with the present section in order to bring the exemption into

application. Until there is some designation of the goods in a particular shipment or on a particular ship as being those to which the contract refers there can be no application of an exemption for their non-arrival.

3. The seller’s duty to tender the agreed or declared goods if they do arrive is not impaired because of their delay in arrival or by their arrival after transshipment.

4. The phrase “to arrive” is often employed in the same sense as “no arrival, no sale” and may then be given the same effect. But a “to arrive” term, added to a C.I.F. or C. & F. contract, does not have the full meaning given by this section to “no arrival, no sale”. Such a “to arrive” term is usually intended to operate only to the extent that the risks are not covered by the agreed insurance and the loss or casualty is due to such uncovered hazards. In some instances the “to arrive” term maybe regarded as a time of payment term, or, in the case of the reselling seller discussed in Point I above, as negating responsibility for conformity of the goods, if they arrive, to any description which was based on his good faith belief of the quality. Whether this is the intention of the parties is a question of fact based on all the circumstances surrounding the resale and in case of ambiguity the rules of §§ 2-316 and 2-317 apply to preclude dishonor.

5. Subsection (B) applies where goods arrive impaired by damage or partial loss during transportation and makes the policy of this article on casualty to identified goods applicable to such a situation. For the term cannot be regarded as intending to give the seller an unforeseen profit through casualty, it is intended only to protect him from loss due to causes beyond his control.

Cross References

Point 1: Section 1-203.
Point 2: Section 2-501 (1) and (3)
Point 5: Section 2-613.

Definitional Cross References

“Buyer”. Section 2-103.
“Conforming”. Section 2-106.
“Contract”. Section 1-201.

“Fault”. Section 1-201.
 “Goods”. Section 2-105.
 “Sale”. Section 2-106.
 “Seller”. Section 2-103.
 “Term”. Section 1-201.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞83, 150, 197, 217, 224.	C.J.S. Sales §§ 151, 157, 167, 214, 222 to 223.
Westlaw Topic Nos. 209, 343.	

§ 2-325. “Letter of credit” term; “confirmed credit”

A. Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

B. The delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

C. Unless otherwise agreed the term “letter of credit” or “banker’s credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller’s financial market.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-325 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (B) follows the general policy of this article and Article 3 (§ 3-802) on conditional payment, under which payment by check or other short-term instrument is not ordinarily final as between the parties if the recipient duly presents the instrument and honor is refused. Thus the furnishing of a letter of credit does not substitute the financing agency’s obligation for the buyer’s, but the seller must first give the buyer reasonable notice of

his intention to demand direct payment from him.

2. Subsection (C) requires that the credit be irrevocable and be a prime credit as determined by the standing of the issuer. It is not necessary, unless otherwise agreed, that the credit be a negotiation credit; the seller can finance himself by an assignment of the proceeds.

3. The definition of “confirmed credit” is drawn on the supposition that the credit is issued by a bank which is not doing direct business in the seller’s financial market; there is no intention to require the obligation of two banks both local to the seller.

Cross References

Sections 2-403, 2-511 (C) and 3-802.

Definitional Cross References

“Buyer”. Section 2-103.
 “Contract for sale”. Section 2-106.
 “Draft”. Section 3-104.
 “Financing agency”. Section 2-104.
 “Notifies”. Section 1-201.
 “Overseas”. Section 2-323.

“Purchaser”. Section 1-201.
 “Seasonably”. Section 1-204.
 “Seller”. Section 2-103.
 “Term”. Section 1-201.

Library References

Banks and Banking ⇌ 191.	C.J.S. Bills and Notes.
Indians ⇌ 23 to 24.	C.J.S. Letters of Credit §§ 341 to 366, 368 to 370, 372 to 376.
Sales ⇌ 191.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 52, 209, 343.	

§ 2-326. Sale on approval and sale or return: consignment sales and rights of creditors

A. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

1. A “sale on approval” if the goods are delivered primarily for use; and
2. A “sale or return” if the goods are delivered primarily for resale.

B. Except as provided in subsection (C), goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.

C. Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as “on consignment” or “on memorandum”. However, this subsection is not applicable if the person making delivery:

1. Complies with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign; or
2. Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or
3. Complies with the filing provisions of the Article on Secured Transactions (Article 9).
4. Is delivering a work of art pursuant to subsection (D).

D. Where goods are works of art delivered to an art dealer by an artist for the purpose of exhibition or sale, and the artist’s share of the proceeds from the sale of the work by the dealer, whether to the dealer on his own account or to a third person, shall create a priority in favor of the artist over the claims, liens or security interests of the creditors of the art dealer, notwithstanding any provision of the Code. For the purposes of this subsection:

1. “Art” includes, but is not limited to paintings, sculptures, drawings, works of graphic art, pottery, weaving, batik, sand paintings, kachina dolls, bead work, baskets, jewelry, macramés or quilts containing the artist’s

original handwritten signature or the artist's distinctive mark on the work of art;

2. "Artist" means the creator of a work of art, or, if he or she is deceased, the artist's heirs or personal representative;

3. "Art dealer" means a person primarily engaged in the business of selling works of art;

4. "Creditor" means a "creditor" as defined in § 1-201 of the Code; and

5. "Person" means an individual, partnership, corporation or association.

E. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the Statute of Frauds section of this article (§ 2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (§ 2-202).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-326 of the Uniform Commercial Code adopted by the states. Subsections (C)(4) and (D) were added to protect the rights of artists against the claims of creditors of art dealers or their consignees.

Commentary. 1. A "sale on approval" or "sale or return" is distinct from other types of transactions with which they have frequently been confused. The type of "sale on approval", "on trial" or "on satisfaction" dealt with involves a contract under which the seller undertakes a particular business risk to satisfy his prospective buyer with the appearance or performance of the goods in question. The goods are delivered to the proposed purchaser but they remain the property of the seller until the buyer accepts them. The price has already been agreed. The buyer's willingness to receive and test the goods is the consideration for the seller's engagement to deliver and sell. The type of "sale or return" involved herein is a sale to a merchant whose unwillingness to buy is overcome by the seller's engagement to take back the goods (or any commercial unit of goods) in lieu of payment if they fail to be resold. These two transactions are so strongly delineated in practice and in general understanding that every presumption runs against a delivery to a consumer being a "sale or return" and against a delivery to a merchant for resale being a "sale on approval".

The right to return the goods for failure to conform to the contract does not make the transaction a "sale on approval" or "sale or return" and has nothing to do with this and the following section. The present section is not

concerned with remedies for breach of contract. It deals instead with a power given by the contract to turn back the goods even though they are wholly as warranted.

The section nevertheless presupposes that a contract for sale is contemplated by the parties although that contract may be of the peculiar character here described.

Where the buyer's obligation as a buyer is conditioned not on his personal approval but on the article's passing a described objective test, the risk of loss by casualty pending the test is properly the seller's and proper return is at his expense. On the point of "satisfaction" as meaning "reasonable satisfaction" where an industrial machine is involved, this article takes no position.

2. Pursuant to the general policies of this Code which require good faith not only between the parties to the sales contract, but as against interested third parties, subsection (C) resolves all reasonable doubts as to the nature of the transaction in favor of the general creditors of buyer. As against such creditors words such as "on consignment" or "on memorandum", with or without words of reservation of title in the seller, are disregarded when the buyer has a place of business at which he deals in goods of the kind involved. A necessary exception is made where the buyer is known to be engaged primarily in selling the goods of others or is selling under a relevant sign law, or the seller complies with the filing provisions of Article 9 as if his interest were a security interest. However, there is no intent in this section to narrow the protection afforded to third parties in any

jurisdiction which has a selling Factors Act. The purpose of the exception is merely to limit the effect of the present subsection itself, in the absence of any such Factors Act, to cases in which creditors of the buyer may reasonably be deemed to have been misled by the secret reservation.

3. Subsections (C)(4) and (D) protect the rights of artists against the interests of the creditors of the art dealers.

4. Subsection (E) resolves a conflict in the preexisting case law by recognition that an "or return" provision is so definitely at odds with any ordinary contract for sale of goods that where written agreements are involved it must be contained in a written memorandum. The "or return" aspect of a sales contract must be treated as a separate contract under the Statute of Frauds section and as contradicting the sale insofar as questions of parol or extrinsic evidence are concerned.

Cross References

Point 2: Article 9.

Point 4: Sections 2-201 and 2-202.

Definitional Cross References

"Between merchants". Section 2-104.

"Buyer". Section 2-103.

"Conform". Section 2-106.

"Contract for sale". Section 2-106.

"Creditor". Section 1-201.

"Goods". Section 2-105.

"Sale". Section 2-106.

"Seller". Section 2-103.

Library References

Factors ☞ 1, 64, 65.

Indians ☞ 23 to 24.

Sales ☞ 8, 168.5, 204 to 206, 222.

Westlaw Topic Nos. 167, 209, 343.

C.J.S. Agriculture §§ 163, 165, 178.

C.J.S. Bailments § 11.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 3, 165 to 166, 190, 216, 221, 229.

§ 2-327. Special incidents of sale on approval and sale or return

A. Under a sale on approval unless otherwise agreed:

1. Although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

2. Use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

3. After due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

B. Under a sale or return unless otherwise agreed:

1. The option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

2. The return is at the buyer's risk and expense.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-327 of the Uniform Commercial Code adopted by the states.

Commentary. 1. If all of the goods involved in a sale on approval conform to the contract, the buyer's acceptance of part of the goods constitutes acceptance of the whole. Acceptance of part falls outside the normal intent of the parties in the "on approval" situation and the policy of this article allowing partial acceptance of a defective delivery has no application here. A case where a buyer takes home two dresses to select one commonly involves two distinct contracts; if not, it is covered by the words "unless otherwise agreed".

2. In the case of a sale or return, the return of any unsold unit merely because it is unsold is the normal intent of the "sale or return" provision, and therefore the right to return for this reason alone is independent of any other action under the contract which would turn on wholly different considerations. On the other hand,

where the return of goods is for breach, including return of items resold by the buyer and returned by the ultimate purchasers because of defects, the return procedure is governed not by the present section but by the provisions on the effects and revocation of acceptance.

3. In the case of a sale on approval the risk rests on the seller until acceptance of the goods by the buyer, while in a sale or return the risk remains throughout on the buyer.

4. Notice of election to return given by the buyer in a sale on approval is sufficient to relieve him of any further liability. Actual return by the buyer to the seller is required in the case of a sale or return contract. What constitutes due "giving" of notice, as required in "on approval" sales, is governed by the provisions on good faith and notice. "Seasonable" is used here as defined in § 1-204. Nevertheless, the provisions of both this article and of the contract on this point must be read with commercial reason and with full attention to good faith.

Cross References

Point 1: Sections 2-501, 2-601 and 2-603.

Point 2: Sections 2-607 and 2-608.

Point 4: Sections 1-201 and 1-204.

Definitional Cross References

"Agreed". Section 1-201.

"Buyer". Section 2-103.

"Commercial unit". Section 2-105.

"Conform". Section 2-106.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Merchant". Section 2-104.

"Notifies". Section 1-201.

"Notification". Section 1-201.

"Sale on approval". Section 2-326.

"Sale or return". Section 2-326.

"Seasonably". Section 1-204.

"Seller". Section 2-103.

Library References

Indians $\S\S$ 23 to 24.

Sales $\S\S$ 168.5, 204, 205.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians $\S\S$ 12, 30 to 31.

C.J.S. Sales $\S\S$ 165 to 166, 190, 216, 221, 229.

§ 2-328. Sale by auction

A. In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

B. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his

discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

C. Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

D. If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-328 of the Uniform Commercial code adopted by the states.

Commentary. 1. The auctioneer may in his discretion either reopen the bidding or close the sale on the bid on which the hammer was falling when a bid is made at that moment. The recognition of a bid of this kind by the auctioneer in his discretion does not mean a closing in favor of such a bidder, but only that the bid has been accepted as a continuation of the bidding. If recognized, such a bid discharges the bid on which the hammer was falling when it was made.

2. An auction "with reserve" is the normal procedure. The crucial point, however, for determining the nature of an auction is the "putting up" of the goods. This article accepts the

view that the goods may be withdrawn before they are actually "put up", regardless of whether the auction is advertised as one without reserve, without liability on the part of the auction announcer to persons who are present. This is subject to any peculiar facts which might bring the case within the "firm offer" principle of this article, but an offer to persons generally would require unmistakable language in order to fall within that section. The prior announcement of the nature of the auction either as with reserve or without reserve will, however, enter as an "explicit term" in the "putting up" of the goods and conduct thereafter must be governed accordingly. The present section continues the prior rule permitting withdrawal of bids in auctions both with and without reserve; and the rule is made explicit that the retraction of a bid does not revive a prior bid.

Cross References

Point 2: Section 2-205.

Definitional Cross References

"Buyer". Section 2-103.
 "Good Faith". Section 1-201.
 "Goods". Section 2-105.
 "Lot". Section 2-105.
 "Notice". Section 1-201.
 "Sale". Section 2-106.
 "Seller". Section 2-103.

Library References

Auctions and Auctioneers ⚡7, 8.
Indians ⚡23 to 24.
Westlaw Topic Nos. 47, 209.

C.J.S. Auctions and Auctioneers §§ 2, 8 to 20.
C.J.S. Indians §§ 12, 30 to 31.

Part 4. Title, Creditors and Good Faith Purchasers

§ 2-401. Passing of title; reservation for security; limited application of this section

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material, the following rules apply:

A. Title to goods cannot pass under a contract for sale prior to their identification to the contract (§ 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

B. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

1. If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

2. If the contract requires delivery at destination, title passes on tender there.

C. Unless otherwise explicitly agreed where delivery is to be made without moving goods:

1. If the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

2. If the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

D. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to

the goods in the seller. Such reversion occurs by operation of law and is not a "sale".

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-401 of the Uniform Commercial code adopted by the states.

Commentary. 1. This article deals with the issues between seller and buyer in terms of step by step performance or non-performance under the contract for sale and not in terms of whether or not "title" to the goods has passed. That the rules of this section in no way alter the rights of either the buyer, seller or third parties declared elsewhere in the Article is made clear by the preamble of this section. This section, however, in no way intends to indicate which line of interpretation should be followed in cases where the applicability of "public" regulation depends upon a "sale" or upon location of "title" without further definition. The basic policy of this article that known purpose and reason should govern interpretation cannot extend beyond the scope of its own provisions. It is therefore necessary to state what a "sale" is and when title passes under this article in case the courts deem any public regulation to incorporate the defined term of the "private" law. Examples of this type of "public" law include tax law which employs transfer of "title" to determine when taxes are due and criminal law

which employs the transfer of title to determine potential liability for theft.

2. "Future" goods cannot be the subject of a present sale. Before title can pass the goods must be identified in the manner set forth in § 2-501. The parties, however, have full liberty to arrange by specific terms for the passing of title to goods which are existing.

3. The "special property" of the buyer in goods identified to the contract is excluded from the definition of "security interest"; its incidents are defined in provisions of this article such as those on the rights of the seller's creditors, on good faith purchase, on the buyer's right to goods on the seller's insolvency, and on the buyer's right to specific performance or replevin.

4. The factual situations in subsections (B) and (C) upon which passage of title turn actually base the test upon the time when the seller has finally committed himself in regard to specific goods. Thus in a "shipment" contract he commits himself by the act of making the shipment. If shipment is not contemplated subsection (C) turns on the seller's final commitment, i.e., the delivery of documents or the making of the contract.

Cross References

Point 2: Sections 2-102, 2-501 and 2-502.

Point 3: Sections 1-201, 2-402, 2-403, 2-502 and 2-716.

Definitional Cross References

"Agreement". Section 1-201.
 "Bill of lading". Section 1-201.
 "Buyer". Section 2-103.
 "Contract". Section 1-201.
 "Contract for sale". Section 2-106.
 "Delivery". Section 1-201.
 "Document of title". Section 1-201.
 "Good faith". Section 2-103.
 "Goods". Section 2-105.
 "Party". Section 1-201.
 "Purchaser". Section 1-201.
 "Receipt of goods". Section 2-103.
 "Remedy". Section 1-201.
 "Rights". Section 1-201.
 "Sale". Section 2-106.
 "Security interest". Section 1-201.
 "Seller". Section 2-103.
 "Send". Section 1-201.

Special Plain Language Comment

In most cases the transfer of title (or ownership) under the Code does not determine changes in the rights of the parties. Such rights are determined by concepts in the Code such as acceptance. However, in some “residual” cases not covered by the Code, the time of transfer of title will be important to determine the rights of the parties. For these “residual” cases and other statutes such as tax and criminal statutes this section gives guidance on the issue of when title passes. Title may only pass after “identification” (a term defined in § 2-501) of the goods, when the goods covered by the agreement have been designated in some way so that they can be separated from other

goods. Unless otherwise agreed by the parties, title passes upon the seller’s completion of any actions necessary to “deliver” the goods. For example, if the agreement provides for shipment, but not delivery of the goods, then title passes upon such shipment, i.e., in such a contract the title passes to the buyer when the seller places the cattle on a truck for delivery, not at the time the shipper delivers the cattle to their destination. Ownership in the goods returns to the seller if the goods are rejected by buyer, but such a transfer is not defined as a “sale” since the goods are being returned and many Code provisions relating to sales would be inappropriate.

Library References

Indians ☞ 23 to 24.
Sales ☞ 197 to 218.5.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 214 to 218, 221, 223 to 229.

§ 2-402. Rights of seller’s creditors against sold goods

A. Except as provided in subsections (B) and (C), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer’s rights to recover the goods under this article (§§ 2-502 and 2-716).

B. A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

C. Nothing in this article shall be deemed to impair the rights of creditors of the seller:

1. Under the provisions of the Article on Secured Transactions (Article 9); or
2. Where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from the doctrine of fraudulent retention in this section 2-402(A) and 2-402(B) constitute the transaction a fraudulent transfer or voidable preference.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-402 of the Uniform Commercial Code adopted by the states. The reference to this “Article” in § 2-402(C)(2) is clarified by referring specifically to the Doctrine of Fraudulent Retention.

Commentary. 1. Local law on questions of hindrance of creditors by the seller’s retention of possession of the goods are outside the scope of this article, but retention of possession in the current course of trade is legitimate. Transactions which fall within the law’s policy against

improper preferences are reserved from the protection of this article.

2. The retention of possession of the goods by a merchant seller for a commercially reasonable time after a sale or identification in current course is exempted from attack as fraudulent. Similarly, the provisions of subsection (C) have no application to identification or delivery made in the current course of trade, as measured against general commercial understanding of what a “current” transaction is.

Definitional Cross References

“Contract for sale”. Section 2-106.

“Creditor”. Section 1-201.

“Good faith”. Section 2-103.

“Goods”. Section 2-105.

“Merchant”. Section 2-104.

“Money”. Section 1-201.

“Reasonable time”. Section 1-204.

“Rights”. Section 1-201.

“Sale”. Section 2-106.

“Seller”. Section 2-103.

Special Plain Language Comment

This section deals with the problem of the conflict of rights between the seller’s creditors and the buyer for goods which have been sold to the buyer but are still held by the seller. The retention of goods by the seller which have already been sold can mislead the creditors of the seller concerning his financial position—the seller will appear to have more “assets” than he

actually owns. The creditors of the seller may void the “sale” of the goods to the buyer, unless the seller is a “merchant” and only retains the goods for a “reasonable time”. Moreover, even if the goods are delivered to the buyer a seller may still claim rights to them through a security interest (see Article 9) or the doctrine of fraudulent conveyance under Navajo law.

Library References

Fraudulent Conveyances ⇨139.

Indians ⇨23 to 24.

Sales ⇨230.

Westlaw Topic Nos. 186, 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales § 220.

§ 2-403. Power to transfer; good faith purchase of goods; “entrusting”

A. A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of this interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

1. The transferor was deceived as to the identity of the purchaser; or
 2. The delivery was in exchange for a check which is later dishonored;
- or
3. It was agreed that the transaction was to be a “cash sale”; or
 4. The delivery was procured through fraud punishable as larcenous under the criminal law.

B. Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to, transfer all rights of the entruster to a buyer in ordinary course of business.

C. "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

D. The rights of other purchasers of goods and of lien creditors are governed by the Article on Secured Transactions (Article 9), and the Articles on Bulk Transfers and Documents of Title as established Navajo law pursuant to 7 N.N.C. § 204.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-403 of the Uniform Commercial Code adopted by the states. References to Articles 6 and 7 of the Uniform Commercial Code have been omitted because the Navajo Nation has not adopted these Articles.

Commentary. 1. This section states a unified and simplified policy on good faith purchase of goods. The basic policy of our law allowing transfer of such title as the transferor has is generally continued and expended under subsection (A). In this respect the provisions of the section are applicable to a person taking by any form of "purchase" as defined by the Code. Moreover the policy of the Code expressly providing for the application of supplementary general principles of law to sales transactions wherever appropriate joins with the present section to continue unimpaired all rights acquired under the law of agency or of apparent agency or ownership or other estoppel, whether based on statutory provisions or on case law principles.

On the other hand, the contract of purchase is of course limited by its own terms as in a case of pledge for a limited amount or of sale of a fractional interest in goods. The Code in § 2-403(A)(1) rejects the distinction between deception carried on face-to-face and deception carried on by mail or wire. This rejection is based upon the policy of shifting the focus of the inquiry from the intention of the initial transferor to the good faith of the ultimate purchaser.

2. The many particular situations in which a buyer in ordinary course of business from a dealer has been protected against reservation of property or other hidden interest are gathered by subsections (B)—(D) into a single principle

protecting persons who buy in ordinary course out of inventory. Consignors have no reason to complain, nor have lenders who hold a security interest in the inventory, since the very purpose of goods in inventory is to be turned into cash by sale.

The principle is extended in subsection (C) to fit with the abolition of the old law of "cash sale" by subsection (A)(3). It is also freed from any technicalities depending on the extended law of larceny; such extension of the concept of theft to include trick, particular types of fraud, and the like is for the purpose of helping conviction of the offender; it has no proper application to the long-standing policy of civil protection of buyers from persons guilty of such trick or fraud. Finally, the policy is extended, in the interest of simplicity and sense, to any entrusting by a bailor; this is in consonance with the explicit provisions of § 7-205 on the powers of a warehouseman who is also in the business of buying and selling fungible goods of the kind he warehouses. Article 7 has not been adopted by the Navajo Nation and the powers of the warehouseman which would be governed under § 7-205 are governed by Navajo law pursuant to 7 N.N.C. § 204. As to entrusting by a secured party, subsection (B) is limited by the more specific provisions of § 9-307(A), which deny protection to a person buying farm products from a person engaged in farming operations.

3. The definition of "buyer in ordinary course of business" (§ 1-201) is effective here and preserves the essence of the healthy limitations developed by the case law on the older statutes. The older loose concept of good faith and wide definition of value combined to create apparent good faith purchasers in many situa-

tions in which the result outraged common sense; the court's solution was to protect the original title especially by use of "cash sale" or of over-technical construction of the enabling clauses of pre-Uniform Commercial Code statutes. But such rulings then turned into limitations on the proper protection of buyers in the ordinary market. Section 1-201 (1) cuts down the category of buyer in ordinary course in such fashion as to take care of the results of the cases, but with no price either in confusion or

in injustice to proper dealings in the normal market.

4. Except as provided in subsection (A), the rights of purchasers other than buyers in ordinary course are left to the Articles on Secured Transactions, Documents of Title, and Bulk Sales. The Navajo Nation has not adopted Articles 6 and 7 (Bulk Sales and Documents of Title) of the Uniform Commercial Code; thus the rights of purchasers which would be governed under these Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

Cross References

Point 1: Sections 1-103 and 1-201.

Point 2: Sections 1-201, 2-402 and 9-307(A).

Points 3 and 4: Sections 1-102, 1-201, 2-104, 2-707 and Article 9.

Definitional Cross References

"Buyer in ordinary course of business" § 1-201.

"Good faith". Sections 1-201 and 2-103.

"Goods". Section 2-105.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Signed". Section 1-201.

"Term". Section 1-201.

"Value". Section 1-201.

Special Plain Language Comment

This section is based on the presumption that for markets to operate efficiently a buyer must be confident that he is receiving "good title" (ownership) of the goods. This section deals with situations in which two sales of the goods have taken place, the owner has sold to a first buyer who has in turn sold to a second or "Ultimate" buyer. In such circumstances, what are the rights of the owner against the ultimate buyer if the first buyer is a wrongdoer? For example, if the check of "first buyer" bounces or the first buyer fails to pay the cash he promised. Thus a business which purchases a truck and pays for it by a check which bounces, does not have "good title" to the truck. The original owner may demand the return of the truck. However, if the company buying the truck in turn sells it to a new purchaser who buys it "in good faith" (i.e., honestly, without an intent to defraud the original owner) and for "value", the original owner has no rights to demand the

truck from the "new purchaser". The rights of the original owner have been "cut off" by the sale of the truck to a "good faith purchaser for value". The same result comes about if the first buyer obtained the truck by fraud or by misidentifying himself. However, the original owner could obtain the truck back from the "new purchaser" if the first buyer stole the truck.

The second part of this section deals with situations in which the owner voluntarily gives possession of goods to a "merchant" who normally deals in such goods and agrees to let such a merchant retain the goods. A common example is bringing a watch to a jeweler for repair. If the "merchant" sells the goods to an innocent buyer the owner cannot recover the goods from such an innocent buyer. Once again the section follows the policy of assuring buyers that they are getting "good title" to the goods they buy in the marketplace.

Library References

Estoppel ⇌75.

Indians ⇌23 to 24.

Sales ⇌234.

Westlaw Topic Nos. 156, 209, 343.

C.J.S. Estoppel §§ 118 to 119.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 232 to 233, 235.

Part 5. Performance

§ 2-501. Insurable interest in goods; manner of identification of goods

A. The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs:

1. When the contract is made if it is for the sale of goods already existing and identified;
2. If the contract is for the sale of future goods other than those described in paragraph (3), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
3. When the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the sale of crops to be harvested within twelve (12) months or the next normal harvest season after contracting whichever is longer.

B. The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone, he may, until default or insolvency or notification to the buyer that the identification is final, substitute other goods for those identified.

C. Nothing in this section impairs any insurable interest recognized under any statute or rule of law.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-501 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The present section deals with the manner of identifying goods to the contract so that an insurable interest in the buyer and the rights set forth in the next section will accrue. Generally speaking, identification may be made in any manner "explicitly agreed to" by the parties. The rules of paragraphs (1), (2) and (3) apply only in the absence of such "explicit agreement".

2. In the ordinary case identification of particular existing goods as goods to which the contract refers is unambiguous and may occur in one of many ways. It is possible, however, for the identification to be tentative or contingent. In view of the limited effect given to identification by this article, the general policy is to resolve all doubts in favor of identification.

3. The uncertainty concerning the effect of presumptions in paragraphs (1), (2) and (3) is reduced to a minimum under this section by requiring "explicit agreement" of the parties before the rules of these paragraphs are displaced—as they would be by a term giving the buyer power to select the goods. An "explicit" agreement, however, need not necessarily be found in the terms used in the particular transaction. Thus, where usage of the trade had previously been made explicit by reduction to a standard set of "rules and regulations" currently incorporated by reference into the contracts of the parties, a relevant provision of those "rules and regulations" is "explicit" within the meaning of this section.

4. In view of the limited function of identification there is no requirement in this section that the goods be in deliverable state or that all of the seller's duties with respect to the processing of the goods be completed in order that

identification occur. For example, despite identification the risk of loss remains on the seller under the risk of loss provisions until completion of his duties as to the goods and all of his remedies remain dependent upon his not defaulting under the contract.

5. Undivided shares in an identified fungible bulk, such as grain in an elevator or oil in a storage tank, can be sold. The mere making of the contract with reference to an undivided share in an identified fungible bulk is enough under paragraph (1) to effect an identification if there is no explicit agreement otherwise. The seller's duty, however, to segregate and deliver according to the contract is not affected by such an identification but is controlled by other provisions of this article.

6. Identification of crops under paragraph (3) is made upon planting only if they are to be harvested within the year or within the next normal harvest season. The phrase "next normal harvest season" fairly includes nursery stock raised for normally quick "harvest", but plainly excludes a "timber" crop to which the concept of a harvest "season" is inapplicable.

Paragraph (3) is also applicable to a crop of wool or the young of animals to be born within twelve (12) months after contracting. The product of a lumbering, mining or fishing operation, though seasonal, is not within the concept of "growing". Identification under a contract for all or part of the output of such an operation can be effected early in the operation.

Cross References

Point 1: Section 2-502.

Point 4: Sections 2-509, 2-510 and 2-703.

Point 5: Sections 2-105, 2-308, 2-503 and 2-509.

Point 6: Sections 2-105(A), 2-107(A) and 2-402.

Definitional Cross References

"Agreement". Section 1-201.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Future goods". Section 2-105.

"Goods". Section 2-105.

"Notification". Section 1-201.

"Party". Section 1-201.

"Sale". Section 2-106.

"Security interest". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ⇄23 to 24.

Insurance ⇄1779, 1790.

Sales ⇄208.

Westlaw Topic Nos. 209, 217, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Insurance §§ 218 to 219, 222 to 224.

C.J.S. Sales §§ 214, 217.

§ 2-502. Buyer's right to goods on seller's insolvency

A. Subject to subsection (B) and even though the goods have not been shipped a buyer, who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section, may on making and keeping good a tender of any unpaid portion of their price recover them from the Seller if the seller's insolvency occurs ten (10) days prior to or ten (10) days after the receipt of any installment on their price. This remedy is not available if the buyer had actual knowledge of seller's insolvency prior to payment of the installment.

B. If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section has been amended to increase the circumstances under which a buyer may recover such goods. Under the Official Text of the Uniform Commercial Code the buyer may only exercise this right if the seller becomes insolvent within ten (10) days after the payment of buyer's installment. To avoid the difficult factual issue of when a seller became insolvent, the Code provides that this remedy is available if the seller becomes insolvent either ten (10) days before or after the payment of any, not just the first, installment. However, the buyer will not be able to employ this extraordinary remedy if his payment was made with actual knowledge of the seller's insolvency since he was aware of the risks he undertook.

Commentary. 1. This section gives an additional right to the buyer as a result of identification of the goods to the contract in the manner

provided in § 2-501. The buyer is given a right to the goods on the seller's insolvency occurring ten (10) days before or after he receives the installment on their price.

2. The question of whether the buyer also acquires a security interest in identified goods and has rights to the goods when insolvency takes place after the 10-day period provided in this section depends upon compliance with the provisions of the Article on Secured Transactions (Article 9).

3. Subsection (B) is included to preclude the possibility of unjust enrichment which exists if the buyer were permitted to recover goods even though they were greatly superior in quality or quantity to that called for by the contract for sale.

Cross References

Point 1: Section 1-201.

Point 2: Article 9.

Definitional Cross References

"Buyer". Section 2-103.

"Conform". Section 2-106.

"Contract for sale". Section 2-106.

"Goods". Section 2-105.

"Insolvent". Section 1-201.

"Right". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ⚡23 to 24.

Sales ⚡399.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 374, 389.

§ 2-503. Manner of seller's tender of delivery

A. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular:

1. Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

2. Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

B. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

C. Where the seller is required to deliver at a particular destination, tender requires that he comply with subsection (A) and also in any appropriate case tender documents as described in subsections (D) and (E) of this section.

D. Where goods are in the possession of a bailee and are to be delivered without being moved:

1. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

2. Tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

E. Where the contract requires the seller to deliver documents

1. He must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (§ 2-323(B)); and

2. Tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-503 of the Uniform Commercial Code adopted by the states. Article 7 of the Uniform Commercial Code has not been adopted by the Navajo Nation and the rights of a buyer in transactions involving documents of title which would be governed by such Article are governed by Navajo laws pursuant to 7 N.N.C. § 204.

Commentary. 1. The major general rules governing the manner of proper or due tender of delivery are gathered in this section. The term "tender" is used in this article in two different senses. In one sense it refers to "due tender" which contemplates an offer coupled with a present ability to fulfill all the conditions resting on the tendering party and must be followed by actual performance if the other party shows himself ready to proceed. Unless the context unmistakably indicates otherwise this is the meaning of "tender" in this article and the occasional addition of the word "due" is only for clarity and emphasis. At other times

it is used to refer to an offer of goods or documents under a contract as if in fulfillment of its conditions even though there is a defect when measured against the contract obligation. Used in either sense, however, "tender" connotes such performance by the tendering party as puts the other party in default if he fails to proceed in some manner.

2. The seller's general duty to tender and deliver is laid down in § 2-301 and more particularly in § 2-507. The seller's right to a receipt if he demands one and receipts are customary is governed by § 1-205. Subsection (A) of the present section proceeds to set forth two primary requirements of tender: first, that the seller "put and hold conforming goods at the buyer's disposition", and second, that he "give the buyer any notice reasonably necessary to enable him to take delivery."

In cases in which payment is due and demanded upon delivery the "buyer's disposition" is qualified by the seller's right to retain control of the goods until payment by the provision of

this article on delivery on condition. However, where the seller is demanding payment on delivery he must first allow the buyer to inspect the goods in order to avoid impairing his tender unless the contract for sale is on C.I.F., C.O.D., cash against documents or similar terms negating the privilege of inspection before payment.

In the case of contracts involving documents the seller can "put and hold conforming goods at the buyer's disposition" under subsection (A) by tendering documents which give the buyer complete control of the goods under the provisions of Article 7 of the Uniform Commercial Code on due negotiation. Article 7 of the Uniform Commercial Code has not been adopted by the Navajo Nation, but the rights of buyers which would be governed under such Article 7 will be governed by Navajo law pursuant to 7 N.N.C. § 204.

3. Under subsection (A)(1) usage of the trade and the circumstances of the particular case determine what is a reasonable hour for tender and what constitutes a reasonable period of holding the goods available.

4. The buyer must furnish reasonable facilities for the receipt of the goods tendered by the seller under subsection (A) (2). This obligation of the buyer is no part of the seller's tender.

5. For the purposes of subsections (B) and (C), there is omitted from this article the rule that a term requiring the seller to pay the freight or cost of transportation to the buyer is equivalent to an agreement by the seller to deliver to the buyer or at an agreed destination. This omission is with the specific intention of negating the rule, for under this article the

"shipment" contract is regarded as the normal one and the "destination" contract as the variant type. The seller is not obligated to deliver at a named destination and bear the concurrent risk of loss until arrival, unless he has specifically agreed so to deliver or the commercial understanding of the terms used by the parties contemplates such delivery.

6. Subsection (D) (2) adopts the rule that between the buyer and the seller the risk of loss remains on the seller during a period reasonable for securing acknowledgment of the transfer from the bailee, while as against an other party the buyer's rights are fixed as of the time the bailee receives notice of the transfer.

7. Under subsection (E) documents are never "required" except where there is an express contract term or it is plainly implicit in the peculiar circumstances of the case or in a usage of trade. Documents may, of course, be "authorized" although not required, but such cases are not within the scope of this subsection. When documents are required, there are three main requirements of this subsection: (1) "All": each required document is essential to a proper tender; (2) "Such": the documents must be the ones actually required by the contract in terms of source and substance; (3) "Correct form": all documents must be in correct form.

When a prescribed document cannot be procured, a question of fact arises under the provision of this article on substituted performance as to whether the agreed manner of delivery is actually commercially impracticable and whether the substitute is commercially reasonable.

Cross References

Point 2: Sections 1-205, 2-301, 2-310, 2-507 and 2-513.

Point 5: Sections 2-308, 2-3 10 and 2-509.

Point 7: Section 2-614(A).

Specific matters involving tender are covered in many additional sections of this article. See

§§ 1-205, 2-301, 2-306 to 2-319, 2-321(C), 2-504, 2-507(B), 2-511(A), 2-513, 2-612 and 2-614.

Definitional Cross References

"Agreement". Section 1-201.

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Conforming". Section 1-106.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Dishonor". Section 3-508.

"Document of title". Section 1-201.

"Draft". Section 3-104.

"Goods". Section 2-105.

"Notification". Section 1-201.

"Reasonable time". Section 1-204.

"Receipt of goods". Section 2-103.

"Rights". Section 1-201.

"Seasonably". Section 1-204.

“Seller”. Section 2-103.
 “Written”. Section 1-201.

Special Plain Language Comment

This section describes the seller’s basic obligation under the Code to “tender” delivery of conforming goods (§ 2-301). “Tender” is defined specifically in Comment 1, but generally means the offer of goods to the buyer with the ability to deliver them upon the buyer’s request. The seller must have the goods ready to deliver to the buyer and must give the buyer proper notice of such readiness. The tender must be done at a reasonable time and the buyer must

furnish facilities appropriate to receive the goods. Finally, where the transaction is based on documents (such as bills of lading which stand in for the actual goods themselves) the seller must deliver the proper document in “correct” form. Because such documents are considered to be the “goods” for legal purposes, they must be completed in precisely the correct manner.

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 153.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 161 to 162, 164, 182.

§ 2-504. Shipment by seller

A. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

1. Put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
2. Obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
3. Promptly notify the buyer of the shipment.

B. Failure to notify the buyer under paragraph (3) or to make a proper contract under paragraph (1) is a ground for rejection only if material delay or loss ensues.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-504 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The section is limited to “shipment” contracts as contrasted with “destination” contracts or contracts for delivery at the place where the goods are located. The general principles embodied in this section cover the special cases of F.O.B. point of shipment contracts and C.I.F. and C. & F. contracts. Under the preceding section on manner of tender of delivery, due tender by the seller requires that he comply with the requirements of this section in appropriate cases.

2. The contract to be made with the carrier under paragraph (1) must conform to all express terms of the agreement, subject to any substitution necessary because of failure of agreed facilities as provided in the later provision on substituted performance. However, under the policies of this article on good faith and commercial standards and on buyer’s rights on improper delivery, the requirements of explicit provisions must be read in terms of their commercial and not their literal meaning. This policy is made express with respect to bills of lading in a set in the provision of this article on form of bills of lading required in overseas shipment.

3. In the absence of agreement, the provision of this article on options and cooperation respecting performance gives the seller the choice of any reasonable carrier, routing and other arrangements. Whether or not the shipment is at the buyer's expense the seller must see to any arrangements, reasonable in the circumstances, such as refrigeration, watering of livestock, protection against cold, the sending along of any necessary help, selection of specialized cars and the like for paragraph (1) is intended to cover all necessary arrangements whether made by contract with the carrier or otherwise. There is, however, a proper relaxation of such requirements if the buyer is himself in a position to make the appropriate arrangements and the seller gives him reasonable notice of the need to do so. It is an improper contract under paragraph (1) for the seller to agree with the carrier to a limited valuation below the true value and thus cut off the buyer's opportunity to recover from the carrier in the event of loss, when the risk of shipment is placed on the buyer by his contract with the seller.

4. Both the language of paragraph (2) and the nature of the situation it concerns indicate that the requirement that the seller must obtain and deliver promptly to the buyer in due form any document necessary to enable him to obtain possession of the goods is intended to cumulate with the other duties of the seller such as those covered in paragraph (1). In this connection, in the case of pool car shipments, a delivery order furnished by the seller on the pool car consignee, or on the carrier for delivery out of a larger quantity, satisfies the requirements of paragraph (2) unless the contract requires some other form of document.

5. This article makes it the seller's duty to notify the buyer of shipment in all cases. The consequences of his failure to do so, however, are limited in that the buyer may reject on this ground only where material delay or loss ensues.

A standard and acceptable manner of notification in open credit shipments is the sending of an invoice and in the case of documentary contracts is the prompt forwarding of the documents as under paragraph (2) of this section. It is also usual to send on a straight bill of lading but this is not necessary to the required notification. However, should such a document prove necessary or convenient to the buyer, as in the case of loss and claim against the carrier, good faith would require the seller to send it on request.

Frequently the agreement expressly requires prompt notification as by wire or cable. Such a term may be of the essence and the final clause of paragraph (3) does not prevent the parties from making this a particular ground for rejection. To have this vital and irreparable effect upon the seller's duties, such a term should be part of the "dickered" terms written in any "form", or should otherwise be called seasonably and sharply to the seller's attention.

6. Generally, under the final sentence of the section, rejection by the buyer is justified only when the seller's dereliction as to any of the requirements of this section in fact is followed by material delay or damage. It rests on the seller, so far as concerns matters not within the peculiar knowledge of the buyer, to establish that his error has not been followed by events which justify rejection.

Cross References

Point 1: Sections 2-319, 2-320 and 2-503(B).
 Point 2: Sections 1-203, 2-323(B), 2-601 and 2-614(A).
 Point 3: Section 2-311(B).
 Point 5: Section 1-203.

Definitional Cross References

"Agreement". Section 1-201.
 "Buyer". Section 2-103.
 "Contract". Section 1-201.
 "Delivery". Section 1-201.
 "Goods". Section 2-105.
 "Notifies". Section 1-201.
 "Seller". Section 2-103.
 "Send". Section 1-201.
 "Usage of trade". Section 1-205.

Library References

Indians ⇄ 23 to 24. Westlaw Topic Nos. 209, 343.
 Sales ⇄ 83, 161. C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 157, 164, 167, 174 to 175.

§ 2-505. Sellers shipment under reservation

A. Where the seller has identified goods to the contract by or before shipment:

1. His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

2. A non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (§ 2-507(B)) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

B. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-505 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Article 7 of the Uniform Commercial Code and the rights of parties which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. The security interest reserved to the seller under subsection (A) is restricted to securing payment or performance by the buyer and the seller is strictly limited in his disposition and control of the goods as against the buyer and third parties. Under this article, the provision as to the passing of interest expressly applies "despite any reservation of security title" and also provides that the "rights, obligations and remedies" of the parties are not altered by the incidence of title generally. The security interest, therefore, must be regarded as a means given to the seller to enforce his rights against the buyer which is unaffected by and in turn does not effect the location of title generally. The rules set forth in subsection (A) are not to be altered by any apparent "contrary intent" of the parties as to passing of title, since the rights and remedies of the parties to the contract of sale, as defined in this article, rest on the contract and its performance or breach and

not on stereotyped presumptions as to the location of title.

This article does not attempt to regulate local procedure in regard to the effective maintenance of the seller's security interest when the action is in replevin by the buyer against the carrier.

2. Every shipment of identified goods under a negotiable bill of lading reserves a security interest in the seller under subsection (A)(1). It is frequently convenient for the seller to make the bill of lading to the order of a nominee such as his agency at destination, the financing agency to which he expects to negotiate the document, or the bank issuing a credit to him. In many instances, also, the buyer is made the order party. This article does not deal directly with the question as to whether a bill of lading made out by the seller to the order of a nominee gives the carrier notice of any rights which the nominee may have so as to limit its freedom or obligation to honor the bill of lading in the hands of the seller as the original shipper if the expected negotiation fails. This circumstance is dealt with in the Article on Documents of Title (Article 7). The Navajo Nation has not adopted Article 7 of the Uniform Commercial Code and rights which would be governed under Article 7

are governed by Navajo law pursuant to 7 N.N.C. § 204.

3. A non-negotiable bill of lading taken to a party other than the buyer under subsection (A)(2) reserves possession of the goods as security in the seller but if he seeks to withhold the goods improperly the buyer can tender payment and recover them.

4. In the case of a shipment by non-negotiable bill of lading taken to a buyer, the seller, under subsection (A) retains no security interest or possession as against the buyer and by the shipment he de facto loses control as against the carrier except where he rightfully and effectively stops delivery in transit. In cases in which the contract gives the seller the right to payment

against delivery, the seller, by making an immediate demand for payment, can show that his delivery is conditional, but this does not prevent the buyer's power to transfer full title to a sub-buyer in ordinary course or other purchaser under § 2-403.

5. Under subsection (B) an improper reservation by the seller which would constitute a breach in no way impairs such of the buyer's rights as result from identification of the goods. The security title reserved by the seller under subsection (A) does not protect his holding of the document or the goods for the purpose of exacting more than is due him under the contract.

Cross References

Point 1: Section 1-201.

Point 3: Sections 2-501 (B) and 2-504.

Point 4: Sections 2-403, 2-507(B) and 2-705.

Point 5: Sections 2-310, 2-319(D), 2-320(D), 2-501 and 2-502.

Definitional Cross References

"Bill of lading". Section 1-201.

"Buyer". Section 2-103.

"Consignee". Section 7-102.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Financing agency". Section 2-104.

"Goods". Section 2-105.

"Holder". Section 1-201.

"Person". Section 1-201.

"Security interest". Section 1-201.

"Seller". Section 2-103.

Library References

Carriers ☞54.

Indians ☞23 to 24.

Sales ☞300, 316.

Shipping ☞106(3).

Westlaw Topic Nos. 70, 209, 343, 354.

C.J.S. Carriers § 398.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 325 to 326, 328, 339 to 343.

C.J.S. Shipping §§ 260 to 263, 265.

§ 2-506. Rights of financing agency

A. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

B. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-506 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Articles 4, 5 and 7 of the Uniform Commercial Code. The rights of parties which would be governed under those Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. "Financing agency" is broadly defined in this article to cover every normal instance in which a party aids or intervenes in the financing of a sales transaction. The term as used in subsection (A) is not in any sense intended as a limitation and covers any other appropriate situation which may arise outside the scope of the definition.

2. "Paying" as used in subsection (A) is typified by the letter of credit, or "authority to pay" situation in which a banker, by arrangement with the buyer or other consignee, pays on his behalf a draft for the price of the goods. It is immaterial whether the draft is formally drawn on the party paying or his principal, whether it is a sight draft paid in cash or a time draft "paid" in the first instance by acceptance or whether the payment is viewed as absolute or conditional. All of these cases constitute "payment" under this subsection. Similarly, "purchasing for value" is used to indicate the whole area of financing by the seller's banker and the principle of subsection (A) is applicable without any niceties of distinction between "purchase", "discount", "advance against collection" or the like. But it is important to notice that the only right to have the draft honored that is acquired is that against the buyer, if any right against any one else is claimed it will have to be under some separate obligation of that other person. A let-

ter of credit does not necessarily protect purchasers of drafts. The Navajo Nation has not adopted Articles 4 and 5 and the rights of the parties which would be governed under those Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

3. Subsection (A) is made applicable to payments or advances against a draft which "relates to" a shipment of goods and this has been chosen as a term of maximum breadth. In particular the term is intended to cover the case of a draft against an invoice or against a delivery order. Further, it is unnecessary that there be an explicit assignment of the invoice attached to the draft to bring the transaction within the reason of this subsection.

4. After shipment, "the rights of the shipper in the goods" are merely security rights and are subject to the buyer's right to force delivery upon tender of the price. The rights acquired by the financing agency are similarly limited and, moreover, if the agency fails to procure any outstanding negotiable document of title, it may find its exercise of these rights hampered or even defeated by the seller's disposition of the document to a third party. This section does not attempt to create any new rights in the financing agency against the carrier which would force the latter to honor a stop order from the agency, a stranger to the shipment, or any new rights against a holder to whom a document of title has been duly negotiated under Article 7. Article 7 of the Uniform Commercial Code has not been adopted by the Navajo Nation and the rights of parties which would be governed under Article 7 are governed by the Navajo law pursuant to 7 N.N.C. § 204.

Cross References

Point 1: Section 2-104(B).

Point 4: Sections 2-501 and 2-502(A).

Definitional Cross References

"Buyer". Section 2-103.

"Document of title". Section 1-201.

"Draft". Section 3-104.

"Financing agency". Section 2-104.

"Good faith". Section 2-103.

"Goods". Section 2-105.

"Honor". Section 1-201.

"Purchase". Section 1-201.

"Rights". Section 1-201.

"Value". Section 1-201.

Library References

Indians ☞ 23 to 24.
 Sales ☞ 292, 309.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 328, 334.

§ 2-507. Effect of seller's tender: delivery on condition

A. Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

B. Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-507 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code and the rights of parties which would be governed under those Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. Under this article the same rules in these matters are applied to present sales and to contracts for sale. But the provisions of this subsection must be read within the framework of the other sections of this article which bear upon the question of delivery and payment.

2. The "unless otherwise agreed" provision of subsection (A) is directed primarily to cases in which payment in advance has been promised or a letter of credit term has been included. Payment "according to the contract" contemplates immediate payment, payment at the end of an agreed credit term, payment by a time

acceptance or the like. Under the Code, "contract" means the total obligation in law which results from the parties' agreement including the effect of this article. In this context, therefore, there must be considered the effect in law of such provisions as those on means and manner of payment and on failure of agreed means and manner of payment.

3. Subsection (B) deals with the effect of a conditional delivery by the seller and in such a situation makes the buyer's "right as against the seller" conditional upon payment. These words are used as words of limitation to conform with the policy set forth in the bona fide purchase sections of this article. Should the seller after making such a conditional delivery fail to follow up his rights, the condition is waived. The provision of this article for a 10-day limit within which the seller may reclaim goods delivered on credit to an insolvent buyer is also applicable here.

Cross References

Point 1: Sections 2-310, 2-503, 2-511, 2-601 and 2-711 to 2-713.

Point 2: Sections 1-201, 2-511 and 2-614.

Point 3: Sections 2-401, 2-403, and 2-702(A)(2).

Definitional Cross References

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 2-105.

"Rights". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ↻23 to 24.
 Sales ↻153.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 161 to 162, 164, 182.

§ 2-508. Cure by seller of improper tender of delivery; replacement

A. Where any tender of delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

B. Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-508 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) permits a seller who has made a non-conforming tender in any case to make a conforming delivery within the contract time upon seasonable notification to the buyer. It applies even where the seller has taken back the non-conforming goods and refunded the purchase price. He may still make a good tender within the contract period. The closer, however, it is to the contract date, the greater is the necessity for extreme promptness on the seller's part in notifying of his intention to cure, if such notification is to be "seasonable" under this subsection.

The rule of this subsection, moreover, is qualified by its underlying reasons. Thus if, after contracting for June delivery, a buyer later makes known to the seller his need for shipment early in the month and the seller ships accordingly, the "contract time" has been cut down by the supervening modification and the time for cure offender must be referred to this modified time term.

2. Subsection (B) seeks to avoid injustice to the seller by reason of a surprise rejection by the buyer. However, the seller is not protected unless he had "reasonable grounds to believe" that the tender would be acceptable. Such reasonable grounds can lie in prior course of dealing, course of performance or usage of trade as

well as in the particular circumstances surrounding the making of the contract. The seller is charged with commercial knowledge of any factors in a particular sales situation which require him to comply strictly with his obligations under the contract as, for example, strict; conformity of documents in an overseas shipment or the sale of precision parts or chemicals for use in manufacture. Further, if the buyer gives notice either implicitly, as by a prior course of dealing involving rigorous inspections, or expressly, as by the deliberate inclusion of a "no replacement" clause in the contract, the seller is to be held to rigid compliance. If the clause appears in a "form" contract evidence that it is out of line with trade usage or the prior course of dealing and was not called to the seller's attention maybe sufficient to show that the seller had reasonable grounds to believe that the tender would be acceptable.

3. The words "a further reasonable time to substitute a conforming tender" are intended as words of limitation to protect the buyer. What is a "reasonable time" depends upon the attending circumstances. Compare § 2-511 on the comparable case of a seller's surprise demand for legal tender.

4. Existing trade usages permitting variations without rejection but with price allowance enter into the agreement itself as contractual limitations of remedy and are not covered by this section.

Cross References

Point 2: Section 2-302.
 Point 3: Section 2-511.

Point 4: Sections 1-205 and 2-721.

Definitional Cross References

“Buyer”. Section 2-103.
 “Conforming”. Section 2-106.
 “Contract”. Section 1-201.
 “Money”. Section 1-201.
 “Notifies”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Seasonably”. Section 1-204.
 “Seller”. Section 2-103.

Library References

Indians ☞ 23 to 24.
 Sales ☞ 153, 165.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 161 to 162, 164, 176, 182.

§ 2-509. Risk of loss in the absence of breach

A. Where the contract requires or authorizes the seller to ship the goods by carrier:

1. If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (§ 2-505); but

2. If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

B. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

1. On his receipt of a negotiable document of title covering the goods;

or

2. On acknowledgment by the bailee of the buyer's right to possession of the goods; or

3. After his receipt of a non-negotiable document of title or other written direction to deliver, as provided in § 2-503 (D) (2).

C. In any case not within subsection (A) or (B), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

D. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (§ 2-327) and on effect of breach on risk of loss (§ 2-510).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-509 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The underlying theory of these sections on risk of loss is the adoption of the contractual approach rather than an arbitrary shifting of the risk with the “property” in the goods. The scope of the present section, therefore, is limited strictly to those cases where there has been no breach by the seller. Where for any reason his delivery or tender fails to conform to the contract, the present section does not apply and the situation is governed by the provisions on effect of breach on risk of loss.

2. The provisions of subsection (A) apply where the contract “requires or authorizes” shipment of the goods. This language is intended to be construed parallel to comparable language in the section on shipment by seller. In order that the goods be “duly delivered to the carrier” under paragraph (1), a contract must be entered into with the carrier which will satisfy the requirements of the section on shipment by the seller and the delivery must be made under circumstances which will enable the seller to take any further steps necessary to a due tender. The underlying reason of this subsection does not require that the shipment be made after contracting, but where, for example, the seller buys the goods afloat and later diverts the shipment to the buyer, he must identify the goods to the contract before the risk of loss can pass. To transfer the risk is enough that a proper shipment and a proper identification come to apply to the same goods although, aside from special agreement, the risk will not pass retroactively to the time of shipment in such a case.

3. Whether the contract involves delivery at the seller’s place of business or at the situs of the goods, a merchant seller cannot transfer

risk of loss and it remains upon him until actual receipt by the buyer, even though full payment has been made and the buyer has been notified that the goods are at his disposal. Protection is afforded him, in the event of breach by the buyer, under the next section.

The underlying theory of this rule is that a merchant who is to make physical delivery at his own place continues meanwhile to control the goods and can be expected to insure his interest in them. The buyer, on the other hand, has no control of the goods and it is extremely unlikely that he will carry insurance on goods not yet in his possession.

4. Where the agreement provides for delivery of the goods as between the buyer and seller without removal from the physical possession of a bailee, the provisions on manner of tender of delivery apply on the point of transfer of risk. Due delivery of a negotiable document of title covering the goods or acknowledgment by the bailee that he holds for the buyer completes the “delivery” and passes the risk.

5. The provisions of this section are made subject by subsection (D) to the “contrary agreement” of the parties. This language is intended as the equivalent of the phrase “unless otherwise agreed” used more frequently throughout this Code. “Contrary” is in no way used as a word of limitation and the buyer and seller are left free to readjust their rights and risks as declared by this section in any manner agreeable to them. Contrary agreement can also be found in the circumstances of the case, a trade usage or practice, or a course of dealing or performance.

Cross References

Point 1: Section 2-510(A),
 Point 2: Sections 2-503 and 2-504.
 Point 3: Sections 2-104, 2-503 and 2-510.
 Point 4: Section 2-503(D).
 Point 5: Section 1-201.

Definitional Cross References

“Agreement”. Section 1-201.
 “Buyer”. Section 2-103.
 “Contract”. Section 1-201.
 “Delivery”. Section 1-201.
 “Document of title”. Section 1-201.
 “Goods”. Section 2-105.
 “Merchant”. Section 2-104.
 “Party”. Section 1-201.
 “Receipt of goods”. Section 2-103.
 “Sale on approval”. Section 2-326.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section governs when the risk of loss or damage to the goods shifts from the seller to the buyer. This section is a “gap filler” which applies only when parties themselves do not determine in their agreement when the risk of loss will pass. The section sets up four categories: contracts where goods are shipped; contracts where the goods are delivered without being moved; consignment contracts and all other types of contracts.

A. Where the contract either authorizes or requires shipment by a third party (i.e., not in the seller’s own trucks) the time when the risk of loss will shift from the seller to the buyer depends on whether the transportation obligations require only delivery to a carrier (“shipment contract”) or delivery to a particular location (“delivery contract”). The parties may also choose to use the rules set out in the standard

mercantile terms defined in §§ 2-319–2-324. In a shipment contract the risk of loss shifts to the buyer upon the delivery of the goods to the carrier. In a delivery contract the risk of loss shifts to the buyer upon the proper “tender” to the buyer at the required destination (see § 2-503 regarding proper “tender”).

B. If the goods are delivered without movement the risk of loss shifts to the buyer upon receipt by the buyer of the proper documents.

C. If the goods are on consignment, the risk of loss is governed by § 2-327.

D. And in all other cases the shift of the risk of loss will depend on the status of the buyer. If the buyer is a nonmerchant the risk of loss shifts when he takes possession of the goods. If the buyer is a merchant the risk of loss shifts when the seller tenders delivery (see § 2-503).

History

CJA-1-86, January 29, 1986.

Library References

Indians ⇄ 23 to 24.
Sales ⇄ 197, 201(4), 217, 224, 232.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 214, 222 to 227.

§ 2-510. Effect of breach on risk of loss

A. Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

B. Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

C. Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-510 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under subsection (A) the seller by his individual action cannot shift the risk of loss to the buyer unless his action con-

forms with all the conditions resting on him under the contract.

2. The “cure” of defective tenders contemplated by subsection (A) applies only to those situations in which the seller makes changes in goods already tendered, such as repair, partial substitution, sorting out from an improper mix-

ture and the like since “cure” by repossession and new tender has an effect on the risk of loss of the goods originally tendered. The seller’s privilege of cure does not shift the risk, however, until the cure is completed.

Where defective documents are involved a cure of the defect by the seller or a waiver of the defects by the buyer will operate to shift the risk under this section. However, if the goods have been destroyed prior to the cure or the buyer is unaware of their destruction at the time he waives the defect in the documents, the risk of the loss must still be borne by the seller, for the risk shifts only at the time of cure, waiver of documentary defects or acceptance of the goods.

3. In cases where there has been a breach of the contract, if the one in control of the goods is the aggrieved party, whatever loss or damage may prove to be uncovered by his insurance falls upon the contract breaker under subsections (B) and (C) rather than upon him. The word “effective” as applied to insurance coverage in those subsections is used to meet the case of supervening insolvency of the insurer. The “deficiency” referred to in the text means such deficiency in the insurance coverage as exists without subrogation. This section merely distributes the risk of loss as stated and is not intended to be disturbed by any subrogation of an insurer.

Cross References

Section 2-509.

Definitional Cross References

“Buyer”. Section 2-103.
 “Conform”. Section 2-106.
 “Contract for sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Seller”. Section 2-103.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞ 197, 217, 224, 232.	C.J.S. Sales §§ 214, 222 to 223.
Westlaw Topic Nos. 209, 343.	

§ 2-511. Tender of payment by buyer; payment by check

A. Unless otherwise agreed tender of payment is a condition to the seller’s duty to tender and complete any delivery.

B. Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

C. Subject to the provisions of the Code on the effect of an instrument on an obligation (§ 3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-511 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The requirement of payment against delivery in subsection (A) is applicable to non-commercial sales generally and to

ordinary sales at retail although it has no application to the great body of commercial contracts which carry credit terms. Subsection (A) applies also to documentary contracts in general and to contracts which look to shipment by the seller but contain no term on time and manner of payment, in which situations the

payment may, in proper case, be demanded against delivery of appropriate documents.

In the case of specific transactions such as C.O.D. sales or agreement providing for payment against documents, the provisions of this subsection must be considered in conjunction with the special sections of the article dealing with such terms. The provision that tender of payment is a condition to the seller's duty to tender and complete "any delivery" integrates this section with the language and policy of the section on delivery in several lots which call for separate payment. Finally, attention should be directed to the provision on right to adequate assurance of performance which recognizes, even before the time for tender, an obligation on the buyer not to impair the seller's expectation of receiving payment in due course.

2. Unless there is agreement otherwise the concurrence of the conditions as to tender of payment and tender of delivery requires their performance at a single place or time. This article determines that place and time by determining in various other sections the place and time for tender of delivery under various circumstances and in particular types of transactions. The sections dealing with time and place of delivery together with the section on right to inspection of goods answer the subsidiary question as to when payment may be demanded before inspection by the buyer.

3. The essence of the principle involved in subsection (B) is avoidance of commercial surprise at the time of performance. The section on substituted performance covers the peculiar case in which legal tender is not available to the commercial community.

4. Subsection (C) is concerned with the rights and obligations as between the parties to a sales transaction when payment is made by

check. This article recognizes that the taking of a seemingly solvent party's check is commercially normal and proper and, if due diligence is exercised in collection, is not to be penalized in any way. The conditional character of the payment under this section refers only to the effect of the transaction "as between the parties" thereto and does not purport to cut into the law of "absolute" and "conditional" payment as applied to such other problems as the discharge of sureties or the responsibilities of a drawee bank which is at the same time an agent for collection.

The phrase "by check" includes not only the buyer's own but any check which does not effect a discharge under Article 3 (§ 3-802). Similarly the reason of this subsection should apply and the same result should be reached where the buyer "pays" by sight draft on a commercial firm which is financing him.

5. Under subsection (C) payment by check is defeated if it is not honored upon due presentment. This corresponds to the provisions of Article on Commercial Paper (§ 3-802). But if the seller procures certification of the check instead of cashing it, the buyer is discharged (§ 3-411).

6. Where the instrument offered by the buyer is not a payment but a credit instrument such as a note or a check post-dated by even one (1) day, the seller's acceptance of the instrument insofar as third parties are concerned, amounts to a delivery on credit and his remedies are set forth in the section on buyer's insolvency. As between the buyer and the seller, however, the matter turns on the present subsection and the section on conditional delivery and subsequent dishonor of the instrument gives the seller rights on it as well as for breach of the contract for sale.

Cross References

Point 1: Sections 2-307, 2-310, 2-320, 2-325, 2-503, 2-513 and 2-609.

Point 2: Sections 2-307, 2-310, 2-319, 2-322, 2-503, 2-504 and 2-513.

Point 3: Section 2-614.

Point 5: Article 3, esp. §§ 3-802 and 3-411.

Point 6: Sections 2-507, 2-702, and Article 3.

Definitional Cross References

"Buyer". Section 2-103.

"Check". Section 3-104.

"Dishonor". Section 3-508.

"Party". Section 1-201.

"Reasonable time". Section 1-204.

"Seller". Section 2-103.

Library References

Indians ⇄ 23 to 24.

Sales ⇄ 185, 191.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

§ 2-512. Payment by buyer before inspection

A. Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless:

1. The non-conformity appears without inspection; or
2. Despite tender of the required documents the circumstances would justify injunction against honor under the provisions of the Code.

B. Payment pursuant to subsection (A) does not constitute an acceptance of goods or impair the buyers right to inspect or any of his remedies.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-512 of the Uniform Commercial Code adopted by the states. The reference in subsection (B) has been revised to reflect that the Navajo Nation has not adopted Article 5 of the Uniform Commercial Code and that the rights of parties which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. Subsection (A) of the present section recognizes that the essence of a contract providing for payment before inspection is the intention of the parties to shift to the buyer the risks which would usually rest upon the seller. The basic nature of the transaction is thus preserved and the buyer is in most cases required to pay first and litigate as to any defects later.

2. "Inspection" under this section is an inspection in a manner reasonable for detecting defects in goods whose surface appearance is satisfactory.

3. Paragraph (1) of this subsection states an exception to the general rule based on common sense and normal commercial practice. The apparent non-conformity referred to is one which is evident in the mere process of taking delivery.

4. Paragraph (2) is concerned with contracts for payment against documents and incorporates the general clarification and modification

of the case law contained in the section on excuse of a financing agency. The Navajo Nation has not adopted Article 5 of the Uniform Commercial Code and the rights of parties which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204.

5. Subsection (B) makes explicit the general policy that the payment required before the inspection in no way impairs the buyer's remedies or rights in the event of a default by the seller. The remedies preserved to the buyer are all of his remedies, which include as a matter of reason the remedy for total non-delivery after payment in advance.

The provision of performance or acceptance under reservation of rights does not apply to the situations contemplated here in which payment is made in due course under the contract and the buyer need not pay "under protest" or the like in order to preserve his rights as to defects discovered upon inspection.

6. This section applies to cases in which the contract requires payment before inspection either by the express agreement of the parties or by reason of the effect in law of that contract. The present section must therefore be considered in conjunction with the provision on right to inspection of goods which sets forth the instances in which the buyer is not entitled to inspection before payment.

Cross References

Point 5: Section 1-207.

Point 6: Section 2-513(C).

Definitional Cross References

"Buyer". Section 2-103.

"Conform". Section 2-106.

"Contract". Section 1-201.

"Financing agency". Section 2-104.

"Goods". Section 2-105.

“Remedy”. Section 1-201.
 “Rights”. Section 1-201.

Library References

Indians ⚡23 to 24.
 Sales ⚡195.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 209 to 210.

§ 2-513. Buyer’s right to inspection of goods

A. Unless otherwise agreed and subject to subsection (C), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable time and place and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

B. Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

C. Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (§ 2-321 (C)), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

1. For delivery “C.O.D.” or on other like terms; or
2. For payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

D. A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-513 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The buyer is entitled to inspect goods as provided in subsection (A) unless it has been otherwise agreed by the parties. The phrase “unless otherwise agreed” is intended principally to cover such situations as those outlined in subsections (C) and (D) and those in which the agreement of the parties negates inspection before tender of delivery. However, no agreement by the parties can displace the entire right of inspection except where the contract is simply for the sale of “this thing”. Even in a sale of boxed goods “as is” inspection is a right of the buyer, since if the boxes prove to contain some other merchandise altogether the

price can be recovered back; nor do the limitations of the provision on effect of acceptance apply in such a case.

2. The buyer’s right of inspection is available to him upon tender, delivery or appropriation of the goods with notice to him. Since inspection is available to him on tender, where payment is due against delivery he may, unless otherwise agreed, make his inspection before payment of the price. It is also available to him after receipt of the goods and so may be postponed after receipt for a reasonable time. Failure to inspect before payment does not impair the right to inspect after receipt of the goods unless the case falls within subsection (D) on agreed and exclusive inspection provisions. The right to inspect goods which have been appropriated

with notice to the buyer hold whether or not the sale was by sample.

3. The buyer may exercise his right of inspection at any reasonable time or place and in any reasonable manner. It is not necessary that he select the most appropriate time, place or manner to inspect or that his selection be the customary one in the trade or locality. Any reasonable time, place or manner is available to him and the reasonableness will be determined by trade usages, past practices between the parties and the other circumstances of the case.

The last sentence of subsection (A) makes it clear that the place of arrival of shipped goods is a reasonable place for their inspection.

4. Expenses of an inspection made to satisfy the buyer of the seller's performance must be assumed by the buyer in the first instance. Since the rule provides merely for an allocation of expense there is no policy to prevent the parties from providing otherwise in the agreement. Where the buyer would normally bear the expenses of the inspection but the goods are rightly rejected because of what the inspection reveals, demonstrable and reasonable costs of the inspection are part of his incidental damage caused by the seller's breach.

5. In the case of payment against documents, subsection (C) requires payment before inspection, since shipping documents against which payment is to be made will commonly arrive and be tendered while the goods are still in transit. This article recognizes no exception in any peculiar case in which the goods happen to arrive before the documents. However, whereby the agreement payment is to await the arrival of the goods, inspection before payment becomes proper since the goods are then "available for inspection".

Whereby the agreement the documents are to be held until arrival the buyer is entitled to inspect before payment since the goods are then "available for inspection". Proof of usage is not necessary to establish this right, but if inspection before payment is disputed the contrary must be established by usage or by an explicit contract term to that effect.

For the same reason, that the goods are available for inspection, a term calling for payment against storage documents or a delivery order does not normally bar the buyer's right to inspection before payment under subsection (C)(2). This result is reinforced by the buyer's right under subsection (A) to inspect goods which have been appropriated with notice to him.

6. Under subsection (D) an agreed place or method of inspection is generally held to be intended as exclusive. However, where compliance with such an agreed inspection term becomes impossible, the question is basically one of intention. If the parties clearly intend that the method of inspection named is to be a necessary condition without which the entire deal is to fail, the contract is at an end if that method becomes impossible. On the other hand, if the parties merely seek to indicate a convenient and reliable method but do not intend to give up the deal in the event of its failure, any reasonable method of inspection may be substituted under this article.

Since the purpose of an agreed place of inspection is only to make sure at that point whether or not the goods will be thrown back, the "exclusive" feature of the named place is satisfied under this article if the buyer's failure to inspect there is held to be an acceptance with the knowledge of such defects as inspection would have revealed within the section on waiver of buyer's objections by failure to particularize. Revocation of the acceptance is limited to the situations stated in the section pertaining to that subject. The reasonable time within which to give notice of defects within the section on notice of breach begins to run from the point of the "acceptance".

7. Clauses on time of inspection are commonly clauses which limit the time in which the buyer must inspect and give notice of defects. Such clauses are therefore governed by the section of this article which requires that such a time limitation must be reasonable.

8. Inspection under this article is not to be regarded as a "condition precedent to the passing of title" so that risk until inspection remains on the seller. Under subsection (D) such an approach cannot be sustained. Issues between the buyer and seller are settled in this article almost wholly by special provisions and not by the technical determination of the focus of the title. Thus "inspection as a condition to the passing of title" becomes a concept almost without meaning. However, in peculiar circumstances inspection may still have some of the consequences hitherto sought and obtained under that concept.

9. "Inspection" under this section has to do with the buyer's check-up on whether the seller's performance is in accordance with a contract previously made and is not to be confused with the "examination" of the goods or of a sample or model of them at the time of contracting which may affect the warranties involved in the contract.

Cross References

Generally: Sections 2-310(2), 2-321(C) and 2-606(A)(2).
Point 1: Section 2-607.

Point 2: Sections 2-501 and 2-502.
 Point 4: Section 2-715.
 Point 5: Section 2-321 (C).
 Point 6: Sections 2-606 to 2-608.
 Point 7: Section 1-204.
 Point 8: Comment to § 2-401.
 Point 9: Section 2-316(C)(2).

Definitional Cross References

“Buyer”. Section 2-103.
 “Conform”. Section 2-106.
 “Contract”. Section 1-201.
 “Contract for sale”. Section 2-106.
 “Document of title”. Section 1-201.
 “Goods”. Section 2-105.
 “Party”. Section 1-201.
 “Presumed”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Rights”. Section 1-201.
 “Seller”. Section 2-103.
 “Send”. Section 1-201.
 “Term”. Section 1-201.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞168.	C.J.S. Sales §§ 185, 188.
Westlaw Topic Nos. 209, 343.	

§ 2-514. When documents deliverable on acceptance; when on payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-514 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code and the rights of parties which would be governed under such Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. This section covers any document against which a draft may be drawn, whatever maybe the form of the document, and applies to interpret the action of a seller or

consignor insofar as it may affect the rights and duties of any buyer, consignee or financing agency concerned with the paper. Supplementary or corresponding provisions are found in Articles 4 and 5 of the Uniform Commercial Code. The Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code and the rights of parties which would be governed under those Articles are governed by Navajo law pursuant to 7 N.N.C. § 204.

2. An “arrival” draft is a sight draft within the purpose of this section.

Cross References

Point 1: See §§ 2-502, 2-505(B), 2-507(B), 2-512, 2-513 and 2-607.

Definitional Cross References

“Delivery”. Section 1-201.
 “Draft”. Section 3-104.

Library References

Indians ⚡23 to 24.
 Sales ⚡146, 191, 202.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 214 to 215.

§ 2-515. Preserving evidence of goods in dispute

In furtherance of the adjustment of any claim or dispute

A. Either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as maybe in the possession or control of the other; and

B. The parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-515 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section meets certain serious problems which arise when there is a dispute as to the quality of the goods and thereby aids the parties in reaching a settlement, and furthers the use of devices which will promote certainty as to the condition of the goods, or at least aid in preserving evidence of their conditions.

2. Subsection (A) affords either party an opportunity for preserving evidence, whether or not agreement has been reached, and thereby reduces uncertainty in any litigation and, in turn perhaps, promotes agreement. Subsection (B) does not conflict with the provisions on the seller's right to resell rejected goods or the buyer's similar right. Apparent conflict between these provisions which will be suggested in certain circumstances is to be resolved by requiring prompt action by the parties. Nor does subsection (A) impair the effect of a term for payment before inspection. Short of such defects as amount to fraud or substantial failure of consideration, non-conformity is neither an excuse nor a defense to an action for non-acceptance of documents. Normally, therefore until the buyer has made payment, inspected and rejected the goods, there is no occasion or use for the rights under subsection (A).

3. Subsection (B) provides for third party inspection upon the agreement of the parties, thereby opening the door to amicable adjustments based upon the findings of such third parties. The use of the phrase "conformity or

condition" makes it clear that the parties' agreement may range from a complete settlement of all aspects of the dispute by a third party to the use of a third party merely to determine and record the condition of the goods so that they can be resold or used to reduce the stake in controversy. "Conformity", at one end of the scale of possible issues, includes the whole question of interpretation of the agreement and its legal effect, the state of the goods in regard to quality and condition, whether any defects are due to factors which operate at the risk of the buyer, and the degree of non-conformity where that may be material. "Condition", at the other end of the scale, includes nothing but the degree of damage or deterioration which the goods show. Subsection (B) is intended to reach any point in the gamut which the parties may agree upon.

The principle of the section on reservation of rights reinforces this paragraph in simplifying such adjustments as the parties wish to make in partial settlement while reserving their rights as to any further points. Subsection (B) also suggests the use of arbitration, where desired, of any points left open, but nothing in this section is intended to repeal or amend any statute governing arbitration. Where any question arises as to the extent of the parties' agreement under the paragraph, the presumption should be that it was meant to extend only to the relation between the contract description and the goods as delivered, since that is what a craftsman in the trade would normally be expected to report upon. Finally, a written and authenticated report of inspection or tests by a third party, whether or not sampling has been practicable,

is entitled to be admitted as evidence under the Code, for it is a third party document.

Cross References

Point 2: Sections 2-513(C), 2-706 and 2-711(B).
Point 3: Sections 1-202 and 1-207.

Definitional Cross References

“Conform”. Section 2-106.
“Goods”. Section 2-105.
“Notification”. Section 1-201.
“Party”. Section 1-201.

Library References

Indians ⇨ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇨ 168.	C.J.S. Sales §§ 185, 188.
Westlaw Topic Nos. 209, 343.	

Part 6. Breach, Repudiation and Excuse

§ 2-601. Buyers rights on improper delivery

Subject to the provisions of this article on breach in installment contracts (§ 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (§§ 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- A. Reject the whole; or
- B. Accept the whole; or
- C. Accept any commercial unit or units and reject the rest.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-601 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A buyer accepting a non-conforming tender is not penalized by the loss of any remedy otherwise open to him. This policy extends to cover and regulate the acceptance of a part of any lot improperly tendered in any case where the price can reasonably be apportioned. Partial acceptance is permitted whether the part of the goods accepted conforms or not. The only limitation on partial acceptance is that good faith and commercial reasonableness must be used to avoid undue impairment of the value of the remaining portion of the goods. This is the reason for the insistence on the “commercial unit” in subsection (C). In this respect, the test is not only

what unit has been the basis of contract, but whether the partial acceptance produces so materially adverse an effect on the remainder as to constitute bad faith.

2. Acceptance made with the knowledge of the other party is final. An original refusal to accept may be withdrawn by a later acceptance if the seller has indicated that he is holding the tender open. However, if the buyer attempts to accept, either in whole, or in part, after his original rejection has caused the seller to arrange for other disposition of the goods, the buyer must answer for any ensuing damage since the next section provides that any exercise of ownership after rejection is wrongful as against the seller. Further, he is liable even though the seller may choose to treat his action as acceptance rather than conversion, since the damage flows from the misleading notice.

5A N.N.C. § 2-601

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Such arrangements for resale or other disposition of the goods by the seller must be viewed as within the normal contemplation of a buyer who has given notice of rejection. However,

the buyer's attempts in good faith to dispose of defective goods where the seller has failed to give instructions within a reasonable time are not to be regarded as an acceptance.

Cross References

Sections 2-602(B)(1), 2-612, 2-718 and 2-719.

Definitional Cross References

"Buyer". Section 2-103.
"Commercial unit". Section 2-105.
"Conform". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Installment contract". Section 2-612.
"Rights". Section 1-201.

Special Plain Language Comment

This section provides that the buyer may accept or reject the entire delivery or "commercial units" of the delivery of goods if the goods or the "tender" (manner of delivery) does not conform to the contract. It is critical to recognize that in this context, contract includes not

only the written agreement of the parties, but also the "usages" or customs of the industry, the prior behavior of the parties in other transactions and the prior behavior of the parties in this transaction.

Library References

Indians ☞ 23 to 24.
Sales ☞ 177, 179(6), 180.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 162, 189, 192, 194 to 198.

§ 2-602. Manner and effect of rightful rejection

A. Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

B. Subject to the provisions of the two following sections on rejected goods (§§ 2-603 and 2-604):

1. After rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

2. If the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (§ 2-711(C)), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

3. The buyer has no further obligations with regard to goods rightfully rejected.

C. The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on Seller's remedies in general (§ 2-703).

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-602 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A tender or delivery of goods made pursuant to a contract of sale, even though wholly non-conforming, requires affirmative action by the buyer to avoid acceptance. Under subsection (A), therefore, the buyer is given a reasonable time to notify the seller of his rejection, but without such seasonable notification his rejection is ineffective. The sections of this article dealing with inspection of goods must be read in connection with the buyers reasonable time for action under this subsection. Contract provisions limiting the time for rejection fall within the rule of the section on "time" and are effective if the time set gives the buyer a reasonable time for discovery of defects. What constitutes a due "notifying" of rejection by the buyer to the seller is defined in § 1-201.

2. Subsection (B) lays down the normal duties of the buyer upon rejection, which flow from the relationship of the parties. Beyond his duty to hold the goods with reasonable care for the seller's disposition, this section generally relieves the buyer from any duties with respect to them, except when the circumstances impose the limited obligation of salvage upon him under the next section.

3. The present section applies only to rightful rejection by the buyer. If the seller has made a tender which in all respects conforms to the contract, the buyer has a positive duty to accept and his failure to do so constitutes a "wrongful rejection" which gives the seller immediate remedies for breach. Subsection (C) is included here to emphasize the sharp distinction between the rejection of an improper tender and the non-acceptance which is a breach by the buyer.

4. The provisions of this section are to be appropriately limited or modified when a negotiation is in process.

Cross References

Point 1: Sections 1-201, 1-204(A) and (C), 2-512(B), 2-513(A) and 2-606(A)(2).

Point 2: Section 2-603(A).

Point 3: Section 2-703.

Definitional Cross References

"Buyer". Section 2-103.

"Commercial unit". Section 2-105.

"Goods". Section 2-105.

"Merchant". Section 2-104.

"Notifies". Section 1-201.

"Reasonable time". Section 1-204.

"Remedy". Section 1-201.

"Rights". Section 1-201.

"Seasonably". Section 1-204.

"Security interest". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ☞ 23 to 24.

Sales ☞ 177, 179(6).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 162, 189, 192, 194 to 198.

§ 2-603. Merchant buyer's duties as to rightfully rejected goods

A. Subject to any security interest in the buyer (§ 2-711(C)), when the seller has no agent or place of business at the market of rejection, a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

B. When the buyer sells goods under subsection (A), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.

C. In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-603 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code. The rights of parties which would be governed under these Articles concerning the discharge of a buyer's obligation to resell the goods under subsection (B) are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. This section recognizes the duty imposed upon the merchant buyer by good faith and commercial practice to follow any reasonable instructions of the seller as to re-shipping, storing, delivery to a third party, re-selling or the like. Subsection (A) goes further and extends the duty to include the making of reasonable efforts to effect a salvage sale where the value of the goods is threatened and the seller's instructions do not arrive in time to prevent serious loss.

2. The limitations on the buyer's duty to resell under subsection (A) are to be liberally construed. The buyer's duty to resell under this section arises from commercial necessity and thus is present only when the seller has "no agent or place of business at the market of rejection". A financing agency which is acting on behalf of the seller in handling the documents rejected by the buyer is sufficiently the seller's agent to lift the burden of salvage resale from the buyer. (See provisions of Articles 4 and 5 of the Uniform Commercial Code; the Navajo Nation has not adopted Articles 4 and 5 of the Uniform Commercial Code. The rights of par-

ties which would be governed under those Articles is governed by Navajo law pursuant to 7 N.N.C. § 204). The buyer's duty to resell is extended only to goods in his "possession or control", but these are intended as words of wide, rather than narrow, import. In effect, the measure of the buyer's "control" is whether he can practicably effect control without undue commercial burden.

3. The explicit provisions for reimbursement and compensation to the buyer in subsection (B) are applicable and necessary only where he is not acting under instructions from the seller. As provided in subsection (A) the seller's instructions to be "reasonable" must on demand of the buyer include indemnity for expenses. If, however, the buyer is actually under the instructions of the seller and he fails to request reimbursement, the buyer is still entitled to reimbursement under subsection (B).

4. Since this section makes the resale of perishable goods an affirmative duty in contrast to a mere right to sell as under the case law, subsection (C) makes it clear that the buyer is liable only for the exercise of good faith in determining whether the value of the goods is sufficiently threatened to justify a quick resale or whether he has waited a sufficient length of time for instructions, or what a reasonable means and place of resale is.

5. A buyer who fails to make a salvage sale when his duty to do so under this section has arisen is subject to damages pursuant to the section on liberal administration of remedies.

Cross References

Point 5: Section 1-106. Compare generally § 2-706.

Definitional Cross References

"Buyer". Section 2-103.

"Good faith". Section 1-201.

"Goods". Section 2-105.

“Merchant”. Section 2-104.
 “Security interest”. Section 1-201.
 “Seller”. Section 2-103.

Library References

Indians ⚡23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⚡179(6).	C.J.S. Sales §§ 192, 194 to 198.
Westlaw Topic Nos. 209, 343.	

§ 2-604. Buyer’s options as to salvage of rightfully rejected goods

Subject to the provisions of the immediately preceding section on perishables, if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller’s account or reship them to him or resell them for the seller’s account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-604 of the Uniform Commercial Code adopted by the states.

Commentary. The basic purpose of this section is twofold: on the one hand it aims at reducing the stake in dispute and on the other at avoiding the pinning of a technical “acceptance” on a buyer who has taken steps towards realization on or preservation of the goods in good faith. This section is essentially a salvage Section and the buyer’s right to act under it is conditioned upon: (1) non-conformity of the goods; (2) due notification of rejection to the seller under the section on manner of rejection;

and (3) the absence of any instructions from the seller which the merchant-buyer has a duty to follow under the preceding section.

This section is designed to accord all reasonable leeway to a rightfully rejecting buyer acting in good faith. The listing of what the buyer may do in the absence of instructions from the seller is intended to be not exhaustive but merely illustrative. This is not a “merchant’s” Section and the options are pure options given to merchant and non-merchant buyers alike. The merchant-buyer, however, may in some instances be under a duty rather than an option to resell under the provisions of the preceding section.

Cross References

Sections 2-602(A), and 2-603(A) and 2-706.

Definitional Cross References

“Buyer”. Section 2-103.
 “Notification”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Seller”. Section 2-103.

Library References

Indians ⚡23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⚡179(6).	C.J.S. Sales §§ 192, 194 to 198.
Westlaw Topic Nos. 209, 343.	

§ 2-605. Waiver of buyer's objections by failure to particularize

A. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

1. Where the seller could have cured it if stated seasonably; or
2. Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

B. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-605 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The present section rests upon a policy of permitting the buyer to give a quick and informal notice of defects in a tender without penalizing him for omissions in his statement, while at the same time protecting a seller who is reasonably misled by the buyer's failure to state curable defects.

2. Where the defect in a tender is one which could have been cured by the seller, a buyer who merely rejects the delivery without stating his objections to it is probably acting in commercial bad faith and seeking to get out of a deal which has become unprofitable. Subsection (A) (1), following the general policy of this article which looks to preserving the deal wherever possible, therefore insists that the seller's right to correct his tender in such circumstances be protected.

3. When the time for cure is past, subsection (A) (2) makes it plain that a seller is entitled upon request to a final statement of objections upon which he can rely. What is needed is that he make clear to the buyer exactly what is being sought. A formal demand under paragraph (2) will be sufficient in the case of a merchant-buyer.

4. Subsection (B) applies to the particular case of documents the same principle which the section on effects of acceptance applies to the case of goods. The matter is dealt with in this section in terms of "waiver" of objections rather than of right to revoke acceptance, partly to avoid any confusion with the problems of acceptance of goods and partly because defects in documents which are not taken as grounds for rejection are generally minor ones. The only defects concerned in the present subsection are defects in the documents which are apparent on their face. Where payment is required against the documents they must be inspected before payment, and the payment then constitutes acceptance of the documents. Under the section dealing with this problem, such acceptance of the documents does not constitute an acceptance of the goods or impair any options or remedies of the buyer for their improper delivery. Where the documents are delivered without requiring such contemporary action as payment from the buyer, the reason of the next section on what constitutes acceptance of goods, applies. Their acceptance by non-objection is therefore postponed until after a reasonable time for their inspection. In either situation, however, the buyer "waives" only what is apparent on the face of the documents.

Cross References

Point 2: Section 2-508.

Point 4: Sections 2-512(B), 2-606(A)(2), 2-607(B).

Definitional Cross References

"Between merchants". Section 2-104.

"Buyer". Section 2-103.

"Seasonably". Section 1-204.

“Seller”. Section 2-103.
 “Writing” and “written”. Section 1-201.

Library References

Sales \S 176, 179(6).
 Westlaw Topic No. 343.
 C.J.S. Sales $\S\S$ 159, 177, 192, 194 to 198.

§ 2-606. What constitutes acceptance of goods

A. Acceptance of goods occurs when the buyer:

1. After a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or
2. Fails to make an effective rejection (§ 2-602(A)), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
3. Does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

B. Acceptance of a part of any commercial unit is acceptance of that entire unit.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-606 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under this article “acceptance” as applied to goods means that the buyer, pursuant to the contract, takes particular goods which have been appropriated to the contract as his own, whether or not he is obligated to do so, and whether he does so by words, action, or silence when it is time to speak. If the goods conform to the contract, acceptance amounts only to the performance by the buyer of one part of his legal obligation.

2. Under this article acceptance of goods is always acceptance of identified goods which have been appropriated to the contract or are appropriated by the contract. There is no provision for “acceptance of title” apart from acceptance in general, since acceptance of title is not material under this article to the detailed rights and duties of the parties. (See § 2-401.) The refinements of the older law between acceptance of goods and of title become unnecessary in view of the provisions of the sections on effect and revocation of acceptance, on effects of identification and on risk of loss, and those sections which free the seller's and buyer's remedies from the complications and confusions

caused by the question of whether title has or has not passed to the buyer before breach.

3. Under paragraph (1), payment made after tender is always one circumstance tending to signify acceptance of the goods but in itself it can never be more than one circumstance and is not conclusive. Also, a conditional communication of acceptance always remains subject to its expressed conditions.

4. Under paragraph (3), any action taken by the buyer, which is inconsistent with his claim that he has rejected the goods, constitutes an acceptance. However, the provisions of paragraph (3) are subject to the sections dealing with rejection by the buyer which permit the buyer to take certain actions with respect to the goods pursuant to his options and duties imposed by those sections, without effecting an acceptance of the goods. The second clause of paragraph (3) modifies some of the prior case law and makes it clear that “acceptance” in law based on the wrongful act of the acceptor is acceptance only as against the wrongdoer and then only at the option of the party wronged.

In the same manner in which a buyer can bind himself, despite his insistence that he is rejecting or has rejected the goods, by an act inconsistent with the seller's ownership under paragraph (3), he can obligate himself by a

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communication of acceptance despite a prior rejection under paragraph (1). However, the sections on buyer's rights on improper delivery and on the effect of rightful rejection, make it clear that after he once rejects a tender, paragraph (1) does not operate in favor of the buyer unless the seller has retendered the goods or has taken affirmative action indicating that he is

holding the tender open. See also Comment 2 to § 2-601.

5. Subsection (B) supplements the policy of the section on buyer's rights on improper delivery, recognizing the validity of a partial acceptance but insisting that the buyer exercise this right only as to whole commercial units.

Cross References

Point 2: Sections 2-401, 2-509, 2-510, 2-607, 2-608 and Part 7.

Point 4: Sections 2-601 through 2-604.

Point 5: Section 2-601.

Definitional Cross References

"Buyer". Section 2-103.

"Commercial unit". Section 2-105.

"Goods". Section 2-105.

"Seller". Section 2-103.

Special Plain Language Comment

This section defines "acceptance" by the buyer. This concept is very important since many of the rights and obligations of buyers and sellers differ after the buyer's acceptance; for ex-

ample, the buyer's right to reject defective goods are much more limited after his "acceptance" of the goods.

Library References

Indians ⇨ 23 to 24.

Sales ⇨ 178.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 189 to 191, 194 to 197.

§ 2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over

A. The buyer must pay the contract rate for any goods accepted.

B. Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for non-conformity.

C. Where a tender has been accepted:

1. The buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

2. If the claim is one for infringement or the like (§ 2-312(C)) and the buyer is sued as a result of such a breach, he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy for liability established by the litigation.

D. The burden is on the buyer to establish any breach with respect to the goods accepted.

E. Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over;

1. He may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.

2. If the claim is one for infringement or the like (§ 2-312(C)) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

F. The provision of subsections (C), (D) and (E) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (§ 2-312(C)).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-607 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under subsection (A), once the buyer accepts a tender the seller acquires a right to its price on the contract terms. In cases of partial acceptance, the price of any part accepted is, if possible, to be reasonably apportioned, using the type of apportionment familiar to the courts in *quantum valebant* cases, to be determined in terms of "the contract rate", which is the rate determined from the bargain in fact (the agreement) after the rules and policies of this article have been brought to bear.

2. Under subsection (B) acceptance of goods precludes their subsequent rejection. Any return of the goods thereafter must be byway of revocation of acceptance under the next section. Revocation is unavailable for a non-conformity known to the buyer at the time of acceptance, except where the buyer has accepted on the reasonable assumption that the non-conformity would be seasonably cured.

3. All other remedies of the buyer remain unimpaired under subsection (B). This is intended to include the buyer's full rights with respect to future installments despite his acceptance of any earlier non-conforming installment.

4. The time of notification is to be determined by applying commercial standards to a merchant buyer. "A reasonable time" for notification from a retail consumer is to be judged by different standards so that in his case it will

be extended, for the rule of requiring notification is designed to defeat commercial bad faith, not to deprive a good faith consumer of his remedy.

The content of the notification need merely be sufficient to let the seller know that the transaction is still troublesome and must be watched. There is no reason to require that the notification which saves the buyer's rights under this section must include a clear statement of all the objects that will be relied on by the buyer, as under the section covering statements of defects upon rejection (§ 2-605). Nor is there reason for requiring the notification to be a claim for damages or of any threatened litigation or other resort to a remedy. The notification which saves the buyer's rights under this article need only be such as informs the seller that the transaction is claimed to involve a breach, and thus opens the way for normal settlement through negotiation.

5. Under this article various beneficiaries are given rights for injuries sustained by them because of the seller's breach of warranty. Such a beneficiary does not fall within the reason of the present section in regard to discovery of defects and the giving of notice within a reasonable time after acceptance, since he has nothing to do with acceptance. However, the reason of this section does extend to requiring the beneficiary to notify the seller that an injury has occurred. What is said above, with regard to the extended time for reasonable notification from the lay consumer after the injury is also applicable here; but even a beneficiary can be

properly held to the use of good faith in notifying, once he has had time to become aware of the legal situation.

6. Subsection (D) unambiguously places the burden of proof to establish breach on the buyer after acceptance. However, this rule becomes one purely of procedure when the tender accepted was non-conforming and the buyer has given the seller notice of breach under subsection (C). For subsection (B) makes it clear that acceptance leaves unimpaired the buyer's right to be made whole, and that right can be exercised by the buyer not only by way of cross-

claim for damages, but also by way of recoupment in diminution or extinction of the price.

7. Subsections (C)(2) and (E)(2) give a warrantor against infringement an opportunity to defend or compromise third party claims or be relieved of his liability. Subsection (E)(1) codifies for all warranties the practice of voucher to defend. Compare § 3-803. Subsection (F) makes these provisions applicable to the buyer's liability for infringement under § 2-312.

8. All of the provisions of the present section are subject to any explicit reservation of rights.

Cross References

Point 1: Section 1-201.
 Point 2: Section 2-608.
 Point 4: Sections 1-204 and 2-605.
 Point 5: Section 2-318.
 Point 6: Section 2-717.
 Point 7: Sections 2-312 and 3-803.
 Point 8: Section 1-207.

Definitional Cross References

"Burden of establishing". Section 1-201.
 "Buyer". Section 2-103.
 "Conform". Section 2-106.
 "Contract". Section 1-201.
 "Goods". Section 2-105.
 "Notifies". Section 1-201.
 "Reasonable time". Section 1-204.
 "Remedy". Section 1-201.
 "Seasonably". Section 1-204.

Library References

Indemnity ⇨40, 79.	Westlaw Topic Nos. 208, 209, 343.
Indians ⇨23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇨179, 285.	C.J.S. Sales §§ 182, 192, 273.

§ 2-608. Revocation of acceptance in whole or in part

A. The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it:

1. On the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or
2. Without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

B. Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

C. A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-608 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The buyer is not required to elect between revocation of acceptance and recovery of damages for breach. Both are now available to him. The non-alternative character of the two remedies is stressed by the terms used in this section. The section no longer speaks of "rescission", a term capable of ambiguous application either to transfer of title to the goods or to the contract of sale and susceptible also of confusion with cancellation for cause of an executed or executory portion of the contract. The remedy under this section is instead referred to simply as "revocation of acceptance" of goods tendered under a contract for sale and involves no suggestion of "election" of any sort.

2. Revocation of acceptance is possible only where the non-conformity substantially impairs the value of the goods to the buyer. For this purpose the test is not what the seller had reason to know at the time of contracting; the question is whether the non-conformity is such as will in fact cause a substantial impairment of value to the buyer though the seller had no advance knowledge as to the buyer's particular circumstances.

3. "Assurances" by the seller under paragraph (2) of subsection (A) can rest as well in the circumstances or in the contract as in explicit language used at the time of delivery. The reason for recognizing such assurances is that they induce the buyer to delay discovery. These are the only assurances involved in paragraph (2). Explicit assurances may be made either in good faith or bad faith. In either case any remedy accorded by this article is available to the buyer under the section on remedies for fraud.

4. Subsection (B) requires notification of revocation of acceptance within a reasonable

time after discovery of the grounds for such revocation. Since this remedy will be generally resorted to only after attempts at adjustment have failed, the reasonable time period should extend in most cases beyond the time in which notification of breach must be given, beyond the time for discovery of non-conformity after acceptance and beyond the time for rejection after tender. The parties may by their agreement limit the time for notification under this section, but the same sanctions and considerations apply to such agreements as are discussed in the comment on manner and effect of rightful rejection.

5. The content of the notice under subsection (B) is to be determined in this case as in others by considerations of good faith, prevention of surprise, and reasonable adjustment. More will generally be necessary than the mere notification of breach required under the preceding section. On the other hand the requirements of the section on waiver of buyer's objections do not apply here. The fact that quick notification of trouble is desirable affords good ground for being slow to bind a buyer by his first statement. Following the general policy of this article, the requirements of the content of notification are less stringent in the case of a non-merchant buyer.

6. Under subsection (B) the policy is one of seeking substantial justice in regard to the condition of goods restored to the seller. Thus the buyer may not revoke his acceptance if the goods have materially deteriorated except by reason of their own defects. Worthless goods, however, need not be offered back and minor defects in the articles reoffered are to be disregarded.

7. The policy of the section allowing partial acceptance is carried over into the present section and the buyer may revoke his acceptance, in appropriate cases, as to the entire lot or any commercial unit thereof.

Cross References

Point 3: Section 2-721.
 Point 4: Sections 1-204, 2-602 and 2-607.
 Point 5: Sections 2-605 and 2-607.
 Point 7: Section 2-601.

Definitional Cross References

"Buyer". Section 2-103.
 "Commercial unit". Section 2-105.
 "Conform". Section 2-106.
 "Goods". Section 2-105.

“Lot”. Section 2-105.
 “Notifies”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Rights”. Section 1-201.
 “Seasonably”. Section 1-204.
 “Seller”. Section 2-103.

Special Plain Language Comment

This section provides that a buyer can reject the goods even after formal acceptance if defects in the goods: (1) substantially impair the value of the goods; *and* (2) he accepted the goods based on the assumption that the defects would be cured or the defects were too difficult to detect initially. However to exercise this right the buyer must “revoke” his acceptance within a “reasonable” time of discovering the defects and must formally notify the seller of his intention to revoke his acceptance.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄ 112.	C.J.S. Sales § 121.
Westlaw Topic Nos. 209, 343.	

§ 2-609. Right to adequate assurance of performance

A. A contract for sale imposes an obligation on each party that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may, if commercially reasonable, suspend any performance for which he has not already received the agreed return.

B. Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

C. Acceptance of any improper delivery or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance.

D. After receipt of a justified demand, failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

History

CJA-1-86 January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-609 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The section rests on the recognition of the fact that the essential purpose of a contract between commercial men is actual performance and they do not bargain merely for a promise, or for a promise plus the right to win a lawsuit and that a continuing sense of reliance and security that the promised performance will

be forthcoming when due, is an important feature of the bargain. If either the willingness or the ability of a party to perform declines materially between the time of contracting and the time for performance, the other party is threatened with the loss of a substantial part of what he has bargained for. A seller needs protection not merely against having to deliver on credit to a shaky buyer, but also against having to procure and manufacture the goods, perhaps turning down other customers. Once he has been

given reason to believe that the buyer's performance has become uncertain, it is an undue hardship to force him to continue his own performance. Similarly, a buyer who believes that the seller's deliveries have become uncertain cannot safely wait for the due date of performance when he has been buying to assure himself of materials for his current manufacturing or to replenish his stock of merchandise.

2. Three measures have been adopted to meet the needs of commercial men in such situations. First, the aggrieved party is permitted to suspend his own performance and any preparation therefor, with excuse for any resulting necessary delay, until the situation has been clarified. "Suspend performance" under this section means to hold up performance pending the outcome of the demand, and includes also the holding up of any preparatory action. This is the same principle which governs the ancient law of stoppage and seller's lien, and also of excuse of a buyer from prepayment if the seller's actions manifest that he cannot or will not perform.

Secondly, the aggrieved party is given the right to require adequate assurance that the other party's performance will be duly forthcoming. This principle is reflected in the familiar clauses permitting the seller to curtail deliveries if the buyer's credit becomes impaired, which when held within the limits of reasonableness and good faith actually express no more than the fair business meaning of any commercial contract.

Third, and finally, this section provides the means by which the aggrieved party may treat the contract as broken if his reasonable grounds for insecurity are not cleared upon within a reasonable time. This is the principle underlying the law of anticipatory breach, whether by way of defective part performance or by repudiation. This section merges these three principles of law and commercial practice into a single theory of general application to all sales agreements looking to future performance.

3. Subsection (B) of the present section requires that "reasonable" grounds and "adequate" assurance as used in subsection (A) be defined by commercial rather than legal standards. The express reference to commercial standards carries no connotation that the obligation of good faith is not equally applicable here.

Under commercial standards and in accord with commercial practice, a ground for insecurity need not arise from or be directly related to the contract in question. The law as to "dependence" or "independence" of promises within a single contract does not control the application of the present section.

Thus a buyer who falls behind in "his account" with the seller, even though the items

involved have to do with separate and legally distinct contracts, impairs the seller's expectation of due performance. Again, under the same test, a buyer who requires precision parts which he intends to use immediately upon delivery, may have reasonable grounds for insecurity if he discovers that his seller is making defective deliveries of such parts to other buyers with similar needs. Thus, too, in a situation such as arose in *Jay Dreher Corporation v. Delco Appliance Corporation*, 93 F.2d 275 (C.C.A. 2, 1937), where a manufacturer gave a dealer an exclusive franchise for the sale of his product but on two or three occasions breached the exclusive dealing clause. Although there was no default in orders, deliveries or payments under the separate sales contract between the parties, the aggrieved dealer would be entitled to suspend his performance of the contract for sale under the present section and demand assurance that the exclusive dealing contract be lived up to. There is no need for an explicit clause tying the exclusive franchise into the contract for the sale of goods since the situation itself ties the agreements together.

The nature of the sales contract enters also into the question of reasonableness. For example, a report from an apparently trustworthy source that the seller had shipped defective goods or was planning to ship them would normally give the buyer reasonable grounds for insecurity. But when the buyer has assumed the risk of payment before inspection of the goods, as in a sales contract on C.I.F. or similar cash against documents terms, that risk is not to be evaded by a demand for assurance. Therefore no ground for insecurity would exist under this section unless the report went to a ground which would excuse payment by the buyer.

4. What constitutes "adequate" assurance of due performance is subject to the same test of factual conditions. For example, where the buyer can make use of a defective delivery, a mere promise by a seller of good repute that he is giving the matter his attention and that the defect will not be repeated, is normally sufficient. Under the same circumstances, however, a similar statement by a known corner cutter might well be considered insufficient without the posting of a guaranty or, if so demanded by the buyer, a speedy replacement of the delivery involved. By the same token where a delivery has defects, even though easily curable, which interfere with easy use by the buyer, no verbal assurance can be deemed adequate which is not accompanied by replacement, repair, money-allowance, or other commercially reasonable cure. A fact situation such as arose in *Corn Products Refining Co. v. Fasola*, 94 N.J.L. 181, 109 A. 505 (1920) offers illustration both of reasonable grounds for insecurity and "adequate" assurance. In that case a contract for

the sale of oils on thirty (30) days credit, two percent (2%) off for payment within ten (10) days, provided that credit was to be extended to the buyer only if his financial responsibility was satisfactory to the seller. The buyer had been in the habit of taking advantage of the discount but at the same time that he failed to make his customary 10-day payment, the seller heard rumors, in fact false, that the buyer's financial condition was shaky. Thereupon, the seller demanded cash before shipment or security satisfactory to him. The buyer sent a good credit report from his banker, expressed willingness to make payments when due on the 30-day terms and insisted on further deliveries under the contract. Under this article the rumors, although false, were enough to make the buyer's financial condition "unsatisfactory" to the seller under the contract clause. Moreover, the buyer's practice of taking the cash discounts is enough, apart from the contract clause, to lay a commercial foundation for suspicion when the practice is suddenly stopped. These matters, however, go only to the justification of the seller's demand for security, or his "reasonable grounds for insecurity".

The adequacy of the assurance given is not measured as in the type of "satisfaction" situation affected with intangibles, such as in personal service cases, cases involving a third party's judgment as final, or cases in which the whole contract is dependent on one party's satisfaction, as in a sale on approval. Here, the seller must exercise good faith and observe commercial standards. This article thus approves the statement of the court in *James B. Berry's Sons Co. Illinois v. Monark Gasoline & Oil Co., Inc.*, 32 F.2d 74 (C.C.A. 8, 1929), that the seller's satisfaction under such a clause must be based upon reason and must not be arbitrary or capricious; and rejects the purely personal "good faith" test of the *Corn Products Refining Co.* case, which held that in the seller's sole judgment, if for *any* reason he was dissatisfied, he was entitled to revoke the credit. In the absence of the buyer's failure to take the two percent (2%) discount as was his custom, the banker's report given in that case would have

been "adequate" assurance under this Code, regardless of the language of the "satisfaction" clause. However, the seller is reasonably entitled to feel insecure at a sudden expansion of the buyer's use of a credit term, and should be entitled either to security or to a satisfactory explanation.

The entire foregoing discussion as to adequacy of assurance by way of explanation is subject to qualification when repeated occasions for the application of this section arise. This Code recognizes that repeated delinquencies must be viewed as cumulative. On the other hand, commercial sense also requires that if repeated claims for assurance are made under this section, the basis for these claims must be increasingly obvious.

5. A failure to provide adequate assurance of performance and thereby to re-establish the security of expectation, results in a breach only "by repudiation" under subsection (D). Therefore, the possibility is continued of retraction of the repudiation under the section dealing with that problem, unless the aggrieved party has acted on the breach in some manner. The 30-day limit on the time to provide assurance is laid down to free the question of reasonable time from uncertainty in later litigation.

6. Clauses seeking to give the protected party exceedingly wide powers to cancel or readjust the contract when ground for insecurity arises must be read against the fact that good faith is a part of the obligation of the contract and not subject to modification by agreement and includes, in the case of a merchant, the reasonable observance of commercial standards of fair dealing in the trade. Such clauses can thus be effective to enlarge the protection given by the present section to a certain extent, to fix the reasonable time within which requested assurance must be given, or to define adequacy of the assurance in any commercially reasonable fashion. But any clause seeking to set up arbitrary standards for action is ineffective under this article. Acceleration clauses are treated similarly in the Articles on Commercial Paper and Secured Transactions.

Cross References

Point 3: Section 1-203.

Point 5: Section 2-611.

Point 6: Sections 1-203 and 1-208 and Articles 3 and 9.

Definitional Cross References

"Aggrieved party". Section 1-201.

"Between merchants". Section 2-104.

"Contract". Section 1-201.

"Contract for sale". Section 2-106.

"Party". Section 1-201.

"Reasonable time". Section 1-204.

“Rights”, Section 1-201.
 “Writing”. Section 1-201.

Special Plain Language Comment

This section embodies the philosophy of the Code to encourage performance of the contract. It permits a method of reassurance to a party to the contract who becomes concerned about the ability of the second party to complete the second party's obligations. The first party can demand in writing some assurance that the sec-

ond party will complete its performance and while waiting for the answer, suspend certain part of the first party's performance. If the second party fails to reply to this request for assurance within thirty (30) days of receiving it, the contract can be considered repudiated.

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 152, 184.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 155, 163, 193.

§ 2-610. Anticipatory repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may—

A. For a commercially reasonable time, await performance by the repudiating party; or

B. Resort to any remedy for breach (§ 2-703 or § 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

C. In either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (§ 2-704).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-610 of the Uniform Commercial Code adopted by the states.

Commentary. 1. With the problem of insecurity taken care of by the preceding section and with provision being made in this article as to the effect of a defective delivery under an installment contract, anticipatory repudiation centers upon an overt communication of intention or an action which renders performance impossible or demonstrates a clear determination not to continue with performance.

Under the present section when such a repudiation substantially impairs the value of the contract, the aggrieved party may at any time resort to his remedies for breach, or he may suspend his own performance while he negotiates with, or awaits performance by, the other party. But if he awaits performance beyond a

commercially reasonable time he cannot recover resulting damages which he should have avoided.

2. It is not necessary for repudiation that performance be made literally and utterly impossible. Repudiation can result from action which reasonably indicates a rejection of the continuing obligation. And, a repudiation automatically results under the preceding section on insecurity when a party fails to provide adequate assurance of due future performance within thirty (30) days after a justifiable demand therefor has been made. Under the language of this section, a demand by one or both parties for more than the contract calls for in the way of counter-performance is not in itself a repudiation nor does it invalidate a plain expression of desire for future performance. However, when under a fair reading it amounts to a statement of intention not to perform except on conditions

which go beyond the contract, it becomes a repudiation.

3. The test chosen to justify an aggrieved party's action under this section is the same as that in the section on breach in installment contracts—namely the substantial value of the contract. The most useful test of substantial value is to determine whether materials inconvenience or injustice will result if the aggrieved party is forced to wait and receive an ultimate tender minus the part or aspect repudiated.

4. After repudiation, the aggrieved party may immediately resort to any remedy he chooses provided he moves in good faith (see § 1-203). Inaction and silence by the aggrieved party may leave the matter open but it cannot be regarded as misleading the repudiating party. Therefore the aggrieved party is left free to proceed at any time with his options under this section, unless he has taken some positive action which in good faith requires notification to the other party before the remedy is pursued.

Cross References

Point 1: Sections 2-609 and 2-612.
Point 2: Section 2-609.
Point 3: Section 2-612.
Point 4: Section 1-203.

Definitional Cross References

"Aggrieved party". Section 1-201.
"Contract". Section 1-201.
"Party". Section 1-201.
"Remedy". Section 1-201.

Library References

Indians ⇄ 23 to 24.
Sales ⇄ 151, 194.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 156, 208.

§ 2-611. Retraction of anticipatory repudiation

A. Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

B. Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (§ 2-609).

C. Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-611 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The repudiating party's right to reinstate the contract is entirely depen-

dent upon the action taken by the aggrieved party. If the latter has cancelled the contract or materially changed his position at any time after the repudiation, there can be no retraction under this section.

2. Under subsection (B) an effective retraction must be accompanied by any assurances demanded under the section dealing with right to adequate assurance. A repudiation is of course sufficient to give reasonable ground for insecurity and to warrant a request for assur-

ance as an essential condition of the retraction. However, after a timely and unambiguous expression of retraction, a reasonable time for the assurance to be worked out should be allowed by the aggrieved party before cancellation.

Cross References

Point 2: Section 2-609.

Definitional Cross References

“Aggrieved party”. Section 1-20 1.

“Cancellation”. Section 2-106.

“Contract”. Section 1-201.

“Party”. Section 1-201.

“Rights”. Section 1-201.

Library References

Indians ⇄23 to 24.

Sales ⇄11, 151, 170, 194.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 16, 156, 169, 208, 223.

§ 2-612. “Installment contract”; breach

A. An “installment contract” is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause “each delivery is a separate contract” or its equivalent.

B. The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (C) and the seller gives adequate assurance of its cure the buyer must accept that installment.

C. Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-612 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The definition of an installment contract is phrased more broadly in this article so as to cover installment deliveries tacitly authorized by the circumstances or by the option of either party.

2. In regard to the apportionment of the price for separate payment this article applies the more liberal test of what can be apportioned rather than the test of what is clearly apportioned by the agreement. This article also recognizes approximate calculation or apportionment of price subject to subsequent adjustment. A provision for separate payment for each lot delivered ordinarily means that the price is at least roughly calculable by units of quantity, but

such a provision is not essential to an “installment contract”. If separate acceptance of separate deliveries is contemplated, no generalized contrast between wholly “entire” and wholly “divisible” contracts has any standing under this article.

3. This article rejects any approach which gives clauses such as “each delivery is a separate contract” their legalistically literal effect. Such contracts nonetheless call for installment deliveries. Even where a clause speaks of “a separate contract for all purposes”, a commercial reading of the language under the section on good faith and commercial standards requires that the singleness of the document and the negotiation, together with the sense of the situation, prevail over any uncommercial and legalistic interpretation.

4. One of the requirements for rejection under subsection (B) is non-conformity substantially impairing the value of the installment in question. However, an installment agreement may require accurate conformity in quality as a condition to the right to acceptance if the need for such conformity is made clear either by express provision or by the circumstances. In such a case the effect of the agreement is to define explicitly what amounts to substantial impairment of value impossible to cure. A clause requiring accurate compliance as condition to the right to acceptance must, however, have some basis in reason, must avoid imposing hardship by surprise and is subject to waiver or to displacement by practical construction.

Substantial impairment of the value of an installment can turn not only on the quality of the goods but also on such factors as time, quantity, assortment, and the like. It must be judged in terms of the normal or specifically known purposes of the contract. The defect in required documents refers to such matters as the absence of insurance documents under a C.I.F. contract, falsity of a bill of lading, or one failing to show shipment within the contract period or to the contract destination. Even in such cases, however, the provisions on cure of tender apply if appropriate documents are readily procurable.

5. Under subsection (B) an installment delivery must be accepted if the nonconformity is curable and the seller gives adequate assurance of cure. Cure of non-conformity of an installment in the first instance can usually be afforded by an allowance against the price, or in the case of reasonable discrepancies in quantity either by a further delivery or a partial rejection. This article requires reasonable action by a buy-

er in regard to discrepant delivery and good faith requires that the buyer make any reasonable minor outlay of time or money necessary to cure an overshipment by severing out an acceptable percentage thereof. The seller must take over a cure which involves any material burden; the buyer’s obligation reaches only to cooperation. Adequate assurance for purposes of subsection (B) is measured by the same standards as under the section on right to adequate assurance of performance.

6. Subsection (C) is designed to further the continuance of the contract in the absence of an overt cancellation. The question arising when an action is brought as to a single installment only is resolved by making such action waive the right of cancellation. This involves merely a defect in one or more installments, as contrasted with the situation where there is a true repudiation within the section on anticipatory repudiation. Whether the nonconformity in any given installment justifies cancellation as to the future depends, not on whether such nonconformity indicates an intent or likelihood that the future deliveries will also be defective, but whether the nonconformity substantially impairs the value of the whole contract. If only the seller’s security in regard to future installments is impaired, he has the right to demand adequate assurances of proper future performance but has not an immediate right to cancel the entire contract. It is clear under this article, however, that defects in prior installments are cumulative in effect so that acceptance does not wash out the defect “waived”. The rule as to buyer’s default is put on the same footing as that in regard to seller’s default.

7. Under the requirement of seasonable notification of cancellation under subsection (C), a buyer who accepts a non-conforming installment which substantially impairs the value of the entire contract should properly be permitted to withhold his decision as to whether or not to cancel pending a response from the seller as to his claim for cure or adjustment. Similarly, a seller may withhold a delivery pending payment for prior ones, at the same time delaying his decision as to cancellation. A reasonable time for notifying of cancellation, judged by commercial standards under the section on good faith extends of course to include the time covered by any reasonable negotiation in good faith. However, during this period the defaulting party is entitled, on request, to know whether the contract is still in effect, before he can be required to perform further.

Cross References

Point 2: Sections 2-307 and 2-607.

Point 3: Section 1-203.

Point 5: Sections 2-208 and 2-609.

Point 6: Section 2-610.

Definitional Cross References

“Action”. Section 1-201.
 “Aggrieved party”. Section 1-201.
 “Buyer”. Section 2-103.
 “Cancellation”. Section 2-106.
 “Conform”. Section 2-106.
 “Contract”. Section 1-201.
 “Lot”. Section 2-105.
 “Notifies”. Section 1-201.
 “Seasonably”. Section 1-204.
 “Seller”. Section 2-103.

Library References

Indians $\S\S$ 23 to 24.	C.J.S. Indians $\S\S$ 12, 30 to 31.
Sales $\S\S$ 82(4), 163, 180.	C.J.S. Sales $\S\S$ 181, 192.
Westlaw Topic Nos. 209, 343.	

§ 2-613. Casualty to identified goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a “no arrival, no sale” term (§ 2-324) then:

- A. If the loss is total the contract is avoided; and
- B. If the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-613 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Where goods whose continued existence is presupposed by the agreement are destroyed without fault of either party, the buyer is relieved from his obligation but may at his option take the surviving goods at a fair adjustment. “Fault” is intended to include negligence and not merely wilful wrong. The buyer is expressly given the right to inspect the goods in order to determine whether he wishes to avoid the contract entirely or to take the goods with a price adjustment.

2. The section applies whether the goods were already destroyed at the time of contract-

ing without the knowledge of either party or whether they are destroyed subsequently but before the risk of loss passes to the buyer. Where under the agreement, including of course usage of trade, the risk has passed to the buyer before the casualty, the section has no application. Beyond this, the essential question in determining whether the rules of this section are to be applied is whether the seller has or has not undertaken the responsibility for the continued existence of the goods in proper condition through the time of agreed or expected delivery.

3. The section on the term “no arrival, no sale” makes clear that delay in arrival, quite as much as physical change in the goods gives the buyer the options set forth in this section.

Cross References

Point 3: Section 2-324.

Definitional Cross References

“Buyer”. Section 2-103.
 “Conform”. Section 2-106.
 “Contract”. Section 1-201.
 “Fault”. Section 1-201.
 “Goods”. Section 2-105.
 “Party”. Section 1-201.
 “Rights”. Section 1-201.
 “Seller”. Section 2-103.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞ 150(2), 172, 217.	C.J.S. Sales §§ 157, 210 to 212.
Westlaw Topic Nos. 209, 343.	

§ 2-614. Substituted performance

A. Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

B. If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-614 of the Uniform Commercial Code adopted by the states. The Navajo Nation has not adopted Article 5 of the Uniform Commercial Code and rights of the parties governed under the Article is governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. Subsection (A) requires the tender of a commercially reasonable substituted performance where agreed to facilities have failed or become commercially impracticable. Under this article, in the absence of specific agreement, the normal or usual facilities enter into the agreement either through the circumstances, usage of trade or prior course of dealing.

This section appears between § 2-613 on casualty to identified goods and the next section

on excuse by failure of presupposed conditions, both of which deal with excuse and complete avoidance of the contract where the occurrence or non-occurrence of a contingency which was a basic assumption of the contract makes the expected performance impossible. The distinction between the present section and those sections lies in whether the failure or impossibility of performance arises in connection with an incidental matter or goes to the very heart of the agreement. The differing fines of solution are contrasted in a comparison of *International Paper Co. v. Rockefeller*, 161 App. Div. 180, 146 N.Y.S. 371 (1914) and *Meyer v. Sullivan*, 40 Cal. App. 723, 181 P. 847 (1919). In the former case a contract for the sale of spruce to be cut from a particular tract of land was involved. When a fire destroyed the trees growing on that tract the seller was held excused since performance

was impossible. In the latter case the contract called for delivery of wheat "F.O.B. Kosmos Steamer at Seattle". The war led to cancellation of that line's sailing schedule after space had been duly engaged and the buyer was held entitled to demand substituted delivery at the warehouse on the line's loading dock. Under this article, of course, the seller would also be entitled, had the market gone the other way to make a substituted tender in that manner.

There must, however, be a true commercial impracticability to excuse the agreed to performance and justify a substituted performance. When this is the case a reasonable substituted performance tendered by either party should excuse him from strict compliance with contract terms which do not go to the essence of the agreement.

2. The substitution provided in this section as between buyer and seller does not carry over into the obligation of a financing agency under

a letter of credit, since such an agency is entitled to performance which is plainly adequate on its face and without need to look into commercial evidence outside of the documents. See Article 5. The Navajo Nation has not adopted Article 5 of the Uniform Commercial Code and the rights of parties which would be governed under that Article are governed by Navajo law pursuant to 7 N.N.C. § 204.

3. Under subsection (B) where the contract is still executory on both sides, the seller is permitted to withdraw unless the buyer can provide him with a commercially equivalent return despite the governmental regulation. Where, however, only the debt for the office remains, a larger leeway is permitted. The buyer may pay in the manner provided by the regulation even though this may not be commercially equivalent provided that the regulation is not "discriminatory, oppressive or predatory".

Definitional Cross References

"Buyer". Section 2-103.
 "Fault". Section 1-201.
 "Party". Section 1-201.
 "Seller". Section 2-103.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞ 83, 190.	C.J.S. Sales § 157.
Westlaw Topic Nos. 209, 343.	

§ 2-615. Excuse by failure of presupposed conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

A. Delay in delivery or non-delivery in whole or in part by a seller who complies with subsections (B) and (C) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency, the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

B. Where the causes mentioned in subsection (A) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

C. The seller must notify the buyer seasonably that there will be delay or non-delivery and when allocation is required under subsection (B), of the estimated quota thus made available for the buyer.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-615 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section excuses a seller from timely delivery of goods contracted for where his performance has become commercially impracticable because of unforeseen supervening circumstances not within the contemplation of the parties at the time of contracting. The destruction of specific goods and the problem of the use of substituted performance on points other than delay or quantity, treated elsewhere in this article, must be distinguished from the matter covered by this section.

2. The present section deliberately refrains from any effort at an exhaustive expression of contingencies and is to be interpreted in all cases sought to be brought within its scope in terms of its underlying reason and purpose.

3. The first test for excuse under this article in terms of basic assumption is a familiar one. The additional test of commercial impracticability (as contrasted with "impossibility", "frustration of performance" or "frustration of the venture") has been adopted in order to call attention to the commercial character of the criterion chosen by this article.

4. Increased cost alone does not excuse performance unless the rise in cost is due to some unforeseen contingency which alters the essential nature of the performance. Other factors such as the express terms of the contract, the contract's purpose, and custom, usage of the trade or prior dealings are considered. Neither is a rise or a collapse in the market in itself a justification, for that is exactly the type of business risk which business contracts made at fixed prices are intended to cover. But a severe shortage of raw materials or of supplies due to a contingency such as war, embargo, local crop failure, unforeseen shutdown of major sources of supply or the like, which either causes a marked increase in cost or altogether prevents the seller from securing supplies necessary to his performance, is within the contemplation of this section.

5. Where a particular source of supply is exclusive under the agreement and fails through casualty, the present section applies rather than the provision on destruction or deterioration of specific goods. The same holds true where a particular source of supply is shown by the circumstances to have been contemplated or assumed by the parties at the time of contracting.

There is no excuse under this section, however, unless the seller has employed all due measures to assure himself that this source will not fail.

In the case of failure of production by an agreed source for causes beyond the seller's control, the seller should, if possible, be excused since production by an agreed source is without more a basic assumption of the contract. Such excuse should not result in relieving the defaulting supplier from liability nor in dropping into the seller's lap an unearned bonus of damages over. The flexible adjustment machinery of this article provides the solution under the provision on the obligation of good faith. A condition to his making good the claim of excuse is the turning over to the buyer of his rights against the defaulting source of supply to the extent of the buyer's contract in relation to which excuse is being claimed.

6. In situations in which neither sense nor justice are served by either answer when the issue is posed in flat terms of "excuse" or "no excuse", adjustment under the various provisions of this article is necessary, especially the sections on good faith, on insecurity and assurance and on the reading of all provisions in the light of their purposes, and the general policy of this Code to use equitable principles in furtherance of commercial standards and good faith.

7. The failure of conditions which go to convenience or collateral values rather than to the commercial practicability of the main performance does not amount to a complete excuse. However, good faith and the reason of the present section and of the preceding one may properly be held to justify and even to require any needed delay involved in a good faith inquiry seeking a readjustment of the contract terms to meet the new conditions.

8. The provisions of this section are made subject to assumption of greater liability by agreement and such agreement is to be found not only in the expressed terms of the contract but in the circumstances surrounding the contracting, in trade usage and the like. Thus the exemptions of this section do not apply when the contingency in question is sufficiently foreshadowed at the time of contracting to be included among the business risks which are fairly to be regarded as part of the dickered terms, either consciously or as a matter of reasonable, commercial interpretation from the circumstances. The exemption otherwise present through usage of trade under the present section may also be expressly negated by the language of the agreement. Generally, express

agreements as to exemptions designed to enlarge upon or supplant the provisions of this section are to be read in the light of mercantile sense and reason, for this section itself sets up the commercial standard for normal and reasonable interpretation and provides a minimum beyond which agreement may not go.

Agreement can also be made in regard to the consequences of exemption as laid down in subsections (B) and (C) and the next section on procedure on notice claiming excuse.

9. The case of a farmer who has contracted to sell crops to be grown on designated land may be regarded as falling either within the section on casualty to identified goods or this section, and he may be excused, when there is a failure of the specific crop, either on the basis of the destruction of identified goods or because of the failure of a basic assumption of the contract. Exemption of the buyer in the case of a "requirements" contract presents a special situation which is covered by the "Output and Requirements" section both as to assumption and allocation of the relevant risks. But when a contract by a manufacturer to buy fuel or raw material makes no specific reference to a particular venture and no such reference may be drawn from the circumstances, commercial understanding views it as a general deal in the general market and not conditioned on any assumption of the continuing operation of the buyer's plant. Even when notice is given by the buyer that the supplies are needed to fill a specific contract of a normal commercial kind, commercial understanding does not see such a supply contract as conditioned on the continuance of the buyer's further contract for outlet. On the other hand, where the buyer's contract is in reasonable commercial understanding conditioned on a definite and specific venture or assumption as, for instance, a war procurement subcontract known to be based on a prime contract which is subject to termination, or a supply contract for a particular construction venture, the reason of the present section may well apply and entitle the buyer to the exemption.

10. Following its basic policy of using commercial practicability as a test for excuse, this section recognizes as of equal significance either a foreign or domestic regulation and disregards any technical distinctions between "law", "regulation", "order" and the like. Nor does it make the present action of the seller depend upon the eventual judicial determination of the legality of the particular governmental action. The seller's good faith belief in the validity of the regulation is the test under this article and the best evidence of his good faith is the general commercial acceptance of the regulation. However, governmental interference cannot excuse unless it truly "supervenes" in such a manner as to be beyond the seller's or buyer's assumption of risk. And any action by the party claiming excuse which causes or colludes in inducing the governmental action preventing his performance would be in breach of good faith and would destroy his exemption.

11. An excused seller must fulfill his obligations under the contract to the extent which the supervening contingency permits, and if the situation is such that his customers are generally affected he must take account of all in supplying one. Subsections (A) and (B), therefore, explicitly permit in any proration a fair and reasonable attention to the needs of regular customers who are probably relying on spot orders for supplies. Customers at different stages of the manufacturing process may be fairly treated by including the seller's manufacturing requirement. A fortiori, the seller may also take account of contracts later in date than the one in question. The fact that such spot orders may be closed at an advanced price causes no difficulty, since any allocation which exceeds normal past requirements will not be reasonable. However, good faith requires, when prices have advanced, that the seller exercise real care in making his allocations, and in case of doubt his contract customers should be favored and supplies prorated evenly among them regardless of price. Save for the extra care thus required by changes in the market, this section seeks to leave every reasonable business leeway to the seller.

Cross References

Point 1: Sections 2-613 and 2-614.
 Point 2: Section 1-102.
 Point 5: Sections 1-203 and 2-613.
 Point 6: Sections 1-102, 1-203 and 2-609.
 Point 7: Section 2-614.
 Point 8: Sections 1-201, 2-302 and 2-616.
 Point 9: Sections 1-102, 2-306 and 2-613.

Definitional Cross References

"Between merchants". Section 2-104.
 "Buyer". Section 2-103.

“Contract”. Section 1-201.
 “Contract for sale”. Section 2-106.
 “Good faith”. Section 1-201.
 “Merchant”. Section 2-104.
 “Notifies”. Section 1-201.
 “Seasonably”. Section 1-204.
 “Seller”. Section 2-103.

Special Plain Language Comment

In certain rare instances a party may be excused of its performance under a contract without “breaching” the contract because a change in the underlying circumstances has made his performance “commercially impracticable”.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞85(2), 172.	C.J.S. Sales §§ 210 to 212.
Westlaw Topic Nos. 209, 343.	

§ 2-616. Procedure on notice claiming excuse

A. Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (§ 2-612), then also as to the whole:

1. Terminate and thereby discharge any unexecuted portion of the contract; or
2. Modify the contract by agreeing to take his available quota in substitution.

B. If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty (30) days the contract lapses with respect to any deliveries affected.

C. The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-616 of the Uniform Commercial Code adopted by the states.

Commentary. This section seeks to establish simple and workable machinery for providing certainty as to when a supervening and excusing contingency “excuses” the delay, “discharges” the contract, or may result in a waiver of the delay by the buyer. When the seller notifies, in accordance with the preceding section, claiming excuse, the buyer may acquiesce, in

which case the contract is so modified. No consideration is necessary in a case of this kind to support such a modification. If the buyer does not elect so to modify the contract, he may terminate it and under subsection (B) his silence after receiving the seller’s claim of excuse operates as such a termination. Subsection (C) denies effect to any contract clause made in advance of trouble which would require the buyer to stand ready to take delivery whenever the seller is excused from delivery by unforeseen circumstances.

Cross References

Point 1: Sections 2-209 and 2-615.

Definitional Cross References

“Buyer”. Section 2-103.
 “Contract”. Section 1-201.
 “Installment contract”. Section 2-612.
 “Notification”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Seller”. Section 2-103.
 “Termination”. Section 2-106.
 “Written”. Section 1-201.

Special Plain Language Comment

This section deals with a buyer's options if a seller has acted properly under § 2-615 and notified the buyer of the seller's inability to perform. The buyer may treat the contract as an installment contract if the original contract involved more than a single item and where only part of the original contract's performance was excused pursuant to § 2-615. If the seller's action substantially impairs the value of the

original contract the buyer can cause the rest of the original contract to be terminated by remaining silent for thirty (30) days after the receipt of notice from the seller. If the buyer wishes to accept the contract modified by the seller's actions pursuant to § 2-615 he must indicate his willingness within that 30-day period of receiving notice from the seller.

Library References

Indians ⇄23 to 24.
 Sales ⇄89, 116.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 109 to 114, 117, 125, 127 to 129, 199.

Part 7. Remedies**§ 2-701. Remedies for breach of collateral contracts not impaired**

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-701 of the Uniform Commercial Code adopted by the states.

Commentary. Whether a claim for breach of an obligation collateral to the contract for sale

requires separate trial to avoid confusion of issues is beyond the scope of this article; but contractual arrangements which as a business matter enter vitally into the contract should be considered a part thereof in so far as cross-claims or defenses are concerned.

Definitional Cross References

“Contract for sale”. Section 2-106.
 “Remedy”. Section 1-201.

Library References

Indians ⇄23 to 24.

Sales ⇄369, 404, 425.

Westlaw Topic Nos. 209, 343.
C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 237, 278 to 280, 284 to 286,
288, 325 to 326, 363 to 364, 374 to 376,
395.

§ 2-702. Seller's remedies on discovery of buyer's insolvency

A. Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery, under this article (§ 2-705).

B. Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten (10) days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three (3) months before delivery the 10-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

C. The seller's right to reclaim under subsection (B) is subject to the rights of a buyer in ordinary course of business or other good faith purchaser under this article (§ 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-702 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The seller's right to withhold the goods or to stop delivery except for cash when he discovers the buyer's insolvency is made explicit in subsection (A) regardless of the passage of title, and the concept of stoppage has been extended to include goods in the possession of any bailee who has not yet attorned to the buyer.

2. Subsection (B) takes as its base-line the proposition that any receipt of goods on credit by an insolvent buyer amounts to a tacit business misrepresentation of solvency and therefore is fraudulent as against the particular seller. This article makes discovery of the buyer's

insolvency and demand within a 30-day period a condition of the right to reclaim goods on the ground. The 30-day limitation period operates from the time of receipt of the goods.

An exception to this time limitation is made when a written misrepresentation of solvency has been made to the particular seller within three (3) months prior to the delivery. To fall within the exception the statement of solvency must be in writing, addressed to the particular seller and dated within three (3) months of the delivery.

3. Because the right of the seller to reclaim goods under this section constitutes preferential treatment as against the buyer's other creditors, subsection (C) provides that such reclamation bars all his other remedies as to the goods involved.

Cross References

Point 1: Sections 2-401 and 2-705.
Compare § 2-502.

Definitional Cross References

"Buyer". Section 2-103.
"Buyer in ordinary course of business". Section 1-201.
"Contract". Section 1-201.
"Good faith". Section 1-201.
"Goods". Section 2-105.

“Insolvent”. Section 1-201.
 “Person”. Section 1-201.
 “Purchaser”. Section 1-201.
 “Receipt of goods”. Section 2-103.
 “Remedy”. Section 1-201.
 “Rights”. Section 2-103.
 “Seller”. Section 2-103.
 “Writing”. Section 1-201.

Special Plain Language Comment

The seller on credit is given a special preference over other creditors on discovery of the insolvency of the buyer. Insolvency is defined in § 1-201 (W). The seller may demand payment in cash for future deliveries of goods. If the goods have already been delivered to the buyer the seller may reclaim the goods but he must make his claim to the goods within ten

(10) days of their receipt by the buyer. However, this 10-day limit does not apply to situations where the buyer has recently (within three (3) months) given the seller a written representation that the buyer is solvent. However, this right to reclaim may be lost if the buyer sells the goods to certain types of third parties.

Library References

Indians ⇄23 to 24.
 Sales ⇄291, 316.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 325 to 326, 333, 339 to 343.

§ 2-703. Seller’s remedies in general

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (§ 2-612), then also with respect to the whole undelivered balance, the aggrieved seller may.

- A. Withhold delivery of such goods;
- B. Stop delivery by any bailee as hereafter provided (§ 2-705);
- C. Proceed under the next section respecting goods still unidentified to the contract;
- D. Resell and recover damages as hereafter provided (§ 2-706);
- E. Recover damages for non-acceptance (§ 2-708) or in a proper case the price (§ 2-709);
- F. Cancel.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-703 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is an index Section which gathers together in one convenient place all of the various remedies open to a seller for any breach by the buyer. This article rejects any doctrine of election of remedy as a

fundamental policy and thus the remedies are essentially cumulative in nature and include all of the available remedies for breach. Whether the pursuit of one remedy bars another depends entirely on the facts of the individual case.

2. The buyer’s breach which occasions the use of the remedies under this section may involve only one lot or delivery of goods, or may involve all of the goods which are the subject

matter of the particular contract. The right of the seller to pursue a remedy as to all the goods when the breach is as to only one or more lots is covered by the section on breach in installment contracts. The present section deals only with the remedies available after the goods involved in the breach have been determined by that section.

3. In addition to the typical case of refusal to pay or default in payment, the language in the preamble, "fails to make a payment due", is

intended to cover the dishonor of a check on due presentment, or the non-acceptance of a draft, and the failure to furnish an agreed letter of credit.

4. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is unenforceable by action unless a different effect is specifically prescribed (§ 1-106).

Cross References

Point 2: Section 2-612.
Point 3: Section 2-325.
Point 4: Section 1-106.

Definitional Cross References

"Aggrieved party". Section 1-201.
"Buyer". Section 2-103.
"Cancellation". Section 2-106.
"Contract". Section 1-201.
"Goods". Section 2-105.
"Remedy". Section 1-201.
"Seller". Section 2-103.

Library References

Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales \Leftrightarrow 289, 300, 316, 332, 340, 369.	C.J.S. Sales §§ 325 to 326, 328, 333, 339 to 344, 348, 363 to 364.
Westlaw Topic Nos. 209, 343.	

§ 2-704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods

A. An aggrieved seller under the preceding section may:

1. Identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
2. Treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

B. Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-704 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section gives an aggrieved seller the right at the time of breach to identify to the contract any conforming finished goods, regardless of the resalability, and to use reasonable judgment as to completing unfin-

ished goods. It thus makes the goods available for resale under the resale Section, the seller's primary remedy, and in the special case in which resale is not practicable, allows the action for the price which would then be necessary to give the seller the value of his contract.

2. Under this article the seller is given express power to complete manufacture or pro-

curement of goods for the contract unless the exercise of reasonable commercial judgment as to the facts as they appear at the time he learns of the breach makes it clear that such action will result in a material increase in damages. The burden is on the buyer to show the commercially unreasonable nature of the seller's action in completing manufacture.

Cross References

Sections 2-703 and 2-706.

Definitional Cross References

"Aggrieved party". Section 1-201.

"Conforming". Section 2-106.

"Contract". Section 1-201.

"Goods". Section 2-105.

"Rights". Section 1-201.

"Seller". Section 2-103.

Library References

Indians \S 23 to 24.

Sales \S 332.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians $\S\S$ 12, 30 to 31.

C.J.S. Sales \S 344.

§ 2-705. Seller's stoppage of delivery in transit or otherwise

A. The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (§ 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

B. As against such buyer the seller may stop delivery until:

1. Receipt of the goods by the buyer; or
2. Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
3. Such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
4. Negotiation to the buyer of any negotiable document of title covering the goods.

C. 1. To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

2. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

3. If a negotiable document of title has been issued for goods the bailee is not obligated to obey a notification to stop until surrender of the document.

4. A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-705 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) applies the stoppage principle to other bailees as well as carriers.

It also expands the remedy to cover the situations, in addition to buyer's insolvency, specified in the subsection. But since stoppage is a burden in any case to carriers, and might be a very heavy burden to them if it covered all small shipments in all these situations, the right to stop for reasons other than insolvency is limited to carload, truckload, planeload or larger shipments. The seller shipping to a buyer of doubtful credit can protect himself by shipping C.O.D.

Where stoppage occurs for insecurity it is merely a suspension of performance, and if assurances are duly forthcoming from the buyer the seller is not entitled to resell or divert.

Improper stoppage is a breach by the seller if it effectively interferes with the buyer's right to due tender under the section on manner of tender of delivery. However, if the bailee obeys an unjustified order to stop he may also be liable to the buyer. The measure of his obligation is dependent on the provisions of the Documents of Title article of Article 7 of the Uniform Commercial Code. This article has not been adopted by the Navajo Nation and the rights of the parties which would be governed under that Article are governed by Navajo law. 7 N.N.C. § 204. Subsection (C)(2) therefore gives him a right of indemnity as against the seller in such a case.

2. "Receipt by the buyer" includes receipt by the buyer's designated representative, the sub-purchaser, when shipment is made direct to him and the buyer himself never receives the goods. It is entirely proper under this article that the seller, by making such direct shipment

to the sub-purchaser, be regarded as acquiescing in the latter's purchase and as thus barred from stoppage of the goods as against him.

As between the buyer and the seller, the latter's right to stop the goods at any time until they reach the place of final delivery is recognized by this section.

Under subsections (C) (3) and (4), the carrier is under no duty to recognize the stop order of a person who is a stranger to the carrier's contract. But the seller's right as against the buyer to stop delivery remains, whether or not the carrier is obligated to recognize the stop order. If the carrier does obey it, the buyer cannot complain merely because of that circumstance; and the seller becomes obligated under subsection (C) (2) to pay the carrier any ensuing damages or charges.

3. A diversion of a shipment is not a "reshipment" under subsection (B)(3) when it is merely an incident to the original contract of transportation. Nor is the procurement of "exchange bills" of lading which change only the name of the consignee to that of the buyer's local agent but do not alter the destination of a reshipment.

Acknowledgment by the carrier as a "warehouseman" within the meaning of this article requires a contract of a truly different character from the original shipment, a contract not in extension of transit but as a warehouseman.

4. Subsection (C)(3) makes the bailee's obedience of a notification to stop conditional upon the surrender of any outstanding negotiable document.

5. Any charges or losses incurred by the carrier in following the seller's orders, whether or not he was obligated to do so, fall to the seller's charge.

6. After an effective stoppage under this section the seller's rights in the goods are the same as if he had never made a delivery.

Cross References

Sections 2-702 and 2-703.

Point 1: Sections 2-503 and 2-609.

Point 2: Section 2-103.

Definitional Cross References

"Buyer". Section 2-103

"Contract for sale". Section 2-106.

"Document of title". Section 1-201.

"Goods". Section 2-105.

"Insolvent". Section 1-201.

“Notification”. Section 1-201.
 “Receipt of goods”. Section 2-103.
 “Rights”. Section 1-201.
 “Seller”. Section 2-103.

Library References

Indians ⚡23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⚡289.	C.J.S. Sales §§ 325 to 326, 333.
Westlaw Topic Nos. 209, 343.	

§ 2-706. Seller’s resale including contract for resale

A. Under the conditions stated in § 2-703 on Seller’s remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (§ 2-710), but less expenses saved in consequence of the buyer’s breach.

B. Except as otherwise provided in subsection (C) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

C. Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

D. Where the resale is at public sale:

1. Only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

2. It must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

3. If the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

4. The seller may buy.

E. A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

F. The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (§ 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (§ 2-711 (Q)).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-706 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The only condition precedent to the seller's right of resale under subsection (A) is a breach by the buyer within the section on the seller's remedies in general or insolvency. Under this section the seller may resell the goods after any breach by the buyer. Thus, an anticipatory repudiation by the buyer gives rise to any of the seller's remedies for breach, and to the right of resale. This principle is supplemented by subsection (B) which authorizes a resale of goods which are not in existence or were not identified to the contract before the breach.

2. In order to recover the damages prescribed in subsection (A) the seller must act "in good faith and in a commercially reasonable manner" in making the resale. Failure to act properly under this section deprives the seller of the measure of damages here provided and relegates him to that provided in § 2-708.

Under this article the seller resells by authority of law, in his own behalf, for his own benefit and for the purpose of fixing his damages. The theory of a seller's agency is thus rejected.

3. If the seller complies with the prescribed standard of duty in making the resale, he may recover from the buyer the damages provided for in subsection (A). Evidence of market of current prices at any particular time or place is relevant only on the question of whether the seller acted in a commercially reasonable manner in making the resale.

The distinction drawn by some courts between cases where the title had not passed to the buyer and the seller had resold as owner, and cases where the title had passed and the seller had resold by virtue of his lien on the goods, is rejected.

4. Subsection (B) frees the remedy of resale from legalistic restrictions and enables the seller to resell in accordance with reasonable commercial practices so as to realize as high a price as possible in the circumstances. By "public" sale is meant a sale by auction. A "private" sale may be effected by solicitation and negotiations conducted either directly or through a broker. In choosing between a public and private sale the character of the goods must be considered and relevant trade practices and usages must be observed.

5. Subsection (B) merely clarifies the common law rule that the time for resale is a reasonable time after the buyer's breach, by

using the language "commercially reasonable". What is such a reasonable time depends upon the nature of the goods, the condition of the market and the other circumstances of the case; its length cannot be measured by any legal yardstick or divided into degrees. Where a seller contemplating resale receives a demand from the buyer for inspection under the section of preserving evidence of goods in dispute, the time for resale may be appropriately lengthened.

On the question of the place for resale, subsection (B) goes to the ultimate test, the commercial reasonableness of the seller's choice as to the place for an advantageous resale. This article rejects the theory that the seller is required to resell at the agreed place for delivery and that a resale elsewhere can be permitted only in exceptional cases.

6. The purpose of subsection (B) being to enable the seller to dispose of the goods to the best advantage, he is permitted in making the resale to depart from the terms and conditions of the original contract for sale to any extent "commercially reasonable" in the circumstances.

7. The provision of subsection (B) that the goods need not be in existence to be resold applies when the buyer is guilty of anticipatory repudiation of a contract for future goods, before the goods or some of them have come into existence. In such a case the seller may exercise the right of resale and fix his damages by "one or more contracts to sell" the quantity of conforming future goods affected by the repudiation. The companion provision of subsection (B) that resale maybe made although the goods were not identified to the contract prior to the buyer's breach, likewise contemplates an anticipatory repudiation by the buyer but occurring after the goods are in existence. If the goods so identified conform to the contract, their resale will fix the seller's damages quite as satisfactorily as if they had been identified before the breach.

8. Where the resale is to be by private sale, subsection (C) requires that reasonable notification of the seller's intention to resell must be given to the buyer. The length of notification of a private sale depends upon the urgency of the matter. Notification of the time and place of this type of sale is not required.

Subsection (D)(2) requires that the seller give the buyer reasonable notice of the time and place of a public resale so that he may have an opportunity to bid or to secure the attendance of other bidders. An exception is made in the

case of goods "which are perishable or threaten to decline speedily in value".

9. Since there would be no reasonable prospect of competitive bidding elsewhere, subsection (D) requires that a public resale "must be made at a usual place or market for public sale if one is reasonably available;" i.e., a place or market which prospective bidders may reasonably be expected to attend. Such a market may still be "reasonably available" under this subsection, though at a considerable distance from the place where the goods are located. In such a case the expense of transporting the goods for resale is recoverable from the buyer as part of the seller's incidental damages under subsection (A). However, the question of availability is one of commercial reasonableness in the circumstances and if such "usual" place or market is not reasonably available, a duly advertised public resale may be held at another place if it is one which prospective bidders may reasonably be expected to attend, as distinguished from a place where there is no demand whatsoever for goods of the kind.

Subsection (D)(1) qualifies the last sentence of subsection (B) with respect to resales of unidentified and future goods at public sale. If conforming goods are in existence the seller may identify them to the contract after the buyer's breach and then resell them at public sale. If the goods have not been identified, however, he may resell them at public sale only as "future"

goods and only where there is a recognized market for public sale of futures in goods of the kind.

The provisions of of subsection (D)(3) are intended to permit intelligent bidding.

The provisions of subsection (D)(4) permitting the seller to bid and, of course, to become the purchaser, benefits the original buyer by tending to increase the resale price and thus decreasing the damages he will have to pay.

10. This article in subsection (E) permits a good faith purchaser at resale to take a good title as against the buyer even though the seller fails to comply with the requirements of this section.

11. Under subsection (F), the seller retains profit, if any, without distinction based on whether or not he had a lien since this article divorces the question of passage of title to the buyer from the seller's right of resale or the consequences of its exercise. On the other hand, where "a person in the position of a seller" or a buyer acting under the section on buyer's remedies exercises his right of resale under the present section he does so only for the limited purpose of obtaining cash, for his "security interest" in the goods. Once that purpose has been accomplished any excess in the resale price belongs to the seller to whom an accounting must be made as provided in the last sentence of subsection (F).

Cross References

Point 1: Sections 2-610, 2-702 and 2-703.
 Point 2: Section 1-201.
 Point 3: Sections 2-708 and 2-710.
 Point 4: Section 2-328.
 Point 8: Section 2-104.
 Point 9: Section 2-710.
 Point 11: Sections 2-401, 2-707 and 2-711 (C).

Definitional Cross References

"Buyer". Section 2-103.
 "Contract". Section 1-201.
 "Contract for sale". Section 2-106.
 "Good faith". Section 2-103.
 "Goods". Section 2-105.
 "Merchant". Section 2-104.
 "Notification". Section 1-201.
 "Person in position of seller". Section 2-707.
 "Purchase". Section 1-201.
 "Rights". Section 1-201.
 "Sale". Section 2-106.
 "Security interest". Section 1-201.
 "Seller". Section 2-103.

Special Plain Language Comment

This right of resale is the most common remedy for sellers in the case of repudiation or breach of the contract by the buyer. Generally

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a seller does not wish to retain the rejected or withheld goods and he will resell them. The seller is permitted to recover the difference between the resale price and the contract price plus incidental damages (as defined in § 2-710) less any expenses saved because of the breach by buyer (for example further packaging or transportation costs). The measure of damages in §§ 2-706 and 2-708 are essentially the same, but the remedy of § 2-706 is generally more advantageous for the seller than the remedy in § 2-708 because of the burden of proof: in § 2-706 the resale price is conclusive proof of

the value of the goods whereas in § 2-708 the seller has the burden of establishing the market price in order to obtain the advantages of § 2-708. The resale must be: (1) in good faith; and (2) commercially reasonable. The satisfaction of these two tests will vary depending on the situation, but generally the resale must be performed in a fashion which takes into account the type of goods and the custom of the trade in such goods. The section also sets out specific requirements depending on whether the resale is public or private.

Library References

Indians ☞23 to 24.

Sales ☞332.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales § 344.

§ 2-707. "Person in the position of a seller"

A. A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

B. A person in the position of a seller may as provided in this article withhold or stop delivery (§ 2-705) and resell (§ 2-706) and recover incidental damages (§ 2-710).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-707 of the Uniform Commercial Code adopted by the states.

Commentary. In addition to following in general the prior law the case of a financing

agency which has acquired documents by honoring a letter of credit for the buyer or by discounting a draft for the seller has been included in the term "a person in the position of a seller".

Cross References

Section 2-506.

Definitional Cross References

"Consignee". Section 2-103.

"Consignor". Section 2-103.

"Goods". Section 2-105.

"Security interest". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ☞23 to 24.

Sales ☞292, 332, 370.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 334, 344, 363 to 364.

§ 2-708. Seller's damages for non-acceptance or repudiation

A. Subject to subsection (B) and to the provisions of this article with respect to proof of market price (§ 2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (§ 2-710), but less expenses saved in consequences of the buyer's breach.

B. If the measure of damages provided in subsection (A) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (§ 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-708 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The current market price at the time and place for tender is set as the standard by which damages for non-acceptance are to be determined. The time and place of tender is determined by reference to the section on manner of tender of delivery, and to the sections on the effect of such terms as F.O.B., F.A.S., C.I.F., C & F, Ex Ship and No Arrival, No Sale.

In the event that there is no evidence available of the current market price at the time and place of tender, proof of a substitute market may be made under the section on determination and proof of market price. Furthermore, the section on the admissibility of market quota-

tions is intended to ease materially the problem of providing competent evidence.

2. The provision of this section permitting recovery of expected profit including reasonable overhead where the standard measure of damages is inadequate, together with the new requirement that price actions may be sustained only where resale is impractical, are designed to eliminate the unfair and economically wasteful results arising under the older law when fixed price articles were involved. This section permits the recovery of lost profits in all appropriate cases, which would include all standard priced goods. The normal measure there would be list price less cost to the dealer or list price less manufacturing cost to the manufacturer. It is not necessary to a recovery of "profit" to show a history of earnings, especially if a new venture is involved.

3. In all cases the seller may recover incidental damages.

Cross References

Point 1: Sections 2-319 through 2-324, 2-503, 2-723 and 2-724.

Point 2: Section 2-709.

Point 3: Section 2-710.

Definitional Cross References

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ⇄23 to 24.

Sales ⇄384.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales § 363.

§ 2-709. Action for the price

A. When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price:

1. Of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

2. Of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

B. Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

C. After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (§ 2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-709 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Neither the passing of title to the goods nor the appointment of a day certain for payment is now material to a price action.

2. The action for the price is now generally limited to those cases where resale of the goods is impracticable except where the buyer has accepted the goods or where they have been destroyed after risk of loss has passed to the buyer.

3. This section uses an objective test concerning the "resalability" of the goods. An action for the price under subsection (A)(2) can be sustained only after a "reasonable effort to resell" the goods "at reasonable price" has actually been made or where the circumstances "reasonably indicate" that such an effort will be unavailing.

4. If a buyer is in default not with respect to the price, but on an obligation to make an advance, the seller should recover not under this section for the price as such, but for the default in the collateral (though coincident) ob-

ligation to finance the seller. If the agreement between the parties contemplates that the buyer will acquire, on making the advance, a security interest in the goods, the buyer on making the advance has such an interest as soon as the seller has rights in the agreed collateral. See § 9-204.

5. "Goods accepted" by the buyer under subsection (A) (1) include only goods as to which there has been no justified revocation of acceptance, for such a revocation means that there has been a default by the seller which bars his rights under this section. "Goods lost or damaged" are covered by the section on risk of loss. "Goods identified to the contract" under subsection (A) (2) are covered by the section on identification and the section on identification notwithstanding breach.

6. This section is intended to be exhaustive in its enumeration of cases where an action for the price lies.

7. If the action for the price fails, the seller may nonetheless have proved a case entitling him to damages for non-acceptance. In such a situation, subsection (C) permits recovery of those damages in the same action.

Cross References

Point 4: Section 1-106.
 Point 5: Sections 2-501, 2-509, 2-510 and 2-704.
 Point 7: Section 2-708

Definitional Cross References

“Action”. Section 1-201.
 “Buyer”. Section 2-103.
 “Conforming”. Section 2-106.
 “Contract”. Section 1-201
 “Goods”. Section 2-105.
 “Seller”. Section 2-103.

Library References

Indians ⌘23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⌘340.	C.J.S. Sales §§ 325 to 326, 348.
Westlaw Topic Nos. 209, 343.	

§ 2-710. Seller’s incidental damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer’s breach, in connection with return or resale of the goods or otherwise resulting from the breach.

History

CJA-1-86, January 29, 1986.

Official Comment

<p>Changes. This section is intended to have the same meaning and effect as § 2-710 of the Uniform Commercial Code adopted by the states.</p> <p>Commentary. This section authorizes reimbursement of the seller for expenses reasonably</p>	<p>incurred by him as a result of the buyer’s breach. The section sets forth the principal normal and necessary additional elements of damage flowing from the breach but intends to allow all commercially reasonable expenditure made by the seller.</p>
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Definitional Cross References

“Aggrieved party”. Section 1-201.
 “Buyer”. Section 2-103.
 “Goods”. Section 2-105.
 “Seller”. Section 2-103.

Library References

Indians ⌘23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⌘384.	C.J.S. Sales § 363.
Westlaw Topic Nos. 209, 343.	

§ 2-711. Buyer’s remedies in general; buyer’s security interest in rejected goods

A. Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract

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(§ 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid:

1. "Cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
2. Recover damages for non-delivery as provided in this article (§ 2-713).

B. Where the seller fails to deliver or repudiates the buyer may also:

1. If the goods have been identified recover them as provided in this article (§ 2-502); or
2. In a proper case obtain specific performance or replevy the goods as provided in this article (§ 2-716).

C. On a rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (§ 2-706).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-711 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is an index to the buyer's remedies, subsection (A) covering those remedies permitting the recovery of money damages, and subsection (B) covering those which permit reaching the goods themselves. The remedies listed here are those available to a buyer who has not accepted the goods or who has justifiably revoked his acceptance. The remedies available to a buyer with regard to goods finally accepted appear in the section dealing with breach in regard to accepted goods. The buyer's right to proceed as to all goods when the breach is as to only some of the goods is determined by the section on breach in installment contracts and by the section on partial acceptance.

Despite the seller's breach, proper retender of delivery under the section on cure of improper tender or replacement can effectively preclude the buyer's remedies under this section, except for any delay involved.

2. Subsection (C) makes clear that the buyer may hold and resell rejected goods if he has paid a part of the price or incurred expenses of the type specified. "Paid" as used here includes acceptance of a draft or other time negotiable instrument or the signing of a negotiable note. His freedom of resale is coextensive with that of a seller under this article except that the buyer may not keep any profit resulting from the resale and is limited to retaining only the amount of the price paid and the costs involved in the inspection and handling of the goods. The buyer's security interest in the goods is intended to be limited to the items listed in subsection (C), and the buyer is not permitted to retain such funds as he might believe adequate for his damages. The buyer's right to cover, or to have damages for non-delivery, is not impaired by his exercise of his right of resale.

3. It should also be noted that this Act requires its remedies to be liberally administered and provides that any right or obligation which it declares is enforceable by action unless a different effect is specifically prescribed (§ 1-106).

Cross References

Point 1: Sections 2-508, 2-601 (C), 2-608, 2-612 and 2-714.

Point 2: Section 2-706.

Point 3: Section 1-106.

Definitional Cross References

“Aggrieved party”. Section 1-201.
 “Buyer”. Section 2-103.
 “Cancellation”. Section 2-106.
 “Contract”. Section 1-201.
 “Cover”. Section 2-712.
 “Goods”. Section 2-105.
 “Notifies”. Section 1-201.
 “Receipt” of goods”. Section 2-103.
 “Remedy”. Section 1-201.
 “Security interest”. Section 1-201.
 “Seller”. Section 2-103.

Library References

Indians \S 23 to 24.	C.J.S. Sales \S 123, 128 to 129, 199, 237, 278
Sales \S 113, 390, 399, 404, 425.	to 280, 284 to 286, 288, 374 to 376, 379,
Westlaw Topic Nos. 209, 343.	389, 395.
C.J.S. Indians \S 12, 30 to 31.	

§ 2-712. “Cover”; buyer’s procurement of substitute goods

A. After a breach within the preceding section the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

B. The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (§ 2-715), but less expenses saved in consequence of the seller’s breach.

C. Failure of the buyer to effect cover within this section does not bar him from any other remedy.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-712 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section provides the buyer with a remedy aimed at enabling him to obtain the goods he needs thus meeting his essential need. This remedy is the buyer’s equivalent of the seller’s right to resell.

2. The definition of “cover” under subsection (A) envisages a series of contracts or sales, as well as a single contract or sale; goods not identical with those involved but commercially usable as reasonable substitutes under the circumstances of the particular case; and contracts on credit or delivery terms differing from the contract in breach, but again reasonable under the circumstances. The test of proper cover is whether at the time and place the buyer acted in good faith and in a reasonable manner, and it is immaterial that hindsight may later

prove that the method of cover used was not the cheapest or most effective.

The requirement that the buyer must cover “without unreasonable delay” is not intended to limit the time necessary for him to look around and decide as to how he may best effect cover. The test here is similar to that generally used in this article as to reasonable time and reasonable action.

3. Subsection (C) expresses the policy that cover is not a mandatory remedy for the buyer. The buyer is always free to choose between cover and damages for non-delivery under the next section.

However, this subsection must be read in conjunction with the section which limits the recovery of consequential damages to such as could not have been obviated by cover. Moreover, the operation of the section on specific performance of contracts for “unique” goods

must be considered in this connection for availability of the goods to the particular buyer, for his particular needs is the test for that remedy and inability to cover is made an express condition to the right of the buyer to replevy the goods.

4. This section does not limit cover to merchants, in the first instance. It is the vital and

important remedy for the consumer buyer as well. Both are free to use cover: the domestic or non-merchant consumer is required only to act in normal good faith while the merchant buyer must also observe all reasonable commercial standards of fair dealing in the trade, since this falls within the definition of good faith on his part.

Cross References

Point 1: Section 2-706.

Point 2: Section 1-204.

Point 3: Sections 2-713, 2-715 and 2-716.

Point 4: Section 1-203.

Definitional Cross References

“Buyer”. Section 2-103.

“Contract”. Section 1-201.

“Good faith”. Section 2-103.

“Goods”. Section 2-105.

“Purchase”. Section 1-201.

“Remedy”. Section 1-201.

“Seller”. Section 2-103.

Special Plain Language Comment

The most common remedy for buyers, similar to resale for sellers, is “cover” (the purchase of substitute goods) because the buyer generally needs to acquire the goods he sought to purchase. If the buyer “covers” within a “reasonable time” he may then obtain as damages the difference between the price he paid to cover and the contract price plus any incidental or consequential damages; but less expenses saved due to seller’s breach. Just as in the seller’s remedies under §§ 2-706 and 2-708 the two remedies, §§ 2-712 and 2-713, have the same measure of damages, but the burden of proof differs: in § 2-712 the cover price is conclusive evidence of the cost of the goods and in § 2-713 the market price must be proved by the buyer. The buyer, unlike the seller, may receive consequential damages (§ 2-715). Consequential

damages are difficult to define but are generally those which arise outside the scope of the immediate buyer-seller transactions and are losses by the buyer due to the breach by the seller and which were reasonably foreseeable to the seller at the time of contracting. For example, if a dealer knows that a farmer is purchasing a tractor in order to harvest his crop and yet he fails to deliver the tractor on time, knowing that no other tractors are available for rental, the dealer would be liable for the loss of the farmer’s crop as consequential damages of his failure to deliver the tractor.

However, if the goods are “unique” or not otherwise available the buyer may demand that the seller perform the contract “specific performance” (§ 2-716).

Library References

Indians ⇨23 to 24.

Sales ⇨418(7).

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 391 to 393, 403.

§ 2-713. Buyer’s damages for non-delivery or repudiation

A. Subject to the provisions of this article with respect to proof of market price (§ 2-723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages-provided in this article (§ 2-715), but less expenses saved in consequence of the seller’s breach.

B. Market price is to be determined as of the place for tender or, in cases of rejection after arrival of acceptance, as of the place of arrival.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-713 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The general baseline adopted in this section uses as a yardstick the market in which the buyer would have obtained cover had he sought that relief. So the place for measuring damages is the place of tender (or the place of arrival if the goods are rejected or their acceptance is revoked after reaching their destination) and the crucial time is the time at which the buyer learns of the breach.

2. The market or current price to be used in comparison with the contract price under this section is the price for goods of the same kind and in the same branch of trade.

3. When the current market price under this section is difficult to prove the section on determination and proof of market price is available to permit a showing of a comparable market

price or, where no market price is available, evidence of spot sale prices is proper. Where the unavailability of a market price is caused by a scarcity of goods of the type involved, a good case is normally made for specific performance under this article. Such scarcity conditions, moreover, indicate that the price has risen and under the section providing for liberal administration of remedies, opinion evidence as to the value of the goods would be admissible in the absence of a market price and a liberal construction of allowable consequential damages should also result.

4. This section carries forward the standard rule that the buyer must deduct from his damages any expenses saved as a result of the breach.

5. The present section provides a remedy which is completely alternative to cover under the preceding section and applies only when and to the extent that the buyer has not covered.

Cross References

Point 3: Sections 1-106, 2-716 and 2-723.

Point 5: Section 2-712.

Definitional Cross References

"Buyer". Section 2-103.

"Contract". Section 1-201.

"Seller". Section 2-103.

Library References

Indians \S 23 to 24.

Sales \S 418.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians \S 12, 30 to 31.

C.J.S. Sales \S 396 to 397, 399 to 400.

§ 2-714. Buyer's damages for breach in regard to accepted goods

A. Where the buyer has accepted goods and given notification (§ 2-607(C)) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

B. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

C. In a proper case any incidental and consequential damages under the next section may also be recovered.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-714 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section deals with the remedies available to the buyer after the goods have been accepted and the time for revocation of acceptance has gone by. This section lays down an explicit provision as to the time and place for determining the loss.

The section on deduction of damages from price provides an additional remedy for a buyer who still owes part of the purchase price, and frequently the two remedies will be available concurrently. The buyer's failure to notify of his claim under the section on effects of acceptance, however, operates to bar his remedies under either that section or the present section.

2. The "non-conformity" referred to in subsection (A) includes not only breaches of warranties but also any failure of the seller to perform according to his obligations under the

contract. In the case of such non-conformity, the buyer is permitted to recover for his loss "in any manner which is reasonable".

3. Subsection (B) describes the usual, standard and reasonable methods of ascertaining damages in the case of breach of warranty, but it is not intended as an exclusive measure. It departs from the measure of damages for non-delivery in utilizing the place of acceptance rather than the place of tender. In some cases the two may coincide, as where the buyer signifies his acceptance upon the tender. If, however, the nonconformity is such as would justify revocation of acceptance, the time and place of acceptance under this section is determined as of the buyer's decision not to revoke.

4. The incidental and consequential damages referred to in subsection (C), which will usually accompany an action, brought under this section, are discussed in detail in the comment on the next section.

Cross References

Point 1: Compare § 2-711; Sections 2-607 and 2-717.

Point 2: Section 2-106.

Point 3: Sections 2-608 and 2-713.

Point 4: Section 2-715.

Definitional Cross References

"Buyer". Section 2-103.

"Conform". Section 2-106.

"Goods". Section 1-201.

"Notification". Section 1-201.

"Seller". Section 2-103.

Library References

Indians ⇨ 23 to 24.

Sales ⇨ 418.

Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 396 to 397, 399 to 400.

§ 2-715. Buyer's incidental and consequential damages

A. Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

B. Consequential damages resulting from the seller's breach include:

1. Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

2. Injury to person or property proximately resulting from any breach of warranty.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-715 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) is intended to provide reimbursement of the buyer who incurs reasonable expenses in connection with the handling of rightfully rejected goods or goods whose acceptance may be justifiably revoked, or in connection with effecting cover where the breach of the contract has in non-conformity or non-delivery of the goods. The incidental damages listed are not intended to be exhaustive but are merely illustrative of the typical kinds of incidental damages.

2. Subsection (B) operates to allow the buyer, in an appropriate case, any consequential damages which are the result of the seller's breach. The "tacit agreement" test for the recovery of consequential damages is rejected. Although the older rule at common law which made the seller liable for all consequential damages of which he had "reason to know" in advance is followed, the liberality of that rule is modified by refusing to permit recovery unless the buyer could not reasonably have prevented the loss by cover or otherwise. Paragraph (2) modifies the former rule concerning consequential damages resulting from breach of warranty by requiring first that the buyer attempt to minimize his damages in good faith, either by cover or otherwise.

3. In the absence of excuse under the section on merchant's excuse by failure of presupposed conditions, the seller is liable for consequential damages in all cases where he had reason to know of the buyer's general or particular requirements at the time of contracting. It

is not necessary that there be a conscious acceptance of an insurer's liability on the seller's part, nor is his obligation for consequential damages limited to cases in which he fails to use due effort in good faith.

Particular needs of the buyer must generally be made known to the seller while general needs must rarely be made known to charge the seller with knowledge.

Any seller who does not wish to take the risk of consequential damages has available the section on contractual limitation of remedy.

4. The burden of proving the extent of loss incurred by way of consequential damages is on the buyer, but the section on liberal administration of remedies rejects any doctrine of certainty which requires almost mathematical precision in the proof of loss. Loss may be determined in any manner which is reasonable under the circumstances.

5. Subsection (B)(2) states the usual rule as to breach of warranty, allowing recovery for injuries "proximately" resulting from the breach. Where the injury involved follows the use of goods without discovery of the defect causing the damage, the question of "proximate" cause turns on whether it was reasonable for the buyer to use the goods without such inspection as would have revealed the defects. If it was not reasonable for him to do so, or if he did in fact discover the defect prior to his use, the injury would not proximately result from the breach of warranty.

6. In the case of sale of wares to one in the business of reselling them, resale is one of the requirements of which the seller has reason to know within the meaning of subsection (13)(1).

Cross References

Point 1: Section 2-608.

Point 3: Sections 1-203, 2-615 and 2-719.

Point 4: Section 1-106.

Definitional Cross References

"Cover". Section 2-712.

"Goods". Section 1-201.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Seller". Section 2-103.

Library References

Indians ↻23 to 24.
 Sales ↻418.
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 396 to 397, 399 to 400.

§ 2-716. Buyer's right to specific performance or replevin

A. Specific performance may be decreed where the goods are unique or in other proper circumstances.

B. The decree for specific performance may include such terms and conditions and to payment of the price, damages, or other relief as the court may deem just.

C. The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-716 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The present section continues in general prior policy as to specific performance and injunction against breach. However, without intending to impair in any way the exercise of the court's sound discretion in the matter, this article seeks to further a more liberal attitude than some courts have shown in connection with the specific performance of contracts of sale.

2. In view of this article's emphasis on the commercial feasibility of replacement, a new concept of what are "unique" goods is introduced under this section. Specific performance is no longer limited to goods which are already specific or ascertained at the time of contracting. The test of uniqueness under this section must be made in terms of the total situation which characterizes the contract. Output and requirements contracts involving a particular or peculiarly available source or market present

today the typical commercial specific performance situation, as contrasted with contracts for the sale of heirlooms or priceless works of art which were usually involved in the older cases. However, uniqueness is not the sole basis of the remedy under this section for the relief may also be granted "in other proper circumstances" and inability to cover is strong evidence of "other proper circumstances".

3. The legal remedy of replevin is given the buyer in cases in which cover is reasonably unavailable and goods have been identified to the contract. This is in addition to the buyer's right to recover identified goods on the seller's insolvency (§ 2-502).

4. This section is intended to give the buyer rights to the goods comparable to the seller's rights to the price.

5. If a negotiable document of title is outstanding, the buyer's right of replevin relates of course to the document not directly to the goods.

Cross References

Point 3: Section 2-502.
 Point 4: Section 2-709.

Definitional Cross References

"Buyer". Section 2-103.
 "Goods". Section 1-201.
 "Rights". Section 1-201.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞399.	C.J.S. Sales §§ 374, 389.
Specific Performance ☞67.	C.J.S. Specific Performance §§ 80 to 81.
Westlaw Topic Nos. 209, 343, 358.	

§ 2-717. Deduction of damages from the price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-717 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section permits the buyer to deduct from the price damages resulting from any breach by the seller and does not limit the relief to cases of breach of warranty as did the prior law. To bring this provision into application the breach involved must be of the

same contract under which the price in question is claimed to have been earned.

2. The buyer, however, must give notice of his intention to withhold all or part of the price if he wishes to avoid a default within the meaning of the section on insecurity and right to assurances. In conformity with the general policies of this article, no formality of notice is required and any language which reasonably indicates the buyer's reason for holding up his payment is sufficient.

Cross References

Point 2: Section 2-609.

Definitional Cross References

"Buyer". Section 2-103.
"Notifies". Section 1-201.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞188, 348.	C.J.S. Sales §§ 209, 351.
Westlaw Topic Nos. 209, 343.	

§ 2-718. Liquidation or limitation of damages: deposits

A. Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

B. Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds:

1. The amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (A); or

2. In the absence of such terms, twenty percent (20%) of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars (\$500.00), whichever is smaller.

C. The buyer's right to restitution under subsection (B) is subject to offset to the extent that the seller establishes:

1. A right to recover damages under the provisions of this article other than subsection (A); and

2. The amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

D. Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (B); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (§ 2-706).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-718 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under subsection (A) liquidated damages clauses are allowed where the amount involved is reasonable in the light of the circumstances of the case. The subsection sets forth explicitly the elements to be considered in determining the reasonableness of a liquidated damages clause. A term fixing unreasonably large liquidated damages is expressly made void as a penalty. An unreasonably small amount would be subject to similar criticism and might be stricken under the section on unconscionable contracts or clauses.

2. Subsection (B) refuses to recognize a forfeiture unless the amount of the payment so forfeited represents a reasonable liquidation of damages as determined under subsection (A).

A special exception is made in the case of small amounts (twenty percent (20%) of the price or five hundred dollars (\$500.00), whichever is smaller) deposited as security. No distinction is made between cases in which the payment is to be applied on the price and those in which it is intended as security for performance. Subsection (B) is applicable to any deposit or down or part payment. In the case of a deposit or turn in of goods resold before the breach, the amount actually received on the resale is to be viewed as the deposit rather than the amount allowed the buyer for the trade in. However, if the seller knows of the breach prior to the resale of the goods turned in, he must make reasonable efforts to realize their true value, and this is assured by requiring him to comply with the conditions laid down in the section on resale by an aggrieved seller.

Cross References

Point 1: Section 2-302.

Point 2: Section 2-706.

Definitional Cross References

"Aggrieved party". Section 1-201.

"Agreement". Section 1-201.

"Buyer". Section 2-103.

"Goods". Section 2-105.

"Notice". Section 1-201.

"Party". Section 1-201.

"Remedy". Section 1-201.

"Seller". Section 2-103.

"Term". Section 1-201.

Special Plain Language Comment

Where damages due to breach of contract are difficult to prove and other remedies are not feasible the parties may agree to an estimated amount of damages, “liquidated damages”. Such liquidated damages must be reasonable as compared to actual damages—liquidated damages which are too high will be declared void and unenforceable. Liquidated damages must meet three tests to be permitted: (1) reasonable amount as compared to actual damages; (2) actual damages difficult to prove; and (3) other remedies are not feasible.

Library References

Damages ☞78(6).
Indians ☞23 to 24.
Westlaw Topic Nos. 115, 209.

C.J.S. Damages §§ 189 to 190, 193 to 194.
C.J.S. Indians §§ 12, 30 to 31.

§ 2-719. Contractual modification or limitation of remedy

A. Subject to the provisions of subsections (B) and (C) of this section and of the preceding section on liquidation and limitation of damages:

1. The agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer’s remedies to return of the goods and repayment of the price or the repair and replacement of non-conforming goods or parts; and

2. Resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

B. Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Act.

C. Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-719 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under this section parties are left free to shape their remedies to their particular requirements and reasonable agreements limiting or modifying remedies are to be given effect.

However, it is of the very essence of a sales contract that at least minimum adequate remedies be available. If the parties intend to conclude a contract for sale within this article they must accept the legal consequence that there be at least a fair quantum of remedy for breach of the obligations or duties outlined in the contract. Thus, any clause purporting to modify or limit the remedial provisions of this article in an

unconscionable manner is subject to deletion and in that event the remedies made available by this article are applicable as if the stricken cause had never existed. Similarly, under subsection (B), where an apparently fair and reasonable clause because of circumstances fails in its purpose or operates to deprive either party of the substantial value of the bargain, it must give way to the general remedy provisions of this article.

2. Subsection (A) (2) creates a presumption that clauses prescribing remedies are cumulative rather than exclusive. If the parties intend the term to describe the sole remedy under the contract, this must be clearly expressed.

3. Subsection (C) recognizes the validity of clauses limiting or excluding consequential damages but makes it clear that they may not

operate in an unconscionable manner. Actually such terms are merely an allocation of unknown or indeterminable risks. The seller in all cases is free to disclaim warranties in the manner provided in § 2-316.

Cross References

Point 1: Section 2-302.
Point 3: Section 2-316.

Definitional Cross References

“Agreement”. Section 1-201.
“Buyer”. Section 2-103.
“Conforming”. Section 2-106.
“Contract”. Section 1-201.
“Goods”. Section 2-105.
“Remedy”. Section 1-201.
“Seller”. Section 2-103.

Special Plain Language Comment

This section permits the parties to limit the remedies available. For example, they could agree that monetary damages are limited to a certain maximum or that monetary damages are not available at all, the only remedy available is the right to have the goods repaired or replaced. The Code imposes two restrictions on such limitations of remedies: the remedy must not be so limited as to “fail of its essential purpose” nor may the exclusion of consequential damages be “unconscionable”. Failure of essential purpose is a difficult concept, but it embodies the traditional principle of contract interpretation that the interpretation of a provision must take into account the purpose of that provision. For example, a contract for the sale of a television set might limit remedies to the repair or replacement of defective components.

If a defective picture tube caused the television set to catch on fire and be destroyed, such a limitation on remedies would “fail in its essential purpose” because no television set would be available to be repaired. The buyer could then turn to other remedies under the Code. The second restriction on the limitation of remedies deals with the limitation or exclusion of consequential damages. Because of the potential importance of such a limitation, the Code has specifically restricted the ability of parties to agree to such limitations, particularly for personal injuries involving consumer goods. For example, if defective wiring in a space heater results in third degree burns, the seller’s attempt to limit the amount of consequential damages to the price of the space heater will not be successful.

Library References

Indians ⇨ 23 to 24.
Sales ⇨ 418(6), 426.
Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Sales §§ 281 to 283, 376, 402.

§ 2-720. Effect of “cancellation” or “rescission” on claims for antecedent breach

Unless the contrary intention clearly appears, expressions of “cancellation” or “rescission” of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-720 of the Uniform Commercial Code adopted by the states.

Commentary. This section is designed to safeguard a person holding a right of action from any unintentional loss of rights by the ill-advised use of such terms as “cancellation”, “rescission”, or the like. Once a party’s rights have accrued they are not to be lightly impaired by concessions made in business decency and without intention to forego them. Therefore, unless the cancellation of a contract expressly declares that it is “without reservation of rights”, or the like, it cannot be considered to be a renunciation under this section.

Cross References

Section 1-107.

Definitional Cross References

“Cancellation”. Section 2-106.
 “Contract”. Section 1-201.

Library References

Indians ⇄23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄94, 111, 131, 370, 405.	C.J.S. Sales §§ 114, 147 to 149, 205, 363 to 364, 395.
Westlaw Topic Nos. 209, 343.	

§ 2-721. Remedies for fraud

Remedies for material misrepresentation or fraud include all remedies available under this article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-721 of the Uniform Commercial Code adopted by the states.	breach of warranty. Thus the remedies for fraud are extended by this section to coincide in scope with those for non-fraudulent breach. This section thus makes it clear that neither rescission of the contract for fraud nor rejection of the goods bars other remedies unless the circumstances of the case make the remedies incompatible.
Commentary. This section was drafted to correct the situation by which remedies for fraud have been more circumscribed than the more modern and mercantile remedies for	

Definitional Cross References

“Contract for sale”. Section 2-106.
 “Goods”. Section 1-201.
 “Remedy”. Section 1-201.

Library References

Fraud ⇄31, 32.	Westlaw Topic Nos. 184, 209, 343.
Indians ⇄23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ⇄37.	C.J.S. Sales §§ 50, 52.

§ 2-722. Who can sue third parties for injury to goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract:

A. A right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

B. If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

C. Either party may with the consent of the other sue for the benefit of whom it may concern.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-722 of the Uniform Commercial Code adopted by the states.

Commentary. This section adopts and extends somewhat the principle of the statutes which provide for suit by the real party in interest. The provisions of this section apply

only after identification of the goods. Prior to that time only the seller has a right of action. During the period between identification and final acceptance (except in the case of revocation of acceptance) it is possible for both parties to have the right of action. Even after final acceptance both parties may have the right of action if the seller retains possession or otherwise retains an interest.

Definitional Cross References

“Action”. Section 1-201.
 “Buyer”. Section 2-103.
 “Contract for sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Party”. Section 1-201.
 “Rights”. Section 1-201.
 “Security interest”. Section 1-201.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Sales ☞ 224, 232.	C.J.S. Sales § 222.
Westlaw Topic Nos. 209, 343.	

§ 2-723. Proof of market price: time and place

A. If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (§ 2-708 or § 2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

B. If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial

judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

C. Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-723 of the Uniform Commercial Code adopted by the states.

Commentary. This section eliminates the most obvious difficulties arising in connection with the determination of market price, when that is stipulated as a measure of damages by some provision of this article. Where the appropriate market price is not readily available the court is here granted reasonable leeway in

receiving evidence of prices current in other comparable markets or at other times comparable to the one in question. In accordance with the general principle of this article against surprise, however a party intending to offer evidence of such a substitute price must give suitable notice to the other party.

This section is not intended to exclude the use of any other reasonable method of determining market price or of measuring damages if the circumstances of the case make this necessary.

Definitional Cross References

“Action”. Section 1-201.
 “Aggrieved party”. Section 1-201.
 “Goods”. Section 2-105.
 “Notifies”. Section 1-201.
 “Party”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Usage of trade”. Section 1-205.

Library References

Indians ⇄ 23 to 24.
 Sales ⇄ 384(2), 418(2).
 Westlaw Topic Nos. 209, 343.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Sales §§ 397 to 398.

§ 2-724. Admissibility of market quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-724 of the Uniform Commercial Code adopted by the states.

Commentary. This section makes market quotations admissible in evidence while providing for a challenge of the material by showing the circumstances of its preparation.

No explicit provisions as to the weight to be given to market quotations is contained in this section, but such quotations, in the absence of compelling challenge, offer an adequate basis for a verdict.

Market quotations are made admissible when the price or value of goods traded "in any established market" is in issue. The reason of the section does not require that the market be closely organized in the manner of a produce exchange. It is sufficient if transactions in the

commodity are frequent and open enough to make a market established by usage in which one price can be expected to affect another and in which an informed report of the range and trend of prices can be assumed to be reasonably accurate.

This section does not in any way intend to limit or negate the application of similar rules of admissibility to other material, whether by action of the courts or by statute. The purpose of the present section is to assure a minimum of mercantile administration in this important situation and not to limit any liberalizing trend in modern law.

Definitional Cross References

"Goods". Section 2-105.

Library References

Evidence ⇨361.

Indians ⇨27(6), 32(7).

Westlaw Topic Nos. 157, 209.

C.J.S. Evidence §§ 1004, 1009.

C.J.S. Indians §§ 13, 60 to 62, 95, 139 to 143, 152.

§ 2-725. Statute of limitations in contracts for sale

A. An action for breach of any contract for sale must be commenced within four (4) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.

B. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

C. Where an action commenced within the time limited by subsection (A) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

D. This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Act became effective.

History

CJA-1-86, January 29, 1986.

Note. At subsection (D), "becomes" changed to "became".

Official Comment

Changes. This section is intended to have the same meaning and effect as § 2-725 of the Uniform Commercial Code adopted by the states.

Commentary. This section introduces a uniform statute of limitations for sale contracts, thus eliminating the jurisdictional variations and providing needed relief for concerns doing business on a nationwide scale whose contracts have heretofore been governed by several different periods of limitation depending upon the state in which the transaction occurred. This article takes sales contracts out of the general laws limiting the time for commencing contractual actions and selects a four-year period as the most appropriate to modern business practice. This is within the normal commercial record keeping period.

Subsection (A) permits the parties to reduce the period of limitation. The minimum period is set at one (1) year. The parties may not, however, extend the statutory period.

Subsection (B), providing that the cause of action accrues when the breach occurs, states an exception where the warranty extends to future performance.

Subsection (C) states the saving provision included in many state statutes and permits an additional short period for bringing new actions, where suits begun within the four-year period have been terminated so as to leave a remedy still available for the same breach.

Subsection (D) makes it clear that this article does not purport to alter or modify in any respect the law on tolling of the statute of limitations as it now prevails in the various jurisdictions.

Definitional Cross References

“Action”. Section 1-201.
 “Aggrieved party”. Section 1-201.
 “Agreement”. Section 1-261.
 “Contract for sale”. Section 2-106.
 “Goods”. Section 2-105.
 “Party”. Section 1-201.
 “Remedy”. Section 1-201.
 “Term”. Section 1-201.
 “Termination”. Section 2-106.

Library References

Indians ⇨23 to 24, 27(4), 32(7).	C.J.S. Indians §§ 12, 17, 30 to 31, 60 to 62, 95, 139 to 143, 152.
Limitation of Actions ⇨24(4), 46(9).	C.J.S. Limitations of Actions §§ 61, 141.
Sales ⇨350, 374, 394, 409, 431.	C.J.S. Sales §§ 290, 327, 377.
Westlaw Topic Nos. 209, 241, 343.	

Article 3. Commercial Paper**Part 1. Short Title, Form and Interpretation****Section**

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Part 1. Short Title, Form and Interpretation

§ 3-101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Commercial Paper.

History

CJA-1-86, January 29, 1986.

§ 3-102. Definitions and index of definitions

A. In this article unless the context otherwise requires:

1. "Issue" means the first delivery of an instrument to a holder or a remitter.

2. An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

3. A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

4. "Secondary party" means a drawer or endorser.

5. "Instrument" means a negotiable instrument.

B. Other definitions to this article and the sections in which they appear are:

"Acceptance". Section 3-410.

"Accommodation party". Section 3-415.

"Alteration". Section 3-407.

"Certificate of deposit". Section 3-104.

"Certification". Section 3-411.

"Check". Section 3-104.

"Definite time". Section 3-109.

"Dishonor". Section 3-507.

"Draft". Section 3-104.

"Holder in due course". Section 3-302.

"Negotiation". Section 3-202.

"Note". Section 3-104.

"Notice of dishonor". Section 3-508.

"On demand". Section 3-108.

"Presentation". Section 3-504.

"Protest". Section 3-509.

"Restrictive Indorsement". Section 3-205.

"Signature". Section 3-401.

C. In this article, unless the context otherwise requires:

1. "Account" means any account with a bank and includes a checking, time, interest or savings account;

2. "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;
3. "Clearing house" means any association of banks or other payors regularly clearing items;
4. "Collecting bank" means any bank handling the item for collection except the payor bank,
5. "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;
6. "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;
7. "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;
8. "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;
9. "Item" means any instrument for the payment of money even though it is not negotiable but does not include money,
10. "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;
11. "Payor bank" means a bank by which an item is payable as drawn or accepted;

D. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. Subsection (C) has been modified to adopt certain definitions found in Article 4 of the Uniform Commercial Code which the Navajo Nation has not adopted.

Commentary. 1. The definition in subsection (A)(1) of this section provides that the delivery may be to a holder or to a remitter.

2. The definitions of "order" (subsection (A)(2)) and "promise" (subsection (A) (3)) state principles clearly recognized by the courts. In the case of orders the dividing line between "a direction to pay" and "an authorization or request" may not be self-evident in the occasional unusual, and therefore non-commercial, case. The prefixing of words of courtesy to the direction—as "please pay" or "kindly pay" should not lead to a holding that the direction has degenerated into a mere request. On the other hand informal language—such as "I wish you would pay"—would not qualify as an order and

such an instrument would be non-negotiable. The definition of "promise" is intended to make it clear that a mere I.O.U. is not a negotiable instrument, and that such phrases as "Due Currier & Baker seventeen dollars fourteen cents (\$17.14), value received" and statements as "I borrowed from P. Shemonia the sum of five hundred dollars (\$500.00) with four percent (4%) interest; the borrowed money ought to be paid within four (4) months from the above date" were promises sufficient to make the instruments into notes.

3. The last sentence of subsection (A)(2) ("order") permits the order to be addressed to one or more persons (as drawees) in the alternative, recognizing the practice of corporations issuing dividend checks and of other drawers who for commercial convenience name a number of drawees, usually in different parts of the country. The section on presentment provides

that presentment may be made to any one of such drawees. Drawees in succession are not permitted because the holder should not be required to make more than one presentment, and upon the first dishonor should have his recourse against the drawer and endorsers.

4. Comments on the definitions indexed follow the sections in which the definitions are contained. The Navajo Nation has not adopted all Articles of the Uniform Commercial Code. The definitions indexed in subsection (B) incorporate certain definitions normally found in Article 4.

5. "Banking Day". Under this definition that part of a business day when a bank is open only for limited functions, e.g., on Saturday evenings to receive deposits and cash checks, but with loan, bookkeeping and other departments closed, is not part of a banking day.

6. "Clearing House". Occasionally express companies, governmental agencies and other non-banks deal directly with a clearing house; hence the definition does not limit the term to an association of banks.

7. "Customer". It is to be noted that this term includes a bank carrying an account with another bank as well as the more typical non-bank customer or depositor.

8. The word "item" is chosen because it is "banking language" and includes non-negotiable as well as negotiable paper calling for money and also similar paper governed by the Article on Investment Securities (Article (C) (which has not been adopted by the Navajo Nation—rights which would be governed under this article are governed by Navajo law pursuant to 7 N.N.C. § 204)) as well as that governed by this article.

9. "Midnight Deadline". The use of this phrase is an example of the more mechanical approach used in this article. Midnight is selected as a termination point or time limit to obtain greater uniformity and definiteness than would be possible from other possible termination points, such as the close of the banking day or business day.

10. The definitions relating to banks in general exclude a bank to which an item is issued, as such bank does not take by transfer except in the particular case covered where the item is issued to a payee for collection, as where a corporation is transferring balances from one account to another. Thus, the definition of "depository bank" does not include the bank to which a check is made payable where a check is given in payment of a mortgage. Such a bank has the status of a payee under this article and not that of a collecting bank.

11. The term "payor bank" includes a drawee bank and also a bank at which an item is payable if the item constitutes an order on the bank to pay, for it is then "payable by" the bank. If the "at" item is not an order in the particular state (see § 3-121), then the bank is not a payor, but will be a presenting or collecting bank.

12. Items are sometimes drawn or accepted "payable through" a particular bank. Under this section and 9-120, the "payable through" bank (if it in fact handles the item) will be a collecting (and often a presenting) bank; it is not a "payor bank".

13. The term intermediary bank includes the last bank in the collection process where the payor is not a bar. Usually the last bank is also a presenting bank.

Cross References

Point 3: Section 3-504(C)(1).

Definitional Cross References

"Bank". Section 1-201.
 "Delivery". Section 1-201.
 "Holder". Section 1-201.
 "Money". Section 1-201.
 "Person". Section 1-201.

Special Plain Language Comment

This article relies heavily upon the use of technical legal terms which are defined in this section and in Article 1.

§ 3-103. Limitation on scope of Article

A. This article does not apply to money documents of title or investment securities.

B. The provisions of this article are subject to the provisions of the Article on Secured Transactions (Article 9) and, to the extent provided in 7 N.N.C.

§ 204, the Article on Bank Deposits and collections (Article 4) adopted by the States in which the bank is located.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-103 of the Uniform Commercial Code adopted by the states except that Articles 7 and 8 of the Uniform Commercial Code have not been adopted by the Navajo Nation.

Commentary. 1. This article is restricted to commercial paper—that is to say, to drafts, checks, certificates of deposit and notes as defined in § 3-104(B). Subsection (A) expressly excludes any money, as defined in this Code (§ 1-201), even though the money may be in the form of a bank note which meets all the requirements of § 3-104(A). Money is, of course, negotiable at common law or under separate statutes, but no provision of this article is applicable to it. Subsection (A) also expressly excludes documents of title and investment securities.

2. Instruments which fall within the scope of this article may also be subject to other Articles of the Code. In the case of a negotiable instrument which is subject to Article 9 because it is used as collateral, the provisions of this article continue to be applicable except insofar as there may be conflicting provisions in the Secured Transactions Article. An instrument which qualifies as “negotiable” under this article may also qualify as a “security”. The Code does not apply to investment securities as such. An instrument shall be treated as negotiable if it qualified as such unless, without reference to the Code, the law of a state covering the securities shall apply to it.

3. The Navajo Nation has not yet adopted Articles 7 and 8 of the Uniform Commercial Code. Rights which would be governed by these Articles will be governed by Navajo law pursuant to 7 N.N.C. § 204.

Cross References

Point 1: Sections 1-201, 3-104(A) and (B), 3-107.

Point 2: Article 9; § 3-104.

Definitional Cross References

“Document of title”. Section 1-201.

“Money” Section 1-201.

§ 3-104. Form of negotiable instruments: “draft”; “check”; “certificate of deposit”; “note”

- A. Any writing to be a negotiable instrument within this article must:
1. Be signed by the maker or drawer; and
 2. Contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and
 3. Be payable on demand or at a definite time; and
 4. Be payable to order or to bearer.
- B. A writing which complies with the requirements of this section is:
1. A “draft” (“bill of exchange”) if it is an order;
 2. A “check” if it is a draft drawn on a bank and payable on demand;
 3. A “certificate of deposit” if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
 4. A “note” if it is a promise other than a certificate of deposit.

C. As used in other Articles of this Code, and as the context may require, the terms “draft”, “check”, “certificate of deposit” and “note” may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-104 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under subsection (A)(2) any writing, to be a negotiable instrument within this article, must be payable in money. “Within this article” in subsection (A) leaves open the possibility that some writings may be made negotiable by other statutes or by judicial decision. The same is true as to any new type of paper which commercial practice may develop in the future.

2. While a writing cannot be made a negotiable instrument within this article by contract or by conduct, nothing in this section is intended to mean that in a particular case a court may not arrive at a result similar to that of negotiability by finding that the obligor is estopped by his conduct from asserting a defense against a bona fide purchaser. Such an estoppel rests upon ordinary principles of the law of simple contract; it does not depend upon negotiability, and it does not make the writing negotiable for any other purpose. But a contract to build a house or to employ a workman, or equally a security agreement does not become a negotia-

ble instrument by the mere insertion of a clause agreeing that it shall be one.

3. Section 3-112 permits an instrument to carry certain limited obligations or powers in addition to the simple promise or order to pay money. Subsection (A) of this section is intended to say that it cannot carry others.

4. Any writing which meets the requirements of subsection (A) and is not excluded under § 3-103 is a negotiable instrument, and all sections of this article apply to it, even though it may contain additional language beyond that contemplated by this section. Such an instrument is a draft, a check, a certificate of deposit or a note as defined in subsection (B). Traveler's checks in the usual form, for instance, are negotiable instruments under this article when they have been completed by the identifying signature.

5. This article requires that the instrument must follow the language of this section, or that a clear equivalent must be found, and that in doubtful cases the decision should be against negotiability.

6. Subsection (C) is intended to make clear the same policy expressed in § 3-805.

Cross References

Sections 3-105 through 3-112, 3-401, 3-402 and 3-403.

Point 1: Section 3-107.

Point 3: Section 3-112.

Point 4: Sections 3-103 and 3-805.

Point 6: Section 3-805.

Definitional Cross References

“Bank”. Section 1-201.

“Bearer”. Section 1-201.

“Definite time”. Section 3-109.

“Money”. Section 1-201.

“On demand”. Section 3-108.

“Promise”. Section 3-102.

“Signed”. Section 1-201.

“Term”. Section 1-201.

“Writing”. Section 1-201.

Special Plain Language Comment

Article Three covers two types of written documents; notes, which record a promise of one person to pay another, and drafts, which are an order from one person to another to pay a third person. A check is a draft addressed to a bank. Drafts and notes can be used to pay for transac-

tions, and that use is encouraged by the concept of "negotiability". A negotiable note or draft may be transferred in such a way that the recipient takes it without being bound by any of the claims or defenses which might be used against prior holders of the note or draft.

Library References

Bills and Notes ☞15 to 21, 41 to 47, 144 to 175.
Indians ☞23 to 24.
Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.
C.J.S. Letters of Credit §§ 3 to 7, 9, 11, 14, 16, 18, 22, 127 to 138, 143, 148, 155, 159.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-105. When promise or order unconditional

A. A promise or order otherwise unconditional is not made conditional by the fact that the instrument:

1. Is subject to implied or constructive conditions; or
2. States its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or
3. Refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to repayment or acceleration; or
4. States that it is drawn under a letter of credit; or
5. States that it is secured, whether by mortgage, reservation of title or otherwise; or
6. Indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or
7. Is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or
8. Is limited to payment out of the entire assets or a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

B. A promise or order is not unconditional if the instrument:

1. States that it is subject to or governed by any other agreement; or
2. States that is to be paid only out of a particular fund or source except as provided in this section.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-105 of the Uniform Commercial Code adopted by the states.

Commentary. The section is intended to make it clear that, so far as negotiability is affected, the conditional or unconditional character of the promise or order is to be deter-

mined by what is expressed in the instrument itself, and to permit certain specific limitations upon the terms of payment.

1. Subsection (A) (1) rejects the theory of decisions which have held that a recital in an instrument that is given in return for an executory promise gives rise to an implied condition that the instrument is not to be paid if the promise is not performed, and that this condition destroys negotiability. Nothing in the section is intended to imply that language may not be fairly construed to mean what it says, but implications, whether of law or fact, are not to be considered in determining negotiability.

2. The final clause of subsection (A) (2) is intended to resolve a conflict in the decisions over the effect of such language as, "This note is given for payment as per contract for the purchase of goods of even date, maturity being in conformity with the terms of such contract". It adopts the general commercial understanding that such language is intended as a mere recital of the origin of the instrument and a reference to the transaction for information, but is not meant to condition payment according to the terms of any other agreement.

3. Subsection (A) (3) likewise is intended to resolve a conflict, and to reject cases in which a reference to a separate agreement was held to mean that payment of the instrument must be limited in accordance with the terms of the agreement, and hence was conditioned by it. Such a reference normally is inserted for the purpose of making a record or giving information to anyone who may be interested, and in the absence of any express statement to that effect is not intended to limit the terms of payment. Inasmuch as rights as to prepayment or acceleration has to do with a "speed-up" in payment and since notes frequently refer to separate agreements for a statement of these rights, such reference does not destroy negotiability even though it has mild aspects of incorporation by reference. The general reasoning with respect to subparagraph (3) also applies to a draft which on its face states that it is drawn under a letter of credit (subparagraph (4)). Paragraphs (3) and (4) therefore adopt the position that negotiability is not affected. If the reference goes further and provides that payment must be made according to the terms of the agreement, it falls under subsection (B)(1).

4. Subsection (A) (5) is intended to settle another conflict in the decisions, over the effect of "title security notes" and other instruments which recite the security given. It rejects cases which have held that the mere statement that the instrument is secured, by reservation of title or otherwise, carries the implied condition that payment is to be made only if the security

agreement is fully performed. Again such a recital normally is included only for the purpose of making a record or giving information, and is not intended to condition payment in any way.

5. Subsection (A) (7) is intended to permit municipal governments, municipal corporations, tribal government corporations or other governments or governmental agencies to draw checks or to issue other short-term commercial paper in which payment is limited to a particular fund or to the proceeds of particular taxes or other sources of revenue. The provision will permit some tribal warrants to be negotiable if they are in proper form. Normally such warrants lack the words "order" or "bearer", or are marked "Not Negotiable", or are payable only in serial order, which make them conditional.

6. Subsection (A) (8) adopts the policy of decisions holding that an instrument issued by an unincorporated association is negotiable although its payment is expressly limited to the assets of the association, excluding the liability of individual members; and recognizing as negotiable an instrument issued by a trust estate without personal liability of the trustee. The policy is extended to a partnership and to any estate. The provision affects only the negotiability of the instrument, and is not intended to change the law of any jurisdiction as to the liability of a partner, trustee, executor, administrator, or any other person on such an instrument.

7. Subsection (B)(1) retains the generally accepted rule that where an instrument contains such language as "subject to terms of contract between maker and payee of this date", its payment is conditioned according to the terms of the agreement and the instrument is not negotiable. The distinction is between a mere recital of the existence of the separate agreement or a reference to it for information, which under subsection (A) (3) will not affect negotiability, and any language which, fairly construed, requires the holder to look to the other agreement for the terms of payment. The intent of the provision is that an instrument is not negotiable unless the holder can ascertain all of its essential terms from its face. In the specific instance of rights as to prepayment or acceleration, however, there may be a reference to a separate agreement without destroying negotiability.

8. Subsection (B)(2) restates the last sentence of § 3 of the original act. As noted above, exceptions are made by paragraphs (7) and (8) of subsection (A) in favor of instruments issued by governments or governmental agencies, or by a partnership, unincorporated association, trust or estate.

Cross References

Section 3-104.

Definitional Cross References

“Account”. Section 3-102.
 “Agreement”. Section 1-201.
 “Instrument”. Section 3-102.
 “Issue”. Section 3-102.
 “Order”. Section 3-102.
 “Promise”. Section 3-102.

Special Plain Language Comment

If a commercial paper is subject to or governed by another agreement, the promise that it carries is conditional and, therefore, the paper is not “negotiable”. Mere references to another agreement do not affect negotiability. See § 3-104.

Library References

Bills and Notes	↔17, 21, 44, 47, 132, 164, 167.	C.J.S. Bills and Notes.
Indians	↔23 to 24.	C.J.S. Letters of Credit §§ 5, 7, 9, 11, 88, 102, 138.
Westlaw Topic Nos.	56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-106. Sum certain

- A. The sum payable is a sum certain even though it is to be paid:
1. With stated interest or by stated installments; or
 2. With stated different rates of interest before and after default or a specified date; or
 3. With a stated discount or addition if paid before of after the date fixed for payment;
 4. With exchange or less exchange, whether at a fixed rate or at the current rate; or
 5. With costs of collection or an attorney’s fee or both upon default.
- B. Nothing in this section shall validate any term which is otherwise illegal.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-106 of the Uniform Commercial Code adopted by the states.

Commentary. The language clarifies the effect of references to interest, discounts or additions, exchange, costs and attorney’s fees, and acceleration or extension.

1. The section rejects decisions which have denied negotiability to a note with a term providing for discount for early payment on the ground that at the time of issue the amount payable was not certain. It is sufficient that at

anytime of payment the holder is able to determine the amount then payable from the instrument itself with any necessary computation. Thus, a demand note bearing interest at six per cent is negotiable. A stated discount or addition for early or late payment does not affect the certainty of the sum as long as the computation can be made, nor do different rates of interest before and after default or a specified date. The computation must be one which can be made from the instrument itself without reference to any outside source, and this section does not make negotiable a note payable with interest “at the current rate”.

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2. Paragraph (4) recognizes the occasional practice of making the instrument payable with exchange deducted rather than added.

3. In paragraph (5) "upon default" is substituted for the language of the original subsection (A)(5) in order to include any default in payment of interest or installments.

4. The section contains no specific language relating to the effect of acceleration clauses on

the certainty of the sum payable. This article (§ 3-109, Definite Time) broadly validates acceleration clauses; it is not necessary to state the matter in this section as well.

5. Subsection (B) is intended to make it clear that this section is concerned only with the effect of usurious interest or other illegal obligations upon negotiability, and is not meant to change the law of the Navajo Nation as to the validity of the term itself.

Cross References

Section 3-104.

Point 4: Section 3-109.

Definitional Cross References

"Term". Section 1-201.

Special Plain Language Comment

This section describes when an instrument evidences an obligation for a "sum certain" and thus satisfies one requirement for the instrument to be "negotiable". See § 3-104.

Library References

Bills and Notes ☞7, 33, 156.

Indians ☞23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 9, 75, 135 to 136.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-107. Money

A. An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" or "immediately available funds" is payable in money.

B. A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the date of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-107 of the Uniform Commercial Code adopted by the states.

Commentary. This section makes clear when an instrument is payable in money and states rules applicable to instruments drawn payable in a foreign currency.

1. The term "money" is defined in § 1-201 as a "a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency". That definition rejects the narrow view that "money" is limited to legal tender. Legal tender acts do no more than designate a particular kind of money which the obligee will be required to accept in

discharge of an obligation. It rejects also the contention sometimes advanced that “money” includes any medium of exchange current and accepted in the particular community, whether it be gold dust, beaver pelts, or cigarettes in occupied Germany. Such unusual “currency” is necessarily of uncertain and fluctuating value, and an instrument intended to pass generally in commerce as negotiable may not be made payable therein.

The test adopted is that of the sanction of government, which recognizes the circulating medium as a part of the official currency of that government. In particular, the provision adopts the position that an instrument expressing the amount to be paid in sterling, francs, lire or other recognized currency of a foreign government is negotiable even though payable in the United States.

2. The provision on “currency” or “current funds” or “immediately available funds” accepts the view that “currency” or “current funds” or “immediately available funds” means that the instrument is payable in money.

3. Either the amount to be paid or the medium of payment may be expressed in terms of a particular kind of money. A draft passing between Toronto and Buffalo may, according to

the desire and convenience of the parties, call for payment of 100 United States dollars or of 100 Canadian dollars; and it may require either sum to be paid in either currency. Under this section an instrument in any of these forms is negotiable, whether payable in Toronto or in Buffalo.

4. As stated in the preceding paragraph the intention of the parties in making an instrument payable in a foreign currency may be that the medium of payment shall be either dollars measured by the foreign currency or the foreign currency in which the instrument is drawn. Under subsection (B) the presumption is, unless the instrument otherwise specifies, that the obligation may be satisfied by payment in dollars in an amount determined by the buying sight rate for the foreign currency on the day the instrument becomes payable. Inasmuch as the buying sight rate will fluctuate from day to day, it might be argued that an instrument expressed in a foreign currency but actually payable in dollars is not for a “sum certain”. Subsection (B) makes it clear that for the purposes of negotiability under this article such an instrument, despite exchange fluctuations is for a sum certain.

Cross References

Section 3-104.

Point 1: Section 1-201.

Point 4: Section 3-109.

Definitional Cross References

“Instrument”. Section 3-102.

“Money”. Section 1-201.

“Order”. Section 3-102.

“Promise”. Section 3-102.

“Purchase”. Section 1-201.

Library References

Bills and Notes ⇨11, 39, 162.

Indians ⇨23 to 24.

Payment ⇨9, 12.

Westlaw Topic Nos. 56, 209, 294.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 9, 137.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Payment §§ 10 to 13, 26.

§ 3-108. Payable on demand

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-108 of the Uniform Commercial Code adopted by the states.

Commentary. The need for certainty in determining the value of an instrument requires

that the time when payment can be compelled be determinable from its face. Likewise, the time when the statute of limitations starts to run must be clear. This section makes certain instruments payable on demand, although they do not expressly so state.

Cross References

Sections 3-104, 3-302 and 3-501 (D).

Definitional Cross References

“Instrument”. Section 3-102.

Library References

Bills and Notes \S 129(3).

Indians \S 23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit \S 90.

C.J.S. Indians \S 12, 30 to 31.

§ 3-109. Definite time

A. An instrument is payable at a definite time if by its terms it is payable:

1. On or before a stated date or at a fixed period after a stated date; or
2. At a fixed period after sight; or
3. At a definite time subject to any acceleration; or
4. At a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

B. An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-109 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The time of payment is definite if it can be determined from the face of the instrument.

2. An undated instrument payable “thirty days after date” is not payable at a definite time, since the time of payment cannot be determined on its face. It is, however, an incomplete instrument within the provisions of § 3-115 dealing with such instruments and maybe completed by dating it. It is then payable at a definite time.

3. Subsection (A) (3) makes clear that, as far as certainty of time of payment is concerned, a

note payable at a definite time but subject to acceleration is no less certain than a note payable on demand, whose negotiability never has been questioned. It is in fact more certain, since it at least states a definite time beyond which the instrument cannot run. Objections to the acceleration clause must be based rather on the possibility of abuse by the holder, which has nothing to do with negotiability and is not limited to negotiable instruments. That problem is now covered by § 1-208.

Subsection (A) (3) is intended to mean that the certainty of time of payment or the negotiability of the instrument is not affected by any acceleration clause, whether acceleration be at the option of the maker or the holder, or automatic upon the occurrence of some event, and

whether it be conditional or unrestricted. If the acceleration term itself is uncertain it may fail on ordinary contract principles, but the instrument then remains negotiable and is payable at a definite time.

The effect of acceleration clauses upon a holder in due course is covered by the definition of the holder in due course (§ 3-302) and by the section on notice to purchaser § 3-304(C). If the purchaser is not aware of any acceleration, his delay in making presentment may be excused under the section dealing with excused presentment (§ 3-511 (A)).

4. Subsection (A) (4) adopts the generally accepted rule that a clause providing for extension at the option of the holder, even without a

time limit, does not affect negotiability since the holder is given only a right which he would have without the clause. If the extension is to be at the option of the maker or acceptor or is to be automatic, a definite time limit must be stated or the time of payment remains uncertain, and the instrument is not negotiable. Where such a limit is stated, the effect upon certainty of time of payment is the same as if the instrument were made payable at the ultimate date with a term providing for acceleration.

The construction and effect of extension clauses is covered by § 3-118(F) on ambiguous terms and rules of construction, to which reference should be made.

Cross References

Section 3-104.

Point 2: Section 3-115.

Point 3: Section 1-208, 3-118(F), 3-304(C), and 3-511 (A).

Point 4: Section 3-118(F).

Definitional Cross References

“Holder”. Section 1-201.

“Instrument”. Section 3-102.

“Term”. Section 1-201.

Special Plain Language Comment

This section describes when an instrument is payable at a “definite time” and thus satisfies one requirement for the instrument to be “negotiable”. See § 3-104.

Library References

Bills and Notes ⇄ 129(1), 155.

Indians ⇄ 23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 86 to 89, 91, 133 to 134.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-110. Payable to order

A. An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as “exchange” or the like and names a payee. It maybe payable to the order of:

1. The maker or drawer; or
2. The drawee; or
3. A payee who is not maker, drawer or drawee; or
4. Two or more payees together or in the alternative; or
5. An estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or
6. An office, or an officer by his title as such, in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

7. A partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

B. An instrument not payable to order is not made so payable by such words as “payable upon return of this instrument properly indorsed”.

C. An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-110 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) (4) is intended to eliminate the word “jointly”, which has carried a possible implication of a right of survivorship. Normally, an instrument payable to “A and B” is intended to be payable to the two parties as tenants in common, and there is no survivorship in the absence of express language to that effect. The instrument may be payable to “A and B”, in which case it is payable to either A or B individually. It may be made payable to “A and/or B”, in which case it is payable either to A or to B singly, or to the two together. The negotiation, enforcement and discharge of the instrument in all such cases are covered by the section on instruments payable to two or more persons (§ 3-116).

2. Subsection (A) (5) is intended to change the result of decisions which have held that an instrument payable to the order of the estate of a decedent was payable to bearer, on the ground that the name of the payee did not purport to be that of any person. The intent in such case is obviously not to make the instrument payable to bearer, but to the order of the representative of the estate. The provision extends the same principle to an instrument payable to the order of “Tilden Trust”, or “Community Fund”. So long as the payee can be identified it is not necessary that it be a legal entity, and in each case the instrument is treated as payable to the order of the appropriate representative or his successor.

3. Under Subsection (A) (6) an instrument may be made payable to the office itself (“Swedish Consulate”) or to the officer by his title as

such (“Treasurer of the City Club”). In either case it runs to the incumbent of the office and his successors. The effect of instruments in such a form is covered by the section on instruments payable with words of description (§ 3-117).

4. Instruments made payable to associations are order paper payable as designed and not bearer paper (subsection (A) (7)). As in the case of incorporated associations, any person having authority from the partnership or association to whose order the instrument is payable may indorse or otherwise deal with the instrument.

5. Subsection (B) is intended to change the result of cases holding that “payable upon return of this certificate properly indorsed” indicated an intention to make the instrument payable to any indorsee and so must be construed as the equivalent of “Pay to order”. Ordinarily, the purpose of such language is only to insure return of the instrument with indorsement in lieu of a receipt, and the word “order” is omitted with the intention that the instrument shall not be negotiable.

6. Subsection (C) is directed at occasional instruments reading “Pay to the order of John Doe or bearer”. Such language usually is found only where the drawer has filled in the name of the payee on a printed form, without intending the ambiguity or noticing the word “bearer”. Under such circumstances the name of the specified payee indicates an intent that the order words shall control. If the word “bearer” is handwritten or typewritten, there is sufficient indication of an intent that the instrument shall be payable to bearer. Instruments payable to “order of bearer” are covered not by this section but by the following § 3-111.

Cross References

Sections 3-104 and 3-111.

Point 1: Section 3-116.

Points 2, 3 and 4: Section 3-117.

Definitional Cross References

“Bearer”. Section 1-201.
 “Conspicuous”. Section 1-201.
 “Instrument”. Section 3-102.
 “Negotiation”. Section 3-202.
 “Person”. Section 1-201.
 “Term”. Section 1-201.

Special Plain Language Comment

This section describes when an instrument is payable “to order” and thus satisfies one requirement for the instrument to be “negotiable”. See § 3-104.

Library References

Bills and Notes	§§ 6, 32, 118, 152, 153.	C.J.S. Letters of Credit	§§ 13, 80, 82, 128, 138.
Indians	§§ 23 to 24.		
Westlaw Topic Nos.	56, 209.	C.J.S. Indians	§§ 12, 30 to 31.
C.J.S. Bills and Notes.			

§ 3-111. Payable to bearer

An instrument is payable to bearer when by its terms it is payable to:

- A. Bearer or the order of bearer; or
- B. A specified person or bearer; or
- C. “Cash” or the order of “cash”, or any other indication which does not purport to designate a specific payee.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-111 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Language such as “order of bearer” usually results when a printed form is used and the word “bearer” is filled in. Subsection (A) rejects the view that the instrument is payable to order, and adopts the position that “bearer” is the unusual word and should control. Compare Comment 6 to § 3-110.

2. Subsection (C) is reworded to remove any possible implication that “Pay to the order of _____” makes the instrument payable to bearer. It is an incomplete order

instrument, and falls under § 3-115. Likewise “Pay Treasurer of X Corporation” does not mean pay bearer, even though there may be no such officer. Instruments payable to the order of an estate, trust, fund, partnership, unincorporated association or office are covered by the preceding section. This subsection applies only to such language as “Pay Cash”, “Pay to the order of cash”, “Pay bills payable”, “Pay to the order of one keg of nails”, or other words which do not purport to designate any specific payee.

3. It should be noted that § 3-204 on special indorsement permits bearer paper to be made payable to order, by allowing the special indorsement to control.

Cross References

Sections 3-104, 3-405 and 3-204.
 Point 2: Sections 3-110(A)(1) and (6) and 3-115.
 Point 3: Section 3-204.

Definitional Cross References

“Bearer”. Section 1-201.
 “Instrument”. Section 3-102.

“Person”. Section 1-201.

“Term”. Section 1-201.

Special Plain Language Comment

This section describes when an instrument is payable “to bearer” and thus satisfies one requirement for the instrument to be “negotiable”. See § 3-104.

Library References

Bills and Notes ☞6, 32, 153.

Indians ☞23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 13, 128.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-112. Terms and omissions not affecting negotiability

A. The negotiability of an instrument is not affected by,

1. The omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

2. A statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

3. A promise or power to maintain or protect collateral or to give additional collateral; or

4. A term authorizing a confession of judgment on the instrument if it is not paid when due; or

5. A term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

6. A term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

7. A statement in a draft drawn in a set of parts (§ 3-801) to the effect that the order is effective only if no other part has been honored.

B. Nothing in this section shall validate any term which is otherwise illegal.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-112 of the Uniform Commercial Code adopted by the states.

Commentary. This section permits the insertion of certain obligations and powers in addition to the simple promise or order to pay money. Under § 3-104, dealing with form of negotiable instruments, the instrument may not contain any other promise, order, obligation or power.

1. Subsection (A)(2) permits a clause authorizing the sale or disposition of collateral given to secure obligations either on the instrument or otherwise of an obligor on the instrument upon

any default in those obligations, including a default in payment of an installment or of interest. It is not limited to default at maturity. The reference to obligations of an obligor on the instrument is intended to recognize so-called cross collateral provisions that appear in collateral note forms used by banks and others throughout the United States and to permit the use of these provisions without destroying negotiability. Paragraph (3) permits a clause containing a promise or power to maintain or protect collateral or to give additional collateral, whether on demand or on some other condition. Such terms frequently are accompanied by a provision for acceleration if the collateral

is not given, which is permitted by the section on what constitutes a definite time. Section 1-208 should be consulted as to the construction to be given such clauses under this Code.

2. Paragraph (4) is intended to mean that a confession of judgment may be authorized only if the instrument is not paid when due, and that otherwise negotiability is affected. Subsection (B) is intended to say that any such local rule remains unchanged, and that the clause itself may be invalid, although the negotiability of the instrument is not affected.

3. Paragraph (5) applies not only to any waiver of the benefits of this article, such as

presentment, notice of dishonor or protest, but also to a waiver of the benefits of any other law, such as a homestead exemption. Again subsection (B) is intended to mean that any rule which invalidates the waiver itself is not changed, and that while negotiability is not affected, a waiver of the statute of limitations contained in an instrument may be invalid.

This paragraph is to be read together with § 3-104(A) on form of negotiable instruments. A waiver cannot make the instrument negotiable within this article where it does not comply with the requirements of that section.

Cross References

Sections 3-104 and 3-105.

Point 1: Sections 1-208 and 3-109(A)(3).

Point 3: Section 3-104.

Definitional Cross References

“Draft”. Section 3-104.

“Instrument”. Section 3-102.

“On demand”. Section 3-108.

“Promise”. Section 3-102.

“Term”. Section 1-201.

Special Plain Language Comment

This section describes the provisions which can be added or omitted from an instrument without affecting its “negotiability”. See § 3-104.

Library References

Bills and Notes ⇄ 144 to 175.

Indians ⇄ 23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 3 to 4, 127 to 138, 143, 148, 155, 159.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-113. Seal

An instrument otherwise negotiable is within this article even though it is under a seal.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-113 of the Uniform Commercial Code adopted by the states.

Commentary. The section is intended to place sealed instruments on the same footing as any other instruments so far as all sections of this article are concerned. It does not affect

any other statutes or rules of law relating to sealed instruments except insofar as, in the case of negotiable instruments, they are inconsistent with this article. Thus, a sealed instrument which is within this article may still be subject to a longer statute of limitations than negotiable instruments not under seal, or to such local rules of procedures as that it may be enforced by an action of special assumpsit.

Cross References

Section 3-104.

Definitional Cross References

“Instrument”. Section 3-102.

Library References

Bills and Notes ☞16, 43, 148.

Indians ☞23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 16, 129 to 131.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-114. Date, antedating, postdating

A. The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

B. Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

C. Where the instrument or any signature thereon is dated, the date is presumed to be correct.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-114 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Any fraud or illegality connected with the date of an instrument does not affect its negotiability, but is merely a defense under §§ 3-306 and 3-307 to the same extent as any other fraud or illegality.

2. An undated instrument payable “thirty days after date” is uncertain as to time of payment, and does not fall within § 3-109(A)(1) on definite time. It is, however, an incomplete

instrument, and the date may be inserted as provided in the section dealing with such instruments (§ 3-115). When the instrument has been dated, this subsection follows decisions providing that the time of payment is to be determined from the stated date, even though the instrument is antedated or postdated. An antedated instrument may thus be due before it is issued. As to the liability of indorsers in such a case, see § 3-501(D), on indorsement after maturity.

3. As to the meaning of “presumed”, see § 1-201.

Cross References

Point 1: Sections 3-306 and 3-307.

Point 2: Sections 3-109(A)(1), 3-115 and 3-501(D).

Point 3: Section 1-201.

Definitional Cross References

“Instrument”. Section 3-102.

“Issue”. Section 3-102.

“On demand”. Section 3-108.

“Presumed”. Section 1-201.

“Signature”. Section 3-401.

Library References

Bills and Notes ⇄148, 155.
 Indians ⇄23 to 24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 129 to 131, 133 to 134.
 C.J.S. Indians §§ 12, 30 to 31.

§ 3-115. Incomplete instruments

A. When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect, it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

B. If the completion is unauthorized, the rules as to material alteration apply (§ 3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-115 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The language “signed while still incomplete in any necessary respect” in subsection (A) makes it entirely clear that a complete writing which lacks an essential element of an instrument and contains no blanks or spaces or anything else to indicate that what is missing is to be supplied, does not fall within the section. “Necessary” means necessary to a complete instrument. It will always include the promise or order, the designation of the payee, and the amount payable. It may include the time of payment where a blank is left for that time to be filled in; but where it is clear that no time is intended to be stated the instrument is complete, and is payable on demand under § 3-108. It does not include the date if issue, which under § 3-114(A) is not essential, unless the instrument is made payable at a fixed period after that date.

2. The omission of any reference to signature of a blank paper is not intended, however, to mean that any person may not be authorized to write in an instrument over a signature either before or after delivery.

3. Subsection (B) states the rule generally recognized by the courts, that any unauthorized

completion is an alteration of the instrument which stands on the same footing as any other alteration. Reference is therefore made to § 3-407 where the effect of alteration is stated. Subsection (C) of that section provides that a subsequent holder in due course may in all cases enforce the instrument as completed.

4. Under this article (§ 3-305 and 3-407) neither non-delivery nor unauthorized completion is a defense against a holder in due course, and it would be illogical that the two together should invalidate the instrument in his hands. A holder in due course sees and takes the same paper, whether it was complete when stolen or completed afterward by the thief, and in each case he relies in good faith on the maker’s signature. The loss should fall upon the party whose conduct in signing blank paper has made the fraud possible, rather than upon the innocent purchaser. The result is consistent with the theory of decisions holding the drawer of a check stolen and afterwards filled in to be estopped from setting up the non-delivery against an innocent party.

5. The language on burden of establishing unauthorized completion follows the generally accepted rule that the full burden of proof by a preponderance of the evidence is upon the party attacking the completed instrument. “Burden of establishing” is defined in § 1-201.

Cross References

Point 1: Sections 3-108 and 3-114(A)

Point 3: Section 3-407.

Point 4: Sections 3-305(B), 3-407(C) and 4-401.

Point 5: Section 1-201.

Definitional Cross References

“Alteration”. Section 3-407.
 “Burden of establishing”. Section 1-201.
 “Delivery”. Section 1-201.
 “Instrument”. Section 3-102.
 “Party”. Section 1-201.
 “Signed”. Section 1-201.

Library References

Alteration of Instruments ☞1 to 23.	C.J.S. Bills and Notes.
Bills and Notes ☞58, 60, 368, 378.	C.J.S. Letters of Credit §§ 32 to 33, 197.
Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 25, 56, 209.	
C.J.S. Alteration of Instruments §§ 2 to 20, 23 to 25, 27 to 87.	

§ 3-116. Instruments payable to two or more persons

An instrument payable to the order of two or more persons:

- A. If in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;
- B. If not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-116 of the Uniform Commercial Code adopted by the states.

Commentary. There is a clear distinction between an instrument payable to “A or B” and one payable to “A and B”. The first names either A or B as payee, so that either of them who is in possession becomes a holder as that term is defined in § 1-201 and may negotiate, enforce or discharge the instrument. The sec-

ond is payable only to A and B together, and both must indorse in order to negotiate the instrument, although one may of course be authorized to sign for the other. Likewise both must join in any action to enforce the instrument, and the rights of one are not discharged without his consent by the act of the other.

If the instrument is payable to “A and/or B”, it is payable in the alternative to A, or to B, or to A and B together, and it may be negotiated, enforced or discharged accordingly.

Cross References

Section 1-201.

Definitional Cross References

“Instrument”. Section 3-102.
 “Person”. Section 1-201.

Library References

Banks and Banking ☞137.	Westlaw Topic Nos. 52, 56, 209.
Bills and Notes ☞120, 196, 209.	C.J.S. Banks and Banking §§ 328, 330.
Indians ☞23 to 24.	C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 81, 83, 139, 143 to
144, 146, 249.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-117. Instruments payable with words of description

An instrument made payable to a named person with the addition of words describing him:

- A. As agent or officer of a specified person is payable to that person's principal, but the agent or officer may act as if he was the holder;
- B. As any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;
- C. In any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-117 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The intent is to include all such descriptions as "John Doe, Treasurer of Town of Framingham", "John Doe, President Home Telephone Co.", "John Doe, Secretary of City Club", or "John Doe, agent of Richard Roe". In all such cases it is commercial understanding that the description is not added for mere identification, but for the purpose of making the instrument payable to the principal, and that the agent or officer is named as payee only for convenience in cashing the check.

2. Subsection (B) covers such description as "John Doe, Trustee of Smithers Trust", "John Doe, Administrator of the Estate of Richard Roe", or "John Doe, Executor under Will of Richard Roe". In such cases the instrument is payable to the individual named, who may negotiate it, enforce it or discharge it, but he or she remains subject to any liability for breach of his obligation as a fiduciary. Any subsequent holder of the instrument is put on notice of the

fiduciary position, and under the section on notice to purchaser (§ 3-304) is not a holder in due course if he takes with notice that John Doe has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit, or otherwise in breach of duty.

3. Any other words of description, such as "John Doe, 1121 Main Street", "John Doe, Attorney", or "Jane Doe, unmarried widow", are to be treated as mere identification, and not in any respect as a condition of payment. The same is true of any description of the payee as "Treasurer", "President", "Agent", "Trustee", "Executor", or "Administrator", which does not name the principal or beneficiary. In all such cases the person named may negotiate, enforce or discharge the instrument if he or she is otherwise identified, even though he or she does not meet the description. Any subsequent party dealing with the instrument may disregard the description and treat the paper as payable unconditionally to the individual, and is fully protected in the absence of independent notice of other facts sufficient to affect his position.

Cross References

Point 2: Section 3-304(B).

Definitional Cross References

"Holder". Section 1-201.
"Instrument". Section 3-102.
"Party". Section 1-201.
"Person". Section 1-201.

Library References

Banks and Banking ☞137.	C.J.S. Banks and Banking §§ 328, 330.
Bills and Notes ☞6, 32, 118, 427.	C.J.S. Bills and Notes.
Indians ☞23 to 24.	C.J.S. Letters of Credit §§ 13, 80, 82, 233.
Westlaw Topic Nos. 52, 56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-118. Ambiguous terms and rules of construction

The following rules apply to every instrument:

A. Where there is doubt whether the instrument is a draft or a note, the holder may treat it as either. A draft drawn on the drawer is effective as a note.

B. Handwritten terms control typewritten and printed terms, and typewritten control printed.

C. Words control figures except that, if the words are ambiguous, figures control.

D. Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

E. Unless the instrument otherwise specifies, two or more persons who sign as maker, acceptor or drawer or endorser and as a part of the same transaction are jointly and severally liable even through the instrument contains such words as "I promise to pay".

F. Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with § 3-604 tenders full payment when the instrument is due.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-118 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The purpose of this section is to protect holders and to encourage the free circulation of negotiable paper by stating rules of law which will preclude a resort to parol evidence for any purpose except reformation of the instrument. Except as to such reformation, these rules cannot be varied by any proof that any party intended the contrary.

2. Subsection (A): The provision is not limited to ambiguities of phrasing, but extends to any case where the form of the instrument leaves its character as a draft or a note in doubt.

3. Subsection (B): This provision covers typewriting because of its frequent use in instruments, particularly in promissory notes.

4. Subsection (C) This position is intended to make it clear that figures control only where the words are ambiguous and the figures are not.

5. Subsection (D): This provision is intended to make it clear that where the instrument provides for payment "with interest" without specifying the rate, the judgment rate of interest of the place of payment is to be taken as intended.

6. Subsection (E): This rule applies to any two or more persons who sign in the same capacity, whether as makers, drawers, acceptors or indorsers. It applies only where such

parties sign as a part of the same transaction; successive indorsers are, of course, liable severally but not jointly.

7. Subsection (F): This provision has reference to such clauses as, "The makers and indorsers of this note consent that it may be extended without notice to them". Such terms usually are inserted to obtain the consent of the indorsers and any accommodation maker to extension which might otherwise discharge them under § 3-606 dealing with impairment of recourse or collateral. An extension in accord with these terms binds secondary parties. The

holder may not force an extension on a maker or acceptor who makes due tender; the holder is not free to refuse payment and keep interest running on a good note or other instrument by extending it over the objection of a maker or acceptor or other party who in accordance with § 3-604 tenders full payment when the instrument is due. Where consent to extension has been given, the subsection provides that unless otherwise specified the consent is to be construed as authorizing only one extension for not longer than the original period of the note.

Cross References

Sections 3-109, 3-114, 3-402 and 3-606.
Point 7: Sections 3-604 and 3-606.

Definitional Cross References

"Draft". Section 3-104.
"Holder". Section 1-201.
"Instrument". Section 3-102.
"Issue". Section 3-102.
"Note". Section 3-104.
"Person". Section 1-201.
"Promise". Section 3-102.
"Signed". Section 1-201.
"Term". Section 1-201.

Library References

Bills and Notes ☞ 116 to 124, 137.
Indians ☞ 23 to 24.
Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 4, 24 to 25, 28, 79 to 83, 109 to 113, 115 to 117, 249.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-119. Other writings affecting instrument

A. As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by another written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

B. A separate agreement does not affect the negotiability of an instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-119 of the Uniform Commercial Code adopted by the states.

Commentary. This section is intended to resolve conflicts as to the effect of a separate writing upon a negotiable instrument.

1. This article does not attempt to state general rules as to when an instrument may be varied or affected by parol evidence, except to the extent indicated by the comment to the preceding section. This section is limited to the effect of a separate written agreement executed as a part of the same transaction. The separate

writing is most commonly an agreement creating or providing for a security interest such as a mortgage, chattel mortgage, conditional sale or pledge. It may, however, be any type of contract, including an agreement that upon certain conditions the instrument shall be discharged or is not to be paid, or even an agreement that it is a sham and not to be enforced at all. Nothing in this section is intended to validate any such agreement which is fraudulent or void as against public policy, as in the case of a note given to deceive a bank examiner.

2. Other parties, such as an accommodation indorser, are not affected by the separate writing unless they were also parties to it as a part of the transaction by which they became bound on the instrument.

3. The section applies to negotiable instruments the ordinary rule that writings executed as a part of the same transaction are to be read together as a single agreement. As between the immediate parties a negotiable instrument is merely a contract, and is no exception to the principle that the courts will look to the entire contract in writing. Accordingly, a note may be affected by an acceleration clause, a clause providing for discharge under certain conditions, or any other relevant term in the separate writing. "May be modified or affected" does not mean that the separate agreement must necessarily be given effect. There is still room for construction of the writing as not intended to affect the instrument at all, or as intended to affect it only for a limited purpose such as foreclosure or other realization of collateral. If there is outright contradiction between the two, as where the note is for one thousand dollars (\$1,000) but the accompanying mortgage recites

that it is for two thousand dollars (\$2,000), the note may be held to stand on its own feet and not to be affected by the contradiction.

4. Under this article a purchaser of the instrument may become a holder in due course although he takes it with knowledge that it was accompanied by a separate agreement, if he has no notice of any defense or claim arising from the terms of the agreement. If any limitation in the separate writing in itself amounts to a defense or claim, as in the case of an agreement that the note is a sham and cannot be indorsed, a purchaser with notice of it cannot be a holder in due course. The section also covers limitations which do not in themselves give notice of any present defense or claim, such as conditions providing that under certain conditions the note shall be extended for one (1) year. A purchaser with notice of such limitations may be a holder in due course, but he takes the instrument subject to the limitation. If he is without such notice, he is not affected by such a limiting clause in the separate writing.

5. Subsection (B) rejects decisions which have carried the rule that contemporaneous writings must be read together to the length of holding that a clause in a mortgage affecting a note destroyed the negotiability of the note. The negotiability of an instrument is always to be determined by what appears on the face of the instrument alone, and if it is negotiable in itself a purchaser without notice of a separate writing is in no way affected by it. If the instrument itself states that it is subject to or governed by any other agreement, it is not negotiable under this article; but if it merely refers to a separate agreement or states that it arises out of such an agreement, it is negotiable.

Cross References

Point 1: Section 3-119.
Point 4: Section 3-304(D)(2).
Point 5: Section 3-105 (B) (1) and (A) (3).

Definitional Cross References

"Agreement". Section 1-201.
"Holder in due course". Section 3-302.
"Instrument". Section 3-102.
"Notice". Section 1-201.
"Rights". Section 1-201.
"Terms". Section 1-201.
"Written" and "writing". Section 1-201.

Library References

Bills and Notes ⇄ 134, 165.	C.J.S. Letters of Credit §§ 104, 127, 135 to 136.
Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 56, 209.	
C.J.S. Bills and Notes.	

§ 3-120. Instruments “payable through” bank

An instrument which states that it is “payable through” a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-120 of the Uniform Commercial Code adopted by the states.

Commentary. Insurance, dividend or payroll checks, and occasionally other types of instruments, are sometimes made payable “through” a particular bank. This section states the commercial understanding as to the effect of such

language. The bank is not named as drawee, and it is not ordered or even authorized to pay the instrument out of the drawer’s account or any other funds of the drawer in its hands. Neither is it required to take the instrument for collection in the absence of special agreement to that effect. It is merely designated as a collecting bank through which presentment is properly made to the drawee.

Definitional Cross References

“Bank”. Section 1-201.

“Collecting bank”. Section 4-105 of the appropriate state commercial code.

“Instrument”. Section 3-102.

“Presentment”. Section 3-504.

Library References

Banks and Banking ☞137, 144, 157.

Bills and Notes ☞20.

Indians ☞23 to 24.

Westlaw Topic Nos. 52, 56, 209.

C.J.S. Banks and Banking §§ 320 to 321, 328, 330, 382.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-121. Instruments payable at bank

A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-121 of the Uniform Commercial Code adopted by the states.

Commentary. In most western states, a note or an acceptance which is payable at a bank is

not treated as a draft on the bank, and the bank is not obligated to make payment from the account of the maker or acceptor.

Cross References

Section 3-502.

Definitional Cross References

“Acceptance”. Section 3-410.

“Bank”. Section 1-201.

“Draft”. Section 3-104.

“Instrument”. Section 3-102.
 “Note”. Section 3-104.
 “Order”. Section 3-102.

Library References

Banks and Banking ☞144.	C.J.S. Banks and Banking §§ 320 to 321.
Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 52, 209.	

§ 3-122. Accrual of cause of action

- A. A cause of action against a maker or an acceptor accrues:
1. In the case of a time instrument on the day after maturity,
 2. In the case of a demand instrument upon its date or, if no date is stated, on the date of issue.
- B. A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.
- C. A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.
- D. Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment:
1. In the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;
 2. In all other cases from the date of accrual of the cause of action.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-122 of the Uniform Commercial Code adopted by the states.

Commentary. 1. It follows the generally accepted rule that action may be brought on a demand note immediately upon issue, without demand, since presentment is not required to charge the maker under this article. An exception is made in the case of certificates of deposit for the reason that banking custom and expectation is that demand will be made before any liability is incurred by the bank, and the additional reason that such certificates are issued with the understanding that they will be held for a considerable length of time, which in many instances exceeds the period of the statute of limitations. As to makers and acceptors of time instruments generally, the cause of action accrues on the day after maturity. As to drawers of drafts (including checks) and all indorsers, the cause of action accrues, in conformity with

their underlying contract on the instrument (§§ 3-413 and 3-414), only upon demand made, typically in the form of a notice of dishonor, after the instrument has been presented to and dishonored by the person designated on the instrument to pay it.

2. Closely related to the accrual of a cause of action is the question of when interest begins to run where the instrument is blank on the point. A term in the instrument providing for interest controls. (See § 3-118(D) for the construction of a term which provides for interest but does not specify the rate or the time from which it runs.) In the absence of such a term and except in the case of a maker, acceptor or other primary obligor of a demand instrument, subsection (D) states the rule that interest at the judgment rate runs from the date the cause of action accrues. In the case of a primary obligor of a demand instrument, interest runs from the date of demand although the cause of action (subsection (A) (1)) accrues on the stated date of the

instrument or on issue. Subsection (D) adopts the position of the majority of the courts that on a demand note interest runs only from demand.

This same rule is applied to acceptors and other primary obligors on a demand instrument.

Cross References

Point 1: Sections 3-501, 3-413 and 3-414.
Point 2: Section 3-118(D).

Definitional Cross References

“Action”. Section 1-201.
“Certificate of deposit”. Section 3-102.
“Dishonor”. Section 3-507.
“Draft”. Section 3-104.
“Instrument”. Section 3-102.
“Note”. Section 3-104.
“Notice of dishonor”. Section 3-508.
“On demand”. Section 3-108.

Special Plain Language Comment

This section describes when the holder of an instrument has a present right to sue (i.e., a “cause of action”) under that instrument. Interest will begin to accrue from that date unless otherwise stated in the instrument.

Library References

Bills and Notes ☞445.	C.J.S. Letters of Credit § 257.
Indians ☞23 to 24, 27(4), 32(7).	C.J.S. Indians §§ 12, 17, 30 to 31, 60 to 62, 95, 139 to 143, 152.
Interest ☞31.	C.J.S. Interest and Usury.
Limitation of Actions ☞48.	C.J.S. Consumer Credit § 37.
Westlaw Topic Nos. 56, 209, 219, 241.	C.J.S. Limitations of Actions §§ 150, 153.
C.J.S. Bills and Notes.	

Part 2. Transfer and Negotiation

§ 3-201. Transfer: right to indorsement

A. Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

B. A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

C. Unless otherwise agreed, any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made, and until that time there is no presumption that the transferee is the owner.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-201 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The section applies to any transfer, whether by a holder or not. Any person who transfers an instrument transfers whatever rights he had in it. The transferee acquires those rights even though they do not amount to "title".

2. The transfer of rights is not limited to transfers for value. An instrument may be transferred as a gift, and the donee acquires whatever rights the donor had.

3. A holder in due course may transfer his rights as such. The rule of this section is that any one may transfer what he has. Its policy is to assure the holder in due course a free maker for the paper. The provision is not intended and should not be used to permit any holder who has himself been a party to any fraud or illegality affecting the instrument, or who has received notice of any defense or claim against it, to wash the paper clean by passing it into the hands of a holder in due course and then repurchasing it. The operation of the provision is illustrated by the following examples.

A. A induces M by fraud to make an instrument payable to A, A negotiates it to B, who takes as a holder in due course. After the instrument is overdue B give it to C, who has notice of the fraud. C succeeds to B's rights as a holder in due course, cutting off the defense.

B. A induces M by fraud to make an instrument payable to A, A negotiates it to B, who takes as a holder in due course. A then repurchases the instrument from B. A does not succeed to B's rights as a holder in due course, and remains subject to the defense of fraud.

C. A induces M by fraud to make an instrument payable to A, A negotiates it to B, who takes with notice of the fraud. B negotiates it to C, a holder in due course, and then repurchases the instrument from C. B does not succeed to C's rights as a holder in due course, and remains subject to the defense of fraud.

D. The same facts as (C), except that B had no notice of the fraud when he first acquired the instrument, but learned of it while he was a holder and with such knowledge negotiated to C. B does not succeed to C's rights as a holder in due course, and his position is not improved by the negotiation and repurchase.

4. The rights of a transferee with respect to collateral for the instrument are determined by Article 9 (Secured Transactions).

5. Subsection (B) is intended to make it clear that a transfer of a limited interest in the instrument passes the rights of the transferor to the extent of the interest given. Thus, a transferee for security acquires all such rights subject of course to the provisions of Article 9 (Secured Transactions).

6. Subsection (C) applies only to the transfer for value of an instrument payable to order or specially indorsed. It has no application to a gift, or to an instrument payable or indorsed to bearer or indorsed in blank. The transferee acquires, in the absence of any agreement to the contrary, the right to have the indorsement of the transferor. This right is now made enforceable by an action for specific performance. Unless otherwise agreed, it is a right to the general indorsement of the transferor with full liability as indorser, rather than to an indorsement without recourse. The question commonly arises where the purchaser had paid in advance and the indorsement is omitted fraudulently or through oversight; a transferor who is willing to indorse only without recourse or unwilling to indorse at all should make his intentions clear. The agreement for the transferee to take less than an unqualified indorsement need not be an express one, and the understanding may be implied from conduct, from past practice, or from the circumstances of the transaction.

7. Subsection (C) provides that there is no effective negotiation until the indorsement is made. Until that time the purchaser does not become a holder, and if he receives earlier notice of defense against or claim to the instrument he does not qualify a holder in due course under § 3-302(A)(3).

8. The final clause of subsection (C), which is new, is intended to make it clear that the transferee without indorsement of an order instrument is not a holder and so is not aided by the presumption that he is entitled to recover on the instrument provided in § 3-307(B). The terms of the obligation do not run to him, and he must account for his possession of the unindorsed paper by proving the transaction through which he acquired it. Proof of a transfer to him by a holder is proof that he has acquired the rights of a holder and that he is entitled to the presumption.

Cross References

Sections 3-202 and 3-416.
Point 5: Article 9.
Point 7: Section 3-302(A)(3).
Point 8: Section 3-307(B)

Definitional Cross References

“Bearer”. Section 1-201.
 “Holder”. Section 1-201.
 “Holder in due course”. Section 3-302.
 “Instrument”. Section 3-102.
 “Negotiation”. Section 3-202.
 “Notice”. Section 1-201.
 “Party” § 1-201.
 “Presumption”. Section 1-201.
 “Rights”. Section 1-201.
 “Security interest”. Section 1-201.

Special Plain Language Comment

One of the purposes of this article 3 is to encourage the transfer of commercial paper by allowing a person who receives commercial paper to get payment regardless of whether the person who promised to pay has a defense against an earlier party (such as the store where goods were bought on credit) who was involved with the paper. The policy is limited to persons who have no knowledge of prior defenses when they get the paper. This section sets out the

rules that: (1) a person who legally acquired commercial paper also acquires the rights of the former holder, unless he takes with knowledge of a defense; (2) a person who transfers for value is legally required to indorse it (e.g., to sign it over); and (3) unless commercial paper is payable to bearer (such a check payable “to cash”), the person who holds it is not legally presumed to be entitled to payment unless paper is indorsed (e.g., signed over) to that person.

Library References

Bills and Notes ⇄223 to 384.
 Indians ⇄23 to 24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 4, 24 to 25, 28 to 30, 33, 63, 65, 139, 142 to 147, 149 to 157, 159 to 201, 203 to 204, 242 to 248.
 C.J.S. Indians §§ 12, 30 to 31.

§ 3-202. Negotiation

A. Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order, it is negotiated by delivery with any necessary indorsement; if payable to bearer, it is negotiated by delivery.

B. An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

C. An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less, it operates only as a partial assignment.

D. Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-202 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Negotiation is merely a special form of transfer, the importance of which lies entirely in the fact that it makes the transferee a holder as defined in § 1-201. Any

negotiation carries a transfer of rights as provided in the section on transfer (§ 3-201 (A) and (B)).

2. Any instrument which has been specially indorsed can be negotiated only with the indorsee of the special indorsee as provided in § 3-204 on special indorsement. An instrument indorsed in blank may be negotiated by delivery alone, provided that it bears the indorsement of all prior special indorsees.

3. Subsection (B) follows decisions holding that a purported indorsement on a mortgage or other separate paper pinned or dipped to an instrument is not sufficient for negotiation. The indorsement must be on the instrument itself or on a paper intended for the purpose which is so firmly affixed to the instrument as to become an extension or part of it. Such a paper is called an allonge.

4. The cause of action on an instrument cannot be split. Any indorsement which purports to convey to any party less than the entire amount of the instrument is not effective for negotiation. This is true of either "Pay A one-half", or "Pay A two-thirds and B one-third", and neither A nor B becomes a holder. On the other hand an indorsement reading merely "Pay A and B" is effective, since it transfers the entire cause of action to A and B as tenants in common.

The partial indorsement does, however, operate as a partial assignment of the cause of action. The provision makes no attempt to state the legal effect of such an assignment, which is left to other applicable law. In a jurisdiction in which a partial assignee has any rights, either at law or in equity, the partial indorsee has such rights; and in any jurisdiction where a partial assignee has no rights, the partial indorsee has none.

5. Subsection (D) is intended to reject decisions holding that the addition of such words as "I hereby assign all my right, title and interest in the within note" prevents the signature from operating as an indorsement. Such words usually are added by laymen out of an excess of caution and a desire to indicate formally that the instrument is conveyed, rather than with any intent to limit the effect of the signature.

6. Subsection (D) is also intended to reject decisions which have held that the addition of "I guarantee payment" indicates an intention not to indorse but merely to guarantee. Any signature with such added words is an indorsement, and, if it is made by a holder, is effective for negotiation; but the liability of the indorser may be affected by the words of guarantee as provided in the section on the contract of a guarantor. (§ 3-416.)

Cross References

Section 3-417.

Point 1: Sections 1-201 and 3-201 (A) and (B).

Point 2: Section 3-204.

Point 6: Section 3-416.

Definitional Cross References

"Bearer". Section 1-201.

"Delivery". Section 1-201.

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Written". Section 1-201.

Special Plain Language Comment

Negotiation is the process through which one person transfers commercial paper to another in a way which gives the second person rights in regard to the paper. A thief gets no rights in

the paper unless the paper is payable to bearer. All other types of paper require indorsement in order to be negotiated.

Library References

Bills and Notes ⇄ 176, 208, 267.

Indians ⇄ 23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 139, 143, 146, 148, 160, 162.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-203. Wrong or misspelled name

Where an instrument is made payable to a person under a misspelled name or one other than his own, he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-203 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A party whose name is wrongly designated or misspelled may make an indorsement effective for negotiation by signing in his true name only. This is not commercially satisfactory, since any subsequent purchaser may be left in doubt as to the state of the title; but, whether it is done intentionally or through oversight, the party transfers his rights and is liable on his indorsement, and there is a negotiation if identity exists.

2. He may make an effective indorsement in the wrongly designated or misspelled name only. This again is not commercially satisfactory, since his liability as an indorser may require proof of identity.

3. He may indorse in both names. This is the proper and desirable form of indorsement, and any person called upon to pay an instrument or under contract to purchase it may protect his interest by demanding indorsement in both names, and is not in default if such demand is refused.

Cross References

Section 3-401 (B).

Definitional Cross References

“Instrument”. Section 3-102.

“Person”. Section 1-201.

“Signature”. Section 3-401.

Special Plain Language Comment

This section recognizes that a person to whom commercial paper is transferred will normally expect the instrument to be signed over to him in both the name of the person to whom the instrument is payable and in that person's real name. For example, if a check is payable to

“John Doe”, but his real name is “John Does”, the check is best transferred by signatures in both names. However, the signature of John Doe in either name does transfer his interest in the instrument.

Library References

Bills and Notes ⇔188, 189.

Indians ⇔23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 152 to 153.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-204. Special indorsement; blank indorsement

A. A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

B. An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank

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becomes payable to bearer and maybe negotiated by delivery alone until specially indorsed.

C. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-204 of the Uniform Commercial Code adopted by the states.

Commentary. The principle here adopted is that the special indorser, as the owner even of a bearer instrument, has the right to direct the payment and to require the indorsement of his indorsee as evidence of the satisfaction of his own obligation. The special indorsee may, of course, make it payable to bearer again by himself indorsing in blank.

Cross References

Section 3-202.

Definitional Cross References

“Bearer”. Section 1-201.
“Delivery”. Section 1-201.
“Instrument”. Section 3-102.
“Person”. Section 1-201.
“Signature”. Section 3-401.

Library References

Bills and Notes ⇨188, 189.	C.J.S. Bills and Notes.
Indians ⇨23 to 24.	C.J.S. Letters of Credit §§ 152 to 153.
Westlaw Topic Nos. 56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-205. Restrictive indorsement

An indorsement is restrictive which either:

- A. Is conditional; or
- B. Purports to prohibit further transfer of the instrument; or
- C. Includes the words “for collection”, “for deposit”, “pay any bank”, or like terms signifying a purpose of deposit or collection; or
- D. Otherwise states that it is for the benefit or use of the indorser or of another person.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-205 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section with its separate mention of conditional indorsements, those prohibiting transfer, indorsement in the bank deposit or collection process, and other indorse-

ments to a fiduciary, permits separate treatment in subsequent sections where policy so requires.

2. The purpose of this section is generally to require a taker or payor under restrictive indorsement to apply or pay value given consis-

tently with the indorsement, but to provide certain exceptions applying to banks in the collection process (other than depository banks), and to some other takers and payors.

Cross References

Sections 3-102, 3-202(B), 3-205, 3-206, 3-304, 3-419, and 3-603.

Definitional Cross References

“Instrument”. Section 3-102.

“Person”. Section 1-201.

Library References

Bills and Notes ⇌190.

Indians ⇌23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 154 to 155.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-206. Effect of restrictive indorsement

A. No restrictive indorsement prevents further transfer or negotiation of the instrument.

B. An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank’s immediate transferor or the person presenting for payment.

C. Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words “for collection”, “for deposit”, “pay any bank”, or like terms (§ 3-205(A) and (Q)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement, and, to the extent that he does so, he becomes a holder for value. In addition, such transferee is a holder in due course if he otherwise complies with the requirements of § 3-302 on what constitutes a holder in due course.

D. The first taker under an indorsement for the benefit of the indorser or another person (§ 3-205(D)) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement, and, to the extent that he does so, he becomes a holder for value. In addition, such taker is a holder in due course if he otherwise complies with the requirements of § 3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (§ 3-304(B)).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-206 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsections (A) and (B) apply to all four classes of restrictive indorsements defined in § 3-205. Conditional indorsements and indorsements for deposit or collection, defined in § 3-205(A) and (C), are also subject to subsection (C); and trust indorsement as defined in § 3-205(D) are subject to subsection (D). This section negates any implication that under a restrictive indorsement neither the indorsee nor any subsequent taker from him could become a holder in due course. This article also avoids any implication that a discharge is effective against a holder in due course. See § 3-602.

2. Under subsection (A) an indorsement reading "Pay A only", or any other indorsement purporting to prohibit further transfer, is without effect for that purpose. Such indorsements have rarely appeared in reported American cases. Ordinarily, further negotiation will be contemplated by the indorser, if only for bank collection. The indorsee becomes a holder, and the indorsement does not of itself give notice to subsequent parties of any defense or claim of the indorser. Hence this section gives such an indorsement the same effect as an unrestricted indorsement.

3. Subsection (B) permits an intermediary bank (§§ 3-102(C) and 4-105) or a payor bank which is not a depository bank (§ 3-102(C)) to disregard any restrictive indorsement except that of the bank's immediate transferor. Such banks ordinarily handle instruments, especially checks, in bulk and have no practicable opportunity to consider the effect of restrictive indorsements. Subsection (B) does not affect the rights of the restrictive indorser against parties outside the bank collection process or against the first bank in the collection process; such rights are governed by subsections (C) and (D) and § 3-603.

4. Conditional indorsements are treated by this section like indorsements for deposit or collection. Under subsection (C) any transferee under such an indorsement except an interme-

diary bank becomes a holder for value to the extent that he acts consistently with the indorsement in paying or applying any value given by him for or on the security of the instrument. Subsection (C) permits a transferee under a conditional indorsement to become a holder in due course free of the conditional indorser's claim.

5. Of the indorsements covered by this section those "for collection", "for deposit" and "pay any bank" are overwhelmingly the most frequent. Indorsements "for collection" or "for deposit" may be either special or blank, indorsements "pay any bank" are almost invariably destined to be lodged in a bank for collection. Subsection (C) requires any transferee other than an intermediary bank to act consistently with the purpose of collection, and § 3-603 lays down a similar rule for payors not covered by subsection (B).

6. Subsection (D), applying to trust indorsements other than those for deposit or collection (§ 3-205(D)) is similar to subsection (C); but in subsection (D) the duty to act consistently with the indorsement is limited to the first taker under it. If an instrument is indorsed "Pay T in trust for B" or "Pay T for B" or "Pay T for account of B" or "Pay T as agent for B", whether B is the indorser or a third person, T is of course subject to liability for any breach of his obligation as fiduciary. But trustees commonly and legitimately sell trust assets in transactions entirely outside the bank collection process; the trustee therefore has power to negotiate the instrument and make his transferee a holder in due course. Whether transferees from T have notice of breach of trust such as to deny them the status of holders in due course is governed by the section on notice to purchasers (§ 3-304); the trust indorsement does not of itself give such notice. Payors are immunized either by subsection (B) of this section or by § 3-603: payment to the trustee or to a purchaser from the trustee is "consistent with the terms" of the trust indorsement under § 3-603(A)(2).

7. Sections 3-306 and 3-419 are explicitly made subject to the rules stated in this section.

Cross References

- Point 1: Sections 3-205 and 3-602.
- Point 2: Section 3-205(B).
- Point 3: Sections 3-102(C), 3-419(D) and 3-603.
- Point 4: Section 3-205(A).
- Point 5: Sections 3-205, 3-603.
- Point 6: Sections 3-205, 3-304 and 3-603.
- Point 7: Sections 3-306, 3-419.

Definitional Cross References

“Bank”. Section 1-201.
 “Depository bank”. Section 3-102 (C).
 “Holder in due course”. Section 3-302.
 “Intermediary bank”. Section 3-102(C).
 “Negotiation”. Sections 3-102(B) and 3-202.
 “Payor bank”. Section 3-102(C).
 “Restrictive indorsement”. Section 3-205.
 “Transfer”. Section 3-201.

Special Plain Language Comment

This section and § 3-205 address the effect on the rights of the parties when the holder of an instrument transfers it with a “restrictive in-

dorsement”, such as “for deposit only in account No. 10”.

Library References

Banks and Banking	§§ 137, 159 to 160.	C.J.S. Bills and Notes.
Bills and Notes	§§ 190, 199, 250, 290.	C.J.S. Letters of Credit §§ 154 to 155, 160.
Indians	§§ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos.	52, 56, 209.	
C.J.S. Banks and Banking	§§ 328, 330, 384 to 387.	

§ 3-207. Negotiation effective although it maybe rescinded

A. Negotiation is effective to transfer the instrument although the negotiation is:

1. Made by an infant, a corporation exceeding its powers, or any other person without capacity; or
2. Obtained by fraud, duress or mistake of any kind; or
3. Part of an illegal transaction; or
4. Made in breach of duty.

B. Except as against a subsequent holder in due course, such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-207 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This provision applies to negotiation which may be rescinded even though the party's lack of capacity, or the illegality, is of a character which goes to the essence of the transaction and makes it entirely void, and even though the party negotiating has incurred no liability and is entitled to recover the instrument and have his indorsement canceled.

2. It is inherent in the character of negotiable paper that any person in possession of an

instrument which by its terms runs to him is a holder, and that anyone may deal with him as a holder. The principle finds its most extreme application in the well settled rule that a holder in due course may take the paper even from a thief and be protected against the claim of the rightful owner. Where there is actual negotiation, even in an entirely void transaction, it is no less effective. The policy of this provision is that any person to whom an instrument is negotiated is a holder until the instrument has been recovered from his possession; and that any person who negotiates an instrument thereby parts with all his rights in it until such recovery. The remedy of any such claimant is to recover

the paper by replevin or otherwise; to impound it or to enjoin its enforcement, collection or negotiation; to recover its proceeds from the holder; or to intervene in any action brought by the holder against the obligor. As provided in the section on the rights of one not a holder in due course (§ 3-306) his claim is not a defense to the obligor unless he himself defends the action.

3. Negotiation under this article always includes delivery (§ 3-202, and see § 1-201 (N)). Acquisition of possession by a thief can therefore never be negotiation under this section. But delivery by the thief to another person may be.

4. Nothing in this section is intended to impose any liability on the party negotiating. He may assert any defense available to him under §§ 3-305-3-307.

5. A holder in due course takes the instrument free from all claims to it on the part of any

person (§ 3-305(A)). Against him there can be no rescission or other remedy, even though the prior negotiation may have been fraudulent or illegal in its essence and entirely void. As against any other party the claimant may have any remedy permitted by law. This section is not intended to specify what that remedy may be, or to prevent any court from imposing conditions or limitations such as prompt action or return of the consideration received. All such questions are left to the law of the particular jurisdiction. Section 3-207(B) gives no right where it would not otherwise exist. The section is intended to mean that any remedies afforded by the applicable law are cut off only by a holder in due course, and that other parties, such as a *bona fide* purchaser with notice that the instrument is overdue, take it subject to the claim as provided in subsection (A) of the section on the rights of one not a holder in due course (§ 3-306).

Cross References

Point 2: Sections 1-201 and 3-306(D).

Point 3: Sections 1-201 and 3-202.

Point 4: Sections 3-305, 3-306 and 3-307.

Point 5: Sections 3-305(A) and 3-306(A).

Definitional Cross References

"Holder in due course". Section 3-302.

"Instrument". Section 3-102.

"Negotiation". Section 3-202.

"Person". Section 1-201.

"Remedy". Section 1-201.

Special Plain Language Comment

This section addresses the rights of a person to whom an instrument has been transferred by "negotiation" even though the transfer is for various reasons voidable.

Library References

Bills and Notes ⇌169, 182, 239, 279, 327, 364.

Indians ⇌23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 29, 142, 147, 150 to 151, 157, 159, 169, 191, 201.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-208. Reacquisition

Where an instrument is returned to or reacquired by a prior party, he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course, and, if indorsement has been canceled, is discharged as against subsequent holders in due course as well.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-208 of the Uniform Commercial Code adopted by the states.

Commentary. The phrase “returned to or required by” is employed in order to make it clear that the section is applied to a return by an indorsee who does not himself indorse. “Discharged” is intended to make it clear that the discharge of the intervening party is included within the rule of the section on effect of discharge against a holder in due course (§ 3-602) and is not effective against a subsequent holder in due course who takes without notice of it.

The reacquirer may keep the instrument himself or he may further negotiate it. On further negotiation he may or may not cancel intervening indorsements. In any case intervening indorsers are discharged as to the reacquirer, since if he attempted to enforce it against them they would have an action back against him. Where the reacquirer negotiates without canceling the intervening indorsements, the section provides that such indorsers are discharged except against subsequent holders in due course. The intervening indorser whose indorsement is stricken is, in conformity with § 3-605, discharged even as against subsequent holders in due course.

Cross References

Sections 3-602, 3-603(B) and 3-605.

Definitional Cross References

“Holder in due course”. Section 3-302.

“Instrument”. Section 3-102.

“Party”. Section 1-201.

Special Plain Language Comment

This section addresses the rights of a holder who transfers an instrument and later reacquires it.

Library References

Bills and Notes ⇄193, 313, 345, 436.

Indians ⇄23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 158 to 159, 231, 240, 242, 244 to 248.

C.J.S. Indians §§ 12, 30 to 31.

Part 3. Rights of a Holder**§ 3-301. Rights of a holder**

The holder of an instrument, whether or not he is the owner, may transfer or negotiate it and, except as otherwise provided in § 3-603 on payment or satisfaction, discharge it or enforce payment in his own name.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-301 of the Uniform Commercial Code adopted by the states.

Commentary. The section states in one provision all the rights of a holder, and to make it

clear that every holder has such rights. The only limitations are those found in § 3-603 on payment or satisfaction. That Section provides (with stated exceptions) that payment to a holder discharges the liability of the party paying even though made with knowledge of a claim of

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another person to the instrument, unless the adverse claimant posts indemnity or procures the issuance of appropriate legal process restraining the payment. Thus, payment to a holder in an adverse claim situation would not

give discharge if the adverse claimant had followed either of the procedures provided for in the “unless” clause of § 3-603; nor would a discharge result from payment in two other specific situations described in § 3-603.

Cross References

Sections 1-201, 3-307 and 3-603(A).

Definitional Cross References

“Holder”. Section 1-201.

“Instrument”. Section 3-102.

“Rights”. Section 1-201.

Special Plain Language Comment

This section describes the rights which a person has whenever he possesses an instrument as a “holder”. Because these rights are very

broad, owners of instruments should be very careful who they allow to hold their instruments. See § 3-302 and see § 3-306.

Library References

Bills and Notes ⇨182, 206, 327, 427.

Indians ⇨23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 29, 142, 144, 147, 150 to 151, 157, 159, 169, 201, 233.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-302. Holder in due course

- A. A holder in due course is a holder who takes the instrument:
1. For value; and
 2. In good faith; and
 3. Without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.
- B. A payee may be a holder in due course.
- C. A holder does not become a holder in due course of an instrument:
1. By purchase of it at judicial sale or by taking it under legal process;
- or
2. By acquiring it in taking over an estate; or
 3. By purchasing it as part of a bulk transaction not in regular course of business of the transferor.
- D. A purchase of a limited interest can be a holder in due course only to the extent of the interest purchased.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-302 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The language “without notice that it is overdue” is *intended* to make it clear that the purchaser of an instrument which is in fact overdue may be a holder in due course

if he takes it without notice that it is overdue. Such notice is covered by the section on notice to purchaser (§ 3-304).

2. Subsection (B) is intended to settle the long continued conflict over the status of the payee as a holder in due course. The position here taken is that the payee may become a holder in due course to the same extent and under the same circumstances as any other holder. This is true whether he takes the instrument by purchase from a third person or directly from the obligor. All that is necessary is that the payee meet the requirements of this section. In the following cases, among others, the payee is a holder in due course:

A. A remitter, purchasing goods from P, obtains a bank draft payable to P and forwards it to P, who takes it for value, in good faith and without notice as required by this section.

B. The remitter buys the bank draft payable to P, but it is forwarded by the bank directly to P, who takes it in good faith and without notice in payment of the remitter's obligation to him.

C. A and B sign a note as co-makers. A induces B to sign by fraud, and without authority from B delivers the note to P, who takes it for value, in good faith and without notice.

D. A defrauds the maker into signing an instrument payable to P. P pays A for it in good faith and without notice, and the maker delivers the instrument directly to P.

E. D draws a check payable to P and gives it to his agent to be delivered to P in payment of D's debt. The agent delivers it to P, who takes it in good faith and without notice in payment of the agent's debt to P. But as to this case see § 3-304(B), which may apply.

F. D draws a check payable to P but blank as to the amount, and gives it to his agent to be delivered to P. The agent fills in the check with an excessive amount, and P takes it for value, in good faith and without notice.

G. D draws a check blank as to the name of the payee, and gives it to his agent to be filled in with the name of A and delivered to A. The

agent fills in the name of P, and P takes the check in good faith, for value and without notice.

3. Subsection (C) is intended to state existing case law. It covers a few situations in which the purchaser takes the instrument under unusual circumstances which indicate that he is merely a successor in interest to the prior holder and can acquire no better rights. (If such prior holder was himself a holder in due course, the purchaser succeeds to that status under § 3-201 on Transfer.) The provision applies to a purchaser at an execution sale, a sale in bankruptcy or a sale by a state bank commissioner of the assets of an insolvent bank. It applies equally to an attaching creditor or any other person who acquires the instrument by legal process, even under an antecedent claim; and equally to a representative, such as an executor, administrator, receiver or assignee for the benefit of creditors, who takes over the instrument as part of an estate, even though he is representing antecedent creditors. Subsection (C) (3) applies to bulk purchases lying outside of the ordinary course of business of the seller. It applies, for example, when a new partnership takes over for value all of the assets of an old one after a new member has entered the firm, or to a reorganized or consolidated corporation taking over in bulk the assets of a predecessor. It has particular application to the purchase by one bank of a substantial part of the paper held by another bank which is threatened with insolvency and seeking to liquidate its assets.

4. A purchaser of a limited interest—as a pledgee in a security transaction—may become a holder in due course, but he may enforce the instrument over defenses only to the extent of his interest, and defenses good against the pledgor remain available insofar as the pledgor retains an equity in the instrument. This is merely a special application of the general rule (§ 1-201) that a purchaser of a limited interest acquires rights only to the extent of the interest purchased.

Cross References

Sections 1-201, 3-303, 3-305 and 3-306.

Point 1: Section 3-304(E).

Point 3: Section 3-201.

Point 4: Section 1-201.

Definitional Cross References

"Good faith". Section 1-201.

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Notice". Section 1-201.

"Notice of dishonor". Section 3-508.

"Person". Section 1-201.

"Purchase". Section 1-201.

“Purchaser”. Section 1-201.
 “Value”. Section 3-303.

Special Plain Language Comment

This section defines the key term “holder in due course”. Such a person has the rights of a “holder” as described in § 3-301 plus additional rights stated in § 3-305.

Library References

Bills and Notes ☞327 to 363.
 Indians ☞23 to 24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 4, 142 to 147, 149 to 153, 157, 159, 169 to 191, 201.
 C.J.S. Indians §§ 12, 30 to 31.

§ 3-303. Taking for value

A holder takes the instrument for value:

A. To the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

B. When he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

C. When he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-303 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A holder who does not himself give value cannot qualify as a holder in due course in his own right merely because value has previously been given for the instrument.

2. In this article value is divorced from consideration (§ 3-408). The latter is important only on the question of whether the obligation of a party can be enforced against him; while value is important only on the question of whether the holder who has acquired that obligation qualifies as a particular kind of holder.

3. Subsection (A) requires that the agreed consideration shall actually have been given. An executory promise to give value is not itself value, except as provided in subsection (C). The underlying reason of this policy is that when the purchaser learns of a defense against the instrument or a defect in the title he is not required to enforce the instrument, but is free to rescind the transaction for breach of the transferor’s warranty (§ 3-417). There is thus not the same necessity for giving him the status of a

holder in due course, cutting off claims and defenses, as where he has actually paid value. A common illustration is the bank credit not drawn upon, which can be and is revoked when a claim or defense appears.

4. Subsection (A) limits the language of the original Section 27, eliminating the attaching creditor or any other person who acquires a lien by legal process. Any such lienor has been uniformly held not to be a holder in due course.

5. Subsection (B) adopts the generally accepted rule that the holder takes for value when he takes the instrument as security for an antecedent debt, even though there is no extension of time or other concession, and whether or not the debt is due. The provision extends the same rule to any claim against any person; there is no requirement that the claim arise out of contract. In particular the provision is intended to apply to an instrument given in payment of or as security for the debt of a third person, even though no concession is made in return.

6. Subsection (C) states generally recognized exceptions to the rule that an executory promise is not value. A negotiable instrument is value because it carries the possibility of negotiation to a holder in due course, after which the party

who gives it cannot refuse to pay. The same reasoning applies to any irrevocable commitment to a third person, such as a letter of credit issue when an instrument is taken.

Cross References

Sections 3-302 and 3-415.
Point 1: Section 3-415.
Point 2: Section 3-408.
Point 3: Section 3-417.

Definitional Cross References

“Holder”. Section 1-201.
“Instrument”. Section 3-102.
“Person”. Section 1-201.
“Security interest”. Section 1-201.

Special Plain Language Comment

This section describes when a “holder” of an instrument gives “value” and thus satisfies one of the requirements for being a “holder in due course” under § 3-302.

Library References

Bills and Notes	§§ 352, 357 to 359.	C.J.S. Bills and Notes.
Indians	§§ 23 to 24.	C.J.S. Letters of Credit §§ 171, 185.
Westlaw Topic Nos.	56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-304. Notice to purchaser

- A. The purchaser has notice of a claim or defense if:
1. The instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or
 2. The purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.
- B. The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.
- C. The purchaser has notice that an instrument is overdue if he has reason to know:
1. That any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
 2. That acceleration of the instrument has been made; or
 3. That he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty (30) days.
- D. Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:
1. That the instrument is antedated or postdated;

2. That it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
3. That any party has signed for accommodation;
4. That an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
5. That any person negotiating the instrument is or was a fiduciary;
6. That there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

E. The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

F. To be effective, notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-304 of the Uniform Commercial Code adopted by the states.

Commentary. 1. "Notice" is defined in § 1-201.

2. An instrument may be blank as to some unnecessary particular, may contain minor erasures, or even have an obvious change in the date, as where "January 2, 1948" is changed to "January 2, 1949", without even exciting suspicion. Irregularity is properly a question of notice to the purchaser of something wrong, and is so treated here.

3. "Voidable" obligation in subsection (A) (2) is intended to limit the provision to notice of defense which will permit any party to avoid his original obligation on the instrument, as distinguished from a set-off or counterclaim.

4. Notice that one party has been discharged is not notice to the purchaser of an infirmity in the obligation of other parties who remain liable on the instrument. A purchaser with notice that an indorser is discharged takes subject to that discharge as provided in the section on effect of discharge against a holder in due course (§ 3-602) but is not prevented from taking the obligation of the maker in due course. If he has notice that all parties are discharged he cannot be a holder in due course.

5. Subsection (B) specifies the same elements as notice of improper conduct of a fiduciary. Under subsection (D)(5) mere notice of the existence of the fiduciary relation is not enough in itself to prevent the holder from taking in due course, and he is free to take the

instrument on the assumption that the fiduciary is acting properly. The purchaser may pay cash into the hands of the fiduciary without notice of any breach of the obligation. Section 3-206 should be consulted for the effect of a restrictive indorsement.

6. Subsection (C) provides that reason to know of an overdue installment or other part of the principal amount is notice that the instrument is overdue and thus prevents the purchaser from taking in due course. On the other hand subsection (D)(6) makes notice that interest is overdue insufficient, on the basis of banking and commercial practice, the decisions under the original Act, and the frequency with which interest payments are in fact delayed. Notice of default in payment of any other instrument, except an uncured default in another instrument of the same series, is likewise insufficient.

7. Subsection (C) provides that the purchaser may take accelerated paper, or a demand instrument on which demand has in fact been made, as a holder in due course if he takes without notice of the acceleration or demand. The presumption that any negotiation has taken place before the instrument was in fact overdue is of importance only in aid of a holder in due course. Under this section it is not conclusive that the instrument was in fact overdue when it was negotiated, if the holder takes without notice of that fact.

The "reasonable time after issue" is retained, but paragraph (3) adds a presumption, as that term is defined in that Act (§ 1-201), that a domestic check is stale after thirty (30) days.

8. Subsection (D)(1) rejects decisions holding that an instrument known to be antedated or postdated is not “regular”. Such knowledge does not prevent a holder from taking in due course.

9. Subsection (D) (2) is to be read together with the provisions of this article as to when a promise or order is unconditional and as to other writings affecting the instrument (§§ 3-105 and 3-119). Mere notice of the existence of any executory promise or a separate agreement does not prevent the holder from taking in due course, and such notice may even appear in the instrument itself. If the purchaser has notice of any default in the promise or agreement which gives rise to a defense or claim against the instrument, he is on notice to the same extent as in the case of any other information as to the existence of a defense or claim.

10. Subsection (D) (4) follows the policy under which any person in possession of an instrument has prima facie authority to fill blanks. It is intended to mean that the holder may take in due course even though a blank is filled in his presence, if he is without notice that the filling is improper. Section 3-407 on alteration should be consulted as to the rights of subsequent holders following such an alteration.

11. Subsection (E) removes any uncertainty as to the effect of “constructive notice” through public filing or recording.

12. Subsection (F) means that notice must be received with a sufficient margin of time to afford a reasonable opportunity to act on it, and that a notice received by the president of a bank one minute before the bank’s teller cashes a check is not effective to prevent the bank from becoming a holder in due course. See in this connection the provision on notice to an organization, § 1-201 (AA).

Cross References

Sections 3-201 and 3-302.
 Point 1: Section 1-201.
 Point 4: Section 3-602.
 Point 5: Section 3-206.
 Point 7: Section 1-201.
 Point 9: Sections 3-105(A)(2) and (3) and 3-119.
 Point 10: Section 3-407.
 Point 12: Section 1-201.

Definitional Cross References

“Accommodation party”. Section 3-415.
 “Agreement”. Section 1-201.
 “Alteration”. Section 3-407.
 “Bank”. Section 1-201.
 “Check”. Section 3-104.
 “Holder in due course”. Section 3-302.
 “Instrument”. Section 3-102.
 “Issue”. Section 3-102.
 “Negotiation”. Section 3-202.
 “Notice”. Section 1-201.
 “Party”. Section 1-201.
 “Person”. Section 1-201.
 “Presumed”. Section 1-201.
 “Promise”. Section 3-102.
 “Purchaser”. Section 1-201.
 “Reasonable time”. Section 1-204.
 “Signed”. Section 1-201.
 “Term”. Section 1-201.

Special Plain Language Comment

If a person has notice of a defense or a claim on a check, note or other piece of commercial paper, he cannot become a holder in due course. Therefore, defining “notice” is very important in order to determine when a pur-

chaser of commercial paper can enforce it free of such claims or defenses. This section describes the basic situations in which a purchaser has notice.

Library References

Bills and Notes ⇄331, 336.
 Indians ⇄23 to 24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 172, 174, 177 to
 179.
 C.J.S. Indians §§ 12, 30 to 31.

§ 3-305. Rights of a holder in due course

To the extent that a holder is a holder in due course he takes the instrument free from:

- A. All claims to it on the part of any person; and
- B. All defenses of any party to the instrument with whom the holder has not dealt except:
 - 1. Infancy, to the extent that it is a defense to a simple contract; and
 - 2. Such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - 3. Such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - 4. Discharge in insolvency proceedings; and
 - 5. Any other discharge of which the holder has notice when he takes the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-305 of the Uniform Commercial code as adopted by the states.

Commentary. 1. This section applies to any person who is himself a holder in due course, and equally to any transferee who acquires the rights of one (§ 3-201). "Takes" is used because a holder in due course may still be subject to any claims or defenses which arise against him after he has taken the instrument.

2. The language "all claims to it on the part of any person" is to make it clear that the holder in due course takes the instrument free not only from any claim of legal title but also from all liens, equities or claims of any other kind. This includes any claim for rescission of a prior negotiation, in accordance with the provisions of the section on reacquisition (§ 3-208).

3. "All defenses" includes non-delivery, conditional delivery or delivery for a special purpose. Under this article such non-delivery or qualified delivery is a defense (§§ 3-306 and 3-307), and the defendant has the full burden of establishing it.

The effect of this section, together with the sections dealing with incomplete instruments (§ 3-115) and alteration (§ 3-407) is to cut off the defense of non-delivery of an incomplete instrument against a holder in due course.

4. Under subsection (B)(1) the defense of infancy may be asserted against a holder in due course, even though its effect is to render the instrument voidable but not void. The policy is one of protection of the infant against those who take advantage of him, even at the expense of occasional loss to an innocent purchaser. No attempt is made to state when infancy is available as a defense or the conditions under which it maybe asserted. In some jurisdictions it is held that an infant cannot rescind the transaction or set up the defense unless he restores the holder to his former position, which in the case of a holder in due course is normally impossible. In other states an infant who has misrepresented his age may be estopped to assert his infancy. Such questions are left to Navajo law, as an integral part of the policy of the tribe as to the protection of infants.

5. Subsection (B) (2) covers mental incompetence, guardianship, ultra vires acts or lack of corporate capacity to do business, any remain-

ing incapacity of married women, or any other incapacity apart from infancy. Such incapacity is largely statutory. Its existence and effect is left to Navajo law. If under Navajo law the effect is to render the obligation of the instrument entirely null and void, the defense may be asserted against a holder in due course. If the effect is merely to render the obligation voidable at the election of the obligor, the defense is cut-off.

6. Duress is a matter of degree. An instrument signed at the point of a gun is void, even in the hands of a holder in due course. One signed under threat to prosecute the son of the maker for theft may be merely voidable so that the defense is cut-off. Illegality is most frequently a matter of gambling or usury, but may arise in many other forms under various statutes. All such matters are left to Navajo law. If under that law the effect of the duress or the illegality is to make the obligation entirely null and void, the defense may be asserted against a holder in due course. Otherwise it is cut-off.

7. Subsection (B)(3) recognizes the defense of "real" or "essential" fraud, sometimes called fraud in the essence or fraud in the factum, as effective against a holder in due course. The common illustration is that of the maker who is tricked into signing a note in the belief that it is merely a receipt of some other document. The theory of the defense is that his signature on the instrument is ineffective because he did not intend to sign such an instrument at all. Under this provision the defense extends to an instrument signed with knowledge that it is a negotiable instrument, but without knowledge of its essential terms.

The test of the defense here stated is that of excusable ignorance of the contents of the writing signed. The party must not only have been in ignorance, but must also have had no reasonable opportunity to obtain knowledge. In determining what is a reasonable opportunity all relevant factors are to be taken into account, including the age and sex of the party, his intelligence, education and business experience; his ability to read or to understand English, the representations made to him and his reason to rely on them or to have confidence in the person making them; the presence or absence of any third person who might read or explain the instrument to him, or any other possibility of obtaining independent information; and the apparent necessity, or lack of it, for acting without delay.

Unless the misrepresentation meets this test, the defense is cut off by a holder in due course.

8. Paragraph (4) is inserted to make it clear that any discharge in bankruptcy or other insolvency proceedings, as defined in this article, is not cut-off when the instrument is purchased by a holder in due course.

9. Under subsection (B)(5) notice of any discharge which leaves other parties liable on this instrument does not prevent the purchaser from becoming a holder in due course. The obvious case is that of the cancellation of an indorsement, which leaves the maker and prior indorsers liable. As to such parties the purchaser may be a holder in due course, but he takes the instrument subject to the discharge of which he has notice. If he is without such notice, the discharge is not effective against him (§ 3-602).

Cross References

Point 1: Section 3-201 (A).

Point 2: Section 3-208.

Point 3: Sections 3-115(B), 3-306(C), 3-307(B) and 3-407(A)(3).

Point 9: Sections 3-304(A)(2) and 3-602.

Definitional Cross References

"Contract". Section 1-201.

"Holder in due course". Section 3-302.

"Insolvency proceedings". Section 1-201.

"Instrument". Section 3-102.

"Notice". Section 1-201.

"Party". Section 1-201.

"Person". Section 1-201.

"Term". Section 1-201.

Special Plain Language Comment

A person who signs a negotiable instrument can rescind the obligation if he or she was too young, was defrauded into signing, has been discharged in bankruptcy or, if the holder has knowledge of any other discharge (reason for

being let off). However, other defenses which may exist in favor of the person obligated on the instrument will not be effective against persons to whom the original payee may transfer the

instrument and who are “holders in due course”. See § 3-306.

Library References

Bills and Notes ☞327, 363, 364.
Indians ☞23 to 24.
Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 142, 159, 169, 190 to 191, 201.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-306. Rights of one not a holder in due course

Unless he has the rights of a holder in due course any person takes the instrument subject to:

- A. All valid claims to it on the part of any person; and
- B. All defenses of any party which would be available in an action on a simple contract; and
- C. The defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (§ 3-408); and
- D. The defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-306 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Any transferee who acquires the rights of a holder in due course under the transfer section of this article (§ 3-201) is included within the provisions of the preceding § 3-305. This section covers any person who neither qualifies in his own right as a holder in due course nor has acquired the rights of one by transfer. In particular, the section applies to a bona fide purchaser with notice that the instrument is overdue.

2. “All valid claims to it on the part of any person” includes not only claims of legal title, but all liens, equities, or other claims of right against the instrument or its proceeds. It includes claims to rescind a prior negotiation and to recover the instrument or its proceeds.

3. Subsection (C) mentions want or failure of consideration in order to make it clear that either is a defense which the defendant has the burden of establishing under the following section of this article. The following section,

which places the full burden of establishing the defense of non-delivery, conditional delivery or delivery for a special purpose upon the defendant, makes any presumption unnecessary.

4. Subsection (D) is a detailed and explicit statement of the policy that the contract of the obligor is to pay the holder of the instrument, and the claims of other persons against the holder are generally not his concern. He is not required to set up such a claim as a defense, since he usually will have no satisfactory evidence of his own on the issue; and the provision that he may not do so is intended as much for his protection as for that of the holder. The claimant who has lost possession of an instrument so payable or indorsed that another may become a holder has lost his rights on the instrument, which by its terms no longer runs to him. The provision includes all claims for rescission of a negotiation, whether based in incapacity, fraud, duress, mistake, illegality, breach of trust or duty or any other reason. It includes claims based on conditional delivery or delivery for a special purpose. It includes claims of legal title, lien, constructive trust or other equity

against the instrument or its proceeds. The exception made in the case of theft is based on the policy which refuses to aid a proved thief to recover, and refuses to aid him indirectly by permitting his transferee to recover unless the transferee is a holder in due course. The exception concerning restrictive indorsements is intended to achieve consistency with § 3-603 and related sections.

Nothing in this section is intended to prevent the claimant from intervening in the holder's

action against the obligor or defending the action for the latter and asserting his claim in the course of such intervention or defense. Nothing here stated is intended to prevent any interpleader, deposit in court or other available procedure under which the defendant may bring the claimant into court or be discharged without himself litigating the claim as a defense. Compare § 3-803 on vouching in other parties alleged to be liable.

Cross References

Section 3-302.

Point 1: Sections 3-201 (A) and 3-305.

Point 2: Section 3-207.

Point 3: Sections 3-305 and 3-307(B)

Point 4: Section 3-803.

Definitional Cross References

"Action". Section 1-201.

"Contract". Section 1-201.

"Delivery". Section 1-201.

"Holder in due course". Section 3-302.

"Instrument". Section 3-102.

"Party". Section 1-201.

"Person". Section 1-201.

"Rights". Section 1-201.

Special Plain Language Comment

This section explains the defenses which may be asserted with respect to an instrument against a holder of the instrument who does not qualify as a "holder in due course". See § 3-302.

Library References

Bills and Notes  313, 314, 450.
Indians  23 to 24.

Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit   159, 166 to 168,
259.

C.J.S. Indians   12, 30 to 31.

  3-307. Burden of establishing signatures, defenses and due course

A. Unless specifically denied in the pleadings, each signature on an instrument is admitted. When the effectiveness of a signature is put in issue:

1. The burden of establishing it is on the party claiming under the signature; but

2. The signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

B. When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

C. After it is shown that a defense exists, a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-307 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The purpose in subsection (A) of requiring a specific denial in the pleadings is to give the plaintiff notice that he must meet a claim of forgery or lack of authority as to the particular signature, and to afford him an opportunity to investigate and obtain evidence. Where local rules of pleading permit, the denial may be on information and belief, or it may be a denial of knowledge or information sufficient to form a belief. It need not be under oath unless the local statutes or rules require verification. In the absence of such specific denial the signature stands admitted, and is not in issue. Nothing in this section is intended, however, to prevent amendment of the pleading in a proper case.

The question of the burden of establishing the signature arises only when it has been put in issue by specific denial. "Burden of establishing" is defined in the definitions section of this Code (§ 1-201). The burden is on the party claiming under the signature, but he is aided by the presumption that it is genuine or authorized [as] stated in paragraph (2). "Presumption" is also defined in this Code (§ 1-201). It means that until some evidence is introduced which would support a finding that the signature is forged or unauthorized the plaintiff is not required to prove that it is authentic. The presumption rests upon the fact that in ordinary experience forged or unauthorized signatures are very uncommon, and normally any evidence is within the control of the defendant or more accessible to him. He is therefore required to make some sufficient showing of the grounds for his denial before the plaintiff is put to his proof. His evidence need not be sufficient to require a directed verdict in his favor, but it must be enough to support his denial by permitting a finding in his favor. Until he introduces such evidence the presumption requires a finding for the plaintiff. Once such evidence is introduced the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff.

Under paragraph (2) this presumption does not arise where the action is to enforce the obligation of a purported signer who has died or become incompetent before the evidence is required, and so is disabled from obtaining or

introducing it. "Action" of course includes a claim asserted against the estate of a deceased or an incompetent.

2. Subsection (B) states that once signatures are proved or admitted, a holder makes out his case by mere production of the instrument, and is entitled to recover in the absence of any further evidence. The defendant has the burden of establishing any and all defenses, but by a preponderance of the total evidence. The provision applies only to a holder, as defined in this Code (§ 1-201). Any other person in possession of an instrument must prove his right to it and account for the absence of any necessary indorsement. If he establishes a transfer which gives him the rights of a holder (§ 3-201), this provision becomes applicable, and he is then entitled to recover unless the defendant establishes a defense.

3. Subsection (C) concerns the doctrine that until it is shown that a defense exists, the issue as to whether the holder is a holder in due course does not arise. In the absence of a defense any holder is entitled to recover, and there is no occasion to say that he is deemed prima facie to be a holder in due course. When it is shown that a defense exists, the plaintiff may, if he so elects, seek to cut off the defense by establishing that he is himself a holder in due course, or that he has acquired the rights of a prior holder in due course (§ 3-201). On this issue he has the full burden of proof by a preponderance of the total evidence. "In all respects" means that he must sustain this burden by affirmative proof that the instrument was taken for value, that it was taken in good faith, and that it was taken without notice (§ 3-302).

Nothing in this section is intended to say that the plaintiff must necessarily prove that he is a holder in due course. He may elect to introduce no further evidence, in which case a verdict may be directed for the plaintiff or the defendant, or the issue of the defense may be left to the jury, according to the weight and sufficiency of the defendant's evidence. He may elect to rebut the defense itself by proof to the contrary, in which case again a verdict may be directed for either party or the issue may be for the jury. This subsection means only that if the plaintiff claims the rights of a holder in due course against the defense he has the burden of proof upon that issue.

Cross References

Sections 3-305, 3-306, 3-401, 3-403 and 3-404.

Point 1: Section 1-201.
 Point 2: Sections 1-201 and 3-201 (A).
 Point 3: Sections 3-201 (A) and 3-302.

Definitional Cross References

“Action”. Section 1-201.
 “Burden of establishing”. Section 1-201.
 “Defendant”. Section 1-201.
 “Genuine”. Section 1-201.
 “Holder”. Section 1-201.
 “Holder in due course”. Section 3-302.
 “Instrument”. Section 3-102.
 “Party”. Section 1-201.
 “Person”. Section 1-201.
 “Presumed”. Section 1-201.
 “Rights”. Section 1-201.
 “Signature”. Section 3-401.

Special Plain Language Comment

If the parties to an instrument have a dispute about their respective rights and obligations, the Court follows various rules for resolving the dispute, including those specified in this section to determine who has the burden of convincing the Court on certain common issues.

Library References

Bills and Notes	§§ 463, 492, 497, 517, 525.	C.J.S. Letters of Credit	§§ 269, 285 to 288, 292, 301, 304.
Indians	§§ 23 to 24, 27(6), 32(7).	C.J.S. Indians	§§ 12 to 13, 30 to 31, 60 to 62, 95, 139 to 143, 152.
Westlaw Topic Nos.	56, 209.		
C.J.S. Bills and Notes.			

Part 4. Liability of Parties

§ 3-401. Signature

A. No person is liable on an instrument unless his signature appears thereon.

B. A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-401 of the Uniform Commercial Code adopted by the states.

Commentary. 1. No one is liable on an instrument unless and until he has signed it. The chief application of the rule has been in cases holding that a principal whose name does not appear on an instrument signed by his agent is not liable on the instrument even though the payee knew when it was issued that it was

intended to be the obligation of one who did not sign. An allonge is part of the instrument to which it is affixed. Section 3-202(B).

Nothing in this section is intended to prevent any liability arising apart from the instrument itself. The party who does not sign may still be liable on the original obligation for which the instrument was given, or for the breach of any agreement to sign, or in tort for misrepresentation, or even on an oral guaranty of payment where the Statute of Frauds is satisfied. He

may of course be liable under any separate writing. The provision is not intended to prevent an estoppel to deny that the party has signed, as where the instrument is purchased in good faith reliance upon his assurance that a forged signature is genuine.

2. A signature may be handwritten, typed, printed or made in any other manner. It need not be subscribed, and may appear in the body of the instrument, as in the case of "I, John Doe, promise to pay . . ." without any other signature. It may be made by mark or even by thumbprint. It may be made in any name, including any trade name or assumed name, however false and fictitious, which is adopted for the purpose. Parol evidence is admissible to

identify the signer, and when he is identified the signature is effective.

This section is not intended to affect any Navajo statute or rule of law requiring a signature by mark to be witnessed, or any signature to be otherwise authenticated or requiring any form of proof. It is to be read together with the provision under which a person paying or giving value for the instrument may require indorsement in both the right name and the wrong one; and with the provision that the absence of an indorsement in the right name may make an instrument so irregular as to call its ownership into question and put a purchaser upon notice which will prevent his taking as a holder in due course.

Cross References

Sections 3-202(B), 3-402 through 3-406.

Point 1: Section 3-410.

Point 2: Section 3-203.

Definitional Cross References

"Person". Section 1-201.

"Instrument". Section 3-102.

"Signed". Section 1-201.

"Written". Section 1-201.

Library References

Bills and Notes ⇄54, 55 to 61.

Indians ⇄23 to 24.

Signatures ⇄1 to 5.

Westlaw Topic Nos. 56, 209, 355.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 26 to 32, 197.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Signatures §§ 1 to 16.

§ 3-402. Signature in ambiguous capacity

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-402 of the Uniform Commercial Code adopted by the states.

Commentary. The review language is intended to say that any ambiguity as to the capacity in which a signature is made must be resolved by a rule of law that it is an indorsement. Parol evidence is not admissible to show any other capacity, except for the purpose of reformation of the instrument as it may be permitted under the rules of the particular jurisdiction. The question is to be determined from the face of the instrument alone, and unless the instrument

itself makes it clear that he has signed in some other capacity the signer must be treated as an indorser.

The indication that the signature is made in another capacity must be clear without reference to anything but the instrument. It maybe found in the language used. Thus, if John Doe signs after "I, John Doe, promise to pay", he is clearly a maker; and "John Doe, witness" is not liable at all. The capacity may be found in any clearly evidenced purpose of the signature, as where a drawee signing in an unusual place on the paper has no visible reason to sign at all unless he is an acceptor. It may be found in

usage or custom. Thus, by long established practice, judicially noticed or otherwise established, a signature in the lower right hand corner of an instrument indicates an intent to sign as the maker of a note or the drawer of a draft.

Any similar clear indication of an intent to sign in some other capacity may be enough to remove the signature from the application of this section.

Cross References

Section 3-401.

Definitional Cross References

“Instrument”. Section 3-102.

“Signature”. Section 3-401.

Library References

Bills and Notes ⇄54, 118, 223, 248, 267.
Indians ⇄23 to 24.

Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 26 to 30, 80, 82,
147, 160, 162.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-403. Signature by authorized representative

A. A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases or representation. No particular form of appointment is necessary to establish such authority.

B. An authorized representative who signs his own name to an instrument:

1. Is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

2. Except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

C. Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-403 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The definition of “representative” in this Code (§ 1-201) includes an officer of a corporation or association, a trustee, an executor or administrator of an estate, or any person empowered to act for another. It is not intended to mean that a trust or an estate is necessarily a legal entity with the capacity to

issue negotiable instruments, but merely that if it can issue them they may be signed by the representative.

The power to sign for another may be an express authority, or it may be implied in law or in fact, or it may rest merely upon apparent authority. It may be established as in other cases of representation, and when relevant parol evidence is admissible to prove or to deny it.

2. Subsection (B) applies only to the signature of a representative whose authority to sign

for another is established. If he is not authorized his signature has the effect of an unauthorized signature (§ 3-404). Even though he is authorized the principal is not liable on the instrument, under the provisions (§ 3-401) relating to signatures, unless the instrument names him and clearly shows that the signature is made on his behalf.

3. Assuming that Peter Pringle is a principal and Arthur Adams is his agent, an instrument might, for example, bear the following signatures affixed by the agent:

- A. "Peter Pringle", or
- B. "Arthur Adams", or
- C. "Peter Pringle by Arthur Adams, Agent", or
- D. "Arthur Adams, Agent", or

E. "Peter Pringle Arthur Adams".

- signature in form (A) does not bind Adams if authorized (§§ 3-401 and 3-404).

- signature as in (B) personally obligates the agent and parol evidence is inadmissible under subsection (B)(1) to disestablish his obligation.

The unambiguous way to make the representation clear is to sign as in subsection (C). Any other definite indication is sufficient, as where the instrument reads "Peter Pringle promises to pay" and it is signed "Arthur Adams, Agent". Adams is not bound if he is authorized (§ 3-404).

Section (B)(2) admits parol evidence in litigation between the immediate parties to prove signature by the agent in his representative capacity.

Cross References

Point 1: Section 1-201.

Point 2: Sections 3-401(A), 3-404 and 3-405.

Definitional Cross References

"Instrument". Section 3-102.

"Person". Section 1-201.

"Representative". Section 1-201.

"Signature". Section 3-401.

Library References

Bills and Notes ⇔ 54, 59, 123.

Indians ⇔ 23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 26 to 30.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-404. Unauthorized signatures

A. Any unauthorized signature is wholly inoperative as that person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signed in favor of any person who in good faith pays the instrument or takes it for value.

B. Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-404 of the Uniform Commercial Code adopted by the states.

Commentary. 1. "Unauthorized signature" is a defined term (§ 1-201). It includes both a forgery and a signature made by an agent exceeding his actual or apparent authority.

2. The final clause of subsection (B) states that generally accepted rule that the unauthorized signature, while it is wholly inoperative as that of the person whose name is signed, is effective to impose liability upon the actual signer or to transfer any rights that he may have in the instrument. His liability is not in damages

for breach of a warranty of his authority, but is full liability on the instrument in the capacity in which he has signed. It is, however, limited to parties who take or pay the instrument in good faith; and one who knows that the signature is unauthorized cannot recover from the signer on the instrument.

3. Subsection (B) settles the conflict which has existed in the decisions as to whether a forgery may be ratified. A forged signature may at least be adopted; and the word "ratified" is used in order to make it clear that the adoption is retroactive and that it may be found from conduct as well as from express statements. Thus, it may be found from the retention of benefits received in the transaction with knowledge of the unauthorized signature; and although the forger is not an agent, the ratification is governed by the same rules and principles as if he were.

This provision makes ratification effective only for the purposes of this article. The unau-

thorized signature becomes valid so far as its effect as a signature is concerned. The ratification relieves the actual signer from liability on the signature. It does not of itself relieve him from liability to the person whose name is signed. It does not in any way affect the criminal law. No policy of the criminal law requires that the person whose name is forged shall not assume liability to others on the instrument; but he cannot affect the rights of the government. While the ratification may be taken into account with other relevant facts in determining punishment, it does not relieve the signer of criminal liability.

4. The words "or is precluded from denying it" in subsection (A) recognize the possibility of an estoppel against the person whose name is signed, as where he expressly or tacitly represents to an innocent purchaser that the signature is genuine; and to recognize the negligence which precludes a denial of the signature.

Cross References

Sections 3-307, 3-401, 3-403 and 3-405.

Point 1: Section 1-201.

Point 4: Section 3-406.

Definitional Cross References

"Good faith". Section 1-201.

"Instrument". Section 3-102.

"Person". Section 1-201.

"Rights". Section 1-201.

"Signature". Section 3-401.

"Signed". Section 1-201.

"Unauthorized signature". Section 1-201.

"Value". Section 3-303.

Library References

Bills and Notes ⇔54, 61, 123.

Indians ⇔23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 26 to 30.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-405. Imposters; signature in name of payee

A. An indorsement by any person in the name of a named payee is effective if:

1. An impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or
2. A person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or
3. An agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

B. Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-405 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section recognizes as effective indorsement of the types of paper covered no matter by whom made. This solution is thought preferable to making such instruments bearer paper; on the face of things they are payable to order and a subsequent taker should require what purports to be a regular chain of indorsements. On the other hand, it is unduly restrictive to require that the actual indorsement be made by the impostor or other fraudulent actor. In most cases the person whose fraud procured the instrument to be issued will himself indorse; when some other third person indorses it will most probably be a case of theft or a second independent fraud superimposed upon the original fraud. In neither case does there seem to be sufficient reason to reverse the rule of the section. To recapitulate: the instrument does not become bearer paper, a purportedly regular chain in indorsements is required, but any person – first thief, second impostor or third murderer – can effectively indorse in the name of the payee.

2. Subsection (A)(1) rejects decisions which distinguish between face-to-face imposture and imposture by mail and hold that where the parties deal by mail the dominant intent of the drawer is to deal with the name rather than with the person so that the resulting instrument may be negotiated only by indorsement of the payee whose name has been taken in vain. The result of the distinction has been under some prior law, to throw the loss in the mail imposture forward to a subsequent holder or to the drawee. Since the maker or drawer believes the two to be one and the same, the two intentions cannot be separated, and the “dominant intent” is a fiction. The position here taken is that the loss, regardless of the type of fraud which the particular imposter has committed, should fall upon the maker or drawer. “Impostor” refers to impersonation, and does not extend to a false representation that the party is the authorized agent of the payee. The maker or drawer who takes the precaution of making the instrument payable to the principal is entitled to have his indorsement.

3. Subsection (A) (2) is based not on whether the named payee is “fictitious”, but whether the signer intends that he shall have no interest in the instrument. The following situations illustrate the application of the subsection:

A. The drawer of a check, for his own reasons, makes it payable to P knowing that P does not exist.

B. The drawer makes the check payable in the name of P. A person named P exists, but the drawer does not know it.

C. The drawer makes the check payable to P, an existing person whom he knows, intending to receive the money himself and that P shall have no interest in the check.

D. The treasurer of a corporation draws its check payable to P, who to the knowledge of the treasurer does not exist.

E. The treasurer of a corporation draws its check payable to P. P exists but the treasurer has fraudulently added his name to the payroll intending that he shall not receive the check.

F. The president and the treasurer of a corporation both sign its check payable to P. P does not exist. The treasurer knows it but the president does not.

G. The same facts as F, except that P exists and the treasurer knows it, but intends that P shall have no interest in the check.

In all cases stated an indorsement by any person in the name of P is effective.

4. Subsection (A) (3) includes the padded payroll cases, where the drawer’s agent or employee prepares the check for signature or otherwise furnishes the signing officer with the name of the payee. The principle followed is that the loss should fall upon the employer as a risk of his business enterprise rather than upon the subsequent holder or drawee. The reasons are that the employer is normally in a better position to prevent such forgeries by reasonable care in the selection or supervision of his employees, or, if he is not, is at least in a better position to cover the loss by fidelity insurance; and that the cost of such insurance is properly an expense of his business rather than of the business of the holder or drawee.

The provision applies only to the agent or employee of the drawer and only to the agent or employee who supplies him with the name of the payee. The following situations illustrate its application:

A. An employee of a corporation prepares a padded payroll for its treasurer, which includes the name of P. P does not exist, and the employee knows it, but the treasurer does not. The treasurer draws the corporation’s check payable to P.

B. The same facts as A, except that P exists and the employee knows it but intends him to have no interest in the check. In both cases an

indorsement by any person in the name of P is effective and the loss falls on the corporation.

5. The section is not intended to affect criminal liability for forgery or any other crime, or civil liability to the drawer or to any other

person. It is to be read together with the section under which an unauthorized signer is personally liable on the signature to any person who takes the instrument in good faith (3-404(A)).

Cross References

Sections 3-401, 3-403, 3-404 and 3-406.
Point. 5: Section 3-404(A).

Definitional Cross References

“Instrument”. Section 3-102.
“Issue”. Section 3-102.
“Person”. Section 1-201.
“Signature”. Section 3-401.

Library References

Banks and Banking	⊕147, 174.	C.J.S. Bills and Notes.
Bills and Notes	⊕182, 239, 279.	C.J.S. Letters of Credit
Indians	⊕23 to 24.	§§ 29, 147, 150 to 151, 157.
Westlaw Topic Nos.	52, 56, 209.	C.J.S. Indians
C.J.S. Banks and Banking	§§ 415 to 416, 419, 421 to 428, 430 to 432, 434, 437 to 438.	§§ 12, 30 to 31.

§ 3-406. Negligence contributing to alteration or unauthorized signature

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-406 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section adopts the doctrine which held that a drawer who so negligently draws an instrument as to facilitate its material alteration is liable to a drawee who pays the altered instrument in good faith. It should be noted that the rule as stated in the section requires that the negligence “substantially” contribute to the alteration.

2. The section extends the above principle to the protection of a holder in due course and of payors who may not technically be drawees. It rejects decisions which have held that the maker of a note owes no duty of care to the holder because at the time the instrument is drawn there is no contract between them. By drawing

the instrument and “setting it afloat upon a sea of strangers” the maker or drawer voluntarily enters into a relation with later holders which justifies his responsibility. In this respect an instrument so negligently drawn as to facilitate alteration does not differ in principle from an instrument containing a blank which may be filled.

The holder in due course under the rules governing alteration (§ 3-407) may enforce the altered instrument according to its original tenor. Where negligence of the obligor has substantially contributed to the alteration, this section gives the holder the alternative right to enforce the instrument as altered.

3. No attempt is made to define negligence which will contribute to an alteration. The question is left to the court or the jury upon the circumstances of the particular cases. Negli-

gence usually has been found where spaces are left in the body of the instrument in which words or figures maybe inserted. No unusual precautions are required, and the section is not intended to change decisions holding that the drawer of a bill is under no duty to use sensitized paper, indelible ink or a protectograph; or that it is not negligence to leave spaces between the lines or at the end of the instrument in which a provision for interest or the like can be written.

4. The section applies only where the negligence contributes to the alteration. It must afford an opportunity of which advantage is in fact taken. The section approves decisions which have refused to hold the drawer responsible where he has left spaces in a check but the payee erased all the writing with chemicals and wrote in an entirely new check.

5. This section does not make the negligent party liable in tort for damages resulting from the alteration. Instead it stops him from asserting it against the holder in due course or drawee. The reason is that in the usual case the extent of the loss, which involves the possibility of ultimate recovery from the wrongdoer, cannot be determined at the time of litigation, and the decision would have to be made on the unsatisfactory basis of burden of proof. The holder or drawee is protected by an estoppel,

and the task of pursuing the wrongdoer is left to the negligent party. Any amount in fact recovered from the wrongdoer must be held for the benefit of the negligent party under ordinary principles of equity.

6. The section protects parties who act not only in good faith (§ 1-201) but also in observance of the reasonable standards of their business. Thus, any bank which takes or pays an altered check which ordinary banking standards would require it to refuse cannot take advantage of the estoppel.

7. The section applies the same rule to negligence which contributes to a forgery or other unauthorized signature, as defined in this Code (§ 1-201). The most obvious case is that of the drawer who makes use of a signature stamp or other automatic signing device and is negligent in looking after it. The section extends, however, to cases where the party has notice that forgeries of his signature have occurred and is negligent in failing to prevent further forgeries by the same person. It extends to negligence which contributes to a forgery of the signature of another, as in the case where a check is negligently mailed to the wrong person having the same name as the payee. As in the case of alteration, no attempt is made to specify what is negligence, and the question is one for the court or the jury on the facts of the particular case.

Cross References

Sections 3-401 and 3-404.
Point 2: Section 3-407(C).
Point 6: Section 1-201.
Point 7: Section 1-201.

Definitional Cross References

“Alteration”. Section 3-407.
“Good faith”. Section 1-201.
“Holder in due course”. Section 3-302.
“Instrument”. Section 3-102.
“Person”. Section 1-201.
“Unauthorized signature”. Section 1-201.

Library References

Banks and Banking ⇨148(3), 174.	C.J.S. Bills and Notes.
Bills and Notes ⇨239, 279.	C.J.S. Letters of Credit §§ 29, 150 to 151.
Indians ⇨23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 52, 56, 209.	
C.J.S. Banks and Banking §§ 416, 419, 421 to 428, 430 to 432, 434 to 435, 437 to 438.	

§ 3-407. Alteration

A. Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in:

1. The number or relations of the parties; or

2. An incomplete instrument, by completing it otherwise than as authorized; or
 3. The writing as signed, by adding to it or by removing any part of it.
- B. As against any person other than a subsequent holder in due course:
1. Alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;
 2. No other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.
- C. A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-407 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) is a general definition. Any alteration is material only as it may change the contract of a party to the instrument; and the addition or deletion of words which do not in any way affect the contract of any previous signer is not material. But any change in the contract of a party, however slight, is a material alteration; and the addition of one cent to the amount payable, or an advance of one (1) day in the date of payment, will operate as a discharge if it is fraudulent.

Specific mention is made of a change in the number or relations of the parties in order to make it clear that any such change is material only if it changes the contract of one who has signed. The addition of a co-maker or a surety does not change in most jurisdictions the contract of one who has already signed as maker and should not be held material as to him. The addition of the name of an alternative payee is material, since it changes his obligation. Subsection (A)(3) makes special mention of a change in the writing signed in order to cover occasional cases of addition of sticker clauses, scissoring or perforating instruments where the separation is not authorized.

2. Subsection (A) (2) is to be read together with § 3-115 on incomplete instruments. Where an instrument contains blanks or is otherwise incomplete, it may be completed in accordance with the authority given and is then valid and effective as completed. If the completion is unauthorized and has the effect of chang-

ing the contract of any previous signer, this provision follows the generally accepted rule in treating it as a material alteration which may operate as a discharge.

3. A material alteration does not discharge any party unless it is made by the holder. Spoliation by any meddling stranger does not affect the rights of the holder. It is of course intended that the acts of the holder's authorized agent or employee, or of his confederates, are to be attributed to him.

A material alteration does not discharge any party unless it is made for a fraudulent purpose. There is no discharge where a blank is filled in the honest belief that it is as authorized; or where a change is made with a benevolent motive such as a desire to give the obligor the benefit of a lower interest rate. Changes favorable to the obligor are unlikely to be made with any fraudulent intent; but if such an intent is found the alteration may operate as a discharge.

The discharge is a personal defense of the party whose contract is changed by the alteration, and anyone whose contract is not affected cannot assert it. The contract of any party is necessarily affected, however, by the discharge of any party against whom he has a right of recourse on the instrument. Assent to the alteration given before or after it is made will prevent the party from asserting the discharge. "Or is precluded from asserting the defense" is added in subsection (B)(1) to recognize the possibility of an estoppel or other ground barring the defense which does not rest on assent.

If the alteration is not material or if it is not made for a fraudulent purpose there is no discharge, and the instrument may be enforced

according to its original tenor. Where blanks are filled or an incomplete instrument is otherwise completed there is no original tenor, but the instrument may be enforced according to the authority in fact given.

4. Subsection (C) provides that a subsequent holder in due course takes free of the discharge in all cases. The provision is merely one form of the general rule governing the effect of discharge against a holder in due course (§ 3-602). The holder in due course may enforce the instrument according to its original tenor. In this connection reference should be made to the section giving the holder in due course the right, where the maker's or drawer's negligence has substantially contributed to the alteration, to enforce the instrument in its altered form (§ 3-406). Reference should also be made to Article 4 covering a bank's right to charge its customer's account in the case of altered instruments. Article 4 has not been adopted by the Navajo Nation. Rights which would be governed under that Article are gov-

erned by Navajo law pursuant to 7 N.N.C. § 204.

Where blanks are filled or an incomplete instrument is otherwise completed, this subsection places the loss upon the party who left the instrument incomplete and permitting the holder to enforce it in its completed form. As indicated in the comment to § 3-115 on incomplete instruments, this result is intended even though the instrument was stolen from the maker or drawer and completed after the theft.

There is no inconsistency between subsection (C) and subsection (B)(2). The holder in due course may elect to enforce the instrument either as provided in that paragraph or as provided in subsection (C).

It should be noted that a purchaser who takes the instrument with notice of any material alteration, including the unauthorized completion of an incomplete instrument, takes with notice of a claim or defense and cannot be a holder in due course (§ 3-304).

Cross References

Sections 3-305, 3-306 and 3-307.

Point 2: Section 3-115.

Point 4: Sections 3-115, 3-304(B) and 3-602.

Definitional Cross References

"Contract". Section 1-201.

"Holder". Section 1-201.

"Holder in due course". Section 3-302.

"Instrument". Section 3-102.

"Party". Section 1-201.

"Person". Section 1-201.

"Signed". Section 1-201.

"Writing". Section 1-201.

Special Plain Language Comment

This section describes the effect on the rights of a holder of an instrument which has been altered by adding or deleting words or terms.

Library References

Alteration of Instruments ⇐1 to 20.

Bills and Notes ⇐378, 450.

Indians ⇐23 to 24.

Westlaw Topic Nos. 25, 56, 209.

C.J.S. Alteration of Instruments §§ 2 to 10, 13, 15 to 19, 23 to 25, 27 to 87.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 33, 167, 197, 259.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-408. Consideration

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (§ 3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall

be taken to displace any statute outside this Code, under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense *pro tanto* whether or not the failure is in an ascertained or liquidated amount.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-408 of the Uniform Commercial Code adopted by the states.

Commentary. 1. "Consideration" is distinguished from "value" throughout this article. "Consideration" refers to what the obligor has received for his obligation, and is important only on the question of whether his obligation can be enforced against him.

2. The "except" clause is intended to remove the difficulties which have arisen where a note or a draft, or an indorsement of either, is given as payment or as security for a debt already owed by the party giving it, or by a third person. The provision is intended to change the result of

decisions holding that where no extension of time or other concession is given by the creditor the new obligation fails for lack of legal consideration. It is intended also to mean that an instrument given for more or less than the amount of a liquidated obligation does not fail by reason of the common law rule that an obligation for a lesser liquidated amount cannot be consideration for the surrender of a greater.

3. With respect to the necessity or sufficiency of consideration other obligations on an instrument are subject to the ordinary rules of contract law relating to contracts not under seal. Promissory estoppel or any other equivalent or substitute for consideration is to be recognized as in other contract cases.

Cross References

Point 1: Section 3-303.

Point 3: Sections 3-306(C) and 3-307(B).

Definitional Cross References

"Holder in due course". Section 3-302.

"Instrument". Section 3-102.

"Person". Section 1-201.

"Rights". Section 1-201.

Special Plain Language Comment

This section explains the extent to which an instrument may not be enforceable when the maker of the instrument neither receives any personal benefit from the transaction nor obtains the benefit of his bargain by having some

other party suffer a detriment at this request (e.g., where the maker gives a note in order to induce a creditor of the maker's relative to forgive a debt owing to that creditor).

Library References

Bills and Notes ⇄90 to 98, 452(3).

Indians ⇄23 to 24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 41 to 64, 261 to 262, 264.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-409. Draft not an assignment

A. A check or other draft does not in itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

B. Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-409 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A check or other draft does not of itself operate as an assignment in law or equity. The assignment may, however, appear from other facts, and particularly from other agreements, express or implied; and when the intent to assign is clear the check may be the means by which the assignment is effected.

2. The drawee is not liable on the instrument until he accepts; but he remains subject to any other liability to the holder. Under state law, payor banks are accountable for the amount of any demand item which they retain beyond midnight of the day on which the item is

received. See § 4-302 of the commercial code of the applicable state law pursuant to 7 N.N.C. § 204 for the payor banks liability for later return. Such a bank, if it does not either make prompt settlement or return on an item received by it will become liable to a holder of the item.

3. Subsection (B) is intended to make it clear that this section does not in any way affect any liability which may arise apart from the instrument itself. The drawee who fails to accept may be liable to the drawer or to the holder for breach of the terms of a letter of credit or any other agreement by which he is obligated to accept. He may be liable in tort or upon any other basis because of his representation that he has accepted, or that he intends to accept. The section leaves unaffected any liability of any kind apart from the instrument.

Cross References

Sections 3-410, 3-411, 3-412 and 3-415.

Definitional Cross References

"Acceptance". Section 3-410.

"Check". Section 3-104.

"Contract". Section 1-201.

"Draft". Section 3-104.

"Instrument". Section 3-104.

Library References

Banks and Banking ☞ 137, 191.

Bills and Notes ☞ 23, 24, 66.

Indians ☞ 23 to 24.

Westlaw Topic Nos. 52, 56, 209.

C.J.S. Banks and Banking §§ 328, 330.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 9, 18 to 21, 341 to 366, 368 to 370, 372 to 376.

C.J.S. Indians §§ 12, 30 to 31.

§ 3-410. Definition and operation of acceptance

A. Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

B. A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

C. Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-410 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under § 3-417 a person obtaining acceptance gives a warranty against alteration of the instrument before acceptance.

2. Subsection (A) adopts the rule that acceptance must be written on the draft. Good commercial and banking practice does not sanction acceptance by any separate writing because of the dangers and uncertainties arising when it becomes separated from the draft. The instrument is now forwarded to the drawee for his acceptance upon it, or reliance is placed upon the obligation of the separate writing itself, as in the case of a letter of credit.

Nothing in this section is intended to eliminate any liability of the drawee in contract, tort or otherwise arising from the separate writing or any other obligation or representation, as provided in § 3-409.

Subsection (A) provides for acceptance by delay or refusal to return the instrument but the drawee maybe liable for a conversion of the instrument under § 3-419.

3. Subsection (A) states the generally recognized rule that the mere signature of the drawee on the instrument is a sufficient acceptance. Customarily the signature is written vertically across the face of the instrument; but since the drawee has no reason to sign for any other

purpose his signature in any other place, even on the back of the instrument, is sufficient. It need not be accompanied by such words as "Accepted", "Certified", or "Good". It must not, however, bear any words indicating an intent to refuse to honor the bill; and nothing in this provision is intended to change such decisions as *Norton v. Knapp*, 64 Iowa 112, 19 N.W. 867 (1884), holding that the drawee's signature accompanied by the words "Kiss my foot" is not an acceptance.

4. The final sentence of subsection (A) expressly states the generally recognized rule, that an acceptance written on the draft takes effect when the drawee notifies the holder or gives notice according to his instructions. Acceptance is thus an exception to the usual rule that no obligation on an instrument is effective until delivery.

5. The purpose of subsection (C) is to provide a definite date of payment where none appears on the instrument. An undated acceptance of a draft payable "thirty days after sight" is incomplete; and unless the acceptor himself writes in a different date the holder is authorized to complete the acceptance according to the terms of the draft by supplying a date of presentment. Any date which the holder chooses to write in is effective providing his choice of date is made in good faith. Any different agreement not written on the draft is not effective, and parol evidence is not admissible to show it.

Cross References

Sections 3-411, 3-412 and 3-418.

Point 1: Section 3-417.

Point 2: Sections 3-401(A), 3-409(B) and 3-419.

Point 5: Section 3-412.

Definitional Cross References

"Delivery". Section 1-201.

"Dishonor". Section 3-507.

"Draft". Section 3-104.

"Good faith". Section 1-201.

"Holder". Section 1-201.

"Honor". Section 1-201.

"Notification". Section 1-201.

"Presentment". Section 3-504.

"Signature". Section 3-401.

"Signed". Section 1-201.

"Written". Section 1-201.

Library References

Bills and Notes ☞68, 73.

Indians ☞23 to 24.

5A N.N.C. § 3-410

NAVAJO UNIFORM COMMERCIAL CODE

Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 37, 39.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-411. Certification of a check

A. Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

B. Unless otherwise agreed a bank has no obligation to certify a check.

C. A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-411 of the Uniform Commercial Code adopted by the states.

Commentary. 1. While certification procured by a holder discharges the drawer and other prior parties, certification procured by the drawer leaves him liable. Any certification procured by a holder discharged the drawer and prior indorsers. Any indorsement made after a certification so procured remains effective; and where it is intended that any indorser shall remain liable notwithstanding certification, he may indorse with the words "after certification" to make his liability clear.

2. Subsection (B) states the generally recognized rule that in the absence of agreement a

bank is under no obligation to certify a check, because it is a demand instrument calling for payment rather than acceptance. The bank may be liable for breach of any agreement with the drawer, the holder, or any other person by which it undertakes to certify. Its liability is not on the instrument, since the drawee is not so liable until acceptance (§ 3-409(A)). Any liability is for breach of the separate agreement.

3. Subsection (C) recognizes the banking practice of certifying a check which is returned for proper indorsement in order to protect the drawer against a longer contingent liability. It is consistent with the provision of § 3-410(B) permitting certification although the check has not been signed or is otherwise incomplete.

Cross References

Sections 3-412, 3-413, 3-417 and 3-418.
Point 2: Section 3-409(A)
Point 3: Section 3-410(B)

Definitional Cross References

"Acceptance". Section 3-410.
"Bank". Section 1-201.
"Check". Section 3-104.
"Holder". Section 1-201.

Library References

Banks and Banking ⇨145.
Bills and Notes ⇨431.
Indians ⇨23 to 24.
Westlaw Topic Nos. 52, 56, 209.

C.J.S. Banks and Banking §§ 364 to 368.
C.J.S. Bills and Notes.
C.J.S. Letters of Credit § 237.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-412. Acceptance varying draft

A. Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance canceled.

B. The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

C. Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-412 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section applies to conditional acceptances, acceptances for part of the amount, acceptances to pay at a different time from that required by the draft, or to the acceptance of less than all of the drawees. It applies to any other engagement changing the essential terms of the draft.

2. Where the drawee offers such a varied engagement the holder has an election. He may reject the offer, insist on acceptance of the draft as presented, and treat the refusal to give it as a dishonor. In that event, the drawee is not bound by his engagement, and is entitled to have it canceled. After any necessary notice of

dishonor and protest the holder may have his recourse against the drawer and indorsers.

If the holder elects to accept the offer, this section does not invalidate the drawee's varied engagement. It remains his effective obligation, which the holder may enforce against him. By his assent, however, the holder discharges any drawer or indorser who does not also assent which must be affirmatively expressed. Mere failure to object within a reasonable time is not assent which will prevent the discharge.

3. Subsection (B) provides that the terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States unless the acceptance states that the draft is to be paid only at such bank or place. Section 3-504(D) provides that a draft accepted payable at a bank in the United States must be presented at the bank designated.

Cross References

Sections 3-410 and 3-413.
Point 3: Section 3-504(D).

Definitional Cross References

"Acceptance". Section 3-410.
"Bank". Section 1-201.
"Dishonor". Section 3-507.
"Draft". Section 3-104.
"Holder". Section 1-201.
"Term". Section 1-201.
"Written". Section 1-201.

Library References

Banks and Banking ☞ 161(1).
Bills and Notes ☞ 83, 256, 301.
Indians ☞ 23 to 24.
Westlaw Topic Nos. 52, 56, 209.
C.J.S. Banks and Banking §§ 317, 319, 327,
385 to 386, 388 to 392, 407, 409 to 410,
414.

C.J.S. Bills and Notes.
C.J.S. Letters of Credit §§ 38, 242 to 248.
C.J.S. Indians §§ 12, 30 to 31.

§ 3-413. Contract of maker, drawer and acceptor

A. The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to § 3-115 on incomplete instruments.

B. The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

C. By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-413 of the Uniform Commercial Code adopted by the states.

Commentary. This section should be read in connection with the sections on incomplete instruments (§ 3-115), negligence contributing to alteration or unauthorized signature (§ 3-406), alteration (§ 3-407), acceptances (§ 3-412) and finality of payment or acceptance varying a draft (§ 3-418). Thus a maker who signs an incomplete note engages under this section to pay it according to its tenor at the time he signs it, but by virtue of § 3-115 and 3-407 the note may thereafter be completed and enforced against him. In the same way, if the maker's negligence substantially contributes to alteration of the instrument, he will become liable on

his note as altered under § 3-406. When a holder assents to an acceptance varying a draft (§ 3-412) he can of course hold the acceptor only according to the form of acceptance to which the holder agreed. Section 3-418 applies the rule of *Plice v. Neal* both to acceptance and payment; thus an acceptor may not, after acceptance, assert that the drawer's signature is unauthorized.

Subsection (A) applies to all drafts (including checks) the rule that the acceptance relates to the instrument as it was at the time of its acceptance and not (in case of alteration before acceptance) to its original tenor. It should be noted that under § 3-417 a person who obtains acceptance warrants to the acceptor that the instrument has not been materially altered.

Cross References

Sections 3-115, 3-406, 3-407, 3-412, 3-417 and 3-418.

Definitional Cross References

"Contract". Section 1-201.
 "Dishonor". Section 3-507.
 "Draft". Section 3-104.
 "Holder". Section 1-201.
 "Instrument". Section 3-102.
 "Notice of dishonor". Section 3-508.
 "Party". Section 1-201.
 "Protest". Section 3-509.

Library References

Bills and Notes	§§ 23, 24, 48, 53, 73.	C.J.S. Letters of Credit	§§ 9, 18 to 21, 23, 39, 81, 309.
Indians	§§ 23 to 24.	C.J.S. Indians	§§ 12, 30 to 31.
Westlaw Topic Nos.	56, 209.		
C.J.S. Bills and Notes.			

§ 3-414. Contract of indorser; order of liability

A. Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the

time of his indorsement to the holder to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

B. Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-414 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) states the contract of indorsement—that if the instrument is dishonored and any protest or notice of dishonor which may be necessary under § 3-501 is given, the indorser will pay the instrument. The indorser's engagement runs to any holder (whether or not for value) and to any indorser subsequent to him who has taken the instrument up. An indorser may disclaim his liability on the contract of indorsement, but only if the indorsement itself so specifies. Since the disclaimer varies the written contract of indorsement, the disclaimer itself must be written on the instrument and cannot be proved by parol evidence. The customary manner of disclaiming the indorser's liability under this section is to indorse "without recourse". Apart from such a disclaimer all indorsers incur this liability,

without regard to whether or not the indorser transferred the instrument for value or received consideration for his indorsement.

2. In addition to his liability on the contract of indorsement, an indorser, if a transferor, gives the warranties stated in § 3-417.

3. As in the case of acceptor's liability (§ 3-413), this section conditions the indorser's liability on the tenor of the instrument at the time of his indorsement. Thus if a person indorses an altered instrument, he assumes liability as indorser on the instrument as altered.

4. Subsection (B) states two presumptions: One is that the indorsers are liable to one another in the order in which they have in fact indorsed. The other is that they have in fact indorsed in the order in which their names appear. Parol evidence is admissible to show that they have indorsed in another order, or that they have otherwise agreed as to their liability to one another.

Cross References

Point 1: Section 3-501.
Point 2: Section 3-417.
Point 3: Section 3-413.
Point 4: Section 3-118(E).

Definitional Cross References

"Contract". Section 1-201.
"Dishonor". Section 3-507.
"Holder". Section 1-201.
"Instrument". Section 3-102.
"Notice of dishonor". Section 3-508.
"Presumed". Section 1-201.
"Protest". Section 3-509.
"Signature". Section 3-401.

Library References

Bills and Notes ⇄229, 240, 247, 271, 280, 285, 396.	C.J.S. Bills and Notes.
Indians ⇄23 to 24.	C.J.S. Letters of Credit §§ 147, 160, 162, 202, 204.
Westlaw Topic Nos. 56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-415. Contract of accommodation party

A. An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

B. When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

C. As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

D. An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

E. An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-415 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) recognizes that an accommodation party is always a surety (which includes a guarantor), and it is his only distinguishing feature. He differs from other sureties only in that his liability is on the instrument and he is a surety for another party to it. His obligation is therefore determined by the capacity in which he signs. An accommodation maker or acceptor is bound on the instrument without any resort of his principal, while an accommodation indorser may be liable only after presentment, notice of dishonor and protest. The subsection recognizes the defenses of a surety in accordance with the provisions subjecting one not a holder in due course to all simple contract defenses, as well as his rights against his principal after payment. Under subsection (C) except as against a holder in due course without notice of the accommodation, parol evidence is admissible to prove that the party has signed for accommodation. In any case, however, under subsection (D) an indorsement which is not in the chain of title (the irregular or anomalous indorsement) is notice to all subsequent takers of the instrument of the accommodation character of the indorsement.

2. In subsection (A) the essential characteristic is that the accommodation party is a surety, and not that he has signed gratuitously. He may be a paid surety, or receive other compen-

sation from the party accommodated. He may even receive it from the payee, as where A and B buy goods and it is understood that A is to pay for all of them and that B is to sign a note only as a surety for A.

3. The obligation of the accommodation party is supported by any consideration for which the instrument is taken before it is due. Subsection (B) is intended to change occasional decisions holding that there is no sufficient consideration where an accommodation party signs a note after it is in the hands of a holder who has given value. The party is liable to the holder in such a case even though there is no extension of time or other concession. This is consistent with the provision as to antecedent obligations as consideration (§ 3-408). The limitation to "before it is due" is one of suretyship law, by which the obligation of the surety is terminated at the time limit unless in the meantime the obligation of the principal has become effective.

4. As a surety the accommodation party is not liable to the party accommodated; but he is otherwise liable on the instrument in the capacity in which he has signed. This general statement of the rule makes unnecessary a detailed list of obligations.

5. Subsection (E) is intended to ensure that under ordinary principles of suretyship the accommodation party who pays is subrogated to the rights of the holder paid, and should have his recourse on the instrument.

Cross References

Sections 3-305, 3-408, 3-604 and 3-606.
 Point 1: Section 3-306(2).
 Point 3: Section 3-408.

Definitional Cross References

“Holder in due course”. Section 3-302.
 “Instrument”. Section 3-102.
 “Notice”. Section 1-201.
 “Party”. Section 1-201.
 “Presentment”. Section 3-504.
 “Signed”. Section 1-201.
 “Writing”. Section 1-201.

Library References

Bills and Notes	§§ 49, 122, 236, 371.	C.J.S. Bills and Notes.
Indians	§§ 23 to 24.	C.J.S. Letters of Credit §§ 24 to 25, 63, 199.
Westlaw Topic Nos.	56, 209.	C.J.S. Indians §§ 12, 30 to 31.

§ 3-416. Contract of guarantor

A. “Payment guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

B. “Collection guaranteed” or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

C. Words of guaranty which do not otherwise specify guarantee payment.

D. No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

E. When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

F. Any guaranty written on the instrument is enforceable notwithstanding any Statute of Frauds.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-416 of the Uniform Commercial Code adopted by the states.

Commentary. The section, states the commercial understanding as to the meaning and

effect of words of guaranty added to a signature.

An indorser who guarantees payment waives not only presentment, notice of dishonor and protest, but also all demand upon the maker or drawee. Words of guaranty do not affect the

character of the indorsement as an indorsement (§ 3-202 (D)); but the liability of the indorser becomes indistinguishable from that of a co-maker. A guaranty of collection likewise waives formal presentment, notice of dishonor and protest, but requires that the holder first proceed against the maker or acceptor by suit and execution, or show that such proceeding would be useless.

Subsection (F) is concerned chiefly with the type of Statute of Frauds which provides that no

promise to answer for the debt, default or mis-carriage of another is enforceable unless it is evidenced by a writing which states the consideration for the promise. It is unusual to state any consideration when a guaranty is added to a signature on a negotiable instrument, which in itself sufficiently shows the nature of the transaction; and such statutes have commonly been held not to apply to such guaranties.

Cross References

Sections 3-202(D) and 3-415.

Definitional Cross References

“Holder”. Section 1-201.
 “Insolvent”. Section 1-201.
 “Instrument”. Section 3-102.
 “Notice of dishonor”. Section 3-508.
 “Party”. Section 1-201.
 “Presumption”. Section 1-201.
 “Protest”. Section 3-509.
 “Signature”. Section 3-401.
 “Written”. Section 1-201.

Library References

Bills and Notes ⇔49.	C.J.S. Bills and Notes.
Guaranty ⇔35, 36, 77(2).	C.J.S. Letters of Credit §§ 24 to 25.
Indians ⇔23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 56, 195, 209.	

§ 3-417. Warranties of presentment and transfer

A. Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that:

1. He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and
2. He has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith:
 - a. To a maker with respect to the maker’s own signature; or
 - b. To a drawer with respect to the drawer’s own signature, whether or not the drawer is also the drawee; or
 - c. To an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer’s signature was unauthorized; and
3. The instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith:
 - a. To the maker of a note; or
 - b. To the drawer of a draft whether or not the drawer is also the drawee; or

c. To the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance proved “payable as originally drawn” or equivalent terms; or

d. To the acceptor of a draft with respect to an alteration made after the acceptance.

B. Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that:

1. He has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
2. All signatures are genuine or authorized; and
3. The instrument has not been materially altered; and
4. No defense of any party is good against him; and
5. He has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

C. By transferring “without recourse” the transferor limits the obligation stated in subsection (B) (4) to a warranty that he has no knowledge of such a defense.

D. A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-417 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The obligations imposed by this section are stated in terms of warranty. Warranty terms, which are not limited to sale transactions, are used with the intention of bringing in all the usual rules of law applicable to warranties, and in particular the necessity of reliance in good faith and the availability of all remedies for breach of warranty, such as rescission of the transaction or an action for damages. Like other warranties, those stated in this section may be disclaimed by agreement between the immediate parties. In the case of an indorser, disclaimer of his liability as a transferor, to be effective, must appear in the form of the indorsement, and no parol proof of “agreement otherwise” is admissible. For corresponding warranties in the case of items in the bank collection process, Article 4 should be consulted. The Navajo Nation has not adopted

Article 4 of the Uniform Commercial Code. The rights of parties which would be governed under Article 4 are governed by Navajo law pursuant to 7 N.N.C. § 204.

2. Subsection (A) is intended to state the undertaking to a party who accepts or pays of one who obtains payment or acceptance of any prior transferor. It is closely connected with the following section on the finality of acceptance or payment (§ 3-418), and should be read together with it.

3. Subsection (A)(1) retains the generally accepted rule that the party who accepts or pays does not “admit” the genuineness of indorsements, and may recover from the person presenting the instrument when they turn out to be forged. The justification for the distinction between forgery of the signature of the drawer and forgery of an indorsement is that the drawee is in a position to verify the drawer’s signature by comparison with one in his hands, but has ordinarily no opportunity to verify an indorsement.

4. Subsection (A)(2) recognizes and deals with competing equities of parties accepting or paying instruments bearing unauthorized maker's or drawer's signatures and those obtaining acceptances or receiving payment. The warranties prescribed and exceptions thereto follow closely principles established at common law.

The basic warranty that the person obtaining payment or acceptance and any prior transferor warrants that he does not have knowledge that the signature of the maker or drawer is unauthorized stems from the general principle that one who presents an instrument knowing that the signature of the maker or drawer is forged or unauthorized commits an obvious fraud upon the party to whom presentment is made. However, few cases present this simple fact situation. If the signature of a maker or drawer has been forged, the parties include the dishonest forger himself and usually one or more innocent holders taking from him. Frequently, the state of knowledge of a holder is difficult to determine and sometimes a holder takes such a forged instrument in perfect good faith but subsequently learns of the forgery. Since in different fact situations holders have equities of varying strength, it is necessary to have some exceptions to the basic warranty.

The exceptions apply only in favor of a holder in due course and, within the provisions of § 3-201, to all subsequent transferees from a holder in due course. Since a condition of the status of a holder in due course under § 3-302(A)(1) is that the holder takes the instrument without notice of any defense against it, this condition presupposes that at the time of taking such a holder had no knowledge of the unauthorized signature. Consequently, the warranty of subsection (A) (2) is pertinent in the case of a holder in due course only in the relatively few cases where he acquires knowledge of the forgery after the taking but before the presentment. In this situation the holder in due course must continue to act in good faith to be exempted from the basic warranty.

The first exemption from the warranty by such a holder, made by subsection (A) (2) (a), is that the warranty does not run to a maker of a note with respect to the maker's own signature. Since a maker of a note is presumed to know his own signature, if he fails to detect a forgery of his own signature and pays the note, he should not be permitted to recover such payment from a holder in due course acting in good faith. Similarly, under subsection (A) (2) (b) a drawer of a draft is presumed to know his own signature and if he fails to detect a forgery of his own signature and pays a draft he may not recover that payment from a holder in due course acting in good faith. This rule applies if the drawer pays the instrument as drawer and

also if he pays the instrument as drawee in a case where he is both drawer and drawee.

A drawee of a draft is presumed to know the signature of his customer, the drawer. However, under subsection (A) (2) and subparagraph (c) of this subsection this presumption is not strong enough to deprive such a drawee (either in accepting or paying an instrument) of the warranty of no knowledge of the unauthorized drawer's signature, unless the holder in due course took the instrument and became such a holder after the drawee's acceptance; or obtained the acceptance without knowledge that the drawer's signature was unauthorized. In the former case, the holder taking after and thereby presumably in reliance on the acceptance should be protected as against the drawee who accepted without detecting the unauthorized signature. In the latter case the holder, having no knowledge of the unauthorized signature at the time of the drawee's acceptance, would not be charged with this warranty and would be entitled to enforce such acceptance under § 3-418, even if thereafter he acquired knowledge of the unauthorized signature prior to enforcement of the acceptance. Such right of the holder to enforce the acceptance would be valueless if immediately upon enforcing it and obtaining payment the holder became obligated to return the payment by reason of breach of the warranty of no knowledge at the time of payment.

5. Subsection (A) (3) retains the common law rule, which has permitted a party paying a materially altered instrument in good faith to recover, and a party who accepts such an instrument to avoid such acceptance. As in the case of subsection (A) (2) this warranty is not imposed against a holder in due course acting in good faith in favor of a maker of a note or a drawer of a draft on the ground that such maker or drawer should know the form and amount of the note or draft which he has signed. The exception made by subsection (A) (3)(c) in the case of a holder in due course of a draft accepted after the alteration is based on the principle that an acceptance is an undertaking relied upon in good faith by an innocent party. The attempt to avoid this result by certifying checks "payable as originally drawn" leaves the subsequent purchaser in uncertainty as to the amount for which the instrument is certified, and so defeats the entire purpose of certification, which is to obtain the definite obligation of the bank to honor a definite instrument. Subsection (A) (3) (c) accordingly provides that such language is not sufficient to impose on the holder in due course the warranty of no material alteration where the holder took the draft after the acceptance and presumably in reliance on it.

Subsection (A) (3) (d) exempts a holder in due course from the warranty of no material alteration to the acceptor of a draft with respect to an alteration made after the acceptance. A drawee accepting a draft has an opportunity of ascertaining the form and particularly the amount of the draft accepted. If, thereafter, the draft is materially altered and is thereupon presented for payment to the acceptor, the acceptor has the necessary information in its records to verify the form and particularly the amount of the draft. If in spite of this available information it pays the draft, there is as much reason to leave the responsibility for such payment upon the acceptor (as against a holder in due course acting in good faith) as there is in the case of a maker or drawer paying a materially altered note or draft.

6. Under § 3-201 parties taking from or holding under a holder in due course, within the limits of that section, will have the same rights under § 3-417(A) as a holder in due course. Of course such parties claiming under a holder in due course must act in good faith and be free from fraud, illegality and notice as provided in § 3-201.

7. The liabilities imposed by subsection (B) in favor of the immediate transferee apply to all present who transfer an instrument for consideration whether or not the transfer is accompanied by indorsement. Any consideration sufficient to support a simple contract will support those warranties.

8. Subsection (B) extends the warranties of any indorser beyond the immediate transferee in all cases. Where there is an indorsement the warranty runs with the instrument and the remote holder may sue the indorser-warrantor directly and thus avoid a multiplicity of suits which might be interrupted by the insolvency of an intermediate transferor. The language of

subsection (B)(1) covers the case of the agent who transfers for another.

9. Subsection (B)(4) resolves a conflict in the decisions as to whether the transferor warrants that there are no defenses to the instrument good against him. The position taken is that the buyer does not undertake to buy an instrument incapable of enforcement, and that in the absence of contrary understanding the warranty is implied. Even where the buyer takes as a holder in due course who will cut off the defense, he still does not undertake to buy a lawsuit with the necessity of proving his status. Subsection (C) however provides that an indorsement "without recourse" limits the (B)(4) warranty to one that the indorser has no knowledge of such defenses. With this exception the liabilities of a "without recourse" indorser under this section are the same as those of any other transferor. Under § 3-414 "without recourse" in an indorsement is effective to disclaim the general contract of the indorser stated in that section.

10. The transferor does not warrant against difficulties of collection, apart from defenses, or against impairment of the credit of the obligor or even his insolvency in the commercial sense. The buyer is expected to determine such questions for himself before he takes the obligation. If insolvency proceedings as defined in this Code (§ 1-201) have been instituted against the party who is expected to pay and the transferor knows it, the concealment of that fact amounts to a fraud upon the buyer, and the warranty against knowledge of such proceedings is provided accordingly.

11. Subsection (D) applies only to a selling agent, as distinguished from an agent for collection. It follows the rule generally accepted that an agent who makes the disclosure warrants his good faith and authority and may not by contract assume a lesser warranty.

Cross References

Sections 3-404, 3-405, 3-406 and 3-414.
 Point 2: Section 3-418.
 Point 4: Sections 3-201, 3-302 and 3-418.
 Point 9: Section 3-414.
 Point 10: Section 1-201.

Definitional Cross References

"Acceptance". Section 3-410.
 "Alteration". Section 3-407.
 "Bank". Section 1-201.
 "Draft". Section 3-104.
 "Genuine". Section 1-201.
 "Good faith". Section 1-201.
 "Holder in due course". Section 3-302.
 "Instrument". Section 3-102.
 "Note". Section 3-104.
 "Party". Section 1-201.

“Person”. Section 1-201.
 “Signature”. Section 3-401.
 “Term”. Section 1-201.

Library References

Banks and Banking	§§ 137, 147, 158 to 175.	to 400, 402 to 412, 414 to 416, 419 to 428,
Bills and Notes	§§ 293, 296, 326.	430 to 432, 434, 437 to 438.
Indians	§§ 23 to 24.	C.J.S. Bills and Notes.
Westlaw Topic Nos.	52, 56, 209.	C.J.S. Letters of Credit §§ 160, 162 to 165.
C.J.S. Banks and Banking	§§ 317, 319, 322 to	C.J.S. Indians §§ 12, 30 to 31.
	325, 327 to 328, 330, 372 to 374, 379, 382	

§ 3-418. Finality of payment or acceptance

Except for recovery of bank payments as provided in other applicable law as provided under 7 N.N.C. § 204 and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The phrase “other applicable law” was substituted for a reference to Uniform Commercial Code Article 4, which has not been adopted by the Navajo Nation. Rights of parties which would be governed under Article 4 are governed by Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. This section follows the common law rule under which a drawee who accepts or pays an instrument on which the signature of the drawer is forged is bound on his acceptance and cannot recover back his payment. The traditional justification for the result is that the drawee is in a superior position to detect a forgery because he has the maker’s signature and is expected to know and compare it; a less fictional rationalization is that it is highly desirable to end the transaction on an instrument when it is paid rather than reopen and tip set a series of commercial transactions at a later date when the forgery is discovered.

The rule as stated in the section is not limited to drawees, but applies equally to the maker of a note or to any other party who pays an instrument.

2. The section follows the same rule regarding the payment of overdrafts, or any other payment made in error as to the state of the drawer’s account. The same argument for finality applies, with the additional reason that the drawee is responsible for knowing the state of the account before he accepts or pays.

3. The section makes payment or acceptance final only in favor of a holder in due course, or a transferee who has the rights of a holder in due course under the shelter principle. If no value has been given for the instrument, the holder loses nothing by the recovery of the payment or the avoidance of the acceptance, and is not entitled to profit at the expense of the drawee; and if he has given only an executory promise or credit he is not compelled to perform it after the forgery or other reason for recovery is discovered. If he has taken the instrument in bad faith or with notice he has no equities as against the drawee.

4. The section rejects decisions permitting recovery on the basis of mere negligence of the holder in taking the instrument. If such negligence amounts to a lack of good faith as defined in this Code (§ 1-201) or to notice under the rules (§ 3-304) relating to notice to a purchaser of an instrument, the holder is not a holder in due course and is not protected; but otherwise the holder’s negligence does not affect the finality of the payment or acceptance.

5. This section is to be read together with the preceding section, which states the warranties given by the person obtaining acceptance or payment. It is also limited by any applicable bank collection provisions permitting a payor bank to recover a payment improperly paid if it returns in a timely manner the item or sends notice of dishonor. All states have such a provision arising under Article 4. The Navajo Nation has not adopted Article 4 of the Uniform Commercial Code. The rights of parties which

would be governed under Article 4 are governed by Navajo law pursuant to 7 N.N.C. § 204. The rights of a banker under such provisions are sharply limited in time, and terminate in any case when a bank has made final payment.

Cross References

Sections 3-302, 3-303 and 3-417.
 Point 2: Section 3-201 (A).
 Point 4: Sections 1-201, 3-302 and 3-304.
 Point 5: Section 3-417.

Definitional Cross References

“Acceptance”. Section 3-410.
 “Bank”. Section 1-201.
 “Holder in due course”. Section 3-302.
 “Instrument”. Section 3-102.
 “Presentment”. Section 3-504.

Library References

Banks and Banking	§§ 147, 150, 174.	C.J.S. Bills and Notes.
Bills and Notes	§§ 72, 363, 434.	C.J.S. Letters of Credit §§ 40, 190, 239.
Indians	§§ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos.	52, 56, 209.	
C.J.S. Banks and Banking	§§ 349 to 352, 358, 415 to 416, 419, 421 to 428, 430 to 432, 434, 437 to 438.	

§ 3-419. Conversion of instrument: innocent representative

A. An instrument is converted when:

1. A drawee to whom it is delivered for acceptance refuses to return it on demand; or
2. Any person to whom it is delivered for payment refuses on demand either to pay or to return it; or
3. It is paid on a forged indorsement.

B. In an action against a drawee under subsection (A) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (A) the measure of liability is presumed to be the face amount of the instrument.

C. Subject to the provisions of this Code concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

D. An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (§§ 3-205 and 3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-419 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A negotiable instrument is the property of the holder. It is a mercantile specialty which embodies rights against other parties, and a thing of value. This section adopts the generally recognized rule that a refusal to return it on demand is a conversion. The provision is not limited to drafts presented for acceptance, but extends to any instrument presented for payment, including a note presented to the maker. The action is not on the instrument, but in tort for its conversion.

The detention of an instrument voluntarily delivered is not wrongful unless and until there is demand for its return. Demand for a return at a particular time may, however, be made at the time of delivery; or it may be implied under the circumstances or understood as a matter of custom. If the holder is to call for the instrument and fails to do so, he is to be regarded as extending the time. "Refuses" is meant to cover any intentional failure to return the instrument, including its intentional destruction. It does not cover a negligent loss or destruction, or any other unintentional failure to return. In such a case the party may be liable in tort for any damage sustained as a result of his negligence, but he is not liable as a converter under this section.

2. Subsection (A)(3) adopts the prevailing view of decisions holding that payment on a forged indorsement is not an acceptance, but that even though made in good faith it is an

exercise of dominion and control over the instrument inconsistent with the rights of the owner, and results in liability for conversion.

3. Subsection (B) adopts the rule generally applied to the conversion of negotiable instruments, that the obligation of any party on the instrument is presumed, in the sense that the term is defined in this Code (§ 1-201), to be worth its face value. Evidence is admissible to show that for any reason such as insolvency or the existence of a defense the obligation is in fact worth less, or even that it is without value. In the case of the drawee, however, the presumption is replaced by a rule of absolute liability.

4. Subsection (C) is intended to adopt the rule of decisions which have held that a representative, such as a broker or a depository bank, who deals with a negotiable instrument for his principal in good faith is not liable to the true owner for conversion of the instrument or otherwise, except that he may be compelled to turn over to the true owner the instrument itself or any proceeds of the instrument remaining in his hands. The provisions of subsection (C) are, however, subject to the provisions of this Code concerning restrictive indorsements (§§ 3-205, 3-206 and related sections).

5. The provisions of this section are not intended to eliminate any liability on warranties of presentment and transfer (§ 3-417). Thus a collecting bank might be liable to a drawee bank which had been subject to liability under this section, even though the collecting bank might not be liable directly to the owner of the instrument.

Cross References

Sections 3-409, 3-410, 3-411 and 3-603.
Point 3: Section 1-201.
Point 4: Sections 1-201, 3-205 and 3-206.
Point 5: Section 3-417.

Definitional Cross References

"Acceptance". Section 3-410.
"Action". Section 1-201.
"Bank". Section 1-201.
"Collecting bank". Section 3-102.
"Good faith". Section 1-201.
"Instrument". Section 3-102.
"Intermediary bank". Section 3-102.
"On demand". Section 3-108.
"Person". Section 1-201.
"Presumed". Section 1-201.
"Representative". Section 1-201.

Library References

Banks and Banking ☞146, 147, 173, 174.	C.J.S. Bills and Notes.
Bills and Notes ☞239, 279.	C.J.S. Letters of Credit §§ 29, 150 to 151.
Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Westlaw Topic Nos. 52, 56, 209.	
C.J.S. Banks and Banking §§ 369, 408, 415 to 416, 419 to 428, 430 to 432, 434, 437 to 438.	

Part 5. Presentment, Notice of Dishonor and Protest**§ 3-501. When presentment, notice of dishonor and protest necessary or permissible**

A. Unless excused (§ 3-511) presentment is necessary to charge secondary parties as follows:

1. Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

2. Presentment for payment is necessary to charge any indorser;

3. In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in § 3-502(A)(2).

B. Unless excused (§ 3-511):

1. Notice of any dishonor is necessary to charge any indorser;

2. In the case of any drawer, the acceptor of a draft payable at bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in § 3-502(A)(2).

C. Unless excused (§ 3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

D. Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge who has indorsed an instrument after maturity.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-501 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Part 5 assembles in one place all provisions as to when any such proceeding is necessary. It eliminates some of the requirements and simplifies others. The effect of unexcused delay in any such proceeding as a discharge is covered by the next section, and the sections following prescribe the details of the proceedings.

2. The words "necessary to charge" mean that the necessary proceeding is a condition precedent to any right of action against the drawer or indorser. He is not liable and cannot be sued without the proceedings, however long delayed. Under some circumstances delay is excused. If it is not excused it may operate as a discharge under the next section. Under some circumstances the proceeding may be entirely excused and the drawer or indorser is then liable as if the proceeding had been duly taken. Section 3-511 states the circumstances under which delay may be excused or the proceeding entirely excused.

3. The last sentence of the subsection states the rule of the decisions that the holder may at his option present any time draft for acceptance, and is not required to wait until the due date to know whether the drawee will accept it; but that if he does make presentment and acceptance is refused, he must give notice of dishonor. There is not similar right to present for acceptance a draft payable on demand, since a demand draft entitles the holder to immediate payment but not to acceptance.

4. Drawers of drafts other than checks are not wholly discharged by failure to make due presentment but, like drawers of checks, are discharged only as they may have suffered loss as provided in § 3-502 (A) (2). Subsection (A) (3) applies the check rule to such makers and

acceptors of domicile paper and the result in the cases referred to in the preceding sentence is reversed. Under this section presentment for payment is not necessary to charge primary parties (makers and acceptors of undomiciled paper).

5. Under subsection (B) the rules as to necessity of notice of dishonor run parallel with the rules as to necessity of presentment stated in subsection (A).

6. Subsection (C) eliminates the requirement of protest except upon dishonor of a draft which on its face appears to be either drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The requirement is left as to such international drafts because it is generally required by foreign law, which this article cannot affect. The formalities of protest are covered by § 3-509 on protest, and substitutes for protest as proof of dishonor are provided for in § 3-510 on evidence of dishonor and of notice.

This provision retains the rule permitting the holder at his option to make protest of any dishonor of any other instrument. Even where not required protest may have definite convenience where process does not run to another state and the taking of depositions is a slow and expensive matter. Even where the instrument is drawn and payable entirely within a state there maybe convenience in saving the trip of a witness from Buffalo to New York to testify to dishonor, where the substitute evidence of dishonor and notice of dishonor cannot be relied on. Either required or optional protest is presumptive evidence of dishonor (§ 3-510).

7. Subsection (D) provides that as to indorsers after maturity neither presentment nor notice of dishonor nor protest is necessary. Like primary parties therefore they will remain liable on the instrument for the period of the applicable statute of limitations.

Cross References

- Point 1: Sections 3-502 through 3-508.
- Point 2: Sections 3-413, 3-414 and 3-511.
- Point 3: Sections 3-413, 3-414 and 3-511.
- Point 4: Section 3-502.
- Point 6: Sections 3-413, 3-414, 3-509, 3-510 and 3-511.
- Point 8: Section 3-108.

Definitional Cross References

- "Acceptance". Section 3-410.
- "Bank". Section 1-201.
- "Certificate of Deposit". Section 3-104.
- "Dishonor". Section 3-507.
- "Draft". Section 3-104.

“Holder”. Section 1-201.
 “Instrument”. Section 3-102.
 “Note”. Section 3-104.
 “Notice of dishonor”. Section 3-508.
 “Party”. Section 1-201.
 “Presentment”. Section 3-504.
 “Protest”. Section 3-509.
 “Secondary party”. Section 3-102.
 “Signature”. Section 3-401.

Special Plain Language Comment

When commercial paper matures, the maker’s liability on a note and the acceptor’s liability on a draft become final. In order to charge a party who is secondarily liable, such as an indorser or an accommodation party, the paper must be presented for acceptance or payment. In some cases, if after the paper is presented and after it is not paid or accepted by the party

primarily obligated to do so, (which is called “dishonor”), the presenting party must provide notice of the dishonor in order to charge indorsers or drawers. Protest is a certificate stating that a dishonor has occurred.

Presentment, notice of dishonor and protest can all be waived by agreement, including an agreement in the note or draft, (see § 3-511).

Library References

Bills and Notes ☞388 to 424.
 Indians ☞24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 97 to 98, 202, 204 to 230, 257, 294, 299.
 C.J.S. Indians §§ 12, 31.

§ 3-502. Unexcused delay; discharge

A. Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due:

1. Any indorser is discharged; and
2. Any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

B. Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-502 of the Uniform Commercial Code adopted by the states.

Commentary. This section is the complement of the preceding section.

1. The circumstances under which presentment or notice of dishonor or protest or delay therein are excused are stated in § 3-511.

When not excused delay operates as a discharge as provided in this section.

2. Subsection (A)(2) applies to any drawer, as well as to the makers and acceptors of drafts and notes payable at a bank. The rule provides for discharge only where the drawer of a check has sustained loss through the delay. This section expressly limits the rule to loss sustained through insolvency of the drawee or payor.

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The purpose of the rule is to avoid hardship upon the holder through complete discharge, and unjust enrichment of the drawer or other party who normally has received goods or other consideration for the issue of the instrument. He is "deprived of funds" in any case where bank failure or other insolvency of the drawee or payor has prevented him from receiving the benefit of funds which would have paid the instrument if it had been duly presented.

Subsection (A) (2) states a right to discharge liability by written assignment to the holder of rights against the drawee or payor as to the funds which cover the particular instrument. The assignment is intended to give the holder an effective right to claim against the drawee or payor.

3. Subsection (B) states that any unexcused delay of a required protest is a complete discharge of all drawers and indorsers.

Cross References

Point 1: Section 3-511 (A).

Point 2: Section 3-501.

Point 3: Section 3-509.

Definitional Cross References

"Bank". Section 1-201.

"Draft". Section 3-104.

"Holder". Section 201.

"Insolvent". Section 1-201.

"Instrument". Section 3-102.

"Note". Section 3-104.

"Notice of dishonor". Section 3-508.

"Presentment". Section 3-504.

"Protest". Section 3-509.

"Rights". Section 1-201.

"Signature". Section 3-401.

"Written". Section 1-201.

Library References

Bills and Notes ◊23, 26, 52, 254, 299, 388 to 421.

Indians ◊24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 9, 18, 20 to 21, 97 to 98, 160, 162, 202 to 212, 231, 244 to 248, 257, 294, 299.

C.J.S. Indians §§ 12, 31.

§ 3-503. Time of presentment

A. Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

1. Where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

2. Where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

3. Where an instrument shows the date on which it is payable, presentment for payment is due on that date;

4. Where an instrument is accelerated, presentment for payment is due within a reasonable time after the acceleration;

5. With respect to the liability of any secondary party, presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

B. A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

1. With respect to the liability of the drawer, thirty (30) days after date or issue whichever is later; and
2. With respect to the liability of an indorser, seven (7) days after his indorsement.

C. Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

D. Presentment to be sufficient must be made at a reasonable hour, and if at a bank, during its banking day.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-503 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section states in one place all of the rules applicable to the time of presentment. Excused delay is covered by § 3-511 on waiver and excuse, and the effect of unexcused delay by § 3-502 on discharge.

2. Subsection (A) contains provisions stating the commercial understanding as to the presentment of instruments payable after sight, and of accelerated paper.

3. Subsection (B) provides specific time limits which are presumed, as that term is defined in this Act (§ 1-201), to be reasonable for uncertified checks drawn and payable within the continental limits of the United States. Court decisions which set a time limit of one (1) day after the receipt of the instrument proved to be too short a time for some holders, such as the department store or other large business clearing many checks through their books shortly after the first of the month, as well as the

farmer or other individual at a distance from a bank.

The time limit provided differs as to drawer and indorser. The drawer, who has himself issued the check and normally expects to have it paid and charged to this account is reasonably required to stand behind it for a longer period, especially in view of the protection now provided by Federal Deposit Insurance. The thirty (30) days specified coincides with the time after which a purchaser has notice that a check has become stale (§ 3-304(C) (3)). The indorser, who has normally merely received the check and passed it on, and does not expect to have to pay it, is entitled to know more promptly whether it is to be dishonored, in order that he may have recourse against the person with whom he has dealt.

4. Subsection (C) is intended to make allowance for the increasing practice of closing banks or businesses on Saturday or other days of the week. It is not intended to mean that any drawee or obligor can avoid dishonor of instruments by extended closing.

Cross References

Point 1: Sections 3-501, 3-502, 3-505, 3-506 and 3-511.

Point 3: Sections 1-201 and 3-304(C)(3).

Definitional Cross References

“Acceptance”. Section 3-410.

“Bank” Section 1-201.

"Banking day". Section 3-102.
 "Check". Section 3-104.
 "Draft". Section 3-104.
 "Instrument". Section 3-102.
 "Issue". Section 3-102.
 "Party". Section 1-201.
 "Person". Section 1-201.
 "Presentment". Section 3-504.
 "Presumed". Section 1-201.
 "Reasonable time". Section 1-204.
 "Secondary party". Section 3-102.
 "Usage of trade". Section 1-205.

Library References

Bills and Notes	§§ 388, 404.	C.J.S. Bills and Notes.
Indians	§ 24.	C.J.S. Letters of Credit § 208.
Westlaw Topic Nos.	56, 209.	C.J.S. Indians §§ 12, 31.

§ 3-504. How presentment made

A. Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

B. Presentment may be made:

1. By mail, in which event the time of presentment is determined by the time of receipt of the mail; or
2. Through a clearing house; or
3. At the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or payor anyone authorized to act for him is present or accessible at such place presentment is excused.

C. It may be made:

1. To any one of two or more makers, acceptors, drawees or other payors; or
2. To any person who has authority to make or refuse the acceptance or payment.

D. A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

E. In the cases described below presentment may be made in the manner and with the result stated below:

1. Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under § 3-505 by the close of the bank's next banking day after it knows of the requirement.

2. Where presentment is made by notice and neither honor nor request for compliance with a requirement under § 3-505 is received by the close of business on the day after maturity or in the case of demand items, by the

close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of facts.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-504 of the Uniform Commercial Code adopted by the states, except that the manner of presentment for banks normally found in § 4-210 of the Official Text of the Uniform Commercial Code has been included in subsection (E) because the Navajo Nation has not yet adopted Article 4 of the Uniform Commercial Code.

Commentary. 1. This section is intended to simplify the rules as to how presentment is made and to make it clear that any demand upon the party to pay is a presentment no matter where or how. Exhibition of the instrument and similar technical requirements are not required unless insisted upon by the party to pay (§ 3-505).

2. Subsection (B) (1) authorizes presentment by mail directly to the obligor. The presentment is sufficient and the instrument is dishonored by non-acceptance or non-payment even though the party making presentment may be liable for improper collection methods. "Through a clearing house" means that presentment is not made when the demand reaches the clearing house, but when it reaches the obligor. Subsection (E) should also be consulted for the methods of presenting which may properly be employed by a collecting bank.

3. Subsection (C)(1) states that the holder is entitled to expect that any one of the named

parties will pay or accept, and should not be required to go to the trouble and expense of making separate presentment to a number of them.

4. Section 3-412 provides that an acceptance made payable at a bank in the United States does not vary the draft. Subsection (D) of this section makes it clear that a draft so accepted must be presented at the bank so designated. The same rule is applied to notes made payable at a bank. The rule of the subsection is in conformity with the provisions of § 3-501 on presentment and § 3-502 on the effect of failure to make presentment with reference to domiciled paper.

5. Codifies a practice extensively followed in presentation of trade acceptances and documentary and other drafts drawn on non-bank payors. It imposes a duty on the payor to respond to the notice of the item if the item is not to be considered dishonored. Notice of such a dishonor charges parties secondarily liable.

6. A drawee not receiving notice is not, of course, liable to the drawer for wrongful dishonor.

7. A bank so presenting an instrument must be sufficiently close to the drawee to be able to exhibit the instrument on the day it is requested to do so or the next business day at the latest.

Cross References

Point 1: Sections 3-501, 3-502, 3-505 and 3-511.

Point 5: Sections 3-412, 3-502 and 3-502.

Definitional Cross References

"Acceptance". Section 3-410.

"Bank". Section 1-201.

"Clearing house". Section 3-102.

"Draft". Section 3-104.

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Note". Section 3-104.

"Party". Section 1-201.

"Person". Section 1-201.

Library References

Bills and Notes ⇄388, 399.

Indians ⇄24.

Westlaw Topic Nos. 56, 209.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit § 205.
C.J.S. Indians §§ 12, 31.

§ 3-505. Rights of party to whom presentment is made

- A. The party to whom presentment is made may without dishonor require:
1. Exhibition of the instrument; and
 2. Reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and
 3. That the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and
 4. A signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

B. Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-505 of the Uniform Commercial Code adopted by the states.

Commentary. 1. In the first instance a mere demand for acceptance of payment is sufficient presentment, and if the payment is unqualifiedly refused nothing more is required. The party to whom presentment is made may, however, require exhibition of the instrument, its production at the proper place, identification of the party making presentment, and a signed receipt on the instrument, or its surrender on full payment. Failure to comply with any such

requirement invalidates the presentment and means that the instrument is not dishonored. The time for presentment is, however, extended to give the person presenting a reasonable opportunity to comply with the requirements.

2. "Reasonable identification" means identification reasonable under all the circumstances. If the party on whom demand is made knows the person making presentment, no requirement of identification is reasonable, while if the circumstances are suspicious a great deal may be required. The requirement applies whether the instrument presented is payable to order or to bearer.

Cross References

Point 1: Sections 3-504 and 3-506.

Definitional Cross References

"Acceptance". Section 3-410.
"Dishonor". Section 3-507.
"Instrument". Section 3-102.
"Party". Section 1-201.
"Person". Section 1-201.
"Presentment". Section 3-504.
"Reasonable time". Section 1-204.
"Signed". Section 1-201.

Library References

Banks and Banking ⇨137.
Bills and Notes ⇨391, 405.

Indians ⇨24.

Westlaw Topic Nos. 52, 56, 209.
C.J.S. Banks and Banking §§ 328, 330.
C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 205 to 209.
C.J.S. Indians §§ 12, 31.

§ 3-506. Time allowed for acceptance or payment

A. Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

B. Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-506 of the Uniform Commercial Code adopted by the states.

Commentary. This section does not purport to cover drafts presented under a letter of credit.

In the law of the states § 4-301 on deferred posting governs the right of a payor bank to

recover tentative settlements made by it on the day an item is received. That right does not survive final payment. Article 4 of the Uniform Commercial Code has not been adopted by the Navajo Nation. Rights of parties which would be governed under Article 4 are governed pursuant to Navajo law 7 N.N.C. § 204.

Definitional Cross References

“Acceptance”. Section 3-410.
“Dishonor”. Section 3-507.
“Documentary draft”. Sections 3-102.
“Instrument”. Section 3-102.
“Party”. Section 1-201.
“Presentment”. Section 3-504.

Library References

Banks and Banking ☞140(3), 161(1).
Bills and Notes ☞70, 392, 416.
Indians ☞24.
Westlaw Topic Nos. 52, 56, 209.
C.J.S. Banks and Banking §§ 317, 319, 327,
357, 359, 361, 371 to 379, 385 to 386, 388
to 392, 401, 407, 409 to 410, 414.

C.J.S. Bills and Notes.
C.J.S. Letters of Credit §§ 21, 202, 204.
C.J.S. Indians §§ 12, 31.

§ 3-507. Dishonor; holder’s right of recourse; term allowing represent- ment

A. An instrument is dishonored when:

1. A necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (§ 3-102); or

2. Presentment is excused and the instrument is not duly accepted or paid.

B. Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

C. Return of an instrument for lack of proper indorsement is not dishonor.

D. A term in a draft or an indorsement thereof allowing a stated time for representment in the event of any dishonor of the draft by non-acceptance if a time draft or by non-payment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. A definition of the midnight deadline has been included in § 3-102 because Article 4 of the Uniform Commercial Code has not been adopted by the Navajo Nation.

Commentary. 1. The language of the section conforms to the provisions of the preceding section as to the time allowed for acceptance or payment.

2. Subsection (C) states the general banking and commercial understanding that the time within which a payor bank must return items, and the methods of returning, under § 3-411(C) a bank may certify an item so returned.

Cross References

Point 1: Sections 3-503, 3-504, 3-505 and 3-508.

Point 2: Section 3-411.

Definitional Cross References

"Acceptance". Section 3-410.

"Bank". Section 1-201.

"Draft". Section 3-104.

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Notice of dishonor". Section 3-508.

"Presentment". Section 3-504.

"Protest". Section 3-509.

"Right". Section 1-201.

"Seasonably". Section 1-204.

"Secondary party". Section 3-102.

"Term". Section 1-201.

Library References

Banks and Banking ⇨140(3), 143, 171(5, 7).

Indians ⇨24.

Bills and Notes ⇨24.

Westlaw Topic Nos. 52, 56, 209.

C.J.S. Banks and Banking §§ 323 to 324, 357, 359, 361, 371 to 381, 401, 403, 409, 411 to 412, 414.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit § 19.

C.J.S. Indians §§ 12, 31.

§ 3-508. Notice of dishonor

A. Notice of dishonor maybe given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

B. Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

C. Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

D. Written notice is given when sent although it is not received.

E. Notice to one partner is notice to each although the firm has been dissolved.

F. When any party is in insolvency proceedings instituted after the issue of the instrument notice maybe given either to the party or to the representative of his estate.

G. When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

H. Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-508 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Notice is normally given by the holder or by an indorser who has himself received notice. Subsection (A) is intended to encourage and facilitate notice of dishonor by permitting any party who may be compelled to pay the instrument to notify any party who maybe liable on it. Thus an indorser may notify another indorser who is not liable to the one

who gives notice, even when the latter has not received notice from any other party to the instrument.

2. Except as to collecting banks, as to which Article 4 controls, the time within which necessary notice must be given is extended to three (3) days after dishonor or receipt of notice from another party. The Navajo Nation has not adopted Article 4 of the Uniform Commercial Code. The rights of parties which would be governed under that Article are governed pursuant to Navajo law pursuant to 7 N.N.C. § 204.

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This period is intended to give the party a margin of time within which to ascertain what is required of him and get out an ordinary business letter.

3. Subsection (C) approves the bank practice of returning the instrument bearing a stamp, ticket or other writing, or a notice of debit of the account, as sufficient notice.

4. Subsection (G) permits notice to be sent to the last known address of a party who is dead or incompetent rather than to his personal representative. The provision is intended to save time, as the name of the personal representative often cannot easily be ascertained, and mail addressed to the original party will reach the representative.

Cross References

Sections 3-501, 3-507 and 3-511.

Definitional Cross References

“Acceptance”. Section 3-410.
“Bank”. Section 1-201.
“Dishonor”. Section 3-507.
“Holder”. Section 1-201.
“Insolvency proceedings”. Section 1-201.
“Instrument”. Section 3-102.
“Issue”. Section 3-102.
“Notifies”. Section 1-201.
“Party”. Section 1-201.
“Persons”. Section 1-201.
“Representatives”. Section 1-201.
“Rights”. Section 1-201.
“Send”. Section 1-201.
“Written” and “writing”. Section 1-201.

Library References

Banks and Banking \Leftrightarrow 140(3), 171(5).	C.J.S. Bills and Notes.
Bills and Notes \Leftrightarrow 393, 411.	C.J.S. Letters of Credit §§ 97, 210, 212, 257.
Indians \Leftrightarrow 24.	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos. 52, 56, 209.	
C.J.S. Banks and Banking §§ 323 to 324, 357, 359, 361, 371 to 379, 401, 403, 411 to 412, 414.	

§ 3-509. Protest; noting for protest

A. A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to verify dishonor by the law of the place where dishonor occurs. It maybe made upon information satisfactory to such person.

B. The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by non-acceptance or nonpayment.

C. The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

D. Subject to subsection (E) any necessary protest is due by the time that notice of dishonor is due.

E. If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-509 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Protest is not necessary except on drafts drawn or payable outside of the United States. Section 3-501 (C) also permits the holder at his option to make protest on dishonor of any other instrument. This section is intended to simplify either necessary or optional protest when it is made.

2. "Protest" has been used to mean the act of making protest, and sometimes loosely to refer to the entire process of presentment, notice of dishonor and protest. In this article it is given its original, technical meaning, that of the official certificate of dishonor.

3. Protest need not be made at the place of dishonor. Any necessary delay in finding the proper officer to make protest is excused under § 3-511.

4. "Information satisfactory to such person" does away with the requirement occasionally stated, that the person making protest must certify as of his own knowledge. The requirement has been more honored in the breach than in the observance, and in practice protest has been made upon hearsay which the officer regards as reliable, upon the admission of the person who has dishonored, or at most upon presentment, which is only indirect proof of the original dishonor. There is seldom any possible motive for false protest, and the basis on which it is made is never questioned. Subsection (A)

leaves to the certifying officer the responsibility for determining whether he has satisfactory information. The provision is not intended to affect any personal liability of the officer for making a false certificate.

5. The protest need not be in any particular form, so long as it certifies the matters stated in subsection (B). It need not be annexed to the instrument, and may be forwarded separately, but annexation may identify the instrument. If the instrument is lost, destroyed, or wrongfully withheld, protest is still sufficient if it identifies the instrument; but the owner must prove his rights as in any action under this article on a lost, destroyed or stolen instrument (§ 3-804).

6. Subsection (C) recognizes the practice of including in the protest a certification that notice of dishonor has been given to all parties or to specified parties. The next section makes such a certification presumptive evidence that the notice has been given.

7. Protest is normally forwarded with notice of dishonor. Subsection (D) extends the time for making a necessary protest to coincide with the time for giving notice of dishonor. Any delay due to circumstances beyond the holder's control is excused under § 3-511 on waiver or excuse. Any protest which is not necessary but merely optional with the holder may be made at any time before it is used as evidence.

8. Subsection (E) retains from the original Section 155 the provision permitting the officer to note the protest and extend it formally later.

Cross References

Point 1: Sections 3-501 (C) and 3-511.
 Point 3: Section 3-511 (A).
 Point 5: Section 3-804.
 Point 6: Section 3-510 (A)
 Point 7: Sections 3-508(B) and 3-511 (A).

Definitional Cross References

"Dishonor". Section 3-507.
 "Instrument". Section 3-102.
 "Notice of dishonor". Section 3-508.
 "Party". Section 1-201.
 "Person". Section 1-201.
 "Presentment". Section 3-504.

Library References

Bills and Notes ⇌408.
 Indians ⇌24.
 Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.
 C.J.S. Letters of Credit § 211.
 C.J.S. Indians §§ 12, 31.

§ 3-510. Evidence of dishonor and notice of dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

A. A document regular in form as provided in the preceding section which purports to be a protest;

B. The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

C. Any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is not evidence of who made the entry.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-510 of the Uniform commercial Code adopted by the states.

Commentary. 1. Subsection (A) states the generally accepted rule that a protest is not only admissible as evidence, but creates a presumption, as that term is defined in this Code (§ 1-201), of the dishonor which it certifies. The rule is extended to include the giving of any notice of dishonor certified by the protest. The provision also relieves the holder of the necessity of proving that a document regular in form which purports to be a protest is authentic, or that the person making it was qualified. Nothing in the provision is intended to prevent the obligor from overthrowing the presumption by evidence that there was in fact no dishonor, that notice was not given, or that the protest is not authentic or not made by a proper officer.

2. Subsection (B) recognizes as the full equivalent of protest the stamp, ticket or other writing of the drawee, payor or presenting bank. The drawee's statement that payment is refused on account of insufficient funds always has been commercially acceptable as full proof of dishonor. It should be satisfactory evidence in any court. It is therefore made admissible, and creates a presumption of dishonor. The provision applies only where the stamp or writing states reasons for refusal which are consistent with dishonor. Thus the following reasons

for refusal are not evidence of dishonor, but of justifiable refusal to pay or accept:

- Indorsement missing
- Signature missing
- Signature illegible
- Forgery
- Payee altered
- Date altered
- Post dated
- Not on us

On the other hand the following reasons are satisfactory evidence of dishonor, consistent with due presentment, and are within this provision:

- Not sufficient funds
- Account garnisheed
- No account
- Payment stopped

3. Subsection (C) recognizes as the full equivalent of protest any books or records of the drawee, payor bank or any collecting bank kept in its usual course of business, even though there is not evidence of who made the entries. The provision, as well as that of subsection (B), rests upon the inherent improbability that bank records or those of the drawee, will show any dishonor which has not in fact occurred, or that the holder will attempt to proceed on the basis of dishonor if he could in fact have obtained payment.

Cross References

Sections 3-501 and 3-508.
Point 1: Section 1-201.

Definitional Cross References

“Acceptance”. Section 3-410.
 “Dishonor”. Section 3-507.
 “Instrument”. Section 3-102.
 “Notice of dishonor”. Section 3-508.
 “Presumption”. Section 1-201.
 “Protest”. Section 3-509.
 “Writing”. Section 1-201.

Library References

Banks and Banking	§§ 155, 175(3).	C.J.S. Bills and Notes.
Bills and Notes	§§ 410, 498, 510, 526.	C.J.S. Letters of Credit §§ 294, 299 to 300.
Indians	§ 24.	C.J.S. Indians §§ 12, 31.
Westlaw Topic Nos.	52, 56, 209.	
C.J.S. Banks and Banking	§§ 357, 412, 420, 422, 443.	

§ 3-511. Waived or excused presentment, protest or notice of dishonor or delay therein

A. Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

B. Presentment or notice or protest as the case may be is entirely excused when:

1. The party to be charged has waived it expressly or by implication either before or after it is due; or
2. Such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or
3. By reasonable diligence the presentment or protest cannot be made or the notice given.

C. Presentment is also entirely excused when:

1. The maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or
2. Acceptance or payment is refused but not for want of proper presentment.

D. Where a draft has been dishonored by non-acceptance a later presentment for payment and any notice of dishonor and protest for non-payment are excused unless in the meantime the instrument has been accepted.

E. A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

F. Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-511 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Delay in making presentment either for payment or for acceptance, in giving notice of dishonor or in making protest is excused when the party has acted with reasonable diligence and the delay is not his fault. This is true where an instrument has been accelerated without his knowledge, or demand has been made by a prior holder immediately before his purchase. It is true under any other circumstance where the delay is beyond his control.

2. The waiver may be express or implied, oral or written, and before or after the proceeding waived is due. It may be, and often is, a term of the instrument when it is issued.

3. A party who has no right to require or reason to expect that the instrument will be honored is not entitled to presentment, notice or protest. This is of course true where he has himself dishonored the instrument or has countermanded payment. It is equally true, for example, where he is an accommodated party and

has himself broken the accommodation agreement.

4. The excuse is established only by proof that reasonable diligence has been exercised without success, or that reasonable diligence would in any case have been unsuccessful.

5. Subsection (C)(1) excuses presentment in situations where immediate payment or acceptance is impossible or so unlikely that the holder cannot reasonably be expected to make presentment. He is permitted instead to have his immediate recourse upon the drawer or indorser, and let the latter file any necessary claim in probate or insolvency proceedings. The exception for the documentary draft is to preserve any profit on the resale of goods for the creditors of the drawee if his representative can find the funds to pay.

6. Subsection (C)(2) includes any case where payment or acceptance is definitely refused and the refusal is not on the ground that there has been no proper presentment. The purpose of presentment is to determine whether or not the maker, acceptor or drawee will pay or accept, and when that question is clearly determined the holder is not required to go through a useless ceremony. The provision applies to a definite refusal stating no reasons.

Cross References

Sections 3-501, 3-502, 3-503, 3-507 and 3-509.

Definitional Cross References

“Acceptance”. Section 3-410.
 “Dishonor”. Section 3-507.
 “Draft”. Section 3-104.
 “Insolvency proceedings”. Section 1-201.
 “Instrument”. Section 3-102.
 “Issue”. Section 3-102.
 “Notice of dishonor”. Section 3-508.
 “Party”. Section 1-201.
 “Presentment”. Section 3-504.
 “Protest”. Section 3-509.
 “Right”. Section 1-201.

Library References

Bills and Notes ⇄397, 422.
 Indians ⇄24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 212 to 215, 219 to 228, 230.
 C.J.S. Indians §§ 12, 31.

Part 6. Discharge

§ 3-601. Discharge of parties

A. The extent of the discharge of any party from liability on an instrument is governed by the sections on:

1. Payment or satisfaction (§ 3-603); or
2. Tender of payment (§ 3-604); or
3. Cancellation or renunciation (§ 3-605); or
4. Impairment of right of recourse or of collateral (§ 3-606); or
5. Reacquisition of the instrument by a prior party (§ 3-208); or
6. Fraudulent and material alteration (§ 3-407); or
7. Certification of a check (§ 3-411); or
8. Acceptance varying a draft (§ 3-412); or
9. Unexcused delay in presentment or notice of dishonor or protest (§ 3-502).

B. Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

C. The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument:

1. Reacquires the instrument in his own right; or
2. Is discharged under any provision of this article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (§ 3-606).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-601 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) contains an index referring to all of the sections of this article which provide for the discharge of any party. The list is exclusive so far as the provisions of this article are concerned, but it is not intended to prevent or affect any discharge arising apart from this Code, as for example a discharge in bankruptcy or a statutory provision for discharge if the instrument is negotiated in a gaming transaction.

2. A negotiable instrument is in itself merely a piece of paper bearing a writing, and strictly speaking is incapable of being discharged. It is the parties who may be discharged from liability on their contracts on the instrument. This section distinguishes between the discharge of a single party and the discharge of all parties.

So far as the discharge of any one party is concerned a negotiable instrument differs from any other contract only in the special rules arising out of its character to which subsection (A)(1)-(9) are an index, and in the effect of the discharge against a subsequent holder in due course (§ 3-602). Subsection (B) specifically recognizes the possibility of a discharge by agreement.

The discharge of any party is a defense available to that party as provided in sections on rights of those who are and are not holders in due course (§§ 3-305 and 3-306). He has the burden of establishing the defense (§ 3-307).

3. Subsection (C) states a general principle regarding the discharge of all parties from liability on their contracts on the instrument. The principle is that all parties to an instrument are discharged when no party is left with rights against any other party on the paper.

When any party reacquires the instrument in his own right his own liability is discharged; and any intervening party to whom he was liable is also discharged as provided in § 3-208 on reacquisition. When he is left with no right of action against an intervening party and no right of recourse against any prior party, all parties are obviously discharged. The instrument itself is not necessarily extinct, since it may be reissued or renegotiated with a new and further liability; and if it subsequently reaches the hands of a holder in due course without notice of the discharge he may still enforce it as provided in § 3-602 on effect of discharge against a holder in due course.

Under § 3-606 on impairment of recourse or collateral, the discharge of any party discharges those who have a right of recourse against him, except in the case of a release with reservation of rights or a failure to give notice of dishonor. A discharge of one who has himself no right of action or recourse on the instrument may thus

discharge all parties. Again the instrument itself is not necessarily extinct, and if it is negotiated to a subsequent holder in due course without notice of the discharge he may enforce it as provided in § 3-602 on effect of discharge against a holder in due course.

4. The language "any party who has himself no right of action or recourse on the instrument" is intended to include accommodation maker or acceptor. Under § 3-415 on accommodation parties, an accommodation maker or acceptor, although he is primarily liable on the instrument in the sense that he is obligated to pay it without recourse upon another, has himself a right of recourse against the accommodated payee; and his reacquisition or discharge leaves the accommodated party liable to him. The accommodated payee, although he is not primarily liable to others, has no right of action or recourse against the accommodation maker, and his reacquisition or discharge may discharge all parties.

Cross References

Sections 3-406, 3-411, 3-412, 3-509, 3-603, 3-604 and 3-605.
 Point 2: Sections 3-305, 3-306, 3-307 and 3-602.
 Point 3: Sections 3-208, 3-602 and 3-606.
 Point 4: Section 3-415.

Definitional Cross References

"Action". Section 1-201.
 "Agreement". Section 1-201.
 "Alteration". Section 3-407.
 "Certification". Section 3-411.
 "Check". Section 3-104.
 "Contract". Section 1-201.
 "Draft". Section 3-104.
 "Instrument". Section 3-102.
 "Money". Section 1-201.
 "Notice of dishonor". Section 3-508.
 "Party". Section 1-201.
 "Presentment". Section 3-504.
 "Rights". Section 1-201.

Library References

Bills and Notes \Leftrightarrow 256, 301, 425 to 440.	C.J.S. Letters of Credit §§ 100, 120, 231 to 249.
Indians \Leftrightarrow 24.	
Westlaw Topic Nos. 56, 209.	C.J.S. Indians §§ 12, 31.
C.J.S. Bills and Notes.	

§ 3-602. Effect of discharge against holder in due course

No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-602 of the Uniform Commercial Code adopted by the states.

Commentary. The section rests on the principle that any discharge of a party provided under any section of this article is a personal defense of the party, which is cut-off when a subsequent holder in due course takes the instrument without notice of the defense. Thus where an instrument is paid without surrender such a subsequent purchase cuts off the defense. This section applies only to discharges arising under the provisions of this article, and it has no

application to any discharge arising apart from it, such as a discharge in bankruptcy.

Under § 3-304(A)(2) on notice to purchaser it is possible for a holder to take the instrument in due course even though he has notice that one or more parties have been discharged, so long as any party remains undischarged. Thus he may take with notice that an indorser of a note has been released, and still be a holder in due course as to the liability of the maker. In that event, the holder in due course is subject to the defense of the discharge of which he had notice when he took the instrument.

Cross References

Sections 3-302, 3-304, 3-305 and 3-601.

Definitional Cross References

"Holder in due course". Section 3-302.

"Instrument". Section 3-102.

"Notice". Section 1-201.

"Party". Section 1-201.

Library References

Bills and Notes ⇔383, 440.

Indians ⇔24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 198, 249.

C.J.S. Indians §§ 12, 31.

§ 3-603. Payment or satisfaction

A. The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability:

1. Of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or
2. Of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

B. Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (§ 3-201).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-603 of the Uniform Commercial Code adopted by the states.

Commentary. 1. A purchaser with notice of payment at or after maturity cannot be a holder in due course, and therefore is cut off by the section. One who takes without notice of the payment and the maturity should be protected against failure to take up the instrument. The matter is now covered by § 3-602.

2. The practice of payment of a draft "for honor" is obsolete and it is today almost entirely unknown. Therefore, subsection (B) eliminates any reference to it and provides that any person may pay with the consent of the holder.

3. Payment to the holder discharges the party who makes it from his own liability on the instrument, and a part payment discharges him *pro tanto*. The same is true of any other satisfaction. It adopts as a general principle the position that a payor is not required to obey an order to stop payment received from an indorser. However, this general principle is qualified by the provisions of subsection (A) (1) and (2) respecting persons who acquire an instrument by theft, or through a restrictive indorsement (§ 3-205). These provisions are thus consistent with § 3-306 covering the rights of one not a holder in due course.

When the party to pay is notified of an adverse claim to the instrument he has normally no means of knowing whether the assertion is true. The "unless" clause of subsection (B) follows statutes which have been passed in many jurisdictions on adverse claims to bank deposits. The paying party may pay despite notification of the adverse claim unless the adverse claimant supplies indemnity deemed adequate by the paying party or procures the issuance of process restraining payment in an action in which the adverse claimant and the holder of the instrument are both parties. If

the paying party chooses to refuse payment and stand suit, even though not indemnified or enjoined, he is free to do so, although, under § 3-306(D) on the rights of one not a holder in due course, except where theft or taking through a restrictive indorsement is alleged the payor must rely on the third party claimant to litigate the issue and may not himself defend on such a ground. His contract is to pay the holder of the instrument, and he performs it by making such payment. Except in cases of theft or restrictive indorsement there is no good reason to put him to inconvenience because of a dispute between two other parties unless he is indemnified or served with appropriate process.

4. Subsection (B) provides that with the consent of the holder payment maybe made by anyone, including a stranger. The same result is reached under § 3-415(E) on accommodation parties. Upon payment and surrender of the paper the payor succeeds to the rights of the holder, subject to the limitation found in § 3-201 on transfer that one who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

5. Payment discharges the liability of the person making it. It discharges the liability of other parties only as:

A. The discharge of the payor discharges others who have a right of recourse against him under § 3-606; or

B. Reacquisition of the instrument discharges intervening parties under § 3-208 on reacquisition; or

C. The discharge of one who has himself no right of recourse on the instrument discharges all parties under § 3-601 on discharge of parties.

Cross References

Sections 3-604 and 3-606.

Point 1: Section 3-601 (C).

Point 3: Sections 3-205 and 3-306(D).

Point 4: Sections 3-201 and 3-415(E).

Point 5: Sections 3-606, 3-208, 3-601.

Definitional Cross References

"Action". Section 1-201.

"Holder". Section 1-201.

"Instrument". Section 3-102.

“Order”. Section 3-102.
 “Party”. Section 1-201.
 “Person”. Section 1-201.
 “Rights”. Section 1-201.

Library References

Bills and Notes ⇨370 to 440.
 Indians ⇨24.
 Westlaw Topic Nos. 56, 209.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 4, 24, 30, 33, 97 to
 98, 100, 120, 190 to 191, 193 to 202, 204 to
 242, 244 to 249, 257, 294, 299.
 C.J.S. Indians §§ 12, 31.

§ 3-604. Tender of payment

A. Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney’s fees.

B. The holder’s refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

C. Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-604 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Subsection (A) states the generally accepted rule as to the effect of tender.

2. Subsection (B) states that the party discharged is one who has a right of recourse against the party making tender, whether the latter be a prior party or a subsequent one who has been accommodated.

3. Subsection (C) states that if an instrument is payable at any one of two or more specified places, the maker or acceptor must be able and ready to pay at each of them. This subsection reverses decisions which held that makers and acceptors of notes and drafts payable at a bank were not discharged by failure of a holder to make due presentment of such paper at the designated bank. See § 3-501 on necessity of presentment, § 3-504 on how presentment is made, and § 3-502 on effect of delay in presentment.

Cross References

Section 3-601.
 Point 3: Sections 3-501, 3-502 and 3-504.

Definitional Cross References

“Holder”. Section 1-201.
 “Instrument”. Section 3-102.
 “On demand”. Section 3-108.
 “Party”. Section 1-201.
 “Right”. Section 1-201.

Library References

Bills and Notes ⇨428, 437.
 Indians ⇨24.

Tender ⇨10, 19, 21.
 Westlaw Topic Nos. 56, 209, 374.

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C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 100, 231, 234 to
236, 238, 242, 244 to 248.

C.J.S. Indians §§ 12, 31.

C.J.S. Tender §§ 7, 26, 28, 42, 44 to 45, 61.

§ 3-605. Cancellation and renunciation

A. The holder of an instrument may even without consideration discharge any party:

1. In any manner apparent on the face of the instrument or the indorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

2. By renouncing his rights by a writing signed and delivered or by surrender of the instrument of the party to be discharged.

B. Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-605 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Cancellation must be done in such a manner as to be apparent on the face of the instrument, and the methods stated,

which are supported by the decisions, are exclusive.

2. Subsection (B) is intended to make it clear that the striking of an indorsement, or any other cancellation or renunciation does not affect the title.

Definitional Cross References

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Party". Section 1-201.

"Rights". Section 1-201.

"Signature". Section 3-401.

"Signed". Section 1-201.

"Writing". Section 1-201.

Library References

Bills and Notes ⇄193, 256, 301, 438.

Indians ⇄24.

Westlaw Topic Nos. 56, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 158, 240 to 248.

C.J.S. Indians §§ 12, 31.

§ 3-606. Impairment of recourse or of collateral

A. The holder discharges any party to the instrument to the extent that without such party's consent the holder:

1. Without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of

dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

2. Unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

B. By express reservation of rights against a party with a right of recourse the holder preserves:

1. All his rights against such party as of the time when the instrument was originally due; and

2. The right of the party to pay the instrument as of that time; and

3. All rights of such party to recourse against others.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-605 of the Uniform Commercial Code adopted by the states.

Commentary. 1. The words "any party to the instrument" provide suretyship defense which are not limited to parties who are "secondarily liable", but are available to any party who is in the position of a surety, having a right of recourse either on the instrument or outside of it, including an accommodation maker or acceptor known to the holder to be so.

2. Consent may be given in advance, and is commonly incorporated in the instrument; or it maybe given afterward. It requires no consideration, and operates as a waiver of the consenting party's right to claim his own discharge.

3. The words "to the knowledge of the holder" exclude the latent surety, as for example the accommodation maker where there is nothing

on the instrument to show that he has signed for accommodation and the holder is ignorant of that fact. In such a case the holder is entitled to proceed according to what is shown by the face of the paper or what he otherwise knows, and does not discharge the surety when he acts in ignorance of the relation.

4. This section retains the right of the holder to release one party, or to postpone his time of payment, while expressly reserving rights against others. Subsection (B) states the generally accepted rule as to the effect of such an express reservation of rights.

5. Subsection (A) (2) has been generally recognized as available to indorsers or accommodation parties. As to when a holder's actions in dealing with collateral may be "unjustifiable", the section on rights and duties with respect to collateral in the possession of a secured party (§ 9-207) should be consulted.

Cross References

Point 5: Section 9-207.

Definitional Cross References

"Agreement". Section 1-201.

"Holder". Section 1-201.

"Instrument". Section 3-102.

"Notice of dishonor". Section 3-508.

"Party". Section 1-201.

"Person". Section 1-201.

"Rights". Section 1-201.

Library References

Bills and Notes ☞52, 256, 301, 437.

Guaranty ☞62.

Indians ☞24.

Westlaw Topic Nos. 56, 195, 209.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 231, 242 to 248.

C.J.S. Indians §§ 12, 31.

Part 7. Advice of International Sight Draft

§ 3-701. Letter of advice of international sight draft

A. A “letter of advice” is a drawer’s communication to the drawee that a described draft has been drawn.

B. Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer’s account and stop the running of interest *pro tanto*. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

C. Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer’s account.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-701 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Checks drawn by one international bank on the account it carries (in currency foreign to itself) in another international bank are still handled under practices which reflect older conditions, but which have a real, continuing reason in the typical, European rule that a bank paying a check in good faith and in ordinary course can charge its depositor’s account notwithstanding forgery of a necessary indorsement. To decrease the risk that forgery will prove successful, the practice is to

send a letter of advice that a draft has been drawn and will be forthcoming. Subsection (C) recognizes that a drawer who sends no such letter forfeits any rights for improper dishonor, while still permitting the drawee to protect his delinquent drawer’s credit.

2. Subsection (B) clarifies for American courts, the meaning of another international practice: that of charging the drawer’s account on receipt of the letter of advice. This practice involves no conception of trust or the like and the rule of § 3-409(A), (Draft not an assignment) still applies. The debit has to do with the payment of interest only. The section recognizes the fact.

Cross References

Point 2: Section 3-409(A)

Definitional Cross References

“Account”. Section 3-102.
 “Bank”. Section 1-201.
 “Draft”. Section 3-104.
 “Genuine”. Section 1-201.
 “Holder”. Section 1-201.

Library References

Banks and Banking ⇨161(1), 189, 191.

Bills and Notes ⇨129.

Indians ⇐24.
 Westlaw Topic Nos. 52, 56, 209.
 C.J.S. Banks and Banking §§ 317, 319, 327,
 385 to 386, 388 to 392, 407, 409 to 410,
 414, 452 to 458.

C.J.S. Bills and Notes.
 C.J.S. Letters of Credit §§ 86 to 89, 91 to 99,
 341 to 366, 368 to 370, 372 to 376.
 C.J.S. Indians §§ 12, 31.

Part 8. Miscellaneous

§ 3-801. Drafts in a set

A. Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

B. Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

C. As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (B). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order. The drawee of such a part is subrogated to the rights: (1) of any holder in due course thereof against the drawer or any other holder; (2) of the payee or other holder against the drawer either on the items or under the transaction out of which it arose; and (3) of the drawer against the payee or any other holder of this part of the draft with respect to the transaction out of which it arose.

D. Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section has been amended to include, in subsection (C), the rights of subrogation available to the drawer of a draft in parts upon improper acceptance of a subsequently presented part of such a draft which is found on § 4-407 of the Official Text.

Commentary. 1. Drafts in a set customarily contain such language as "Pay _____ this first of exchange (second unpaid)", with equivalent language in the second part. Today a part also commonly bears conspicuous indication of its number. At least the first factor is necessary to

notify the holder of his rights, and is therefore necessary in order to make this section apply. Subsection (A) so provides, thus stating in the statute a matter left previously to a commercial practice long uniform but expensive to establish in court.

2. Payment of the part of the draft subsequently presented is improper and the drawee may not charge it to the account of the drawer, but someone has probably been unjustly enriched in the total transaction, at the expense of the drawee. So the drawee is like a bank which

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has paid a check over an effective stop payment order, an is subrogated to the same rights as a bank would have in that situation.

3. A statement in a draft drawn in a set of parts to the effect that the order is effective only if no other part has been honored does not render the draft non-negotiable as conditional See § 3-112(A)(7).

Cross References

Point 3: Section 3-112.

Definitional Cross References

“Acceptance”. Section 3-410.
“Check”. Section 3-104.
“Draft”. Section 3-104.
“Holder”. Section 1-201.
“Holder in due course”. Section 3-302.
“Honor”. Section 1-201.
“Person”. Section 1-201.
“Rights”. Section 1-201.

Library References

Bills and Notes	§§ 14, 437.	C.J.S. Letters of Credit	§§ 231, 242, 244 to 248, 250.
Indians	§ 24.	C.J.S. Indians	§§ 12, 31.
Westlaw Topic Nos.	56, 209.		
C.J.S. Bills and Notes.			

§ 3-802. Effect of instrument on obligation for which it is given

A. Unless otherwise agreed where an instrument is taken for an underlying obligation:

1. The obligation is *pro tanto* discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

2. In any other case the obligation is suspended *pro tanto* until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

B. The taking in good faith of a check which is not post-dated does not of itself so extend the time on the original obligation as to discharge a surety.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-802 of the Uniform Commercial Code adopted by the states.

Commentary. 1. This section is intended to settle conflicts as to the effect of an instrument as payment of the obligation for which it is given.

2. Where a holder procures certification of a check, the drawer is discharged under § 3-411

on check certification. Thereafter the original obligation is regarded as paid, and the holder must look to the certifying bank. The circumstances may indicate a similar intent in other transactions, and the question may be one of fact of the jury. Subsection (A) (1) states a rule discharging the obligation *pro tanto* when the instrument taken carries the obligation of a bank as drawer, maker or acceptor and there is

no recourse on the instrument against the underlying obligor.

3. It is commonly said that a check or other negotiable instrument is "conditional payment". By this it is normally meant that taking the instrument is a surrender of the right to sue on the obligation until the instrument is due, but if the instrument is not paid on due presentment the right to sue on the obligation is "revived". Subsection (A)(2) states this result in terms of suspension of the obligation, which is intended to include suspension of the running of the statute of limitations. On dishonor of the in-

strument the holder is given his option to sue either on the instrument or on the underlying obligation. If, however, the original obligor has been discharged on the instrument (see § 3-601) he is also discharged on the original obligation.

4. Subsection (B) is intended to remove any implication that a check given in payment of an obligation discharges a surety. The check is taken as a means of immediate payment; the 30-day period for presentment specified in § 3-503 does not affect the surety's liability.

Cross References

Point 2: Sections 1-201, 3-411 and 3-60 1.

Point 4: Section 3-503.

Definitional Cross References

"Action". Section 1-201.

"Bank". Section 1-201.

"Check". Section 3-104.

"Dishonor". Section 3-507.

"Good faith". Section 1-201.

"Instrument". Section 3-102.

"On demand". Section 3-108.

"Presentment". Section 3-504.

Library References

Banks and Banking ⇨137, 189.

Bills and Notes ⇨23, 140.

Indians ⇨24.

Payment ⇨15 to 23.

Westlaw Topic Nos. 52, 56, 209, 294.

C.J.S. Banks and Banking §§ 328, 330, 452 to 458.

C.J.S. Bills and Notes.

C.J.S. Letters of Credit §§ 9, 18, 20 to 21, 120, 122 to 126, 245.

C.J.S. Indians §§ 12, 31.

C.J.S. Payment §§ 16 to 19, 21.

§ 3-803. Notice to third party

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will, in any action against him by the person giving the notice, be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend, he is so bound.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-803 of the Uniform Commercial Code adopted by the states.

Commentary. The section conforms to the analogous provision in § 2-607. It extends to such liabilities as those arising from forged indorsements even though not “on the instrument”, and is intended to make it clear that the notification is not effective until received. In *Hartford Accident & Indemnity Co. v. First Nat. Bank & Trust Co.*, 281 N.Y. 162, 22 N.E.2d 324, 123 A.L.R. 1149 (1939), the common law doctrine of “vouching in” was held inapplicable where the party notified had no direct liability to the party giving the notice. In that case the

drawer of a check, sued by the payee whose indorsement had been forged, gave notice to a collecting bank. In a second action the drawee was held liable to the drawer; but in an action by the drawee for judgment over against the collecting bank the determination of fact in the first action was held not conclusive. This section does not disturb this result; the section is limited to cases where the person notified is “answerable over” to the person giving the notice.

Cross References

Section 2-607.

Definitional Cross References

“Action”. Section 1-201.
 “Defendant”. Section 1-201.
 “Instrument”. Section 3-102.
 “Notifies”. Section 1-201.
 “Person”. Section 1-201.
 “Right”. Section 1-201.
 “Seasonably”. Section 1-204.
 “Written”. Section 1-201.

Library References

Bills and Notes ⇨458.	C.J.S. Bills and Notes.
Guaranty ⇨79.	C.J.S. Letters of Credit § 255.
Indemnity ⇨40, 79, 85.	C.J.S. Indians §§ 12, 16, 18, 31, 42 to 43, 60
Indians ⇨24, 27(5), 32(7).	to 62, 139 to 143, 146, 152.
Westlaw Topic Nos. 56, 195, 208, 209.	

§ 3-804. Lost, destroyed or stolen instruments

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-804 of the Uniform Commercial Code adopted by the states.

Commentary. This section is intended to provide a method of recovery on instruments which are lost, destroyed or stolen. The plaintiff who claims to be the owner of such an instrument is not a holder as that term is defined in this Code since he is not in possession of the paper, and he does not have the holder's prima facie right

to recover under the section on the burden of establishing signatures. He must prove his case. He must establish the terms of the instrument and his ownership, and must account for its absence.

If the claimant testifies falsely, or if the instrument subsequently turns up in the hands of a holder in due course, the obligor may be subjected to double liability. The court is therefore authorized to require security indemnifying the obligor against loss by reason of such possibili-

ties. There may be cases in which so much time has elapsed, or there is so little possible doubt as to the destruction of the instrument and its ownership that there is no good reason

to require the security. The requirement is therefore not an absolute one, and the matter is left to the discretion of the court.

Cross References

Sections 1-201 and 3-307.

Definitional Cross References

“Action”. Section 1-201.
 “Defendant”. Section 1-201.
 “Instrument”. Section 3-102.
 “Party”. Section 1-201.
 “Term”. Section 1-201.

Library References

Bills and Notes ⇄441.
 Indians ⇄23 to 24, 27(1), 32(7).
 Lost Instruments ⇄13.
 Westlaw Topic Nos. 56, 209, 246.
 C.J.S. Bills and Notes.

C.J.S. Letters of Credit § 251.
 C.J.S. Indians §§ 12 to 15, 19, 30 to 31, 42, 53, 55, 60 to 62, 68, 89, 91 to 92, 94 to 95, 97, 139 to 143, 152.
 C.J.S. Lost Instruments § 9.

§ 3-805. Instruments not payable to order or to bearer

This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 3-805 of the Uniform Commercial Code adopted by the states.

Commentary. This section covers the “non-negotiable instrument”. As it has been used by most courts, this term has been a technical one of art. It does not refer to a writing, such as a note containing an express condition, which is not negotiable and is entirely outside of the scope of this article and to be treated as a simple contract. It refers to a particular type of instrument which meets all requirements as to form of a negotiable instrument except that it is not payable to order or to bearer. The typical example is the check reading merely “Pay John Doe”.

Such a check is not a negotiable instrument under this article. At the same time it is still a check, a mercantile specialty which differs in many respects from a simple contract. Commercial and banking practice treats it as a check, and a long line of decisions have made it clear that it is subject to the law merchant as

distinguished from ordinary contract law. Although the Negotiable Instruments Law was held by its terms not to apply to such “non-negotiable instruments”, it has been recognized as a codification and restatement of the law merchant, and has in fact been applied to them by analogy.

Thus the holder of the check reading “Pay A” establishes his case by production of the instrument and proof of signatures; and the burden of proving want of consideration of any other defense is upon the obligor. Such a check passes by indorsement and delivery without words of assignment, and the indorser undertakes greater liabilities than those of an assignor. This section resolves a conflict in the decisions as to the extent of that undertaking by providing in effect that the indorser of such an instrument is not distinguished from any indorser of a negotiable instrument. The indorser is entitled to presentment, notice of dishonor and protest, and the procedure and liabilities in bank collection are the same. The rules as to alteration, the filling of blanks, accommodation

parties, the liability of signing agents, discharge, and the like are those applied to negotiable instruments.

In short, the “non-negotiable instrument” is treated as a negotiable instrument, so far as its form permits. Since it lacks words of negotia-

bility there can be no holder in due course of such an instrument, and any provision of any section of this article peculiar to a holder in due course cannot apply to it. With this exception, such instruments are covered by all sections of this article.

Cross References

Section 3–104.

Definitional Cross References

“Bearer”. Section 1–201.

“Holder in due course”. Section 3–302.

“Instrument”. Section 3–102.

“Term”. Section 1–201.

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C.J.S. Indians §§ 12, 31.

Article 4. [Reserved]

Article 5. [Reserved]

Article 6. [Reserved]

Article 7. [Reserved]

Article 8. [Reserved]

Article 9. Secured Transactions; Sales of Accounts and Chattel Paper

Part 1. Short Title, Applicability and Definitions

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9–108. When after-acquired collateral not security for antecedent debt

9–109. Classification of goods: “consumer goods”; “equipment”; “farm products”; “inventory”

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9–112. Where collateral is not owned by debtor

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- 9-203. Attachment and enforceability of security interest; proceeds; formal requisites
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- 9-205. Use or disposition of collateral without accounting permissible
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- 9-304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession
- 9-305. When possession by secured party perfects security interest without filing
- 9-306. "Proceeds"; secured party's rights on disposition of collateral
- 9-307. Protection of buyers of goods
- 9-308. Purchase of chattel paper and instruments
- 9-309. Protection of purchasers of instruments, documents and securities
- 9-310. Priority of certain liens arising by operation of law
- 9-311. Alienability of debtor's rights: judicial process
- 9-312. Priorities among conflicting security interests in the same collateral
- 9-313. Priority of security interests in fixtures
- 9-314. Accessions
- 9-315. Priority when goods are commingled or processed
- 9-316. Priority subject to subordination
- 9-317. Secured party not obligated on contract of debtor
- 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

Part 4. Filing

- 9-401. Place of filing; erroneous filing; removal of collateral
- 9-402. Formal requisites of financing statement; amendments; mortgage as financing statement
- 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer

- 9–404. Termination statement
- 9–405. Assignment of security interest
- 9–406. Release of collateral
- 9–407. Information from filing officer
- 9–408. Financing statements covering consigned or leased goods

Part 5. Default

- 9–501. Default; procedure when security agreement covers both real and personal property
- 9–502. Collection rights of secured party
- 9–503. Secured party's right to take possession after default
- 9–504. Secured parties right to dispose of collateral after default; effect of disposition
- 9–505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation
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- 9–507. Secured party's liability for failure to comply with this part

Part 1. Short Title, Applicability and Definitions

§ 9–101. Short title

This article shall be known and may be cited as the Navajo Uniform Commercial Code—Secured Transactions.

History

CJA–1–86, January 29, 1986.

Official Comment

Changes. This article sets out a comprehensive scheme for the regulation of security interests in personal property and fixtures. In many respects this Code is based upon and similar to the Uniform Commercial Code adopted by most of the states in the United States. The Official Comments to this Code describe the reasons for most of the variations from the version proposed in such other states.

Commentary. Consumer installment sales and consumer loans present special problems of a nature which makes special regulation of them inappropriate in a general commercial codification. While this article applies generally to security interests in consumer goods, it is not designed to supersede such consumer legislation. See Official Comments to §§ 9–102 and 9–203.

The aim of this article is to provide a simple and unified structure within which the immense variety of present-day secured financing transactions can go forward with less cost and with greater certainty. Under this article the traditional distinctions among security devices based largely on form, are not retained. The Article

applies to all transactions intended to create security interests in personal property and fixtures, and the single term “security interest” substitutes for the variety of other descriptive terms which had grown up at common law and under a 100-year accretion of statutes in other states. This does not mean that the old forms may not be used, and § 9–102 (B) makes it clear that they may be.

This article does not determine whether “title” to collateral is in the secured party or in the debtor and adopts neither a “title theory” nor a “lien theory” of security interests. Rights, obligations and remedies under the Article do not depend on the location of title (§ 9–202). The location of title may become important for other purposes (as, for example, in determining the incidence of taxation), and in such a case the parties are left free to contract as they will. In this connection the use of a form which has traditionally been regarded as determinative of title (e.g., the conditional sale contract) could reasonably be regarded as evidencing the parties' intention with respect to title to the collateral.

Under the Article distinctions based on form (except as between pledge and non-possessory interests) are no longer controlling. For some purposes there are distinctions based on the type of property which constitutes the collateral (e.g., industrial and commercial equipment, business inventory, farm products, consumer goods, accounts receivable, documents of title and other intangibles), and where appropriate, the Article states special rules applicable to financing transactions involving a particular type of property. The objectives include statutory simplification and a considerable degree of flexibility in financing transactions. The scheme of the Article is to make distinctions, where distinctions are necessary, along functional rather than formal lines.

The Article's flexibility and simplified formalities should make it possible for new forms of secured financing, as they develop, to fit comfortably under its provisions, thus avoiding the necessity (so apparent in the states) of year by year passing new statutes and tinkering with the old ones to allow legitimate business transactions to go forward.

The rules set out in this article are principally concerned with the limits of the secured party's protection against purchasers from and creditors of the debtor. Except for procedures on default and certain other provisions, freedom of contract generally prevails between the immediate parties to the security transaction.

§ 9-102. Policy and subject matter of Article

A. Except as otherwise provided in § 9-104 on excluded transaction, this Article applies:

1. To any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures, including goods, documents, instruments, general intangibles, chattel paper or accounts; and also
2. To any sale of accounts or chattel paper.

B. This article applies to security interests created by contract, including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This article does not apply to statutory liens except as provided in § 9-310.

C. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a lien, transaction or interest to which this article does not apply. Security for any obligation is automatically transferred with a transfer of the obligation, subject to the effects of compliance or non-compliance with the requirements for perfection of such security interests or liens under applicable law.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-102 of the Uniform Commercial Code adopted by the states. Variations are only for the purpose of clarification or emphasis.

Commentary. The main purpose of this section is to bring all consensual security interests in personal property and fixtures under this article, except for certain types of transactions excluded by § 9-104. In addition certain sales of accounts and chattel paper are brought with-

in this article to avoid difficult problems of distinguishing between transactions intended for security and those not so intended. As to security interests in fixtures, see § 9-313 (A).

1. Except for sales of accounts and chattel paper, the principal test whether a transaction comes under this article is: is the transaction intended to have effect as security? For example, § 9-104 excludes certain transactions where the security interest (such as a mechanic's or artisan's lien) arises under statute or

common law by reason of status, rather than by consent of the parties. Transactions in the form of consignment or leases are subject to this article if the understanding of the parties or the effect of the arrangement shows that a security interest was intended. (As to consignments the provisions of §§ 2-326, 9-114 and 9-408 should be consulted.) When it is found that a security interest as defined in § 1-201 (KK) was intended, this article applies regardless of the form of the transaction or the name by which the parties may have characterized it. The list of traditional security devices in § 9-102(B) is illustrative only; other old devices, as well as any new ones which the ingenuity of the parties or lawyers may invent, are included, so long as the requisite intent is found. The controlling definition is that contained in § 9-102(A).

The Article does not abolish existing security devices, but instead specifies new requirements with which all such secured transactions must comply. The conditional sale or bailment-lease, for example, is not prohibited; but even though it is used, the rules of this article govern such transactions.

2. If an obligation is to repay borrowed money and is not part of chattel paper, the obligation is either an instrument or a general intangible. A sale of an instrument or general intangible is not within this article, but a transfer intended to have effect as security for an obligation of the transferor is covered by § 9-102(A)(1). In either case the nature of the transaction is not affected by the fact that collateral is transferred with the instrument or general intangible. Such a transfer is treated as a transfer by operation of law, whether or not it is articulated in the agreement. See Comment 4 below for an illustration. However, the rights and priorities associated with such collateral depend upon compliance with applicable law, including those requiring recording or filing in order to accomplish the perfection of such a security interest or lien or to establish priority over competing security interests or liens.

An assignment of accounts or chattel paper as security for an obligation is covered by

§ 9-102(A)(1). Commercial financing on the basis of accounts and chattel paper is often so conducted that the distinction between a security transfer and a sale is blurred, and a sale of such property is therefore covered by § 9-102(B)(2) whether intended for security or not, unless excluded by § 9-104. The buyer then is treated as a secured party, and his interest as a security interest. See §§ 9-105(A)(13), and 1-201(KK). Certain sales which have nothing to do with commercial financing transactions are excluded by § 9-104(F). See also § 9-302(A)(5), exempting from filing casual or isolated assignments, and § 9-302(B), preserving the perfected status of a security interest against the original debtor when a secured party assigns his interest.

3. In general, problems of choice of law in this article as to the validity of security agreements are governed by § 1-105. Problems of choice of law as to perfection of security interests and the effect of perfection or non-perfection thereof, including rules requiring reperfecting, are governed by § 9-103.

4. Section 9-102(C) recognizes that one secured transaction can result in further secured transactions. For example, Farmer A may sell 50 sheep to Farmer B in exchange for a promissory note which is secured by a security interest in those sheep. Farmer A may endorse and deliver that secured note to his Bank as security for a loan. Pursuant to § 9-102, since the Bank has a security interest in the note, the Bank also becomes the secured party with respect to the 50 sheep that secure that note. If Farmer B defaults on his note, the Bank may enforce the security interest in the note by proceeding against the 50 sheep for the account of Farmer A and subject to the terms of the security and other agreements between Farmer A and the Bank.

5. While most sections of this article apply to a security interest without regard to the nature of the collateral or its use, some sections state special rules with reference to particular types of collateral. An index of sections where such special rules are stated as follows:

SECTION	ACCOUNTS
9-102(A)(2)	Sale of accounts subject to Article
9-103(A)	When Article applies; conflict of laws rules
9-104(F)	Certain sales of accounts excluded from Article
9-106	Definitions
9-205	Permissible for debtor to make collections
9-206(A)	Agreement not to assert defenses against assignee
9-301(A)(4)	Unperfected security interest subordinate to certain transferees
9-302(A)(5)	What assignments need not be filed
9-306(E)	Rule when goods whose sale gave rise to an account return to seller's possession
9-318(A)	Rights of assignee subject to defenses
9-318(B)	Modification of contract after assignment of contract right
9-318(C)	When account debtor may pay assignor
9-318(D)	Term prohibiting assignment ineffective

- 9-401 Place of filing
- 9-502 Collection rights of secured party
- 9-504(B) Rights on default where underlying transaction was sale of accounts or contract rights

SECTION CHATTEL PAPER

- 9-102(A)(2) Sale subject to Article
- 9-104(F) Certain sales excluded from Article
- 9-105(A)(2) Definition
- 9-205 Permissible for debtor to make collections
- 9-206(A) Agreement not to assert defenses against assignee
- 9-207(A) Duty of secured party in possession to preserve rights against prior parties
- 9-301(A)(3) Unperfected security interest subordinate to certain transferees
- 9-304(A) Perfection by filing
- 9-305 When possession by secured party perfects security interest
- 9-306(E) Rule when goods whose sale result in chattel paper return to seller's possession
- 9-308 When purchasers of chattel paper have priority over security interest
- 9-318(A) Rights of assignee subject to defenses
- 9-318(C) When account debtor may pay assignor
- 9-502 Collection rights of secured party
- 9-504(B) Rights on default where underlying transaction was sale

SECTION DOCUMENTS AND INSTRUMENTS

- 9-105(A)(5) Definition of document (and see § 1-201)
- 9-105(A)(7) Definition of instrument
- 9-206(A) Rule where buyer of goods signs both negotiable instrument and security agreement
- 9-207(A) Duty of secured party in possession of instrument to preserve rights against prior parties
- 9-301(A)(3) Unperfected security interest subordinate to certain transferees
- 9-302(A)(2) and (6) What interests need not be filed
- 9-304(A) How security interest can be perfected
- 9-304(B),(C) Perfection of security interest in goods in possession of issuer of negotiable document or of other bailee
- 9-304(D),(E) Perfection of security interest in instruments or negotiable documents without filing or transfer of possession
- 9-305 When possession by secured party perfects security interest
- 9-308 When purchasers of instruments have priority over security interest
- 9-309 When purchasers of negotiable instruments or negotiable documents have priority over security interest
- 9-501(A) Rights on default where collateral is documents
- 9-502 Collection rights of secured party

SECTION GENERAL INTANGIBLES

- 9-103(B) When Article applies; conflict of laws rules
- 9-105 Obligor is "account debtor"
- 9-106 Definition
- 9-301(A)(4) Unperfected security interest subordinate to certain transferees
- 9-318(A) Rights of assignee subject to defenses
- 9-318(C) When account debtor may pay assignor
- 9-502 Collection rights of secured party

SECTION GOODS

- 9-103 When Article applies with regard to goods of a type normally used in more than one jurisdiction; goods covered by certificate of title; conflict of law rules
- 9-105(A)(8) Definition
- 9-109 Classification of goods as consumer goods, equipment, farm products, and inventory
- 9-203 Formal requisites of security agreement covering certain types of goods (crops or timber)
- 9-204 Validity of after-acquired property clause covering certain types of goods (crops, consumer goods)

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9-205	Permissible for debtor to accept returned goods
9-206(B)	When security agreement can limit or modify warranties on sale
9-301(A)(3)	Unperfected security interest in goods in possession of issuer of negotiable document or of other bailee
9-304(E)	Perfection of security interest in goods in possession of issuer of negotiable document or of other bailee
9-305	When possession by secured party perfects security interest
9-306(E)	Rule when goods whose sale gave rise to account or chattel paper return to seller's possession
9-307	When buyers of goods from debtor take free of security interest
9-313	Goods which are or become fixtures
9-314	Goods affixed to other goods
9-315	Goods commingled in a product
9-401(A)	Place of filing for fixtures
9-402	Form of financing statement covering fixtures
9-504(A)	Sale of goods by secured party after default subject to Article 2 (Sales)

SECTION CONSUMER GOODS

9-109(A)	Definition
9-203(B)	Transaction
9-204(B)	Validity of after-acquired property clause against an assignee subject to statute or decision which establishes rule for buyers of consumer goods
9-206(A)	Buyer's agreement not to assert defenses
9-302(A)(4)	When filing not required
9-307(B)	When buyers from debtor take free of security interest
9-401(A)(1)	Place of filing
9-505(A)	Secured party's duty to dispose of repossessed consumer goods
9-507(A)	Secured party's liability for improper disposition of consumer goods after default

SECTION EQUIPMENT

9-103(B)	When Article applies with regard to certain types of equipment normally used in more than one jurisdiction; conflict of laws rules
9-109(B)	Definition
9-302(A)(3)	When filing not required to perfect security interest in certain farm equipment
9-307(B)	When buyers of certain farm equipment from debtor take free of security interest
9-401(A)	Place of filing for equipment used in farming operation
9-503	Secured party's right after default to remove or to render equipment unusable

SECTION FARM PRODUCTS

9-109(C)	Definition
9-203(A)(2)	Formal requisites of security agreement covering crops
9-307	When a buyer of farm products takes free of security interest
9-312(B)	Priority of secured party who gives new value to enable debtor to produce crops
9-401(A)	Place of filing
9-402(B)	Form of financing statement covering crops
and (C)	

SECTION INVENTORY

9-103(C)	When Article applies with regard to certain types of inventory normally used in more than one jurisdiction; conflict of laws rules
9-109(D)	Definition
9-114	Consigned goods
9-306(E)	Rule where goods whose sale gave rise to account or chattel paper return to seller's possession
9-307(A)	When buyers from debtor take free of security interest
9-312(C)	When purchase money security interest takes priority over conflicting security interest
9-304(E)	
9-408	Financing statements covering consigned or leased goods

Cross References

Sections 9-103 and 9-104.

Point 1: Section 2–326.
Point 2: Section 1–105.

Definitional Cross References

“Account”. Section 9–106.
“Chattel paper”. Section 9–105.
“Contract”. Section 1–201.
“Document”. Section 9–105.
“General intangibles”. Section 9–106.
“Goods”. Section 9–105.
“Instrument”. Section 9–105.
“Security interest”. Section 1–201.

Special Plain Language Comment

Most transfers of personal property and fixtures can be classified as one of the following:

1. Unconditional sales, where the parties intend that the buyer keep the property regardless of whether or not he performs any obligation to the seller. For example, if a store sells a loan of seed to a farmer on credit, without intending to reclaim the seed if the farmer fails to pay the purchase price, that is an unconditional sale.

2. True leases, where the parties intend that the owner/lessor will always regain his property at the agreed time and until that time the property can be used by the borrower/lessee. For example, if an equipment rental company rents a tractor to a farmer for a week, that is a true lease transaction; or

3. Secured transactions, where the parties intend that the property be used as collateral to secure an obligation of the debtor/obligor to the creditor/obligee. For example, if an equipment dealer sells a tractor to a farmer on credit and the farmer agrees that his rights to the tractor become exclusive only when he pays the entire purchase price, that conditional sale is a secured transaction subject to this article 9. Similarly, if a farmer borrows money from a bank in order to buy 10 horses and agrees to use those horses as collateral for the loan, that is also a secured transaction subject to this article.

There are many different types of secured transactions. In most cases, besides true leases, a secured transaction will exist when a debt or

other obligation exists between two persons and those parties agree that the property owned or held by the debtor/obligor can be used by the creditor/obligee to satisfy the debt or obligation if the debtor/obligor fails to perform as agreed.

Sales of chattel paper and accounts are treated like secured transactions. See § 9–106 for the definition of accounts and § 9–105 for the definition of chattel paper.

Other laws besides Article 9 may create liens upon the property of a person to secure his obligation to another person. Although such liens are similar in function to Article 9 security interests, this article does not apply to those liens, except that § 9–310 states when those liens have priority over Article 9 security interests in the same property.

When person A is obligated to person B, person B can generally use that obligation of person A as collateral to secure a separate debt or other obligation of person B to person C. In such cases person A generally can be required to perform that obligation in favor of person C. That obligation of person A either may be secured by property of person A or may be unsecured. If an obligation is transferred from one person to another, the security for that obligation is also transferred. Article 9 will apply to obligations and to security for obligations except to the extent they are excluded by § 9–104.

Library References

Indians ⇐24.
Secured Transactions ⇐1 to 25.
Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 31.
C.J.S. Secured Transactions §§ 2 to 19, 21 to 33, 35 to 37.

§ 9–103. Perfection of security interest in multiple state transactions

A. Documents, instruments and ordinary goods.

1. This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (B), mobile goods described in subsection (C), and minerals described in subsection (E).

2. Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

3. If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty (30) days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the 30-day period.

4. When collateral is brought into and kept on Navajo Indian Country, while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this article to perfect the security interest:

a. If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four (4) months after the collateral is brought into Navajo Indian Country, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

b. If the action is taken before the expiration of the period specified in paragraph (4) (a), the security interest continues perfected thereafter;

c. For the purpose of priority over a buyer of consumer goods (§ 9-307(B)), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (4) (a) and (b).

B. Certificate of title.

1. This subsection applies to goods covered by a certificate of title issued under Navajo law or under a statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

2. Except as otherwise provided in this subsection (B), perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four (4) months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

3. Except with respect to the rights of a buyer described in the next paragraph (4), a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into Navajo Indian

Country and thereafter covered by a certificate of title issued under Navajo law is subject to the rules stated in subsection (A) (4).

4. If goods are brought into Navajo Indian Country while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued under Navajo law and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

5. Unless and until the Navajo Nation Council adopts laws creating a system for the issuance of certificates of title for such goods, perfection of security interests in vehicles and other goods registered under the certificate of title laws of a state of the United States or other jurisdiction shall be governed by such laws.

C. Accounts, general intangibles and mobile goods.

1. This subsection (C) applies to accounts (other than an account described in subsection (E) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (B).

2. The law (including the conflict of laws rule) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.

3. If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has his major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions, and the Commonwealth of Puerto Rico, including Navajo Indian Country.

4. A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Code of 1958, as amended, it shall be deemed

located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

5. A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four (4) months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

D. Chattel paper.

The rules stated for goods in subsection (A) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (C) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account-debtor.

E. Minerals

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

F. Uncertificated securities.

The law (including the conflict of laws rules), of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

G. Deposit Accounts.

This article governs the perfection of security interests in deposit accounts of any person or entity which are maintained at any office located in Navajo Indian Country of any depository institution or other business authorized to accept deposits in Navajo Indian Country.

History

CJA-1-86, January 26, 1986.

Official Comment

Changes. Except as stated in § 9-103(G), this section is intended to have the same meaning and effect as § 9-103 of the Uniform Commercial Code adopted by the states. Other variations are only for the purposes of clarification or emphasis.

An exception exists under § 9-103(B) for motor vehicle and other goods which are registered under certificates of title laws of other jurisdictions in order to conform to existing practice. As to other persons or entities to whom Navajo law might apply, the Navajo Na-

tion is treated like the States of the United States for the purposes of the § 9-103 choice of law rules.

Commentary. 1. The general rules on choice of law between the original parties in § 1-105 apply to this article. However, when conflicting claims to collateral arise, the question depends on perfection of security interests, and thus on the effect of perfection or non-perfection. These problems are dealt with in this section 9-103. The general rule (§ 9-103 (A) (2)) is that these questions are governed by

the law of the jurisdiction where the collateral is located when the last event occurs on which is based the assertion that the security interest is perfected or unperfected. The event will frequently be the filing. If the last event is not filing and perfection is through filing, the filing required is in the jurisdiction where the collateral is located when the last event occurs; prior filing in another jurisdiction is not effective and is not saved by the four-month rule discussed below, which applies only when the security interest was already perfected in the jurisdiction from which the collateral was removed. If the security interest was perfected in one jurisdiction and then removed to another jurisdiction, maintenance of perfection in the latter jurisdiction or failure to do so is the "last event" to which the basic rule refers.

There are, however, exceptions to this basic rule as stated below:

2. If the parties to a transaction creating a purchase money security interest in goods understand when the security interest attaches that the collateral will be kept in another jurisdiction, the law of that jurisdiction governs perfection and the effect of perfection or non-perfection until thirty (30) days after the debtor receives possession of the goods (§ 9-103(A)(3)). A filing in that jurisdiction perfects the security interest even before the goods are removed. The 30-day period is not a period of grace during which filing is unnecessary or has retroactive effect, but merely states the period during which the other jurisdiction is the place of filing. The effect of late filing is governed by other provisions, such as §§ 9-301 and 9-312.

3. If the goods reach that jurisdiction within the thirty (30) days, the effectiveness of the filing in that jurisdiction continues without interruption. If the collateral is not kept in that jurisdiction before the end of the 30-day period, subsection (A)(3) ceases to be applicable and thereafter the law of the jurisdiction where the collateral is located controls perfection. A failure of the collateral to reach the intended destination jurisdiction before the expiration of the 30-day period because of a conflicting claim or otherwise may cause disappointment of expectations that the law of the destination jurisdiction will govern continuously, and caution may dictate filing both in that jurisdiction and in the jurisdiction where the security interest attaches.

This section 9-103 uses the concepts that goods are "kept" in or "brought" into a jurisdiction, and related terms. These concepts imply a stopping place of a permanent nature in the jurisdiction, and not merely transit or storage intended to be transitory.

4. A. Where the collateral is an automobile or other goods covered by a certificate of title issued by any state and the security interest is perfected by notation on the certificate of title,

perfection is controlled by the certificate of title rather than by the law of the state wherein the security interest attached (§ 9-103(B)).

B. It has long been hoped that "exclusive certificate of title laws" would provide a sure means of controlling property interests in goods like automobiles which because of their nature cannot readily be controlled by local or state-wide filing alone. In theory the certificate of title should control the property interests in the vehicle wherever the vehicle maybe. However, two circumstances operate to prevent the perfect operation of the certificate of title device:

First, some jurisdictions have never adopted certificate of title laws. This results in problems in the issuance of a certificate of title when the vehicle moves from a non-certificate state, because the certificate-issuing officer is in no position to conduct a complete search to ascertain the condition of the title in a jurisdiction of origin which requires no filing or in which filing could be in any one or more of several localities. It also seems that when a vehicle moves from a certificate to a non-certificate jurisdiction, the officers issuing a new registration for the vehicle are not always meticulous to notify secured parties shown on the certificate to give them a chance to perfect their security interests in the non-certificate jurisdiction when new registration is issued. Moreover, some vehicles like mobile homes are not always issued certificates even in a jurisdiction which may have certificate laws applicable thereto, because the certificate laws may apply only if the mobile homes use the highways. Registration plates of a mobile home having a certificate could be removed and there would be nothing visible to show that a certificate had ever been issued for it.

Second, various fraudulent devices based on allegations of loss of the certificate of title enable a dishonest person to obtain both an original and a duplicate of title; to have a security interest shown on only one certificate; and then to effect a transfer into a new jurisdiction on the basis of the clean certificate, no matter how diligent the officers in the second jurisdiction may be.

Given these practical problems, the choice of applicable rules of law after interstate removals of vehicles subject to certificate of title laws is most difficult. This article provides the rules set forth below.

C. The security interest perfected by notation on a certificate of title will be recognized without limit as to time; but, of course, perfection by this method ceases if the certificate of title is surrendered (§ 9-103 (B) (2)). Since the secured party ordinarily holds the certificate, surrender thereof could not occur without his action in the matter in some respect. If the vehicle is reregistered in another jurisdiction

while the secured party still holds the certificate, a danger of deception to third parties arises. The section provides that the certificate ceases to control after four (4) months following removal if reregistration has occurred, but during the four (4) months the secured party has the same protection for cases of interstate removal as is set forth in § 9-103(A)(4) and Comment 7, subject to additional limitation if the reregistration also involves a new "clean" certificate of title in the removal jurisdiction and a non-professional buyer buys while that new certificate is outstanding. See § 9-103(B)(4) and Comment 4(E).

D. If a vehicle: (a) is not covered by a certificate of title; (b) is removed to a jurisdiction issuing certificates; and (c) a certificate is issued for that vehicle in the new jurisdiction, then the holder of security interest has the same four-month protection subject to the provision discussed in the next subsection (E) of this comment.

E. Where "this jurisdiction" issues a certificate of title on collateral that has come from another jurisdiction subject to a security interest perfected in any manner, problems will arise if this jurisdiction, from whatever cause, fails to show on its certificate the security interest perfected in the other jurisdiction. The Navajo Nation will have every reason nevertheless, to make its certificate of title reliable to the type of person who most needs to rely upon it. Section 9-103(B) (4) therefore provides that the security interest perfected in the other jurisdiction is subordinate to the rights of a limited class of persons buying the goods while there is a dean certificate of title issued by any authorized official, without knowledge of the security interest perfected in the other jurisdiction. The limited class are buyers who are non-professionals, i.e., not dealers and not secured parties (who are ordinarily professionals). This protective rule does not apply if the Navajo Nation Council (or its authorized official or authority) adopts a device used under some certificate of title laws, namely, stating on the certificate of title that the vehicle may be subject to security interests not shown on the certificate, where the collateral came from a non-certificate jurisdiction. In any event, Navajo law defers to the perfection laws of other jurisdictions issuing certificates of title under § 9-103(B)(5) unless and until the Navajo Nation Council (or another authorized official or authority) creates a comparable mechanism for issuing such certificates of title. However, when and if such a Navajo law is created, the security interest perfected in another jurisdiction would become unperfected unless reperfected under Navajo law within the usual four-month period (§ 9-103(B)(4)).

5. The general rules of the section based on location collateral could not be applied to cer-

tain types of intangible collateral which have no location in any realistic sense, or to certain moveable chattels which have no permanent location.

A. For accounts and general intangibles there is no indispensable or symbolic document which represents the underlying claim, whose endorsement or delivery is the one effectual means of transfer. Since the principal question is where certain financing statements shall be filed, two things become clear: *First*: since the purpose of filing is to allow subsequent creditors of the debtor-assignor to determine the true status of his affairs, the place chosen must be one which such creditors would normally associate with the assignor; thus the place of business of the assignee and the places of business or residences of the various account debtors must be rejected in ordinary situation. *Second*: the place chosen must be one which can be determined with the least possible risk of error. The place chosen by § 9-103(C) is the debtor's location, which is ordinarily the location of its chief executive office. This concept is discussed below.

B. Another class of collateral for which a special rule is stated in § 9-103(C) is mobile goods of types which are normally moved for use from one jurisdiction to another. Such goods are generally classified as equipment; sometimes they may be classified as inventory, for example, goods leased by a professional lessor. Subsection 9-103 (C) provides that a security interest in such equipment or inventory is subject to this article when the debtor's location, i.e., ordinarily its chief executive office, is in Navajo Indian Country.

While automobiles are obviously mobile goods, they will in most cases be covered by § 9-103(B) of this section and therefore excluded from § 9-103(C) by paragraph (1) thereof. If an automobile is not covered by a certificate of title and is classified as equipment or as inventory under lease, it will be subject to § 9-103(C). Automobiles and other mobile goods which are classified as consumer goods are not subject to § 9-103(C).

The rule of § 9-103(C) applies to goods of a type "normally used" in more than one jurisdiction; there is no requirement that particular goods be in fact used out of state. Thus, if an enterprise whose chief executive office is in Navajo Indian Country keeps in State Y goods of the type covered by § 9-103(C), the rule of subsection (C) requires filing under Navajo law even though the goods never leave State Y.

C. "Chief executive office" does not mean the place of incorporation; it means the place from which in fact the debtor manages the main part of his business operations. This is the place where persons dealing with the debtor would normally look for credit information, and

is the appropriate place for filing. The term "chief executive office" is not defined in this section or elsewhere in this article. Doubt may arise as to which is the "chief executive office" of a multi-state enterprise, but it would be rare that there could be more than two possibilities. A secured party in such a case may easily protect himself at no great additional burden by filing in each possible place. The subsection states a rule which will be simple to apply in most cases, and which makes it possible to dispense with much burdensome and useless filing.

D. If the location of the debtor is moved after a security in interest has been perfected in another jurisdiction, the secured party has four (4) months within which to refile, unless the perfection in the original jurisdiction would have expired earlier (§ 9-103(C)(5)).

E. Under § 9-103(C) each jurisdiction other than that of the debtor's location in effect disclaims jurisdiction over certain accounts and general intangibles which, by common law rules, might be held to be within its jurisdiction; in the same way there is a disclaimer of jurisdiction over mobile chattels, even though they may be physically located within the jurisdiction much of the time. If the jurisdiction whose law controls under this rule is a United States jurisdiction, the law of that jurisdiction will be recognized in the disclaiming jurisdiction as perfecting the security interest. The jurisdiction of the debtor's location may not, however, have such legislation. Consider, for example, the case where mobile equipment is used in Arizona, but the debtor's chief place of business is in a Mexican jurisdiction which will not permit or recognize filing as to property physically located therein. Section 9-103(C) (3) solves this difficulty by permitting perfection through filing in the jurisdiction in the United States in which the debtor has its major executive office in the United States. Where the debtor is not located in the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the secured party may alternatively perfect by notification to account debtors.

F. A sentence in § 9-103(C)(4) provides a special rule for security interests in airplanes owned by a foreign air carrier. Without that sentence subsection (C) might refer such a case to the law of a foreign nation whose law is difficult or impossible to ascertain. The sentence clears up such doubts by treating as the location of the carrier the office designated for service of process in the United States under the Federal Aviation Code of 1958. To the extent that it is applicable, the Convention on the International Recognition of Rights in Aircraft (Geneva Convention) supersedes state legislation on this subject, as set forth in § 9-302(C),

but some nations are not parties to that Convention.

6. Section 9-103(D) deals with chattel paper, a semi-intangible security interest which may be perfected either by possession or by filing (§§ 9-304(A), and 9-305). As to possessory security, § 9-103(D) provides that chattel paper shall be subject to the same rule as goods in § 9-103(A). As to non-possessory security, § 9-103(D) provides that it shall be subject to the same rule as the intangibles under § 9-103(C), except that notification to the account debtor is ruled out as an optional means of perfection under § 9-103(C)(3), since a different alternative, possession, is available for chattel paper.

7. In addition to the foregoing rules defining which jurisdiction governs perfection of a security interest in the first instance, "this jurisdiction" (i.e., a destination jurisdiction after removal) adds its own rules requiring removal of collateral other than that described in § 9-103(B), (C), and (E). "This jurisdiction" will for four (4) months recognize perfection under the law of the jurisdiction from which the collateral came, unless the remaining period of effectiveness of the perfection in that jurisdiction was less than four (4) months (§ 9-103(A)(4).) After the four-month period or the remaining period of effectiveness; whichever is shorter, the secured party must comply with perfection requirements under Navajo law. Section 9103 (A) (4) proceeds on the theory that not only the secured party whose collateral has been removed, but also creditors of and purchasers from the debtor "in this jurisdiction" should be considered.

The four-month period is long enough for a secured party to discover in most cases that the collateral has been removed and refile in this jurisdiction; thereafter, if he has not done so, his interest, although originally perfected in the jurisdiction from which the collateral was removed, is subject to defeat here by purchasers of the collateral. Compare the situation arising under § 9-403(B) when a filing lapses. It should be noted that a "purchaser" includes a secured party. Section 1-201 (FF) and (GG). The rights of a purchaser with a security interest against an unperfected security interest are governed by § 9-312.

In case of delay beyond the four-month period, there is no "relation back". This is also true where the security interest is perfected for the first time in this jurisdiction.

If the removal of property occurs within a short period (like two weeks) before the lapse of the filing in the original state, the secured party has only that period, not the full four (4) months, to reperfect in this "jurisdiction". However, ordinarily the secured party would have filed a continuation statement in the origi-

nal Jurisdiction, and he may do so to avoid lapse and allow himself the full four (4) months if he is searching for the collateral and needs more time.

Section 9-103(A)(4) does not apply to the case of goods removed from one filing district to another within this jurisdiction (see § 9-401 (Q)), but only to property brought into this jurisdiction from another jurisdiction.

8. Section 9-103(E) deals with problems relating to the financing of minerals (including oil and gas) as these products come from the ground. In some cases rights in oil and gas in the ground have been split into a large variety of interests. As the oil or gas issues from the ground, it may be encumbered by the group of persons having interests therein. Alternatively, the product may be sold at minehead or wellhead and the resulting accounts assigned. The question arises as to the place of filing. The usual rule of § 9-103(C) would make the place to search for encumbrances on the accounts the locations of the respective assignors might be a number of individuals located throughout the

country. To avoid the difficult problems of search thus created, § 9-103(E) provides that the place for filing with respect to security interests in the mineral as they issue from the ground at minehead or wellhead or in the accounts arising out of the sale of the minerals at minehead or wellhead shall be in the jurisdiction where the minehead or wellhead is located. See § 9-401.

The term “at wellhead” is intended to encompass arrangements based on sale of the product as soon as it issues from the ground and is measured, without technical distinctions as to whether title passes at the “Christmas tree” or the far side of a gathering tank or at some other point. The term “at minehead” is a comparable concept.

Nothing in §§ 9-103 or 9-401 should be construed as purporting to permit security interests in any trust property such as land, minerals, crops or timber (See § 2-107, Comment 2) unless properly approved by the United States Government, 25 U.S.C. § 81 (1984).

Cross References

Sections 1-105, 9-302 and 9-401.

Definitional Cross References

“Accounts”. Section 9-106.
 “Attaches”. Section 9-203.
 “Chattel Paper”. Section 9-105.
 “Collateral”. Section 9-105.
 “Consumer Goods”. Section 9-109.
 “Debtor”. Section 9-105.
 “Document”. Section 9-105.
 “Equipment”. Section 9-109.
 “General intangibles”. Section 9-106.
 “Goods”. Section 9-105.
 “Instrument”. Section 9-109.
 “Purchase money security interest”. Section 9-107.
 “Purchaser”. Section 1-201(GG).
 “Security interest”. Section 1-201 (KK).

Special Plain Language Comment

Since the law of different jurisdictions might be applicable to transaction between parties located in different jurisdictions or to property located in different jurisdictions, it is necessary for the parties and other interested persons to know where to perfect security interests in different types of collateral. Section 9-103 states the “choice of law” rules for determining which jurisdiction’s law is to be followed in order to

“perfect” a security interest in each type of collateral and to evaluate the effects of perfecting or failing to perfect in that manner.

Section 9-103 describes the rules for determining which jurisdiction’s law to consult in order to determine the method, effect and place of perfection of security interests and the consequences of nonperfection.

Library References

Banks and Banking ⇌136.
 Indians ⇌23 to 24, 32.
 Secured Transactions ⇌81 to 102.
 Westlaw Topic Nos. 52, 209, 349A.

C.J.S. Banks and Banking § 293.
 C.J.S. Indians §§ 12, 30 to 31, 49, 51.
 C.J.S. Secured Transactions §§ 3, 50 to 51, 53 to 80, 105, 128.

§ 9-104. Transactions excluded from Article

This article does not apply:

A. To a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to, and third parties affected by, transactions in particular types of property; or

B. To a landlord's lien; or

C. To a lien given by statute or other rule of law for services or materials except as provided in § 9-310 on priority of such liens; or

D. To a transfer of a claim for wages, salary or other compensation of an employee; or

E. To a transfer by a government or governmental subdivision, official or agency except to the extent that such entity has made an effective waiver of its sovereign immunity in accordance with 7 N.N.C. § 621 *et seq.*; or

F. To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

G. To a transfer of an interest in or claim in or under any policy of insurance as security for any loan made by the insurance company pursuant to the provision of the policy; or

H. To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

I. To any right of set-off; or

J. Except to the extent that provision is made for fixtures in § 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder or to any property held in trust (see § 2-107, Comment 2); or

K. To a transfer in whole or in part of any claim arising out of tort; or

L. To a transfer of an interest in any deposit account (§ 9-105(A)), except as provided with respect to proceeds (§ 9-306) and priorities in proceeds (§ 9-312), and except for deposit accounts maintained in offices in Navajo Indian Country of depository institutions and other businesses authorized to accept deposits in Navajo Indian Country.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. The purpose of § 9-104 is to exclude certain security transactions from this article. Except as stated in § 9-104(E),(G) and (L), this section is intended to have the same meaning and effect as § 9-104 of the Uniform

Commercial Code adopted by the states. Section 9-104(E) is altered to comply with 7 N.N.C. § 621 *et seq.* and to allow governmental units to elect to be bound by this article. Section 9-104(G) is expanded from the Official Text

(following the lead of California and certain other States) in order to permit insured parties to use their policies as security. The official Text of § 9-104(L) is modified because (like the California version of the Code) Navajo Indian Country deposit accounts are permitted to be collateral under this article.

Commentary. 1. Where a federal statute regulates the incidents of security interests in particular types of property, those security interests are of course governed by the federal statute and excluded from this article. The Ship Mortgage Code, 1920, is an example of such a federal act. The present provisions of the Federal Aviation Code of 1958 (49 U.S.C. Section 1403 *et seq.*) call for registration of title to and liens upon aircraft with the Civil Aeronautics Administrator and such registration is recognized as equivalent to filing under this article (§ 9-302(C)). However, to the extent that the Federal Aviation Code does not regulate the rights of parties to and third parties affected by such transactions, security interests in aircraft remain subject to this article.

Although the Federal Copyright Act of 1976 contains provisions permitting the recording of any transfer of copyright (17 U.S.C. Section § 201, 204, 205). The prior copyright law was interpreted as not containing sufficient provisions regulating the rights of the parties and third parties to exclude security interests in copyrights from the provisions of this article. Compare *Republic Pictures Corp. v. Security-First National Bank of Los Angeles*, 197 F.2d 767 (9th Cir. 1952). The status of secured interests in copyrights under the new statute is not clear. Compare also with respect to patents, 35 U.S.C. Section 47, and trademarks. The filing provisions under these Codes, like the filing provisions of the Federal Aviation Code, are recognized as the equivalent to filing under this article. See § 9-302(C) and (D).

Even such a statute as the Ship Mortgage Code is far from a comprehensive regulation of all aspects of ship mortgage financing. That Code contains provisions on formal requisites, on recordation and on foreclosure but not much more. If problems arise under a ship mortgage which are not covered by the Code, the federal admiralty court must decide whether to improvise an answer under "federal law" or to follow the law of some jurisdiction with which the mortgage transaction has appropriate contacts. The exclusionary language in § 9-104(A) is that

this article does not apply to such security interest "to the extent" that the federal statute governs the rights of the parties. Thus, if the federal statute contained no relevant provision, this article could be looked to for an answer.

2. Except for fixtures (§ 9-313), the Article applies only to security interests in personal property. The exclusion of landlord's liens by subsection (B) and of leases and other interests in or liens on real estate by subsection (J) merely reiterates the limitations on coverage already made explicit in § 9-102(C). See (Comment 4 to that section.)

3. Section 9-104(C) excludes statutory liens from this article. Section 9-310 states a rule for determining priorities between such liens and the consensual security interests covered by this article.

4. Assignments of wage claims and the like present important social problems whose solution should be a matter of separate local regulation. Section 9-104(D) therefore excludes them from this article.

5. Certain governmental borrowings include collateral in the form of assignments of water, electricity or sewer charges, rents on dormitories or industrial buildings, tools etc. Since these assignments may be governed by special provisions of law, these governmental transfers are excluded from this article, except to the extent that the governmental authority, official or agency has complied with 7 N.N.C. § 621 *et seq.* and thereby elects to become subject to this article.

6. In general, sales as well as security transfers of accounts and chattel paper are within this article (see § 9-102). Section 9-104(F) excludes from the Article certain transfers of such intangibles which, by their nature, have little or nothing to do with commercial financing transactions.

7. Rights under life insurance and other policies are available as collateral except to the extent that the insurance payments secure a loan from the insurer under the policy. Deposit accounts are also available as security if the deposit account is maintained on Navajo Indian Country.

8. The remaining exclusions go to other types of claims which do not customarily serve as commercial collateral: judgments under § 9-104(H), set-offs under subsection (I) and tort claims under subsection (K).

Cross References

- Point 1: Section 9-302(C)
- Point 2: Sections 9-102(C) and 9-313.
- Point 3: Sections 9-102 (B) and 9-3 10.
- Point 6: Section 9-102.

Definitional Cross References

“Account”. Section 9-106.
 “Chattel paper”. Section 9-105.
 “Contract”. Section 1-201.
 “Deposit account”. Section 9-105.
 “Party”. Section 1-201.
 “Rights”. Section 1-201.
 “Security interest”. Section 1-201.

Special Plain Language Comment

Except for limited types of property excluded by § 9-104 from the Article, this article permits persons and entities to use any type of personal property as collateral. Real estate is always excluded from this article. Fixtures are included in this article except to the extent that they are trust property subject to regulation by the United States Government. (See § 2-107, Comment 2.)

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞10, 11.	C.J.S. Secured Transactions §§ 3, 7, 11, 22 to 33.
Westlaw Topic Nos. 209, 349A.	

§ 9-105. Definitions and index of definitions

A. In this article unless the context otherwise requires:

1. “Account debtor” means the person who is obligated on an account, deposit account, chattel paper or general intangible;
2. “Chattel paper” means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
3. “Collateral” means the property subject to a security interest, and includes accounts and chattel paper which have been sold;
4. “Debtor” means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term “debtor” means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both the owner and the obligor where the context so requires.
5. “Deposit account” means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization or a similar account maintained with any other type of business which is or becomes authorized to accept such deposits by the law applicable thereto. An account evidenced by a negotiable certificate of deposit is an “instrument” but a non-negotiable certificate of deposit is a deposit account, if such account is maintained in Navajo Indian Country, or a general intangible, if such account is maintained in any other jurisdiction;

6. "Document" means document of title as defined in the general definitions of Article 1 (§ 1-201), and a warehouse receipt issued by a warehouse or other bailee in order to evidence the receipt of goods to be held for the bailor or his assignee;

7. "Encumbrance" includes real estate leases, mortgages and other liens on real estate and all other rights and interests in real estate that are not ownership interests.

8. "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (§ 9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

9. "Instrument" means a negotiable instrument (defined in § 3-104), or a certificated security (as defined in this section), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

10. "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

11. An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

12. "Security agreement" means an agreement which creates or provides for a security interest;

13. "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders or owners of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

14. "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

B. In this article, unless the context otherwise requires:

1. A "certificate security" is a share, participation or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:

a. Represented by an instrument issued in bearer or registered form;

b. Of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

c. Either one of a class or series or by its term divisible into a class or series of shares, participations, interests, or obligations.

2. An “uncertificated security” is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

a. Not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

b. Of a type commonly dealt in on securities exchanges or markets; and

c. Either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

3. A “security” is either a certificated or an uncertificated security. If a security is certificated, the terms “security” and “certificated security” may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this article and not by Article 3, even though it also meets the requirements of that Article. This article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this article.

C. Other definitions applying to this article and the sections in which they appear are:

“Account”. Section 9-106.

“Attach”. Section 9-203.

“Construction mortgage”. Section 9-313(A).

“Consumer goods”. Section 9-109(A).

“Equipment”. Section 9-109(B).

“Farm products”. Section 9-109(C).

“Fixture”. Section 9-313(A).

“Fixture filing”. Section 9-313(A).

“General intangibles”. Section 9-106.

“Inventory”. Section 9-109(D).

“Lien creditor”. Section 9-301(C).

“Proceeds”. Section 9-306(A).

“Purchase money security interest”. Section 9-107.

“United States”. Section 9-103.

D. The following definitions in other Articles apply to this article:

“Check”. Section 3-104.

“Contract for sale”. Section 2-106.

“Holder in due course”. Section 3-302.

“Note”. Section 3-104.

“Sale”. Section 2-106.

E. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. Except as provided in §§ 9-105(A) (1), (5), (6), (9) and subsection (B), this section is intended to have the same meaning and effect as § 9-105 of the Uniform Commercial Code adopted by the states. Section 9-105(A)(1) is expanded from the Official Text to include deposit accounts. Because of the rapid deregulation of financial services businesses, § 9-105 (A) (5) is expanded to include deposit accounts which are similar to bank accounts regardless of the identity of the deposit holder as long as the deposit holder is legally entitled to accept such deposits under applicable law. Although negotiable certificates of deposits are “instruments”, non-negotiable certificates of deposit are “deposit accounts”, if maintained in Navajo Indian Country, or “general intangibles” if located outside Navajo Indian Country. Sections 9-105(A)(6) and (9) are modified because the Navajo Nation has not adopted Article 7 relating to warehouse receipts or Article 8 relating to investment securities. Subsection (B) incorporates certain definitions found in Article 8 relating to investment securities which the Navajo Nation has not otherwise adopted.

Commentary. 1. General. It is necessary to have a set of terms to describe the parties to a secured transaction, the agreement itself, and the property involved therein. This article generally uses terms which are defined in the Uniform Commercial Code adopted by the states.

In place of such terms as “chattel mortgage”, “conditional sale”, “assignment of accounts receivable”, “trust receipt”, etc., this article substitutes the general term (“security agreement” defined in § 9-105(A)(12)) in place of “mortgagor”, “mortgaged”, “conditional vendee”, “conditional vendor”, etc., this article substitutes “debtor”, defined in § 9-105(A) (4), and “secured party”, defined in § 9-105(A) (13). The property subject to the security agreement is “collateral”, defined in § 9105(A)(3). The interest in the collateral which is conveyed by the

debtor to the secured party is a “security interest”, defined in § 1-201 (KK).

2. Parties. The parties to the security agreement are the “debtor” and the “secured party”.

“Debtor”: In all but a few cases the person who owes the debt and the person whose property secures the debt will be the same. Occasionally, one person furnishes security for another’s debt, and sometimes property is transferred subject to a secured debt of the transferor which the transferee does not assume. In such cases, under the second sentence of the definition, the term “debtor” may, depending upon the context, include either or both such persons. Section 9-112 sets out special rules which are applicable where collateral is owned by a person who does not owe the debt or obligation that is secured.

“Secured Party”: The term includes any person in whose favor there is a security interest (defined in § 1-201). The term is used equally to refer to a person who as a seller retains a lien on or title to goods sold, to a person whose interest arises initially from a loan transaction, and to an assignee of either. Note that a seller is a “secured party” in relation to his customer; but the seller becomes a “debtor” if he assigns the chattel paper as collateral to secure his own debt to a third party. This is also true of a lender who assigns the debt as collateral. With the exceptions stated in § 9-104(F) the Article applies to any sale of accounts or chattel paper: the term “secured party” includes an assignee of such intangibles whether by sale or for security, to distinguish him from the payee of the account, for example, who becomes a “debtor” by pledging the account as security for a loan.

(On the applicability of the terms “debtor” and “secured party” to consignments and leases, see § 9-408 and the Comments thereto.)

“Account debtor”: Where the collateral is an account, deposit account, chattel paper or gen-

eral intangible the original obligor is called the "account debtor". See § 9-105(A)(1).

3. Property subject to the security agreement. "Collateral", defined in subsection (A) (3) is a general term for the tangible and intangible property subject to a security interest. For some purposes the Code makes distinctions between different types of collateral and therefore further classification of collateral is necessary. Collateral which consists of tangible property is "goods", defined in § 9-105 (A) (8); and "goods" are again subdivided in § 9-109. For purposes of this article all intangible collateral fits one of five categories, two of which "accounts", and "general intangibles" are defined in the following § 9-106; the other three, "documents", "instruments" and "chattel paper", are defined in § 9-105 (A)(6), (A)(9) and (A) (2).

"Goods": the definition in § 9-105 (A) (8) is similar to that contained in § 2-105 except that the Sales Article definition refers to "time of identification to the contract for sale", while this definition refers to "the time the security interest attaches". (See § 9-203.)

For the treatment of fixtures, § 9-313 should be consulted. It will be noted that the treatment of fixtures under § 9-313 does not at all points conform to their treatment under § 2-107 (goods to be severed from realty). Section 2-107 relates to sale of such goods; § 9-313 to security interests in them. The discrepancies between the two sections arise from the differences in the types of interest covered. A comparable discrepancy exists as to minerals. In the case of timber, both sections treat it as goods if it is to be severed under a contract of sale, but not otherwise.

If in any jurisdiction any minerals before severance are deemed to be personal property, they fall outside the Article's definition of "goods" and would therefore fall into the catch-all definition, "general intangibles", in § 9-106. In that case, the special provisions of § 9-103(E) would not apply and those of § 9-103(C) would apply. The resulting problems should be considered under local law.

For the purpose of this article, goods are classified as "consumer goods", "equipment", "farm products", and "inventory", as those terms are defined in § 9-109. When the general term "goods" is used in this article, it includes, as may be appropriate in the context, those subclasses of goods defined in § 9-109.

"Instrument": the term as defined in § 9-105(A)(9) includes not only negotiable instruments and certificated securities but also any other intangibles evidenced by writings which are in ordinary course of business transferred by delivery. As in the case of chattel paper "delivery" is only the minimum stated and may be accompanied by other steps. If a

writing is itself a security agreement or lease with respect to specific goods it is chattel paper and not an instrument, although it otherwise meets the term of the definition of instrument. (See Comment below on "chattel paper".) However, the fact that an instrument is secured by collateral, whether the collateral be other instruments, documents, goods, accounts or general intangibles, does not change the character of the principal obligation as an instrument or convert the combination of instrument and collateral into a separate Code classification of personal property. The single qualification to this principle is that an instrument which is secured by chattel paper is itself part of the chattel paper, while also retaining its identity as an instrument.

"Document": (See the Comments under §§ 1-201 (O).)

"Chattel paper": To secure his own financing a secured party may wish to borrow against or sell the security agreement itself along with his interest in the collateral which he has received from his debtor. Since the refinancing of paper secured by specific goods presents some problems of its own, the term "chattel paper" is used to describe this kind of collateral. The Comments under § 9-308 further describe this concept. Thus, chattel paper includes a purchaser's obligation to pay a purchase price and the security agreement granting the seller a security interest in the goods sold to the purchaser, whether the obligation and security agreement are contained in one or more different documents. Similarly, when a lessor wishes to assign a security interest in a lease of goods, the lease collateral is chattel paper. Charters of vessels are excluded from the definition of chattel paper because they fit under the definition of accounts. (See Comment to § 9-106.) The term "charter" as used herein and in § 9-106 includes bareboat charters, time charters, successive voyage charters, contracts of affreightment, contracts of carriage, and all other arrangements for use of vessels.

4. The following transactions illustrate the use of the term "chattel paper" and some of the other terms defined in this section. A dealer sells a tractor to a farmer on conditional sales contract or purchase money security interest. The conditional sales contract is a "security agreement", the farmer is the "debtor", the dealer is the "secured party" and the tractor is the type of "collateral" defined in § 9-109 as "equipment". But now the dealer transfers the contract to his bank, either by outright sale or to secure a loan. Since the conditional sales contract is a security agreement relating to specific equipment, the conditional sales contract is now the type of collateral called "chattel paper". In this transaction between the dealer and his bank, the bank is the "secured party",

the dealer is the “debtor”, and the farmer is the “account debtor”.

Under the definition of “security interest” in § 1-201 (KK) a lease does not create a security interest unless intended as security. Whether or not the lease itself is a security agreement, it is chattel paper when transferred if it relates to specific goods. Thus, if the dealer enters into a straight lease of the tractor to the farmer (not intended as security), and then arranges to borrow money on the security of the lease, the lease is chattel paper.

Security agreements of the type formerly known as chattel mortgages and conditional sales contracts are frequently executed in connection with a negotiable note or a series of such notes. Under the definitions in § 9-105(A)(2) and (A)(9) the rules applicable to chattel paper, rather than those relating to instruments, are applicable to the group of writings (contract plus note) taken together.

5. Miscellaneous definitions. “Deposit account” is a type of collateral excluded from this article under § 9-104(L), except when it constitutes proceeds of other collateral under § 9-306 or is maintained in Navajo Indian Country.

The terms “encumbrance” and “mortgage” are defined for use in § 9-313 regarding fixtures.

The term “transmitting utility” is defined to designate a special class of debtors for whom separate filing rules are provided in Part 4, thus obviating all local filing and particularly the several local filings that would be necessary under the usual rules of § 9-401 for the fixture collateral of a far-flung public utility debtor. (See Comments under §§ 9-401 and 9-403.)

The term “pursuant to commitment” is defined for use in the rules relating to priority of future advances in §§ 9-301(D), 9-307(C), and 9-312(G).

6. Subsection (B) defines “security”, the basic term of this section. Paragraphs (1) and (2) respectively define “certificated security” and “uncertificated security”) and paragraph (3) states that the term “security” comprises both. These definitions are functional rather than formal. At the core is the notion that a security is a share or participation in an enterprise or an obligation that is of a type commonly traded in organized markets for such interests or is commonly recognized as a medium for investment. The ambit of the definition will change as “securities” trading practices evolve to include or

exclude new property interests. It is believed that the definition will cover anything which securities markets, including not only the organized exchanges but as well the “over-the-counter” markets, are likely to regard as suitable for trading. For example, transferable warrants evidencing rights to subscribe for shares in a corporation will normally be “certificated securities” within the definition, since they (1) are issued in bearer or registered form, (2) are of a type commonly dealt in on securities markets, (3) constitute a class or series of instruments, and (4) evidence an obligation of the issuer, namely the obligation to honor the warrant upon its due exercise and issue shares accordingly.

Notice that the definition of uncertificated security does not include the phrase “or commonly recognized in any area in which it is issued or dealt in as a medium for investment”. Since there is no requirement of representation by an instrument, a great many interests that might be regarded as media for investment would be classified as securities under the umbrella of the omitted phrase. For example, interests such as bank checking and savings accounts are intended to be excluded from the definition because they are not commonly traded; but since those accounts are commonly recognized as media for investment, the omitted language might bring them within the scope of the definition.

Interests such as the stock of closely-held corporations, although they are not actually traded upon securities exchanges, are intended to be included within the definitions of both certificated and uncertificated securities by the inclusion of interests “of a type” commonly traded in those markets. (See subsections (B) (1) (b) and (B) (2) (b).)

The second sentence of subsection (B)(3) is intended to eliminate confusion arising from the fact that certificated securities are alternatively viewed as the actual pieces of paper and the interests they represent. The final sentence of subsection (B)(3) is modified to recognize that an issuer that nominally issues certificated securities but does not normally send the certificates to the owners is functionally identical to the issuer of uncertificated securities and should be guided by the same rules.

7. Comments to the definitions indexed in § 9-105(C) and (D) follow the sections in which the definitions are contained.

Cross References

Point 2: Sections 9-104(F) and 9-112.

Point 3: Sections 2-105, 2-107, 9-106, 9-109, 9-303 and 9-313.

Definitional Cross References

"Account". Section 9-106.
 "Agreement". Section 1-201.
 "Document of title". Section 1-201.
 "General intangibles". Section 9-106.
 "Holder". Section 1-201.
 "Money". Section 1-201.
 "Negotiable instrument". Section 3-104.
 "Person". Section 1-201.
 "Representative". Section 1-201.
 "Rights". Section 1-201.
 "Security interest". Section 1-201.
 "Writing". Section 1-201.

Research References

Construction and effect of UCC Art 9, dealing with secured transactions, sales of accounts, contract rights, and chattel paper, 30 A.L.R.3d 9 (1970).

Special Plain Language Comment

This section 9-105 contains the basic definitions which are used in Article 9, as supplemented by the definitions in §§ 9-106, 9-107 and 9-109 and by the general definitions in § 1-201. Each provision in this article must be read carefully in the context of such definitions.

Rather than explain such definitions in simpler terms in this comment, the Comments to the substantive portions of this article will be expanded to provide illustrations which demonstrate the use of defined terms.

§ 9-106. Definitions: "account"; "general intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including rights to bring lawsuits and other things in action) other than goods, accounts, deposit accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-106 of the Uniform Commercial Code adopted by the states, except that non-negotiable certificates of deposit are included as general intangibles pursuant to § 9-105(E), if they are maintained off the Navajo Reservation, and deposit accounts are treated as a separate type of collateral.

Commentary. The terms in this section round out the classification of intangibles: see the definitions of "document", "chattel paper" and "instrument" in § 9-105. Those three terms cover the various categories of commercial paper which are either negotiable or to a greater or less extent dealt with as if negotiable.

The term "account" covers most choses in action which maybe the subject of commercial financing transactions but which are not evidenced by an indispensable writing. The term "general intangibles" brings under this article miscellaneous types of contractual rights and other personal property which are used or may become customarily used as commercial security. Examples are goodwill, literary rights and rights to performance. Other examples are copyrights, trademarks and patents, except to the extent that they may be excluded by § 9-104(A). This article solves the problems of filing of security interests in these types of intangibles (§§ 9-103(C) and 9-401). Note that

this catch-all definition does not apply to money or to types of intangibles which are specifically excluded from the coverage of the Article (§ 9-104). Note also that under § 9-302 filing under a federal statute may satisfy the filing requirements of this article.

A right to the payment of money is frequently buttressed by ancillary covenants to insure the preservation of collateral, such as covenants in a purchase agreement, note or mortgage requiring insurance on the collateral or forbidding removal of the collateral, or covenants to preserve credit-worthiness of the promisor, such as covenants restricting dividends, etc. While these miscellaneous ancillary rights might conceivably be thought to fall within the definition of "general intangibles", it is not the intention of the Code to treat them separately and require the perfection of assignment thereof by filing in the manner required for perfection of an assignment of general intangibles. Whatever perfection is required for the perfection of an assignment of the right to the payment of money will also carry these ancillary rights.

Similarly, when the right to the payment of money is not yet earned by performance, there are frequently ancillary rights designed to assure that an assignee may complete the performance and crystallize the right to payment of money. Such rights are frequently present in a "maintenance" lease, where the lessor has continuing duties to perform, or in a ship charter. These ancillary rights, if considered in the abstract, might be thought to be "general intangibles", since they do not themselves involve the

payment of money. However, it is not the intent of the Code to split up the rights to the payment of money and its ancillary supports, and thereby multiply the problem of perfection of assignments. Therefore, all rights of the lessor in a lease are to be perfected as "chattel paper", and all rights of the owner in a ship charter are to be perfected as "accounts".

"Account" is defined as a right to payment for goods sold or leased or services rendered; the ordinary commercial account receivable. In some special cases a right to receive money not yet earned by performance crystallizes not into an account but into a general intangible, for it is a right to payment of money that is not "for goods sold or leased or for services rendered". Examples of such rights are the right to receive payment of a loan not evidenced by an instrument or chattel paper; a right to receive partial refund of purchase prices paid by reason of retroactive volume discounts; rights to receive payment under licenses of patents and copyrights, exhibition contracts, etc.

This article rejects any lingering common law notion that only rights already earned can be assigned. In the triangular arrangement following assignment, there is reason to allow the original parties-assignor and account debtor more flexibility in modifying the underlying contract before performance than after performance (see § 9-318). It will, however, be found that in most situations the same rules apply to accounts both before and after performance.

Cross References

Sections 9-103(B), 9-104, 9-302(C), 9-318 and 9-401.

Definitional Cross References

"Chattel paper". Section 9-105.

"Contract". Section 1-201.

"Document". Section 9-105.

"Goods". Section 9-105.

"Instrument". Section 9-105.

Special Plain Language Comment

"Choses" or "things in action" mentioned with respect to general intangibles are basically rights to bring a legal action to enforce an obligation or a claim, although § 9-104 excludes claims other than those for breach of contract and certain related legal theories. General intangibles is thus a "catch-all" category including everything (besides money) which

is permitted collateral under this article (see §§ 9-102 and 9-104) and which is not defined in § 9-106 as accounts or in § 9-105 as goods, deposit accounts, chattel paper, documents or instruments.

Comments to the substantive provisions in this article will illustrate meanings of accounts and general intangibles.

§ 9-107. Definitions: "purchase money security interest"

A security interest is a "purchase money security interest" to the extent that it is:

A. Taken or retained by the seller of the collateral to secure all or part of its price; or

B. Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-107 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under existing rules of law and under this article purchase money obligations often have priority over other obligations. Thus, a purchase money obligation has priority over an interest acquired under an after-acquired property clause (§ 9-312(C) and (D)). Where filing is required, a grace period of ten (10) days is allowed against creditors and transferees in bulk (§ 9-301 (B)). In some instances filing may not be necessary (§ 9-302(A) (4)).

Under this section a seller has a purchase money security interest if he retains a security interest in the goods. A financing agency has a purchase money security interest when it advances money to the seller, taking back an assignment of chattel paper, and also when the financier advances money to the buyer to enable

him to buy the property, and the buyer uses the money for that purpose.

2. When a purchase money interest is claimed by a secured party who is not a seller, he must of course have given present consideration. This section therefore provides that the purchase money party must be one who gives value "by making advances or incurring an obligation"; which quoted language excludes from the purchase money category any security interest taken as security for or in satisfaction of a preexisting claim or antecedent debt.

3. If a secured party wishes he may acquire both a purchase money security interest to secure the purchase money obligation and a regular security interest to secure other obligations. Although some court decisions in other jurisdictions would seem to require separate documentation for each type of security interest, this section permits the same security agreement to create (and the same financing statement to perfect) both types of security interests.

Cross References

Point 1: Sections 9-301, 9-302, and 9-312.

Point 2: Section 9-108.

Definitional Cross References

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Person". Section 1-201.

"Rights". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-201.

Special Plain Language Comment

A seller can acquire a purchase money security interest to secure the unpaid portion of the price of collateral sold to the buyer. A lender can also acquire a purchase money security interest by loaning the debtor the funds which he uses to purchase the collateral. However, the lender has to be able to prove that its loan funds were used to pay the purchase price, for

example, by using a cashiers or certified check evidencing the loan funds to pay the purchase price to the seller.

Purchase money security interests can have various advantages over regular security interests, including priority under §§ 9-312(C) and (D).

Library References

Indians ☞23 to 24.

Secured Transactions ☞83, 146.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 10, 55, 103 to 105.

§ 9-108. When after-acquired collateral not security for antecedent debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property, his security interest in the after-acquired collateral shall be deemed to be taken for new value (and not as security for an antecedent debt) if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-108 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Many financing transactions contemplate that the collateral will include both the debtor's existing assets and also assets thereafter acquired by him in the operation of his business. This article generally validates such after-acquired property interests (see § 9-204 and Comment), although they may be subordinated to later purchase money security interests under § 9-312 (C) and (D).

Two tests must be met under this section for an interest in after-acquired property to be one not taken for an antecedent debt. First: the secured party must, at the inception of the transaction, have given new value in some form. Second: the after-acquired property must come in either in the ordinary course of the debtor's business or as an acquisition which is made under a contract of purchase entered into within a reasonable time after the giving of new value and pursuant to the security agreement. The reason for the first test needs no comment. The second is in line with limitations which judicial construction has placed on the opera-

tion of after-acquired property clauses. Their coverage has been in many cases restricted to subsequent ordinary course acquisitions: this article does not go so far (see § 9-204 and Comment), but it does deny present value status to out of ordinary course of business acquisitions that are not made pursuant to the original loan agreement.

2. The term "value" is defined in § 1-201 (RR) and discussed in the accompanying Comment. In this section and in other sections of this article the term "new value" is used but is left without statutory definition. The several illustrations of "new value" given in the text of this section (making an advance, incurring an obligation, releasing a perfected security interest) as well as the "purchase money security interest" definition in § 9-107 indicate the nature of the concept. In other situations it is left to the courts to distinguish between "new" and "old" value, between present considerations and antecedent debt. As a practical matter, the concept of "new value" will be governed in most cases by the definition of "new value" in 11 U.S.C. § 547(a) (2), which relates to the preference tests under the Bankruptcy Code.

Cross References

Point 1: Sections 9-204 and 9-312.

Point 2: Section 9-107.

Definitional Cross References

"Collateral". Section 9-105.

"Contract". Section 1-201.

"Debtor". Section 9-105.

“Purchase”. Section 1-201.
 “Rights”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security agreement”. Section 9-105.
 “Security interest”. Section 1-201.
 “Value”. Section 1-201.

Special Plain Language Comment

This article permits the debtor to grant a security interest in collateral which he may acquire in the future. (See § 9-204. This section describes the tests for deciding when that security is acquired for new value or when it is acquired for an old (or “antecedent”) debt.)

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞ 13, 116.	C.J.S. Secured Transactions §§ 12, 85.
Westlaw Topic Nos. 209, 349A.	

§ 9-109. Classification of goods: “consumer goods”; “equipment”; “farm products”; “inventory”

Goods are:

A. “Consumer goods” if they are regularly used or bought for use for personal, family or household purposes;

B. “Equipment” if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

C. “Farm products” if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wooldip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory; or

D. “Inventory” if they are held by a person who holds them for sale or lease or to be furnished under contracts of service (or if he has so furnished them), or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-109 of the Uniform Commercial Code adopted by the states, except that goods which are regularly used by consumers for their personal, family or household purposes are defined as consumer goods even if they are more often also used for business purposes and that Navajo law apart from this Code may further clarify and regulate the matters relating to consumer goods.

Commentary. 1. This section classifies goods as consumer goods, equipment, farm products and inventory. The classification is important in many situations: it is relevant, for example, in determining the rights of persons who buy from a debtor goods subject to a security interest (§ 9-307), in certain question of priority (§ 9-312), in determining the place of filing (§ 9-40 1) and in working out rights after default (Part 5). Comment 5 to § 9-102 con-

tains an index of the special rules under this Code applicable to different classes of collateral.

2. The classes of goods are mutually exclusive; the same property cannot at the same time and as to the same person be both equipment and inventory, for example. In borderline cases—a physician's car or a farmer's jeep which might be either consumer goods or equipment—the principal use to which the property is put should be considered as determinative, although under Navajo law, goods which have regular use for personal, family or household purposes will be consumer goods even if they are also regularly used for business purposes by an individual consumer. Goods can fall into different classes at different times; a radio is inventory in the hands of a dealer and consumer goods in the hands of a householder. When goods are owned by a corporation, partnership or other business entity, it is presumed that such goods are not consumer goods.

3. The principal test to determine whether goods are inventory is that they are held for immediate or ultimate sale. Implicit in the definition is the criterion that the prospective sale is in the ordinary course of business. Machinery used in manufacturing, for example, is equipment and not inventory even though it is the continuing policy of the enterprise to sell machinery when it becomes obsolete. Goods to be furnished under a contract of services are inventory even though the arrangement under which they are furnished is not technically a sale. When an enterprise is engaged in the business of leasing a stock of products to users (for example, the fleet of cars owned by a car rental agency), that stock is also included within the definition of "inventory". It should be noted that one class of goods which is not held for disposition to a purchaser or user is included in inventory: "Materials used or consumed in a business". Examples of this class of inventory are fuel to be used in operations, scrap metal produced in the course of manufacture, and containers to be used to package the goods. In general, it may be said that goods used in a business are equipment when they are fixed assets or have, as identifiable units, a relatively long period of use; but are inventory, even though not held for sale, if they are used up or

consumed in a short period of time in the production of some end product.

4. Goods are "farm products" only if they are in the possession of a debtor engaged in farming operations. Animals in a herd of livestock are covered whether they are acquired by purchase or result from natural increase. Products of crops or livestock remain farm products so long as they are in the possession of a debtor engaged in farming operations and have not been subjected to a manufacturing process. The terms "crops", "livestock" and "farming operations" are not defined; however, it is obvious from the text that "farming operations" includes raising livestock as well as crops. Similarly, since eggs are products of livestock, livestock includes fowl.

When crops or livestock or their products come into the possession of a person not engaged in farming operations they cease to be "farm products". If they come into the possession of a marketing agency for sale or distribution or of a manufacturer or processor as raw materials, they become inventory.

Products of crops or livestock, even though they remain in the possession of a person engaged in farming operations, lose their status as farm products if they are subjected to a manufacturing process. What is and what is not a manufacturing operation is not determined by this article. At one end of the scale some processes are so closely connected with farming—such as pasteurizing milk or boiling sap to produce maple syrup or maple sugar—that they would not rank as manufacturing. On the other hand, an extensive canning operation would be manufacturing. The line is one for the courts to draw. After farm products have been subjected to a manufacturing operation, they become inventory if held for sale.

5. The principal definition of equipment is a negative one: goods used in a business (including farming or a profession) which are not inventory and not farm products. Trucks, rolling stock, tools, machinery are typical types of equipment. Furthermore, any goods which are not covered by one of the other definitions in this section are to be treated as equipment.

Cross References

Point 1: Sections 9-102, 9-307, 9-312, 9-401 and Part 5.

Point 3: Section 9-307.

Point 4: Section 9-307.

Definitional Cross References

"Contract". Section 1-201.

"Debtor". Section 9-105.

"Goods". Section 9-105.

"Organization". Section 1-201.

“Person”. Section 1-201.

“Sale”. Sections 2-106 and 9-105.

Special Plain Language Comment

This article provides for different rights and obligations to apply to different types of goods. This section describes the tests for classifying goods as “consumer goods”, “equipment”, “farm products” or “inventory”. Those four categories are mutually exclusive, and the same item can only be placed in one category at a time. However, the classification of goods can

depend upon their use, and the same item can have a different classification in the hands of different people. For example, a pick-up truck can be “consumer goods” of an individual who uses it for personal transportation, “equipment” of a business that uses it for deliveries, and “inventory” of a truck dealer.

Library References

Indians ☞23 to 24.

Secured Transactions ☞14.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 13.

§ 9-110. Sufficiency of description

For the purposes of this article any description of personal property or real estate is sufficient, whether or not it is specific, if it reasonably identifies what is described.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-110 of the Uniform Commercial Code adopted by the states.

Commentary. The requirement of description of collateral (see § 9-203 and Comment thereto) is evidentiary. The test of sufficiency of a description laid down by this section is that the description do the job assigned to it—that it make possible the identification of the thing

described. Under this rule it is not essential that descriptions be of the most exact and detailed nature, the so-called “serial number” test. The same test of reasonable identification applies where a description of real estate is required in a financing statement. (See § 9-402.) The functional test for the adequacy of a description is whether a third person could determine what the collateral is without an unreasonable amount of difficulty.

Cross References

Sections 9-203 and 9-402.

Special Plain Language Comment

The collateral must be described in financing statements and security agreements. This section describes the rule for deciding whether a collateral description is adequate. If a financing statement description of collateral is inadequate, then the financing statement is ineffective. If a security agreement description

is inadequate, the security agreement may be ineffective, although the Courts can use oral or other evidence in order to resolve ambiguities concerning what collateral the parties intended the agreement to cover and to reform the agreement to be consistent with the intention of the parties.

Library References

Indians ☞23 to 24.

Secured Transactions ☞43 to 45, 94.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 46 to 48, 68 to 70.

§ 9-111. [Omitted]**History**

CJA-1-86, January 29, 1986.

§ 9-112. Where collateral is not owned by debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral: (i) is entitled to received from the secured party any surplus under § 9-502(B) or under § 9-504(A); (ii) is not liable for the debt or for any deficiency after resale; and (iii) has the same right as the debtor:

- A. To receive statements under § 9-208;
- B. To receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under § 9-505;
- C. To redeem the collateral under § 9-506;
- D. To obtain injunctive or other relief under § 9-507(A); and
- E. To recover losses caused to him under § 9-208(B).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-112 of the Uniform Commercial Code adopted by the states.

Commentary. Under the definition of § 9-105, in any provisions of this article dealing with the collateral the term "debtor" means the owner of the collateral even though he is not the person who owes payment or performance of the obligation secured. For example, if the owner of a corporation grants a security interest in equipment which he owns in order to secure a loan to the corporation, both the owner and the corporation are "debtors", even though the owner has not promised to repay the loan. This section covers several situations in which the implications of this broad definition of "debtor" are specifically set out.

The duties which this section imposes on a secured party toward such an owner of collateral are conditioned on the secured party's knowl-

edge of the true state of the facts. Short of such knowledge he may continue to deal exclusively with the person who owes the obligation. This section does not suggest that the secured party is under any duty of inquiry. It does not purport to cut across or alter the law of conversion or of ultra vires. Whether a person who does not own property has authority to encumber it for his own debts, and whether a person is free to encumber his property as collateral for the debts of another, are each matters to be decided under other rules of law and are not covered by this section. This section also does not affect any rights which the owner of collateral may have under laws relating to suretyship or guaranties.

This section does not purport to be an exhaustive treatment of the subject. It isolates certain problems which maybe expected to arise and states rules as to them. Others will no doubt arise: their solution is left to the courts.

Cross References

Sections 9-105, 9-208 and Part 5.

Definitional Cross References

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Notice". Section 1-201.

“Person”. Section 1-201.
 “Receive notice”. Section 1-201.
 “Right”. Section 1-201.
 “Secured party”. Section 9-105.

Special Plain Language Comment

This section recognizes that people sometimes grant security interests in their property in order to secure obligations of another person. Although this article refers to both that owner of the collateral and person having the obligation as “debtors”, those two types of “debtors” have different rights and obligations. This section describes some of the protections available to the owner of collateral who is not obligated on the obligation secured by that collateral.

Library References

Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions \Leftrightarrow 12, 117, 131, 162, 164, 239, 241.	C.J.S. Secured Transactions §§ 12, 36, 86, 88, 112 to 113, 115, 117 to 118, 180, 184.
Westlaw Topic Nos. 209, 349A.	

§ 9-113. Security interests arising under Article on sales

A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this article, except that to the extent that (and so long as) the debtor does not have or does not lawfully obtain possession of the goods:

- A. No security agreement is necessary to make the security interest enforceable; and
- B. No filing is required to perfect the security interest; and
- C. The rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-113 of the Uniform Commercial Code adopted by the states.

Commentary. 1. Under the provisions of Article 2 on Sales, a seller of goods may reserve a security interest (see, e.g., §§ 2-401 and 2-505); and in certain circumstances, whether or not a security interest is reserved, the seller has rights of resale and stoppage under §§ 2-703, 2-705 and 2-706, which are similar to the rights of a secured party. Similarly, under such sections as §§ 2-506, 2-707 and 2-711, a financing agency, an agent, a buyer or another person may have a security interest or other right in goods similar to that of a seller. The use of the term “security interest” in the Sales Article is meant to bring the interests so designated within this article. This section makes it clear, however, that such security in-

terests are exempted from certain provisions of this article.

2. The security interests to which this section applies commonly arise by operation of law in the course of a sales transaction. Since the circumstances under which they arise are defined in the Sales Article, there is no need for the “security agreement” defined in § 9-105(A)(12) and required by § 9-203 (A), and subsection (A) dispenses with such requirements. The requirement of filing may be inapplicable under §§ 9-302(A)(1) and (2), 9-304 and 9-305, where the goods are in the possession of the secured party or of a bailee other than the debtor. To avoid difficulty in the residual cases, as for example where a bailee does not receive notification of the secured party’s interest until after the security interest arises, subsection (B) dispenses with any filing requirement. Finally, subsection (C) makes inapplicable the default provisions of Part 5 of this arti-

cle, since the Sales Article contains detailed provisions governing stoppage of delivery and resale after breach. (See §§ 2-705, 2-706, 2-707(B) and 2-711 (C).)

3. These limitations on the applicability of this article to security interests arising under the Sales Article are appropriate only so long as the debtor does not have or lawfully obtain possession of the goods. A secured party who wishes to retain a security interest after the debtor lawfully obtains possession must comply fully with all the provisions of this article and ordinarily must file a financing statement to perfect his interest. This is the effect of the "except" clause in the preamble to this section. Note that in the case of a buyer who has a security interest in rejected goods under § 2-711 (C), the buyer is the "secured party" and the seller is the "debtor".

4. This section applies only to a "security interest". The definition of "security interest" in § 1-201 (KK) expressly excludes the special property interest of a buyer of goods on identification of those goods to a contract under

§ 2-401 (A). The seller's interest after identification and before delivery may be more than a security interest by virtue of explicit agreement under § 2-401(A) or 2-501(A), by virtue of the provisions of § 2-401(B) or (C) or (D), or by virtue of substitution pursuant to § 2-501 (B). In such cases, Article 9 is inapplicable by the terms of § 9-102(A)(1).

5. Where there is a "security interest", this section applies only if the security interest arises "solely" under the Sales Article. Thus, § 1-201 (KK) permits a buyer to acquire by agreement a security interest in goods not in his possession or control. Such a security interest does not impair the buyer's rights under the Sales Article, but any rights based on the security agreement are fully subject to this article without regard to the limitations of this section. Similarly, a seller who reserves a security interest by agreement does not lose his rights under the Sales Article, but rights other than those conferred by the Sales Article depend on full compliance with this article.

Cross References

Point 1: Sections 2-401, 2-505, 2-506, 2-705, 2-706, 2-707, and 2-711(Q).

Point 2: Sections 2-705, 2-706, 2-707(B), 2-711 (C), 9-203 (A), 9-302(A) (1) and (2), 9-304, 9-305 and Part 5.

Point 3: Section 2-711 (C).

Point 4: Sections 2-401, 2-501 and 9-102(A)(1).

Definitional Cross References

"Debtor". Section 9-105.

"Goods". Section 9-105.

"Rights". Section 1-201.

"Secured party". Section 9-105.

"Security agreement". Section 9-105.

"Security interest". Section 1-201.

Special Plain Language Comment

This section reconciles this article 9 with Article 2 which also grants rights which are in some or all respects like security interests. If the seller or his agents still have possession of

goods being sold to a buyer, the seller can have numerous rights under Article 2 which are not affected by the requirements of this article 9.

Library References

Indians ⇌23 to 24.

Sales ⇌300, 391.5.

Secured Transactions ⇌10.

Westlaw Topic Nos. 209, 343, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Sales §§ 328, 378.

C.J.S. Secured Transactions §§ 3, 7, 22 to 33.

§ 9-114. Consignment

A. A person who delivers goods under a consignment which is not a security interest and who would be required to file under this article by § 2-326 (C) (3): (i) has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they

were the property of the consignee; and (ii) also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if:

1. The consignor complies with the filing provision of the Article on Sales with respect to consignments (§ 2-326(C)(3)) before the consignee receives possession of the goods; and
2. The consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and
3. The holder of the security interest receives the notification within five (5) years before the consignee receives possession of the goods; and
4. The notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

B. In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor, except for artists (see § 2-326).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-114 of the Uniform Commercial Code adopted by the states except that artists who consign goods have priority over the consignor's creditors.

Commentary. 1. This section requires that where goods are furnished to a merchant under the arrangement known as consignment, rather than in a security transaction, the consignor must, in order to protect his position as against an inventory secured party of the consignee, give to that party the same notice and at the same time that he would give to that party if that party had filed first with respect to inventory and if the consignor were furnishing the goods under an inventory security agreement instead of under a consignment.

For the distinction between true consignment and security arrangements, see § 1-201 (MM). For the assimilation of consignments under certain circumstances to goods on sale or return and the requirement of filing in the case of consignments, see § 2-326.

The requirements of notice in this section conform closely to the concepts and the language of § 9-312(C), which should be consulted together with the relevant Comments thereto.

Except in the limited cases of identifiable cash proceeds received on or before delivery of the goods to a buyer, no attempt has been made to provide rules as to perfection of a claim to proceeds of consignments (compare § 9-306) or the priority thereof (compare § 9-312). It is believed that under many true consignments the consignor acquires a claim for an agreed amount against the consignee at the moment of sale, and does not look to the proceeds of sale. In contrast to the assumption of this article that rights to proceeds of security interests under § 9-306 represent the presumed intent of the parties (compare § 9-203(C)), the Article goes on the assumption that if consignors intend to claim the proceeds of sale, they will do so by expressly contracting for them and will perfect their security interests therein.

Cross References

Sections 2-326 and 9-312(C).

Definitional Cross References

"Consignment". Section 1-201(MM).

"Debtor". Section 9-105.

“Goods”. Section 9–105.
 “Notification”. Section 1–201(Z).
 “Proceeds”. Section 9–306.
 “Security interest”. Section 1–201(MM).

Special Plain Language Comment

This section refers to certain arrangements made under Article 2 which are described as “consignments”, and reconciles the competing interests of the interested parties in the consigned property. For example, if the owner of a painting delivered the painting to a gallery for sale by the gallery to third parties, the owner

can be described as a “consignor” and the gallery can be described as the “consignee”. This section describes the rights of the consignor (e.g., the owner of the painting) against the consignee (e.g., the gallery) and its secured creditors.

Library References

Indians ⇄ 23 to 24.
 Secured Transactions ⇄ 138 to 150.
 Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Secured Transactions §§ 10, 88, 90 to 110, 118.

Part 2. Validity of Security Agreement and Rights of Parties Thereto

§ 9–201. General validity of security agreement

Except as otherwise provided by applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, consumer protection, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

History

CJA–1–86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9–201 of the Uniform Commercial Code as adopted by the states, except that this section recognizes that federal and other laws outside this Code can affect the terms of a security agreement.

Commentary. This section states the general validity of a security agreement. In general, the security agreement is effective between the parties. It is likewise effective against third parties. Exceptions to this general rule arise where there is a specific provision in any Article of this Code or other applicable law; for example, where Article I invalidates a disclaimer of the obligations of good faith, etc. (§ 1–102 (Q),

or this article subordinates the security interest because it has not been perfected (§ 9–301) or for other reasons (see § 9–312 on priorities) or defeats the security interest where certain types of claimants are involved (for example, § 9–307 on buyers of goods). As pointed out in the Comment to § 9–102, there is no intention that the enactment of this article should repeal retail installment selling acts, small loan acts or other consumer protection laws. Nor of course are any applicable usury laws repealed. These are mentioned in the text of § 9–201 as examples of applicable laws, outside this Code entirely, which might invalidate terms of a security agreement.

Cross References

Sections 1–102(C), 9–301, 9–307 and 9–312.

Definitional Cross References

“Collateral”. Section 9-105.
 “Creditor”. Section 1-201.
 “Party”. Section 1-201.
 “Purchaser”. Section 1-201.
 “Security agreement”. Section 9-105.

Special Plain Language Comment

This section recognizes the legal effect of security agreements, which can be affected by other applicable laws.

Library References

Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions \Leftrightarrow 1, 41, 131.	C.J.S. Secured Transactions §§ 3, 7 to 9, 23,
Westlaw Topic Nos. 209, 349A.	37 to 44, 88.

§ 9-202. Title to collateral immaterial

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-202 of the Uniform Commercial Code as adopted by the states.

Commentary. The rights and duties of the parties to a security transaction and of third parties are stated in this article without reference to the location of “title” to the collateral. Thus, the incidents of a security interest which secures the purchase price of goods are the same under this article whether the secured party appears to have retained title or the debtor appears to have obtained title and then conveyed it or a lien to the secured party. This article in no way determines which line of interpretation (title theory v. lien theory or retained title v. conveyed title) should be followed in cases where the applicability of some other rule of law depends upon who has title. Thus, if a

revenue law imposes a tax on the “legal” owner of goods, or if a corporation law makes a vote of the stockholders prerequisite to a corporation “giving” a security interest but not if it acquires property “subject” to a security interest, this article does not attempt to define whether the secured party is a “legal” owner or whether the transaction “gives” a security interest for the purpose of such laws. Other rules of law or the agreement of the parties determine the location of “title” for such purposes.

Petitions for reclamation brought by a secured party in his debtor’s insolvency proceedings have often been granted or denied on a title theory: where the secured party has title, reclamation will be granted; where he has “merely a lien”, reclamation may be denied. (For the treatment of such petitions under this article, see Point 1 of Comment to § 9-507.)

Cross References

Sections 2-401 and 2-507.

Definitional Cross References

“Collateral”. Section 9-105.
 “Debtor”. Section 9-105.
 “Remedy”. Section 1-201.
 “Rights”. Section 1-201.
 “Secured party”. Section 9-105.

Special Plain Language Comment

This section recognizes that a relationship of “debtor” and “secured party” can exist even though the secured party remains the technical owner of the property subject to the right of the debtor-buyer to acquire title to the property when he pays the full purchase price.

Library References

Indians ⚡23 to 24.

Secured Transactions ⚡12.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 12, 36.

§ 9–203. Attachment and enforceability of security interest; proceeds; formal requisites

A. Subject to the provisions of other applicable laws on the security interest of a collecting bank such rights are governed by § 4–208 of the Uniform Commercial Code, on security interests in securities (since the Navajo Nation has not adopted Article 4 and Article 8 of the Uniform Commercial Code rights which would be governed under those Articles are governed by Navajo law pursuant to 7 N.N.C. § 204) and subject to § 9–113 on a security interest arising under Article 2 on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

1. The collateral is in the possession of the secured party pursuant to an agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
2. Value has been given; and
3. The debtor has rights in the collateral.

B. A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (A) have taken place unless explicit agreement postpones the time of attaching.

C. Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by § 9–306.

D. A transaction, although subject to this division, is subject to other statutes enacted by the Navajo Nation Council. A transaction, although subject to this division, is also subject to certain other statutes of the States. Such statutes are not pre-empted by this Code (although such statutes may be pre-empted by further legislation of the Navajo Nation Council). Unless otherwise agreed in writing the law of the state in which a natural person resides, or in the case of all other entities, the state in which the entity has its principal place of business shall be the governing statutes. Such statutes are those set forth in the following sections of the state statutes: Ariz. Rev. Stat. Ann. § 47–9203(D) in Arizona, N.M. Stat. Ann. § 55–9–203 (B) in New Mexico and Utah Code Ann. § 70A–9–203(D) in Utah.

E. In case of conflict between the provisions of this article and any such statutes, the provisions of such statutes control. Failure to comply with any applicable statute has only the effect which is specified therein.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-203 of the Uniform Commercial Code as adopted by the states, except that subsection (D) recognizes that statutes of the Navajo Nation Council and certain states may have an effect on this article.

Commentary. 1. Subsection (A) states three basic prerequisites to the existence of a security interest: agreement, value, and collateral. In addition, the agreement must be in writing unless the collateral is in the possession of the secured party (including an agent on his behalf—see Comment 2 to § 9-305). When all of these elements exists, the security agreement becomes enforceable between the parties and is said to “attach”. Perfection of a security interest (see § 9-303) will in many cases depend on the additional step of filing a financing statement (see § 9-302) or possession of the collateral (§§ 9-304(A) and 9-305). Section 9-301 states who will take priority over a security interest which has attached but which has not been perfected. Subsection (B) states a rule of construction under which the security interest, unless postponed by explicit agreement, attaches automatically when the stated events have occurred.

2. As to the type of description of collateral in a written security agreement which will satisfy the requirements of this section, see § 9-110 and the Comment thereto. In the case of crops growing or to be grown or timber to be cut the best identification is by describing the land, and subsection (A)(1) requires such a description.

3. One purpose of the formal requisites stated in subsection (A)(1) is evidentiary. The requirement of a written record minimizes the possibility of future dispute as to the terms of a security agreement and as to what property stands as collateral for the obligation secured. Where the collateral is in the possession of the secured party, the evidentiary need for a written record is much less than where the collateral is in the debtor’s possession; customarily, of course, as a matter of business practice the written record will be kept, but, in this article the writing is not a formal requisite. Subsec-

tion (A)(1), therefore, dispenses with the written agreement—and thus with signature and description—if the collateral is in the secured party’s possession.

4. The definition of “security agreement” (§ 9-105) is “an agreement which creates or provides for a security interest”. Under that definition the requirement of this section that the debtor sign a security agreement is not intended to reject, and does not reject, the deeply rooted doctrine that a bill of sale, although absolute in form, may be shown to have been in fact given as security. Under this article a debtor may show by parol evidence that a transfer purporting to be absolute was in fact for security and may then, on payment of the debt, assert his fundamental right to return of the collateral and execution of an acknowledgment of satisfaction.

5. The formal requisite of a writing stated in this section is not only a condition to the enforceability of a security interest against third parties, it is also in the nature of a Statute of Frauds. Unless the secured party or his agent is in possession of the collateral, his security interest, absent a writing which satisfies subsection (A) (1), is not enforceable even against the debtor, and cannot be made so on any theory of equitable mortgage or the like. If the secured party has advanced money, he is, of course, a creditor and, like any creditor, is entitled after judgment to appropriate process to enforce his claim against his debtor’s assets. That secured party win not, however, have against his debtor the rights given a secured party by Part 5 of this article on default. More harm than good would result from allowing creditors to establish a secured status by parol evidence after they have neglected the simple formality of obtaining a signed writing.

6. The provisions of regulatory statutes covering the field of consumer finance prevail over the provisions of this article in case of conflict. Failure to comply with any applicable regulatory statute has whatever effect may be specified in that statute, but no more.

Cross References

Section 9-113.

Point 1: Section 9-110.

Point 5: Part 5.

Definitional Cross References

“Collateral”. Section 9-105.
 “Debtor”. Section 9-105.
 “Party”. Section 1-201.
 “Proceeds”. Section 9-306.
 “Secured party”. Section 9-105.
 “Security agreement”. Section 9-105.
 “Security interest”. Section 1-201.
 “Signed”. Section 1-201.

Special Plain Language Comment

This section describes the fundamental requirements for a security interest to attach to any collateral. Although a written agreement is necessary to create a security interest in collateral not possessed by the secured party or his agent, the security interest requires “value” in order to attach to collateral. The security interest only attaches to the extent of the debtor’s interest in the collateral. If the debtor has no interest in particular collateral when he signs a security agreement, no security interest attaches to that collateral until the debtor acquires rights in the collateral to which the security interest can attach. The timing of the attachment of the security interest can affect the rights of the parties under other provisions of this article.

Library References

Indians \S 23 to 24, 32.	C.J.S. Indians $\S\S$ 12, 30 to 31, 49, 51.
Secured Transactions $\S\S$ 12, 22, 41 to 51, 133, 168.	C.J.S. Secured Transactions $\S\S$ 12, 34 to 49, 119 to 124.
Westlaw Topic Nos. 209, 349A.	

§ 9-204. After-acquired property; future advances

A. Except as provided in subsection (B), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

B. No security interest attaches under an after-acquired property clause to consumer goods other than accessions (§ 9-314) when given as additional security unless the debtor acquires rights in them within ten (10) days after the secured party gives value.

C. Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (§ 9-105(A)).

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-204 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Subsection (A) makes clear that a security interest arising by virtue of an after-acquired property clause has equal status with a security interest in collateral in which the debtor has rights at the time value is given

under the security agreement. That is to say: the security interest in after-acquired property is not merely an “equitable” interest; no further action by the secured party—such as the taking of a supplemental agreement covering the new collateral—is required. This does not, however, mean that the interest is proof against subordination or defeat: Section 9-109 should be consulted on when a security interest in after-ac-

quired collateral is not security for antecedent debt, and § 9-312(C) and (D) on when such a security interest may be subordinated to a conflicting purchase money security interest in the same collateral.

2. This article accepts the principle of a “continuing general lien” or a “floating security interest”. This article validates a security interest in the debtor’s existing and future assets, even though (see § 9-205) the debtor has liberty to use or dispose of collateral without being required to account for proceeds or substitute new collateral. (See further, however, § 9-306 on Proceeds and Comment thereto.)

Notice that the question of assignment of future accounts is treated like any other case of after-acquired property—no periodic list of accounts is required by this Code. Where less than all accounts are assigned, such a list may, of course, be necessary to permit identification of the particular accounts assigned.

3. Subsection (A) also serves to validate the so-called “cross-security” clause under which collateral acquired at any time may secure advances whenever made or obligations whenever arising.

4. Subsection (B) limits the operation of the after-acquired property clause against consumers. No such interest can be claimed as additional security in consumer goods (defined in § 9-109), except accessions (see § 9-314), acquired more than ten (10) days after the giving of value.

5. Under subsection (C) collateral may secure future as well as present, advances or obligations when the security agreement so pro-

vides. In line with the policy of this article toward after-acquired property interests that subsection validates the future advance interest, provided only that the obligation be covered by the security agreement.

The effect of after-acquired property and future advance clauses in the security agreement should not be confused with the use of financing statements in notice filing. The references to after-acquired property clauses and future advance clauses in § 9-204 are limited to security agreements. This section follows § 9-203, the section requiring a written security agreement, and its purpose is to make clear that confirmatory agreements are not necessary where the basic agreement has the clauses mentioned. This section has no reference to the operation of financing statements. The filing of a financing statement is effective to perfect security interests as to which other required elements for perfection exist, whether the security agreement involved is one existing at the date of filing with an after-acquired property clause or a future advance clause, or whether the applicable security agreement is executed later. Indeed, § 9-402(A) expressly contemplates that a financing statement may be filed when there is no security agreement. There is no need to refer to after-acquired property or future advances in the financing statement.

As in the case of interests in after-acquired collateral, a security interest based on future advances or obligations may be subordinated to conflicting interests in the same collateral. See §§ 9-301(D); 9-307(C); 9-312(C), (D) and (G).

Cross References

Point 1: Sections 9-108 and 9-312.

Point 2: Sections 9-205 and 9-306.

Point 4: Sections 9-109 and 9-314.

Point 5: Sections 9-301(D); 9-307(C); 9-312(C), (D) and (G).

Definitional Cross References

“Account”. Section 9-106.

“Agreement”. Section 1-201.

“Collateral”. Section 9-105.

“Consumer goods”. Section 9-109.

“Contract”. Section 1-201.

“Debtor”. Section 9-105.

“Purchase”. Section 1-201.

“Pursuant to commitment”. Section 9-105.

“Rights”. Section 1-201.

“Secured party”. Section 9-105.

“Security agreement”. Section 9-105.

“Security interest”. Section 1-201.

“Value”. Section 1-201.

Special Plain Language Comment

Except for consumer goods, a security agreement may grant a security interest in specified collateral, whether then existing or thereafter acquired by the debtor, to secure any or all of the obligations of the debtor to the secured party, whether then existing or thereafter arising.

Library References

Indians ⚡23 to 24.

Secured Transactions ⚡13, 20, 114, 116.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 12, 18, 83, 85.

§ 9-205. Use or disposition of collateral without accounting permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of an or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-205 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. This article expressly validates the floating charge or lien on a shifting stock. (See §§ 9-201, 9-204, and Comment to § 9-204.) This section provides that a security interest is not invalid or fraudulent by reason of liberty in the debtor to dispose of the collateral without being required to account for proceeds or substitute new collateral.

2. While this section does not require a secured party to “police” his collateral, the filing requirements (§ 9-302) give other creditors the opportunity to ascertain from public sources whether property of their debtor or prospective debtor is subject to secured claims, and the provisions about proceeds (§ 9-306(D)) enable creditors to claim collections which were made by the debtor more than ten (10) days before

insolvency proceedings and commingled or deposited in a bank account before institution of the insolvency proceedings.

3. Nothing in § 9-205 prevents such “policing” or dominion as the secured party and the debtor may agree upon. Business and not legal reasons win determine the extent to which strict accountability, segregation of collections, daily reports and the like will be employed.

4. The last sentence is added to make clear that this section does not mean that the holder of an unfiled security interest, whose perfection depends on possession of the collateral by the secured party or by the bailee (such as a field warehouseman), can allow the debtor access to and control over the goods without thereby losing his perfected interest. The rules on the degree and extent of possession which are necessary to perfect a pledge interest or to constitute a valid field warehouse are not relaxed by this or any other Section of this article.

Cross References

Point 1: Sections 9-201 and 9-204.

Point 2: Sections 9-302 and 9-306(D).

Point 4: Sections 9-304 and 9-305.

Definitional Cross References

“Account”. Section 9-106.
 “Chattel paper”. Section 9-105.
 “Collateral”. Section 9-105.
 “Creditor”. Section 1-201.
 “Debtor”. Section 9-105.
 “Goods”. Section 9-105.
 “Proceeds”. Section 9-306.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.

Special Plain Language Comment

This section clarifies the fact that the secured parties legal rights are generally not impaired by his failure to control the debtor’s use or disposition of the collateral.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞162, 164.	C.J.S. Secured Transactions §§ 112 to 113,
Westlaw Topic Nos. 209, 349A.	115, 117 to 118.

§ 9-206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists

A. Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a, negotiable instrument under the Article on Commercial Paper (Article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

B. When a seller retains a purchase money security interest in goods, the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller’s warranties.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-206 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Clauses are frequently inserted in installment purchase contracts under which the conditional vendee agrees not to assert defenses against an assignee of the contract. Under subsection (A) such clauses in a security agreement are validated outside the consumer field, but only as to defenses which could be cut-off if a negotiable instrument were used. This limitation is important, since if the clauses were allowed to have full effect as typi-

cally drafted, they would operate to cut-off real as well as personal defenses. The execution of a negotiable note in connection with a security agreement is given like effect as the execution of an agreement containing a waiver of defense clause. The same rules are made applicable to leases as to security agreements, whether or not the lease is intended as security.

2. This article takes no position on the controversial question whether a buyer of consumer goods may effectively waive defenses by contractual clause or by execution of a negotiable note. This article neither adopts nor rejects the approach taken in such statutes and decisions,

except that the validation of waivers in subsection (A) is expressly made "subject to any statute or decision" which may restrict the waiver's effectiveness in the case of a buyer of consumer goods.

3. Subsection (B) makes clear that purchase money security transactions are sales, and warranty rules for sales are applicable. It also

prevents a buyer from inadvertently abandoning his warranties by a "no warranties" term in the security agreement when warranties have already been created under the sales arrangement. Where the sales arrangement and the purchase money security transaction are evidenced by only one writing, that writing may disclaim, limit or modify warranties to the extent permitted by Article 2.

Cross References

Point 1: Section 3-305.

Point 2: Section 9-203(B).

Point 3: Section 2-102 and 2-316.

Definitional Cross References

"Agreement". Section 1-201.

"Consumer goods". Section 9-109.

"Good faith". Section 1-201.

"Goods". Section 9-105.

"Holder". Section 1-201.

"Holder in due course". Sections 3-302 and 9-105.

"Negotiable instrument". Section 3-104.

"Notice". Section 1-201.

"Purchase money security interest". Section 9-107.

"Sale". Sections 2-106 and 9-105.

"Security agreement". Section 9-105.

"Security interest". Section 1-201.

"Value". Section 1-201.

Special Plain Language Comment

This section discusses the extent to which a seller or lessor can include waivers in his contract which enable his successor by assignment

to enforce the contract even though the buyer or lessee would otherwise have a defense to such enforcement by the seller or lessor personally.

Library References

Indians ⇄23 to 24.

Secured Transactions ⇄186.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 140.

§ 9-207. Rights and duties when collateral is in secured party's possession

A. A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed in writing.

B. Unless otherwise agreed in writing, when collateral is in the secured party's possession:

1. Reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

2. The risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

3. The secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

4. The secured party must keep the collateral identifiable, but fungible collateral may be commingled; and

5. The secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

C. A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections, but does not lose his security interest.

D. A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-207 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Subsection (A) states the duty to preserve collateral imposed on a pledge. In many cases a secured party having collateral in his possession may satisfy this duty by notifying the debtor of any act which must be taken and allowing the debtor to perform such act himself. If the secured party himself takes action, his reasonable expenses may be added to the secured obligation.

Under § 1-102(C) the duty to exercise reasonable care may not be disclaimed by agreement, although under that section the parties remain free to determine by agreement, in any manner not manifestly unreasonable, what shall constitute reasonable care in a particular case.

2. Subsection (B) states rules which apply, unless there is written agreement otherwise, in

typical situations during the period while the secured party is in possession of the collateral.

3. The right of a secured party holding instruments or documents to have them endorsed or transferred to him or his order is dealt with in the relevant sections of Article 3 (Commercial Paper).

4. This section applies when the secured party has possession of the collateral before default, as a pledgee, and also when he has taken possession of the collateral after default. (See §§ 9-501 (A) and (B) and 9-503.) Subsection (D) permits operation of the collateral in the circumstances stated, and subsection (B) (1) authorizes payment of or provision for expenses of such operation. Agreements providing for such operation are common in trust indentures securing corporate bonds and are particularly important when the collateral is a going business. Such an agreement cannot, of course, disclaim the duty of care established by subsection (A), nor can it waive or modify the rights of the debtor contrary to § 9-501 (C).

Cross References

Point 1: Section 1-102 (C).

Point 3: Section 3-201.

Point 4: Section 9-501(B) and Part 5.

Definitional Cross References

"Chattel paper". Section 9-105.

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Instrument". Section 9-105.

“Money”. Section 1-201.

“Party”. Section 1-201.

“Secured party”. Section 9-105.

“Security interest”. Section 1-201.

Special Plain Language Comment

This section describes certain rights and obligations of a secured party when he has possession of the collateral. To a limited extent these rights and obligations may be altered by agreement.

Library References

Indians ☞ 23 to 24.

Secured Transactions ☞ 163, 165, 169, 170.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 113 to 114,

117, 125 to 126.

§ 9-208. Request for statement of account or list of collateral

A. A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral, a debtor may similarly request the secured party to approve or correct a list of the collateral.

B. The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor, the secured party may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply, he is liable for any loss caused to the debtor thereby, and; if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both, the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, he must disclose the name and address of any successor in interest known to him, and he is liable for any loss caused to the debtor as a result of any failure to so disclose. A successor in interest is not subject to this section until a request is received by him.

C. A debtor is entitled to such a statement once every six (6) months without charge. The secured party may require payment of a charge not exceeding ten dollars (\$10.00) for each additional statement furnished.

D. If the secured party is an organization maintaining branches or branch offices, the requests provided for herein shall be sent to the branch or office at which the secured transaction was entered into or at which the debtor is permitted or required to pay his obligation. Unless the secured party shall otherwise so specify in his statement, the secured party's statement shall be deemed to apply only to obligations entered into or payable at such branch or office and to any collateral taken at such branch or office. If such branch or

office is closed before such a statement is issued, the secured party's obligations are not limited to any branch or office.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-208 of the Uniform Commercial Code as adopted by the states, except that subsection (D) has been added in order to clarify the obligations of a secured party with multiple branches or offices in a manner similar to the version of the Code adopted in California and certain other states.

Commentary. 1. The purpose of this section is to provide a procedure whereby a debtor may obtain from the secured party a statement of the amount due on the obligation and in some cases a statement of the collateral.

2. The financing statement required to be filed under this article (see § 9-402) may disclose only that a secured party may have a security interest in specified types of collateral owned by the debtor. Unless a copy of the security agreement itself is filed as the financing statement, third parties are told neither the amount of the obligation secured nor which particular assets are covered. Since subsequent

creditors and purchasers may legitimately need more detailed information, it is necessary to provide a procedure under which the secured party will be required to make disclosure. On the other hand, the secured party should not be under a duty to disclose details of business operations to any casual inquirer or competitor who asks for them. This section gives the right to demand disclosure only to the debtor, who will typically request a statement in connection with negotiations with subsequent creditors and purchasers, or for the purpose of establishing his credit standing and proving which of his assets are free of the security interest. The secured party is further protected against onerous requests by the provisions that he need furnish a statement of collateral only when his own records identify the collateral and that, if he claims all of a particular type of collateral owned by the debtor, he is not required to approve an itemized list.

Cross References

Point 2: Section 9-402.

Definitional Cross References

"Collateral". Section 9-105.
 "Debtor". Section 9-105.
 "Good faith". Section 1-201.
 "Know". Section 1-201.
 "Person". Section 1-201.
 "Receive". Section 1-201.
 "Secured party". Section 9-105.
 "Security agreement". Section 9-105.
 "Security interest". Section 1-201.
 "Send". Section 1-201.
 "Written". Section 1-201.

Special Plain Language Comment

The section creates a mechanism which the debtor may use to check on the status of his transaction with the secured party or to obtain

proof of that status for other creditors or persons.

Library References

Indians ☞ 23 to 24.
 Secured Transactions ☞ 162.
 Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Secured Transactions § 112.

Part 3. Rights of Third Parties; Perfected and Unperfected
Security Interests; Rules of Priority

**§ 9-301. Persons who take priority over unperfected security interests;
rights of “lien creditor”**

A. Except as otherwise provided in subsection (B), an unperfected security interest is subordinate to the rights of:

1. Persons entitled to priority under § 9-312;
2. A person who becomes a lien creditor before the security interest is perfected;
3. In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interests and before it is perfected;
4. In the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that gives value without knowledge of the security interest and before it is perfected.

B. If the secured party files with respect to a purchase money security interest before or within ten (10) days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or other buyer out of the ordinary course of business or of a lien creditor which arise between the time the security interest attaches and the time of filing.

C. A “lien creditor” means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

D. A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he or she becomes a lien creditor or within forty-five (45) days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-301 of the Uniform Commercial Code as adopted by the states, except to the extent buyers of farm products are given greater protection under § 9-307 of this Code, which protection is recognized in this section 9-301.

Commentary. 1. This section lists the classes of persons who take priority over an

unperfected security interest. As in § 547 of the Federal Bankruptcy Code, the term “perfected” is used to describe a security interest in personal property which cannot be defeated in insolvency proceedings or in general by creditors. A security interest is “perfected” when the secured party has taken whatever steps are necessary to give him such a perfected interest.

These steps are explained in the five following sections (9-302 through 9-306).

2. Section 9-312 states general rules for the determination of priorities among conflicting security interests and in addition refers to other sections which state special rules of priority in a variety of situations. The interests given priority under § 9-312 and the other sections therein cited take such priority in general even over a perfected security interest. Therefore, perfected and other priority interests also take priority over an unperfected security interest, and subsection (A)(1) of this section so states.

3. Subsection (A)(2) provides that an unperfected security interest is subordinate to the rights of lien creditors. The section subordinates the unperfected security interest, but does not subordinate the secured debt to the competing lien.

4. Subsections (A)(3) and (A)(4) deal with purchasers (other than secured parties) of collateral who would take subject to a perfected security interest but who are by these subsections given priority over an unperfected security interest. In the cases of goods and of intangibles of the type whose transfer is effected by physical delivery of the representative piece of paper (instruments, documents and chattel paper) the purchaser who takes priority must both give value and receive delivery of the collateral without knowledge of the existing security interest and before perfection (subsection (A)(3)). Thus, even if the purchaser gave value without knowledge and before perfection, he would take subject to the security interest if perfection occurred before physical delivery of the collateral to him. The subsection (A) (3) rule is obviously not appropriate where the collateral consists of intangibles and there is no representative piece of paper whose physical delivery is the only or the customary method of transfer. Therefore, with respect to such intangibles (accounts and general intangibles), subsection (A) (4) gives priority to any transferee who has given value without knowledge and before perfection of the security interest.

The term "buyer in ordinary course of business" referred to in subsection (A) (3) is defined in § 1-201 (1).

Other secured parties are excluded from subsections (A) (3) and (A) (4) because their priorities are covered in § 9-312 (see point 2 of this comment).

5. Except to the extent provided in subsection (B), this article does not permit a secured party to file or take possession after another interest has received priority under subsection (A) and thereby protect himself against the intervening interest. Subsection (B) gives a grace period for perfection by filing as to purchase money security interests only (as defined in § 9-107). The grace period runs for ten (10) days after the debtor receives possession of the collateral, but operates to cut off only the interests of intervening lien creditors, bulk purchasers or other buyers out of the ordinary course of business.

6. Subsection (D) deals with the question whether advances under an existing security interest in collateral, made after rights of lien creditors have attached to that collateral, will take precedence over rights of lien creditors. (See related problems in §§ 9-307(C) and 9-312(G).) In this section, because of the impact of the rule chosen on the question whether the security interest for future advances is "protected" under § 6323 (3)(2) and (4) of the Internal Revenue Code as amended by the Federal Tax Lien Code of 1966, the priority of the security interest for future advances over a judgment lien is made absolute for forty-five (45) days, regardless of knowledge of the secured party concerning the judgment lien. If, however, the advance is made after the forty-five (45) days, the advance will not have priority unless it was made or committed without knowledge of the lien obtain by legal proceedings. The importance of the rule chosen for actual conflicts between secured parties making subsequent advances and judgment lien creditors may not be great; but the rule chosen for the first forty-five (45) days is important in effectuating the intent of the Federal Tax Lien Code of 1966.

Cross References

Section 9-312.

Point 1: Sections 9-302 through 9-306.

Point 6: Sections 9-204, 9-307(C) and 9-312(G).

Definitional Cross References

"Account". Section 9-106.

"Buyer in ordinary course of business". Section 1-201.

"Chattel paper". Section 9-105.

"Collateral". Section 9-105.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document". Section 9-105.

"General intangibles". Section 9-106.
 "Goods". Section 9-105.
 "Instrument". Section 9-105.
 "Knowledge". Section 1-201.
 "Person". Section 1-201.
 "Purchase money security interest". Section 9-107.
 "Pursuant to commitment". Section 9-105.
 "Representative". Section 1-201.
 "Rights". Section 1-201.
 "Secured party". Section 9-105.
 "Security interest". Section 1-201.
 "Value". Section 1-201.

Special Plain Language Comment

This section describes the priorities between unperfected security interests (i.e., those where the secured party has not filed required financing statement or complied with requirements for taking possession of collateral or for giving notice to third parties in possession) and competing liens and interests in the collateral.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄ 138 to 146.	C.J.S. Secured Transactions §§ 10, 88, 90 to 107, 118.
Westlaw Topic Nos. 209, 349A.	

§ 9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply

A. A financing statement must be filed to perfect all security interests except the following:

1. A security interest in collateral in possession of the secured party under § 9-305;
2. A security interest temporarily perfected in instruments or documents without delivery under § 9-304 or in proceeds for a 10-day period under § 9-306;
3. A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
4. A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered by applicable law; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in § 9-313;
5. An assignment of accounts which does not alone (or in conjunction with other assignments to the same assignee) transfer a significant part of the outstanding accounts of the assignor;
6. A security interest of a collecting bank or arising under the Article on Sales (see § 9-113) or covered in subsection (C) of this section;
7. An assignment for the benefit of A the creditors of the transferor, and subsequent transfers by the assignee thereunder;
8. A security interest in a deposit account, which interest is perfected instead: (i) automatically upon the execution of the security agreement when the deposit account is maintained with the secured party; and (ii) when notice thereof is given in writing to the organization with whom the deposit account is maintained (if different than the secured party); and

9. A security interest in or claim under any policy of insurance, including unearned premiums, which interest is perfected instead when notice thereof is given in writing to the insurer.

B. If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

C. The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to:

1. A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or

2. Any Navajo law which provides for the registration of title or liens on motor vehicles or other personal property, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this article (Part 4) apply to a security interest in that collateral created by him as debtor; or

3. A certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (§ 9-103(B)).

D. Compliance with a statute or treaty described in subsection (C) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in § 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-302 of the Uniform Commercial Code as adopted by the states, except that this section makes certain adjustments because this Code does not presently include Article 4 or 8 of the Uniform Commercial Code and because this Code follows the approach taken in California to the perfection of security interests in deposit accounts and insurance policies.

Commentary. 1. Subsection (A) states the general rule that to perfect a security interest under this article a financing statement must be filed. Subsections (A) (1)(A) (9) exempt from the filing requirement the transactions described. Subsection (C) further sets out certain transactions to which the filing provisions of

this article do not apply, but it does not defer to another statute on the filing of inventory security interests. The cases recognized are those where suitable alternative systems for giving public notice of a security interest are available. Subsection (D) states the consequences of such other form of notice.

Section 9-303 states the time when a security interest is perfected by filing or otherwise. Part 4 of the Article deals with the mechanics of filing: place of filing, form of financing statement and so on.

2. There is no requirement of filing when the secured party has possession of the collateral in a pledge transaction (subsection (A) (1)). Section 9-305 should be consulted on what collat-

eral may be pledged and on the requirements of possession.

3. Under this article, filing is not effective to perfect a security interest in instruments. (See § 9-304(A).)

4. Where goods subject to a security interest are left in the debtor's possession, the only permanent exception from the general filing requirement is that stated in subsection (A)(4): purchase money security interests in consumer goods. For temporary exceptions, see §§ 9-304(E) (1) and 9-306.

Although the security interests described in subsection (A) (4) are perfected without filing, § 9-307(B) provides that unless a financing statement is filed certain buyers may take free of the security interest even though perfected. See that section and the Comment thereto.

On filing for security interests in motor vehicles under certificate of title laws, see subsection (C) of this section.

5. A financing statement must be filed to perfect a security interest in accounts except for the transactions described in subsection (A) (5) and (7). It should be noted that this article applies to sales of accounts and chattel paper as well as to transfers thereof for security (§ 9-102 (A) (2)); the filing requirement of this section applies both to sales and to transfers thereof for security. This article adopts that filing requirement, on the theory that there is no valid reason why public notice is less appropriate for assignments of accounts than for any other type of nonpossessory interest. Section 9-305, furthermore, excludes accounts from the types of collateral which may be the subject of a possessory security interest: filing is thus the only means of perfection contemplated by this article. See § 9-306 on accounts as proceeds.

The purpose of the subsection (A) (5) exemption is to save from ex post facto invalidation casual or isolated assignments. Any person who regularly takes assignments of any debtor's accounts should file. In this connection § 9-104(F) which excludes certain transfers of accounts from the Article should be consulted.

Assignments of interests in trusts and estates are not required to be filed because they are often not thought of as collateral comparable to the types dealt with by this article. Assignments for the benefit of creditors are not required to be filed because they are not financing transactions and the debtor will not ordinarily be engaging in further credit transactions.

6. With respect to the subsection (A)(6) exemptions, see the sections cited therein and Comments thereto.

7. The following example will explain the operation of subsection (B): Buyer buys goods from Seller who retains a security interest in them which he perfects. Seller assigns the perfected security interest to X. The security interest, in X's hands and without further steps on his part, continues perfected against Buyer's transferees and creditors. If, however, the assignment from Seller to X was itself intended for security (or was a sale of accounts or chattel paper), X must take whatever steps may be required for perfection in order to be protected against Seller's transferees and creditors.

8. Subsection (C) exempts from the filing provisions of this article transactions as to which an adequate system of filing, Navajo, state or federal, has been set up outside this article and subsection (D) makes clear that when such a system exists perfection of a relevant security interest can be had only through compliance with that system (i.e., filing under this article is not a permissible alternative). Examples of the type of federal statute referred to in subsection (C)(1) are the provisions of 17 U.S.C. §§ 28, 30 (copyrights), 49 U.S.C. § 1403 (aircraft), 49 U.S.C. § 20(3) (railroads). The Assignment of Claims Code of 1940, as amended, provides for notice to contracting and disbursing officers and to sureties on bonds but does not establish a national filing system and therefore is not within the scope of subsection (C)(1). An assignee of a claim against the United States, who must of course comply with the Assignment of Claims Code, must also file under this article in order to perfect his security interest against creditors and transferees of his assignor.

Some states have enacted central filing statutes with respect to security transactions in kinds of property which are of special importance in the local economy. Subsection (C) adopts such statutes as the appropriate filing system for such property.

In addition to such central filing statutes many states have enacted certificates of title laws covering motor vehicles and the like. Subsection (C) exempts transactions covered by such laws from the filing requirements of this article. For a discussion of the operation of state motor vehicle certificate of title laws in interstate contexts, see Comment 4 to § 9-103.

9. Perfection of a security interest under a state or federal statute of the type referred to in subsection (C) has all the consequences of perfection under the provisions of this article, subsection (D).

Cross References

Point 1: Section 9-303 and Part 4.
Point 2: Section 9-305.

Point 3: Section 9-304(A).
 Point 4: Section 9-307(B).
 Point 5: Section 9-102(A)(2), 9-104(F) and 9-305.
 Point 6: Section 9-113.

Definitional Cross References

“Account”. Section 9-106.
 “Collateral”. Section 9-105.
 “Consumer goods”. Section 9-109.
 “Creditor”. Section 1-201.
 “Debtor”. Section 9-105.
 “Delivery”. Section 1-201.
 “Document”. Section 9-105.
 “Equipment”. Section 9-109.
 “Fixture”. Section 9-313.
 “Fixture filing”. Section 9-313.
 “Instrument”. Section 9-105.
 “Inventory”. Section 9-109.
 “Proceeds”. Section 9-306.
 “Purchase”. Section 1-201.
 “Purchase money security interest”. Section 9-107.
 “Sale”. Sections 2-106 and 9-105.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.

Special Plain Language Comment

This section describes when it is not necessary to file a financing statement in order to perfect a security interest in particular types of collateral. In certain cases, alternative methods of perfection are stated.

Library References

Indians ⇄ 3, 23 to 24.	C.J.S. Indians §§ 12, 30 to 31, 33.
Secured Transactions ⇄ 81 to 89, 182.	C.J.S. Secured Transactions §§ 3, 50 to 51, 53 to 60, 62 to 64, 135 to 136.
Westlaw Topic Nos. 209, 349A.	

§ 9-303. When security interest is perfected; continuity of perfection

A. A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in §§ 9-302, 9-304, 9-305, and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

B. If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-303 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. The term “attach” is used in this article to describe the point at which property becomes collateral subject to a security interest. The requisites for attachment are stated in § 9-203. When it attaches a security

interest may be either perfected or unperfected. "Perfected" means that the secured party has taken all the steps required by this article as specified in the several sections listed in subsection (A). A perfected security interest may still be or become subordinate to other interests (see § 9-312), but in general after perfection the secured party is protected against creditors and transferees of the debtor and in particular against any representative of creditors in insolvency proceedings instituted by or against the debtor. Subsection (A) states the truism that the time of perfection is when the security interest has attached and any necessary steps for perfection (such as taking possession or filing) have been taken. If the steps for perfection have been taken in advance (as when the secured party files a financing statement before giving value or before the debtor acquires rights in the collateral), then the interest is perfected automatically when it attaches.

2. The following example will illustrate the operation of subsection (B): A bank which has issued a letter of credit honors drafts drawn under the credit and receives possession of the negotiable bill of lading covering the goods shipped. Under §§ 9-304(B) and 9-305 the bank now has a perfected security interest in the document and the goods. The bank releases the bill of lading to the debtor for the purpose of procuring the goods from the carrier and selling them. Under § 9-304(E) the bank continues to have a perfected security interest in the document and goods for twenty-one (21) days. The

bank files a financing statement before the expiration of the 21-day period. Its security interest now continues perfected for as long as the filing is good. The goods are sold by the debtor. The bank continues to have a security interest in the proceeds of the sale to the extent stated in § 9-306.

If the successive stages of the bank's security interest succeed each other without an intervening gap, the security interest is "continuously perfected" and the date of perfection is when the interest first became perfected (i.e., in the example given, when the bank received possession of the bill of lading against honor of the drafts). If, however, there is a gap between stages—for example, if the bank does not file until after the expiration of the 21-day period specified in § 9-304(E), the collateral still being in the debtor's possession—then, the chain being broken, the perfection is no longer continuous. The date of perfection would now be the date of filing (after expiration of the 21-day period); the bank's interest might now become subject to attack under § 547 of the Federal Bankruptcy Code and would be subject to any interests arising during the gap period which under § 9-301 take priority over an unperfected security interest.

The rule of subsection (B) would also apply to the case of collateral brought into this jurisdiction subject to a security interest which become perfected in another state or jurisdiction. See § 9-103(A)(4).

Cross References

Sections 9-302, 9-304, 9-305 and 9-306.
Point 1: Sections 9-204 and 9-312.
Point 2: Sections 9-103(A)(4) and 9-301.

Definitional Cross References

"Attach". Section 9-203.
"Security interest". Section 1-201.

Special Plain Language Comment

This section deals with the consequences of changes in circumstances which may cause a "perfected" security interest to become "unper-

fectured" without further action by one or both of the parties.

Library References

Indians ⇌ 23 to 24.
Secured Transactions ⇌ 133, 134, 135.
Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.
C.J.S. Secured Transactions §§ 34, 51 to 52, 58.

§ 9-304. Perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession

A. A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (D) and (E) of this section and § 9-306(B) and (C) on proceeds.

B. During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

C. A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

D. A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one (21) days from the time it attaches to the extent that it arises for new value given under a written security agreement.

E. A security interest remains perfected for a period of twenty-one (21) days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

1. Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to § 9-312(C); or

2. Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

F. After the 21-day period in subsections (D) and (E) perfection depends upon compliance with applicable provisions of this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-304 of the Uniform Commercial Code as adopted by the states, except as to certain adjustments which were necessary because this Code does not contain an Article 8 of the Uniform Commercial Code regarding certificated securities.

Commentary. 1. For most types of property, filing and taking possession are alternative methods of perfection. For some types of intangibles (i.e., accounts and general intangibles) filing is the only available method (see § 9-305 and Point 1 of Comment thereto). With respect to instruments subsection (A) provides that, ex-

cept for the cases of “temporary perfection” covered in subsections (D) and (E), taking possession is the only available method of perfection. That rule is based on the thought that where the collateral consists of instruments, it is universal practice for the secured party to take possession of them in pledge; any surrender of possession to the debtor is for a short time; therefore it would be unwise to provide the alternative of perfection for a long period by filing which, since it in no way corresponds with commercial practice, would serve no useful purpose. For similar reasons, filing is not permitted as to money.

Subsection (A) further provides that filing is available as a method of perfection for security interests in chattel paper and negotiable documents, which also come within § 9-305 on perfection by possession. Chattel paper is sometimes delivered to the assignee, sometimes left in the hands of the assignor for collection; subsection (A) allows the assignee to perfect his interest by filing in the latter case. Negotiable documents may be, and usually are, delivered to the secured party, and subsection (A) allows an alternative method of perfection. Perfection of an interest in goods through a non-negotiable document is covered in subsection (C).

2. Subsection (B) takes the position that, so long as a negotiable document covering goods is outstanding, title to the goods is, so to say, locked up in the document, and the proper way of dealing with such goods is through the document. Perfection therefore is to be made with respect to the document and, when made, automatically, carries over to the goods. Any interest perfected directly in the goods while the document is outstanding (for example, a chattel mortgage type of security interest on goods in a warehouse) is subordinated to an outstanding negotiable document.

3. Subsection (C) takes a different approach to the problem of goods covered by a non-negotiable document or otherwise in the possession of a bailee who has not issued a negotiable document. Here title to the goods is not looked on as being locked up in the document, and the secured party may perfect his interest directly in the goods by filing as to them. The subsection states two other methods of perfection: issuance of the document in the secured party’s name (as consignee of a straight bill of lading or the person to whom delivery would be made under a non-negotiable warehouse receipt), and

receipt of notification of the secured party’s interest by the bailee which, under § 9-305, is looked on as equivalent to taking possession by the secured party.

4. Subsections (D) and (E) give perfected status to security interests in instruments and documents for a short period although there has been no filing and the collateral is in the debtor’s possession. There are a variety of legitimate reasons—some of them are described in subsections (E)(1) and (E)(2)—why such collateral has to be temporarily released to a debtor, and no useful purpose would be served by cluttering the files with records of such exceedingly short term transactions. Under subsection (D) the 21-day perfection runs from the date of attachment. There is no limitation on the purpose for which the debtor is in possession, but the secured party must have given new value under a written security agreement. Under subsection (E) the 21-day perfection runs from the date a secured party who already has a perfected security interest turns over the collateral to the debtor (an example is a bank which has acquired a bill of lading by honoring drafts drawn under a letter of credit and subsequently turns over the bill of lading to its customer). There is no new value requirement, but the turnover must be for one or more of the purposes stated in subsections (E)(1) and (E)(2). Note that while subsection (D) is restricted to instruments and negotiable documents, subsection (E) extends to goods covered by non-negotiable documents as well. Thus, the letter of credit bank referred to in the example could make a subsection (E) turn-over without regard to the form of the bill of lading, provided that, in the case of a non-negotiable document, it had previously perfected its interest under one of the methods stated in subsection (C). But note that the discussion of subsection (E) in this comment deals only with perfection. Priority of a security interest in inventory after surrender of the document depends on compliance with the requirements of § 9-312(C) on notice to prior inventory financier.

Finally, it should be noted that the twenty-one (21) days applies only to the documents and to the goods obtained by surrender thereof. If the goods are sold, the security interest will continue in proceeds for only ten (10) days under § 9-306, unless a further perfection occurs as to the security interest in proceeds.

Cross References

Sections 9-302, 9-305 and 9-312(C).

Definitional Cross References

“Chattel paper”. Section 9-105.

“Debtor”. Section 9-105.

“Document”. Section 9-105.
 “Goods”. Section 9-105.
 “Instrument”. Section 9-105.
 “Receives” notification. Section 9-201.
 “Sale”. Sections 2-106 and 9-105.
 “Secured party”. Section 9-105.
 “Security agreement”. Section 9-105.
 “Security interest”. Section 1-201.
 “Value”. Section 1-201.
 “Written”. Section 1-201.

Special Plain Language Comment

This section describes the means for handling and perfecting collateral in the form of “instruments”, “chattel paper”, “documents”, and goods covered by “documents”. Among other things, the section describes how the secured party handles goods which are in the possession of warehousemen or other “bailees” who issue either a “negotiable” or “non-negotiable” document which represents rights with respect to the goods in his possession.

Library References

Indians ☞23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞88, 89.	C.J.S. Secured Transactions §§ 59 to 60.
Westlaw Topic Nos. 209, 349A.	

§ 9-305. When possession by secured party perfects security interest without filing

A security interest in letters of credit and advices of credit, goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party’s taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party’s interest. A security interest is perfected by possession from the time possession is taken without back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest maybe otherwise perfected as provided in this article before or after the period of possession by the secured party.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-305 of the Uniform Commercial Code as adopted by the states, except for the adjustment for certificated securities which are treated like other instruments because this Code does not presently include Article 8 of the Uniform Commercial Code.

Commentary. 1. As under the common law of pledge, no filing is required by this article to perfect a security interest where the secured party has possession of the collateral. (Compare § 9-302(A)(1).) This section permits a security interest to be perfected by transfer of possession only when the collateral is goods, instruments,

documents or chattel paper: that is to say, accounts and general intangibles are excluded. A security interest in accounts and general intangibles—property not ordinarily represented by any writing whose delivery operates to transfer the claim—may under this article be perfected only by filing, and this rule would not be affected by the fact that a security agreement or other writing described the assignment of such collateral as a “pledge”. Section 9-302(A)(5) exempts from filing certain assignments of accounts which are out of the ordinary course of financing: such exempted assignments are perfected when they attach under § 9-303 (A); they do not fall within this section.

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2. Possession may be by the secured party himself or by an agent on his behalf. It is, of course, clear, however, that the debtor or person controlled by him cannot qualify as such an agent for the secured party. See also the last sentence of § 9-205. Where the collateral (except for goods covered by a negotiable document) is held by a bailee, the time of perfection of the security interest, under the second sentence of the section, is when the bailee receives notification of the secured party's interest. It is not necessary for the bailee to attorn to the secured party or acknowledge that the bailee now holds on behalf of the secured party.

3. The third sentence of this section rejects the "equitable pledge" theory of relation back, under which the taking possession was deemed to relate back to the date of the original security agreement. Where a pledge transaction is contemplated, perfection dates only from the time possession is taken, although a security interest may attach, unperfected, before that time under the rules stated in § 9-204. The only exception to this rule is the short 21-day period of perfection provided in § 9-304(D) and (E) during which a debtor may have possession of specified collateral in which there is a perfected security interest.

Cross References

Sections 9-204, 9-302, 9-303, and 9-304.

Definitional Cross References

"Chattel paper". Section 9-105.
"Collateral" § 9-105.
"Documents". Section 9-105.
"Goods". Section 9-105.
"Instruments". Section 9-105.
"Receives" notification. Section 1-201.
"Secured party". Section 9-105.
"Security interest". Section 1-201.

Special Plain Language Comment

This section describes the circumstances under which possession by the secured party or his agents is sufficient to "perfect" a security interest in collateral.

Library References

Indians ⇄23 to 24. C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄88, 89. C.J.S. Secured Transactions §§ 59 to 60.
Westlaw Topic Nos. 209, 349A.

§ 9-306. "Proceeds"; secured party's rights on disposition of collateral

A. "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

B. Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof, unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

C. The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected, but it ceases to be a perfected security interest and becomes unperfected ten (10) days after receipt of the proceeds by the debtor unless:

1. A filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

2. A filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

3. The security interest in the proceeds is perfected before the expiration of the ten (10) day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

D. In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

1. In identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

2. In identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

3. In identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

4. In all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (4) is:

a. Subject to any right to set-off, and

b. Limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten (10) days before the institution of the insolvency proceedings less the sum of (i) the payments to the secured party on account of cash proceeds received by the debtor during such period; and (ii) the cash proceeds received by the debtor during such period to which the secured party is entitled under subsection (D)(1)-(3).

E. If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

1. If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

2. An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (1) to the extent that the transferee of the chattel paper was entitled to priority under § 9-308.

3. An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (1).

4. A security interest of an unpaid transferee asserted under paragraph (2) or (3) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-306 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. This section states a secured party's right to the proceeds received by a debtor on disposition of collateral and states when his interest in such proceeds is perfected. It makes clear that insurance proceeds from casualty loss of collateral are proceeds within the meaning of this section. As to the proceeds of consigned goods, see § 9-114 and the Comment thereto.

2. A. This section provides rules for insolvency proceedings. Subsections (D)(1)-(3) substitute specific rules of identification for general principles of tracing. Subsection (D) (4) limits the security interest in proceeds not within these rules to an amount of the debtor's cash and deposit accounts not greater than cash proceeds received within ten (10) days of insolvency proceedings less the cash proceeds during this period already paid over and less the amounts for which the security interest is recognized under subsection (D)(1)-(3).

B. Subsections (B) and (C) make clear that the three-month period for calculating a voidable preference in bankruptcy begins with the date of the secured party's obtaining the security interest in the original collateral and not with the date of his obtaining control of the proceeds. The interest in the proceeds "continues" as a perfected interest if the original interest was perfected; but the interest ceases to be perfected after the expiration of ten (10) days unless a filed financing statement covered the original collateral and the proceeds are collateral of a type as to which a security interest could be perfected by a filing in the same office or unless the secured party perfects his interest in the proceeds themselves-i.e., by filing a financing statement covering them or by taking pos-

session. See § 9-312(F) and Comment thereto for priority of rights in proceeds perfected by a filing as to original collateral.

C. Where cash proceeds are deposited into the debtor's checking account and paid out in the operation of the debtor's business, recipients of the funds of course take free of any claim which the secured party may have in them as proceeds when such payments and transfers occur in the ordinary course of business. The law of fraudulent conveyances would no doubt in appropriate cases support recovery of proceeds by a secured party from a transferee out of ordinary course or otherwise in collusion with the debtor to defraud the secured party.

3. In most cases when a debtor makes an unauthorized disposition of collateral, the security interest under this article, continues in the original collateral in the hands of the purchaser or other transferee. That is to say, since the transferee takes subject to the security interest, the secured party may repossess the collateral from him or in an appropriate case maintain an action for conversion. Subsection (B) codifies this rule. The secured party may claim both proceeds and collateral, but may of course have only one satisfaction.

In many cases a purchaser or other transferee of collateral will take free of a security interest, and in such cases the secured party's only right will be to proceeds. The transferee will take free whenever the disposition was authorized, which authorization may be contained in the security agreement or otherwise given. The right to proceeds, either under the rules of this section or under specific mention thereof in a security agreement or financing statement, does not in itself constitute an authorization of sale.

Section 9-301 states when certain transferees take free of unperfected security interests. Section 9-307 on goods, § 9-308 on chattel paper and instruments and § 9-309 on negotiable in-

struments, negotiable documents and securities state when purchasers of such collateral take free of a security interest even though the disposition was not authorized.

4. Subsection (E) states rules to determine priorities when collateral which has been sold is returned to the debtor: for example, goods returned to a department store by a dissatisfied customer. The most typical problems involve sale and return of inventory, but the subsection can also apply to equipment. Subsection (E) (1) of this section reinforces the rule of § 9-205: as between secured party and debtor (and debtor's trustee in bankruptcy) the original security interest continues on the returned goods. Whether or not the security interest in the returned goods is perfected depends upon factors stated in the text.

Subsections (E) (2), (3) and (4) deal with a different aspect of the returned goods situation. Assume that a dealer has sold an automobile and transferred the chattel paper or the account arising on the sale to Bank X (which had not previously financed the car as inventory). Thereafter the buyer of the automobile rightfully rescinds the sale, say for breach of warranty, and the car is returned to the dealer. Subsection (E)(2) gives the bank as transferee of the chattel paper or the account a security interest in the car against the dealer. For protection against dealer's creditors or purchasers from him (other than buyers in the ordinary course of business, see § 9-307), Bank X as the transferee, under subsection (E)(4), must perfect its interest by taking possession of the car or by filing as to it. Perfection of his original interest in the chattel paper or the account does not

automatically carry over to the returned car, as it does under subsection (E) (1) where the secured party originally financed the dealer's inventory.

In the situation covered by subsections (E) (2) and (E) (3) a secured party who financed the inventory and a secured party to whom the chattel paper or the account was transferred may both claim the returned goods—the inventory financier under subsection (E)(1), the transferee under subsections (E)(2) and (E) (3). With respect to chattel paper, § 9-308 regulates the priorities. With respect to an account, subsection (E) (3) subordinates the security interest of the transferee of the account to that of the inventory financier. However, if the inventory security interest was unperfected, the transferee's interest could become entitled to priority under the rules stated in § 9-312(E).

In cases of repossession by the dealer and also in cases where the chattel was returned to the dealer by the voluntary act of the account debtor, the dealer's position may be that of a mere custodian; he may be an agent for resale, but without any other obligation to the holder of the chattel paper; he may be obligated to repurchase the goods, the chattel paper or the account from the secured party or to hold it as collateral for a loan secured by a transfer of the chattel paper or the account.

If the dealer thereafter sells the goods to a buyer in ordinary course of business in any of the foregoing cases, the buyer is fully protected under § 2-403(B) as well as under § 9-307(A), whichever is technically applicable.

Cross References

Sections 9-307, 9-308 and 9-309.

Point 3: Sections 1-205 and 9-301.

Point 4: Sections 2-403(B), 9-205 and 9-312.

Definitional Cross References

"Account". Section 9-106.

"Bank". Section 1-201.

"Chattel paper". Section 9-105.

"Check". Sections 3-104 and 9-105.

"Collateral". Section 9-105.

"Creditors". Section 1-201.

"Debtor". Section 9-105.

"Deposit account". Section 9-105.

"Goods". Section 9-105.

"Insolvency proceedings". Section 1-20 1.

"Money". Section 1-201.

"Purchaser". Section 1-201.

"Sale". Sections 2-106 and 9-105.

"Secured party". Section 9-105.

"Security agreement". Section 9-105.

"Security interest". Section 1-201.

Special Plain Language Comment

This section states rules which govern in various circumstances the treatment of “proceeds” which arise upon the sale or other disposition of collateral. This section also describes the treatment of goods which are returned to or recovered by a seller.

Library References

Indians ⚡23 to 24.

Secured Transactions ⚡168.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 119 to 124.

§ 9-307. Protection of buyers of goods

A. A buyer of goods in ordinary course of business (§ 1-201 (I)) takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

B. In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes.

C. A buyer of goods other than a buyer in ordinary course of business (subsection (A) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than forty-five (45) days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-307 of the Uniform Commercial Code as adopted by the states, except that like California and other states, this section does not deny protection to buyers in the ordinary course of business of farm products as provided in the Official Text or to consumer purchasers of consumer goods without knowledge of the security interest.

Commentary. 1. This section states when buyers of goods take free of a security interest even though perfected. A buyer who takes free of a perfected security interest of course takes free of an unperfected one. Section 9-301 should be consulted to determine what purchasers, in addition to the buyers covered in this section, take free of an unperfected security interest.

Article 2 (Sales) states general rules on purchase of goods from a seller with defective or voidable title (§ 2-403).

2. The definition of “buyer in ordinary course of business” in § 1-201 (1) restricts the application of subsection (A) to buyers (except pawnbrokers) “from a person in the business of selling goods of that kind”. Thus, the subsec-

tion applies, in the terminology of this article, primarily to inventory and farm products. The buyer in ordinary course of business is defined as one who buys “in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party”. This section provides that such a buyer takes free of a security interest, even though perfected, and although he knows that the security interest exists. Reading the two provisions together, it results that the buyer takes free if he merely knows that there is a security interest which covers the goods, but takes subject to the security interest if he knows, in addition, that the sale is in violation of some term in the security agreement not waived by the words or conduct of the secured party.

The limitations which this section imposes on the persons who may take free of a security interest apply of course only to unauthorized sales by the debtor. If the secured party has authorized the sale in the security agreement or otherwise, the buyer takes free without regard to the limitations of this section. Section 9-306 states the right of a secured party to the proceeds of a sale, authorized or unauthorized.

3. Subsection (B) deals with buyers of “consumer goods” (defined in § 9-109). Under § 9-301 (A) (4) no filing is required to perfect a purchase money interest in consumer goods subject to this subsection except motor vehicles required to be registered; filing is required to perfect security interests in such goods other than purchase money interests and, registration is required for motor vehicles, even in the case of purchase money interests. (The special case of fixtures has added complications that are apart from the point of this discussion.)

Under subsection (B) a buyer of consumer goods takes free of a security interest even though perfected: (a) if he buys without knowledge of the security interest; (b) for value; and (c) for his own personal, family, or household purposes. As to purchase money security interests which are perfected without filing under § 9302 (A) (4): A secured party may file a financing statement (although filing is not required for perfection). However, whether or not the secured party files, a buyer who meets the qualifications stated in the preceding sentence takes free of the security interest. So long as the security interest remains unperfected, not

only the buyers described in subsection (B), but the purchasers described in § 9-301 will take free of the interest. In any event, after compliance by a secured party with the applicable certificate of title law, all subsequent buyers, under the rule of subsection (B), are subject to the security interest. Thus, consumer purchasers are deemed to have knowledge of security interests reflected on the registration title documents for motor vehicles.

4. Although a buyer is of course subject to the Code’s system of notice from filing or possession, subsection (C) makes clear that he will not be subject to future advances under a security interest after the secured party has knowledge that the buyer has purchased the collateral and in any event after forty-five (45) days after the purchase unless the advances were made pursuant to a commitment entered into before the expiration of the forty-five (45) days and without knowledge of the purchase. Of course, a buyer in ordinary course who takes free of the security interest under subsection (A) is not subject to any future advances. (Compare §§ 9-301 (D) and 9-312(G).)

Cross References

Point 1: Sections 2-403 and 9-301.

Point 2: Section 9-306.

Point 3: Sections 9-301 and 9-302.

Point 4: Sections 9-301 (D) and 9-312 (G).

Definitional Cross References

“Buyer in ordinary course of business”. Section 1-201.

“Consumer goods”. Section 9-109.

“Goods”. Section 9-105.

“Knows” and “Knowledge”. Section 1-201.

“Person”. Section 1-201.

“Purchase”. Section 1-201.

“Pursuant to commitment”. Section 9-105.

“Secured party”. Section 9-105.

“Security interest”. Section 1-201.

“Value”. Section 1-201.

Special Plain Language Comment

This section describes when buyers of goods are protected from continuing security interests created by their sellers and when the secured parties of the sellers retain the right to foreclose upon the goods in order to satisfy the obligations of the seller.

Library References

Indians ⇄ 23 to 24.

Secured Transactions ⇄ 141.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 93 to 99, 118.

§ 9-308. Purchase of chattel paper and instruments

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument:

A. Which is perfected under § 9-304 (permissive filing and temporary perfection) or under § 9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

B. Which is claimed merely as proceeds of inventory or other goods subject to a security interest (§ 9-306) even though he knows that the specific paper or instrument is subject to the security interest.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-308 of the Uniform Commercial Code as adopted by the states, except that the protection for purchasers of chattel paper or instruments extends to persons claiming security interests in such collateral as proceeds from the sale of all goods, not merely inventory.

Commentary. 1. Chattel paper is defined (§ 9-105) as "a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods". Such paper has become an important class of collateral in financing arrangements, which may as in the automobile and some other fields follow an earlier financing arrangement covering inventory or which may begin with the chattel paper itself

Arrangements where the chattel paper is delivered to the secured party who then makes collections, as well as arrangements where the debtor, whether or not he is left in possession of the paper, makes the collections, are both widely used, and are known respectively as notification (or "direct collection") and non-notification (or "indirect collection") arrangements. In the automobile field, for example, when a car is sold to a consumer buyer under an installment purchase agreement and the resulting chattel paper is assigned, the assignee usually takes possession, the obligor is notified of the assignment and is directed to make payments to the assignee. In the furniture field, for an example on the other hand, the chattel paper may be left in the dealer's hands or delivered to the assignee; in either case the obligor may not be notified, and payments are made to the dealer-assignor who receives them under a duty to remit to his assignee. The widespread use of both methods of dealing with chattel paper is recognized by the provisions of this article, which permit perfection of a chattel paper security interest either by filing or by taking possession.

2. Although perfection by filing is permitted as to chattel paper, certain purchasers of chattel

paper allowed to remain in the debtor's possession take free of the security interest despite the filing. Subsection (B) of the section deals with the case where the security interest in the chattel paper is claimed merely as proceeds—e.g., on behalf of an inventory financier who has not by some new transaction with the debtor acquired a specific interest in the chattel paper. In that case a purchaser, even though he knows of the inventory financier's proceeds interest, takes priority provided he gives new value and takes possession of the paper in the ordinary course of his business. The same basic rule applies in favor of a purchaser of other instruments who claims priority against a proceeds interest therein of which he has knowledge. Thus, a purchaser of a negotiable instrument might prevail under subsection (B) even though his knowledge of the conflicting proceeds claim precluded his having holder in due course status under § 9-309.

3. Subsection (A) deals with the case where the non-possessory security interest in the chattel paper is more than a mere claim to proceeds—i.e., exists in favor of a secured party who has given value against the paper, whether or not he financed the inventory whose sale gave rise to it. In this case the purchaser, to take priority, must not only give new value and take possession in the ordinary course of his business, but he must also take without knowledge of the existing security interest. Thus a secured party who has a specific interest in the chattel paper and not merely a claim to proceeds and who wishes to leave the paper in the debtor's possession can, because of the knowledge requirement, protect himself against purchasers by stamping or noting on the chattel paper the fact that it has been assigned to him.

4. It should be noted that under § 9-304(A) a security interest in an instrument, negotiable or non-negotiable, cannot be perfected by filing (except where the instrument constitutes part of chattel paper). Thus, the only types of perfected non-possessory security interest that can arise in an instrument are the temporary 21-day

perfection provided for in § 9-304(D) and (E) or the ten (10) day perfection in proceeds of § 9-306. Where such a perfected interest exists

in a non-negotiable instrument, purchasers will take free if they qualify under subsection (A) of the section.

Cross References

Point 1: Sections 9-304(A) and 9-305.

Point 2: Section 9-306.

Point 4: Sections 9-304 and 9-306.

Definitional Cross References

“Chattel paper”. Section 9-105.

“Instrument”. Section 9-105.

“Inventory”. Section 9-109.

“Knowledge”. Section 1-201.

“Proceeds”. Section 9-306.

“Purchaser”. Section 1-201.

“Security interest”. Section 1-201.

“Value”. Section 1-201.

Special Plain Language Comment

This section describes the competing priorities between (1) buyers of chattel paper and instruments, and (2) persons with security interests in such collateral, either directly or as “proceeds” of goods sold by the debtor.

Library References

Indians ⇄ 23 to 24.

Secured Transactions ⇄ 142, 143.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 90.

§ 9-309. Protection of purchasers of instruments, documents and securities

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (§ 3-302) or a holder to whom a negotiable document of title has been duly negotiated or a bona fide purchaser of a security, and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-309 of the Uniform Commercial Code as adopted by the states, although this Code does not presently include Articles 7 (regarding documents) and 8 (regarding securities) of the Uniform Commercial Code.

Commentary. 1. Under this article the rights of purchasers of negotiable paper, including negotiable documents of title and investment securities, are determined by the rules of holding in due course and the like which are applicable to the type of paper concerned. See Article 3 of this Code. The rights of parties

which would be governed under Articles 7 and 8 of the Uniform Commercial Code are governed under Navajo law pursuant to 7 N.N.C. § 204.

2. Under § 9-304(A) filing is ineffective to perfect a security interest in instruments (including securities) except those instruments which are part of chattel paper, and, of course, is ineffective to constitute notice to subsequent purchasers. Although filing is permissible as a method of perfection for a security interest in documents, this section provides that the filing does not constitute notice to purchasers.

Cross References

Article 3 and §§ 9-304(A) and 9-308.

Definitional Cross References

“Document of title”. Section 1-201.
 “Holder”. Section 1-201.
 “Holder in due course”. Sections 3-302 and 9-105.
 “Negotiable instrument”. Sections 3-104 and 9-105.
 “Notice”. Section 1-201.
 “Purchaser”. Section 1-201.
 “Security”. Section 9-105.
 “Security interest”. Section 1-201.

Special Plain Language Comment

This section describes the protection which instruments and which certain purchasers have certain holders of negotiable documents and as against competing security interests.

Library References

Indians ⇄ 23 to 24.	Westlaw Topic Nos. 209, 349A.
Secured Transactions ⇄ 143.	C.J.S. Indians §§ 12, 30 to 31.

§ 9-310. Priority of certain liens arising by operation of law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-310 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. The purpose of this section is to provide that liens securing claims arising from work intended to enhance or preserve the value of the collateral take priority over an earlier security interest even though perfected.

2. There was generally no specific statutory rule as to priority between security devices and liens for services or materials. This section makes the lien for services or materials prior in

all cases where they are furnished in the ordinary course of the lienor's business and the goods involved are in the lienor's possession. Some of the statutes creating such liens may expressly make the lien subordinate to a prior security interest. This section does not repeal such statutory provisions. If the statute creating the lien is silent, even though it has been construed by decision to make the lien subordinate to the security interest, this section provides a rule of interpretation that the lien should take priority over the security interest.

Cross References

Sections 9-102(B), 9-104(C) and 9-312(A).

Definitional Cross References

“Goods”. Section 9-105.
 “Person”. Section 1-201.
 “Security interest”. Section 1-201.

Special Plain Language Comment

This section recognizes that, when a person has a lien for services rendered or materials provided to improve, repair or protect collateral, such a lien will generally have priority over competing security interests created under this

article. Mechanic liens are an example of such liens. The creation and terms of such liens are determined by other statutes or decisions by the Navajo courts.

Library References

Indians ☞ 23 to 24.

Secured Transactions ☞ 144.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 90, 100 to 101.

§ 9-311. Alienability of debtor's rights; judicial process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default, although a provision in a security agreement making such transfer constitute a default is valid.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-311 of the Uniform Commercial Code as adopted by the states, although like in California and other states the last clause has been added in order to clarify that such transfers may constitute defaults under the security agreement. Thus, the debtor retains the right to transfer effectively any or all of his interest in the collateral to a third party, although such a transfer may give the secured party remedies against the collateral depending upon the terms of the security agreement.

Commentary. 1. The purpose of this section is to make clear that in all security transactions under this article, the debtor has an interest (whether legal title or an equity) which he can dispose of and which his creditors can reach.

2. This section provides that in all security interests the debtor's interest in the collateral remains subject to claims of other creditors who take appropriate action. Other Navajo laws determine the form of "appropriate process" for other creditors to use to reach a debtor's property.

3. Where the security interest is in inventory, difficult problems arise with reference to attachment and levy. Assume that a debt of one hundred thousand dollars (\$100,000) is secured by inventory worth twice that amount. If by attachment or levy certain units of the inventory are seized, the determination of the debtor's equity in the units seized is not a simple matter. The section leaves the solution of this problem to the courts. Procedures such as marshalling may be appropriate.

Cross References

Sections 9-301(D), 9-307(C) and 9-312(G).

Definitional Cross References

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Rights". Section 1-201.

"Sale". Sections 2-106 and 9-105.

"Security agreement". Section 9-105.

"Security interest". Section 1-201.

Special Plain Language Comment

This section allows the owner of collateral to transfer any or all of his interest in collateral to another secured creditor or purchaser even though a prior security interest exists in the collateral. Other creditors of the owner can also use the court procedures to require the owner's property to be sold in order to satisfy the owner's debts. However, the security agreement signed by the owner of the property may provide that such transfers of the collateral to third parties are defaults entitling the secured creditor to exercise various remedies under this article with respect to the collateral. See §§ 9-502, 9-503 and 9-504.

Library References

Indians ☞ 23 to 24.

Secured Transactions ☞ 166, 170.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 115, 117 to 118, 126.

§ 9-312. Priorities among conflicting security interests in the same collateral

A. The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 9-103 on security interests related to other jurisdictions; and § 9-114 on consignments. The security interests of collecting banks in an item being collected, accompanying documents and proceeds to secure credit given by such bank on such item shall have priority over conflicting perfected security interests in the item and any accompanying documents or proceeds.

B. A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three (3) months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six (6) months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

C. A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if:

1. The purchase money security interest is perfected at the time the debtor receives possession of the inventory, and
2. The purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party; or (ii) before the beginning of the 21-day period where the purchase money security interest is temporarily perfected without filing or possession (§ 9-304(E)); and
3. The holder of the conflicting security interest receives the notification within five (5) years before the debtor receives possession of the inventory, and
4. The notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

D. A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten (10) days thereafter.

E. In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (C) and (D) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

1. Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection; and

2. So long as conflicting security interests are unperfected, the first to attach has priority.

F. For the purposes of subsection (E) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

G. If future advances are made while a security interest is perfected by filing, the taking of possession, or other perfection, the security interest has the same priority for the purpose of subsection (E) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as 9-312 of the Uniform Commercial Code as adopted by the states, except for certain adjustments made because the Code does not presently include Article 4 of the Official Text. The rights which the parties would have under Article 4 of the Uniform Commercial Code are governed under Navajo law pursuant to 7 N.N.C. § 204.

Commentary. 1. In a variety of situations two or more people may claim an interest in the same property. The several sections specified in subsection (A) contain rules for determining priorities between security interests and such other claims in the situations covered in those sections. For cases not covered in those Sections, this section states general rules or priority between conflicting security interests.

2. Subsection (B) gives priority to a new value security interest in crops based on a current crop production loan over an earlier secu-

urity interest in the crop which secured obligations (such as rent, interest or mortgage principal amortization) due more than six (6) months before the crops become growing crops. This priority is not affected by the fact that the person making the crop loan knew of the earlier security interest. In the case of crops which are grown on trees or vines, the crop begins to grow for the purposes of this section when customary cultivation practices begin for a crop season (e.g. pruning or spraying) or when the buds or fruit first appears, whichever occurs first.

3. Subsections (C) and (D) give priority to a purchase money security interest (defined in § 9-107) under certain conditions over non-purchase money interests, which in this context will usually be interests asserted under after-acquired property clauses. See § 9-204 on the extent to which after-acquired property interests are validated and § 9-108 on when a security

interest in after-acquired property is deemed taken for new value. While this article broadly validates the after-acquired property interest, it also recognizes as sound the preference for the purchase money interest. That policy is carried out in subsections (C) and (D).

Subsection (D) states a general rule applicable to all types of collateral except inventory: the purchase money interest takes priority if it is perfected when the debtor receives possession of the collateral or within ten (10) days thereafter. As to the 10-day grace period, compare § 9-301 (B). The perfection requirement means that the purchase money secured party either has filed a financing statement before that time or has a temporarily perfected statement before that time or has a temporarily perfected interest in goods covered by documents under § 9-304(D) and (E) (which is continued in a perfected status by filing before the expiration of the 21-day period specified in that section). There is no requirement that the purchase money secured party be without notice or knowledge of the other interest, and the purchase money secured creditor takes priority although he knows of it or it has been filed.

Under subsection (C), the same rule of priority, but without the 10-day grace period for filing, applies to a purchase money security interest in inventory, with the additional requirement that the purchase money secured party give notification, as stated in subsection (C), to any other secured party who filed earlier for the same item or type of inventory. The reason for the additional requirement of notification is that typically the arrangement between an inventory secured party and his debtor will require the secured party to make periodic advances against incoming inventory or periodic releases of old inventory as new inventory is received. A fraudulent debtor may apply to the secured party for advances even though he has already given a security interest in the inventory to another secured party. The notification requirement protects the inventory financier in such a situation: if he has received notification, he will presumably not make an advance; if he has not received notification (or if the other interest does not qualify as a purchase money interest), any advance he may make will have priority. Since an arrangement for periodic advances against incoming property is unusual outside the inventory field, no notification requirement is included in subsection (D).

Where the purchase money inventory financing began by possession of a negotiable document of title by the secured party, he must in order to retain priority give the notice required by subsection (C) at or before the usual time, i.e., when the debtor gets possession of the inventory, even though his security interest re-

mains perfected for twenty-one (21) days under § 9-304(E).

When under these rules the purchase money secured party has priority over another secured party, the question arises whether this priority extends to the proceeds of the original collateral. Under subsection (D) which deals with non-inventory collateral and where there was no ordinary expectation that the goods would be sold, the section gives an affirmative answer. In the case of inventory collateral under subsection (C), where it was expected that the goods would be sold and where financing frequently is based on the resulting accounts, chattel paper, or other proceeds, the subsection gives an answer limited to the preservation of the purchase money priority only in so far as the proceeds are cash received on or before the delivery of the inventory to a buyer, that is, without the creation of an intervening account to which conflicting rights might attach. The conflicting rights to proceeds consisting of accounts are governed by subsection (E). See Comment 8.

The foregoing rules applicable to purchase money security interests in inventory apply also to the rights in consigned merchandise. See § 9-114.

4. Subsection (E) states a rule for determining priority between conflicting security interests in cases not covered in the sections referred to in subsection (A) or in subsections (B), (C) and (D) of this section. Note that subsection (E) applies to cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (C) and (D).

There is a single priority rule based on precedence in the time as of which the competing parties either filed their security interests or perfected their security interests. The form of the claim to priority, i.e., filing or perfection, may shift from time to time, and the rank will be based on the first filing or perfection so long as there is no intervening period without filing or perfection. Filing may occur as to particular collateral before the collateral comes into existence. Under the standards of § 9-203 perfection cannot occur as to particular collateral until the collateral itself (and not prior collateral) comes into existence and the debtor has rights therein; but under subsection (F) of this section the secured party's priority may date from his time of perfection as to the prior collateral, if perfection or filing has been continuously maintained. Subsection (F) provides that a date of filing or perfection as to original collateral is also a date of filing or perfection as to proceeds. This rule should also be read with § 9-306, which makes it unnecessary to claim proceeds expressly in a financing statement and provides in effect that a filing as to original collateral is also a filing as to proceeds (with exceptions therein stated). Thus, if a financing

statement is filed covering inventory, then (subject to the exception involving multistate problems) this filing is also a filing as to the resulting accounts and constitutes the date of filing as to the accounts.

The party who may have had a prior security interest in inventory (or may have had the only such security interest) does not automatically for that reason have priority as to the accounts. His claim in accounts may or may not have priority over competing filed claims to accounts. The priority is based on precedence as to the accounts under the rules stated in the preceding paragraph.

5. The operation of this section is illustrated by the examples set forth under this and the succeeding Points.

Example 1. "A" files against "X" (debtor) on February 1. "B" files against "X" on March 1. "B" makes a non-purchase money advance against certain collateral on April 1. "A" makes an advance against the same collateral on May 1. "A" has priority even though "B's" advance was made earlier and was perfected when made. It makes no difference whether or not "A" knew of "B's" interest when he made his advance.

The problem stated in the example is peculiar to a notice filing system under which filing may be made before the security interest attaches (see § 9-402). The justification for the rule lies in the necessity of protecting the filing system—that is, of allowing the secured party who has first filed to make subsequent advances without each time having, as a condition of protection, to check for filing later than his. Note, however, that his protection is not absolute: if, in the example, "B's" advance creates a purchase money security interest, he has priority under subsection (D), or, in the case of inventory, under subsection (C) provided he has properly notified "A". (See further Example 3 below.)

Example 2. "A" and "B" make non-purchase money advances against the same collateral. The collateral is in the debtor's possession and neither interest is perfected when the second advance is made. Whichever secured party first perfects his interest (whether by taking possession of the collateral, by filing or otherwise) takes priority, and it makes no difference whether or not he knows of the other interest at the time he perfects his own.

This result may be regarded as a race of diligence among creditors. Subsection (E) (2) adds the thought that so long as neither of the interests is perfected, the one which first attached (i.e., under the advance first made) has priority. The last mentioned rule maybe thought to be of merely theoretical interest, since it is hard to imagine a situation where the case would come into litigation without either "A" or "B" having perfected his interest. If

neither interest had been perfected at the time of the filing of a petition in bankruptcy, of course neither would be good against the trustee in bankruptcy. See Bankruptcy Code § 547.

Example 3. "A" has a temporarily perfected (21-day) security interest, unfiled, in a negotiable document in the debtor's possession under § 9-304 (D) or (E). On the fifth day "B" files and thus perfects a security interest in the same document. On the tenth day "A" files. "A" had priority, whether or not he knows of "B's" interest when he files, because "A" perfected first and has maintained continuous perfection or filing.

6. The application of the priority rules to after-acquired property must be considered separately for each item of collateral. Priority does not depend only on time of perfection, but may also be based on priority in filing before perfection.

Example 4. On February 1 "A" makes advances to "X" (the debtor) under a security agreement which covers "all the machinery in X's plant" and contains an after-acquired property clause. "A" promptly files his financing statement. On March 1 "X" acquires a new machine, "B" makes an advance against it and files his financing statement. On April 1 "A", under the original security agreement, makes an advance against the machine acquired March 1. If "B's" advance creates a purchase money security interest, he has priority under subsection (D) (provided he filed before "X" received possession of the machine or within ten (10) days thereafter). If "B's" advance, although he gave new value, did not create a purchase money interest, "A" has priority as to both of his advances by virtue of his priority in filing, although the parties perfected simultaneously on March 1 as to the new machine.

The application of the priority rules to proceeds presents special features discussed in Comment 8.

7. The application of the priority rules to future advances is complicated. In general, since any secured party must operate in reference to the Code's system of notice, he takes subject to future advances under a priority security interest while it is perfected through filing, possession, or otherwise, whether the advances are committed or non-committed, and to any advances subsequently made "pursuant to commitment" (§ 9-105) during that period. In the rare case when a future advance is made without commitment while the security interest is perfected temporarily without either filing, possession, or otherwise, the future advance has priority from the date it is made. These rules are more liberal toward the priority of future advances than the corresponding rules applicable to an intervening buyer (§ 9-307(C)) be-

cause of the different characteristics of the intervening party. Compare the corresponding rule applicable to an intervening judgment creditor. (§ 9-301 (D).)

Example 5. On February 1 "A" makes an advance against machinery in the debtor's possession and files his financing statement. On March 1 "B" makes an advance against the same machinery and files his financing statement. On April 1 "A" makes a further advance under the original security agreement, against the same machinery (which is covered by the original financing statement and thus perfected when made). "A" has priority over "B" both as to the February 1 and as to the April 1 advance, and it makes no difference whether or not "A" knows of "B's" intervening advance when he makes his second advance.

"A" wins, as to the April 1 advance, because he first filed even though "B's" interest attached, and indeed was perfected, before the April 1 advance. The same rule would apply if either "A" or "B" had perfected through possession. Section 9-204(C) and the Comment thereto should be consulted for the validation of future advances.

The same result would be reached even though "A's" April 1 advance was not under the original security agreement, but was under a new security agreement under "A's" same financing statement or during the continuation of "A's" possession.

8. The application of the priority rules of subsections (E) and (F) to proceeds is shown by the following examples:

Example 6: "A" files a financing statement covering a described type of inventory then owned or thereafter acquired. "B" subsequently takes a purchase money security interest in certain inventory described in "A's" financing statement and achieves priority over "A" under subsection (C) as to this inventory. This inventory is then sold, producing proceeds.

If the proceeds of the inventory are instruments or chattel paper, the rights of "A" and "B" (on the one hand) and any adverse claimant to these proceeds (on the other hand) are governed by §§ 9-308 and 9-309. If the proceeds are cash, subsection (C) indicates that "B's" priority as to the inventory carries over to the cash. Proceeds which are accounts constitute different collateral, and the priorities as to the original collateral do not control the priority as to the accounts. Under §§ 9-306 and 9-312(F), "A's" first filing as to the inventory constitutes a first filing as to the accounts, pro-

vided that the same filing office would be appropriate for filing as to accounts under the rules of § 9-306(C). Therefore, "A" has priority as to the accounts.

Many parties financing inventory are quite content to protect their first security interest in the inventory itself, realizing that when inventory is sold, someone else will be financing the accounts and the priority for inventory will not run forward to the accounts. Indeed, the cash supplied by the accounts financier will be used to pay the inventory financing. In some situations, the party financing the inventory on a purchase money basis makes contractual arrangements that the proceeds of accounts financing by another be devoted to paying off the first inventory security interest.

Example 7. In the foregoing case, if "B" had filed directly as to accounts, the date of that filing as to accounts would be compared with the date of "A's" first filing as to the inventory, and the first-to-file rule would prevail.

Subsection (F) provides that a filing as to original collateral determines the date of a filing as to the proceeds thereof. This rule implies, of course, that the filing as to the original collateral is effective as to proceeds under the rule of § 9-306(C).

Example 8. If "C" had filed as to accounts in Example 6 above before either "A" or "B" had filed as to inventory, "C's" first filing as to accounts would have priority over the filings of "A" and "B", which would also constitute filings as to accounts under the rule just mentioned. "A's" and "B's" position as to the inventory gives them no automatic claim to the proceeds of the inventory consisting of accounts against someone who has filed earlier as to accounts. If, on the other hand, either "A's" or "B's" filings as to the inventory constituted good filings as to accounts and these filings preceded "C's" direct filings as to accounts, "A" or "B" would outrank "C" as to the accounts.

If the filings as to inventory were not effective under subsection (F) for filing as to accounts because a filing for accounts would have to be in a different filing office under § 9-103(C), these inventory filings would nevertheless be effective for ten (10) days as to accounts. See § 9-306. If the perfection of the security interest in accounts was continued within the ten (10) days by appropriate filings, then "A's" and "B's" interests in the accounts would date from the date of filing as to inventory.

Cross References

Sections 9-204(A) and 9-303.

Point 1: Sections 9-114, 9-301, 9-304, 9-306, 9-307, 9-308, 9-309, 9-310, 9-313, 9-314, 9-315 and 9-316.

Point 3: Sections 9-108, 9-204, 9-304(D) and (E).

Points 4 to 7: Sections 9-204, 9-301(D), 9-304(D) and (E), 9-306, 9-307(C) and 9-402(A).

Point 8: Sections 9-103(F) and 9-306(C).

Definitional Cross References

“Chattel paper”. Section 9-105.
 “Collateral”. Section 9-105.
 “Debtor”. Section 9-105.
 “Documents”. Section 9-105.
 “Give notice”. Section 1-201.
 “Goods”. Section 9-105.
 “Instruments”. Section 9-105.
 “Inventory”. Section 9-109.
 “Knowledge”. Section 1-201.
 “Person”. Section 1-201.
 “Proceeds”. Section 9-306.
 “Purchase money security interest”. Section 9-107.
 “Pursuant to commitment”. Section 9-105.
 “Receives” notification. Section 1-201.
 “Secured party”. Section 9-105.
 “Security”. Section 9-105.
 “Security interest”. Section 1-201.
 “Value”. Section 1-201.

Special Plain Language Comment

This section states the rules for priority types of collateral and in proceeds from the sale among competing security interests in various or other disposition of collateral.

Library References

Indians ☞23 to 24.

Secured Transactions ☞138 to 146.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 10, 88, 90 to 107, 118.

§ 9-313. Priority of security interests in fixtures

A. In this section and in the provisions of Part 4 of this article referring to fixture filing, unless the context otherwise requires:

1. Goods are “fixtures” when they become so related to particular real estate because of their attachment or affixation to realty or other fixtures, that a deed to the real property would transfer the goods if they were not removed from the real property (assuming for such purposes that the realty could be lawfully deeded). Nothing in this article shall be deemed to make fixtures real property or, to the maximum extent permitted by federal law, to cause fixtures to become part of any real property held in trust for the Navajo Nation. No personal property which is not permanently affixed or attached to real property shall be deemed to be a fixture. No personal property which is affixed or attached to any real property (or to any building or other real property structure or improvement) and becomes a fixture or fixtures shall lose its character or status as personal property subject to this article as long as the fixture can be removed without causing damage to the real property which could only be repaired at a cost exceeding the value of the fixture or fixtures at such time (excluding from such computation any decrease in the value of the realty because of the removal of the fixtures).

2. A “fixture filing” is the filing in the required office (§ 9-401 (A) (1)) of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of § 9-402(E).

3. A mortgage is a “construction mortgage” to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates.

B. A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

C. This article does not prevent creation of an encumbrance upon, fixtures pursuant to real estate law.

D. A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

1. The security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the debtor has an interest of record in the real estate, is in possession of the real estate (whether or not such possession is exclusive or continuous) or, in the case of land owned by or held in trust for the Navajo Nation, the debtor has a right to use of the land; or

2. The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate, is in possession of the real estate (whether or not such possession is exclusive or continuous) or, in the case of land owned by or held in trust for the Navajo Nation, the debtor has a right to use of the land; or

3. The fixtures are readily removable factory, office or business machines and other goods or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any methods permitted by this article; or

4. The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

E. A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where:

1. The encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

2. The debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor’s right terminates, the priority of the security interest continues for a reasonable time.

F. Notwithstanding subsection (D)(1), but otherwise subject to subsections (D), (E) and (I), a security interest in fixtures is subordinate to a construction

mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

G. Subject to subsection (I), in cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

H. When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate, but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

I. Except as may otherwise be stated in any lease or other agreement between the Navajo Nation (or any authorized governmental official, agency or authority) and any owner or secured party relating to the use or possession of any real property owned by or held in trust for the Navajo Nation, and to the extent permitted by federal law, (i) the Navajo Nation consents to the creation of security interests in fixtures owned by persons having the right to use or possess any such real property and (ii) the Navajo Nation's interest in any fixtures shall not have priority over any security interests in fixtures under this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-313 of the Uniform Commercial Code as adopted by the states, except that:

A. The term "fixtures" is defined in a functional manner because of the complex state of the applicable real property laws and because of the policies described in these Comments;

B. Goods are less readily classified as real property compared to the Official Text because that characterization might result in goods becoming part of trust property of the Navajo Nation (the extent to which improvements become trust property, if at all, is unclear); and

C. The requirement for the debtor's ownership of a record interest in the land on which the fixtures are located or possession of that land is relaxed to accommodate the customary and sometimes non-exclusive uses of Tribal lands by members of the Tribe without recorded interests.

The general policy of the Navajo Nation is to encourage commercial transactions and to enable Navajo debtors to maximize their credit worthiness by maximizing the business property which they can use as collateral. Consistent with that policy, goods do not become fixtures or lose their status as inventory, equipment, farm products or consumer goods unless they are affixed or attached to land or buildings or other real property improvements in a manner which has substantial permanence and which would cause the fixtures to be included in a conveyance by deed of the real property. Federal law provides that improvements on a leasehold held in trust for the Navajo Nation or an individual Indian becomes the property of the lessor unless the lease provides otherwise. 25 C.F.R. § 162.9 (1984). Improvements are not defined in the regulations, but the Code in subsection (B) uses the term improvement. Improvement is generally considered to be a class of property distinct from fixtures. Improve-

ments are much more integrally related to the land than fixtures. For some examples of fixtures see 16 N.N.C. § 1401 (B). Temporary attachments or the creation of safety devices or braces to support the goods do not cause the goods to become fixtures, since a contrary rule might cause persons wishing to prevent goods from becoming fixtures to minimize safety precautions. As stated in subsection (I), this article attempts to distinguish fixtures from trust property and improvements on the trust property of the Navajo Nation in order to facilitate financing for such property.

Commentary. 1. Section 9-313 deals with the problem that certain goods which are the subject of Article 9 financing become so affixed or otherwise so related to real estate they may become part of the real estate, and that personal property security interests would be subordinate to real estate interests except as protected by the priorities regulated by the section. These goods are called "fixtures". Some fixtures also retain their personal property nature in that an Article 9 financing with respect to them may exist and may continue to be recognized, if notice therefore is given to real estate interests in accordance with this section. However, this concept does not apply if the goods are integrally incorporated into the real estate in the forming of a permanent structure, i.e., an improvement. Improvements may also become the property of the lessor on land held in trust either for the Navajo Nation or individual Indians. 25 C.F.R. § 162.9 (1984).

The term "fixture filing" has been introduced and defined. It emphasizes that when a filing is intended to give the priority advantages herein discussed against real estate interests, the filing must (except as stated below) be for record in the real estate records and indexed therein, so that it will be found in a real estate search, except for lands owned by or held in trust for the Navajo Nation, which are filed as described in § 9-401 (A) (1).

Since the determination in advance of judicial decision of the question whether goods have become fixtures is a difficult one, no inference may be drawn from a fixture filing that the secured party concedes that the goods are or will become fixtures. The fixture filing may be merely precautionary.

2. "Fixture" is defined to include any goods which become so related to particular real estate that an interest in them may arise under real estate law, and therefore, goods integrally incorporated into the real estate are fixtures. However, under subsection (B) no security interest exists under Article 9 in ordinary building materials incorporated into an improvement on land. Goods may be technically "ordinary building materials", e.g., window glass, but if they are incorporated into a structure which as a

whole has not become an integral part of the real estate, the rules applicable to the ordinary building materials follow the rules applicable to the structure itself. The outstanding examples presenting this kind of problem are the modern "mobile homes" and the modern prefabricated steel buildings usable as warehouses, garages, factories, etc. In the case of the mobile homes, most of them are erected on leased land or other land not owned by the debtor, and the right of the debtor under a mobile home purchase contract to remove the goods as lessee or user of the land will make clear that his secured party ordinarily has a similar right. See § 9-313(E) (2). Although such mobile homes and prefabricated buildings might not be considered improvements under 25 C.F.R. § 162.9, owners of such structures who place them on leased land should ensure that the lease grants them the authority to remove them.

In cases where mobile homes or prefabricated steel buildings are erected by a person having an ownership interest in the land, the question into which category the buildings fall is one determined by other applicable law. In general, the governing law will not be that applicable in determining whether goods have become real property between landlord and tenant, or between mortgagor and mortgagee, or between grantor and grantee, but rather that applicable in a three party situation, determining whether secured financing under Article 9 can survive as against parties who acquire rights through the affixation of the goods to the real estate.

The assertion that no security interest exists in ordinary building materials is only for the operation of the priority provisions of this section. It is without prejudice to any rights which the secured party may have against the debtor himself if he incorporated the goods into real estate or against any party guilty of wrongful incorporation thereof in violation of the secured party's rights.

3. Under these concepts the section recognizes three categories of goods: (1) those which retain their character entirely as goods and are not part of the real estate; (2) ordinary building materials which have become an integral part of the real estate and cannot retain their character as goods for purposes of finance; and (3) an intermediate class which may have become real estate for certain purposes, but as to which secured financing under Article 9 maybe preserved. This third and intermediate class is the primary subject of this section. The demarcation between these classifications is not exhaustively delineated by this section, the determination of whether a good is a fixture will depend on the same three-part test which is common in many jurisdictions: (1) annexation to the realty; (2) adaptation or application to the use or purpose to which that part of the realty to which it

is connected is appropriate; and (3) intention to make the article a permanent accession to the real property. See *Energy Control Services, Inc. v. Arizona Department of Economic Security*, 135 Ariz. 20, 658 P.2d 820 (1982); *Garrison General Tire Service v. Montgomery*, 75 N.M. 321, 404 P.2d 143 (1965); *State Road Commission v. Papanikolas*, 19 Utah 2d 153, 427 P.2d 749 (Utah 1967).

4. In considering fixture priority problems, there will always first be a preliminary question whether real estate interests per se have an interest in the goods as part of real estate. If not, it is immaterial, so far as concerns real estate parties as such, whether a security interest in goods is perfected or unperfected. In no event does a real estate party acquire an interest in "pure" goods as defined in this article just because a security interest therein is unperfected. If, on the other hand, real estate law gives real estate parties an interest in the goods, a conflict arises between the laws relating to real and personal property, and this section states the priorities.

A. The principal exception to the general rule of priority stated in Comment (B) based on time of filing or recording is a priority given in subsection (D) (1) to purchase money security interests in fixtures as against prior recorded real estate interests, provided that the purchase money security interest is filed as a fixture filing in the required place before the goods become fixtures or within ten (10) days thereafter. This priority corresponds to one given in § 9-312(D), and the ten (10) days of grace represents a reduction of the purchase money priority as against prior interests in the real estate under the present § 9-313, where the purchase money priority exists even though the security interest is never filed.

It should be emphasized that this purchase money priority with the ten (10) day grace period for filing is limited to rights against prior real estate interests. There is no such priority with the 10-day grace period as against subsequent real estate interests. The fixture security interest can defeat subsequent real estate interests only if it is filed first and prevails under the usual conveyancing rule recognized in subsection (D) (2) or as otherwise provided in this section.

B. The general principle of priority announced in this section is set forth in subsection (D) (2). It is basically that a fixture filing gives to the fixture security interest priority as against other real estate interests according to the usual priority rule of conveyancing, that is, the first to file or record prevails. An apparent limitation to this principle set forth in subsection (D)(2) (namely that the secured party must have had priority over any interest of a predecessor in title of the conflicting encumbrancer or owner)

is not really a limitation, but is an expression of the usual rule that a person must be entitled to transfer what he has. Thus, if the fixture security interest is subordinate to a mortgage, it is subordinate to an interest of an assignee of the mortgage even though the assignment is a later recorded instrument. Similarly, if the fixture security interest is subordinate to the rights of an owner, it is subordinate to a subsequent grantee of the owner and likewise subordinate to a subsequent mortgagee of the owner.

C. A qualification to the rule based on priority of filing or recording is subsection (D) (4), where priority based on precedence in filing or recording is preserved, but there is no requirement that, as against a judgment lienor of the real estate, the prior filing of the fixture security interest must be in the real estate records. The fixture security interest if perfected first should prevail even though not filed or recorded in real estate records, because generally a judgment creditor is not a reliance creditor who would have searched records. Thus, even a prior filing in the records required for goods protects the priority of a fixture security interest against a subsequent judgment lien.

It is hoped that this rule will have the effect of preserving a fixture security interest so filed against invalidation by a trustee in bankruptcy. That would be the result under § 544(1) of the Bankruptcy Code if the time of perfection of the fixture security interest were measured by the judgment creditor test applicable to personal property. It would not be the result if the time of perfection were measured by the purchase test applicable to real estate. Since the fixture security interest arises against the goods in their capacity as personal property, the bankruptcy courts should apply the judgment creditor test. The effectiveness of the drafting to achieve its purchase cannot be known certainly until the courts adjudicate the question or until it is settled by amendment to the Bankruptcy Code.

The phrase "lien by legal or equitable proceedings" in § 9-313 (D) (4) is intended to encompass all liens on real estate obtained by any creditor action under the Bankruptcy Code.

D. A special exception to the usual rule if priority based on precedence in time is the one of § 9-313(D)(3) in favor of holders of security interests in factory, office and business machines and other goods, and in certain replacement domestic appliances, as discussed below. To repeat, a fixture conflict is not reached if the goods are held as a matter of applicable law not to have become part of the real estate, which will frequently be the holding for goods of these types. If the opposite is held, the rule of subsection (D) (3) operates only if the fixture security interest is perfected before the goods become fixtures. Having been perfected, it would of course have priority over subsequent real

estate interests under the rule of subsection (D) (2). Since it would in almost all cases be a purchase money security interest, it would also have priority over other real estate interests under the purchase money priority of subsection (D)(1), discussed in subsection (A) above. The rule is stated separately because the permitted perfection is by any method permitted by the Article, and not exclusively by a fixture filing.

As an additional point, in the case of machinery, the separate statement of this rule makes clear that it is not overridden by the construction mortgage priority of § 9-313(F) discussed in Comment (E) below, as may have been true if reliance had been solely on the purchase money priority. Factory, office and business machines and other goods are not always financed as part of a construction mortgage, and the mortgagee should be alert to conflicting chattel financing of these machines and other goods.

As to appliances, the rule stated is limited to readily removable replacements, not original installations, of appliances which are consumer goods in the hands of the debtor (§ 9-109). To facilitate financing of original appliances in new dwellings as part of the real estate financing of the dwellings, no special priority is given to chattel financing or original appliances. The section leaves to other applicable law the question whether original installations are fixtures to which the protection accorded by this section to construction mortgages would be applicable. Likewise, it is recognized that (when not supplied by tenants) appliances in commercial apartment buildings may be intended as permanent improvements, and no special rule is stated for appliances in that case. The special priority rule here stated in favor of Article 9 financing is limited to situations where the installation of appliances may not be intended to be permanent, e.g., replacement appliances used by the debtor or his family (consumer goods). The principal effect of the rule is to make clear that a secured party financing occasional replacements of domestic appliances in noncommercial owner-occupied contexts need not concern himself with real estate descriptions or records; indeed, for a purchase-money replacement of consumer goods, perfection without any filing will be possible. (The priority of the construction mortgage has no application to replacement appliances.)

E. The purchase money priority presents a difficult problem in relation to construction mortgages. The latter will ordinarily have been recorded even before the commencement of delivery of materials to the job, and therefore would be prior in rank to the fixture security interests were it not for the problem of the purchase money priority. Subsection (F) expressly gives priority to the construction mort-

gage recorded before the filing of the fixture security interest, but this priority of a construction mortgage applies only during the construction period leading to the completion of the improvement. As to additions to the building made long after completion of the improvement, the construction priority will not apply simply because the additions are financed by the real estate mortgagee under an open end clause of his construction mortgage. In such case, the applicable principles will be those of §§ 9-313(D)(1) and (13)(2). A refinancing of a construction mortgage has the same priority as the mortgage itself.

The phrase "an obligation incurred for the construction of an improvement" covers both optional advances and advances pursuant to commitment, and both types of advances have the same priority under the section.

5. The section does recognize that fixture filing may be necessary when the debtor is in possession of the real estate (e.g., a lessee) even without an interest of record. This possibility of a filing against a debtor who is not in the real estate chain of title makes it necessary to require the furnishing of the name of a record owner in such cases. See §§ 9-401 (A)(1), 9-402(C), item 3; 9-402(E); and 9-403(G).

6. The status of fixtures installed by tenants (as well as such persons as licensees and holders of easements) is defined by subsection (E)(2) to the effect that if the debtor (tenant or other interest mentioned) has the right to remove the fixture as against a real estate interest, the secured party has priority over that real estate interest.

7. Real estate lenders and title companies will have little difficulty in locating relevant fixture security interests applicable to particular parcels of real estate because of the provisions as to real estate description in fixture filings, the indexing thereof, and other related provisions in Part 4 of Article 9.

8. Real estate lending is typically long-term, and is usually done by institutional investors who can afford to take a long view of the matter rather than concentrating on the results of any particular case. It is apparent that the rule which permits and encourages purchase money fixture financing, which in contrast is typically short term, will result in the modernization and improvement of real estate, rather than in its deterioration, and will on balance benefit long-term real estate lenders. Because of the short-term character of the Article 9 financing, it will rarely produce any conflict in fact with the real estate lender. The contrary rule would chill the availability of short-term credit for modernization of real estate by installation of new fixtures and in the long run could not help real estate lenders.

9. Subsection (H) provides that a secured party entitled to priority may in all cases sever and remove his collateral, subject, however, to a duty to reimburse any real estate claimant (other than the debtor himself) for any physical injury caused by the removal. The right to reimburse is implemented by the last sentence of subsection (H) which gives the real estate claimant a statutory right to security or indemnity failing which he may refuse permission to remove fixtures. The subsection (H) rule thus

protects the real estate claimant under the reimbursement provisions.

10. Section 9-313(I) addresses the unique status of much of the real property subject to the jurisdiction of the Navajo Nation and to a significant extent the jurisdiction of the federal government. See 25 U.S.C. §§ 81, 396, 397, 402, 415, & 635. This section does not, of course, alter federal law, but it does state the general rules which govern to the extent of the jurisdiction of the Navajo Nation over its real property and fixtures.

Cross References

Sections 2-107, 9-102(A), 9-104(J) and 9-312(A), and Parts 4 and 5.

Definitional Cross References

“Collateral”. Section 9-105.
 “Contract”. Section 1-201.
 “Creditor”. Section 1-201.
 “Debtor”. Section 9-105.
 “Encumbrance”. Section 9-105.
 “Goods”. Section 9-105.
 “Knowledge”. Section 1-201.
 “Mortgage”. Section 9-105.
 “Person”. Section 1-201.
 “Purchase”. Section 1-201.
 “Purchaser”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.
 “Value”. Section 1-201.
 “Writing”. Section 1-201.

Special Plain Language Comment

This section states the treatment for competing interests in goods which are so affixed or attached to real estate that they could be claimed both by persons having an interest in the real estate and by persons having a security

interest in the goods under this article. This section is especially important because of the trust character of much of the real estate subject to the jurisdiction of the Navajo Nation.

Library References

Fixtures ☞9.
 Indians ☞9, 23 to 24.
 Secured Transactions ☞138.
 Westlaw Topic Nos. 177, 209, 349A.

C.J.S. Indians §§ 12, 30 to 31, 67.
 C.J.S. Secured Transactions §§ 88, 90, 106 to 107.

§ 9-314. Accessions

A. A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section “accessions”) over the claims of all persons to the whole except as stated in subsection (C), and subject to § 9-315(A).

B. A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (C), but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who

has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

C. The security interests described in subsections (A) and (B) do not take priority over:

1. A subsequent purchaser for value of any interest in the whole; or
2. A creditor with a lien on the whole subsequently obtained by judicial proceedings; or
3. A creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for, without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale (other than the holder of a perfected security interest purchasing at his own foreclosing sale) is a subsequent purchaser within this section.

D. When under subsection (A) or (B) and (C) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default (subject to the provisions of Part 5) remove his collateral from the whole, but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury (but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them). A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-314 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. The purpose of this section is to state when a secured party claiming an interest in goods installed in or affixed to other goods is entitled to priority over a party with a security interest in the whole.

2. This section does not apply to goods which, for example, are so commingled in a manufacturing process that their original identity is lost. That type of situation is covered in § 9-315. Section 9-315 should also be consulted for the effect of a financing statement which claims both component parts and the resulting product.

Cross References

Sections 9-203(A), 9-303 and 9-312(A) and Part 5.
Point 2: Section 9-315.

Definitional Cross References

“Collateral”. Section 9-105.
“Creditor”. Section 1-201.
“Debtor”. Section 9-105.
“Goods”. Section 9-105.
“Knowledge”. Section 1-201.

“Person”. Section 1-201.
 “Purchaser”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.
 “Value”. Section 1-201.
 “Writing”. Section 1-201.

Special Plain Language Comment

This section describes the treatment of goods which are added to other goods to create combined products and the competing interests of secured creditors with interests in the component goods and in the combined whole products. For example, if a citizens band radio is added to a car, the radio is an “accession” to the whole car.

Library References

Accession \Leftrightarrow 2.	C.J.S. Accession §§ 9 to 12.
Indians \Leftrightarrow 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions \Leftrightarrow 138, 141.	C.J.S. Secured Transactions §§ 88, 90, 93 to 99, 106 to 107, 118.
Westlaw Topic Nos. 7, 209, 349A.	

§ 9-315. Priority when goods are commingled or processed

A. If a security interest in goods was performed and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if:

1. The goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or
2. A financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled. In a case to which subsection (2) applies, no separate security interest in the part of the original goods which has been manufactured, processed or assembled into the product may be claimed under § 9-314.

B. When under subsection (A) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-315 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. The purpose of this section is to state when a secured party whose collateral contributes to a product has priority over others who have conflicting claims in the same product.

2. Under this section the security interest continues in the resulting mass or product in the cases stated in subsection (A).

3. This section applies not only to cases where flour, sugar and eggs are commingled

into cake mix or cake, but also to cases where components are assembled into a machine. In the latter case a secured party is put to an election at the time of filing, by the last sentence of subsection (A), whether to claim under this section or to claim a security interest in one component under § 9-314.

4. Subsection (B) is needed because under subsection (A) it is possible to have more than one secured party claiming an interest in a product. The rule stated treats all such interests as being of equal priority entitled to share ratably in the product.

5A N.N.C. § 9-315

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Cross References

Sections 9-203(A), 9-303, 9-312(A) and 9-314.

Definitional Cross References

“Goods”. Section 9-105.

“Security interest”. Section 1-201.

Special Plain Language Comment

This section describes the treatment of security interests in goods which become part of a product or mass. For example, this section covers grain which is commingled with other grain of the same type in a silo or other storage facility and grain which is made into bread.

Library References

Confusion of Goods ⅈ6.

Indians ⅈ23 to 24.

Secured Transactions ⅈ115.1, 138 to 146.

Westlaw Topic Nos. 90, 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 10 to 11, 84, 88, 90 to 107, 118.

§ 9-316. Priority subject to subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-316 of the Uniform Commercial Code as adopted by the states.

Commentary. The several preceding sections deal elaborately with questions of priority.

This section is inserted to make it entirely clear that a person entitled to priority may effectively agree to subordinate his claim. Only the person entitled to priority may make such an agreement: his rights cannot be adversely affected by an agreement to which he is not a party.

Cross References

Sections 1-102 and 9-312(A).

Definitional Cross References

“Agreement”. Section 1-201.

“Person”. Section 1-201.

Library References

Indians ⅈ23 to 24.

Secured Transactions ⅈ147.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 108.

§ 9-317. Secured party not obligated on contract of debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor’s acts or omissions.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-317 of the Uniform Commercial Code as adopted by the states. This section shall apply to all approved contracts.

This section clarifies that the secured party is not liable for the conduct or contracts of the

debtor. The secured party is not the principal or agent of the debtor, even if the secured transaction contemplates the debtor's sale of collateral and the payment of proceeds to the secured party. This is true for all types of secured transactions, including those involving trust receipts.

Cross References

Section 2-210(D).

Definitional Cross References

"Collateral". Section 9-105.

"Contract". Section 1-201.

"Debtor". Section 9-105.

"Secured party". Section 9-105.

"Security interest". Section 1-201.

Library References

Indians ⇄ 23 to 24.

Secured Transactions ⇄ 169.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 125.

§ 9-318. Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment

A. Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in § 9-206, the rights of an assignee are subject to:

1. All the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and
2. Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment which conspicuously states that the assignee intends by such notice to limit defenses and offsets by the account debtor on his obligations to the debtor.

B. So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee, unless the account debtor has otherwise agreed, but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

C. The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been

assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

D. A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-318 of the Uniform Commercial Code as adopted by the states, except that it requires greater clarity in a secured party's notification to the account debtor.

Commentary. 1. An assignee (including a secured party) has traditionally been subject to defenses or set offs existing before an account debtor is notified of the assignment. When the account debtor's defenses on an assigned claim arise from the contract between him and the assignor, it makes no difference whether the breach giving rise to the defense occurs before or after the account debtor is notified of the assignment (subsection (A) (1)). The account debtor may also have claims against the assignor which arise independently of that contract: an assignee is subject to all such claims which accrue before, and free of all those which accrue after, the account debtor is notified (subsection (A) (2)). The account debtor may waive his right to assert claims or defenses against an assignee to the extent provided in § 9-206.

2. Subsection (B) makes good faith-modifications by assignor and account debtor without the assignee's consent effective against the assignee even after notification. When, for example, it becomes necessary for a government agency to cut back or modify existing contracts, comparable arrangements must be made promptly in hundreds and even thousands of subcontracts lying in many tiers below the prime contract. Typically, the right to payments under these subcontracts will have been assigned. The government as sovereign, might have the right to amend or terminate existing contracts apart from statute. This subsection gives the prime contractor (the account debtor) the right to make the required arrangements directly with his subcontractors without undertaking the task or procuring assents from the many banks to whom rights under the contracts may have been assigned. Assignees are protect-

ed by the provision which gives them automatically corresponding rights under the modified or substituted contract. Notice that subsection (B) applies only so far as the right to payment has not been earned by performance, and therefore its application ends entirely when the work is done or the goods are furnished.

3. Subsection (C) clarifies the right of an account debtor to make payment to his seller-assignor in an "indirect collection" situation (see Comment to § 9-308). So long as the assignee permits the assignor to collect claims or leaves him in possession of chattel paper which does not indicate that payment is to be made at some place other than the assignor's place of business, the account debtor may pay the assignor even though he may know of the assignment. In such a situation an assignee who wants to take over collections must notify the account debtor to make further payments to him.

4. Subsection (D) denies effectiveness to contractual terms prohibiting assignment of sums due and to become due under contracts of sale, construction contracts and the like. Under the rule as stated, an assignment would be effective, even if made to an assignee who took with full knowledge that the account debtor had sought to prohibit or restrict assignment of the claims.

5. The Federal Assignment of Claims Code of 1940 - to which of course this section is subject - requires that assignments of claims against the United States be filed as provided in that Code. Many large business enterprises, situated like the United States in that claims against them are held by hundreds or thousands of subcontractors or suppliers, often require in their contract or purchase order forms that assignments against them be filed in a prescribed way. Subsection (C) requires reasonable identification of the account assigned and recognizes the right of an account debtor to require reasonable proof of the making of the

assignment and to that extent validates such requirements in contracts or purchase order forms. If the notification does not contain such reasonable identification or if such reasonable proof is not furnished on request, the account debtor may disregard the assignment and make payment to the assignor. What is "reasonable" is not left to the arbitrary decision of the ac-

count debtor; if there is doubt as to the adequacy either of a notification or of proof submitted after request, the account debtor may not be safe in disregarding it, unless he has notified the assignee with commercial promptness as to the respects in which identification or proof is considered defective.

Cross References

Point 1: Section 9-206.
Point 3: Sections 9-205 and 9-308.
Point 4: Section 2-210(B) and (C).

Definitional Cross References

"Account". Section 9-106.
"Account debtor". Section 9-105.
"Agreement". Section 1-201.
"Contract". Section 1-201.
"Good faith". Section 1-201.
"Party". Section 1-201.
"Receives notification". Section 1-201.
"Rights". Section 1-201.
"Sale". Sections 2-106 and 9-105.
"Seasonably". Section 1-204.
"Term". Section 1-201.

Special Plain Language Comment

This section describes the rights and obligations between a person who owes money on a right to payment which has become collateral and the secured party with a security interest in that collateral. In particular, this section describes the extent to which a buyer of property

from the seller-debtor may assert defenses which the buyer has against the seller-debtor to the payment of the purchase price against the secured party of the seller-debtor or against a purchaser of that right to receive payment.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄ 181 to 191.	C.J.S. Secured Transactions §§ 25, 134 to 143.
Westlaw Topic Nos. 209, 349A.	

Part 4. Filing

§ 9-401. Place of filing; erroneous filing; removal of collateral

A. The proper place to file in order to perfect a security interest is as follows:

1. When the collateral is timber to be cut, or is minerals or the like (including oil and gas) or accounts subject to § 9-103(E), or when the financing statement is filed as a fixture filing (§ 9-313) and the collateral is goods which are or are to become fixtures, then, in the Commerce Department within the Division of Economic Development or its designated successor;
2. In all other cases, in the Commerce Department within the Division of Economic Development or its designated successor.

B. A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

C. A filing which is made in the proper place under the law of this jurisdiction continues effective for four (4) months after a change in the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is changed. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new required place within said period. The security interest may also be perfected in the new place after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new place. A change in the use of the collateral does not impair the effectiveness of the original filing.

D. The rules stated in § 9-103 determine whether filing is necessary in this jurisdiction.

E. Notwithstanding the preceding subsections, and subject to § 9302(C), the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Commerce Department within the Division of Economic Development or its designated successor. This filing constitutes a fixture filing (§ 9-313) as to the collateral described therein which is or is to become fixtures.

F. For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

History

CD-61-86, December 11, 1986.
CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-401 of the Uniform Commercial Code as adopted by the states, except that adjustments have been made in the filing requirements to reflect the differences in the manner in which land is held within Navajo Indian Country and most states. The changes reflect the fact that the Navajo Nation wishes to exercise its civil jurisdiction over Navajo Indian Country to avoid the confusion caused by the otherwise conflicting jurisdictions.

Commentary. 1. When a secured party has in good faith attempted to comply with the filing requirements but has not done so correctly, subsection (B) makes his filing effective in so far as it was proper, and also makes it good for

all collateral covered by the financing statement against any person who actually knows the contents of the improperly filed statement.

2. Subsection 9-401 (C) deals with change of residence or place of business or the location or use of the goods after a proper filing has been made. The subsection is important only when local filing is required, and covers only changes between local filing units in this jurisdiction. For changes of location between jurisdiction see § 9-103 (A) (4).

3. The usual filing rules do not apply well for a transmitting utility (defined in § 9-105). The Code provides that for transmitting utilities the filing need only be in the Commerce Department within the Division of Economic Development or its designated successor. The nature of

the debtor will inform persons searching the record as to where to make a search.

Cross References

Sections 9-302, 9-304 and 9-307(B).

Point 2: Section 9-103(C).

Point 3: Sections 9-402(E) and 9-403(F).

Definitional Cross References

“Account”. Section 9-106.

“Collateral”. Section 9-105.

“Consumer goods”. Section 9-109.

“Debtor”. Section 9-105.

“Equipment”. Section 9-109.

“Farm products”. Section 9-109.

“Financing statement”. Section 9-402.

“Fixture filing”. Section 9-313.

“Good faith”. Section 1-201.

“Goods”. Section 9-105.

“Knowledge”. Section 1-201.

“Person”. Section 1-201.

“Secured party”. Section 9-105.

“Security interest”. Section 1-201.

“Signed”. Section 1-201.

“Transmitting utility”. Section 9-105.

Special Plain Language Comment

This section describes the place where financing statements are to be filed for each type of collateral requiring filing to “perfect” (i.e., complete) the security interest. This section also describes rules relating to filing in an incorrect place or to filing when the debtor relocates.

Library References

Indians ⇄23 to 24.

Secured Transactions ⇄90, 96, 97, 98, 99, 135.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 52, 61 to 64, 72 to 80.

§ 9-402. Formal requisites of financing statement; amendments; mortgage as financing statement

A. A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to § 9-103(E), or when the financing statement is filed as a fixture filing (§ 9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (E). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon,

photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this jurisdiction.

B. A financing statement which otherwise complies with subsection (A) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

1. Collateral already subject to a security interest in another jurisdiction when it is brought into this jurisdiction, or when the debtor's location is changed to this jurisdiction. Such a financing statement must state that the collateral was brought into this jurisdiction or that the debtor's location was changed to this jurisdiction under such circumstances; or
2. Proceeds under § 9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or
3. Collateral as to which the filing has lapsed; or
4. Collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (G)).

C. A form substantially as follows is sufficient to comply with subsection (A):

Name of debtor (or assignor)_____

Address_____

Name of secured party (or assignee)_____

Address_____

1. This financing statement covers the following types (or items) of property: (Describe)_____

2. (If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate)_____

3. (If applicable) The above goods are to become fixtures on* / (Describe Real Estate) _____, and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record.) The name of a record owner is_____

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable)_____

Signature of Debtor (or Assignor)_____

Signature of Secured Party (or Assignee)_____

D. A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

E. A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to § 9-103(E), or a financing statement filed as a fixture filing § 9-313) where the debtor is not a transmitting utility, must (i) show that it covers this type of collateral, (ii) recite that it is to be filed in the real estate records, and (iii) contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under Navajo law. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

F. To the extent that this section requires the recording of a fixture filing in the real estate records where mortgages are recorded, a mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

1. The goods are described in the mortgage by item or type; and
2. The goods are or are to become fixtures related to the real estate described in the mortgage; and
3. The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and
4. The mortgage is duly recorded.

So far as this article relates to the matter, no fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

G. A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or names of partners. Where the debtor so changes his name or, in the case of an organization, its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four (4) months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

H. A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

*Where appropriate substitute either "The head or minehead of the well or mine located above minerals or the like (including oil and gas) or accounts will be financed at the well- on . . . "

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-402 of the Uniform Commercial Code as adopted by the states. See § 9-401.

Commentary. 1. Subsection (A) sets out the simple formal requisites of a financing statement under this article. These requirements are: (1) signature of the debtor; (2) addresses of both parties; (3) a description of the collateral by type or item.

Where the collateral is crops growing or to be grown or when the financing statement is filed as a fixture filing (§ 9-313) or when the collateral is timber to be cut or minerals or the like (including oil and gas) financed at wellhead or minehead or accounts resulting from the sale thereof, the financing statement must also contain a description of the lands concerned. On description generally, see § 9-110 and Comment 4 to the present section. An important distinction must be drawn, however, between the function of the description of land in reference to crops and its function in the other cases mentioned. For crops it is merely part of the description of the crops concerned, and the security interest in crops is a Code security interest. In contrast, in the other cases mentioned the function of the description of land is to have the financing statement filed in the appropriate real estate records, as distinguished from the personal property records. Subsection (C) suggests a form which complies with the statutory requirements and makes clear that for the types of collateral mentioned other than crops, the financing statement containing a description of the land concerned is to go in the realty records. Note also subsection (E) on the adequacy of the description of land where the filing is to be in the real estate records. See also § 9-403.

A copy of the security agreement may be filed in place of a separate financing statement, if it contains the required information and signature.

2. This section adopts the system of "notice filing". What is required to be filed is not the security agreement itself, but only a simple notice which may be filed before the security interest attaches or thereafter. The notice itself indicates merely that the secured party who has filed may have a security interest in the collateral described. Further inquiry from the parties concerned will be necessary to disclose the complete state of affairs. Section 9-208 provides a statutory procedure under which the secured party, at the debtor's request, may be required to make disclosure. Notice filing has proved to be of great use in financing transactions involving inventory, accounts and chattel paper, since it obviates the necessity of refileing of each of a series of transactions in a continuing arrangement where the collateral changes from day to day. Where other types of collateral are involved, the alternative procedure of filing a signed copy of the security agreement may prove to be the simplest solution. Some-

times more than one copy of a financing statement or of a security agreement used as a financing statement is needed for filing. In such a case the section permits use of a carbon copy or photographic copy of the paper, including signatures.

However, even in the case of filings that do not necessarily involve a series of transactions the financing statement is effective to encompass transactions under a security agreement not in existence and not contemplated at the time the notice was filed, if the description of collateral in the financing statement is broad enough to encompass them. Similarly, the financing statement is valid to cover after-acquired property and future advances under security agreements whether or not mentioned in the financing statement.

3. Subsection (B) allows the secured party to file a financing statement signed only by himself where the filing is required by any of the events listed, each of which occurs after the commencement of the financing, and therefore under circumstances where the cooperation of the debtor is not certain. See § 9-401(C). The secured party should not be penalized for failure to make a timely filing by reason of difficulty in procuring the signature of a possibly reluctant or hostile debtor. Financing statements filed under this subsection must explain the circumstances under which they are filed with the signature of the secured party rather than that of the debtor.

In contrast to the signatures on original financing statements, an amendment to a financing statement must be signed by both parties, to preclude either from adversely affecting the interests of the other.

The reference in subsection (D) to an amendment which "adds collateral" refers to additional types of collateral. A security interest on additional units of a type of collateral already described can be created under an after-acquired property clause or a new security agreement. See Comment to § 9-204. On priorities in such cases see § 9-312 and Comments thereto.

4. A description of real estate must be sufficient to identify it. See § 9-110. This formulation rejects the view that the real estate description must be by metes and bounds, or otherwise conforming to traditional real estate practice in conveyancing, but of course the incorporation of such a description by reference to the recording data of a deed, mortgage or other instrument containing the description should suffice under the most stringent standards. The proper test for the description in a filing for fixtures, minerals, accounts subject to § 9-103(E) or timber to be cut is that a description of real estate must be sufficient so that the fixture financing statement will fit into the real estate search

system and the financing statement be found by a real estate searcher; in other words, the test of adequacy of the description is whether it would be adequate in a mortgage of the real estate. However, the description of the real estate on which the crops are located need only satisfy the requirements of the local recorder for such crop filings where the crops are not grown on land owned by or held in trust for the Navajo Nation. In the case of crops grown on lands within Navajo Indian Country, the description of the land need only include its approximate location to the extent that no more precise location is reasonably available. Because it may not be practical to obtain with reasonable effort a precise description of some Navajo land and this Code does not wish to discourage commercial financing by imposing impractical or expensive requirements, the description of Navajo land which is difficult to describe in a formal sense shall not be invalid as long as the parties make a reasonable effort to distinguish the crop from other crops of the same debtor. In such cases, other creditors of the debtor will have the burden of distinguishing between separate crops of the same debtor, and the emphasis of such descriptions is not so much how to locate the land as it is how to distinguish between separate crops of the debtor in which different secured parties have a security interest or in which there is no security interest.

Where the debtor does not have an interest of record in the real estate, a fixture financing statement must show the name of a record owner. Thus, in such cases the fixture financing will fit into the real estate search system.

5. A real estate mortgage may provide that it constitutes a security agreement with, respect to fixtures (or other goods) in conformity with this article. Combined mortgages on real estate and goods are common and useful for certain purposes. This section goes further and makes provision that the recording of the real estate mortgage, (if it complies with the requirements of financing statement) shall constitute the filing of a financing statement as to the fixtures (but not, of course, as to the other goods). See § 9-403. Of course, if a combined mortgage covers goods which are not fixtures, a regular filing is necessary for such goods, and subsection (F) is inapplicable to such goods. Likewise, filing as a "fixture filing" provided in § 9-401 does not apply to true goods.

6. Subsection (G) undertakes to deal with some of the problems as to who is the debtor. In the case of individuals, it contemplates filing only in the individual name, not in a trade name. In the case of partnerships it contemplates filing in the partnership name, not in the names of any of the partners, and not in any other trade names. Trade names are deemed to be too uncertain and too likely not to be known to the secured party or person searching the record, to form the basis for a filing system. See § 9-403(E).

Subsection (G) also deals with the case of a change of name of a debtor and provides some guidelines when mergers or other changes of corporate structure of the debtor occur with the result that a filed financing statement might become seriously misleading. Not all cases can be imagined and covered by statutes in advance. However, the principle sought to be achieved by the subsection is that after a change which would be seriously misleading, the old financing statement is not effective as to new collateral acquired more than four (4) months after the change, unless a new appropriate financing statement is filed before the expiration of the four (4) months. The old financing statement, if legally still valid under the circumstances, would continue to protect collateral acquired before the change and, if still operative under the particular circumstances, would also protect collateral acquired within the four (4) months. Obviously, the subsection does not undertake to state whether the old security agreement continues to operate between the secured party and the party surviving the corporate change of the debtor.

7. Subsection (G) also deals with a different problem, namely whether a new filing is necessary where the collateral has been transferred from one debtor to another. This article answers the question in the negative. Thus, any person searching the condition of the ownership of a debtor must make inquiry as to the debtor's source of title, and must search in the name of a former owner if circumstances seem to require it. But see § 9-307.

8. Subsection (H) is in line with the policy of this article to simplify formal requisites and filing requirements and is designed to discourage the fanatical and impossibly refined reading of such statutory requirements.

Cross References

- Point 1: Section 9-110.
- Point 2: Section 9-208.
- Point 3: Sections 9-103, 9-306 and 9-401 (C).
- Point 4: Section 9-110.
- Point 5: Section 9-403(F).
- Point 6: Section 9-403(H).
- Point 7: Section 9-311.

Definitional Cross References

"Collateral". Section 9-105.
 "Debtor". Section 9-105.
 "Fixture". Section 9-313.
 "Fixture filing". Section 9-313.
 "Goods". Section 9-105.
 "Party". Section 1-201.
 "Proceeds". Section 9-306.
 "Secured party". Section 9-105.
 "Security agreement". Section 9-105.
 "Security interest". Section 1-201.
 "Signed". Section 1-201.
 "Transmitting utility". Section 9-105.

Special Plain Language Comment

This section describes the form for various filings and the preparation and use of such types of "financing statements" and "fixture forms."

Library References

Indians ⇄23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄92, 96.	C.J.S. Secured Transactions §§ 65 to 66, 72.
Westlaw Topic Nos. 209, 349A.	

§ 9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer

A. Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

B. Except as provided in subsection (F) a filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five (5) year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty (60) days or until expiration of the five (5) year period, which ever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

C. A continuation statement may be filed by the secured party within six (6) months prior to the expiration of the five-year period specified in subsection (B). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with § 9-405(B), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective

whereupon it lapses in the same manner as provided in subsection (B) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement.

D. Except as provided in subsection (G), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition, the filing officer shall index the statement according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

E. The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be set by regulation. The uniform fee for each name more than one required to be indexed shall be set by regulation.

F. If the debtor is a transmitting utility (§ 9-401 (E)) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under § 9-402(F) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

G. When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to § 9-103(E), or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors; in a mortgage of the real estate described, and, to the extent that the law of this jurisdiction provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

History

CD-61-86, December 11, 1986.

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-403 of the Uniform Commercial Code as adopted by the states, except for adjustments which have been made because of the establishment of a Navajo filing system.

Commentary. 1. Subsection (A) clarifies that a financing statement filed for record gives constructive notice from the time of presentation to the filing officer, rather than from the time of indexing.

2. Subsection (B) establishes five (5) years as the filing period, with an exception for the cases

mentioned in subsection (F). Subsection (C) provides for the filing of one or more continuation statements (which need be signed only by the secured party), if it is desired to continue the effectiveness of the original filing.

The theory of this article is that the public files of financing statements are self-clearing, because the filing officer may automatically discard each financing statement after a period of five (5) years, unless a continuation statement is filed or the financing statement is stiff effective under subsection (F). This theory materially lessens the tension that would otherwise exist to

have the files cleared by termination statements under § 9-404. Similarly, a person searching the files need not go back into the past indefinitely, and he has a limited and defined search problem.

Subsection (F) provides certain special filing rules, namely, filings against transmitting utilities (§ 9-105), for which financing statements are filed in the Commerce Department of the Division of Economic Development and real estate mortgages which serve as fixture financing statements and which are filed in the Commerce Department of the Division of Economic Development or its successor. In both of these cases the financing statement is valid for the life of the obligations secured. No confusion as to the required scope of search should result, because of the special nature of the filings involved.

3. Under subsection (B) the security interest becomes unperfected when filing lapses. Thereafter, the interest of the secured party is subject to defeat by purchasers and lienors even though before lapse the conflicting interest may have been junior. Compare the situation arising

under § 9-103(A)(4) when a perfected security interest under the law of another jurisdiction is not perfected in this jurisdiction within four (4) months after the property is brought into this jurisdiction.

Thus, if "A" and "B" both make non-purchase money advances against the same collateral, and both perfect security interests by filing, "A" (who files first) is entitled to priority under § 9-312(E). But if no continuation statement is filed, "A's" filing may lapse first. So long as "B's" interest remains perfected thereafter, he is entitled to priority over "A's" unperfected interest.

4. Subsection (G) makes clear that the filings in real estate records (§§ 9-401 and 9-402(C) and (E)), shall be indexed in the real estate records, where they will be found by a real estate searcher. Where the debtor is not an owner of record, the financing statement must show the name of an owner of record, and the statement is to be indexed in his name. See §§ 9-313(D)(2) and (3); 9-402(C); and 9-402(E).

Cross References

Point 3: Sections 9-103(C), 9-301 and 9-312(E).

Definitional Cross References

"Debtor". Section 9-105.
 "Financing statement". Section 9-402.
 "Fixture". Section 9-313.
 "Fixture filing". Section 9-313.
 "Secured party". Section 9-105.
 "Security interest". Section 1-201.
 "Transmitting utility". Section 9-105.

Special Plain Language Comment

This section describes the mechanical aspects of filing "continuation statements" needed to avoid the lapse of a prior filing.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄ 96, 97, 98.	C.J.S. Secured Transactions §§ 72, 78 to 80.
Westlaw Topic Nos. 209, 349A.	

§ 9-404. Termination statement

A. If a financing statement covering consumer goods is filed on or after July 30, 1986, then within (i) one (1) month or (ii) within ten (10) days following written demand by the debtor, whichever occurs first, after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases, whenever

there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the security party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with § 9-405(B), including payment of the required fee. If the affected secured party fails to file such a termination statement as by this subsection, or to send such a termination statement within ten (10) days after proper demand therefor, he shall be liable to the debtor for one hundred dollars (\$100.00) and (in addition) for any loss caused to the debtor by such failure.

B. On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the termination statement, or if he has no such record, he may remove them from the files at any time after one (1) year after receipt of the termination statement.

C. If the termination statement is in the standard form prescribed by the Commerce Department within the Division of Economic Development or its designated successor, the uniform fee for filing and indexing the termination statement shall be set by regulation.

History

CD-61-86, December 11, 1986.
CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-404 of the Uniform Commercial Code as adopted by the states, except for adjustments which have been made because of the establishment of a Navajo filing system.

Commentary. 1. The purpose of this section is to provide a procedure for noting discharge of the secured obligation on the records and for noting that a financing arrangement has been terminated.

Since most financing statements expire in five (5) years unless a continuation statement is filed (§ 9-403), no compulsion is placed on the secured party to file a termination statement unless demanded by the debtor, except in the case of consumer goods. Because many consumers

will not realize the importance of clearing the situation as it appears on file, an affirmative duty is put on the secured party in that case. However, many purchase money security interests in consumer goods will not be filed, except for motor vehicles (§ 9-302(A)(4)), in which case a certificate of title law may control instead of the filing provisions of Article 9.

2. This section adds a provision covering the problem which arises because a secured party under a notice filing system may file notice of an intention to make advances which may never be made. Under this section a debtor may require a secured party to send a termination statement when there is no outstanding obligation and no commitment to make future advances.

Cross References

Point 2: Section 9-402(A).

Definitional Cross References

“Consumer goods”. Section 9-109.
 “Debtor”. Section 9-105.
 “Financing statement”. Section 9-402.
 “Person”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.
 “Send”. Section 1-201.
 “Value”. Section 1-201.
 “Written”. Section 1-201.

Special Plain Language Comment

This section describes the arrangements for terminating financing statements.

Library References

Indians ⇄ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ⇄ 100.	C.J.S. Secured Transactions § 128.
Westlaw Topic Nos. 209, 349A.	

§ 9-405. Assignment of security interest

A. A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in § 9-403(D). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be set by regulation.

B. A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to § 9-103 (E), he shall index the assignment under the name of the assignor as grantor and, to the extent that Navajo law provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be set by

regulation. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (§ 9-402 (F)) may be made only by an assignment of the mortgage in the manner provided by the law applicable to the recording of such mortgages.

C. After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

History

CD-61-86, December 11, 1986.

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-405 of the Uniform Commercial Code as adopted by the states, except for adjustments which have been made because of the establishment of a Navajo filing system.

Commentary. This section provides a permissive device whereby a secured party who has assigned all or part of his interest may have the assignment noted of record. Note that under § 9-302(B) no filing of such an assignment is required as a condition of continuing the perfected status of the security interest against creditors and transferees of the original debtor. A secured party who has assigned his interest might wish to have the fact noted of record, so

that inquiries concerning the transaction would be addressed not to him but to the assignee (see Point 2 of comment to § 9-402). After a secured party has assigned his rights of record, the assignee becomes the "secured party of record" and may file a continuation statement under § 9-403, a termination statement under § 9-404, or a statement of release under § 9-406.

Where a mortgage of real estate is effective as a financing statement filed as a fixture filing (§ 9-402(F)), then an assignment of record of the security interest may be made only in the manner in which an assignment of the mortgage may be made under the law applicable to such mortgages.

Cross References

Sections 9-302(B) and 9-402 through 9-406.

Definitional Cross References

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Financing statement". Section 9-402.

"Rights". Section 1-201.

"Secured party". Section 9-105.

"Signed". Section 1-201.

"Written". Section 1-201.

Special Plain Language Comment

This section describes certain mechanical arrangements for the transfer of a secured party's position to a new secured party.

Library References

Indians ☞ 23 to 24.

Secured Transactions ☞ 181 to 191.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 25, 134 to 143.

§ 9-406. Release of collateral

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with § 9-405(B), including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be set by regulation.

History

CD-61-86, December 11, 1986.
CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-406 of the Uniform Commercial Code as adopted by the states, except for adjustments which have been made to reflect the establishment of a Navajo filing system.

Commentary. Like the preceding section, this section provides a permissive device for noting of record any release of collateral.

There is no requirement that such a statement be filed when collateral is released (*cf.* § 9-404 on Termination Statements). It is merely a method of making the record reflect the true state of affairs so that fewer inquiries will have to be made by persons who consult the files.

If the statement of release is not signed by the secured party of record, the assignment procedure of § 9-405(B) must be followed.

Cross References

Section 9-404.

Definitional Cross References

“Collateral”. Section 9-105.
“Debtor”. Section 9-105.
“Financing statement”. Section 9-402.
“Secured party”. Section 9-105.
“Signed”. Section 1-201.

Special Plain Language Comment

This section describes the mechanics for a secured party to release some collateral without terminating the entire financing statement.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞ 205 to 207.	C.J.S. Secured Transactions §§ 127, 129.
Westlaw Topic Nos. 209, 349A.	

§ 9-407. Information from filing officer

A. If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a

copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

B. Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be set by regulation. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of to be set by regulation.

History

CD-61-86, December 11, 1986.

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-407 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Subsection (A) requires the filing officer upon request to return to the secured party a copy of the financing statement on which the material data concerning the filing are noted. Receipt of such a copy will assure the secured party that the mechanics of filing have been complied with. Note, however, that under § 9-403 (A) the secured party does not bear the risk that the filing officer will not properly perform his duties; under that section the secured party has complied with the filing requirements when he presents his financing

statement for filing and the filing fee has been tendered or the statement accepted by the filing officer.

2. Subsection (B) requires the filing officer on request to issue to any person who has tendered the proper fee his certificate as to what filings have been made against any particular debtor and to furnish copies of such filed financing statements. In view of the centralized filing system adopted by this article (see § 9-401 and Comment thereto), this provision is of obvious convenience to a person who wishes to know what the files contain but who cannot conveniently consult files located in the capital of the Navajo Nation.

Cross References

Point 1: Section 9-403(A). Point 2: Section 9-401.

Definitional Cross References

“Debtor”. Section 9-105.

“Financing statement”. Section 9-402.

“Person”. Section 1-201.

“Secured party”. Section 9-105.

“Send”. Section 1-201.

§ 9-408. Financing statements covering consigned or leased goods

A consignor or lessor of goods may file a financing statement using the terms “consignor”, “consignee”, “lessor”, “lessee” or the like instead of the terms specified in § 9-402. The provisions of this part shall apply as appropriate to such a financing statement, but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (§ 1-201 (KK)). However, if it is determined for other reasons that the

consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

History

CJA-1-86, January 29, 1986.

Official Comment

This section is intended to have the same meaning and effect as § 9408 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. Where filing is required under §§ 2-326(C) and 9-114 for a consignment which is not a security interest (§ 1-201 (KK)), this section authorizes the appropriate adaptations of terminology.

Apart from the rules in Part 4, the rules of this article using the terms “debtor” and “secured party” will not apply to consignments if they are not security interests. Section 9-114 on consignments essentially parallels § 9-312(C) on inventory priorities, and the latter rule therefore does not apply to consignments. Section 2-326 states the rights of creditors of a consignee who has not filed or otherwise complied with subsection (C), and § 9-301 on unperfected security interests is therefore not applicable. Section 2-326 and the law of consignments supply rules which are provided by § 9-311 for security interests

and that section is therefore not applicable to consignments. For reasons indicated in the Comment to § 9-114, § 9-306 on proceeds is inapplicable to consignments. An equivalent to the protection of a buyer in ordinary course of business against a security interest under § 9-307(A) is provided against consignments by § 2-403 (B) and (C).

2. If a lease is actually intended as security (§ 1-201 (KK)), this article applies in full. However, this question of intention is a doubtful one, and the lessor may choose to file for safety even while contending that the lease is a true lease for which no filing is required. This section authorizes filing with appropriate changes of terminology, and without affecting the substantive question of classification of the lease. If the lease is a true lease, none of the provisions of the Article is applicable to the lease as an interest in the chattel. Note, however, that the Article may be applicable to the lease in its aspect as chattel paper. See § 9-105(B).

Cross References

Point 1: Sections 1-201(KK), 2-326, 2-403, 9-114, 9-301, 9-306, 9-307, and 9-312.

Point 2: Sections 1-201 (KK) and 9-105(B).

Definitional Cross References

“Debtor”. Section 9-105.

“Financing Statement”. Section 9-402.

“Goods”. Section 9-105(A)(8).

“Secured Party”. Section 9-105.

Special Plain Language Comment

Persons who allow others to sell their goods (e.g. “consignors”) and persons who allow others to use their goods (e.g., “lessors”) sometimes do not want to be treated as “secured parties” under this article, but wish to file un-

der this article to protect themselves in case they are determined by a court to be a “secured party”. This section accommodates that concern.

Library References

Indians ⇌23 to 24.

Secured Transactions ⇌10, 25, 92.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions §§ 3, 7, 21 to 33, 65 to 66.

Part 5. Default

§ 9-501. Default; procedure when security agreement covers both real and personal property

A. When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and, except as limited by subsection (C), those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights remedies and duties provided in § 9-207. The rights and remedies referred to in this subsection are cumulative.

B. After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in § 9-207.

C. To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (§ 9-504(C) and § 9-505) and with respect to redemption of collateral (§ 9-506), but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured, if such standards are not manifestly unreasonable.

1. Section 9-502(B) and § 9-504(B) insofar as they require accounting for surplus proceeds of collateral;
2. Section 9-504(C) and § 9-505(A) which deal with disposition of collateral;
3. Section 9-505(B) which deals with acceptance of collateral as discharge of obligation;
4. Section 9-506 which deals with redemption of collateral;
5. Section § 9-507(A) which deals with the secured party's liability for failure to comply with this part; and
6. Section 9-503 which deals with the repossession of personal property—7 N.N.C. § 621.

D. If the security agreement covers both real and personal property or fixtures, the secured party may proceed under this part as to the personal property or fixtures, or he may proceed as to both the real and the personal property or fixtures in accordance with his rights and remedies in respect of the real property, in which case the provisions of this part do not apply.

E. When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

History

CJA-1-86, January 29, 1986.

Note. Repossession of personal property moved from 7 N.N.C. § 607 to 7 N.N.C. § 621

and renamed "Repossession of consumer goods."

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-501 of the Uniform Commercial Code as adopted by the states, except as adjusted for clarification of the position regarding fixtures in subsection (D).

Commentary. 1. The rights of the secured party in the collateral after the debtor's default are of the essence of a security transaction. These are the rights which distinguish the secured from the unsecured lender. This section and the following six sections state those rights as well as the limitations on their free exercise which legislative policy requires for the protection not only of the defaulting debtor but of other creditors. However, subsections (A) and (B) make it clear that the statement of rights and remedies in this part does not exclude other remedies provided by agreement.

2. Following default and the taking possession of the collateral by the secured party, there is no longer any distinction between the security interest which before default was non-possessory and that which was possessory under a pledge. Therefore, no general distinction is taken in this part between the rights of a non-possessory secured party and those of a pledgee; the latter, being in possession of the collateral at default, will of course not have to avail himself of the right to take possession under § 9-503.

3. Section 9-207 states rights, remedies and duties with respect to collateral in the secured party's possession. That Section applies not only to the situation where he is in possession before default, as a pledgee, but also, but subsections (A) and (B) of this section, to the secured party in possession after default. Nevertheless, the relations of the parties have been changed by default, and § 9-207 (as it applies after default) must be read together with this part. In particular, agreements, permitted under § 9-207 cannot waive or modify the rights of the debtor contrary to subsection (C) of this section.

4. Section 1-102(C) states rules to determine which provisions of this Code are mandatory and which may be varied by agreement. In general, provisions which relate to matters which come up between immediate parties may be varied by agreement. In the area of rights after default our legal system has traditionally looked with suspicion on agreements designed to cut down the debtor's rights and free the secured party of his duties: no mortgage clause

has ever been allowed to clog the equity of redemption. The default situation offers great scope for overreaching; the suspicious attitude of the courts have been grounded in common sense. Subsection (C) of the section contains a codification of this long-standing and deeply rooted attitude: the specified rights of the debtor and duties of the secured party may not be waived or varied except as stated. Provisions not specified in subsection (C) are subject to the general rules stated in § 1-102 (C).

5. The collateral for many corporate security issues consists of both real and personal property. In the interest of simplicity and speed subsection (D) permits, although it does not require, the secured party to proceed as to both real and personal property in accordance with his rights and remedies in respect of the real property. Except for the permission so granted, this Code leaves to other applicable law all questions of procedure with respect to real property. For example, this Code does not determine whether the secured party can proceed against the real estate alone and later proceed in a separate action against the personal property in accordance with his rights and remedies against the real estate. By such separate actions the secured party "proceeds as to both", and this part does not apply in either action. However, subsection (D) does give the secured party an option to proceed under this part as to the personal property.

6. Under subsection (A) a secured party is entitled to reduce his claim to judgment or to foreclose his interest by any available procedure, outside this article, which applicable law may provide. The first sentence of subsection (E) makes clear that any judgment lien which the secured party may acquire against the collateral is, so to say, a continuation of his original interest (if perfected) and not the acquisition of a new interest or a transfer of property to satisfy an antecedent debt. The judgment lien is therefore stated to relate back to the date of perfection of the security interest. The second sentence of the subsection makes clear that a judicial sale following judgment, execution and levy is one of the methods of foreclosure contemplated by subsection (A); such a sale is governed by other law and not by this article and the restrictions which this article imposes on the right of a secured party to buy in the collateral at a sale under § 9-504 do not apply.

Cross References

Point 2: Section 9-503.
 Point 3: Section 9-207.
 Point 4: Section 1-102(C).
 Point 5: Sections 9-102(A) and 9-104(j).
 Point 6: Section 9-504.

Definitional Cross References

“Agreement”. Section 1-201.
 “Collateral”. Section 9-105.
 “Debtor”. Section 9-105.
 “Documents”. Section 9-105.
 “Goods”. Section 9-105.
 “Remedy”. Section 1-201.
 “Rights”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security agreement”. Section 9-105.
 “Security interest”. Section 1-201.

Special Plain Language Comment

This section describes the extent to which the rights and obligations of “debtors” and “secured parties” may be changed by agreement. This section also describes the interaction between this article and other laws and procedures dealing with creditor rights after default.

Library References

Indians ⚡23 to 24, 27, 32(7).	C.J.S. Secured Transactions §§ 118, 144 to 189.
Secured Transactions ⚡221 to 243.	
Westlaw Topic Nos. 209, 349A.	
C.J.S. Indians §§ 12 to 13, 30 to 31, 60 to 62, 68, 89, 91, 97, 139 to 143, 152.	

§ 9-502. Collection rights of secured party

A. When so agreed in a conspicuous manner in writing and, in any event, on default the secured party is entitled to notify an account debtor or the obligor on an instrument or deposit account to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which the secured party is entitled under § 9-306.

B. A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-502 of the Uniform Commercial Code as adopted by the states, except that it has been adjusted to include a remedy for the security interest in deposit accounts and to require conspicuous written agreement to predefault collection of assigned rights to payment.

Commentary. 1. The assignee of accounts, deposit accounts, chattel paper, or instruments hold as collateral property which is not only the most liquid asset of the debtor's business, but also property which may be collected without any interruption of the business (assuming that it continues after default). The situation is far different from that where the collateral is inventory or equipment, whose removal may bring the business to a halt. Furthermore, the problems of valuation and identification, present where the collateral is tangible goods, do not arise so sharply on the assignment of intangibles. Considerations, similar although not identical, apply to assignments of general intangibles, which are also covered by the rule of the section. Consequently, this section recognizes the fact that financing by assignment of intangibles lacks many of the complexities which arise after default in other types of financing, and allows the assignee to liquidate in the regular course of business by collecting whatever may become due on the collateral, whether or not the method of collection contemplated by the security arrangement before default was direct (i.e., payment by the account debtor to the assignee, "notification" financing) or indirect (i.e., payment by the account debtor to the assignor, "non-notification" financing). By agreement, of course, the secured party may have the right to give notice and to make collections before default.

2. In one form of accounts receivable financing, which is found in the "factoring" arrangements, which are common in the textile indus-

try, the assignee assumes the credit risk—that is, he buys the account under an agreement which does not provide for recourse or charge-back against the assignor in the event the account proves uncollectible. Under such an arrangement, neither the debtor nor his creditors have any legitimate concern with the disposition which the assignee makes of the accounts. Under another form of accounts receivable financing, however, the assignee does not assume the credit risk and retains a right of full or limited recourse, or charge-back for uncollectible accounts. In such a case, both debtor and creditors have a right that the assignee not dump the accounts, if the result will be to increase a possible deficiency claim or to reduce a possible surplus.

3. Where an assignee has a right of charge-back or a right of recourse, subsection (B) provides that liquidation must be made with due regard to the interest of the assignor and of his other creditors—"in a commercially reasonable manner" (compare § 9-504 and see § 9-507(B)) and the proceeds allocated to the expenses of realization and to the indebtedness. If the "charge-back" provisions of the assignment arrangement provide only for "charge-back" of bad accounts against a reserve, the debtor's claim to surplus and his liability for a deficiency are limited to the amount of the reserve.

4. Financing arrangements of the type dealt with by this section are between businessmen. The last sentence of subsection (B) therefore preserves freedom of contract, and the subsection recognizes that there may be a true sale of accounts or chattel paper, although recourse exists. The determination whether a particular assignment constitutes a sale or a transfer for security is left to the courts. Note that, under § 9-102, this article applies both to sales and to security transfers of such intangibles.

Cross References

Sections 9-205 and 9-306.

Point 3: Sections 9-504 and 9-507(B).

Point 4: Sections 9-102(A)(2) and 9-104(F).

Definitional Cross References

"Account". Section 9-106.

"Account debtor". Section 9-105.

"Agreement". Section 1-201.

"Chattel paper". Section 9-105.

"Collateral". Section 9-105.

"Debtor". Section 9-105.

"Instrument". Section 9-105.

"Notify". Section 1-201.

"Proceeds". Section 9-306.

“Secured party”. Section 9-105.

“Security agreement”. Section 9-105.

Special Plain Language Comment

This section describes the operation of a remedy by which the secured party may enforce collection of collateral in the form of rights to payment owing to the debtor.

Library References

Indians ☞23 to 24.

Secured Transactions ☞227.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.

C.J.S. Secured Transactions § 152.

§ 9-503. Secured party's right to take possession after default

A secured party has on default the right to take possession of the collateral solely in accordance with the Navajo law which does not permit a secured party to repossess personal property of Navajo Indians without judicial process. See 7 N.N.C. § 621. If the security agreement so provides, the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may, in accordance with applicable Navajo law, render equipment unusable, and may dispose of collateral on the debtor's premises under § 9-504.

History

CJA-1-86, January 29, 1986.

Note. Repossession moved from 7 N.N.C. § 607 to 7 N.N.C. § 621.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-503 of the Uniform Commercial Code as adopted by the states, except that repossession of collateral located within Navajo Indian Country and entry on Navajo Indian Country to exercise such remedies must be done in accordance with applicable Navajo law.

Commentary. Under this article the secured party's right to possession of the collateral (if he is not already in possession as pledgee) accrues on default unless otherwise agreed in the security agreement. In the case of collateral such as heavy equipment, the physical removal from the debtor's plant and the storage of the equipment

pending resale maybe exceedingly expensive and in some cases impractical. The section therefore provides that in lieu of removal, the lender may render equipment unusable or dispose of collateral on the debtor's premises. The authorization to render equipment unusable or to dispose of collateral without removal would not justify unreasonable action by the secured party, since, under § 9-504(C), all his actions in connection with disposition must be taken in “commercially reasonable manner”. However, all such remedies of the secured party must be exercised on Navajo Indian Country in accordance with the laws and procedures of that jurisdiction.

Cross References

Section 9-504.

Definitional Cross References

“Action”. Section 1-201.

“Collateral”. Section 9-105.

“Debtor”. Section 9-105.

“Equipment”. Section 9-109.

“Rights”. Section 1-201.

“Secured party”. Section 9-105.

“Security agreement”. Section 9-105.

Navajo Rules of Court Relating to Repossession.

Special Plain Language Comment

This section describes the remedy of the secured party after default by the debtor on the obligation secured by collateral to recover possession of that collateral from the debtor or to

enter the debtor’s property in order to assemble the collateral, to render the collateral inoperable, or to sell it.

Library References

Indians ☞23 to 24, 32.

Secured Transactions ☞228.

Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31, 49, 51.

C.J.S. Secured Transactions §§ 151, 153 to 160, 180.

§ 9-504. Secured party’s right to dispose of collateral after default; effect of disposition

A. A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). Unless otherwise provided in the security agreement, the proceeds of disposition shall be applied in the order followed to:

1. The reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys’ fees and legal expenses incurred by the secured party; and

2. The satisfaction of indebtedness secured by the security interest under which the disposition is made; and

3. The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

B. If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

C. Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms, but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the

debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. Such notices must be delivered personally or be deposited in the United States mail postage prepaid addressed: (i) to the debtor at his address as set forth in the financing statement or in the security agreement or at such other address as may have been furnished to the secured party for such purpose, or if no address has been so set forth or furnished, at his last known address; and (ii) to any other secured party at the address set forth in his request for notice. Unless a debtor is entitled to greater notice and advertising by agreement, there is a rebuttable presumption that: (i) a private sale or disposition notice shall be commercially reasonable if it is given at least ten (10) days in advance of the disposition; and (ii) a public sale or disposition notice shall be deemed commercially reasonable if it is given at least ten (10) days in advance of the disposition and if notice of the time and place of such disposition is given at least five (5) days before such disposition by publication at least twice in both a newspaper of general circulation in the county in which the sale is to be held and a newspaper of general circulation in the Navajo Indian Country. Any public sale or disposition may be postponed from time to time by public announcement at the time and place last scheduled for the disposition and by commercially reasonable notice of the new sale or disposition. The secured party may buy at any public sale, and, if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, he may buy at private sale.

D. When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings:

1. In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or
2. In any other case, if the purchaser acts in good faith.

E. A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-504 of the Uniform Commercial Code as adopted by the states, except that certain issues are clarified such as the notice arrangement. In order to prevent uncertainty concerning reasonable time for notice of a sale or disposition, the subsection (C) states a rebuttable presumption for a satisfactory minimum notice standard which will create a "safe harbor" in all but the most unusual cases where greater notice is obviously necessary (e.g., in order to allow advertising of specialty collateral in a specialized trade publication). Nothing in this section is intended to discourage greater notice or advertising, and this section focuses solely upon minimum standards.

Commentary. 1. Although public sale is recognized, it is hoped that private sale will be encouraged where, as is frequently the case, private sale through commercial channels will result in higher realization on collateral for the benefit of all parties. The only restriction placed on the secured party's method of disposition is that it must be commercially reasonable. In this respect this section follows the provisions of the section on resale by a seller following a buyer's rejection of goods. (§ 2-706). Subsection (A) does not restrict disposition to sale: the collateral may be sold, leased or otherwise disposed of-subject of course to the general requirement of subsection (B) that all aspects of the disposition be "commercially reasonable". Section 9-507(B) states some tests as to what is "commercially reasonable".

2. Subsection (A) contains provisions for the application of proceeds and for the debtor's right to surplus and liability for deficiency. Under subsection (A)(3) the secured party, after paying expenses of retaking and disposition and his own debt, is required to pay over remaining proceeds to the extent necessary to satisfy the holder of any junior security interest in the same collateral if the holder of the junior interest has made a written demand and furnished on request reasonable proof of his interest. This provision is necessary in view of the fact that under subsection (D) the junior interest is discharged by the disposition. Since the requirement is conditioned on written demand, it should not result in undue burden on the secured party making the disposition. It should be noted also that under § 9-112 where the secured party knows that the collateral is owned by a person who is not the debtor, the owner of the collateral and not the debtor is entitled to any surplus.

3. In any security transaction the debtor (or the owner of the collateral if other than the debtor: see § 9-112) is entitled to any surplus which results from realization on the collateral.

The debtor will also, unless otherwise agreed, be liable for any deficiency, and subsection (B) so provides. Since this article covers sales of certain intangibles as well as transfers for security, the subsection also provides that (apart from agreement) the right to surplus or liability for deficiency does not accrue where the transaction between debtor and secured party was a sale and not a security transaction.

4. Subsection (D) provides that a purchaser for value from a secured party after default takes free of any rights of the debtor and of the holders of junior security interests and liens, even though the secured party has not complied with the requirements of this part or of any judicial proceedings. Where the purchaser for value has bought at a public sale, he is protected under paragraph (1) if he has no knowledge of any defects in the sale and was not guilty of collusive practices. Where the purchaser for value has bought at a private sale he must, to receive the protection of paragraph (2), qualify in all respects as a purchaser in good faith. Thus, while the purchaser at a private sale is required to proceed in the exercise of good faith, the purchaser at public sale is protected so long as he is not actively in bad faith, and is put under no duty to inquire into the circumstances of the sale.

5. Under subsection (C), the secured party in most cases is required to give reasonable notification of disposition to the debtor unless the debtor has after default signed a statement renouncing or modifying his right to notification of sale. The secured party must also (except for consumer goods) give notice to any other secured parties who have in writing given notice of a claim of an interest in the collateral. This latter notice must be given before the debtor renounces his rights or before the secured party gives his notification to the debtor. Compare § 9-505(B). Except for the requirement of notification, there is no statutory period during which the collateral must be held before disposition. "Reasonable notification" is not defined in this article, although certain rebuttable presumptions are included as guides to the parties. At a minimum, notice must be sent in such time that persons entitled to receive it will have sufficient time to take appropriate steps to protect their interests by paying the defaulted obligation or by taking part in the sale or other disposition if they so desire.

6. No period is set within which the disposition must be made, except in the case of consumer goods which under § 9-505(A) must in certain instances be sold within ninety (90) days after the secured party has taken possession. The failure to prescribe a statutory period during which disposition must be made is in line with the policy adopted in this article to encour-

age disposition by private sale through regular commercial channels. It may, for example, be wise not to dispose of goods when the market has collapsed, or to sell a large inventory in parcels over a period of time instead of in bulk. Note, however, that under subsection (C) every aspect of the sale or other disposition of the collateral must be commercially reasonable; this specifically includes, method, manner, time,

place and terms. See § 9-507(B). Under that provision a secured party who without proceeding under § 9-505(B) held collateral a long time without disposing of it, thus running up large storage charges against the debtor, where no reason existed for not making a prompt sale, might well be found not to have acted in a "commercially reasonable" manner. See also § 1-203 on the general obligation of good faith.

Cross References

Point 1: Sections 2-706 and 9-507(B).
 Point 2: Section 9-112.
 Point 3: Sections 9-102(A)(2) and 9-112.
 Point 4: Section 2-706.
 Point 6: Sections 9-505 and 9-507(B).

Definitional Cross References

"Account". Section 9-106.
 "Agreement". Section 1-201.
 "Chattel paper". Section 9-105.
 "Collateral". Section 9-105.
 "Consumer goods". Section 9-109.
 "Contract". Section 1-201.
 "Debtor". Section 9-105.
 "Financing statement". Section 9-402.
 "Gives" notification. Section 1-201.
 "Good faith". Section 1-201.
 "Goods". Section 9-105.
 "Knowledge". Section 1-201.
 "Person". Section 1-201.
 "Proceeds". Section 9-306.
 "Purchaser". Section 1-201.
 "Receives" notification. Section 1-201.
 "Rights". Section 1-201.
 "Sale". Sections 2-106 and 9-105.
 "Secured party". Section 9-105.
 "Security agreement". Section 9-105.
 "Security interest". Section 1-201.
 "Send". Section 1-201.
 "Term". Section 1-201.
 "Value". Section 1-201.
 "Written". Section 1-201.

Special Plain Language Comment

This section describes the procedures for a disposing of the collateral after default on the secured party to follow in selling or otherwise secured obligation of the debtor.

Library References

Indians ☞23 to 24.	C.J.S. Secured Transactions §§ 161, 164 to
Secured Transactions ☞229, 240.	166, 168 to 169, 172, 174 to 175, 180 to
Westlaw Topic Nos. 209, 349A.	183.
C.J.S. Indians §§ 12, 30 to 31.	

§ 9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge obligation

A. If the debtor has paid sixty percent (60%) of the cash price in the case of a purchase money security interest in consumer goods or sixty percent (60%) of

the loan in the case of another security interest in consumer goods, and the debtor has not signed after default a statement renouncing or modifying his rights under this part, a secured party who has taken possession of collateral must dispose of it under § 9-504, and, if the secured party fails to do so within ninety (90) days after he takes possession, the debtor at his option may recover in conversion or under § 9-507(A) on secured party's liability.

B. In any other case involving consumer goods or any other collateral, a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation (or, if agreed by the debtor after default, in satisfaction of an agreed part of the obligation). Written notice of such proposal shall be sent to the debtor and, except in the case of consumer goods, notice shall be sent to any other secured party from whom the secured party has received (before sending his, notice to the debtor) written notice of a claim of an interest in the collateral. If the secured part/ receives objection in writing from the debtor or other secured party entitled to receive notification within thirty (30) days after the notice was sent, the secured party must dispose of the collateral under § 9-504 or collect collateral consisting of rights to payment under § 9-502. In the absence of such written objection, the secured party may retain the collateral in satisfaction of the debtor's obligation.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as 9-505 of the Uniform Commercial Code as adopted by the states, except that it (i) clarifies the right of the debtor to agree after default to a transfer of collateral in satisfaction of less than all of the debt, ii) maintains the absolute right of the debtor to written notice from the 1962 version of the Uniform Commercial Code (this section was modified in the 1972 amendments to permit waiver of such notice by the debtor), (iii) maintains the 30-day notice period from the 1962 version of the Uniform Commercial Code; and (iv) clarifies the right of a secured party whose proposal has been rejected to collect rights to payment under § 9-502 instead of selling them under § 9-504.

Commentary. 1. Experience has shown that the parties are frequently better off without a resale of the collateral; hence this section sanctions an alternative arrangement. In lieu of resale or other disposition, the secured party may propose under subsection (B) that he keep the collateral as his own, thus discharging the obligation and abandon any claim for a deficiency unless otherwise agreed by the debtor after default. This right may not be exercised in the case of consumer goods where the debtor has paid sixty percent (60%) of the price or obligation and thus has a substantial equity, and

this right may be exercised in other cases only on notification to the debtor, and (except in the case of consumer goods) to any other secured party who was given written notice of a claim of an interest in the collateral. In the latter case, notice must be given before the secured party sends his notice to the debtor. The secured party may keep the goods in lieu of sale on failure of anyone receiving notification to object within thirty (30) days.

2. When an objection is received by the secured party, he must then proceed to dispose of the collateral in accordance with § 9-504 (or, in the case of rights to payment, to collect it under § 9-502), and on failure to do so would incur the liabilities set out in § 9-507. In the case of consumer goods where sixty percent (60%) of the price or obligation has been paid, the disposition must be made within ninety (90) days after possession taken. For failure to make the sale within the 90-day period the secured party is liable in conversion or alternatively may incur the liabilities set out in § 9-507. In the absence of objection the secured party is bound by this notice.

3. After default (but not before) a consumer-debtor who has paid sixty percent (60%) of the cash price may sign a written renunciation of his rights to require resale of the collateral.

Cross References

Sections 9-504 and 9-507(A).

Definitional Cross References

“Collateral”. Section 9-105.
 “Consumer goods”. Section 9-109.
 “Debtor”. Section 9-105.
 “Knows”. Section 1-201.
 “Notice”. Section 1-201.
 “Person”. Section 1-201.
 “Purchase money security interest”. Section 9-107.
 “Receives” notification. Section 1-201.
 “Rights”. Section 1-201.
 “Secured party”. Section 9-105.
 “Security interest”. Section 1-201.
 “Send”. Section 1-201.
 “Signed”. Section 1-201.
 “Written”. Section 1-201.

Special Plain Language Comment

This section describes a procedure whereby the secured party enforces his proposal to keep the collateral in satisfaction of the secured obligation unless the debtor objects within thirty (30) days, except in certain specified cases involving consumer goods or other agreements among the parties.

Library References

Indians ☞ 23 to 24.	C.J.S. Indians §§ 12, 30 to 31.
Secured Transactions ☞ 229, 239, 242.	C.J.S. Secured Transactions §§ 161, 180, 185.
Westlaw Topic Nos. 209, 349A.	

§ 9-506. Debtor’s right to redeem collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under § 9-504 or before the obligation has been discharged under § 9-505(B), the debtor or any other secured party may (unless otherwise agreed in writing after default) redeem the collateral by tendering fulfillment of an obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and, to the extent provided in the agreement and not prohibited by law, his reasonable attorneys’ fees and legal expenses.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-506 of the Uniform Commercial Code as adopted by the states.

Commentary. Except in the case stated in § 9-505(A) (consumer goods) the secured party is not required to dispose of collateral within any stated period of time. Under this section so long as the secured party has not disposed of

collateral in his possession or contracted for its disposition, and so long as his right to retain it has not become fixed under § 9-505(B), the debtor or another secured party may redeem. The debtor must tender fulfillment of all obligations secured, plus certain expenses: if the agreement contains a clause accelerating the entire balance due on default in one installment, the entire balance would have to be tendered.

“Tendering fulfillment” obviously means more than a new promise to perform the existing promise; it requires payment in full of all monetary obligations then due and, performance in full of all other obligations then matured. If unmatured obligations remain, the security interest continues to secure them as if there had been no default.

Under § 9-504 the secured party may make successive sales of parts of the collateral in his

possession. The fact that he may have sold or contracted to sell part of the collateral would not affect the debtor’s right under this section to redeem what was left. In such a case, of course, in calculating the amount required to be tendered the debtor would receive credit for net proceeds of the collateral sold.

Cross References

Sections 9-504 and 9-505.

Definitional Cross References

“Agreement”. Section 1-201.
 “Collateral”. Section 9-105.
 “Contract”. Section 1-201.
 “Debtor”. Section 9-105.
 “Secured party”. Section 9-105.
 “Writing”. Section 1-201.

Special Plain Language Comment

This section describes the debtor’s right to reclaim his collateral by satisfying the secured obligations and certain expenses of the secured

party before the secured party has disposed of such collateral or obligated himself to do so.

Library References

Indians ⇄ 23 to 24.
 Secured Transactions ⇄ 241.
 Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31.
 C.J.S. Secured Transactions § 184.

§ 9-507. Secured party’s liability for failure to comply with this part

A. If it is established that the secured party is not proceeding in accordance with the provisions of this part, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred, the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover, in any event, an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price.

B. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured, party either sells the collateral in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold, he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be

appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

History

CJA-1-86, January 29, 1986.

Official Comment

Changes. This section is intended to have the same meaning and effect as § 9-507 of the Uniform Commercial Code as adopted by the states.

Commentary. 1. The principal limitation on the secured party's right to dispose of collateral is the requirement that he proceed in good faith (§ 1-203) and in a commercially reasonable manner. See § 9-504. In the case where he proceeds, or is about to proceed, in a contrary manner, it is vital both to the debtor and other creditors to provide a remedy for the failure to comply with the statutory duty. This remedy will be of particular importance when it is applied prospectively before the unreasonable disposition has been concluded. This section therefore provides that a secured party proposing to dispose of collateral in an unreasonable manner, may, by court order, be restrained from doing so, and such an order might appropriately provide either that he proceed with the sale or other disposition under specified terms and conditions, or that the sale be made by a representative of creditors where insolvency proceedings have been instituted. The section further provides for damages where the unreasonable disposition has been concluded, and, in the case of consumer goods, states a minimum recovery.

A case may be put in which the liquidation value of an insolvent estate would be enhanced by disposing of all the debtor's property (including that subject to a security interest) in the liquidation proceeding and in which, if a secured party repossesses and sells that part of the property which he holds as collateral, the remainder will have little or no resale value. In

such a case the question may arise whether a particular court has the power to control the manner of disposition, although reasonable in other respects, in order to preserve the estate for the benefit of creditors. Such a power is no doubt inherent in a federal bankruptcy court, and perhaps also in other courts of equity administering insolvent estates.

2. In view of the remedies provided the debtor and other creditors in subsection (A) when a secured party does not dispose of collateral in a commercially reasonable manner, it is of great importance to make clear what types of disposition are to be considered commercially reasonable, and in an appropriate case to give the secured party means of getting, by court order or negotiation with a creditors' committee or a representative of creditors, approval of a proposed method of disposition as a commercially reasonable one. Subsection (B) states rules to assist in the determination, and provides for such advance approval in appropriate situations. One recognized method of disposing of repossessed collateral is for the secured party to sell the collateral to or through a dealer—a method which in the long run may realize better average returns, since the secured party does not usually maintain his own facilities for making such sales. Such a method of sale, fairly conducted, is recognized as commercially reasonable under the second sentence of subsection (B). However, none of the specific methods of disposition set forth in subsection (B) is to be regarded as either required or exclusive, provided only that the disposition made or about to be made by the secured party is commercially reasonable.

Cross References

Point 1: Section 1-203, 9-202 and 9-504.

Definitional Cross References

"Collateral". Section 9-105.

"Consumer goods". Section 9-109.

"Creditor". Section 1-201.

"Debtor". Section 9-105.

5A N.N.C. § 9-507

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“Knows”. Section 1-201.
“Notification”. Section 1-201.
“Person”. Section 1-201.
“Representative”. Section 1-201.
“Rights”. Section 1-201.
“Secured party”. Section 9-105.
“Security interest”. Section 1-201.

Special Plain Language Comment

This section describes the penalties for bad faith or commercially unreasonable acts by the secured party and procedures for protection of the debtor and other interested creditors from such wrongful conduct. The section also provides some clarification guiding the secured creditor in the proper method of exercising his remedies.

Library References

Indians ☞23 to 24, 32(7).
Secured Transactions ☞242.
Westlaw Topic Nos. 209, 349A.

C.J.S. Indians §§ 12, 30 to 31, 60 to 62, 139 to 143, 152.
C.J.S. Secured Transactions § 185.

Title 6

Community Development

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47. Force account; employment of workers
48. Operation
49. Maintenance
50. Program development

Subchapter 1. Generally

§ 1. Statement of policy

Political, social, educational, and recreational activities of the local community shall be centered in the chapter houses and community centers. A more direct relationship of the local community to the Navajo Nation Council shall be fostered as recommended in Resolution CJ-20-55. In order to achieve community development, chapter houses and community centers shall be used for a variety of purposes such as adult education, health clinics, recreation, social activities, laundry, bathing, sewing, and meetings.

6 N.N.C. § 1

COMMUNITY DEVELOPMENT

History

ACJ-40-57, June 21, 1957.
CF-35-57, February 15, 1957.

Cross References

Community Centers, see 5 N.N.C. § 1201 *et seq.*

Library References

Indians ⇨7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 2. Community participation

In order to develop a feeling of self-reliance, responsibility, and pride in each local community, a program of community organization and planning shall be conducted in each community to achieve the following objectives:

A. To explain the plan and aims for the Navajo Nation construction of community buildings and the role of the local community in relationship to the over-all program.

B. To allow each community to participate in developing a planned program for using the new facilities and to select the type of building and its location.

C. To develop a custodial responsibility in the community so that the building and its equipment will be properly maintained.

D. To encourage the community to contribute labor, materials, equipment or ideas in the construction of the building, and thereby to maximize the feeling of community ownership and responsibility for the chapter house or community center.

E. To develop an attitude of readiness in the community to utilize the facilities to achieve a more wholesome community life and to encourage continuing participation in programs of community development.

History

ACJ-40-57, June 21, 1957.

Cross References

Transportation and Community Development Committee, see 2 N.N.C. § 420 *et seq.*

Library References

Indians ⇨7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 3. Community development program and activities; conferences; assistance

A. The Division of Community Development is authorized to hold conferences in which chapter officers of different chapters get together to discuss community development program and chapter activities.

COMMUNITY DEVELOPMENT

6 N.N.C. § 4

B. The President of the Navajo Nation and the Division of Community Development are authorized and directed to develop programs to assist chapters and community centers to operate, utilize, and maintain the facilities authorized herein.

History

ACJ-78-58, July 10, 1958.
CM-46-57, May 14, 1957.

References to the "Community Development Department".

Revision note (1995). The words "Division of Community Development" replace previous ref-

Library References

Indians ☞7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 4. Community planning

A. The Transportation and Community Development Committee of the Navajo Nation Council is declared to be the body responsible for developing, coordinating and approving comprehensive community improvement plans for the communities under the jurisdiction of the Navajo Nation.

B. Comprehensive community improvement plans shall include a land use plan, a major thoroughfare plan, a community facilities plan, zoning plans, subdivision regulations and public improvement programs.

C. The Transportation and Community Development Committee shall call upon all necessary and available technical assistance from Navajo Nation staff, the Bureau of Indian Affairs, the Public Health Service and other agencies to assist in the development of comprehensive community plans. The Navajo Nation President is authorized to appoint an employee of the Navajo Nation to coordinate the technical assistance.

D. No community plan shall be adopted unless it has been approved by a duly called meeting of the Chapter organization in which the community is located. Every effort will be made to involve persons living in the communities concerned to participate in the planning process.

E. The Navajo Nation President is authorized to sign on behalf of the Navajo Nation a workable program for community improvement, for submission to the Housing and Home Finance Agency.

History

ACMY 72-63, May 2, 1963.

"Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Revision note. Previous references to the "Advisory Committee" have been replaced by the

Library References

Indians ☞32(10).
Zoning and Planning ☞30, 353.1.
Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.
C.J.S. Zoning and Land Planning §§ 2, 5, 12, 39.

6 N.N.C. § 5

COMMUNITY DEVELOPMENT

§ 5. Code review

A. The Transportation and Community Development Committee of the Navajo Nation Council is declared to be the body responsible for reviewing codes and recommending the same for adoption or amendment to the Navajo Nation Council.

B. Codes subject to review by the Transportation and Community Development Committee shall include building code, electrical code, plumbing code, housing code, sanitation code, zoning code.

History

CN-93-68, November 18, 1968.

CS-75-65, September 1, 1965.

ACMY-72-63, May 2, 1963.

Revision note (1995). Previous references to the "Advisory Committee" have been replaced by the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Note. Regarding the compilation and codification of Navajo Nation laws, see the authority of the Office of Legislative Counsel (2 N.N.C. § 964(B)) and the Ethics and Rules Committee of the Navajo Nation Council (2 N.N.C. § 834(B)(4)).

Library References

Health ☞390.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 6. Code Advisory Committee

To assist the Transportation and Community Development Committee of the Navajo Nation Council in discharging its responsibility for code review, there is created a Code Advisory Committee consisting of a representative of the Navajo Nation appointed by the President of the Navajo Nation; the General Manager of the Navajo Tribal Utility Authority; the Head of the Design and Engineering Services Department, Navajo Nation; Chief Sanitary Engineer, Public Health Service; Maintenance Engineer, Bureau of Indian Affairs, and such other persons as the President of the Navajo Nation may from time to time designate.

History

ACMY-72-63, May 2, 1963.

Revision note (1995). Slightly reworded for purposes of statutory form.

Note. For the authority of the Transportation and Community Development Committee, see 2

N.N.C. § 420 *et seq.* Regarding the compilation and codification of Navajo Nation laws, see the authority of the Office of Legislative Counsel (2 N.N.C. § 964(B)) and the Ethics and Rules Committee of the Navajo Nation Council (2 N.N.C. § 834(B)(4)).

Library References

Health ☞390.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 7. Participation under Economic Opportunity Act of 1964

A. The President of the Navajo Nation, the Navajo Nation, Council and the Executive Staff are authorized and directed to assist in implementing programs under Titles I-VI of the Economic Opportunity Act of 1964,¹ which are beneficial to the Navajo Nation and the Navajo People. The President of the

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6 N.N.C. § 41

Navajo Nation and the Navajo Nation Council are further authorized to execute on behalf of the Navajo Nation all necessary documents to accomplish the purposes of this section.

B. The appropriate committees of the Navajo Nation Council are authorized to approve general policies, plans of operation, and programs which are beneficial to the Navajo Nation and Navajo People under Titles I–VI of the Economic Opportunity Act of 1964.¹

C. The appropriate committees of the Navajo Nation Council, in conjunction with the Budget and Finance Committee of the Navajo Nation Council, shall make recommendations to the Navajo Nation Council for any appropriations of Navajo Nation funds which may be necessary to accomplish the purposes of this section.

¹ 42 U.S.C.A. § 2701 et seq.

History

CJA–6–65, January 11, 1965.
CS–53–64.

Note. Pursuant to 2 N.N.C. Subchapter 9, et seq., various standing committees of the Navajo

Nation Council have policy, oversight, and certain delegated authorities and duties related to plans of operation and programs of the Navajo Nation government. See generally, CD–68–89, December 15, 1989.

Library References

Indians ⇨7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

Subchapter 3. Chapter Houses

§ 41. Eligibility

Each Chapter organization officially recognized under the provisions of 26 N.N.C. § 1 et. seq. shall be eligible for the construction or improvement of a community chapter house to meet its requirements in accordance with the standards hereinafter set forth in this subchapter.

History

ACJN–90–65, June 21, 1965.
CD–70–62, December 4, 1962.
ACMY–76–61, May 12, 1961.
ACAP–61–60, April 29, 1960.
CM–28–58.

CM–46–57.
ACJ–40–57.

Revision Note. Reference to 2 N.N.C. §§ 4001 and 4006 has been replaced by Navajo Local Governance Act, 26 N.N.C. § 1 et seq.

Library References

Indians ⇨7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 42. Location; final approval; standards for selection

A. Final approval for the location of each chapter house shall be granted in its discretion by the Transportation and Community Development Committee of the Navajo Nation Council.

B. Each Chapter shall be guided by the following criteria in the selecting of the location of a new chapter house:

1. The site shall be located so that it will conveniently serve the entire community.
2. The site shall be chosen giving consideration to the road network of the community.
3. The chapter building shall be located near a developed source of water. The development of an adequate source of water must in all instances precede location of the building. In no instance shall water be piped in excess of 2,000 feet.
4. The chapter building shall be near power, if available.
5. Wherever possible, the site shall be adjacent to a school, clinic, police substation or other service facility, in order that custodial attention may be provided by someone living nearby.

History

ACAP-61-60, April 29, 1960.

ACJ-4-57, January 8, 1957.

Revision note (1995). Previous reference to the "Advisory Committee" has been replaced by

the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Library References

Indians ⇄32(10).

Westlaw Topic No. 209.

C.J.S. Indians § 63.

§ 43. Plans

A. Each new chapter house shall be built from architectural plans. The chapter membership shall choose one of several basic plans previously approved by the Transportation and Community Development Committee of the Navajo Nation Council and such plan maybe varied by the community only as to materials, appearance and utility equipment.

B. Renovation or improvement of existing chapter houses shall be done from architectural plans, or in relatively uncomplicated situations, from plans prepared by the Design and Engineering Services Department, as may be administratively determined feasible and economical.

History

ACJA-14-67, January 31, 1967.

ACO-206-66, October 19, 1966.

ACAU-166-62, August 22, 1962.

ACO-193-60, October 27, 1960.

ACAP-61-60, April 29, 1960.

ACJ-40-57, June 21, 1957.

Revision note. Previous reference to the "Advisory Committee" has been replaced by the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Note. By GSCO-60-91, the Government Services Committee adopted a Plan of Operation

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6 N.N.C. § 46

for the Division of Community Development which includes a Design and Engineering Services department whose director provides architectural and engineering services to chapters.

Library References

Indians ⇨32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 44. Applications Generally

Applications for the construction or improvement of chapter facilities shall be presented to the President of the Navajo Nation for review by the Executive Staff. The Executive Director, Division of Community Development or his or her representative shall present the applications to the Transportation and Community Development Committee of the Navajo Nation Council with comments and recommendations.

History

ACAP-61-60, April 29, 1960.
Revision note (1995). Slightly reworded for purposes of statutory form. Previous reference to the "Public Services Division" has been replaced by the "Division of Community Development" and previous reference to the "Advisory Committee" has been replaced by the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Library References

Indians ⇨32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 45. Form

Applications for community Chapter House construction or improvement shall be submitted on form "Application for Construction or Improvement of Chapter House". The applications shall be signed by the Navajo Nation Council delegate serving the Chapter area, the President, Vice-President and Secretary of the chapter organization and shall be further supported by individual signatures of not less than 100 adult members of the community to be served.

History

ACAP-61-60, April 29, 1960.

Library References

Indians ⇨32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 46. Review by Transportation and Community Development Committee; decision

A. The Transportation and Community Development Committee shall consider all applications for new chapter houses on the following basis:

1. Population and area to be served.

6 N.N.C. § 46

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2. Average meeting attendance records.
3. Operating management and maintenance skills within the community.
4. General acculturation and educational level of the community.
5. Actual need of the community for the facilities requested.
6. Comparison of requested facilities with facilities granted other communities similarly situated.
7. Kind, type and probable difficulty of operating and maintaining utility equipment.
8. Reasonableness of request.
9. Comparative costs as related to budgeted funds.
10. Ability and plans of community to provide operating costs in full.
11. Ability and plans of community to provide total maintenance or to pay one-half maintenance costs of a Navajo Nation mobile unit.
12. Current financial status of requesting chapter.
13. Acceptance of agreement to operate and maintain building.
14. Type of chapter house selected and suitability to the community.

B. After review of each request for construction of a Chapter House, the Transportation and Community Development Committee shall render its decision. If the decision is affirmative, the construction shall be authorized by appropriate resolution. If the decision is adverse, the Director, Division of Community Development, shall immediately so inform the requesting chapter organization with a full statement of the reasons for denial of the request and suggestions for remedial action.

C. The Transportation and Community Development Committee shall consider all requests for renovation, remodeling and major repair of existing chapter houses on the basis of applicable items listed under subsection (A) of this section and shall render its decision under the terms of subsection (B) of this section.

History

ACAP-61-60, April 29, 1960.

Revision note (1995). By GSCO-60-91 the Government Services Committee of the Navajo Nation Council adopted a Plan of Operation for the Division of Community Development which plan states in pertinent part the Division has as a purpose "to administer, plan, manage and

monitor resources for communities and their members which will foster and support housing infrastructure, public facilities. . . ." Previous references to the "Advisory Committee" have been replaced by the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*

Library References

Indians ⇄32(10).

Westlaw Topic No. 209.

C.J.S. Indians § 63.

§ 47. Force account; employment of workers

A. The construction, renovation, and improvement of chapter houses shall be done on force account by the Design and Engineering Services Department.

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6 N.N.C. § 49

B. Preferential employment of local qualified workers shall be provided for in the construction, renovation and improvement of chapter houses, however, in the absence thereof, the Design and Engineering Services Department in cooperation with the Employment and Personnel Department shall employ non-local qualified workers to the extent required to meet budgetary and time schedules.

C. To achieve economical results, the Design and Engineering Services Department is instructed to disregard external and community interference or pressure to hire unqualified or unnecessary members or workers.

D. Each Chapter House project shall be under the supervision of a foreman and one leadman.

E. Local available labor shall be rotated on ten (10) work-day shifts.

History

ACAP-61-60, April 29, 1960.
Revision note (1995). Previous references to the "Design and Construction Department" have been replaced by the "Design and Engineering Services Department". Also, the wording of subsection (B) was slightly reworded and reorganized for form and clarity.

Library References

Indians ☞32(1, 6, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51, 63.

§ 48. Operation

A. Responsibility for the operation of all chapter houses rests solely with the chapter organization. This includes all operating costs, if any, for fuel, water, sewage disposal, power and caretaker service.

B. The community is required to contribute or to earn through its program plan sufficient income to provide for operating costs of conducting its meetings, programs and chapter building operation. This is a condition of the Navajo Nation grant for construction.

C. The community is expected to fully provide for the cleanliness and orderliness of the building and adjacent premises.

History

ACAP-61-60, April 29, 1960.

Library References

Indians ☞32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 49. Maintenance

A. The policy of the Navajo Nation Council in providing communities with chapter house facilities requires the chapters to maintain these buildings in operable condition and in good repair.

6 N.N.C. § 49

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B. Because many chapters are experiencing maintenance problems due to lack of trained local manpower and shortage of available funds, a skilled chapter house maintenance crew of two men and a mobile equipment and supply truck shall be made available to serve the chapter organizations.

C. Service of this mobile unit may be had by chapters on request. The Navajo Nation shall pay one-half of the actual cost of personnel time, materials and travel and chapters will be billed for one-half the cost. Such maintenance bill shall be settled in full in each instance before the next request for service is honored.

D. Any required additional common labor shall be hired locally and the chapter shall be billed one-half the cost as provided in subsection (C) of this section.

History

ACAP-61-60, April 29, 1960.

Library References

Indians ☞7, 32(10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 63.

§ 50. Program development

The President of the Navajo Nation and the Division of Community Development together with the several related standing committees of the Navajo Nation Council shall assist the chapters to develop programs to utilize, operate and maintain their chapter facilities.

History

ACAP-61-60, April 29, 1960.

Revision note (1995). Slightly reworded for purposes of statutory form.

Library References

Indians ☞7, 32(1, 10).
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49 to 51, 63.

Chapter 3. Chapter Recreation Program

Section

- 251. Objective
- 252. Scope
- 253. Funds
- 254. Applications for assistance forms
- 255. Review, approval and processing
- 256. Management and operations
- 257. Purchase of equipment and supplies

§ 251. Objective

The objective of the Navajo Nation's Chapter Recreation Program is to provide wholesome recreational activities for youth and adults in the chapter communities. The program is especially intended to fill the need for summer activities for the thousands of young people who return to their homes from off-Reservation schools, bordertown dormitories and Reservation schools.

History

ACS-177-60, September 21, 1960.

Cross References

Navajo Youth Camp, see 19 N.N.C. § 601.

Library References

Indians ⇨6.5, 7, 32.

Theaters and Shows ⇨2.

Westlaw Topic Nos. 209, 376.

C.J.S. Entertainment and Amusement.

C.J.S. Sports §§ 10 to 16.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 252. Scope

The type or types of recreational or educational activities to be included in the chapter program must be clearly determined by the chapter. These activities may relate to entertainment, education, sports, games, development of skills, and/or others activities desired by the local communities. A chapter might desire to promote an athletic team and purchase the necessary equipment. A chapter may wish to purchase movie projector equipment, sewing machines or shop tools. All suggested programs are subject to review and concurrence.

History

ACS-177-60, September 21, 1960.

Library References

Indians ⇨6.5, 7, 32.

Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 253. Funds

A. Funds for the Chapter Recreation Program shall be made available to chapter organizations in accordance with a Plan of Operation in amounts not to exceed seven hundred fifty dollars (\$750.00) for approved expenditures for the purchase of supplies and equipment needed for recreational programs outlined by each chapter in its presentation, if acceptable.

B. Funds available for the Program shall be used for equipment and supplies associated closely with its objectives.

C. Salaries, wages or per diem shall not be paid from these funds.

History

ACS-177-60, September 21, 1960.

Library References

Indians ☞7.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 254. Applications for assistance forms

Application forms for Chapter Recreation Program assistance shall be available from community workers, or the Division of Community Development. Application forms shall initially be mailed by the Division of Community Development to all chapter presidents, together with a copy of the Plan of Operation. Community workers shall give assistance to chapters in preparing these application forms.

History

ACS-177-60, September 21, 1960. been changed to the "Division of Community Development". Reference to the "Public Services Division" has been deleted.
Revision note (1995). Reference to the "Department of Community Development" has

Library References

Indians ☞7.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

§ 255. Review, approval and processing

Applications for Chapter Recreation Program assistance shall be submitted to the Director, Division of Community Development, for review, approval and processing. Any application which fails to secure the approval of the Director, Division of Community Development, shall be presented to the Transportation and Community Development Committee for advice, assistance and guidance in making a decision. If the application is rejected, the Director, Division of Community Development, shall so notify the chapter stating the reasons for rejection and making suggestions for modification. Rejected applications may be appealed by the chapter directly to the Transportation and Community Development Committee which shall review the request and render the final decision. When the application is approved, the Division of Community Development shall take the necessary action to request the purchase of the enumerated equipment or supplies.

History

ACS-177-60, September 21, 1960. Committee" changed to "Director, Division of Community Development", and "Transportation and Community Development Committee" respectively. See 2 N.N.C. § 423(B)(3).
Revision note (1995). References to the "Head, Department of Community Development", "Education Committee", and "Advisory

Library References

Indians ☞7, 32. Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 47, 49, 51.

§ 256. Management and operations

Management and operation of the chapter program shall be determined by the people of the chapter community in a regularly called meeting of the chapter.

History

ACS-177-60, September 21, 1960.

Cross Reference

See also, Navajo Nation Local Governance Act, 26 N.N.C. § 1 et seq.

Library References

Indians ↻6.5, 7, 32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47, 49, 51.

§ 257. Purchase of equipment and supplies

Purchasing of equipment and supplies for the Chapter Recreational Program shall be by Navajo Nation Purchase Order, through the Purchasing Section of the Navajo Nation.

History

ACS-177-60, September 21, 1960.

Cross Reference

See generally, Navajo Nation Procurement Act, 12 N.N.C. § 301 et seq.

Library References

Indians ↻7.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 47.

Chapter 5. Housing Projects

Subchapter 1. Shiprock Low-Cost Housing Area

Section

- 451. Establishment; authority
- 452. Plan of land tenure; authority
- 453. Availability of homesites without cost
- 454. Sanitation requirements
- 455. Plan of administration; establishment
- 456. Advisory Committee as Shiprock Community Board
- 457. Applications for permits; Authority to receive
- 458. Persons who may make an application; form
- 459. Conflicting applications
- 460. Issuance of occupancy permits; assignment

Section

- 461. Assignment of lands; application
- 462. Conditions
- 463. Local improvements
- 464. Use of land; construction requirements

Subchapter 3. Window Rock Navajo Nation Housing Project

Article 1. General Provisions

- 521. Definitions; employee
- 522. Establishment; housing units designated
- 523. Nature
- 524. Purpose
- 525. Plan of Operation; adoption; amendment
- 526. Administrator; designation
- 527. Apartments of Window Rock Motel Center
- 528. Housing Reserve
- 529. Revolving Fund
- 530. Employee occupants; agreement
- 531. Rentals
- 532. Non-employee occupants; rental; rate

Article 2. Housing Committee

- 551. Establishment; purpose
- 552. Composition
- 553. Authority and duties
- 554. Meetings
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Subchapter 5. Navajo Housing Authority

- 601. Definitions
- 602. Establishment
- 603. Declaration of need
- 604. Purposes
- 605. Board of Commissioners
- 606. Appointment
- 607. Term of office
- 608. Compensation
- 609. Offices; election; presiding officer
- 610. Secretary
- 611. Treasurer; duties; bond
- 612. Meetings
- 613. Quorum
- 614. Exercise of powers
- 615. Removal of members
- 616. Powers
- 617. Bonds
- 618. Quarterly report

- 619. Interest of officers or employees in project or property
- 620. Planning, zoning, sanitary and building regulations
- 621. Non-profit construction or operation
- 622. Tax exemption
- 623. Exemption from execution or other judicial process
- 624. Navajo Nation cooperation
- 625. Approval by Secretary of the Interior
- 626. Actions involving validity or enforcement of contracts; evidence
- 627. Federal law
- 628. Fidelity bonds

Subchapter 1. Shiprock Low-Cost Housing Area

§ 451. Establishment; authority

The President of the Navajo Nation is authorized by and with the approval of the Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council and upon concurrence of the Shiprock Chapter officers and the Shiprock Land Board, to establish a permanent low-cost housing area at or in the vicinity of Shiprock for occupancy by members of the Navajo Nation and their families. It is contemplated that the area will be surveyed and streets, necessary alleys, and property lines established.

History

CN-58-56, November 1, 1956. Council under 2 N.N.C. §§ 420 *et seq.* and 691 *et seq.*, respectively, now have controlling authority under this section.

Revision note (1995). The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation

Cross Reference

See also, 6 N.N.C. § 601 *et seq.*

Library References

Indians ⇄32(10).	C.J.S. Indians § 63.
Municipal Corporations ⇄717.5.	C.J.S. Municipal Corporations § 1544.
Westlaw Topic Nos. 209, 268.	

§ 452. Plan of land tenure; authority

The President of the Navajo Nation by and with the approval of the Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council shall establish a plan of land tenure for low-cost housing area for the benefit of the members of the Navajo Nation and their families, which plan may provide for homesite tenure under assignment, permit or lease.

History

CN-58-56, November 1, 1956. Council under 2 N.N.C. § 420 *et seq.*, and § 691 *et seq.*, respectively, now have controlling authority under this section. See also, authority

Revision note (1995). The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation

6 N.N.C. § 452

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of the Navajo Housing Authority at 6 N.N.C.
§ 601 et seq.

Library References

Indians ☞9, 32(10).	C.J.S. Indians §§ 63, 67.
Municipal Corporations ☞717.5.	C.J.S. Municipal Corporations § 1544.
Westlaw Topic Nos. 209, 268.	

§ 453. Availability of homesites without cost

It is the expressed policy of the Navajo Nation Council with respect to the administration of the low-cost housing area at Shiprock that homesites shall be made available in such area to members of the Navajo Nation without cost; provided, that lands acquired thereunder shall be subject to any liens which now are or may become enforceable against the Navajo Nation and its members.

History

CN-58-56, November 1, 1956.

Cross Reference

See also, 6 N.N.C. § 601 et seq.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(3).	C.J.S. Municipal Corporations § 1545.
Westlaw Topic Nos. 209, 268.	

§ 454. Sanitation requirements

Minimum sanitation requirements for the low-cost housing area shall be in accordance with the requirements established by the United States Public Health Service.

History

CN-58-56, November 1, 1956.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

§ 455. Plan of administration; establishment

The President of the Navajo Nation, by and with the approval of the Transportation and Community Development Committee and Resources Committee, shall establish a plan of administration for the low-cost housing area with appropriate recognition of the Council's expressed desire to proceed with community development at Shiprock in a manner responsive to the needs and wishes of members of the Navajo Nation residing in the Shiprock community.

History

ACM-42-58, March 21, 1958.
 CN-58-56, November 1, 1956.
Revision note (1995). The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council under 2 N.N.C. §§ 420 *et seq.*, and 691 *et seq.*, respectively, now have controlling authority under this section.

Library References

Indians ☞32(10).
 Municipal Corporations ☞717.5(4).
 Westlaw Topic Nos. 209, 268.
 C.J.S. Indians § 63.
 C.J.S. Municipal Corporations § 1543.

§ 456. Advisory Committee as Shiprock Community Board

The Advisory Committee of the Tribal Council shall function as an interim Shiprock Community Board until such time as a Board can be composed of the residents of the Shiprock low-cost housing area.

History

ACM-42-58, March 21, 1958.
 CM-40-57, March 21, 1957.
 ACJ-50-57, July 11, 1957.
 ACA-28-57, April 26, 1957.
 CN-58-56, November 1, 1956.
Revision Note (1995). The Transportation and Community Development Committee of the Navajo Nation Council, under 2 N.N.C. § 420 *et seq.*, now has oversight authority over community housing matters.

Library References

Indians ☞32(10).
 Westlaw Topic No. 209.
 C.J.S. Indians § 63.

§ 457. Applications for permits; Authority to receive

The Division of Community Development is authorized and directed to receive applications for permits to occupy lots in the Shiprock low-cost housing area, and to bring such applications before the Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council for necessary action.

History

ACM-42-58, March 21, 1958.
Revision note (1995). The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council under 2 N.N.C. §§ 420 *et seq.*, and § 691 *et seq.*, respectively, now have oversight authority over community housing matters and land use permits. See also, authority of the Navajo Housing Authority, 6 N.N.C. § 601 *et seq.*

Library References

Indians ☞32(10).
 Municipal Corporations ☞717.5(4).
 Westlaw Topic Nos. 209, 268.
 C.J.S. Indians § 63.
 C.J.S. Municipal Corporations § 1543.

§ 458. Persons who may make an application; form

Any adult or person who is an enrolled member of the Navajo Nation or an enrolled Navajo in his or her minority who is the head of a family, may make application in writing to the Transportation and Community Development

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Committee and the Resources Committee of the Navajo Nation Council for a permit to occupy a lot in the low-cost housing area for residential purposes. Such application shall designate a specific lot. The Navajo Nation Office of Attorney General is authorized and directed to prepare a suitable application form for this purpose.

History

ACM-42-68, March 21, 1958.
Revision note (1995). The Transportation and Community Development Committee (2 N.N.C. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for the Advisory Committee pursuant to CD-68-89. Also, reference to the "Legal Department of the Navajo Tribe" has been changed to the "Navajo Nation Office of the Attorney General".

Library References

Indians ☞32(10).
Municipal Corporations ☞717.5(2).
Westlaw Topic Nos. 209, 268.
C.J.S. Indians § 63.
C.J.S. Municipal Corporations § 1544.

§ 459. Conflicting applications

A. In the event the Transportation and Community Development Committee and Resources Committee of the Navajo Nation Council receive conflicting applications to occupy the same parcel of land, the Transportation and Community Development Committee and Resources Committee of the Navajo Nation Council shall conduct an open hearing at which all parties in conflict shall be given an opportunity to be heard and the Transportation and Community Development Committee and Resources Committee of the Navajo Nation Council shall thereupon make a determination as to which applicant shall prevail by such manner as the Committees may determine.

B. Generally, any applicant who at the time of such application is occupying lands within a three mile radius of the middle of the bridge on New Mexico Highway 491 over the San Juan River at Shiprock without valid authority for such occupancy shall be given preference.

History

ACM-42-58, March 21, 1958.
Revision note (1995). The Transportation and Community Development Committee (2 N.N.C. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for the Advisory Committee pursuant to CD-68-89. Revision note (2003). Reference to "Highway 666" changed to "Highway 491" pursuant to Legislation of the New Mexico State Legislature.

Library References

Indians ☞32(10).
Municipal Corporations ☞717.5(2).
Westlaw Topic Nos. 209, 268.
C.J.S. Indians § 63.
C.J.S. Municipal Corporations § 1544.

§ 460. Issuance of occupancy permits; assignment

The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council, upon consideration of an application for an occupancy permit and favorable action thereon shall issue the occupancy permit to the applicant, which permit shall extend for a term of

two (2) years from date of issuance. Such permit shall be in writing on a form to be provided by the Navajo Nation Office of the Attorney General and shall be assignable for residential use only with the approval of said Committees.

History

ACM-42-58, March 21, 1958.

Revision note. The Transportation and Community Development Committee (2 N.N.C. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for

the Advisory Committee pursuant to CD-68-89. Reference to the "Legal Department of the Navajo Tribe" has been changed to the "Navajo Nation Office of the Attorney General".

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 461. Assignment of lands; application

A. Upon lapse of the occupancy permit issued to any occupant of the low-cost housing area, such occupant shall be considered, in the absence of evidence to the contrary, as having applied to the Transportation and Community Development Committee and/or the Resources Committee of the Navajo Nation Council for an assignment of the lands occupied by such occupant, such assignment to remain in effect for as long as the land is used for residential purposes in accordance with applicable regulations of the Navajo Nation now or hereafter in force.

B. The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council shall consider each application for assignment and either approve or disapprove such application provided that grounds for disapproval shall be limited to a finding that continued occupancy of the land in the low-cost housing area by the applicant will result in continuance of a demonstrated condition of disaffection and dissatisfaction among Shiprock residents or the public generally due to conduct of such applicant or members of his or her immediate family, or to a finding that the occupant is not in fact occupying the premises.

C. Advice of the approval of such application shall be forwarded to the Navajo Nation Office of the Attorney General which shall prepare and cause to be issued to the applicant an assignment, executed by the President of the Navajo Nation on behalf of the Navajo Nation.

History

ACM-42-58, March 21, 1958.

Revision note (1995). The Transportation and Community Development Committee (2 N.N.C. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for

the Advisory Committee pursuant to CD-68-89. Also, reference to the "Legal Department of the Navajo Tribe" has been changed to the "Navajo Nation Office of the Attorney General".

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

6 N.N.C. § 461

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C.J.S. Municipal Corporations § 1543.

§ 462. Conditions

Any assignment covering lands in the low-cost housing area shall among its conditions include the following:

- A. Assignments shall prohibit nonresidential uses.
- B. Assignments shall be transferable only to members of the Navajo Nation and only with the prior approval of the Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council.

History

ACM-42-58, March 21, 1958. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for the Advisory Committee pursuant to CD-68-89.
Revision note (1995). The Transportation and Community Development Committee (2 N.N.C.

Library References

Indians ⇄32(10). C.J.S. Indians § 63.
Municipal Corporations ⇄717.5(4). C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.

§ 463. Local improvements

The Transportation and Community Development Committee and the Resources Committee of the Navajo Nation Council, upon their own initiative and in conformity with the provisions of this subchapter may at any time establish a plan of local improvements which shall be of general benefit to the occupants of the lands and such improvements may include extension and expansion of the domestic water supply, improvement of roads and bridges, irrigation water for gardening purposes, street and area-way lighting, sewage and garbage disposal, walkways, playground improvements, and such other public services as the said Committees may, from time to time, authorize.

History

ACM-42-58, March 21, 1958. § 420 *et seq.*) and the Resources Committee (2 N.N.C. § 691 *et seq.*) have been substituted for the Advisory Committee pursuant to CD-68-89.
Revision note (1995). The Transportation and Community Development Committee (2 N.N.C.

Library References

Indians ⇄32(10). C.J.S. Indians § 63.
Municipal Corporations ⇄717.5(4). C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.

§ 464. Use of land; construction requirements

Each lot in the low-cost housing area is to be used exclusively for a single residence and for garden purposes by the occupant and immediate family. Minimum construction requirements shall include a single family dwelling and a privy, the latter being constructed in accordance with standards established by the United States Public Health Service. The privy shall be constructed prior to occupancy of the land by the permittee.

History

ACM-42-58, March 21, 1958.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

Subchapter 3. Window Rock Navajo Nation Housing Project

Article 1. General Provisions

§ 521. Definitions; employee

As used in this subchapter, the term “employee” shall include all persons paid by the Navajo Nation for substantially fulltime services of any nature.

History

ACM-54-56, July 3, 1956.

§ 522. Establishment; housing units designated

The Window Rock Navajo Nation Housing Project is established and the housing units composing such Project are so designated.

History

CJ-15-56, January 27, 1956.

Cross Reference

See also, Plan of Operation for Navajo Nation Employee Housing Program, Division of General Services.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(1).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations §§ 1543 to 1545.

§ 523. Nature

The houses constituting the Window Rock Housing Project are not a business enterprise, but part of the administrative buildings of the Navajo Nation, and repayment of the Navajo Nation’s capital investment shall be accomplished primarily from improved performance of duty by higher caliber employees.

History

ACM-54-56, March 19, 1956.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(1).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations §§ 1543 to 1545.

6 N.N.C. § 524

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§ 524. Purpose

The houses constituting the Window Rock Navajo Nation Housing Project were authorized to be built by the Navajo Nation Council for the reason that housing was not available in or near Window Rock, making it impossible to recruit and retain competent employees for the organization.

History

ACM-54-56, March 19, 1956.

Library References

Indians ☞32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 525. Plan of Operation; adoption; amendment

Authority is delegated to the Government Services Committee to act in place of the Navajo Nation Council in adopting and amending from time to time a Plan of Operation for the Window Rock Navajo Nation Housing Project.

History

ACM-54-56, March 19, 1956.
CJ-15-56, January 27, 1956.

Revision note (1995). Reference to the Advisory Committee has been changed to the Government Services Committee. The Window

Rock Navajo Nation Housing Project is currently under the administrative authority of the Division of General Services with standing committee oversight by the Government Services Committee, ACO-375-72. See generally, 2 N.N.C. § 341 *et seq.*

Library References

Indians ☞32(10).
Municipal Corporations ☞717.5(4).
Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.
C.J.S. Municipal Corporations § 1543.

§ 526. Administrator; designation

The Director of the Division of General Services of the Navajo Nation or such person as s/he shall designate shall be Administrator of the Window Rock Navajo Nation Housing Project.

History

CJ-15-56, January 27, 1956.

Revision note (1995). The Window Rock Navajo Nation Housing Project is currently under

the administrative authority of the Division of General Services. ACO-375-72.

§ 527. Apartments of Window Rock Motel Center

The eight efficiency apartments of the Window Rock Motel Center shall be rented to the Window Rock Navajo Nation Housing Project at the rate of forty dollars (\$40.00) per month each, not including utilities payable from the Project revolving fund, and shall be operated as a part of such Project until the Administrator determines that they are no longer needed. Utilities for these efficiency apartments shall be paid by the Project.

History

ACM-54-56, March 21, 1956.
Note. In 1973, these apartments were transferred to the Navajo Housing and Development Enterprise pursuant to ACAP-185-73. As of 2003, various Navajo Nation programs occupy what were once apartments.

Library References

Indians ☞32(10).
 Municipal Corporations ☞717.5(4).
 Westlaw Topic Nos. 209, 268.
 C.J.S. Indians § 63.
 C.J.S. Municipal Corporations § 1543.

§ 528. Housing Reserve

A specifically described area, containing 197.72 acres, more or less, is withdrawn from all other uses and disposition and is reserved for the purposes of the Window Rock Navajo Nation Housing Project.

History

ACM-54-56, March 19, 1956.

Library References

Indians ☞9.1, 32(10).
 Westlaw Topic No. 209.
 C.J.S. Indians § 63.

§ 529. Revolving Fund

A. There is established a Window Rock Navajo Nation Housing Project Revolving Fund. All rentals and damages received on account of the Window Rock Navajo Nation Housing Project shall be placed in this fund, which shall be administered by the Controller of the Navajo Nation, and shall be available for paying costs of utilities, maintenance, landscaping, remodeling, sidewalks, paving and repaving, fencing, equipment, recreational facilities, and any other costs reasonably connected with the Window Rock Navajo Nation Housing Project.

B. Disbursements may be made by the Controller in accordance with general or special authorizations of the Housing Committee.

C. The Controller shall report to the Navajo Nation Council each year during consideration of the Navajo Nation Council budget on the condition of the fund and shall state whether in view of actual and estimated expenses and in view of the purpose for which the houses were built, any part of the fund can at that time be transferred to the general fund of the Navajo Nation.

History

ACM-54-56, March 19, 1956.
Revision note (1995). Reference to “Treasurer of the Tribe” has been changed to the “Controller of the Navajo Nation”.

Library References

Indians ☞32(4.1, 10).
 Municipal Corporations ☞717.5(3, 4, 4).
 Westlaw Topic Nos. 209, 268.
 C.J.S. Indians § 63.
 C.J.S. Municipal Corporations §§ 1543, 1545.

§ 530. Employee occupants; agreement

A. Every employee of the Navajo Nation permitted to occupy a unit of the Window Rock Navajo Nation Housing Project shall sign a written agreement to pay rent promptly (unless he or she is an officer of the Navajo Nation or his or her contract provides for rent free quarters); to pay for any damage to any part of the housing project by him or herself or any member of his family or any animal or machine kept by him or her, reasonable wear and tear excepted; to pay damages for excessive use of utilities; to accept the decision of the Housing Committee when approved by the Administrator as to all damages; and authorizing the Controller of the Navajo Nation to deduct from any sum owed by the Navajo Nation all rentals when due and all damages determined by the Housing Committee with the approval of the Administrator to have been caused by occupant, a member of occupant's family, or any animal or machine kept by occupant.

B. The Housing Committee with the approval of the Administrator shall prepare a standard form of agreement, and may include therein additional terms not inconsistent with those above specified.

History

ACM-54-56, March 19, 1956.

Revision note (1995). Reference to the "Treasurer" has been changed to the "Controller of the Navajo Nation".

Library References

Indians ☞32(6, 10).

C.J.S. Indians §§ 51, 63.

Municipal Corporations ☞717.5(3, 4).

C.J.S. Municipal Corporations §§ 1543, 1545.

Westlaw Topic Nos. 209, 268.

§ 531. Rentals

A. Rentals to be charged employees occupying houses of the Window Rock Navajo Nation Housing Project shall be due in advance on the first day of each month at the following rates:

Houses built pursuant to Resolution No. CJ-29-54 (unfurnished)

For employees making six thousand dollars (\$6,000) per year or less
..... Sixty-five dollars (\$65.00)

For employees making more than six thousand dollars (\$6,000) per year
..... Seventy-five dollars (\$75.00)

Apartments in Tribal houses in old residential area (furnished)

..... Fifty-five dollars (\$55.00)

Efficiency apartments in motel Thirty-five dollars (\$35.00)

B. All rents shall include utility services in reasonable amounts. The Housing Committee with the approval of the Administrator shall decide when the use of any utility service by any householder exceeds a reasonable amount and shall assess actual damages for such excess use. All personal toll telephone calls shall be at the expense of the householder.

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C. Rates of rental may be changed at any time by the Administrator with the approval of the Government Services Committee.

D. The houses occupied by the President and Vice-President, and any employees whose contracts so provide shall be rent free.

History

ACM-54-56, March 19, 1956.

Cross Reference

Government Services Committee oversight authority for this section, see 2 N.N.C. § 341 et seq.
Housing for the Speaker of the Navajo Nation Council, see 2 N.N.C. § 283.
Plans of operation for the Navajo Nation Employee Housing Program and the Division of General Services.

Library References

Indians ☞16, 32(10). C.J.S. Indians §§ 63, 98.
Municipal Corporations ☞717.5(3). C.J.S. Municipal Corporations § 1545.
Westlaw Topic Nos. 209, 268.

§ 532. Non-employee occupants; rental; rate

A. Any units of the Window Rock Navajo Nation Housing Project not needed for employee housing may be rented to non-employees by the Administrator upon such terms and conditions as the Administrator, with the advice of the Housing Committee, may deem proper. It shall be conditionally agreed that occupants must vacate the premises upon thirty (30) days' notice from the Administrator. The Administrator may prescribe the form of agreement to be signed by non-employed occupants and their employing agency.

B. The rentals in such cases shall be at a fixed figure which, in the opinion of the Administrator, will amortize the cost of the house rented over a reasonable period and will provide the Navajo Nation a reasonable interest rate.

History

ACM-54-56, March 19, 1956.

Cross Reference

See also, Plan of Operation for the Navajo Nation Employee Housing Program and the Division of General Services.

Library References

Indians ☞16, 32(10). C.J.S. Indians §§ 63, 98.
Municipal Corporations ☞717.5(3). C.J.S. Municipal Corporations § 1545.
Westlaw Topic Nos. 209, 268.

Article 2. Housing Committee

§ 551. Establishment; purpose

A. There is established a Window Rock Navajo Nation Housing Committee.

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B. The purpose of the Window Rock Navajo Nation Housing Committee is to plan, implement, supervise and control all activities relative to the administration of the Window Rock and Fort Defiance Navajo Nation housing areas.

History

ACO-375-72, October 25, 1972.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 552. Composition

The Window Rock Navajo Nation Housing Committee shall be composed of the following Navajo Nation representatives:

- A. Director, Division of Community Development;
- B. Director, Division of Economic Development;
- C. Attorney General, Department of Justice;
- D. Auditor General, Office of Auditor General;
- E. Director, Division of Finance (shall serve as Chairperson, Window Rock Navajo Nation Housing Committee).

History

ACO-109-78, October 19, 1978.

ACO-375-72, October 25, 1972.

Revision Note (1995). The Navajo Tribal Legal Office was redesignated the Tribal Legal Department by the 1978 Budget pages IX-I and IX-12 and was moved from 2 N.N.C.

§ 1101-1104 to 2 N.N.C. §§ 1991-1994. By CF-8-82, the Navajo Legal office was abolished and the Department of justice was established, with the Attorney General given authority over administrative and operating policies and supervisory control over the Department. See 2 N.N.C. § 1961 *et seq.*

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 553. Authority and duties

The Window Rock Navajo Nation Housing Committee shall:

- A. Adopt and change from time to time rules and regulations governing admission and expulsion of tenants as it may deem necessary;
- B. Adopt and change from time to time rules and regulations governing sanitation, control of livestock, and fire hazards in accordance with applicable regulations governing such;
- C. Adopt and change from time to time rules and regulations governing remodeling, repainting and any other improvements reasonably connected with housing;
- D. Adopt and change from time to time rules and regulations governing rental fees, utility fees and any other fees reasonably connected with housing to

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insure an adequate income by which houses can be maintained and the number of houses can be increased to meet the ever increasing need for housing by employees of the Navajo Nation;

E. Design and implement such forms and agreements as may be necessary to fulfill its purposes;

F. Adopt and maintain procedures to effect periodic inspections of the premises, cause repairs to be made as maybe deemed necessary, and assess costs for damages where damage to tribal property is due to more than normal wear;

G. Undertake whatever projects as may be assigned by appropriate authorities;

H. Give prompt and orderly consideration to all applications for housing in order that the Navajo Nation can recruit and retain competent employees;

I. Institute and maintain principles of sound management in order that the Window Rock and Fort Defiance Navajo Nation housing areas are maintained in a manner to meet sanitation requirements of assigned houses and surrounding grounds; and to insure a sound maintenance program; and do any and all things necessary to provide additional housing as funds become available;

J. Give notices of changes in occupancy status or rental rates to the Navajo Nation Controller promptly, and to involved renters.

History

ACO-375-72, October 25, 1972.

Revision Note (1995). At Subsection (J), reference to "Tribal Controller" changed to "Navajo Nation Controller".

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 554. Meetings

A. The Window Rock Navajo Nation Housing Committee shall meet monthly at a time and place to be determined by the Chairperson, Window Rock Navajo Nation Housing Committee.

B. The Chairperson, Window Rock Navajo Nation Housing Committee, shall preside at all meetings and shall be responsible for maintaining an orderly and dignified meeting.

C. Each representative shall appoint an alternate to serve when unable to attend a meeting.

D. A quorum of the Committee must be present to conduct a valid meeting; a quorum shall consist of at least three members.

E. Majority vote of those representatives voting shall, in all cases, constitute the final opinion of the Window Rock Navajo Nation Housing Committee.

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F. A written record of official actions taken at each meeting shall be maintained. A copy of such record shall be provided to each member of the Committee immediately following each meeting.

History

ACO-375-72, October 25, 1972.

Library References

Indians ☞32(4.1, 10).

C.J.S. Indians § 63.

Municipal Corporations ☞717.5(4).

C.J.S. Municipal Corporations § 1543.

Westlaw Topic Nos. 209, 268.

§ 555. Fiscal responsibility

A. There is established the Window Rock Navajo Nation Housing Revolving Fund to be maintained by the Controller of the Navajo Nation. All receipts from rentals, damages or other sources relating to Window Rock Navajo Nation Housing operations shall be credited to this fund to be available for payment of costs reasonably connected with the operation and maintenance of the housing areas. Disbursements from the fund shall be made by the Controller of the Navajo Nation pursuant to general or special authorizations of the Housing Committee.

B. Provided the balance in the fund is sufficient to sustain ordinary operations, additional housing units may be procured.

C. The Controller of the Navajo Nation shall provide, at least monthly, reports showing the income, expenditures and balance remaining in the fund.

History

ACO-375-72, October 25, 1972.

Library References

Indians ☞32(4.1, 10).

C.J.S. Indians § 63.

Municipal Corporations ☞717.5(4).

C.J.S. Municipal Corporations § 1543.

Westlaw Topic Nos. 209, 268.

Subchapter 5. Navajo Housing Authority

§ 601. Definitions

The following terms, wherever used or referred to in this subchapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

A. "Area of Operation" means all areas within the jurisdiction of the Council.

B. "Board" means the Board of Commissioners of the Authority.

C. "Council" means the Navajo Nation Council.

D. “Federal Government” includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

E. “Home-buyer” means a person(s) who has executed a lease-purchase agreement with the Authority and who has not yet achieved home ownership.

F. “Housing Project” or “Project” means any work or undertaking to provide or assist in providing (by any suitable method, including but not limited to: rental; sale of individual units in single or multi-family structures under conventional condominium, or cooperative sales contracts or lease purchase agreements; loans, or subsidizing of rentals or charges) decent, safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping, and for administrative, community, health, recreational, welfare, or other purposes. The term “Housing Project” or “Project” also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith, and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

G. “Obligations” means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this subchapter.

H. “Obligee” includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to the Authority property used in connection with a project, or any assignee or assignees of such lessor’s interest or any part thereof, and the Federal Government when it is a party to any contract with the Authority in respect to a housing project.

I. “Persons of Low Income” means persons or families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use.

History

CMY-41-77, May 6, 1977
ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).
Westlaw Topic No. 209.
C.J.S. Indians § 63.

§ 602. Establishment

A. Pursuant to the authority vested in the Navajo Nation by its Navajo Nation Code, and its authority to provide for the health, safety, morals, and

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welfare, the Navajo Nation Council establishes a public body known as the Navajo Housing Authority (hereinafter referred to as the Authority), and enacts this subchapter which shall establish the purposes, powers and duties of the Authority.

B. In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this subchapter as amended by CMY-41-77. A copy of CMY-41-77 duly certified by the President of the Navajo Nation shall be admissible in evidence in any suit, action or proceeding.

History

CMY-41-77, May 6, 1977.
ACJN-85-63, § 2, June 11, 1963.
CAP-5-63, April 16, 1963.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

§ 603. Declaration of need

It is hereby declared:

A. That there exist within the area of the jurisdiction of the Council unsanitary, unsafe and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortage forces such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;

B. That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

C. That the shortage of decent, safe and sanitary dwellings for persons of low income cannot be relieved through the operation of private enterprise;

D. That the providing of decent, safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of concern to the Council;

E. That residential construction activity and a supply of acceptable housing are important factors to general economic activity, and that the undertakings authorized by this subchapter to aid the production of better housing and more desirable neighborhood and community development at lower costs will make

possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and,

F. That the necessity in the public interest for the provisions of this sub-chapter is hereby declared as a matter of legislative determination.

History

CMY-41-77, May 6, 1977.
ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(1). Westlaw Topic Nos. 209, 268.	C.J.S. Municipal Corporations §§ 1543 to 1545.

§ 604. Purposes

The Authority shall be organized and operated for the purposes of:

A. Remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals;

B. Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

C. Providing employment opportunities through the construction, reconstruction, improvement, extension, alteration or repair and operation of low income dwellings.

History

CMY-41-77, May 6, 1977.
ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(1). Westlaw Topic Nos. 209, 268.	C.J.S. Municipal Corporations §§ 1543 to 1545.

§ 605. Board of Commissioners

The affairs of the Authority shall be managed by a Board of Commissioners composed of eight persons.

History

ACMA-37-84, March 15, 1984.	CO-58-73, October 18, 1973.
CMY-41-77, May 6, 1977.	ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Municipal Corporations ☞717.5(4). Westlaw Topic Nos. 209, 268.	C.J.S. Municipal Corporations § 1543.

Annotations**1. Validity**

“NHA approved the articles of incorporation under the power granted by the Navajo Nation Code in 6 N.N.C. §§ 605, 616(B)(14).” *Cabi-*

nets Southwest, Inc. v. Navajo Nation Labor Commission, No. SC-CV-46-03, slip op. at 5 (Nav. Sup. Ct. February 11, 2004).

§ 606. Appointment

A. The Board Members shall be appointed, and may be reappointed, by the Government Services Committee of the Navajo Nation Council. A resolution of the Government Services Committee of the Navajo Nation Council as to the appointment or reappointment of any Commissioner shall be conclusive evidence of the due and proper appointment of the Commissioner.

B. A Commissioner shall be a member of the Navajo Nation, and no more than two Commissioners shall be members of the Navajo Nation Council. Three of the Commissioners shall represent the tenants and homebuyers participating in programs administered by the Authority, one shall reside in the State of New Mexico, one shall reside in the State of Arizona, and one shall reside in the State of Utah. There shall be one representative on the Board from each of the five agencies comprising the Navajo Nation. These individuals shall have some formal education, or at least three (3) years of leadership experience in a local unit of government.

C. No person shall be barred from serving on the Board because that person is a tenant or homebuyer in a housing project of the Authority; and such Commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants or homebuyers, even though such matters affect the Commissioner as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in his capacity as a tenant or homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his or her individual rights, obligations or status as a tenant or homebuyer.

History

CO-78-91, October 25, 1991.
CMY-41-77. May 6, 1977.

CO-58-73, October 18, 1973.
ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(6, 10).
Municipal Corporations ☞717.5(4).
Westlaw Topic Nos. 209, 268.

C.J.S. Indians §§ 51, 63.
C.J.S. Municipal Corporations § 1543.

§ 607. Term of office

The term of office shall be four (4) years and staggered. When the Board is first established, one member's term shall be designated to expire in one (1) year, another to expire in two (2) years, a third to expire in three (3) years, and the last two in four (4) years. Thereafter, all appointments shall be for four (4) years, except that in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Each member of the Board shall hold office until his successor has been appointed and has qualified.

History

CMY-41-77, May 6, 1977.
 CO-58-73, October 18, 1973
 ACJN-85-63, June 11, 1963.

Cross Reference

Regarding subsection (C), see also, 6 N.N.C. § 619(A).

Library References

Indians ☞32(6, 10).	C.J.S. Indians §§ 51, 63.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

§ 608. Compensation

The Commissioners shall be reimbursed for actual travel expenses, meals and other costs and expenses incurred which are directly attributed to attendance at duly called Board meetings. At its discretion, the Board of Commissioners may proposed a stipend be paid to its members for attendance at Board meetings subject to 5 N.N.C. § 1991(A). All Board expenses and stipends shall be paid from NHA funds budgeted for that purpose. Commissioners shall be entitled to reimbursement, as above, for attendance at duly called Board meetings, where due to absences of other Board members, a quorum is not present.

History

CAP-47-99, April 23, 1999.	CMY-41-77, May 6, 1977.
ACAU-134-86 August 13, 1986.	ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(6, 10).	C.J.S. Indians §§ 51, 63.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

§ 609. Officers; Election; Presiding Officer

The Board shall elect from among its members a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer; and a member may hold the position of Secretary/Treasurer. In the absence of the Chairperson, the Vice Chairperson shall preside; and in the absence of both the Chairperson and Vice Chairperson, the Secretary shall preside.

History

CJY-57-95, July 20, 1995.	Note (2005). References to “Chairman”
CMY-41-77, May 6, 1977.	changed to “Chairperson.”
ACJN-85-63, June 11, 1963.	

Library References

Indians ☞32(6, 10).	C.J.S. Indians §§ 51, 63.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

6 N.N.C. § 610

COMMUNITY DEVELOPMENT

§ 610. Secretary

The Secretary shall keep complete and accurate records of an meetings and action taken by the Board.

History

ACJN-85-63, June 11, 1963.

Cross References

Duty of Secretary to preside in absence of other officers, see § 609 of this title.

§ 611. Treasurer; duties; bond

The Treasurer shall keep full and accurate financial records, make periodic reports to the Board, and submit a complete annual report, in written form, to the Navajo Nation Council as required by 6 N.N.C. § 618.

History

CMY-41-77, May 6, 1977.

ACJN-85-63, June 11, 1963.

made to 6 N.N.C. § 618 by CO-78-91, October 25, 1991.

Revision note. "Annual" report changed to "quarterly" report pursuant to amendments

§ 612. Meetings

Meetings of the Board shall be held at regular intervals as provided in the bylaws. Emergency meetings may be held upon twenty-four (24) hours actual notice and business transacted, provided that not less than a majority of the full Board concurs in the proposed action.

History

CMY-41-77, May 6, 1977.

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 613. Quorum

A majority of the *full* Board, notwithstanding the existence of any vacancies, shall constitute a quorum for the transaction of business, but no Board action shall be taken by a vote of less than a majority of such full Board.

History

CMY-41-77, May 6, 1977.

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).

Westlaw Topic No. 209.

C.J.S. Indians § 63.

§ 614. Exercise of powers

The Board shall have authority to exercise, by majority vote of those present and voting, any and all powers delegated to the Authority by this subchapter or any amendments thereto, except as provided in 6 N.N.C. § 617, for the adoption of Board resolutions.

History

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 615. Removal of members

A member of the Board may be removed by the appointing power for serious inefficiency or neglect of duty or for misconduct in office, but only after a hearing before the appointing power and only after the member has been given a written notice of the specific charges against him or her at least ten (10) days prior to the hearing. At any such hearing, the member shall have the opportunity to be heard in person or by counsel and to present witnesses on his or her behalf. In the event of removal of any Board member, a record of the proceedings, together with the charges and findings thereon, shall be filed with the appointing power and a copy thereof sent to the appropriate office of the Department of Housing and Urban Development.

History

CMY-41-77, May 6, 1977.

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(6, 10).

Municipal Corporations ☞153.

Westlaw Topic Nos. 209, 268.

C.J.S. Indians §§ 51, 63.

C.J.S. Municipal Corporations §§ 419, 421, 435, 437.

§ 616. Powers

A. The Authority shall have perpetual succession in its corporate name.

B. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

1. The Navajo Nation gives its irrevocable consent to allowing the Authority to sue and be sued in its corporate name, upon any contract, claim or obligation arising out of its activities, the Authority to agree by contract to waive any immunity from suit which the Navajo Housing Authority might otherwise have; but under no circumstances shall the Navajo Nation be liable for the debts and obligations of the Authority, nor shall the land, funds and all other real or personal property of the Navajo Nation be subject to execution or levy on account of the debts or obligations of the Authority.

Nothing contained herein nor in any other provision of this subchapter shall be construed to waive the right of the Navajo Nation to assert the defense of sovereign immunity in any lawsuit against the Navajo Nation, and nothing contained herein nor in any other provision of this subchapter shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolate and inviolable.

2. To adopt and use a corporate seal.
3. To enter into agreements, contracts and understandings with any governmental agency, federal, state or local (including the Navajo Nation Council and/or standing committees) or with any person, partnership, corporation or Indian Tribe; and to agree to any conditions attached to federal financial assistance. Notwithstanding anything to the contrary contained in this subchapter or in any other provision of law, to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project. In any contract with the federal government for annual contributions to the Authority, the Authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenant or conditions to which the Authority is subject; and such contract may further provide that in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: Provided, that the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the Authority the project as then constituted.

It is the purpose and intent of this subchapter to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

4. To lease property from the Navajo Nation and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

5. To borrow money, to issue temporary or long-term evidence of indebtedness; and to repay the same. Corporate bonds shall be issued and repaid in accordance with the provisions of 6 N.N.C. § 617.

6. To pledge the assets and receipts of the Authority as security for debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

7. To purchase land or interests in land or take the same by gift; to lease land or interests in land to the extent provided by law.

8. To undertake and carry out studies and analyses of the housing needs in areas under the jurisdiction of the Navajo Nation, to prepare housing plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

9. With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project (including individual cooperative or condominium units): to lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase; to establish and revise rents or required monthly payments; to make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care and management of housing units; and to make such further rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this subchapter.

10. To purchase insurance in any stock or mutual company for any property or against any risks or hazards.

11. To invest such funds as are not required for immediate disbursement.

12. To establish and maintain such bank accounts as may be necessary or convenient.

13. To employ an executive director, technical and maintenance personnel and such other officers and employees, permanent or temporary, as it may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

14. To take such further actions as are commonly engaged in by corporate bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

15. To adopt such bylaws as the Board deems necessary and appropriate.

16. To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of a state or another tribe in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other public housing agency or agencies for the purpose of financing (including but not limited to the issuance of notes or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects of the Authority or such other public housing agency or agencies. For such purpose, the Authority may by resolution prescribe and authorize any other public housing agency or agencies, so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers, as the Authority's agent or otherwise, in the name of the Authority or in the name of such agency or agencies.

17. To finance purchase of a home by an eligible homebuyer in accordance with regulations and requirements of the Department of Housing and Urban Development.

18. To terminate any lease or rental agreement or lease purchase agreement when the tenant or homebuyer who has violated the terms of such agreement, or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement; and to bring action for eviction against such tenant or homebuyer.

C. No ordinance or other enactment of the Navajo Nation with respect to the acquisition, operation, or disposition of Navajo Nation property shall be applicable to the Authority in its operations pursuant to this subchapter.

D. It is the purpose and intent of this subchapter to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

History

CMY-41-77, May 6, 1977.

ACMA-80-71, March 16, 1971.

CN-75-66, June 21, 1966.

CN-21-63, June 14, 1963.

ACJN-85-63, June 11, 1963.

Cross References

Approval of financial assistance contract by Secretary of the Interior, see § 625 of this title.

Bonds, powers with respect to issuance of, see § 617 of this title.

Exercise of powers by Board, see § 614 of this title.

Library References

Indians ⚡32(10).

Municipal Corporations ⚡717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

Annotations

1. Construction and application

“NHA approved the articles of incorporation under the power granted by the Navajo Nation Code in 6 N.N.C. §§ 605, 616(B)(14).” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 5 (Nav. Sup. Ct. February 11, 2004).

2. Immunity

“As we have previously noted, NHA does not have sovereign immunity from a lawsuit, but NHA generally is exempt from levy and execution. See 6 N.N.C. §§ 616, 623.” *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 4 (Nav. Sup. Ct. August 26, 2004).

“Under this section, NHA is required to waive its immunity from suits in any agreement with another party. Even when NHA fails to do so, it lacks immunity under the clear language of Section 616(b)(1).” *NHA v. Bluffview Resident Management Corporation, Board of Directors, et al.*, No. SC-CV-35-00, slip op. at 9 (Nav. Sup. Ct. December 17, 2003).

“... [T]he NHA can waive its immunity from levy and execution by contract. The contract language that waives the NHA’s immunity from levy and execution must be clear and express, and any ambiguity will not be construed as a waiver of immunity.” *The Navajo Housing Authority v. Dana and Associates*, 5 Nav. R. 157, 160 (Nav. Sup. Ct. 1987).

§ 617. Bonds

A. The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of

paying or retiring obligations previously issued by it. The Authority may issue such types of obligations as it may determine, including obligations on which the principal and interest are payable:

1. Exclusively from the income and revenues of the project financed with the proceeds of such obligations, or with such income or revenues together with a grant from the federal government in aid of such project;

2. Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such obligations; or

3. From its revenues generally. Any of such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

B. Neither the Commissioners of the Authority nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

C. The notes and other obligations of the Authority shall not be a debt of the Navajo Nation and the obligations shall so state on their face.

D. Obligations of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes imposed by the Navajo Nation. The tax exemption provisions of this subchapter shall be considered part of the security for the repayment of obligations and shall constitute, by virtue of this subchapter and without necessity of being restated in the obligations, a contract between the Authority and the Navajo Nation and the holders of obligations and each of them, including all transferees of the obligations from time to time.

E. Obligations shall be issued and sold in the following manner:

1. Obligations of the Authority shall be authorized by a resolution adopted by the vote of a majority of the full Board and may be issued in one or more series;

2. The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide;

3. The obligations may be sold at public or private sale at not less than par value;

4. In case any of the Commissioners of the Authority whose signatures appear on any obligations cease to be Commissioners before the delivery of such obligations, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the Commissioners had remained in office until delivery.

F. Obligations of the Authority shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any obligations of the

Authority or the security therefor, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this subchapter shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this subchapter.

G. In connection with the issuance of obligations or incurring of obligations under leases and to secure the payment of such obligations, the Authority, subject to the limitations in this subchapter, may:

1. Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;
2. Provide for the powers and duties of obligees and limit their liabilities, and provide the terms and conditions on which such obligees may enforce any covenants or rights securing or relating to the obligations;
3. Covenant against pledging all or any part of its rents, fees and revenues or against mortgaging any or all of its real or personal property to which its title or right then exists or may thereafter come into existence or permitting or suffering any lien on such revenues or property;
4. Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof,
5. Covenant as to what other or additional debts or obligations may be incurred by it;
6. Covenant as to the obligations to be issued and as to the issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
7. Provide for the replacement of lost, destroyed or mutilated obligations;
8. Covenant against extending the time for the payment of its obligations or interest thereof;
9. Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof;
10. Covenant concerning the rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees and other revenues, and as to the use and disposition to be made thereof;
11. Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds; .
12. Prescribe the procedures, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given;
13. Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies;

- 14. Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation;
- 15. Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;
- 16. Vest in any obligee or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations;
- 17. Exercise all or any part or combination of the powers granted in this section;
- 18. Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character;
- 19. Make any covenants and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the absolute discretion of the Authority, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

History

CMY-41-77, May 6, 1977.
 ACJN-85-63, June 11, 1963.

Cross References

Powers generally, see § 616 of this title.

Library References

Indians ☞32(4.1, 10).	C.J.S. Indians § 63.
Municipal Corporations ☞906.	C.J.S. Municipal Corporations §§ 1645 to
Westlaw Topic Nos. 209, 268.	1646, 1702.

§ 618. Quarterly report

The Authority shall submit quarterly reports, signed by the Chairperson of the Board, to the Navajo Nation Council showing:

- A. A summary of the quarter’s activities;
- B. The financial condition of the Authority;
- C. The condition of the properties;
- D. The number of units and vacancies;
- E. Any significant problems and accomplishments;
- F. Plans for the future;
- G. Such other information as the Authority or the Navajo Nation Council shall deem pertinent.

History

CO-78-91, October 25, 1991.
 CMY-41-77, May 6, 1977.
 ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).

Municipal Corporations ☞717.5(4).

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 1543.

§ 619. Interest of officers or employees in project or property

A. During his or her tenure and for one (1) year thereafter, no Commissioner, officer or employee of the Authority, or any member of any governing body of the Navajo Nation, or any other public official who exercises any responsibilities or functions with regard to the project, shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract relating to any project, unless prior to such acquisition, he or she discloses his or her interest in writing to the Authority and such disclosure is entered upon the minutes of the Authority, and the Commissioners, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest.

B. If any Commissioner, officer or employee of the Authority involuntarily acquires any such interest, or voluntarily or involuntarily acquired any such interest prior to appointment or employment as a Commissioner, officer or employee, the Commissioner, officer or employee, in any such event, shall immediately disclose his or her interest in writing to the Authority, and such disclosure shall be entered upon the minutes of the Authority, and the Commissioner, officer or employee shall not participate in any action by the Authority relating to the property or contract in which he or she has any such interest.

C. Any violation of the foregoing provisions of this section shall constitute misconduct in office.

D. This section shall not be applicable to the acquisition of any interest in obligations of the Authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project or to act as trustee under any trust indenture, or to utility services the rates for which are fixed or controlled by a governmental agency, or to membership on the Board as provided in § 606(C) of this title.

History

CMY-41-77, May 6, 1977.

ACJN-85-63, June 11, 1963.

Cross Reference

Concerning subsection (A), see also 6 N.N.C. § 606.

Library References

Indians ☞32(6, 10).

Municipal Corporations ☞717.5(4).

Officers and Public Employees ☞110.

Westlaw Topic Nos. 209, 268, 283.

C.J.S. Indians §§ 51, 63.

C.J.S. Municipal Corporations § 1543.

C.J.S. Officers and Public Employees §§ 234 to 245.

§ 620. Planning, zoning, sanitary and building regulations

All projects of the Authority shall be subject to the planning, zoning, sanitary and building regulations applicable to the locality in which the planned project is situated.

History

ACJN-85-63, June 11, 1963.

Library References

Health ☞390.
Indians ☞32(10).
Zoning and Planning ☞236.1.

Westlaw Topic Nos. 198H, 209, 414.
C.J.S. Indians § 63.

§ 621. Non-profit construction or operation

The Authority shall not construct or operate any project for profit.

History

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(10).
Municipal Corporations ☞717.5(4).
Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.
C.J.S. Municipal Corporations § 1543.

§ 622. Tax exemption

The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Navajo Nation.

History

ACJN-85-63, June 11, 1963.

Library References

Indians ☞32(9).
Taxation ☞181.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 256 to 258, 301 to 302.

§ 623. Exemption from execution or other judicial process

All property, including funds acquired or held by the Authority pursuant to this subchapter, shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property. However, the provisions of this section shall not apply to or limit the right of the obligee to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this subchapter or the right of the Authority to bring eviction actions in accordance with § 616 (B)(18) of this title.

History

CMY-41-77, May 6, 1977.
ACJN-85-63, June 11, 1963.

Library References

Execution ⇌22.
Indians ⇌16(8), 32(7, 10).
Westlaw Topic Nos. 161, 209.

C.J.S. Executions §§ 39 to 40.
C.J.S. Indians §§ 60 to 63, 139 to 143, 152.

Annotations**1. Defenses**

“... [S]overeign immunity is a jurisdictional defense, which may be raised for the first time on appeal.” *The Navajo Housing Authority v. Dana and Associates*, 5 Nav. R. 157, 160 (Nav. Sup. Ct. 1987).

2. Immunity

“The real issue in this case is whether the NPEA overrides the general exemption in Section 623. In considering the relationship between the two statutes, we emphasize the difference between sovereign immunity and a statutory exemption. Ordinarily, a legislative body must waive sovereign immunity through explicit language in the statute. *See, e.g., United States v. King*, 395 U.S. 1, 4 (1969). However, as Section 623 does not address the sov-

ereign immunity of NHA, we do not require the same explicit expression to find a waiver of the statutory exemption. We hold that the Navajo Nation Council may override a statutory exemption if there is clear intent in the plain language and/or structure of the later law to include the exempted individual or entity in a generally applicable regulation.” *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 5 (Nav. Sup. Ct. August 26, 2004).

“The Navajo Nation Council (Council) waived NHA’s sovereign immunity, but there is a separate section in the Navajo Nation Code that provides for an exemption from execution of ‘other judicial process’... ” *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 4 (Nav. Sup. Ct. August 26, 2004).

§ 624. Navajo Nation cooperation

A. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Navajo Nation agrees that:

1. It will not levy or impose any real or personal property taxes or special assessments upon the Authority or any project.
2. It will furnish or cause to be furnished to the Authority and the tenants of projects all services and facilities of the same character and to the same extent as the Navajo Nation furnishes from time to time without cost or charge to other dwellings and inhabitants in areas under the jurisdiction of the Navajo Nation.
3. Insofar as it may lawfully do so, it will grant such deviations from any present or future building or housing codes of the Navajo Nation as are reasonable and necessary to promote economy and efficiency in the development and operation of any project, and at the same time safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development and protection of such project, and the surrounding territory.
4. It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.
5. It will join in any disposition of project property or interest therein by the Authority and make assignments or other appropriate disposition of

the underlying land as permitted by law, where action is required in order to grant the maximum interest therein permitted by law.

6. This section will not be abrogated, changed, or modified without the consent of the Public Housing Administration.

B. The Navajo Nation declares its intention to use its lawful powers, to the extent feasible, to eliminate unsafe or unsanitary dwelling units in areas subject to the jurisdiction of the Navajo Nation, as additional dwellings are provided by projects of the Authority.

C. The provisions of subsection (A) of this section shall remain in effect with respect to any project so long as the project is either owned by a public body or governmental agency and is used for low-rent housing purposes, any contract between the Authority and the Public Housing Administration for loans or annual contributions, or both, in connection with such project remains in force and effect, or any bonds issued in connection with such project or any monies due to the Public Housing Administration in connection with such project remain unpaid, whichever period is the longest.

D. If at any time title to or possession of any project is held by any public body or governmental agency authorized by law to engage in the development or operation of low income housing, including the federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

E. It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

F. The Navajo Nation declares that the powers of the Navajo Nation shall be vigorously utilized to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations including action through the appropriate courts.

G. The appropriate court shall have jurisdiction to hear and determine an action for eviction of a tenant or homebuyer. The Navajo Nation declares that the powers of said Court shall be vigorously utilized and the Navajo Nation will cooperate to the fullest extent possible to enforce eviction of a tenant or homebuyer for nonpayment or other contract violations.

History

CMY-41-77, May 6, 1977.
ACJN-85-63, June 11, 1963.

Cross References

Tax exemption, see § 622 of this title.

Library References

Indians ☞32(9, 10).	C.J.S. Indians §§ 63, 130 to 132, 134.
Municipal Corporations ☞717.5(4).	C.J.S. Municipal Corporations § 1543.
Westlaw Topic Nos. 209, 268.	

§ 625. Approval by Secretary of the Interior

With respect to any financial assistance contract between the Authority and the federal government, the Authority shall obtain the approval of the Secretary of the Interior or his or her designee.

History

ACJN-85-63, June 11, 1963.

Cross References

Financial assistance generally, see § 616 of this title.

Library References

Indians ⇄7, 32(10).
United States ⇄82(3.3).

Westlaw Topic Nos. 209, 393.
C.J.S. Indians §§ 46 to 47, 63.

§ 626. Actions involving validity or enforcement of contracts; evidence

In any suit, action or proceeding involving the validity or enforcement of or relating to any of its contracts, the Authority shall be conclusively deemed to have become established and authorized to transact business and exercise its powers upon proof of the adoption of this subchapter. A copy of the resolution which adopted this subchapter duly certified by the then Chairman of the Navajo Tribal Council shall be admissible in evidence in any suit, action or proceeding.

History

ACJN-85-63, June 11, 1963.

Library References

Indians ⇄27(6), 32(7, 10).
Westlaw Topic No. 209.

C.J.S. Indians §§ 13, 60 to 63, 95, 139 to 143,
152.

§ 627. Federal law

Each project developed or operated under a contract providing for federal financial assistance shall be developed and operated in compliance with all requirements of such contract and applicable federal legislation, and with all regulations and requirements prescribed from time to time by the federal government in connection with such assistance.

History

CMY-41-77, May 6, 1977.

Library References

Indians ⇄7, 32(10).
United States ⇄82(3.3).

Westlaw Topic Nos. 209, 393.
C.J.S. Indians §§ 46 to 47, 63.

§ 628. Fidelity bonds

The Authority shall obtain or provide for adequate fidelity bond coverage of its officers, agents, or employees handling cash or authorized to sign checks or certify vouchers.

History

CMY-41-77, May 6, 1977.

Library References

Indians ⇄32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

Chapter 7. Planning and Zoning

Subchapter 1. Navajo Planning and Development Board

Section

1001-1006. [Repealed]

Subchapter 3. Zoning

- 1051. Preparation of ordinances
- 1052. Approval and adoption
- 1053. Enforcement and information
- 1054. Amendments

Subchapter 5. Comprehensive Plan

- 1101. Origin and purpose
- 1102. Preparation of plan
- 1103. Presentation of plan
- 1104. Control by the Transportation and Community Development Committee
- 1105. Land use; variations
- 1106. Applications for land use

Subchapter 7. Damages

- 1151. Damages to improvements
- 1152. Damages to intangible interests

Subchapter 1. Navajo Planning and Development Board

§§ 1001 to 1006. [Repealed]**History**

CAU-37-73, August 22, 1973.

By CAU-37-73, the Navajo Nation Council merged the duties of the Navajo Planning and Development Board with those given to the Economic Development and Planning Committee, a standing committee of the Navajo Nation Council. The functions of the Economic Development and Planning Committee were redelegated to the Community Development Committee (now the Transportation and Community Development Committee), the Economic Development Committee and the Resources Committee. See 2 N.N.C. §§ 420, 721, and 691 respectively. CD-68-89, December 15, 1989.

opment and Planning Committee were redelegated to the Community Development Committee (now the Transportation and Community Development Committee), the Economic Development Committee and the Resources Committee. See 2 N.N.C. §§ 420, 721, and 691 respectively. CD-68-89, December 15, 1989.

Subchapter 3. Zoning

§ 1051. Preparation of ordinances

The Transportation and Community Development Committee is authorized to adopt zoning ordinances for communities having an adopted Comprehensive Community Plan where land for the community as defined therein has been withdrawn.

History

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2).

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Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ⇨32(10).

Zoning and Planning ⇨4.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning §§ 3, 5 to 7, 10, 85.

§ 1052. Approval and adoption

The Planning and Zoning Officer, Navajo Nation, shall cause to be prepared proposed zoning ordinances for the communities. The proposed ordinances shall require approval by the Transportation and Community Development Committee before becoming effective.

History

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2). Also, the statutory reference to the Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

hensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2). Also, the statutory reference to the Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).

Zoning and Planning ☞131.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning §§ 12, 14, 16.

§ 1053. Enforcement and information

The Planning and Zoning Officer shall be responsible for the enforcement of all zoning ordinances adopted by the Transportation and Community Development Committee. The Officer shall further provide and maintain a public information office relative to all matters arising from adopted zoning ordinances.

History

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Com-

munity Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2).

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).

Zoning and Planning ☞761.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning § 334.

§ 1054. Amendments

All proposed amendments to zoning ordinances shall first be reviewed by the Local Planning Board, and shall require approval by the Transportation and Community Development Committee before becoming effective.

History

CS-76-65, September 1, 1965.

Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve compre-

hensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2). Also, the statutory reference to the Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).

Zoning and Planning ☞191, 193.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning §§ 84 to 87, 89, 92 to 94.

Subchapter 5. Comprehensive Plan

§ 1101. Origin and purpose

The Chapter, at a meeting called for that purpose, shall formally request of the Planning and Zoning Officer, Navajo Nation, the preparation of a Comprehensive Community Plan of the community. A Comprehensive Community Plan will provide a means for the Chapter, working with the Local Planning Board assisted by technical experts, to make an assessment of the resources of the community and to develop a plan and a program for providing the kind of environment needed for improvement, growth and development of the community. Such a plan shall include, but not be limited to, the following:

A. An *Open Space Plan* which preserves for the people certain areas to be retained in their natural state or developed for recreational purposes.

B. A *Land Use Plan* which projects future community land needs, showing by location and extent, areas to be used for residential, commercial, industrial, and public purposes.

C. A *Thoroughfare Plan* which provides a system of and design criteria for major streets, existing and proposed, distinguishing between limited access, primary, and secondary thoroughfares, and relating major thoroughfares to the road network and land use of the surrounding area.

D. A *Community Facilities Plan* which shows the location, type, capacity, and area served, of present and projected or required community facilities including, but not limited to, recreation areas, schools, libraries, and other public buildings. It will also show related public utilities and services and indicate how these services are associated with future land use.

History

CAU-72-65, August 31, 1965.

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve comprehensive community land use plans and zoning ordinances, including land withdrawals

necessary for the implementation of such land use plans. See 2 N.N.C. § 423(C)(2). Also, the statutory reference to the Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973.

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ⇨32(10).

Zoning and Planning ⇨30.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning §§ 2, 5, 12, 39.

§ 1102. Preparation of plan

The Planning and Zoning Officer, Navajo Nation, shall prepare with the assistance of appropriate technical staff of the Navajo Nation, the Bureau of Indian Affairs, and the United States Public Health Service, a Comprehensive Community Plan. The Planning and Zoning Officer shall consult with the

Chapter and the Local Planning Board during the preparation of this plan for advice. He shall consult with the Transportation and Community Development Committee for advice during the preparation of this plan and their written approval of the plan shall be required before the same may be submitted to the Chapter for final approval. The officer shall be responsible for the preparation of a proper Comprehensive Community Plan to fit the needs of the community.

History

CAU-72-65, August 31, 1965. comprehensive community land use plans and zoning ordinances, including land withdrawals necessary for the implementation of such land use plans. See 2 N.N.C. § 423 (C) (2).

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Zoning and Planning ☞30.	C.J.S. Zoning and Land Planning §§ 2, 5, 12,
Westlaw Topic Nos. 209, 414.	39.

§ 1103. Presentation of plan

The Comprehensive Community Plan so prepared for a community shall be presented to the Chapter at a duly called meeting for approval.

History

CAU-72-65, August 31, 1965. comprehensive community land use plans and zoning ordinances, including land withdrawals necessary for the implementation of such land use plans. See 2 N.N.C. § 423(C)(2).

Note. The Transportation and Community Development Committee of the Navajo Nation Council is authorized to review and approve

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Zoning and Planning ☞30.	C.J.S. Zoning and Land Planning §§ 2, 5, 12,
Westlaw Topic Nos. 209, 414.	39.

§ 1104. Control by the Transportation and Community Development Committee

The Comprehensive Community Plan, as approved by the local Chapter, shall be presented to the Transportation and Community Development Committee for adoption and withdrawal of the land for the community as defined in the plan. The Transportation and Community Development Committee shall have full control and complete authority of land utilization of community withdrawn lands as defined by the adopted Comprehensive Community Plan. No person shall, after Transportation and Community Development Committee adoption of the plan and withdrawal of the land for the community, as defined in the

6 N.N.C. § 1104

COMMUNITY DEVELOPMENT

plan, utilize any land therein without specific written approval of the Transportation and Community Development Committee; provided that easements and rights-of-way may be granted as provided by Navajo Nation law so long as same comply with the Comprehensive Community Plan.

History

CAU-72-65, August 31, 1965.
Revision note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. The Transportation and Community Development Committee has been delegated authority to review and approve comprehensive community land use plans and zoning ordinances pursuant to 2 N.N.C. § 423(C)(2).

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).
Zoning and Planning ☞30.
Westlaw Topic Nos. 209, 414.
C.J.S. Indians § 63.
C.J.S. Zoning and Land Planning §§ 2, 5, 12, 39.

§ 1105. Land use; variations

The utilization of all withdrawn lands of the community as defined by the adopted Comprehensive Community Plan shall be in accordance with the provisions of said plan; provided that variations thereunder shall be permitted when approved by the Transportation and Community Development Committee.

History

CAU-72-65, August 31, 1965.
Revision note. The Navajo Community Planning Board was repealed by CAU 37-73, August 22, 1973. See 2 N.N.C. § 423(C)(2) for the authority of the Transportation and Community Development Committee.

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ☞32(10).
Zoning and Planning ☞481.
Westlaw Topic Nos. 209, 414.
C.J.S. Indians § 63.
C.J.S. Zoning and Land Planning §§ 228 to 229, 231 to 232.

§ 1106. Applications for land use

All applications for Transportation and Community Development Committee consideration for utilization of lands within a community to be developed under a Transportation and Community Development Committee approved Comprehensive Community Plan and where lands for the community, as defined in the plan have been withdrawn by the Transportation and Community Development Committee shall be reviewed expeditiously first by:

- A. The Local Planning Board;
- B. The Planning and Zoning Officer, Navajo Nation;

- C. The Bureau of Indian Affairs;
- D. The United States Public Health Service;
- E. Department of Justice, Navajo Nation;
- F. The President, Navajo Nation;
- G. The Office of Legislative Counsel, Navajo Nation prior to being submitted to the Transportation and Community Development Committee, to insure conformance with the Comprehensive Community Plan.

History

CS-74-65, September 1, 1965.

Revision note. By CF-8-82 the Navajo Tribal Legal Office was abolished and the Department of Justice was established with the Attorney General given authority over administrative and operating policies and supervisory control over the Department. See 2 N.N.C. § 1961 et seq. The Navajo Tribal Legal Office was redesignated the Tribal Legal Department by the 1978

Budget pages IX-1 and IX-12 and was moved from 2 N.N.C. § 1101-1104 to 2 N.N.C. § 1991-1994. The Legislative Secretary no longer exists in Navajo Nation government. The Office of Legislative Counsel provides legal advice and legislative services to the Navajo Nation Council and its standing committees. See 2 N.N.C. § 960 et seq., see also, 2 N.N.C. § 164.

Cross Reference

Regarding zoning, see also, 27 N.N.C. § 2004.

Library References

Indians ⇨32(10).

Zoning and Planning ⇨432.

Westlaw Topic Nos. 209, 414.

C.J.S. Indians § 63.

C.J.S. Zoning and Land Planning §§ 198, 205 to 206.

Subchapter 7. Damages

§ 1151. Damages to improvements

A. When in accomplishing the purpose of the Comprehensive Community Plan, the Navajo Nation disposes of land containing any improvement belonging to a person who will not donate the same whether the disposition is made by surface lease, permit, consent to grant of right-of-way or consent to commencement of construction on a proposed right-of-way, or in any other manner that gives the grantee or proposed grantee exclusive use of the surface of the land containing such improvement, or authorizes the grantee or proposed grantee to use the surface of the land in such manner that said improvement or improvements must be removed, damaged, or destroyed, the Navajo Nation will pay or require to be paid damages to the rightful claimant of such improvement or improvements.

1. As used herein "improvement" means houses, hogans, sunshades, stables, storage sheds and dugouts, and sweathouses; sheep and horse corrals, lamb pens, and fences lawfully maintained; irrigation ditches, dams, charcos, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value. Where any improvement of a person is readily

removable and he or she has an opportunity to remove the same, damages payable on account of said improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed or damaged in the authorized course of use of the land on which it is located.

2. No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring said improvement knew or with reasonable diligence ought to have known that the area in which it was located was proposed to be disposed of by the Navajo Nation adversely to such person's interest.

B. Upon adverse disposition by the Navajo Nation of a person's lawful interest, the President of the Navajo Nation shall cause to be prepared an appraisal of the improvements for which the person is entitled to compensation as hereinabove provided. The President of the Navajo Nation or his authorized representative shall negotiate with the person for settlement of his or her claim for payment of the value of the improvement or the reasonable cost of its removal. If a settlement satisfactory to the President of the Navajo Nation or his or her authorized representative and the person is reached, the proposed agreement shall be submitted to the Transportation and Community Development Committee for approval, and authorization to pay the claim if appropriate.

C. If a settlement satisfactory to the President of the Navajo Nation or his authorized representative and the person cannot be reached, the President of the Navajo Nation shall appoint a negotiating committee with representation from the following to make a settlement of the claim:

1. Local Planning Board
2. Resources Committee, Navajo Nation Council; and
3. Land Administration Department, Navajo Nation.

D. If a settlement satisfactory to the negotiating committee and the person cannot be reached, the claim will be referred to the Transportation and Community Development Committee for review and further directions in accordance with appropriate laws of the Navajo Nation.

History

CS-78-65, September 2, 1965.

Revision note. In subsection (B) the words "and the person" were added after "representative" for clarity. Land Administration Department was added in place of Land Investigation Department as that is the successor agency.

The Navajo Community Planning Board was repealed by CAU-37-73, August 22, 1973. See 2 N.N.C. § 420 *et seq.* for the Transportation and Community Development Committee's authority.

Cross Reference

Concerning damages, see also, 16 N.N.C. § 1401 *et seq.* and 26 N.N.C. § 2005 *et seq.*

Library References

Indians ☞25, 32(10).

Municipal Corporations ☞739.

Westlaw Topic Nos. 209, 268.

C.J.S. Indians §§ 32, 63.

C.J.S. Municipal Corporations § 685.
C.J.S. United States §§ 181 to 183.

§ 1152. Damages to intangible interests

When in accomplishing the purpose of the Comprehensive Community Plan, the Navajo Nation as a result of the granting of any lease or permit embracing Navajo Nation land, or of granting permission by the Navajo Nation for the use of Navajo Nation land, or as a result of the use of Navajo Nation land under such lease, permit or permission, the value of any part of such land for its customary use by a person formerly lawfully using the same is destroyed or diminished, the Navajo Nation will compensate or cause to be compensated the former user in the manner hereinafter specified.

A. When the livelihood of the former Navajo Indian user is gravely affected by the new use, such user shall have first priority in resettling on other lands acquired by the Navajo Nation, except the area acquired pursuant to the Act of September 2, 1958 (72 Stat. 1686); and the Nation shall pay the expense of removing said person, his or her family, and property to any new land made available for his or her use, and such shall constitute full compensation to such Navajo.

B. 1. In all other cases involving damages under this paragraph, the amount thereof shall be fixed and determined in the manner specified in § 1151 (A) (1) of this subchapter.

2. If a settlement satisfactory to the President of the Navajo Nation or his authorized representative and the person cannot be reached, settlement will be made as specified under § 1151 (A) (2) and (B) of this subchapter.

C. Where, through reseeding, irrigation or otherwise, the remaining land in the customary use area of any individual damaged by adverse disposition of Navajo Nation land is within a reasonable time made able to provide the same economic return as his former entire customary use area, no damages shall be payable to such person, except for the period, if any, between adverse disposition of land in the customary use area and the time when the productivity of the remaining land achieves equality with the entire former customary use area.

D. Only lawful and authorized use shall be compensated under this section. Thus, no person shall be compensated for loss of use of land for grazing animals in excess of his permitted number, or without a permit.

E. Every person otherwise entitled to damages under subsection (B) of this section shall not be entitled to receive any payment thereof until he or she has surrendered for cancellation his or her grazing permit as to all animal units in excess of the carrying capacity of the land remaining in his or her customary use area. Persons so surrendering their grazing permits shall be entitled to an immediate appropriate lump sum payment for each sheep unit cancelled.

History

CS-78-65, September 2, 1965.

Cross Reference

Concerning damages, see also, 16 N.N.C. § 1401 et seq. and 26 N.N.C. § 2005 et seq.

Library References

Indians ☞32(10).

Municipal Corporations ☞739.

Westlaw Topic Nos. 209, 268.

C.J.S. Indians § 63.

C.J.S. Municipal Corporations § 685.

Chapter 9. Swimming Pools

Section

- 1301. Definitions
- 1302. Plans and specifications; submission and approval
- 1303. Operator's permit
- 1304. Revocation of permit
- 1305. Hearing
- 1306. Decision and order
- 1307. Emergency orders; hearing
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- 1309. Regulations of other agencies
- 1310. Physical features of swimming pools; cleanliness; inoperative equipment
- 1311. Dimensions
- 1312. Design and construction requirements
- 1313. Color, longitudinal stripes and depth marks
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- 1316. Water supply and quality
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- 1320. Bath houses
- 1321. Prevention of the spreading of diseases
- 1322. Construction and care of indoor floor surfaces
- 1323. Suits and towels; cleaning and storing
- 1324. Maximum permissible number of bathers
- 1325. Safety precautions
- 1326. Food and refreshments
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- 1328. Operating records

§ 1301. Definitions

For the purposes of this chapter the following definitions shall apply:

A. "Swimming pool" shall mean any artificial swimming pool together with the buildings and appurtenances essential to the use thereof, and shall include public swimming pools, semiprivate swimming pools and wading pools.

B. "Artificial swimming pool" shall mean a structure intended for bathing or swimming purposes, made of concrete, masonry, metal, plastic or other impervious material, together with building and appurtenances located either indoors or outdoors and provided with a controlled water supply.

C. "Public swimming pool" shall mean a swimming pool, admission to which may be gained by the general public with or without the payment of a

fee, such as a school, community, municipal or commercial pool, and shall include all swimming pools operated and maintained in conjunction with or by clubs and community associations.

D. “Semiprivate swimming pool” shall mean a swimming pool on the premises of or which is part of a hotel, motel, trailer court, apartment house, recreation camp or similar establishment where the primary business of the establishment is not the operation of swimming facilities and where admission to the use of the pool is included in the fee or consideration given for the primary use of the premises.

E. “Wading pool” shall mean a shallow public or semiprivate swimming pool intended chiefly for use of children and having a maximum depth of two feet.

F. “Lifeguard” shall mean a person who holds a valid Red Cross or YMCA Senior Lifeguard Certificate or who has equivalent qualifications and who has no duties other than to superintend the safety of those using the swimming pool during the time the pool is open.

G. “Approved” shall mean acceptable to the Health Advisor based on a determination as to conformance with appropriate standards and good health practice.

H. “Transportation and Community Development Committee” shall mean the Transportation and Community Development Committee of the Navajo Nation Council.

I. “Health Advisor” shall mean the Director, Navajo Area Indian Health Service, United States Public Health Service, Window Rock, Arizona, or his or her designated representative.

J. “Operator’s Permit” shall mean a written permit issued by the Office of Navajo Resources and Security upon recommendation of the Health Advisor, reflecting a swimming pool operator’s compliance with this chapter.

History

ACMY-191-71, May 12, 1971.

Revision note (1995). The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee.

Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

§ 1302. Plans and specifications; submission and approval

Whenever any alterations, modifications or new construction of a swimming pool is contemplated by the operator or prospective operator, three sets of plans and specifications shall be submitted to the Health Advisor for review, who shall recommend approval or such modifications as are necessary for approval.

History

ACMY-191-71, May 12, 1971.

Revision note. Partially reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1303. Operator's permit

No person shall operate or maintain a public or semiprivate swimming pool unless he or she has a valid operator's permit to operate such pool that has been obtained through the Office of Navajo Resources and Security. Only persons who comply with the provisions of this chapter and other applicable laws, regulations and ordinances shall be entitled to receive or retain such an operator's permit. Such permits are not transferable to another owner, person or location. A permit shall be permanent unless revoked for cause.

History

ACMY-191-71, May 12, 1971.

Revision note. First sentence partially reworded for purpose of clarity.

Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to

the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

Library References

Health ☞391.

Indians ☞32(9).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 1304. Revocation of permit

The Office of Navajo Resources and Security may revoke any permit for failure to comply with any of the provisions of this chapter. Before a permit is revoked, the person holding the permit shall be given notice in writing enumerating the alleged failure to comply with the provisions of these regulations and specifying a reasonable time for compliance. If after the stated time the Office of Navajo Resources and Security finds such violations have not been remedied, he shall give notice that the permit has been revoked.

History

ACMY-191-71, May 12, 1971.

Revision note. Second and third sentences partially reworded for purpose of clarity.

Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to

the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

Library References

Health ☞391.

Indians ☞32(9).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 1305. Hearing

Any person affected by any notice issued in connection with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter according to the approved procedures. Such person shall file in the Office of the President of the Navajo Nation, a written petition requesting such hearing and setting forth a brief statement of the grounds for such request within ten (10) days after the day notice was served. Upon receipt of such petition the Office of Navajo Resources and Security shall set a time and place for such hearing and give the petitioner written notice thereof. At the hearing, petitioners shall be given an opportunity to be heard and to show cause why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed: Provided the petitioner has not upon application submitted good and sufficient reason for postponement of such hearing.

History

ACMY-191-71, May 12, 1971.

Revision note. Partially rephrased for purpose of clarity.

Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to

the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

Library References

Health ⇌374.

Indians ⇌32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1306. Decision and order

After a hearing, the Office of Navajo Resources and Security, with the consultation of the Health Advisor, shall sustain, modify or withdraw the notice, depending on the findings as to compliance or noncompliance with this chapter. If the Office of Navajo Resources and Security shall sustain or modify such notice, it shall be deemed to be an order.

History

ACMY-191-71, May 12, 1971.

Revision note. Partially reworded for purpose of clarity.

Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to

the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

§ 1307. Emergency orders; hearing

A. Whenever the Office of Navajo Resources and Security, upon the advice of the Health Advisor, finds that an emergency matter exists which requires immediate action to protect public health, he may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is deemed necessary in view of the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately.

6 N.N.C. § 1307

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B. Upon petition to the Office of Navajo Resources and Security, petition shall be afforded a hearing as soon as possible. After such hearing, depending upon findings regarding compliance or noncompliance with the provisions of this chapter, the Office may continue the order in effect, or modify or revoke it.

History

ACMY-191-71, May 12, 1971.
Revision note. Reworded for purpose of clarity.
Note. The Office of Navajo Resources and Security was discontinued in 1978 pursuant to the 1978 Budget resolution and organization chart. See Title 2, Navajo Division of Natural Resources.

Library References

Health ☞374, 391.
Indians ☞6.1, 32.
Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1308. Reissuance of revoked permit

Any permit revoked in accordance with the provisions of this chapter shall be reissued upon proper application by the operator and presentation of evidence that the deficiencies causing the revocation have been corrected.

History

ACMY-191-71, May 12, 1971.
Revision note. Partially reworded for purpose of clarity.

Library References

Health ☞391.
Indians ☞32(9).
Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1309. Regulations of other agencies

All public and semiprivate pools shall comply with all requirements of the electrical, plumbing and other agencies, whose regulations are considered to be the minimum requirements for the health and safety of bathers.

History

ACMY-191-71, May 12, 1971.
Revision note. Partially reworded for purpose of clarity.

Library References

Health ☞391.
Indians ☞6.1, 32.
Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1310. Physical features of swimming pools cleanliness; inoperative equipment

A. All swimming pools, and their accompanying premises, shall be so designed, constructed, equipped, operated and maintained as to insure clean and sanitary conditions at all times.

B. Inoperative equipment shall constitute grounds for closing the pool.

History

ACMY-191-71, May 12, 1971.

Revision note. Subsection (A) partially re-phrased for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1311. Dimensions

A. *Depth of water.* The minimum depth of water in the deepest part of any pool which is used for diving purposes shall not be less than eight feet six inches. A pool designed for swimming purposes only shall have a maximum depth of five feet.

B. *Width.* The minimum width of any section of a swimming pool shall be fifteen feet.

C. *Length.* The length of the diving portion (section of pool where water is over five feet in depth) shall be a minimum of eighteen feet with the center line of the deepest part of the pool being not less than ten feet from the deep end of the pool. The minimum length of any swimming pool which is greater than five feet in depth shall be thirty-six feet, unless exempted by extenuating circumstances.

History

ACMY-191-71, May 12, 1971.

Revision note. Subsection (C) slightly reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1312. Design and construction requirements

A. *Slope.* The slope of the bottom of any part of a pool where the water is less than five feet deep must be not more than one foot in each 12 feet. There shall be no sudden changes of slope within the area where the water depth is less than five feet. (Any flat area on the pool bottom offers excellent lodging places for sediment and shall be avoided.) All portions of the pool bottom shall have a definite slope toward the pool drains.

B. *Walls.* The inside wall surface of a swimming pool shall be vertical, except that, where covered construction is used between the side walls and bottom of a swimming pool, the radius of curvature in the area less than five feet deep shall not exceed six inches; in the area between the deep end of the pool and the point of maximum depth, a minimum of a five-foot radius cove at the base of a three-foot top vertical section shall be provided. There shall be a uniform transition in the cove between five-foot depth and the cove at the maximum pool depth.

C. *Steps.* Steps for entering and leaving the pool shall be of such construction as to minimize chances of accidents. Ladders shall be located at one or preferably both sides of the pool; a ladder or steps shall be placed at the shallow end of the pool. Treads of ladders or steps shall be of nonslip material. In public pools, all steps must be recessed and shall not protrude into the pool proper. In semiprivate pools, the maximum projection shall be limited to three feet six inches, but no abrupt projection will be permitted if it creates a safety hazard.

D. *Runways.* A runway at least four feet wide, constructed of concrete or other impervious material, shall completely surround the pool. The runway shall have a slope between one-fourth and three-eighths inch per foot away from the pool; it shall be an integral part of the pool walls or it shall overlap the walls. Either floor drains, in the ratio of not less than one per 200 square feet of runway area, provided they shall not exceed 25 feet on centers, or collecting troughs covered with gates shall be provided unless drainage is to the surrounding area. The drainage from runways shall be considered sewage and shall be conducted to the sewer or drained to the area outside the runway paved area around the pool. A complete and effective break shall be provided between the drains for the runway area and the sewer to prevent the possibility of sewage backing up into the runway area drains. Runway drains shall not be interconnected with scum gutter drain lines.

E. *Barrier.* There shall be an effective separation of the space used by spectators from that used by bathers in all public pools. The swimming pool and bather area of all pools shall be completely enclosed by a barrier at least 36 inches high. There shall be no unpaved area within the barrier enclosed bathing area surrounding public pools.

F. *Curbs.* No elevated curbs shall be permitted within the bathing area.

G. *Scum gutters.* Scum gutters shall be provided around the entire perimeter of swimming pools. Scum gutter drains shall not exceed 15 feet on centers. Water from scum gutters may be either recirculated through the filters or discharged to the sewer. If discharged to the sewer there shall be a minimum of an eighth-inch gap between the scum gutter drain line and the top rim of the sewer manhole or drain box.

1. Skimmers may be used in lieu of scum gutters providing the following minimum requirements are met: A minimum of two skimmers shall be required for all swimming pools; an additional skimmer shall be provided for each 450 square feet of surface area or fraction thereof in excess of 900 square feet. Skimmers, when used on swimming pools whose surface area exceeds 2000 square feet, shall be used in combination with scum gutters, which shall be provided around at least fifty percent (50%) of the pool perimeter. Piping for skimmers shall be of a size allowing at least sixty percent (60%) of the total outflow of water to be handled. An adjustable skimmer wire and strainer basket shall be provided for each skimmer.

2. Skimmers should not be used as a means of adding filter aid to filters.

H. *Vacuum line.* A separate vacuum line is desirable for use in vacuuming the pool.

I. *Drains.* Where the pool width is greater than 25 feet, multiple outlet drains shall be provided. The drainage system including the backwash filter line, for a swimming pool shall be constructed with a minimum of an eighth-inch air gap to prevent sewage or other waste from siphoning, flooding, or otherwise discharging into the swimming pool. Drains shall be covered with an approved grate.

J. *Fill spout.* The fill spout shall be so located as to constitute a minimum hazard to persons in the pool area, such as under the diving board or adjacent to a ladder. The discharge end of the fill pipe shall have a minimum effective air gap of five inches above the overflow level.

History

ACMY-191-71, May 12, 1971.

Revision note. Subsections (B), (C), (E), (G), 2nd par., and (J) partially reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1313. Color, longitudinal stripes and depth marks

A. *Color.* The swimming pool walls and floor surfaces shall be a light color.

B. *Striping.* Dark contrasting stripes, a minimum of four inches wide, shall divide the pool into longitudinal lines five to seven feet wide on all public swimming pools. The striping on semiprivate pools shall be five feet from the pool ends.

C. *Depth markings.* Depth markings of a dark color and of sufficient size to be clearly visible across the pool shall be placed in pairs, one of each pair being on either side of the pool on the vertical wall near the water level. A pair of markings shall be placed at each successive one-foot increment of depth, except depth markings need not be placed less than four feet apart. The minimum and maximum depths shall be so designated, including the five-foot depth.

History

ACMY-191-71, May 12, 1971.

Revision note. Partially reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1314. Diving boards; regulation and nonregulation

A. Diving boards shall be installed with one thought in mind: the provision of maximum safety for the diver.

6 N.N.C. § 1314

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B. Regulation one meter and three meter board installations must comply with the following requirements:

1. The minimum depth of water under a regulation one meter board shall not be less than eight feet six inches.
2. The minimum depth of water under a regulation three meter board shall not be less than 12 feet.
3. Open water of the recommended minimum depth shall be provided in the area of a 200-degree arc extending forward and to either side of the center of the tip of the board. The radius of such arc shall be a minimum of eight feet for the one meter board installations and 12 feet for three meter board installations.
4. The minimum length of the diving area of a swimming pool having a one meter board installation shall be 25 feet, and the minimum length of the diving area of a swimming pool having a three meter board shall be 35 feet.
5. A minimum of 12 feet of free, unobstructed headroom shall be provided above the installation of a regulation one meter or three meter diving board.
6. Parallel or diverging multiple diving board installations shall be allowed providing all the above requirements are met and the boards are not placed closer than 12 feet at the center of the tips of the boards.

C. Nonregulation diving board installations must comply with the following requirements:

1. In all installations of nonregulation diving boards, safety of use shall be the prime consideration.
2. An area which is a minimum of four feet square shall be provided in the diving portion of the pool, and this area shall not be less than eight feet six inches deep. The center line of this area shall be in line with the diving board and the nearest edge of this area shall be eight feet from the deep end of the pool.
3. The area above the diving board shall be such that there is no possibility of collision by the diver with any overhead obstruction.

History

ACMY-191-71, May 12, 1971.

Revision note. Words "must comply with the following requirements" added in subsections

(B) and (C); subsection (C) slightly reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1315. Wading pools; requirements

A. *Barrier.* A barrier at least 36 inches high shall be provided to separate a wading pool from a swimming pool.

B. *Depth.* The maximum depth of a wading pool shall be 24 inches.

C. *Slope.* The maximum slope of the bottom of a wading pool shall be not more than one foot in each 12 feet.

D. *Main drain.* Wading pools shall have a main drain located in the deepest part of the pool.

E. *Scum gutter or skimmer.* Wading pools shall be equipped with a scum gutter, skimmer or other means to remove floating material. If skimmers are used, one skimmer shall be provided for each 400 square feet of pool area or fraction thereof.

F. *Air gap.* There shall be a minimum of five-inch air gap on the fill line to prevent the possibility of any wading pool water siphoning or otherwise getting into the domestic water supply.

1. The fill line or fill spout shall be located so it does not present a hazard to children in the pool area.

2. There shall be a minimum effective air gap of eight inches between the pool and filter drain lines and that of the top of the sewer manhole.

G. *Runways.* A runway at least four feet wide constructed of concrete or other impervious material shall completely surround the pool. The runway shall have a slope between one-fourth and three-eighths inch per foot away from the pool; it shall be an integral part of the pool walls. The drainage from runways shall be constructed as a sewage and either be conducted to a sewer or allowed to drain the area outside the barrier.

H. *Water.* Water in the wading pools shall be from a potable source. The turnover period shall not exceed two (2) hours. Incoming water shall be chlorinated to maintain a free chlorine residual as near 0.6 ppm as practical. Supplemental hand chlorination is desirable to maintain a minimum of 0.6 ppm or more of free chlorine residual in the pool. The pH range of the pool water should be maintained between 7.2 and 8.0.

History

ACMY-191-71, May 12, 1971.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1316. Water supply and quality

Water used to fill or add to a swimming pool shall be from a supply properly located, protected and operated; and shall be easily accessible, adequate and of a safe, sanitary quality. No water supply shall be used except under conditions approved by the Health Advisor. Bacteriological quality shall be maintained in the pool as follows:

A. *Public pool.* At least one sample containing five ten milliliter portions must be submitted to a laboratory approved by the Health Advisor each week that the pool is in operation. If a nonconforming sample is obtained, additional samples shall be submitted by the Health Advisor as soon as possible and two consecutive nonconforming samples shall constitute grounds for closing the pool unless evidence of correction of this deficiency is provided.

B. *Semiprivate pools.* At least two samples containing five ten milliliter portions each must be submitted by the Health Advisor to a laboratory each month that the pool is in operation. If a nonconforming sample is obtained, additional samples shall be submitted by the Health Advisor as soon as possible, and two consecutive nonconforming samples shall constitute grounds for closing the pool unless evidence of correction of this deficiency is provided.

History

ACMY-191-71, May 12, 1971.

Library References

Health ☞384, 391.
Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1317. Clarity, disinfection and pH of water

A. *Clarity.* All water in the pool at times of use shall be sufficiently clear to permit a black disc six inches in diameter on a white field, when placed on the bottom of the pool at the deepest point to be clearly visible from the runway around the deep area.

B. *Disinfection.* Swimming pool water shall be disinfected by chlorination secured through the use of chlorine or hypochlorites. The dosage of chlorine or hypochlorites added shall be sufficient to secure a concentration of at least 0.4 ppm free available chlorine (flash reaction) at all times when the pool is in operation.

1. An approved mechanical chlorinator having a capacity to feed a minimum of one pound of chlorine in twenty-four (24) hours for each five thousand (5000) gallons of pool capacity shall be provided. Hand chlorination of swimming pool water is not acceptable, except for emergency or supplemental operation.

2. The disinfection residual in a swimming pool shall be checked immediately prior to opening the pool to swimming. It is important that frequent checks be made on the chlorine residual during periods of heavy bather load and during periods of high intensity of sunlight.

3. Other disinfecting agents will be permitted when approved by the Health Advisor.

C. *Handling of toxic materials.* Toxic materials such as gas chlorinators and chlorine gas cylinders shall be housed in an enclosure separated from the swimming pool, corridors, dressing rooms, and other space used by bathers by a tight partition wall with no doors or other access opening in the partition wall.

1. In the room where chlorine gas is stored or in a room where a gas chlorinator is located, a door to the outside extending to the floor level shall be provided.

2. Chlorine gas equipment or chlorine gas shall not be located where the floor is below grade, and access to the room shall be only through a door to the outside of the building.

3. The requirements of this regulation shall also apply to other toxic gaseous disinfecting agents.

4. Existing nonconforming installations may be permitted subject to the approval of the Health Advisor.

D. *Chlorine testing kit.* A chlorine comparator testing kit, preferably of the color disc type, to read 0.1, 0.4, 0.6 and 1.0 ppm shall be provided. It is desirable to have a chlorine testing kit with additional intermediate readings and broader range. If chemicals other than chlorine are used, an approved testing kit shall be provided for testing the residual of these chemicals.

E. *pH control.* The pH of the water in the pool shall be maintained between 7.2 and 8.0. A pH comparator testing kit preferably of the color disc type, to read from 6.8 to 8.4, with at least two intermediate readings, shall be provided.

History

ACMY-191-71, May 12, 1971. the pool" substituted for "being opened" in 3rd paragraph. In subsection (C), "the" added in last sentence of 2nd paragraph.

Revision note. In subsection (B), "when" added near end of 1st paragraph and "opening

Library References

Health ☞384, 391.
Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1318. Filtration

A. All swimming pool water shall be recirculated through rapid sand or diatomite filters. The filter rate shall not exceed the manufacturer's recommended filter rate and in no case shall the filter rate exceed three gallons per minute per square foot. The turnover period shall not exceed six (6) hours for public pools and seven (7) hours for semiprivate pools. Other methods of filtration using equipment bearing the Seal of Approval of the National Sanitation Foundation may be approved in lieu of rapid sand or diatomite filters.

B. If rapid sand filters are used at least 36 inches of sand, free of clay, organic, and soluble material, having an effective size of .4 to .5 mm, and a uniformity coefficient not exceeding 1.75 shall be provided, unless other treatment approved by the Health Advisor is provided.

C. Filters shall be equipped for effective backwashing. If rapid sand filters are to be used a minimum of three filters shall be provided and the pump shall have sufficient capacity to backwash filters at a minimum rate of nine gallons per square foot of filter area per minute.

D. Filters shall be equipped with pressure gauges on the inlet and outlet filter lines. Rapid sand filters shall also have suitable provision for feeding chemicals.

E. A lint and hair catcher shall be provided on all swimming pools.

F. All public pools shall be equipped with a rate of flow meter.

G. Diatomite filters should be equipped with slurry and precoat feeders for adding filter aid. Skim filters are not approved.

6 N.N.C. § 1318

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History

ACMY-191-71, May 12, 1971.

Library References

Health ⇨391.

Indians ⇨6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1319. Plumbing connections; cross connections; back siphonage

There shall be no physical connection between a swimming pool and a water supply and/or sewers. All plumbing and piping shall be so arranged as to prevent back siphonage. Cross-connections are prohibited.

History

ACMY-191-7 1, May 12, 197 1.

Revision note. Word “so” added in second sentence.

Library References

Health ⇨391.

Indians ⇨6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1320. Bath houses

A. *Dressing room.* Adequate and sanitary dressing rooms shall be provided for all public swimming pools.

B. *Showers.* Showers in sufficient number shall be provided with hot and cold water with soap. The minimum number to be provided shall be one for the first 40 bathers or fraction thereof, and an additional one for each additional 40 bathers or fraction thereof of the bathing load design.

The hot water heater shall be of adequate capacity to provide hot water for all bathers using the showers.

C. *Toilet facilities.* The minimum number of water closets to be provided per sex shall be one for the first 40 bathers or fraction thereof, and an additional one for each additional 40 bathers or fraction thereof of the bathing load design; provided, however, urinals may be substituted for the male sex, not to exceed one-third of the total number of water closets required. Urinals shall be so constructed as to prevent splashing.

D. *Wash basins.* Wash basins in the ratio of one to each two toilet facilities shall be provided for each sex.

E. *Floors.* Floors in toilets, dressing rooms, walkways, and runways shall have a slope between one-fourth and three-eighths inch each per foot to floor drains. Floor finish shall be nonskid Portland cement, tile or other impervious material.

F. *Drinking fountains.* At least one approved sanitary drinking fountain utilizing the slanting jet principle with surrounding guard, nonsubmersible opening, and supplied with water under adequate pressure shall be provided at

a convenient point on all public swimming pools and also preferably on semiprivate pools.

G. *Ventilation.* Good ventilation shall be provided to minimize condensation and odors,

H. *Heating facilities.* All gas-fired heating appliances, including water heaters, shall be vented directly to the outside air with “B” vents. Open-face heaters are prohibited. Gas-fired heaters shall not be located in any service room or bathhouse. All liquefied petroleum installations shall have one hundred percent (100%) shut-off. All gas installations shall comply with all laws governing such installations.

I. *Semiprivate pools.* In the case of semiprivate swimming pools, facilities provided for separate lodging units and/or other shower and restroom facilities may be used to satisfy this section.

History

ACMY-191-71, May 12, 1971.

Revision note. Subsections (C) and (D) partially reworded for purpose of clarity.

Library References

Incorrect or Missing Topic. ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 98H, 209.

C.J.S. Convicts §§ 2 to 3.

C.J.S. Indians §§ 49, 51.

§ 1321. Prevention of the spreading of diseases

A. *Shower.* A cleansing shower with soap shall be required of all bathers entering or reentering the enclosed bathing area.

B. *Suspected persons excluded.* No person having a communicable disease shall be employed at a public or semiprivate swimming pool. All patrons known to be, or suspected by the Health Advisor or the management of being afflicted with an infectious disease, suffering from sores or wearing bandages shall be excluded from all public or semiprivate bathing places, except on presentation of a written statement of current dates as approved by the Health Advisor.

C. *Foot baths.* Foot baths are not approved in swimming pools.

History

ACMY-191-71, May 12, 1971.

Revision note. The word “enclosed” substituted for “fenced”.

Library References

Health ☞384, 391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1322. Construction and care of indoor floor surfaces

All floors of dressing rooms, toilet rooms, passageways, walkways and runways at every indoor swimming pool shall be constructed of impervious

6 N.N.C. § 1322

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material, having no holes or places for water to stand, provided with a nonskid surface, maintained in a clean condition, and rinsed daily with a chlorine solution having not less than 1,000 ppm of chlorine, or other approved disinfecting solutions. All new floor surfaces shall have a slope between one-fourth and three-eighths inch per foot to drains.

History

ACMY-191-7 1, May 12, 1971.

Library References

Health ☞384, 391.
Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1323. Suits and towels; cleaning and storing

Provision shall be made for laundering, rinsing and drying all suits and towels supplied by the management. All suits and towels owned by the management shall be laundered with a detergent or soap by one of the following methods: In 160 F. water for 15 minutes; in 170 F. water for eight minutes; 212 F. water for three minutes.

Clean suits and towels must be kept strictly separated from those which have been used.

History

ACMY-191-71, May 12, 1971.

Revision note. Subsections (D) and (E), first sentence, slightly reworded for purpose of clarity.

Library References

Health ☞384, 391.
Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1324. Maximum permissible number of bathers

The maximum number of bathers permitted within the enclosed bathing area at any one time shall not exceed one bather for each 25 square feet of water surface of the pool.

History

ACMY-191-7 1, May 12, 1971.

Revision note. Word "enclosed" substituted for "fenced".

Library References

Health ☞391.
Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians §§ 49, 51.

§ 1325. Safety precautions

A. *Ring buoys.* At every swimming pool there shall be provided two or more throwing ring buoys having a maximum outside diameter of 18 inches

and with a one-fourth inch line attached whose length shall be not less than the pool width plus 10 feet, placed on racks at strategic intervals about the pool.

B. *Poles or life hooks.* One or more light but strong poles (bamboo or other) with blunt ends not less than 12 feet in length, for making reaching assists or rescues shall be provided.

C. *First aid kit and supplies.* A first aid kit containing sterile gauze, absorbent cotton, adhesive tape, bandages of various widths and a lifesaving plastic airway for mouth to mouth resuscitation shall be provided.

D. *Telephone.* Every swimming pool shall be provided with a telephone and the telephone numbers of one or more doctors, ambulances, hospitals, police departments, fire departments and sheriff's departments.

E. *Lifeguard.* A lifeguard shall be on duty in the bathing area at all times that a public swimming pool is in operation. For a semiprivate pool, a responsible person shall be in the pool area at all times the pool is open to swimmers. If regulation lifeguard service is not provided at semi private pools a sign shall be posted clearly stating that this service is not provided.

F. *Glass containers.* Glass containers shall not be permitted in shower rooms or the enclosed area of any pool.

G. *Lighting.* Pools open for night swimming shall be equipped with adequate artificial area lighting, including underwater lights.

History

ACMY-191-71, May 12, 1971.

Revision note. Second paragraph slightly reworded for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1326. Food and refreshments

A. No food or refreshments shall be permitted in the immediate enclosed bathing area of a public swimming pool.

B. The operator of a semiprivate swimming pool may provide food and drink service within the enclosed barrier area, providing non-breakable eating and drinking utensils and containers.

History

ACMY-191-71, May 12, 1971.

Revision note. Word "may" substituted for "is allowed to" in second paragraph.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

6 N.N.C. § 1327

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§ 1327. Spectators

Spectators may be allowed within the enclosed bathing area of semiprivate pools only, except that during recognized, organized aquatic programs, spectators may be allowed in the bathing area of public pools.

History

ACMY-191-71, May 12, 1971.

Revision note. Rephrased for purpose of clarity.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

§ 1328. Operating records

The daily operating record for a public swimming pool shall include the following: date; the total number of bathers accommodated; the maximum number of bathers at any time; starting and stopping time of filters; time of backwashing; whether or not the pool bottom at its greatest depth is plainly visible at all times; results of disinfecting residuals; pH of pool water; kinds and quantities of chemicals added; and the name of the pool operator. Accidents shall be recorded.

History

ACMY-191-71, May 12, 1971.

Library References

Health ☞391.

Indians ☞6.1, 32.

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians §§ 49, 51.

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Library References

Signatures ☞1.
Westlaw Topic No. 355.
C.J.S. Signatures §§ 1 to 16.

§ 101. Signature defined

The term “signature” as used in this Title shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Signatures ☞5.
Westlaw Topic No. 355.
C.J.S. Signatures §§ 5, 8 to 11.

§ 102. Navajo Nation Council defined

The term “Navajo Nation Council,” as used in this Title shall be construed to refer to the Navajo Nation Council, as defined in 2 N.N.C. § 101.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 103. District Courts defined

The term “District Courts” as used in this Title shall include the District Courts, the Family Courts of the Navajo Nation, and any divisions thereof established by the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CAU-46-89, August 16, 1989.
CD-94-85, December 4, 1985.

Library References

Courts ☞50.	C.J.S. Courts § 106.
Indians ☞32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 106, 209.	

Annotations**1. Purpose**

“The Peacemaker Division (the name was changed from ‘Peacemaker Court’) was created as part of the district court, but because the family court is part of the district court by definition, 7 N.N.C. § 103 (1995 ed.), local peacemaking programs in the seven judicial dis-

tricts are also attached to the family court. Over the years, a practice has evolved where people use the local peacemaking program to resolve various kinds of cases, including probate actions.” *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4, 5 (Nav. Sup. Ct. August 2, 2001).

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- 421. Establishment
- 422. Purposes and powers

423. Composition and personnel
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Subchapter 1. Generally

§ 201. Establishment; composition

- A. There is a Judicial Branch of the Navajo Nation.
- B. The Judicial Branch of the Navajo Nation government shall consist of the District Courts, the Supreme Court of the Navajo Nation, and such other Courts as may be created by the Navajo Nation Council.
- C. The Judicial Branch of the Navajo Nation shall also consist of such additional Judicial Branch divisions, departments, offices or programs that further the purposes of the Courts as may be created, subject to amendment or abolishment, by the Judiciary Committee through adoption of their plans of operation.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Courts ☞41, 50.
 Indians ☞32(7).
 Westlaw Topic Nos. 106, 209.

C.J.S. Courts §§ 93 to 96, 100, 102, 106.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 202. Seals of Courts

The Courts of the Navajo Nation shall each adopt a seal which shall be used to authenticate their respective judgments and other papers. The form of the seals and regulations for their use shall be specified by rules of court adopted and placed in effect as provided in 7 N.N.C. § 601.

History

CD-94-85, December 4, 1985.
 CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Courts ☞48.
 Indians ☞32(7).
 Westlaw Topic Nos. 106, 209.

C.J.S. Courts § 4.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 203. Reserved

§ 204. Law applicable

- A. In all cases the courts of the Navajo Nation shall first apply applicable Navajo Nation statutory laws and regulations to resolve matters in dispute

before the courts. The Courts shall utilize Diné bi beenahaz'áanii (Navajo Traditional, Customary, Natural or Common Law) to guide the interpretation of Navajo Nation statutory laws and regulations. The courts shall also utilize Diné bi beenahaz'áanii whenever Navajo Nation statutes or regulations are silent on matters in dispute before the courts.

B. To determine the appropriate utilization and interpretation of Diné bi beenahaz'áanii, the court shall request, as it deems necessary, advice from Navajo individuals widely recognized as being knowledgeable about Diné bi beenahaz'áanii.

C. The courts of the Navajo Nation shall apply federal laws or regulations as may be applicable.

D. Any matters not addressed by Navajo Nation statutory laws and regulations, Diné bi beenahaz'áanii or by applicable federal laws and regulations, may be decided according to comity with reference to the laws of the state in which the matter in dispute may have arisen.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Cross References

The Foundation of the Diné, Diné Law and Diné Government, see 1 N.N.C. § 201 et seq.

Library References

Indians ⇄32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

Research References

Construction and application of federal tribal exhaustion doctrine, 186 A.L.R. Fed. 71 (2003).
Federal question, 41 Am. Jur. 2d Indians, § 167.

Annotations

1. Navajo law and custom

“The Navajo Nation courts have the authority to apply “customs of the Navajo Nation“ as law, 7 N.N.C. § 204 (A) (1995 ed.).” *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

“ . . . [T]he customs and traditions of the Navajo people have the force of law. They provide a unique body of law known as Navajo common law.” *Navajo Nation v. Platero*, 6 Nav. R. 422, 424 (Nav. Sup. Ct. 1991).

“Navajo custom and tradition may be shown in several ways: it may be shown through recorded opinions and decisions of the Navajo courts or through learned treatises on the Navajo way; it may be judicially noticed; or it may be established by testimony of expert witnesses

who have substantial knowledge of Navajo common law in an area relevant to the issue before the court.” *In the Matter of the Estate of Belone*, 5 Nav. R. 161, 165 (Nav. Sup. Ct. 1987).

This section clearly expresses the intent that Navajo law apply wherever possible. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

The application of custom depends on a good many circumstances and all the facts of the case. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

When applying custom, the courts should see whether a particular custom or tradition is generally accepted and applicable to the parties before the court. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

7 N.N.C. § 204

Note 2

2. Common law

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

“... [I]f a district court takes judicial notice of a particular custom as Navajo common law, it must clearly set forth in its order the custom on which it is relying, so that the basis for its decision is clear and can be reviewed by this Court.” *In the Matter of the Estate of Belone*, 5 Nav. R. 161, 165-166 (Nav. Sup. Ct. 1987).

Navajo Common Law is a body of law which is fully binding on the Navajo Court of Appeals and consists of the customs, traditions and usages of the Navajo people. *Tome v. Navajo Nation*, 4 Nav. R. 159 (Nav. Ct. App. 1983).

3. State law

Courts should carefully make certain that the matter is “not covered” by Navajo law, under subsection (C) of this section, before considering or proceeding to the use of state law. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

Under this section, the traditions and customs of the Navajo people are to be applied where the Navajo Tribal Code is silent and federal law does not prohibit the application of tradition and custom; it is only in a situation where there is no tradition or custom that the Tribal Courts are authorized to apply state law. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

4. Divorce—Division of property

Since nothing is specifically stated in the Navajo Tribal Code as to how either separate or community property is to be divided upon divorce, this section is controlling in the matter. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Since, under Navajo tradition, a land use permit given from a father to a son cannot be characterized as his separate property, nor as community property, the land use permit be-

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longs to the entire family to be used for the benefit of the entire family. The District Court properly applied Navajo tradition and custom in awarding land use permits, grazing permit and all other property connected with a farm to wife in divorce proceedings and the award and distribution of the property rights between the parties was a fair and just settlement pursuant to 9 N.N.C. § 404. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

5. Alimony

The courts of the Navajo Nation are empowered to award alimony in dissolution of marriage cases. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Nothing in Navajo tradition or custom would prohibit the court from applying New Mexico law pursuant to this section and therefore, an award of alimony in a marriage dissolution action in the tribal courts is both proper and authorized. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

6. Child Custody

Since Navajo custom and tradition is but one of many factors to be considered in child custody cases, a trial judge may be justified in disregarding old ways, and the Court of Appeal will not overturn such a decision unless it was clearly an abuse of discretion. *Lente v. Notah*, 3 Nav. R. 72 (Nav. Ct. App. 1982).

7. Federal law questions

“Absent Navajo law interpreting the Navajo Rules of Civil Procedure (NRCP), we look to the federal law on similar questions for guidance. See 7 N.N.C. § 204 (authorizing use of federal law).” *Dale Nicholson Trust v. Chavez, et al.*, No. SC-CV-69-00, slip op. at 4 (Nav. Sup. Ct. January 6, 2004).

Navajo tribal court could determine validity of allottee’s patent and allotment application under federal law in ejectment and trespass action brought by United States on behalf of Navajo allottee against Navajo occupant of parcel. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996).

“The courts of the Navajo Nation must conform their decisions to applicable federal law.” *Biakeddy v. Biakeddy*, 6 Nav. R. 391, 392 (Nav. Sup. Ct. 1991).

“Section 204 does authorize the Navajo courts to use any applicable law of the United States in any controversy, so the district court’s use of Rule 23 of the Federal Rules of Civil Procedure was proper. Class actions are often a desirable method of dispute resolution, because they eliminate separate suits thereby providing for judicial efficiency.” *Billie v. Abbott*, 6 Nav. R. 66, 75 (Nav. Sup. Ct. 1988).

8. Suits against Navajo Nation

“We disagree with TBI’s position that 7 N.T.C. § 204(a) authorizes suits against the Navajo Tribe iv a violation of civil rights is asserted. Neither the Navajo Bill of Rights, 1 N.T.C. §§ 1–9, nor 7 N.T.C. § 204(a) explicitly authorizes suits against the Navajo Nation. [. . .] . . . [T]his is a breach of contract action brought against the Navajo Nation, therefore, arguments of civil rights abuse under the Navajo Bill of Rights is inappropriate. [. . .] Instead of arguing civil rights violations, TBI should have argued whether any provisions in the contract waived the Tribe’s immunity from

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

9. Expert witnesses, generally

“The court must first determine the witness’s status as an ‘expert,’ assess the relevance of his testimony, and find it will aid the court’s or the jury’s understanding of a given custom before relying upon the testimony”. *Jensen v. Giant Industries, Arizona, Inc.*, No. SC–CV–51–99, slip op. at 4 (Nav. Sup. Ct. January 22, 2002), citing *In re Estate of Belone v. Yazzie*, 5 Nav. R. 161 (Nav. Sup. Ct. 1987).

§ 205. Record of proceedings

A. Each Court of the Navajo Nation shall keep a record of all proceedings of the Court, which shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, the name of the presiding Judge, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

B. A record of all proceedings shall be kept at the appropriate court and shall be available for public inspection unless prohibited by order of the Court for good cause or by applicable laws.

History

CO–72–03, October 24, 2003.
 CD–94–85, December 4, 1985.
 CJA–1–59, January 6, 1959.

Library References

Courts ⇨48.	C.J.S. Courts § 4.
Indians ⇨32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Records ⇨32.	C.J.S. Records §§ 65, 67 to 73.
Westlaw Topic Nos. 106, 209, 326.	

§ 206. Cooperation of Navajo Nation, federal and state employees

A. No employee or official of the Navajo Nation, federal or state government shall obstruct, interfere with or control the functions of any Court of the Navajo Nation or attempt to influence such functions in any manner except as permitted by Navajo Nation laws or regulations or in response to a request for advice or information from the Court.

B. Navajo Nation employees, particularly those who are engaged in social service, law enforcement, health and educational work, shall assist the Court, upon its request, in the preparation and presentation of the facts in the case and in the proper disposition of the case.

History

CO–72–03, October 24, 2003.	CJA–1–59, January 6, 1959.
CD–94–85, December 4, 1985.	

Note. Previous Section 207 revised and relocated to Section 631 by CO-72-03, October 24, 2003.

Library References

Indians ☞4, 32(1, 7).
Westlaw Topic No. 209.

C.J.S. Indians §§ 7 to 8, 21, 49 to 51, 60 to 62, 139 to 143, 152.

Subchapter 3. District Courts

§ 251. Composition

A. The District Courts of the Navajo Nation shall consist of judges recommended by the Judiciary Committee of the Navajo Nation Council, appointed by the President of the Navajo Nation, and confirmed by the Navajo Nation Council.

B. The District Courts of the Navajo Nation shall be located in such Judicial Districts of the Navajo Nation as are developed by the Judicial Branch, approved by the Judiciary Committee, and provided for in the Navajo Nation operating budget.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CD-88-78, §§ 2, 3, December 20, 1978.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Courts ☞45.
Indians ☞32(7).
Westlaw Topic Nos. 106, 209.

C.J.S. Courts § 105.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 252. Reserved

History

Note. Previous Section 252 revised and relocated to Section 252(B) by CO-72-03, October 24, 2003.

§ 253. Jurisdiction—Generally

A. The District Courts of the Navajo Nation shall have original jurisdiction over:

1. Crimes. All offenses in the Navajo Nation Criminal Code (17 N.N.C. § 101 *et seq.*) whereby any person commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation

who commits an offense against any other member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

2. Civil Causes of Action. All civil actions in which the defendant: (1) is a resident of Navajo Indian Country ; or (2) has caused an action or injury to occur within the territorial jurisdiction of the Navajo Nation.

3. Miscellaneous. All other matters provided by Navajo Nation statutory law, *Diné bi beenahaz'áanii*, and Navajo Nation Treaties with the United States of America or other governments. All causes of action recognized in law, including general principles of American law applicable to courts of general jurisdiction.

B. The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all cases involving domestic relations, probate, adoption, paternity, custody, child support, guardianship, mental health commitments, mental and/or physical incompetence, name changes, and all matters arising under the Navajo Nation Children's Code.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CF-19-80, February 13, 1980.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ⇨ 6.4 to 6.10, 32(7), 38(2).
Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
154 to 162, 168.

Annotations

1. Construction and application

"The Navajo Nation courts were established by the Navajo Nation Council, and the district courts find their legislative grant of general jurisdiction in 7 N.N.C. § 253 (as amended by CO-72-03, 10/27/03). That section confers original jurisdiction to the district courts over crimes, civil actions where the defendant is a resident of the Navajo Nation or causes an action or injury to occur within the territorial jurisdiction of the Navajo Nation, and 'all other matters provided by Navajo Nation statutory law, *Diné bi beehaz'áanii*, and Navajo Nation treaties with the United States or American of other governments.'" *Judy v. White*, No. SC-CV-35-02, slip op. at 6 (Nav. Sup. Ct. August 2, 2004).

"... [T]here is a presumption against multiple litigation, where it can be avoided." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 4 (Nav. Sup. Ct. July 25, 2001).

"... [B]y applying a Navajo common law interpretation, ... the family court is better suited to hear quiet title actions." *In re: Harvey*, 6 Nav. R. 413, 415 (Nav. Sup. Ct. 1991).

"The Navajo courts have civil jurisdiction over all persons who cause an action to occur in

Navajo Indian Country." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

"Tribal civil jurisdiction is derived from a tribe's retained inherent sovereignty." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

"The courts of the Navajo Nation have the authority to probate the unrestricted property of a decedent. [...] Unrestricted property includes property owned by individuals, and for which the Navajo Nation does not hold title for all tribal members." *In re: Estate of Wauneka, Sr.*, 5 Nav. R. 79, 81 (Nav. Sup. Ct. 1986).

"History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

"... [T]he Navajo Nation has not expressed its consent to be sued under 7 N.T.C. § 253." *Johnson v. The Navajo Nation*, 5 Nav. R. 192, 196 (Nav. Sup. Ct. 1987).

This section does not exclude review of Navajo Tribal Council actions from its broad grant of power to the courts. *Halona v. MacDonald*, 1 Nav. R. 189 (Nav. Ct. App. 1978).

7 N.N.C. § 253

Note 2

2. Alimony

The Courts of the Navajo Nation are empowered to award alimony in dissolution of marriage cases. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

Nothing in Navajo tradition or custom would prohibit the court from applying New Mexico law pursuant to 7 N.N.C. § 204 and therefore, an award of alimony in a marriage dissolution action in the tribal courts is both proper and authorized. *Johnson v. Johnson*, 3 Nav. R. 5 (Nav. Ct. App. 1980).

3. Criminal prosecutions

“... [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over ‘all violations of laws of the Navajo Nation’; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the ‘Navajo Indian Country’; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

Paragraph (A) of this section enables the Courts of the Navajo Nation to issue summons or warrants applicable to a criminal prosecution. *Navajo Nation v. Atcity*, 4 Nav. R. 130 (Nav. Ct. App. 1983).

4. Foreign corporations

Navajo Nation has the power to grant its courts personal jurisdiction over foreign corporations as a consequence of such corporations’ acts in Navajo territory, such as wrongful repossession alleged in instant case, according to modern expansions of the “minimum contacts” due process standard. *Thompson v. Lovelady’s Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

This section’s provision for jurisdiction over all other matters over which jurisdiction has been or may be vested implicitly asserts Navajo Nation jurisdiction over non-Indian, non-resident businesses and individuals, and court has jurisdiction over a non-Indian, non-resident business which allegedly wrongfully repossesses personal property upon Navajo land. *Thompson v. Lovelady’s Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

5. Injunctions

District Court has civil jurisdiction, under this section’s provision for jurisdiction over “all other matters which may hereafter be placed within the jurisdiction of the Trial Court,” to enjoin

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a threatened criminal trespass prohibited by the code. *Salt River Project Agricultural Improvement and Power District v. International Brotherhood of Electrical Workers Local Union No. 266*, 1 Nav. R. 277 (Nav. Ct. App. 1978).

6. Non-Indians

“... [T]his statute authorizes personal jurisdiction over non-resident defendants to the extent allowed by Navajo due process.” *Sells v. Espil*, 6 Nav. R. 195, 197 (Nav. Sup. Ct. 1990).

A non-Indian may be sued in the Navajo courts if he is found within the tribe’s territorial jurisdiction; so that defendant corporations could be sued for forcible entry and detainer. *Navajo Tribe v. Orlando Helicopter Airways, Inc.*, (Nav. Ct. App. January 12, 1972).

7. Controversies arising on Navajo Nation lands

“Whenever any right that an enrolled Navajo has while residing on the Navajo Reservation is abrogated by a state official, that Navajo has suffered a personal injury. [...] If a state official interferes in the domestic disputes of Navajos living on the reservation then the official has caused an action to occur within the Navajo Nation. This is true although the state official may not have entered the reservation.” *Billie v. Abbott*, 6 Nav. R. 66, 73 (Nav. Sup. Ct. 1988).

“At the outset we establish that a defendant may cause personal injury actionable in Navajo court without ever having set foot on Navajo soil. In a prior decision this Court said that the Navajo courts have jurisdiction ‘over any person doing injury within the Navajo Nation ...’” *Billie v. Abbott*, 6 Nav. R. 66, 73 (Nav. Sup. Ct. 1988), citing *Deal v. Blatchford*, 3 Nav. R. 159, 160 (1982).

Navajo Courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants, and no Federal Act has given state courts jurisdiction over such controversies. *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed. 2d 251 (1959).

Arizona courts are not free to exercise jurisdiction over a civil suit by a non-Indian against a Navajo Indian where cause of action was derived from transaction which took place on the Navajo Reservation. *Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed. 2d 251 (1959).

8. Consent to jurisdiction

Vehicle manufacturer did not consent, in financing and lease agreement between Indian tribe and financing subsidiary of manufacturer, to submit to tribal jurisdiction over any foreseeable tort claims arising out of use of its vehicles on reservation; agreement’s exclusive forum selection clause related only to disputes connected to the lease and financing contract and was

unrelated to product liability action arising out of one-vehicle accident involving vehicle financed under agreement. *Ford Motor Co. v. Todecheene*, 221 F.Supp.2d 1070 (D.Ariz. 2002).

9. Need for unique remedy

Vehicle manufacturer was not subject to Indian tribal court's jurisdiction, on basis of need to preserve political integrity of tribe, in product liability claims arising out of one-vehicle accident involving vehicle built by manufacturer; single vehicle roll-over underlying products liability lawsuit did not require a unique tribal court remedy and did not threaten or have a sufficiently adverse effect on the political integrity, economic security, or health or welfare of the tribe as a whole. *Ford Motor Co. v. Todecheene*, 221 F.Supp.2d 1070 (D.Ariz. 2002).

10. Business with tribe members

Non-Indian off-reservation automobile dealer could not avoid Indian tribe's exercise of civil jurisdiction over it on ground that it had not conducted business with the tribe, but only with individual Indians. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 36 UCC Rep. Serv. 1809 (9th Cir.(Ariz.) 1983).

11. Subject matter jurisdiction

"Our district courts are courts of general jurisdiction under the Navajo Nation Code, 7 N.N.C. § 253, but their jurisdiction is limited by federal statutes and by United States Court case law. Under these authorities a tribal court has subject matter jurisdiction over non-Indians from several sources. A tribe may exercise its broad inherent sovereignty over non-Indian conduct anywhere within its territory." *Nelson, et al. v. Pfizer, Inc. et al.*, No SC-CV-01-02, slip op. at 3 (Nav. Sup. Ct. November 17, 2003).

Navajo Nation district court lacked subject-matter jurisdiction over insurance company which provided liability insurance to medical clinic being sued in Navajo court; insurance company was not a member of the tribe and did not engage in any consensual relationship with tribe, inasmuch as its contractual relationship was with clinic which was a nonmember of the tribe. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir.(Utah) 2002).

Navajo Nation district court lacked subject-matter jurisdiction over attorney who was hired by liability insurance provider for medical clinic being sued in Navajo court, even though attorney was a member of Navajo Nation Bar Association; attorney's membership in Bar Association, although a consensual relationship, did not provide requisite nexus to exertion of tribal au-

thority to join attorney as a defendant with clients he was representing, and such jurisdiction was not necessary to protect Navajo self-government. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir.(Utah) 2002).

"... [S]ince the apportionment plan was invalid, the District Court had to do something when it was made aware that the Navajo Nation was attempting to conduct elections under a plan that we had declared invalid. In addition, a new event (passage of Navajo Nation Council Resolution No. CF-29-98) affecting the case arose. In light of these events, the District Court correctly ruled that it had the inherent authority to conduct a status review of the case and to grant relief based on the status of the case. That is part of the District Court's inherent power to implement adjudication." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 4 (Nav. Sup. Ct. July 25, 2001).

12. Concurrent jurisdiction

In determining whether Navajo Tribal Court had concurrent jurisdiction over ejection and trespass action brought in district court, Court of Appeals would consider statutes of Navajo Nation. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996).

13. Divorce proceedings

"Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation." *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

14. Judgment debts

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

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

§ 253a. Long-Arm Civil Jurisdiction and Service of Process Act

A. Definitions. As used in this Act, the term "person" includes an individual, executor, administrator, or other personal representative, or a corporation,

partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of the Navajo Nation and whether or not organized under the laws of the Navajo Nation. The term includes all persons, natural or fictitious, of any kind.

B. Personal jurisdiction based on enduring relationship or status. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over a person domiciled in, organized under the laws of, or maintaining his, her, or its place of business in the Navajo Nation as to any cause of action or claim for relief. A Court of the Navajo Nation may exercise personal jurisdiction over any member of the Navajo Nation regarding that person's status as a member of the Navajo Nation for activities outside this jurisdiction which affect any other member of the Navajo Nation. A Court of the Navajo Nation may exercise civil jurisdiction over any person who assumes tribal relations with Navajos and the Navajo Nation by marriage, adoption, guardianship or other enduring relationship with Navajos.

C. Personal jurisdiction based on conduct. A Court of the Navajo Nation may exercise personal and subject matter jurisdiction over any non-member who consents to jurisdiction by commercial dealings, residence, employment, written or implied consent, or any action or inaction which causes injury which affects the health, welfare, or safety of the Navajo Nation or any of its members located within the territorial jurisdiction of the Navajo Nation, or any other act which constitutes the assumption of tribal relations and the resulting express or implied consent to jurisdiction. A Court of the Navajo Nation may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action for relief arising from the person's:

1. Transacting any business in the Navajo Nation;
2. Contracting at any place to supply services or things within the Navajo Nation;
3. Causing tortious injury by any act or omission within the Navajo Nation;
4. Causing tortious injury in the Navajo Nation by an act or omission outside the Navajo Nation if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in the Navajo Nation;
5. Having an interest in, using, or possessing real property in the Navajo Nation, including the actual occupancy or lease of trust land, allotted land, fee land, or any other land within Navajo Indian country;
6. Contracting to insure any person, property or risk located within the Navajo Nation;
7. Causing an act which creates an environmental hazard or degradation of the air, waters, flora, fauna, cultural artifact, or other resource of the Navajo Nation;
8. Selling alcohol to any person who enters the Navajo Nation and who causes an injury in the Navajo Nation under the influence of alcohol; or

9. Any action or inaction outside this jurisdiction which causes actual injury or damage within the Navajo Nation, where such injury or damage was reasonably foreseeable.

D. Service of process outside the Navajo Nation. When the exercise of personal jurisdiction is authorized by this Act, service of process may be made outside the Navajo Nation, and where such service is not reasonably feasible, service may be made by any means which is likely to give the defendant actual notice of the pendency of an action.

E. Inconvenient forum. When a Navajo Nation Court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss the action in whole or in part on any condition that may be just.

F. Other basis of jurisdiction unaffected. A Court of the Navajo Nation may exercise jurisdiction on any other basis authorized by law, including the inherent and treaty jurisdiction of the Navajo Nation.

G. Manner and proof of service.

1. When the law of the Navajo Nation authorizes service outside the Navajo Nation, the service, when calculated to give actual notice, may be made:

- a. By personal delivery in the manner prescribed for service within the Navajo Nation;
- b. In the manner prescribed by the law of the place in which service is made in an action in any of its courts of general jurisdiction;
- c. By any form of mail addressed to the person to be served and requiring a signed receipt;
- d. As directed by a foreign authority in response to a letter rogatory; or
- e. As directed by the Court.

2. Proof of service outside the Navajo Nation may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the Navajo Nation, the order pursuant to which service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee satisfactory to the court and showing that the service was reasonably calculated to give actual notice.

H. Individuals to be served; special cases. When the law of the Navajo Nation requires that in order to effect service one or more designated individuals be served, service outside the Navajo Nation under this Act must be made upon the designated individual or individuals.

I. Assistance to tribunals and litigants outside the Navajo Nation.

1. A Court of the Navajo Nation may order service upon any person who is domiciled or can be found within the Navajo Nation of any document issued in connection with a proceeding in a tribunal outside the Navajo

Nation. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the Navajo Nation and shall direct the manner of service. Otherwise, no process which is not process issued by a Navajo Nation Court or administrative tribunal with jurisdiction over the cause may be served within the Navajo Nation, and the Navajo Nation denies consent to admission to the Navajo Indian country to any state official or process server for the service of process unless the same is done under this Section.

2. Service in connection with a proceeding in a tribunal outside the Navajo Nation may be made within the Navajo Nation only with an order of a Navajo Nation Court.

3. Service under this section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the Navajo Nation.

4. A Navajo Nation Court may decline to order service of process where a tribunal outside the Navajo Nation lacks jurisdiction over the action, where the application is fraudulent, or where the action violates the public policy of the Navajo Nation.

J. Other provisions of law unaffected. This Act does not repeal or modify any other law of the Navajo Nation permitting any other procedure for service of process.

History

CO-72-03, October 24, 2003.
CJA-02-01, January 24, 2001.

Library References

Courts ☞12.	C.J.S. Indians §§ 14 to 16, 18 to 19, 21, 42 to
Indians ☞27(2, 5), 32(7).	43, 53, 55 to 62, 135 to 136, 139 to 143,
Westlaw Topic Nos. 106, 209.	146, 152.
C.J.S. Courts § 41.	

§ 254. Territorial jurisdiction

A. The territorial jurisdiction of the Navajo Nation shall extend to Navajo Indian Country, defined as all land within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency, all land within the limits of dependent Navajo Indian communities, all Navajo Indian allotments, all land owned in fee by the Navajo Nation, and all other land held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians.

B. The Courts of the Navajo Nation may also exercise jurisdiction over any action for probate, domestic relations, child custody, adoption and Navajo Nation benefits and services, in which a party is a Navajo resident of the Hopi-Partitioned Lands.

History

CO-72-03, October 24, 2003. CJA-11-00, January 28, 2000.

COURTS AND PROCEDURE

7 N.N.C. § 255

CD-94-85, December 4, 1985.

CJY-57-85, July 25, 1985.

CMY-28-70, May 7, 1970.

Preamble. CJY-57-85 contained the following preamble:

"7. It is the intent of these amendments that the reference to 'all land' is comprehensive and includes rights-of-way, fee land, and other lands, notwithstanding the nature of title thereto, within the exterior boundaries of the Navajo Reservation, Eastern Navajo Agency, dependent Navajo communities, Navajo Indian allotments

and all lands held in trust for, owned in fee by, or leased by the United States to the Navajo Nation or any Band of Navajo Indians. Nothing herein shall be construed as constituting authorization for the purchase or lease of lands by any Band of Navajo Indians; and"

"8. 'Dependent Navajo Indian Communities' is intended to encompass all lands currently within the Eastern Navajo Agency and such other lands as may be determined consistent with federal law to constitute dependent Navajo Indian communities."

Library References

Courts ☞512.

Indians ☞6.4 to 6.10, 32(1, 7).

Westlaw Topic Nos. 106, 209.

C.J.S. Courts § 223.

C.J.S. Indians §§ 49 to 51, 60 to 62, 139 to 143, 152.

Annotations

1. Concurrent jurisdiction

In determining whether Navajo Tribal Court had concurrent jurisdiction over ejectment and trespass action brought in district court, Court of Appeals would consider statutes of Navajo Nation. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996).

2. Outside reservation

Dispute between two Navajo Indians over land located in Navajo Indian country but outside reservation boundaries fell within jurisdiction of Navajo Tribal Court. *U.S. v. Tsosie*, 92 F.3d 1037 (10th Cir.(N.M.) 1996).

"... [R]eading 7 N.T.C. § 254 as including the Moencopi Administrative Unit within its definition of Navajo Indian Country is *not* inconsistent with federal law. The Moencopi Administrative Unit lies within the exterior boundaries of the Navajo Indian Reservation *and* it has yet to be decided that the Hopi Tribe holds an *exclusive* interest in the lands." *Taylor v. Bradley*, 6 Nav. R. 147, 149 (Nav. Sup. Ct. 1989).

3. Scope of jurisdiction

"After reviewing the documents submitted by both sides in this case, we believe we do not

have to reach the question of whether the parcel is within the territorial jurisdiction of the Navajo Nation. This is because Cabinet is bound by an explicit consent to Navajo jurisdiction in the lease between NHA and the Navajo Nation." *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 3-4 (Nav. Sup. Ct. February 11, 2004).

"Petitioner claims that, regardless of any Navajo Nation definition of its territorial jurisdiction, *e.g.* 7 N.N.C. § 254 (1995), which definition includes land owned in fee by the Nation, the Labor Commission must show that the parcel is a 'dependent Indian community' under the federal Indian Country statute, 18 U.S.C. § 1151, and the United States Supreme Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998)."

"History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council." *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

§ 255. Writs or orders

The District Courts shall have the power to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction.

History

CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Library References

Indians ☞32(7).

Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Annotations

1. Garnishment

Enabling language of this section and former version of 9 N.N.C. § 1303 enable the District Courts of the Navajo Nation to order wage garnishment to any employer, trustee, financial agency or other person within the territorial jurisdiction of the Nation for child support. *Heredia v. Heredia*, 4 Nav. R. 124 (Nav. Ct. App. 1983).

Pursuant to 7 N.N.C. § 705 and this section, coupled with Rule 23, Rules of Navajo Civil Procedure, garnishment is permitted. *Tracey v. Heredia*, 4 Nav. R. 149 (Nav. Ct. App. 1983).

2. Power of court

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

“This Court affirms the principle that the Navajo Tribal Courts have inherent power to en-

force their orders and uphold the dignity of the court through contempt powers.” *In the Matter of Contempt of Sells*, 5 Nav. R. 37 (Nav. Ct. App. 1985).

3. Due process

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

4. Review

“As a general principle, we will give considerable deference to a district court’s exercise of discretion. *Higdon v. Nelson*, 7 Nav.R. 158, 159 (1995). The parameters of discretion are whether the district court acted within the rules, principles and customs applicable to the facts of the case. We will not overturn a discretionary decision unless the record shows that there was an actual abuse of discretion. *Little v. Begay*, 7 Nav. R. 353, 354 (1998).” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 4 (Nav. Sup. Ct. July 16, 2001).

§ 256. Temporary or preliminary injunctive relief

No District Court of the Navajo Nation shall enter an order for temporary or preliminary injunctive relief in any proceeding in which there is no appearance by the defendant, unless:

A. The District Court judge certifies in writing as to the specific irreparable harm which would occur were the temporary relief not to be ordered; and

B. The legal counsel for the plaintiff certifies by affidavit the reasonable efforts which have been made to locate the defendant or defendant’s legal counsel to notify him or her of the hearing on preliminary or temporary injunctive relief.

History

CO-72-03, October 24, 2003.

CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.

Library References

Indians ☞32(7).

Injunction ☞132 to 138.21.

Westlaw Topic Nos. 209, 212.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

C.J.S. Injunctions §§ 4 to 5, 9, 12, 14 to 15,

17, 20, 24, 27 to 28, 30, 36 to 37, 39, 166.

§ 257. Sovereign immunity of the Navajo Nation

Jurisdiction of the District Courts of the Navajo Nation shall not extend to any action against the Navajo Nation without the Navajo Nation’s express

consent. Any action against the Navajo Nation shall comply with the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and any other law providing the Navajo Nation with immunity from suit.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CF-19-80, February 13, 1980.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

Library References

Indians ⇄32(1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 49 to 51.

Annotations

1. Exceptions

“The Navajo district courts have no jurisdiction in suits against the Navajo Nation without its express consent.” *Plummer v. Brown II*, 6 Nav. R. 88, 92 (Nav. Sup. Ct. 1989).

Immunity of Navajo Tribe from suit is not absolute; it is subject to complete defeasance by act of Congress and Tribe itself can also waive immunity. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

Omnibus Indian Mineral Leasing Act did not diminish sovereign immunity of Navajo Tribe. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

Tribal sovereign immunity did not bar suit for injunctive relief against certain Navajo officials who were alleged to have violated federal law by acting beyond the scope of their authority in attempting to regulate affairs of non-Indian electric utility that operated power plant on tribal trust land. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995).

Indian tribes may not be sued absent express and unequivocal waiver of immunity by tribe or abrogation of tribal immunity by Congress. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995).

2. Common law immunity

Navajo Tribe’s common-law immunity from suit extended not only to suit for monetary damages, but also to action for injunctive or declaratory relief. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

3. Dismissal of claims

Complaint against Navajo Tribal Council and Navajo Office of Mineral Development would be dismissed on sovereign immunity grounds where relief against them, as merely parts of tribal government, would be, in effect, relief against Tribe. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

4. Actions barred

If purpose of action against Navajo tribal officials were, in effect, to obtain relief against Tribe, suit would be barred by Tribe’s sovereign immunity. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

5. Tribal officers

Navajo Tribe’s sovereign immunity would not protect tribal officers from suit against them in their individual capacities for acts beyond their authority. *Superior Oil Co. v. U.S.*, 605 F.Supp. 674 (D.Utah 1985).

Subchapter 4. Special Division of Window Rock District Court

§ 291. Establishment

There is established the Special Division of the Window Rock District Court.

History

CMA-11-89, March 10, 1989.

CMA-8-89, March 1, 1989.

Library References

Courts ☞50.

Indians ☞32(7).

Westlaw Topic Nos. 106, 209.

C.J.S. Courts § 106.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 292. Composition

A. The Special Division of the Window Rock District Court shall consist of three judges or retired judges or retired justices, who shall be assigned in such manner and for such terms as is provided in this section, for the purpose of appointing special prosecutors pursuant to 2 N.N.C. §§ 2021—2024.

B. Judges of the Special Division shall be appointed for terms of two (2) years each, which terms shall commence on the date of the enactment of this section, and thereafter on the date of every other anniversary of the enactment of this section.

C. The Chief Justice of the Navajo Nation shall designate and assign three judges or retired judges or retired justices to the Special Division for each successive two-year term. At least two of the judges shall be active permanent judges of District Courts of the Navajo Nation. The third judge may be either an active permanent judge of the Navajo Nation or a retired judge or retired justice of the Navajo Nation. Unless there are an insufficient number of active permanent judges from at least two District Courts, not more than one judge or retired judge may be assigned to the Special Division from a particular District (or preceding trial) Court. The Chief Justice shall designate one of the judges to be the presiding judge of the Special Division.

D. Judges of the Special Division may only be removed during their terms upon their resignation, or by a two-thirds (2/3) vote of the full membership of the Navajo Nation Council. Any vacancy in such division shall be filled only for the remainder of the two-year period for which such vacancy occurs and in the same manner as initial appointments to such division were made.

E. Except as provided under subsection (F) of this section, assignment to the Special Division shall not bar any other judicial assignment during the term of assignment to such division.

F. No judge of the Special Division shall be eligible to participate in any judicial proceeding concerning a matter which involves a special prosecutor appointed by the Division while such special prosecutor is serving in that office, or which involves the exercise of such special prosecutor's official duties, regardless of whether such special prosecutor is still serving in that office.

G. Within five (5) calendar days of the enactment of this section, the Special Division shall be created pursuant to subsection (C) of this section.

History

CO-72-03, October 24, 2003.
CMA-11-89, March 10, 1989.
CMA-8-89, March 1, 1989.

Cross References

Special Prosecutor, see 2 N.N.C. § 2021 et seq.

Library References

Courts ☞41, 70.	C.J.S. Courts §§ 93 to 96, 100, 102, 123.
Indians ☞32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Judges ☞3, 7, 10, 11, 21.	C.J.S. Judges §§ 12 to 14, 21 to 24, 26 to 29, 35 to 38, 40 to 41.
Westlaw Topic Nos. 106, 209, 227.	

Subchapter 5. Supreme Court**§ 301. Composition and location**

A. The Supreme Court of the Navajo Nation shall consist of the Chief Justice of the Navajo Nation and two Associate Justices of the Supreme Court.

B. The Supreme Court of the Navajo Nation shall be located in Window Rock, Navajo Nation (Arizona).

C. The Supreme Court of the Navajo Nation may sit and conduct hearings outside of the Navajo Nation in accordance with policies established for the conduct of hearings outside the Navajo Nation.

History

CO-72-03, October 24, 2003.	CJA-5-59, January 9, 1959.
CD-94-85, December 4, 1985.	CO-69-58, October 16, 1958.
CMY-39-78, May 4, 1978.	

Library References

Courts ☞41, 74.	C.J.S. Courts §§ 93 to 96, 100, 102, 121.
Indians ☞32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 106, 209.	

Annotations**1. Construction and application**

“We therefore conclude that in cases where three justices were assigned to a case and one becomes unavailable during consideration due to resignation, removal or other reason beyond the control of the Court, this Court may issue an opinion by the remaining two justices.” *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01 slip op. at 4 (Nav. Sup. Ct. November 14, 2003)

“As the procedural requirement for three justices was a separate action, Section 301(A) merely defines the make-up of the Court. It does not independently restrict the Court to

three justices where the Navajo Nation Council had included a separate provision to do so.” *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01 slip op. at 3 (Nav. Sup. Ct. November 14, 2003)

“Though on its face 301(A) states three justices make up this Court, other sections of the Judicial Reform Act and its predecessors demonstrate that the Navajo Nation Council authorized this Court to use a two-justice panel when necessary.” *Benally v. Mobil Oil Corporation, nka ExxonMobil Oil Corporation*, No. SC-CV-05-01, slip op. at 2 (Nav. Sup. Ct. November 14, 2003)

§ 302. Jurisdiction—Generally

The Supreme Court shall have jurisdiction to hear appeals from final judgments and other final orders of the District Courts of the Navajo Nation and such other final administrative orders as provided by law. The Supreme Court shall also have jurisdiction over original extraordinary writs. The Supreme Court shall be the Court of last resort.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Indians ☞ 6.6(3), 6.7(3), 27(7), 32(7), 38(6).
 Westlaw Topic No. 209.

C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
 152 to 153, 163.

Annotations**1. Jurisdiction, generally**

“Appellants filed this appeal long after the thirty (30) days expired to appeal the final order. This Court only has jurisdiction to review decisions appealed within thirty (30) days of the decision.” *Mitchell, et al. v. Davis, et al.*, No. SC-CV-52-03, slip op. at 3 (Nav.Sup.Ct. August 16, 2004).

“No sanctions were imposed, and the attorney did not take an appeal. The finding of contempt was personal to the attorney, collateral to the action, and neither party has any rights as a result of the contempt finding which are part of this appeal.” *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 9 (Nav. Sup. Ct. July 25, 2001).

“Section 302 by itself does not vest this Court with jurisdiction over appeals of final decisions made by the administrative agencies. Instead, section 302 requires that a law from among the laws governing an administrative agency must provide for an appeal to this Court.” *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 302 (Nav. Sup. Ct. 1990).

“Section 302 gave the Court jurisdiction to review final judgments and final orders of the district courts and certain administrative agencies.” *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 202 (Nav. Sup. Ct. 1990).

“An appeal from a final administrative decision is permitted only if a statute exists which expressly provides for an appeal to the Supreme Court. [...] [N]ot all final administrative decisions are appealable to the Supreme Court.” *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 111-112 (Nav. Sup. Ct. 1986).

“The Supreme Court’s appellate jurisdiction is not derived from general principles governing administrative law. The Supreme Court can

acquire and exercise jurisdiction only in the manner dictated by the laws enacted by the legislative body.” *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 111 (Nav. Sup. Ct. 1986).

“This Court’s authority to issue a writ of prohibition is established at 7 N.T.C. § 302, which grants to the Court original jurisdiction to hear cases where a special writ or order is necessary or proper to carry out its jurisdiction, and supervisory jurisdiction over a trial court acting beyond its jurisdiction.” *Chief Justice McCabe v. Hon. Walters.*, 5 Nav. R. 43, 47 (Nav. Ct. App. 1985).

“History shows that the Navajo Tribal Council gave the Navajo courts their jurisdiction. Consequently, the Navajo courts can exercise only that jurisdiction granted by the Navajo Tribal Council.” *Plummer v. Brown II*, 6 Nav. R. 88, 90 (Nav. Sup. Ct. 1989), citing *Nez v. Barney*, 3 Nav. R. 126, 129 (1982).

2. Exhaustion of remedies

“The merits of the case have progressed only to the second level of the tax administrative review process with rights of appeal to the Hearing Officer and the Tax Commission intact. Conferee White’s order of denial of Chuska’s motion to quash cannot be interpreted as disposing of the merits of the assessment issue thereby the case is not ripe for appeal. Neither is the issuance of an administrative subpoena in the midst a valid administrative proceeding and appealable action.” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 103 (Nav. Sup. Ct. 1986).

“The Supreme Court is unavailable for review until all the substantial rights of the parties have been determined in the lower tribunal, whether that tribunal be District Court or administrative agency. The case must be fully adjudicated on the merits, and the entry of the final decision

must preclude further proceedings in the lower tribunal.” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 102 (Nav. Sup. Ct. 1986).

“Generally, exhaustion [of administrative remedies] will not be required: 1. When the administrative remedy is inadequate. [. . .] 2. When the complainant will suffer irreparable injury if required to exhaust administrative remedies. 3. When the agency is clearly acting or attempting to act in excess of its authority. 4. When pursuing the administrative process would be futile . . .” *Navajo Skill Center v. Benally*, 5 Nav. R. 93, 96–97 (Nav. Sup. Ct. 1986).

“In determining when agency actions will be reviewed, the doctrines of primary jurisdiction and exhaustion of administrative remedies have been developed. Primary jurisdiction refers to the concept that the agency should act first. Exhaustion of administrative remedies is the concept that the agency should complete its procedures before the courts interfere.” *Navajo Skill Center v. Benally*, 5 Nav. R. 93, 96 (Nav. Sup. Ct. 1986).

§ 303. Writs or orders

The Supreme Court shall have the power to issue any writs or orders:

- A. Necessary and proper to the complete exercise of its jurisdiction;
- B. To prevent or remedy any act of any Court which is beyond such Court’s jurisdiction; or
- C. To cause a Court to act where such Court fails or refuses to act within its jurisdiction.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ⇄ 32(7), 38(6).
Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152, 163.

Annotations

1. Construction and application

“The Navajo Board of Election Supervisors is not a court for purposes of section 303.” *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 203 (Nav. Sup. Ct. 1990).

“Under its original jurisdiction, the Supreme Court has supervisory authority over lower courts. Supervisory authority permits the Court to issue extraordinary writs, which include injunctions, to the lower courts.” *Bennett v. Navajo Board of Election Supervisors*, 6 Nav. R. 201, 202 (Nav. Sup. Ct. 1990).

3. Final orders

“In the case of *Chuska Energy Co. v. Navajo Tax Comm’n*, we construed the word ‘final’ in our appellate jurisdiction statute . . . to mean the procedural stage where ‘all the substantial rights of the parties have been determined in the lower tribunal.’ 5 Nav. R. 98, 102 (1986).” *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 3 (Nav. Sup. Ct. July 25, 2001).

“ . . . [A]n order denying a motion to dismiss is interlocutory and not final for purposes of appealability.” *Billie v. Abbott*, 5 Nav. R. 201, 203 (Nav. Sup. Ct. 1987).

4. Certified questions

“An administrative agency cannot certify a question to this Court because that would violate separation of powers principles as well as their own powers.” *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

5. Advisory opinions

“We do not, and we cannot, give advisory opinions.” *In re: Navajo Board of Election Supervisors*, 6 Nav. R. 304 (Nav. Sup. Ct. 1990).

7 N.N.C. § 303

Note 1

(2) the exercise of such power by the lower court is not authorized by law; and (3) the exercise of such power will result in injury, loss or damage for which there is no plain, speedy and adequate remedy at law.” *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 86 (Nav. Sup. Ct. 1986).

“ . . . [A] writ of prohibition works to keep the inferior tribunals within their lawful jurisdictional bounds.” *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 86 (Nav. Sup. Ct. 1986).

2. Burden of proof

“It will be the petitioner’s burden to prove that he is entitled to the writ [of prohibition] as a matter of right.” *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

3. Mandamus, generally

“It is imperative that the petition [for a writ of mandamus] show that (1) the petitioner has a legal right to have the particular act performed; (2) the respondent judge has a legal duty to perform that act; and (3) the respondent judge failed or neglected to perform the act. A writ of mandamus will not be used to create new duties for district court judges.” *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

“A writ of mandamus will be issued to compel a district court judge to perform a judicial duty required by law, only if there is no plain, speedy and adequate remedy at law.” *Yellowhorse, Inc. v. The Window Rock District Court*, 5 Nav. R. 85, 87 (Nav. Sup. Ct. 1986).

4. Jurisdiction

“Court Clerks are under the immediate control of the Court. Administrative agency clerks or custodians of agency records are beyond the immediate reach of the court, but within the Court’s ‘all writs’ jurisdiction under 7 N.N.C. § 303(1995).” *Legislative Branch/Community Services Program, the Navajo Nation v. Hatahlie*, 7 Nav. R. 259, 261 (Nav. Sup. Ct. 1997).

“Situations inciting action under the necessary and proper clause include cases where the Supreme Court has lawfully acquired jurisdiction but efforts are being pursued to defeat jurisdiction; where the status quo must be maintained pending review of an action on appeal; and where the Supreme Court has po-

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tential appellate jurisdiction but there is interference with that jurisdiction which prevents perfection of the appeal. The test is to show a need to preserve and protect the Supreme Court’s appellate jurisdiction.” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 102 (Nav. Sup. Ct. 1986).

“24 N.T.C. § 234(b) does not empower the Supreme Court with original jurisdiction to issue injunctions. Neither can the Supreme Court properly use 24 N.T.C. § 234(b) to invoke its supervisory authority over lower courts. An appeal to the Supreme Court of a final Tax Commission decision is the only remedy available under 24 N.T.C. § 234(b).” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

“[A]n original petition seeking an injunction must allege the Supreme Court’s original jurisdiction under Section 303 and identify the court to be enjoined.” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 100 (Nav. Sup. Ct. 1986).

“The Supreme Court’s jurisdiction to issue an injunction is derived from two sources within 7 N.T.C. § 303; the necessary and proper clause and through its powers to supervise the lower courts.” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 100 (Nav. Sup. Ct. 1986).

5. Powers of court

“This Court, en banc, can also remove a district judge from a case using 7 N.N.C. § 303. [. . .] Section 303 does not authorize the Chief Justice to act alone in removing a trial judge from a pending case.” *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 322–323 (Nav. Sup. Ct. 1998).

6. Review

“It is clear from the Shiprock District Court’s July 28, 1999 ‘temporary commitment’ order, which was actually an indefinite civil contempt order, that Pelt was jailed solely for her failure to pay a civil judgment for a contract debt. We hold that section 3 of the Navajo Nation Bill of Rights prohibited her incarceration for failure to pay the judgment on a contract as an unreasonable deprivation of liberty.” *Pelt v. Shiprock District Court*, No. SC–CV–37–99, slip op. at 7 (Nav. Sup. Ct. May 4, 2001).

Subchapter 7. Justices and Judges

Article 1. Generally

§ 351. Salaries

A.¹ Salaries for Justices and Judges of the Courts of the Navajo Nation shall be established by the Judiciary Committee of the Navajo Nation Council, and in setting rates of compensation, the Committee shall take into consideration:

1. The Navajo Nation Classification and Pay Plan;
2. The need to attract outstanding Navajo candidates to the judiciary;
3. The need to attract or compensate Justices or Judges who are graduates of a school of law or who have extensive experience in law or judging;
4. Comparable salaries of Justices and Judges in the region; and
5. Any other objective criteria relevant to judicial compensation.

¹ So in original; no subsec. (B) was enacted.

History

CO-72-03, October 24, 2003.

CD-94-85, Exhibit D, December 4, 1985.

CO-53-81, October 22, 1981.

CF-6-76, February 19, 1976.

CJN-35-61, June 27, 1961.

CJN-40-59, June 10, 1959.

CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.

Library References

Indians ☞32(7).

Judges ☞22(5).

Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

C.J.S. Judges §§ 77, 80.

§ 352. Removal from office

A. The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines reasonable cause exists to believe the Justice or Judge has engaged in malfeasance or misfeasance in office, serious neglect of duty, or has become mentally or physically unable to perform the duties of office. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

B. The Judiciary Committee of the Navajo Nation Council may recommend the removal of any Justice or Judge from office if the Judiciary Committee determines there is substantial evidence that the Justice or Judge willfully or negligently made significant misrepresentations or omissions about his or her qualifications on his or her application for the judicial position. The Chief Justice may recommend to the Judiciary Committee the removal of any Justice or Judge as provided for above. Only if the Judiciary Committee does not follow the Chief Justice's recommendation may the Chief Justice recommend such removal directly to the Navajo Nation Council.

C. A recommendation for removal under subsections (A) or (B) above shall be presented promptly to the Navajo Nation Council by proposed resolution, and the Justice or Judge sought to be removed from office shall be given an opportunity to appear before the Navajo Nation Council and present evidence in his or her own defense. The Navajo Nation Council is not bound by the formal Rules of Evidence in its considerations or deliberations. Thereafter such Justice or Judge may be removed from office by a two-thirds vote of the full membership of the Navajo Nation Council.

D. Documented and conclusive evidence that a Justice or Judge has been convicted of a felony in state or federal court since taking office, or that a Justice or Judge has been convicted of any tribal criminal offense which is also identified as a Major Crime in 18 U.S.C. § 1153 since taking office, shall result in the removal of such Justice or Judge by resolution of the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1985.
CO-69-58, October 16, 1958.

Cross References

Judiciary Committee authority to recommend removal of Judges, see 2 N.N.C. § 574.

Library References

Indians ⇄32(7).
Judges ⇄11.
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges §§ 29, 40 to 41.

Annotations

1. Authority of committee

“The Chairman and Advisory Committee also have no authority to recall retired or removed judges back to service. [. . .] Judges who have been removed for misconduct have no status as

retired judges. Thus, they cannot be recalled for temporary duty on the Navajo Nation bench.” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

§ 353. Retirement

A. Definitions. The following definitions shall apply for purposes of this Section:

1. Judiciary Committee means the Judiciary Committee of the Navajo Nation Council.
2. Navajo Nation Judge as used in this Section shall include the Chief Justice of the Navajo Nation, all Associate Justices of the Navajo Nation Supreme Court, and all Trial Judges of the Navajo Nation District Courts and Family Courts.
3. Judges’ Retirement Plan means:
 - a. Either duly approved and established provisions directly applicable to Judges contained within the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor; or
 - b. A duly approved and established Navajo Nation Judges’ Retirement Plan document.

B. Eligibility.**1. Judges beginning service after the effective date of this Section:**

a. A Navajo Nation Judge beginning service after the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire and receive retirement benefits only in accordance with the Judges' Retirement Plan and only after meeting the vesting, retirement age and other eligibility requirements of the Judges' Retirement Plan.

b. The provisions of this Section specifically applicable to Navajo Nation Judges beginning service before the effective date of this Section are not applicable to Judges beginning service after the effective date of this Section.

2. Judges beginning service before the effective date of this Section:

a. The vesting, retirement age, and other eligibility requirements specifically identified in this Section as applicable to Navajo Nation Judges beginning service before the effective date of this Section shall be incorporated into and applied through the Judges' Retirement Plan.

b. A Navajo Nation Judge beginning service before the effective date of this Section with a permanent appointment pursuant to 7 N.N.C. § 355 may retire after having served a total of eight (8) or more years in office. A Navajo Nation Judge beginning service before the effective date of this Section who retires before reaching the age of fifty-five (55) years pursuant to Subsection (B), but not due to disability, shall not receive retirement benefits until the Judge has reached the age of fifty-five (55) years.

c. A Navajo Nation Judge beginning service before the effective date of this Section who retires or resigns with less than a total of eight (8) years in office shall not be eligible for retirement benefits under this Section.

3. A Navajo Nation Judge who intends to retire shall compile all the necessary paperwork and forward it to the Chief Justice. If the Chief Justice finds from the paperwork that the Judge meets the requirement for retirement, the Chief Justice shall give preliminary approval to the retirement request and forward the paperwork to the Navajo Nation Retirement Program for concurrence and processing of retirement benefits pursuant to the Judges' Retirement Plan.

4. A Navajo Nation Judge's total years of service for purposes of calculating eligibility for retirement benefits shall begin with the date of confirmation by the Navajo Nation Council and include all years served as a Navajo Nation probationary Judge and as a permanent Judge.

C. Removal; effect on retirement benefits.

1. The Navajo Nation Council may, upon recommendation of the Judiciary Committee, remove from office a permanent Navajo Nation Judge for inability to perform judicial duties due to permanent mental or physical disability. The Chief Justice shall recommend removal to the Judiciary Committee. A Navajo Nation Judge removed under Subsection (C) shall

receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who has been removed from office for malfeasance, misfeasance, serious neglect of duty, or criminal conviction as set forth in 7 N.N.C. § 352, shall be eligible for retirement benefits under this Section but shall not have the status of retired Judge.

D. Permanent disability; eligibility.

1. A Navajo Nation Judge may retire if the Judge has become permanently disabled from performing his or her duties of office. "Permanently disabled" means the permanent inability of the Judge, by reason of physical or mental incapacity, to perform any substantial part of his or her ordinary duties as a Navajo Nation Judge. A Navajo Nation Judge who retires under Subsection (D) shall receive retirement benefits in accordance with the disability provisions of the Judges' Retirement Plan.

2. A Navajo Nation Judge who intends to retire under Subsection (D) shall compile all the necessary paperwork and forward it to the Chief Justice for review. The Chief Justice shall recommend to the Judiciary Committee whether the Judge is eligible to retire under Subsection (D). The Judiciary Committee shall recommend to the Retirement Plan Administration Committee or its successor whether the Judge is eligible to retire under Subsection (D). The Retirement Plan Administration Committee or its successor shall have final authority to determine whether a Navajo Nation Judge is eligible to retire under the disability provisions of the Retirement Plan.

3. The Retirement Plan Administration Committee or its successor, with the concurrence of the Judiciary Committee, may develop nondiscriminatory procedures for evaluating the continuing disability of a Navajo Nation Judge retired under Subsection (D). The retirement benefits of a Navajo Nation Judge retired under Subsection (D) shall be suspended for failure to comply with such procedures in a timely fashion or if the disability no longer meets the criteria of Subsection (D).

4. The retirement benefits of a Navajo Nation Judge who retires under Subsection (D) shall be suspended during any time such Judge engages in the practice of law in any way, including the teaching of law.

E. Benefit levels.

1. Retirement benefits for Navajo Nation Judges beginning service after the effective date of this Section shall be established through the Judges' Retirement Plan document and administered through the Navajo Nation Retirement Program. The Judges' Retirement Plan may take into consideration the American Bar Association Standards relating to judicial retirement.

2. Retirement benefits for Judges beginning service before the effective date of this Section shall be incorporated into the Judges' Retirement Plan document and administered through the Navajo Nation Retirement Program. Such benefits shall be equivalent to the Section 353 in effect during the Judge's service.

3. A retired Navajo Nation Judge who is receiving retirement benefits pursuant to this Section shall not simultaneously receive salary, wages and/or

stipends for work performed from those employers participating in the Retirement Plan for Employees of the Navajo Nation and Participating Affiliates or its successor.

4. A Navajo Nation Judge’s retirement benefits shall not be diminished except as specifically identified under subsections (D) and (E).

F. Pro Tempore service. The Chief Justice may recall a retired Navajo Nation Judge to service as a Navajo Nation Judge pro tempore. The retired Judge recalled to service shall be reimbursed only for reasonable expenses related to such service. A Navajo Nation Judge who has retired due to disability or has been removed pursuant to Subsection (C) shall not be eligible for recall to service.

G. Plan document. The Judges’ Retirement Plan shall:

1. Incorporate the applicable amended subsections of Section 353;
2. Incorporate provisions for the continued payment of retirement benefits which have vested or will vest under the former Section 353; and
3. Include a Judges’ retirement trust fund to pay judges their retirement benefits.

H. Authority. The Budget and Finance Committee, upon positive recommendation of the Judiciary Committee and the Retirement Plan Administration Committee, shall have the authority to approve the initial Judges’ Retirement Plan document and any subsequent amendments. This authority shall not be deemed to alter or amend the Retirement Plan Administration Committee’s or the Navajo Nation Retirement Program’s authority to administer the Judges’ Retirement Plan or the Budget and Finance Committee’s authority to administer the underlying trust fund.

I. Effective dates. Except for amended Subsections (B), (C), (D) and (E), these amendments to 7 N.N.C. § 353 shall become effective upon enactment. Subsections (B), (C), (D) and (E) shall become effective after a final Navajo Nation Judges’ Retirement Plan has been recommended by the Judiciary Committee and the Retirement Plan Administration Committee and approved by the Budget and Finance Committee and the Judges retirement trust fund fully funded by the Navajo Nation Council. For purposes of this subsection, fully funded shall mean funded to a level sufficient to satisfy the funding requirements of the Employees Retirement Insurance Security Act ¹ if such Act was applicable to the Judges Retirement Plan.

¹ 29 U.S.C.A. § 1001 et seq.

History

CO-72-03, October 24, 2003.
 CJA-04-03, January 29, 2003.
 CJY-60-00, July 21, 2000.
 CD-94-85, December 4, 1985.
 CJN-33-62, June 18, 1962.
 CJN-35-61, June 27, 1961.

CF-15-61, February 15, 1961.
 CJN-40-59, June 10, 1959.
 CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.
Exceptions to provision. CJA-11-84, January 25, 1984.

Library References

Indians ☞32(7).
Judges ☞7, 22.
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges §§ 21 to 24, 27 to 29, 75.

Annotations**1. Authority of committee**

“The Chairman and Advisory Committee also have no authority to recall retired or removed judges back to service. The legally appointed Chief Justice has the authority to recall only retired judges to the bench temporarily to help relieve congestion in the courts. [. . .] Judges who have been removed for misconduct have no

status as retired judges. Thus, they cannot be recalled for temporary duty on the Navajo Nation bench. A probationary judge who has been removed by the Chairman upon recommendation of the Judiciary Committee also has no status as a retired judge and cannot be recalled to service.” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

§ 354. Qualifications for judicial appointment

A. District Courts. The following standards and qualifications shall apply to all judicial appointments to the District Courts of the Navajo Nation:

1. Member of Navajo Nation and Age. An applicant shall be an enrolled member of the Navajo Nation and shall be over thirty (30) years of age.

2. Criminal Convictions. An applicant shall not have any felony or other conviction of an offense identified as a Major Crime in 18 U.S.C. § 1153 in any jurisdiction. An applicant shall not have any misdemeanor convictions in any jurisdiction within a five (5) consecutive year period prior to the date the application is submitted.

3. Education. Each applicant shall have earned, at a minimum, an Associate of Arts or Science degree from an accredited institution of higher education. An applicant who has earned a higher educational degree shall be preferred, with particular preference being given to a law degree (J.D. or LL.M.).

4. Experience. Each applicant shall have at least four (4) years direct work experience in a law related area and shall have a working knowledge of Navajo and applicable federal and state laws. Those applicants with experience working with the Navajo Nation Courts or with state and federal courts shall be preferred.

5. Knowledge of Navajo Language, Culture and Tradition. Each applicant must be able to speak both Navajo and English, and have some practical knowledge of the fundamental laws of the Diné. The applicant must be able to demonstrate:

- a. An understanding of K'é, including the Diné clan system; and
- b. A basic understanding of traditional Navajo religious ceremonies; and
- c. An understanding of the traditional Navajo lifestyle.

6. Health. Each applicant shall produce a current statement from a licensed physician indicating that the applicant is in good mental health.

7. Driver's License. Each applicant shall possess a valid driver's license.

8. No Substance Abuse or Addiction. In addition to the requirement of obtaining a medical statement pursuant to subsection (A)(6) above, each applicant must attest that he or she does not abuse or have a harmful physical addiction to any mood altering substance.

9. Writing Test. Upon initial screening of applicants by the Judiciary Committee, those applicants selected shall submit to a writing test that illustrates each applicant's organizational, analytical and communicative legal writing abilities.

10. Ethics. Each applicant shall show that he or she has neither present nor past conflicts of interests that give the appearance of partiality or bias in cases brought in the Courts of the Navajo Nation. Each applicant must demonstrate a commitment to judicial independence and an impartial background that will indicate neutrality and fairness for proper decision making. An applicant shall not have been found in violation of:

- a. The Navajo Nation Ethics in Government Law;
- b. Standards of ethics or professional conduct for lawyers in any jurisdiction; or
- c. Standards of ethics for judges or judicial codes of conduct in any jurisdiction;

within a five (5) consecutive year period prior to the date the application is submitted.

11. References. Each applicant must be of good moral character and shall submit a minimum of four (4) current letters of reference specifically regarding his or her application for judicial appointment. At least one (1) letter of reference shall be from a regular member in good standing with the Navajo Nation Bar Association. Such letters shall outline the applicant's legal skills, motivation and employment performance, and the applicant's character and capacity for independence, honesty and impartiality.

12. Management Ability. Each applicant shall possess managerial and independent decision-making skills necessary for the efficient operation of a Court. Information such as the applicant's record of supervising staff, coordinating budget and personnel requirements, verbal communication and writing abilities shall be carefully considered by the Judiciary Committee.

13. Navajo Nation Bar Association. Each applicant shall provide proof in his or her application that he or she is presently a regular or inactive member in good standing with the Navajo Nation Bar Association and shall maintain membership in good standing throughout his or her judicial career.

14. Removal from office. Navajo Nation probationary and permanent judges removed from office for any reason shall not be eligible for subsequent judicial appointment.

B. Supreme Court. The standards and qualifications applicable to judicial appointments to the District Courts of the Navajo Nation shall apply to all judicial appointments to the Supreme Court of the Navajo Nation with the following variations:

1. Education. Each applicant for judicial appointment to the Supreme Court shall have earned, at a minimum, a four-year Bachelor's degree from

an accredited institution of higher education. An applicant who has earned a J.D. or LL.M. shall be preferred.

2. Judge Applicants. A sitting Navajo Nation District Court Judge applicant who meets all requirements for appointment to the Supreme Court shall be preferred, in accordance with the following:

a. A Navajo Nation District Court Judge (permanent or probationary) beginning service before the effective date of this Section shall be eligible for appointment to the Supreme Court irrespective of the increased minimum educational qualifications for either District Court Judges or Supreme Court Justices enumerated in this Section. Provided, however, that such District Court Judge applicant shall meet all other minimum qualifications as set forth in this Section.

b. A Navajo Nation District Court Judge (permanent or probationary) beginning service after the effective date of this Section shall not be eligible for appointment to the Supreme Court unless he or she meets all minimum qualifications for Supreme Court Justices as set forth in this Section.

C. These minimum qualifications and educational requirements shall not affect the status of probationary or permanent Justices or Judges beginning service before the effective date of this Section.

D. Each applicant shall be objectively evaluated, selected, appointed and confirmed based solely on their qualifications for the particular judicial position at issue and without regard to political affiliation or association.

History

CO-72-03, October 24, 2003.
CAP-28-03, April 25, 2003.
CD-94-85, December 4, 1985.

Library References

Indians ☞32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Judges ☞4.	C.J.S. Judges §§ 15 to 18, 20.
Westlaw Topic Nos. 209, 227.	

Annotations

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| <p>1. Application
“The contents of the application, including the supporting documents, must conform to 7 N.T.C. § 354.” <i>In re: Certified Questions I</i>, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).</p> <p>2. Screening of applicants
“The initial screening of applicants, which includes review of qualifications pursuant to 7</p> | <p>N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355, 354(a) and 2 N.T.C. § 572(1).” <i>In re: Certified Questions I</i>, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).</p> |
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§ 355. Appointment; term of office

A. The President of the Navajo Nation shall appoint the Chief Justice, Associate Justices, and District Court Judges with confirmation by the Navajo Nation Council from among those applicants recommended by the Judiciary Committee of the Navajo Nation Council.

B. The Chief Justice and the Associate Justices of the Supreme Court, and all District Court Judges shall be appointed for a probationary period of two (2) years and upon permanent appointment shall serve thereafter during good behavior.

C. A probationary Chief Justice, Associate Justice or Judge shall not be recommended for permanent appointment unless he or she has successfully completed a course of training accredited for judges and he or she has received a satisfactory performance evaluation from the Chief Justice and the Judiciary Committee of the Navajo Nation Council at the conclusion of the probationary Justice’s or Judge’s two-year probationary term.

D. At any time during the probationary term of any Chief Justice, Associate Justice or Judge, the Judiciary Committee may recommend to the President of the Navajo Nation that the probationary Justice or Judge be removed from office. The President of the Navajo Nation, pursuant to such recommendation, shall remove such probationary Justice or Judge from office. Any Justice or Judge so removed shall not be eligible for the status of retired Judge, shall not be eligible for reappointment as a Justice or Judge, and shall not be called to sit in any case pursuant to 7 N.N.C. § 353(F).

E. At the conclusion of the two-year probationary term, the Judiciary Committee shall review the record and qualifications of each probationary Justice or Judge and shall recommend to the President whether or not each probationary Justice or Judge has satisfactorily completed the probationary term and should be appointed to a permanent position. The President shall not appoint to a permanent position any probationary Justice or Judge not recommended by the Judiciary Committee. The appointments shall be submitted to the Navajo Nation Council for confirmation.

History

CO-72-03, October 24, 2003.
 CJY-60-00, July 21, 2000.
 CD-94-85, December 4, 1985.

Cross References

Judiciary Committee authority, see 2 N.N.C. § 574.

Library References

Indians ↻32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Judges ↻3, 7.	C.J.S. Judges §§ 12 to 14, 21 to 24, 27 to 29.
Westlaw Topic Nos. 209, 227.	

Annotations

1. Construction and application

“Different events occur if the Judiciary Committee recommends a probationary judge to a permanent position. [. . .] The legislative scheme does not allow the Chairman’s denial of permanent appointment to a probationary judge to be final. [. . .] The Navajo Tribal Council will make a final decision as to whether to grant

permanent status to this type of probationary judge.” *In re: Certified Questions II*, 6 Nav. R. 105, 108-110 (Nav. Sup. Ct. 1989).

“If the Judiciary Committee’s recommendation is that the probationary judge be denied permanent appointment, the Chairman must deny the appointment. [. . .] The Chairman is required to follow the Judiciary Committee’s

7 N.N.C. § 355

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recommendation of denial.” *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

“The process for either appointment to permanent judge or denial of appointment to permanent judge begins with the Chief Justice. [. . .] The Chief Justice has first-hand knowledge of the work of the probationary judge during the probationary term. The Chief Justice’s recommendation will be based upon the training requirement and the performance evaluation required under 7 N.T.C. § 355(c).” *In re: Certified Questions II*, 6 Nav. R. 105, 107–108 (Nav. Sup. Ct. 1989).

“At the conclusion of the probationary period, the judge is evaluated and recommended for or against permanent appointment.” *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

“The above cited statute providing for removal of probationary judge is not discretionary because the statute gives the public an overwhelming and compelling interest in ensuring that only qualified and ethics-conscious individuals become judges. The Navajo public has an interest in a strong and independent judiciary. Navajo sovereignty is strengthened by a strong and independent judiciary. For these reasons, a probationary judge who has been determined to be unfit for office by the Judiciary Committee must be removed by the Chairman. The public is protected by the removal of the judge.” *In re: Certified Questions II*, 6 Nav. R. 105, 107 (Nav. Sup. Ct. 1989).

“The Navajo Tribal Council also has the power to deny a judgeship to any person that the Chairman appoints as a judge. Any judge appointment made by the Chairman or the Advisory Committee without following the laws contained in the Navajo Tribal Code is illegal and shall not be recognized as valid.” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

“The Chairman [President] has no independent authority to appoint a person as judge who has not been screened and recommended by the Judiciary Committee. As a collateral matter, the Advisory Committee has absolutely no authority to either recommend, not recommend, confirm, or on its own appoint a person as judge of the Navajo Nation. All recommendations for appointment of judges are initiated by the Judiciary Committee.” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

“The initial screening of applicants, which includes review of qualifications pursuant to 7 N.T.C. § 354 and interviews, is conducted by the Judiciary Committee of the Navajo Tribal Council. The power of initial screening is given to the Judiciary Committee by 7 N.T.C. §§ 355,

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354(a) and 2 N.T.C. § 572(1).” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

“The appointment of judges to the Navajo Nation bench is governed by the Navajo Tribal Code.” *In re: Certified Questions I*, 6 Nav. R. 97, 99 (Nav. Sup. Ct. 1989).

2. Confirmation of judges

“Confirmation by the Navajo Tribal Council is complete when the judge receives a majority vote from those delegates voting during a duly called session of the Navajo Tribal Council.” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

“The confirmation of judges now rests exclusively with the Navajo Tribal Council pursuant to the [Judicial Reform] Act [of 1985].” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

3. Removed judges

“A probationary judge who has been removed by the Chairman upon recommendation of the Judiciary Committee also has no status as a retired judge and cannot be recalled to service.” *In re: Certified Questions I*, 6 Nav. R. 97, 100 (Nav. Sup. Ct. 1989).

4. Termination

“If a probationary judge is to be removed prior to the expiration of his probationary period, the Judiciary Committee must make a recommendation of removal to the Chairman. Pursuant to such recommendation, the Chairman *must* remove the probationary judge. No further removal proceeding is required. The removal is final.” *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

“The Chairman of the Navajo Tribal Council is not empowered to act alone in either removing a probationary judge or denying a permanent appointment to a probationary judge. The Navajo Tribal Code laws on the Judicial Branch provide for two ways by which a probationary judge can be terminated. The first is by removal and the second is by denial of permanent appointment. In either case the Chairman cannot act until after the Judiciary Committee of the Navajo Tribal Council has formally acted by recommendation.” *In re: Certified Questions II*, 6 Nav. R. 105, 106 (Nav. Sup. Ct. 1989).

5. Evaluation of judges

“The Committee makes an independent determination of the training requirement and whether the probationary judge has performed satisfactorily over the two-year probationary term.” *In re: Certified Questions II*, 6 Nav. R. 105, 108 (Nav. Sup. Ct. 1989).

§ 356. Probationary term

A. The probationary term for District Court Judges, the Chief Justice and Associate Justices shall be two (2) years from the date of confirmation by the Navajo Nation Council.

B. A permanent District Court Judge subsequently appointed as Chief Justice or Associate Justice shall also be subject to a two-year probationary term as described in subsection (A) of this Section.

History

CO-72-03, October 24, 2003.

Library References

Indians ⇄32(7).
Judges ⇄7.
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges §§ 21 to 24, 27 to 29.

§ 357. Evaluation

Permanent Justices and Judges shall be subject to periodic objective evaluations in accordance with Judicial Performance Evaluation Policies and Procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

Cross References

Judiciary Committee authority, see 2 N.N.C. § 574.

Library References

Indians ⇄32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Article 2. Chief Justice

§ 371. Administrative duties

In addition to his or her judicial duties, the Chief Justice of the Navajo Nation shall supervise all Justices and Judges of the Navajo Nation and administer the Judicial Branch in accordance with applicable standards, rules, policies or procedures. The Chief Justice shall also exercise such duties that are consistent with the Office of Chief Justice.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ☞32(7).
Judges ☞24.
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges §§ 35, 53 to 56, 59 to 65.

Annotations**1. Construction and application**

“All the parties to a case have a basic right to a fair and impartial judge. If the Chief Justice, acting alone and using his administrative powers, can remove district judges, there is the risk that parties may attempt to use political influence to decide cases.” *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 323 (Nav. Sup. Ct. 1998).

“The Chief Justice is the administrative as well as the judicial head of the Judicial

Branch.” *In the Matter of Contempt of Sells*, 5 Nav. R. 37, 38 (Nav. Ct. App. 1985).

2. Construction with other laws

“There is clearly no need for the Chief Justice to create an extra-judicial remedy and unilaterally remove a district judge from a case when we have abundant procedures, rules, and decisional law available to handle to process.” *In re: Excusal of Judge Ferguson*, 7 Nav. R. 320, 323 (Nav. Sup. Ct. 1998).

§ 372. Acting Chief Justice

A. The Chief Justice of the Navajo Nation shall designate in writing one Associate Justice of the Supreme Court to act as Chief Justice whenever the Chief Justice is absent from the territorial jurisdiction of the Navajo Nation, is on vacation, ill or otherwise unable to perform the duties of the Chief Justice. The Chief Justice shall delegate to the acting Chief Justice some or all of the powers of the office of Chief Justice. The Chief Justice may at any time change his or her written designation of the Associate Justice empowered to act as Chief Justice.

B. The Chief Justice may designate in writing one permanent District Court Judge to carry out the administrative duties of the Office of Chief Justice whenever the Chief Justice and both Associate Justices are absent from the territorial jurisdiction of the Navajo Nation, ill or otherwise unable to perform the duties of the Chief Justice. The designation shall expire at a time designated by the Chief Justice or whenever withdrawn in a separate writing by the Chief Justice and, in any event, shall automatically expire in five (5) working days after the date of designation unless renewed in writing by the Chief Justice.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-5-59, January 9, 1959.

Library References

Indians ☞32(7).
Judges ☞24.
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges §§ 35, 53 to 56, 59 to 65.

Annotations**1. Review**

“In considering the provisions of Title 7 as a whole, the Court holds that the appointment of

Honorable Dean Wilson, a retired judge, as Acting Chief Justice or Special Presiding Justice in this proceeding is authorized by Navajo Trib-

al law and is therefore proper.” *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 46 (Nav. Ct. App. 1985).

§ 373. Residence

A residence shall be furnished in Window Rock, Navajo Nation (Arizona), together with the cost of water, sewer, refuse disposal, electricity and natural gas, without charge to the sitting Chief Justice. The Navajo Nation shall not be responsible or liable for any costs or expenses associated with an alternative residence if the sitting Chief Justice declines to reside in the specific residence provided by the Navajo Nation as set forth in this Section.

History

CO-72-03, October 24, 2003.

Library References

Indians ⇨32(7).
Judges ⇨22(.5).

Westlaw Topic Nos. 209, 227.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 374. Oath of Office

The Chief Justice of the Navajo Nation shall administer the oath of office to the President, Vice President, Navajo Nation Council Delegates, and all other elected officials as provided by law. The Chief Justice may designate another Justice or Judge of the Navajo Nation to administer the oath.

History

CO-72-03, October 24, 2003.

Library References

Oath ⇨2.
Westlaw Topic No. 280.
C.J.S. Oaths and Affirmations §§ 5 to 6.

Subchapter 9. Judicial Branch Personnel Policies

§ 401. Judicial Branch personnel policies and procedures

All employment positions, including judicial appointments, within the Judicial Branch shall be governed by Judicial Branch personnel policies and procedures and Justices’ and Judges’ personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

Cross References

Judiciary Committee authority to approve policies, see 2 N.N.C. § 574(L).

Library References

Indians ☞32(7).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Subchapter 10. Navajo Nation Peacemaking Program (Hózhóǫ́jí Naat'áanii)

§ 409. Establishment

It is hereby recognized and affirmed that there is a Navajo Nation Peacemaking Program (Hózhóǫ́jí Naat'áanii) within the Judicial Branch of the Navajo Nation. The Peacemaking Program shall be the central point of peacemaking information and coordination with the Navajo Nation Judicial Branch.

History

CO-72-03, October 24, 2003.
 CO-76-01, October 17, 2001.

Library References

Indians ☞32(7).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 410. Purposes

The purposes of the Navajo Nation Peacemaking Program include: to promote a non-adversarial forum for solving disputes where the parties to the dispute voluntarily agree or are referred to peacemaking; to promote peacemaking counseling services to clients of the Navajo Nation Courts; to promote peacemaking support and assistance to Navajo Nation Courts when requested to make recommendations on sentencing; to provide education and training on Navajo culture, traditions and other Navajo accepted beliefs to individuals, organizations, and communities; to provide support and technical assistance to peacemakers; to promote the research, development, and learning of Navajo culture, traditions, and other Navajo accepted beliefs in support of judicial and community programs; and provide problem solving assistance to peacemakers, Judges, Court staff, and others concerning the peacemaking process. Peacemaking is intended to promote healing and reestablish harmony among those persons participating in peacemaking.

History

CO-72-03, October 24, 2003.
 CO-76-01, October 17, 2001.

Library References

Arbitration ☞1.2.	C.J.S. Arbitration § 2.
Indians ☞32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 33, 209.	

§ 411. Responsibility and authority

The Navajo Nation Peacemaking Program shall have the authority and power to undertake the following functions and duties:

A. To conform the procedures of Hózhóǫ́jí Naat’áanii to traditional Hózhóǫ́jí Naat’áanii concepts, including K’é, clanship, and other principles of Navajo culture, traditions, and other Navajo accepted beliefs, establish standards and procedures for that process, and otherwise develop standards, principles, and procedures for the development of Hózhóǫ́jí Naat’áanii in accordance with Navajo culture, traditions, and other Navajo accepted beliefs and the laws of the Navajo Nation.

B. To maintain a list of peacemakers and provide technical support to peacemakers to facilitate the conduct of peacemaking.

C. To periodically evaluate the techniques of peacemakers and the peacemaking process.

D. To authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.

E. To perform such other functions and duties that are in accordance with Navajo Nation law and purposes of the Navajo Nation Peacemaking Program and that will promote the practice of peacemaking.

History

CO-72-03, October 24, 2003.
CO-76-01, October 17, 2001.

Library References

Arbitration ¶4.1.	C.J.S. Arbitration § 6.
Indians ¶32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 33, 209.	

§ 412. Personnel

The Navajo Nation Peacemaking Program shall be administered by a Peacemaking Program Coordinator. All personnel, including the coordinator, shall be subject to Navajo Nation Judicial Branch personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CO-76-01, October 17, 2001.

Library References

Arbitration ¶26.	C.J.S. Arbitration §§ 60, 62.
Indians ¶32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 33, 209.	

§ 413. Legislative oversight

The Navajo Nation Peacemaking Program shall operate under the legislative oversight of the Judiciary Committee of the Navajo Nation Council pursuant to

the powers granted that Committee in 2 N.N.C. § 571 *et seq.* The Navajo Nation Peacemaking Program shall operate pursuant to a Plan of Operation approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CO-76-01, October 17, 2001.

Library References

Indians ☞32(7).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Subchapter 11. Judicial Conduct Commission

§ 421. Establishment

The Judicial Conduct Commission is established as an independent commission receiving administrative support and assistance from the Judicial Branch of the Navajo Nation.

History

CO-72-03, October 24, 2003.

Library References

Indians ☞32(7).
Judges ☞11(3).
Westlaw Topic Nos. 209, 227.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges § 42.

§ 422. Purposes and powers

A. The purposes and powers of the Judicial Conduct Commission are:

1. To enhance public confidence in the Navajo Nation Judiciary by providing a fair, impartial and expeditious forum to hear complaints and grievances against Navajo Nation Justices and Judges involving alleged violations of the Code of Judicial Conduct, personnel policies for Justices and Judges, and any other Navajo Nation laws or policies that set standards of ethics and conduct for Justices and Judges.
2. To investigate or direct the investigation of complaints or grievances against Justices and Judges;
3. To make findings and recommend sanctions, as appropriate; and
4. To forward recommendations for suspension or removal of Justices and Judges to the Judiciary Committee and to the Chief Justice.

B. The Judicial Conduct Commission shall refer all complaints not properly before the Judicial Conduct Commission to the proper authorities, such as the Chief Prosecutor, the Ethics and Rules Office, or the Disciplinary Committee of the Navajo Nation Bar Association, as necessary.

C. The Judicial Conduct Commission shall develop and recommend its Plan of Operation, rules, policies and procedures, and operating budget, for approval by the Judiciary Committee, the Budget and Finance Committee, and the Navajo Nation Council, as necessary.

History

CO-72-03, October 24, 2003.

Library References

Indians ☞32(7).
Judges ☞11(3).
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges § 42.

§ 423. Composition and personnel

A. Composition. The Judicial Conduct Commission shall consist of five (5) members serving staggered four (4) year terms.

1. One (1) member shall be a sitting or retired federal or state court Justice or Judge in good standing in their respective jurisdiction selected by the Justices and Judges of the Navajo Nation Courts.

2. One (1) member shall be a retired Navajo Nation Justice or Judge in good standing with the Navajo Nation Bar Association selected by the Justices and Judges of the Navajo Nation Courts.

3. Two (2) members shall be regular or inactive members of the Navajo Nation Bar Association in good standing with no pending disciplinary proceedings against them and who have not been formally reprimanded or suspended within a four (4) consecutive year period prior to their selection, selected by the voting membership of the Navajo Nation Bar Association. The NNBA-selected members shall not be retired or removed Justices or Judges of the Navajo Nation Courts.

4. One (1) member shall be a member of the Navajo Nation public selected by the Judiciary Committee of the Navajo Nation Council from among applicants submitting letters of interest and resumes to the Judiciary Committee. The Judiciary Committee selected member shall not be a current NNBA member, nor a sitting, retired, or removed Justice or Judge of the Navajo Nation or any other jurisdiction.

B. Personnel. The Judicial Conduct Commission shall receive administrative support and assistance from the Judicial Branch of the Navajo Nation and shall hire personnel and approve Commission expenditures as provided for in the Judicial Conduct Commission Plan of Operation and the Navajo Nation operating budget.

History

CO-72-03, October 24, 2003.

Library References

Indians ☞32(7).
Judges ☞11(3).

Westlaw Topic Nos. 209, 227.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

C.J.S. Judges § 42.

§ 424. Legislative oversight

The Judicial Conduct Commission shall operate pursuant to a Plan of Operation and policies and procedures recommended by the Judicial Conduct Commission and approved by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.

Library References

Indians ⇨32(7).
Judges ⇨11(3).
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Judges § 42.

Chapter 5. Procedure

Subchapter 1. Generally

Section

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- 603. Action in name of Navajo Nation; authority to bring
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- 631. Action against provider of an alcoholic beverage

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- 651. Right to jury trial
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- 657. Verdict of jury
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- 703. Lawful debt in proceedings to distribute decedents' estates
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- 705. Writs of execution—Generally
- 706. Issuance; contents
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- 709. Notice and public sale of property seized; proceeds; bill of sale
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- 712. Execution prior to judgment

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- 751. Security for costs
- 752. Assessment of costs
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- 801. Appeal from final judgment or order
- 802. Reserved
- 803. Scope of the appeal
- 804. Proceedings on appeal

Subchapter 11. Rules of General Construction

- 851. Construction
- 852. Amendment
- 853. Severability

Subchapter 1. Generally

§ 601. Court rules; authority to adopt

A. The Supreme Court of the Navajo Nation shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt rules of

pleading, practice, and procedure applicable to all proceedings in the Courts of the Navajo Nation. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed rules of pleading, practice and procedure.

B. The Supreme Court shall, after providing reasonable public notice and a meaningful opportunity to respond, adopt uniform rules for the admission of evidence in Navajo Nation Courts. The Supreme Court shall specifically consult with the Attorney General of the Navajo Nation, the Chief Legislative Counsel, and the President of the Navajo Nation Bar Association prior to adopting any proposed uniform rules for the admission of evidence.

C. The Supreme Court may independently adopt standard forms for pleadings, motions and other papers filed in Navajo Nation Courts by litigants.

D. The Supreme Court may independently adopt standard forms for Navajo Nation District Court and Supreme Court judgments, writs, orders and opinions.

E. No rule adopted by the Supreme Court shall be effective unless adopted in strict compliance with the requirements of this Section.

History

CO-72-03, October 24, 2003.
CO-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Courts ☞78, 80.
Indians ☞32(7).
Westlaw Topic Nos. 106, 209.

C.J.S. Courts §§ 7, 124 to 128.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Annotations

1. Construction and application

“In a direct conflict between a statute passed by the Navajo Nation Council and a rule approved by this Court, the statute must prevail. This Court has already stated that the statute requires filing of the notice of appeal within five (5) days. *Benally*. Our rule purports to extend that period to thirty (30) days. This Court may set our own rules when specifically authorized in the Navajo Nation Code. See 7 N.N.C. § 601. However, the doctrine of separation of powers in our Navajo form of government pre-

vents this Court from setting rules that directly contradict a clear mandate of the Council.” *Fort Defiance Housing Corporation v. Allen*, No. SC-CV-01-03, slip op. at 4 (Nav. Sup. Ct. June 7, 2004).

“The Navajo Nation Supreme Court has the power to adopt rules of ‘pleading, practice, and procedure,’ with the approval of the Judiciary Committee of the Navajo Nation Council.’ *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

§ 602. Limitation of actions

A. There shall be commenced and prosecuted within two (2) years after the cause of action accrues, and not afterward, the following civil actions:

1. For personal injuries. When death ensues from such injuries, such action for wrongful death shall be considered as accruing at the death of the party injured except as otherwise provided for in section 602(A)(4) and (5).
2. For trespass or property damage, or for detaining and converting the personal property of another to one’s own use.

3. For malicious prosecution, or for false imprisonment, or for injuries done to the character or reputation of another for libel or slander.

4. No cause of action accrues for personal injury or wrongful death until the party having the right to sue has discovered the nature of the injury, the cause of the injury, and the identity of the party whose action or inaction caused the injury, or until, in the exercise of reasonable diligence, in light of available knowledge and resources, the party should have discovered these facts, whichever is earlier. This Subsection applies to and revives all injured parties' claims, regardless of whether the claim may have been barred in the absence of this Subsection.

5. Notwithstanding any provision of law to the contrary, an action to recover damages for property damage, personal injury or wrongful death caused by contact with, or exposure to, any substance causing injury resulting from the latent effects of exposure to any substance or combination of substances, in any form, upon or within the body or upon or within the property shall be commenced and prosecuted:

a. Within three (3) years of the date when the party having the right to sue has discovered the injury, the cause of the injury, and the identity of the person liable for the injury, or within three (3) years of the time when, in light of the knowledge and resources available and of reasonable diligence, the party should have discovered these facts, whichever is earlier.

b. This Subsection applies to and revives all injured parties' claims, regardless of whether the claims may have become barred in the absence of this Subsection, provided further, that no claim to recover such damages for injury prior to the date of this amendment will be barred on the basis of any law, until two (2) years after the date of this amendment.

B. There shall be commenced and prosecuted within three (3) years after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.

2. Upon stated or open accounts other than mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, but no item of a stated or open account shall be barred so long as any item thereof has been incurred within three (3) years immediately prior to the bringing of an action thereon.

3. For relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

C. There shall be commenced and prosecuted within four (4) years after the cause of action accrues, and not afterward, actions by one partner against a co-partner or co-partners for settlement of the partnership account, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents, and the cause of action shall be considered as having accrued upon a cessation of the dealings in which they were interested together.

D. There shall be commenced and prosecuted within five (5) years after the cause of action accrues, and not afterward, all probate actions.

E. Civil actions for which no limitation is otherwise prescribed shall be brought within five (5) years after the cause of action accrues, and not afterward.

F. If an action is not barred by existing law, the time fixed in an amendment of such law shall govern the limitation of the action. If an amendment to existing law would bar an action previously not barred by existing law, such action may be brought within one (1) year from the time the amendment takes effect, and not afterward.

G. If a person entitled to bring an action is at the time the cause of action accrues under disability of minority, mental incapacity or imprisonment, the period of disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the time after removal of the disability which is allowed to others. The period of limitation shall not, however, be extended by the tacking or connection of one disability with another already commenced, notwithstanding any supervening disability.

H. When a person dies in whose favor or against whom there is a cause of action, the limitation of the action ceases to run until twelve (12) months after the death, unless a personal representative of the deceased person's estate is sooner qualified, in which case the limitation shall cease to run only until such qualification.

I. When an action is barred by limitation, no acknowledgment of the justness of the claim or of liability therefor made subsequent to the time it becomes due shall be admitted in evidence to take the action out of the operation of the law, unless the acknowledgment is in writing and signed by the party to be charged hereby.

History

CO-72-03, October 24, 2003.
CAP-40-01, April 20, 2001.
CD-94-85, December 4, 1985.

CF-1-82, February 2, 1982.
CJ-51-56, July 19, 1956.

Library References

Indians ⇄27(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 17, 95.

Annotations

1. Construction and application

"... [W]e will read the statute of limitations in conjunction with the computation of time rule." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 3 (Nav. Sup. Ct. January 22, 2002).

"... [A]pplying Rule 6(A) principles to statutes of limitation." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 3 (Nav. Sup. Ct. January 22, 2002).

"Both the statute of limitations at 7 N.N.C. § 602(1)(1995) and Rule 6(A) of the Nav.

R.Civ.P. on the computation of time are derived from general American civil procedure. Therefore ... we ... apply them, if they are in accord with Navajo Nation statutory intent and Navajo commonlaw." *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 2 (Nav. Sup. Ct. January 22, 2002).

2. Exempt actions

"... [O]rders providing for child support payments, or for payment of arrearage resulting

from delinquent child support payments, cannot be barred by the statute of limitations, the doctrine of laches, or any reliance by the father on the mother's previous failure to act to enforce the father's obligation." *Notah v. Francis*, 5 Nav. R. 147, 149 (Nav. Sup. Ct. 1987).

§ 603. Action in name of Navajo Nation; authority to bring

A. All actions or the defense of all actions in the name of the Navajo Nation shall be brought by the Attorney General of the Navajo Nation or his or her designee.

B. The attorney for any party claiming to sue or defend in the name of the Navajo Nation or on behalf of the Navajo Nation shall be required to submit proof of his or her authority.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.

CF-19-80, February 13, 1980.
 CJ-51-56, July 19, 1956.

Cross References

Attorney General's authority, see 2 N.N.C. § 1964(F).

Library References

Indians ⇨27(1), 32(1, 7), 38.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 13 to 15, 19, 42, 49 to 51, 53, 55, 60 to 62, 68, 89, 91 to 92, 94 to 95, 97, 139 to 143, 152, 163.

§ 604. Notice and opportunity to appear

No judgment shall be given on any suit unless the defendant has been served notice in accordance with the applicable Court rules of such suit and given ample opportunity to appear in Court in his/her defense. Evidence of the provision and receipt of notice shall be kept as part of the record in the case.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJA-1-59, January 6, 1959.

Cross References

Navajo Nation Bill of Rights, see 1 N.N.C. § 3.

Library References

Indians ⇨6.4 to 6.10, 27(5), 32(7).
 Judgment ⇨17.
 Process ⇨3.
 Westlaw Topic Nos. 209, 228, 313.

C.J.S. Indians §§ 16, 18, 42 to 43, 60 to 62, 139 to 143, 146, 152.
 C.J.S. Judgments §§ 22, 27.
 C.J.S. Process § 3.

Annotations

1. Notice

Fact that natural mother received notice of pending adoption proceeding because she was told of it by a relative and acknowledged knowledge of it to relatives did not satisfy require-

ments of this section nor the requirements of due process because it was not reliable notice. *In the Matter of the Adoption of Four Children*, 4 Nav. R. 9 (Nav. Ct. App. 1983).

7 N.N.C. § 604

Note 1

There must be evidence in writing of proper notice to persons in a law suit. *In the Matter of the Adoption of Four Children*, 4 Nav. R. 9 (Nav. Ct. App. 1983).

2. Voidable actions

Where there was a lack of proof in the case file showing proper publication of notice in the

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termination of parental rights action, the subsequent adoption was voidable. *Navajo Nation, ex rel. Division of Social Welfare in the Interest of Two Minor Children*, 4 Nav. R. 57 (Nav. Ct. App. 1983).

§ 605. Witnesses

A. The Judges of the Courts of the Navajo Nation shall have the power to issue subpoenas for the attendance of witnesses either on their own motion or upon motion of any of the parties to the case, which subpoena shall bear the signature of the clerk of the Court issuing it. Failure to obey such subpoena shall be deemed to be a contempt and punishable according to applicable laws. Service of such subpoenas shall be by a regular commissioned Navajo Nation Police Officer or by a person appointed by the Court for that purpose.

B. Witnesses who testify voluntarily may be paid by the party calling them. If the Court so orders, their actual expenses incurred in the performance of their function shall be assessed as a cost awarded to the prevailing party.

C. Witnesses attending Court under subpoenas shall be entitled to the same fees as jurors.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Indians ⇄ 27(6, 8), 32(7), 38(5).
Westlaw Topic No. 209.

C.J.S. Indians §§ 13, 20, 60 to 62, 68, 89, 91
to 92, 95, 97, 139 to 143, 152, 165.

Research References

Uniform act to secure attendance of witnesses from without a state in criminal proceedings, 440 A.L.R.2d 732 (1955).
Generally, 81 Am. Jur. 2d Witnesses, § 34.

§ 606. Legal counsel; right of representation; unauthorized practice of law

A. Legal counsel shall be allowed to appear in any proceedings before the Courts of the Navajo Nation provided that the legal counsel is a member in active status and in good standing of the Navajo Nation Bar Association. Every defendant in a criminal case shall have the right to representation by legal counsel and in the event he has no such representation, he may proceed without legal counsel or a legal counsel may be appointed by the Judge.

B. Only persons who are members in good standing of the Navajo Nation Bar Association shall provide legal representation in the Courts of the Navajo Nation, quasi-judicial, legislative, and administrative law forums, and other legal services within the territorial jurisdiction of the Navajo Nation. Persons who are not members in active status and in good standing of the Navajo

Nation Bar Association and who provide legal representation or other legal services within the territorial jurisdiction of the Navajo Nation, and who are not duly associated with members in good standing of the Navajo Nation Bar Association, shall be deemed to be conducting the unauthorized practice of law, and shall be subject to civil and/or criminal sanctions under Navajo Nation law.

C. Persons conducting the unauthorized practice of law shall be subject to civil penalties, including triple the amount of all legal fees, costs, and other funds paid to them by persons to whom they have purported to provide legal representation or other legal services, a civil fine in the amount of five hundred dollars (\$500) per occurrence, and, if not a member of the Navajo Nation, will be subject to exclusion from the Navajo Nation.

D. Judges of the Navajo Nation Courts, administrative law judges, hearing officers, and the presiding officials of quasi-judicial or legislative bodies shall have the authority to determine, relative to matters heard before them, whether a person is a member in active status and in good standing of the Navajo Nation Bar Association, or duly associated with members in active status and in good standing of the Navajo Nation Bar Association, and the power to impose any of the civil sanctions set forth in Subsection (C) above.

E. Persons conducting the unauthorized practice of law shall be liable for both actual and consequential damages suffered by persons with whom they have contracted for the provision of legal representation or other legal services. Civil actions alleging the unauthorized practice of law shall be brought in the District Courts of the Navajo Nation.

History

CO-72-03, October 24, 2003.
CAP-38-00, April 20, 2000.

CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Cross References

Criminal Offense of "Unauthorized Practice of Law," see 17 N.N.C. § 377.

Library References

Attorney and Client ⇨4, 11, 31.
Indians ⇨6.4 to 6.10, 32(7), 38(1).
Westlaw Topic Nos. 45, 209.
C.J.S. Attorney and Client §§ 8 to 9, 13 to 16,
30.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
163.

Annotations

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

§ 607. Extradition

Any person lawfully arrested for violating Navajo Nation criminal law(s) or detained by Navajo Nation Court order shall not be released to any other jurisdiction, including the federal government, except pursuant to formal extradition procedures as set forth in 17 N.N.C. § 1951 *et seq.*

History

CO-72-03, October 24, 2003.

Note. Previous Section 607 was revised and relocated to Section 621.

Library References

Indians ↻32(13).

Westlaw Topic No. 209.

C.J.S. Indians § 157.

Subchapter 2. Statutory Causes of Action

Article 1. Repossession

§ 621. Repossession of consumer goods

A. The consumer goods (goods regularly used or bought for use for personal, family or household purposes, including vehicles and mobile homes) of individuals possessed under credit agreements shall not be taken by any person, or agent of any person, except in strict compliance with this Section. Self-help repossession is prohibited on the Navajo Nation. Unsuccessful attempts to repossess in violation of this Section shall also constitute a violation of this Section.

B. Any person desiring to repossess consumer goods pursuant to any credit agreement where the goods are security for a debt, or other arrangement involving credit, must first obtain the written and informed consent of the debtor at the time the repossession is sought. The written consent must be retained by the creditor or the creditor's agent and exhibited to any law enforcement or other Navajo Nation official upon demand. No written consent obtained by fraud shall be deemed valid, and no repossession obtained by the enticement of the debtor or individual in possession to a place where self-help repossession is permitted shall be valid. Only the debtor can give a valid consent to repossession.

C. Where a debtor under this Section fails or refuses to give informed and written consent to a repossession, repossession may be effected only by a judgment of a Navajo Nation District Court in an appropriate proceeding.

D. Transactions between merchants properly secured under the Navajo Uniform Commercial Code (5A N.N.C. § 9-101 *et seq.*) are not transactions for consumer goods. Transactions between merchants are exempt from the process set forth in Subsections (A), (B) and (C). Neither consent to repossession nor judicial process are required to repossess goods obtained in a transaction between merchants.

E. For purposes of this Section, the term "merchant" is defined in the Navajo Uniform Commercial Code, 5A N.N.C. § 2-104, as may be amended.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CF-26-68, February 7, 1968.

Note. This Section was previously located at Section 607.

Cross References

Navajo Uniform Commercial Code, see 5A N.N.C. § 9-503.

Library References

Indians ☞ 23, 24, 32(7, 8).
 Westlaw Topic No. 209.

C.J.S. Indians §§ 12, 29 to 31, 59 to 62, 139 to 143, 152, 157.

Research References

Applicability to territories and Indian nations, 16B Am. Jur. 2d Constitutional Law, § 977.

Annotations**1. Validity**

Navajo regulations governing self-help vehicle repossessions on the reservation and providing that written consent was required for repossession from either owner of vehicle or tribal court, that any party who willfully violated the written consent requirement could be excluded from the reservation, and that liquidated damages could be granted to an owner whose personalty was repossessed on reservation in violation of the written consent requirement, because the regulations were a necessary exercise of tribal self-government, they were designed to keep reservation peace and protect the health and safety of the tribal members, and regulating conduct of non-Indians repossessing automobiles on reservation land was a valid exercise of tribe's power to exclude nonmembers from the reservation. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, (9th Cir.(Ariz.) 1983).

2. In general

RE: Repossession statute. "In essence, the law permits the repossession of personal property only with the written consent of the purchaser at the time of repossession, or repossession pursuant to a court order." *Nelson v. Basin Motor Company*, 6 Nav. R. 399, 400 (Nav. Sup. Ct. 1991).

3. Applicability

Non-Indian, off-reservation automobile dealer could not avoid application of Indian tribe's civil laws regulating the conduct of non-Indians attempting to repossess vehicles on tribal land on ground that contracts for the sales of the vehicles were entered into off the reservation land or on the ground that the tribe's repossession laws were inapplicable because the sales contracts gave dealer the right to enter reservation land to conduct repossessions, because the mere existence of a lawful property right to be

on Indian land does not immunize non-Indians from tribe's power to place other conditions on non-Indian's conduct or continued presence on Indian land. *Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, (9th Cir.(Ariz.) 1983).

4. Jurisdiction

"Here, we hold that because Basin did not initiate the act of repossession and did not commit any wrongful act within the Navajo Nation, the district court properly found that the repossession took place outside our territorial jurisdiction. The Navajo Nation repossession law does not apply under the facts of this case." *Nelson v. Basin Motor Company*, 6 Nav. R. 399, 401 (Nav. Sup. Ct. 1991).

Navajo court has subject matter jurisdiction over a wrongful repossession action claiming noncompliance with this section, under code section giving court jurisdiction over certain actions and also over all other matters over which jurisdiction has vested or may vest in the future. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

The Navajo Nation has the power to grant its courts personal jurisdiction over foreign corporations as a consequence of such corporations' acts in Navajo territory, such as wrongful repossession alleged in the instant case, according to modern expansions of the "minimum contacts" due process standard. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

Court has jurisdiction over a non-Indian, non-resident business or individual which is alleged to have wrongfully repossessed personal property on Navajo land. *Thompson v. Wayne Lovelady's Frontier Ford*, 1 Nav. R. 282 (Nav. Ct. App. 1978).

5. Purpose

"The Navajo repossession laws are the result of a necessary exercise of tribal sovereign pow-

7 N.N.C. § 621

Note 5

ers and are designed to protect the health, safety, and welfare of Navajo Nation citizens.” *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup. Ct. 1988) citing *Babbit Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. 1983).

6. Waivers, generally

“A release of claims under the Navajo repossession laws made as part of a settlement agreement after an illegal repossession has occurred

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does not further infringe on the public interest, but any such waiver of claims under the Navajo repossession laws will be scrutinized closely by the Navajo courts to ensure that the agreements were made openly and fairly. Such close scrutiny is necessary in order to ensure the same protection of consumers which the Navajo repossession laws seek.” *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 33 (Nav. Sup. Ct. 1988).

§ 622. Violation—Penalty

A. Any nonmember of the Navajo Nation found to be in willful violation of 7 N.N.C. § 621 may be excluded from the territorial jurisdiction of the Navajo Nation in accordance with the procedure set forth in 17 N.N.C. §§ 1901–1906.

B. Any business whose employees are found to be in willful violation of 7 N.N.C. § 621 may be denied the privilege of doing business within the territorial jurisdiction of the Navajo Nation. Any business that uses agents or others to repossess property in willful violation of § 621 and avoids entering the Navajo Nation may be denied the privilege of advertising in Navajo Nation media, including newspapers, radio stations, and television channels, and no such business shall have the privilege of enforcing any contract within the Navajo Nation. No state judgment obtained by such a business may be enforced in the Navajo Nation. It shall be an affirmative defense to any action in debt or contract or to enforce a foreign judgment that the plaintiff was in willful violation of § 621 or has engaged in a pattern or practice of violations of that Section.

C. Any person who violates any provision of 7 N.N.C. § 621 shall be subject to a fine of not less than five thousand dollars (\$5,000). In addition, the person found in violation of this Subsection shall pay the fine set forth in 7 N.N.C. § 623, or a minimum of five thousand dollars (\$5,000) in liquidated damages as restitution to the debtor. The restitution shall be paid at the same time or before the fine.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CF-26-68, February 7, 1968.

Note. This Section was previously located at Section 608.

Library References

Indians ⇄32(7, 13).
Westlaw Topic No. 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152, 157.

Annotations

1. Construction and application

“The Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health, safe-

ty, and welfare of Navajo Nation citizens.” *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup. Ct. 1988) citing *Babbit Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. 1983).

§ 623. Civil liability

A. Any person who violates 7 N.N.C. § 621 and any business whose employee violates such section is deemed to have breached the peace of the Navajo Nation, and shall be civilly liable to the debtor for any loss caused by the failure to comply with 7 N.N.C. §§ 621–623.

B. The debtor has the right to recover an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the debt or the time price differential plus ten percent (10%) of the cash price.

C. Debtor means the person who owes payment or other performance of an obligation secured by consumer goods, whether or not the debtor owns or has rights in the consumer goods.

D. A Court may award punitive damages for any repossession that is willful, fraudulent, or unconscionable.

E. No foreign judgment may be enforced permitting a repossession or replevin in substantial violation of 7 N.N.C. § 621 or obtained to evade its provisions.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJN-53-69, June 4, 1969.

Note. This Section was previously located at Section 609.

Library References

Indians ⇄ 23 to 25, 32(7, 8).
Replevin ⇄ 111.
Westlaw Topic Nos. 209, 335.
C.J.S. Indians §§ 12, 29 to 32, 59 to 62, 139 to 143, 152, 157.

C.J.S. Replevin § 98.
C.J.S. United States §§ 181 to 183.

Annotations**1. Construction and application**

“The Navajo repossession laws are the result of a necessary exercise of tribal sovereign powers and are designed to protect the health, safe-

ty, and welfare of Navajo Nation citizens.” *Amigo Chevrolet v. Lee*, 6 Nav. R. 31, 32 (Nav. Sup. Ct. 1988) citing *Babbit Ford, Inc. v. The Navajo Indian Tribe*, 710 F.2d 587, 593 (9th Cir. 1983).

§ 624. Severability

If any provision or clause of 7 N.N.C. §§ 621, 622 or 623, or application thereof to any person or any business or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, and to this end, the provisions of the sections are declared to be severable.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJN-53-69, June 4, 1969.

Note. This Section was previously located at Section 610.

Library References

Statutes ⇨64(1).
 Westlaw Topic No. 361.
 C.J.S. Statutes §§ 83 to 85.

Article 2. Action against provider of an alcoholic beverage

§ 631. Action against provider of an alcoholic beverage

A. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child(ren) or parent(s) of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same; and
2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

B. For the purposes of this Section, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

C. If a person having rights or liabilities under this Section dies, the rights or liabilities provided by this Section survive to or against that person's estate.

D. An action based upon a cause of action under this Section shall be commenced within five (5) years after the date of injury or property damage.

E. Nothing in this Section precludes any cause of action or additional recovery against the person causing the injury.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJA-10-78, January 24, 1978.

Note. This Section was previously located at Section 207.

Cross References

Manufacture or Delivery of Liquor, see 17 N.N.C. § 411 (E) and (F).

Library References

Indians ⇨32(8), 34, 35.
 Intoxicating Liquors ⇨282 to 324.
 Westlaw Topic Nos. 209, 223.

C.J.S. Indians §§ 29, 59, 66, 157, 169.
 C.J.S. Intoxicating Liquors §§ 428 to 463.

Subchapter 3. Jury

§ 651. Right to jury trial

In any criminal or civil case, but not in any domestic relations, decedent's estate, equitable proceeding, or miscellaneous case, as set out in 7 N.N.C. § 253, any party shall, upon demand, be entitled to jury trial on any issue of fact.

History

CD-94-85, December 4, 1985.	Tribal Council Resolution 1921-1951, Res. p. 212, December 19, 1945.
CJA-5-59, January 9, 1959.	
CO-69-58, October 16, 1958.	

Library References

Indians ⇨6.4 to 6.10, 32(7), 38(1).	C.J.S. Juries §§ 6, 10 to 11, 15 to 17, 22 to 23,
Jury ⇨11 to 14.	26 to 36, 41 to 43, 46 to 51, 53 to 57, 59, 61
Westlaw Topic Nos. 209, 230.	to 73, 81, 96 to 97, 99, 103 to 105, 126 to
C.J.S. Indians §§ 60 to 62, 139 to 143, 152,	127.
163.	

§ 652. Lists of jurors; preparation

The Judicial Branch shall prepare lists of eligible jurors from time to time. Such lists shall constitute a fair cross-section of the Judicial District where jury trials will be held.

History

CO-72-03, October 24, 2003.	CJA-5-59, January 9, 1959.
CD-94-85, December 4, 1985.	CO-69-58, October 16, 1958.

Library References

Indians ⇨32(7), 38(1).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
Jury ⇨60.	163.
Westlaw Topic Nos. 209, 230.	C.J.S. Juries § 305.

§ 653. Number of jurors

In any case, a jury shall consist of six residents of the Judicial District in which the trial is held, selected from the list of eligible jurors.

History

CD-94-85, December 4, 1985.
 CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Indians ⇨32(7), 38(1).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
Jury ⇨4.	163.
Westlaw Topic Nos. 209, 230.	C.J.S. Juries §§ 264, 266.

§ 654. Eligibility of jurors

Any person residing within the territorial jurisdiction of the Navajo Nation over the age of eighteen (18) years, of at least ordinary intelligence, and not under judicial restraint, shall be eligible to be a juror.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ⇨32(7), 38(1).
Jury ⇨38, 41, 47.
Westlaw Topic Nos. 209, 230.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152, 163.

C.J.S. Juries §§ 269, 276, 283 to 284, 286 to 287, 294, 299 to 300, 302 to 303.

Annotations**1. Construction and application**

“ . . . 1) juries must be drawn from a source which is fairly representative of the community, but need not mirror it; 2) all defendants may assert the right, including people who are not members of an excluded group (i.e. Indians can

challenge the exclusion of non-Indians from juries); and 3) a defendant can prevail by showing a systematic exclusion of distinctive groups of people; but not an occasional mistaken exclusion.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 434 (Nav. Sup. Ct. 1991).

§ 655. Challenges to jury

Any party to the case may exercise no more than three peremptory challenges, and shall have an unlimited number of challenges for cause.

History

CD-94-85, December 4, 1985.
CJA-5-59, January 9, 1959.

CO-69-58, October 16, 1958.
Note. Slightly reworded.

Library References

Indians ⇨32(7), 38(1).
Jury ⇨125, 136.
Westlaw Topic Nos. 209, 230.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152, 163.
C.J.S. Juries §§ 367, 425.

Annotations**1. Challenges**

“ . . . Navajo trial judges may not require parties to exhaust their peremptory challenges

first, before permitting a challenge for cause.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 435 (Nav. Sup. Ct. 1991).

§ 656. Instructions to jury

The judge shall instruct the jury in the law governing the case. Jury instructions may be selected by the judge from instructions prepared and presented by the parties.

History

CD-94-85, December 4, 1985.
CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ☞32(7), 38(1).
 Trial ☞202, 228.
 Westlaw Topic Nos. 209, 388.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
 163.
 C.J.S. Trial §§ 547, 555, 593.

§ 657. Verdict of jury

The jury shall bring a verdict for the plaintiff or the defendant. In civil cases, a verdict may be rendered by a majority vote of the jury. In criminal cases, a verdict shall be by a unanimous vote of the jury.

History

CD-94-85, December 4, 1985.
 CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Criminal Law ☞872.5.
 Indians ☞32(7), 38(1).
 Trial ☞321.5.
 Westlaw Topic Nos. 110, 209, 388.

C.J.S. Criminal Law §§ 1396 to 1398, 1543.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
 163.
 C.J.S. Trial §§ 852 to 854.

§ 658. Jurors' fees

A. Every person who is required to attend Court for selection or service as a juror shall be entitled to a reasonable fee not to exceed actual expenses incurred for attendance and reasonable compensation for mileage to and from his home to Court not to exceed the rate established for Navajo Nation employees for each separate day he is required to be present in court provided funds therefore are appropriated by the Navajo Nation Council.

B. The party demanding a jury trial in a civil action may be required to prepay the mileage and compensation of jurors, and other costs of a jury trial. Prepayment of such costs shall not be required if the party is proceeding in forma pauperis or if prepayment would deny that person the right to a trial by jury.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
 CO-69-58, October 16, 1958.

Library References

Indians ☞32(7), 38(1).
 Jury ☞77.
 Westlaw Topic Nos. 209, 230.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
 163.
 C.J.S. Juries § 353.

Subchapter 5. Judgment and Execution**§ 701. Judgment—Form and contents**

A. The judgment in all civil cases shall be an order of the Court awarding money damages to the injured party, directing the surrender of certain property

to the injured party, directing the performance of an act for the benefit of the injured party, directing that a party refrain from taking action with regard to the injured party, or a declaration of rights of the parties.

B. Where the injury was inflicted as the result of negligence, the judgment shall fairly compensate the injured party for his or her injuries or loss . The Court shall consider the comparative fault of the parties in making an award of damages.

C. Where the injury was inflicted deliberately, intentionally, willfully, wantonly, recklessly, unconscionably, or as the result of gross negligence, the judgment may impose additional penalties in the form of punitive damages in favor of the injured party . Where punitive damages are awarded, there may be additional award of damages to the Navajo Nation for patterns and practices of conduct in violation of public policy or egregious conduct contrary to clear public policy.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Indians ⇨27(7), 32(7).
Judgment ⇨24, 218 to 225.
Westlaw Topic Nos. 209, 228.

C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
152 to 153.
C.J.S. Judgments §§ 73, 75, 81, 86 to 89.

Annotations

1. Compulsory award of damages

Under subsection (D) of this section, even though it may be said that the injury is the result of an “accident”, the court need not award a reasonable part of the loss suffered, where there is no just or equitable consideration to cause it to do so. *Mann v. Navajo Tribe*, 4 Nav. R. 83 (Nav. Ct. App. 1983).

2. Garnishment

Under the powers outlined in 7 N.N.C. §§ 255, 701(a) and 706, the Navajo Courts have the statutory authority to utilize garnishment procedures. *Navajo Tribal Utility Authority v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

3. Definitions

“ . . . [O]ur judgment statute . . . requires the court to determine whether an injury was the result of carelessness, deliberate infliction, or accident, with varying degrees of damages, depending upon the nature of the injury.” *Jensen v. Giant Industries, Arizona, Inc.*, No. SC-CV-51-99, slip op. at 5 (Nav. Sup. Ct. January 22, 2002).

“ . . . [F]ailure to exercise ordinary care in avoiding foreseeable harm to others constitutes negligence. [] Thus, the duty of care owed by an individual is closely related to the foreseeability

that another individual will be harmed. [] The extent of the duty depends on the circumstances. [] Where the danger of injury to others is greater, so is the duty to exercise care.” *Wilson v. Begay*, 6 Nav. R. 1, 4 (Nav. Sup. Ct. 1988).

“In determining whether a party was negligent, a court must determine whether that party owed a duty of care to the individual who was injured.” *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988), citing *Mann v. Navajo Tribe*, 4 Nav. R. 83, 85 (1983).

“This Court has held that, “[c]arelessness’ is actually the same legal standard as ‘negligence’ ”” *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988), citing *Mann v. Navajo Tribe*, 4 Nav. R. 83, 85 (1983).

4. Damage awards

“Courts must carefully scrutinize claims for damages even after the defendant’s liability has been proven, and the record must contain a reasonable justification for the amount of damages awarded.” *Wilson v. Begay*, 6 Nav. R. 1, 7 (Nav. Sup. Ct. 1988).

“The plaintiff has the burden of proving damages. The plaintiff must first establish with reasonable certainty that the defendant’s con-

duct caused the plaintiff damages. The plaintiff must then establish the amount of his damages with reasonable certainty. The rule within the Navajo Nation is that an award of damages must be based upon proof and not speculation.” *Wilson v. Begay*, 6 Nav. R. 1, 5 (Nav. Sup. Ct. 1988), citing *Hall v. Arthur*, 3 Nav. R. 35, 40 (1980).

“The legal basis for awarding compensatory damages in Navajo law is 7 N.T.C. § 701” *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988).

5. Compensation

“To clarify these questions, we hold that 7 N.N.C. § 701 (1995), which addresses judgments, permits all causes of action generally recognized by law to compensate an ‘injured party,’ including survival and wrongful death actions. Our holding is reinforced by the provisions of 7 N.N.C. § 255 (1995), which provides that ‘[t]he district courts shall have the power to issue any writs or orders necessary and proper to the complete exercise of their jurisdiction.’” *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 5 (Nav. Sup. Ct. January 31, 2001).

6. Jurisdiction

“The drafters of our judicial code had the foresight to provide that all actions involving an ‘injured party’ require the compensation outlined in 7 N.N.C. § 701 and to provide that once a Navajo Nation court has jurisdiction over the person, there is general subject matter jurisdiction to provide relief based upon any generally-recognized legal theory. As we have said before, the Navajo Nation courts are courts of general jurisdiction, and all actions which are generally recognized in the United States are available in the Navajo Nation.” *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 5 (Nav. Sup. Ct. January 31, 2001).

7. Interest

“ . . . [W]hen a plaintiff claiming prejudgment interest proposes an interest rate, it is up to the defendant to show that it is unreasonable.” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 9 (Nav. Sup. Ct. July 16, 2001).

“An award of prejudgment interest as compensatory damages should be computed by establishing the past loss or economic damage, the period of time between the events recited above and the date of judgment in terms of years or months, and the appropriate interest rate.” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 9 (Nav. Sup. Ct. July 16, 2001).

“There should be an offer made to the person who committed the injury . . . with a discussion of the facts of liability, proof of the loss and

a showing of the injury actually suffered. If that offer is rejected in objective bad faith, or a counter-offer which is unreasonable is made, then that is the point when prejudgment interest should begin accruing. Otherwise, prejudgment interest will begin accruing from the date the complaint is filed. Prejudgment interest must be claimed in a prayer for relief, although the plaintiff need not plead the circumstances which justify the award.” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 7 (Nav. Sup. Ct. July 16, 2001).

“The purpose of prejudgment interest is to place the injured person in as good a position as he otherwise would have been, because damages also include ‘the foregone use of the money.’ *General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655-656 (1983). . . . ‘Prejudgment interest is an element of complete compensation.’ *West Virginia v. United States*, 479 U.S. 305, 310 (1987). . . . Another way of putting it is, prejudgment interest is designed to ‘make whole’ an injured person.” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 6 (Nav. Sup. Ct. July 16, 2001).

8. Discretion

“The trial court’s discretion is limited by ‘custom.’ *Little v. Begay*, 7 Nav. R. at 354 We have said that *nalyeeh* is based upon the effects of the injury, and it should be enough so that there are no hard feelings.” *Benally v. First Nat’l Ins. Co. of America*, 7 Nav. R. 329, 338 (1998).

9. Insurance

“We compared insurance to a bag with monies available to see to the plaintiff’s needs. . . . There are procedures for arriving at *nalyeeh* that involve the respectful talking out of a dispute. The person requesting *nalyeeh* should be willing to lay out all the facts of the problem and the injury, and the listener should acknowledge the request to talk out the problem and then participate in good faith.” *Singer v. Nez*, No. SC-CV-04-99, slip op. at 8 (Nav. Sup. Ct. July 16, 2001).

10. Comparative negligence

“This Court therefore holds that the Navajo Nation is a pure comparative negligence jurisdiction, and any award to Benally, if Mobil is found liable, should be reduced to reflect only Mobil’s portion of responsibility for the injury. The doctrine of *t’aash shi akwiisdzaa* is consistent with comparative negligence, as reduction of the award makes certain Benally takes responsibility for his own actions, but still compensates him for that part of injury caused by Mobil.” *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01 slip op. at 8 (Nav. Sup. Ct. November 24, 2003).

§ 702. Rendition

The judge shall render judgment in accordance with the verdict of the jury and existing law.

History

CD-94-85, December 4, 1985.
CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ☞27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Judgment ☞215.	152 to 153.
Westlaw Topic Nos. 209, 228.	C.J.S. Judgments §§ 108 to 109.

§ 703. Lawful debt in proceedings to distribute decedents' estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of the Navajo Nation to distribute decedents' estates.

History

CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Indians ☞18, 23, 32(7).	C.J.S. Indians §§ 30, 60 to 62, 114, 116, 118
Westlaw Topic No. 209.	to 121, 139 to 143, 152.

§ 704. Reserved**§ 705. Writs of execution—Generally**

The party in whose favor a money judgment is given by the Courts of the Navajo Nation may at any time within five (5) years after entry thereof have a writ of execution issued for its enforcement. Provided, however, there shall be no limitation to the issuance of writs of execution for judgments for the payment of child support. No execution, however, shall issue after the death of the judgment debtor, with the exception that judgments for the payment of child support shall survive against the estate of the judgment debtor. A judgment creditor may have as many writs of execution as are necessary to effect collection of the entire amount of the judgment.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJ-51-56, July 19, 1956.

Library References

Execution ☞5 to 9.	C.J.S. Executions §§ 6 to 13.
Indians ☞6.9, 27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Westlaw Topic Nos. 161, 209.	152 to 153.

Annotations

1. Purpose

The obvious purpose of this section is to prevent stale judgments and to require judgment creditors to be diligent in seeking to collect on their judgments. *Becenti v. Laughlin*, 4 Nav. R. 147 (Nav. Ct. App. 1983).

2. Limitations period

“... [T]he statute of limitations at 7 N.T.C. § 705, is tolled during the periods that a stay of execution is in effect.” *The Navajo Housing Authority v. Dana and Associates*, 5 Nav. R. 157, 159 (Nav. Sup. Ct. 1987).

Partial satisfaction of the judgment and legitimate attempts to collect by execution or otherwise toll the five-year limitation on executions under this section. *Becenti v. Laughlin*, 4 Nav. R. 147 (Nav. Ct. App. 1983).

3. Garnishment

Pursuant to this section and 7 N.N.C. § 255 coupled with Rule 23, Rules of Navajo Civil

Procedure, garnishment is permitted. *Tracey v. Heredia*, 4 Nav. R. 149 (Nav. Ct. App. 1983).

4. Scope of court's power

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

5. Construction with other laws

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

§ 706. Issuance; contents

A writ of execution shall be issued by the Clerk of Court and addressed to any regular commissioned Navajo Nation Police Officer and shall direct him to seize and deliver to the Clerk of Court sufficient unrestricted and nonexempt personal property of the debtor to pay the judgment and costs of sale. The writ shall specify the particular unrestricted and nonexempt property to be seized.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJ-51-56, July 19, 1956.

Library References

Execution ⇨60, 77 to 89.
Indians ⇨27(7), 32(7).
Westlaw Topic Nos. 161, 209.
C.J.S. Executions §§ 57 to 58, 76 to 77, 80 to 88.
C.J.S. Indians §§ 20, 60 to 62, 139 to 143, 152 to 153.

Annotations

1. Garnishment

Under the powers outlined in 7 N.N.C. §§ 255, 701(A) and this section, the Navajo Courts have the statutory authority to utilize garnishment procedures. *Navajo Tribal Utility Authority v. Foster*, 4 Nav. R. 86 (Nav. Ct. App. 1983).

2. Property subject to garnishment

“We coalesce Navajo concepts of property (Navajo common law) and English common law, and apply it to modern situations, to hold

that bank accounts in the name of a judgment debtor are personal property subject to execution under sections 706 and 711.” *Billie v. Nez*, 7 Nav. R. 253, 255 (Nav. Sup. Ct. 1996).

3. Notice

“We hold that the statutory execution provisions and the existence of a final judgment in the court record are sufficient notice to a judgment debtor that a court clerk may issue a writ of execution.” *Billie v. Nez*, 7 Nav. R. 253, 256 (Nav. Sup. Ct. 1996).

§ 707. Return

Within ninety (90) days of his receipt of the writ of execution, the police officer shall return it to the Clerk of Court with the property seized, or with a written explanation of why the property cannot be delivered.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJ-51-56, July 19, 1956.

Library References

Execution ☞333.	C.J.S. Executions § 323.
Indians ☞27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Westlaw Topic Nos. 161, 209.	152 to 153.

§ 708. Appraisal of property seized

Immediately upon receipt of the property seized under a writ of execution, the Clerk of Court shall cause it to be appraised item by item by an appraiser selected by the plaintiff and defendant to make an impartial appraisal. If the plaintiff and defendant fail to agree on an appraiser, the Clerk shall make the selection. The appraiser shall submit the appraisal to the Clerk of Court and send copies of the same to the plaintiff and defendant.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJ-51-56, July 19, 1956.

Library References

Indians ☞27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Westlaw Topic No. 209.	152 to 153.

§ 709. Notice and public sale of property seized; proceeds; bill of sale

A. Within seven (7) days of appraisal of property seized under a writ of execution, the Clerk of Court shall post in public places at least two notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale. The clerk shall also notify the judgment debtor of the time and place of sale, by means of first class mail if the judgment debtor's address is known, or by means of publication if such address is not known.

B. The sale shall be held within a reasonable time after posting, in the same Judicial District in which the Court rendering the judgment of foreclosure is located.

C. The Clerk shall sell the property publicly, to the highest bidder for cash, but for not less than the appraised price. The clerk may sell the property by item or in bulk, at his or her discretion.

D. The Clerk shall pay into court the expenses of sale and any unpaid court costs of either party from the proceeds of sale, and shall pay the balance up to

the full amount of the judgment (less unpaid court costs of plaintiff) to the plaintiff. Any excess shall be paid to the defendant.

E. The Clerk shall deliver a bill of sale to the buyer upon request.

F. Procedures for execution, storage and sale shall be in accordance with Court rules.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJ-51-56, July 19, 1956.

Library References

Execution ⇨219 to 228.	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Indians ⇨27(7), 32(7).	152 to 153.
Westlaw Topic Nos. 161, 209.	
C.J.S. Executions §§ 212, 215 to 222, 225 to 229, 233.	

§ 710. Private sale of property seized; delivery of unsold property to plaintiff or return to defendant

A. If the Clerk is unable to sell the property seized under a writ of execution for its appraised value, he or she may hold it for fourteen (14) days after the date of the attempted sale, during which time he or she shall sell it to the first person offering the appraised value in cash.

B. The Clerk may at any time, however, after an unsuccessful attempted public sale and before an actual sale, upon request of the plaintiff and payment of all costs, deliver the property to the plaintiff and credit the appraised value thereof against the judgment debt. If the appraised value is greater than the debt the Clerk shall not deliver the property to the plaintiff until the plaintiff pays the defendant in cash for such excess value.

C. At the end of fourteen (14) days if the property remains unsold and unclaimed by the plaintiff the Clerk shall return it to the defendant.

History

CO-72-03, October 24, 2003.
 CD-94-85, December 4, 1985.
 CJ-51-56, July 19, 1956.

Library References

Indians ⇨27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Westlaw Topic No. 209.	152 to 153.

§ 711. Property subject to execution and property exempt from execution

A. The following property shall be exempt from execution:

1. One motor vehicle;
2. Personal effects and clothing of a reasonable value as determined by the Court;

3. Tools or equipment for a trade or profession of a reasonable value as determined by the Court;

4. Health or medical equipment required by the judgment debtor to maintain health;

5. An interest in a home where the judgment debtor resides of a reasonable value as determined by the Court;

6. A reasonable subsistence amount of livestock as determined by the Court;

7. Bona fide religious, ceremonial or sacred items and paraphernalia, and family heirlooms, as agreed to by the parties or determined by the Court.

B. All other property shall be subject to execution and sale.

C. A court may issue writs of garnishment upon the wages or monies of a judgment debtor held by third parties, subject to adoption of a Navajo Nation garnishment statute and associated rules, and further subject to limitations upon wage executions in federal law.

D. A judgment debtor may challenge the seizure of property for sale as being exempt under Subsections (A)(2), (3), (4), (5), (6) or (7) in objections filed with the Court following the seizure of that property under § 706.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJ-51-56, July 19, 1956.

Library References

Exemptions ☞ 31 to 61.
Indians ☞ 23, 27(7), 32(7).
Westlaw Topic Nos. 163, 209.

C.J.S. Indians §§ 20, 30, 60 to 62, 139 to 143,
152 to 153.

Annotations

1. Exemption

Land interests within the Navajo Nation are exempt from execution under this section. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

Even though outrageous inflation rates have existed since this statute was passed, the Appeals Court had no jurisdiction to enlarge the provisions of this section; it is up to the Navajo Tribal Council to make more liberal exemption

provisions if it so chooses. *Johnson v. Dixon*, 4 Nav. R. 108 (Nav. Ct. App. 1983).

2. Bank accounts

"We coalesce Navajo concepts of property (Navajo common law) and English common law, and apply it to modern situations, to hold that bank accounts in the name of a judgment debtor are personal property subject to execution under sections 706 and 711." *Billie v. Nez*, 7 Nav. R. 253, 255 (Nav. Sup. Ct. 1996).

§ 712. Execution prior to judgment

A. Prejudgment attachments are prohibited.

B. Despite the prohibition in § 712(A), a Court may, upon notice and an opportunity to be heard by the person who possesses the property, enter appropriate orders to prevent the destruction, removal, transfer, or disposition of the property which is the subject of the suit or the property which may be subject to a writ of execution.

C. Where the action involves the ongoing payment of monies to the plaintiff or defendant making a cross or counterclaim, the court may require the payment of such monies to the Court pending the outcome of the action.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJ-51-56, July 19, 1956.

Library References

Execution ☞158 to 177.	C.J.S. Executions §§ 152 to 193.
Indians ☞27(7), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
Westlaw Topic Nos. 161, 209.	152 to 153.

Subchapter 7. Costs, Fees and Fines

§ 751. Security for costs

In all civil suits a party may be required to deposit with the Clerk of the Court a fee or other security in a reasonable amount to cover costs and other disbursements in the case, such amount to be determined by Court rules.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Costs ☞105 to 145.	C.J.S. Costs §§ 59 to 93.
Indians ☞27(8), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 68, 89, 91 to
Westlaw Topic Nos. 102, 209.	92, 97, 139 to 143, 152.

§ 752. Assessment of costs

The court may assess the costs of the case against the party or parties against whom judgment is given. Such costs may consist of the expenses of voluntary witnesses and witnesses attending court under subpoenas, fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the proceeding as the court may order.

History

CD-94-85, December 4, 1985.
CJA-1-59, January 6, 1959.

Library References

Costs ☞92, 146, 175, 183.	C.J.S. Costs §§ 51, 94, 107, 119.
Indians ☞27(8), 32(7).	C.J.S. Indians §§ 20, 60 to 62, 68, 89, 91 to
Westlaw Topic Nos. 102, 209.	92, 97, 139 to 143, 152.

Annotations**1. Discretion of court**

“This Court holds that actions for dissolution of marriage are special circumstances in which the judge may order one party to pay a reasonable amount toward the attorney fees of the

other party. It is within the discretion of the judge to determine what is a reasonable amount.” *Morgan v. Morgan*, 5 Nav. R. 64, 65 (Nav. Sup. Ct. 1985).

§ 753. Fees and fines; collection and disposition

A. Fees, fines, and assessments (as permitted by law) shall be collected by the Courts of the Navajo Nation, in amounts set by Court rules.

B. Fees, fines, and assessments (as permitted by law) shall be regularly deposited into the the Unreserved, Undesignated Fund Balance of the Navajo Nation.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

CJA-5-59, January 9, 1959.
CO-69-58, October 16, 1958.

Library References

Indians ☞32(7), 37, 38(1).
Westlaw Topic No. 209.

C.J.S. Indians §§ 22, 60 to 62, 139 to 143, 152, 163.

Subchapter 9. Appeals**§ 801. Appeal from final judgment or order**

Every person aggrieved by a final judgment or order of a District Court, or the order of an administrative agency where the law provides for an appeal to the Supreme Court, shall file a notice of appeal in accordance with the applicable rules of appellate procedure within thirty (30) days from the date of the judgment or order, or as otherwise provided by law.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.
CJA-5-59, January 9, 1959.

Library References

Administrative Law and Procedure ☞724.
Appeal and Error ☞428(2).
Indians ☞27(7), 32(7), 38(6).
Westlaw Topic Nos. 15A, 30, 209.
C.J.S. Appeal and Error §§ 270, 274 to 282, 290, 295 to 297, 314, 384, 386 to 387.

C.J.S. Indians §§ 20, 60 to 62, 139 to 143, 152 to 153, 163.
C.J.S. Public Administrative Law And Procedure § 211.

Annotations**1. In general**

“No sanctions were imposed, and the attorney did not take an appeal. The finding of contempt was personal to the attorney, collateral to the action, and neither party has any rights

as a result of the contempt finding which are part of this appeal.” *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 9 (Nav. Sup. Ct. July 25, 2001).

"7 N.T.C. § 801(a) is not the Supreme Court's jurisdictional statute. 7 N.T.C. § 801(a) establishes the time limits and the requirements for filing a notice of appeal. Instead, the basis of the Supreme Court's appellate jurisdiction is located at 7 N.T.C. § 302." *Navajo Nation Division of Resources v. Spencer*, 5 Nav. R. 109, 110 (Nav. Sup. Ct. 1986).

2. Prosecution

"There is no express statutory right for the prosecution to take an appeal in the Navajo Nation." *Navajo Nation v. Yellow*, ACR-03-93, slip op. at 5 (Nav. S. Ct. January 18, 1994).

3. Time to file

"The right to file an appeal is granted and fixed by 7 N.T.C. § 801(a). [. . .] A party may appeal only a final judgment or order, and interlocutory appeals are not allowed." *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 206, 207 (Nav. Sup. Ct. 1990).

" . . . Appellant assumed the risk of delay when he decided to file his appeal by mail. The time limits set forth in 7 N.T.C. § 801(a) will not be enlarged for mail filings." *Riverview Service Station v. Eddie*, 5 Nav. R. 135, 136 (Nav. Sup. Ct. 1987).

"7 N.T.C. § 801(a) is a jurisdictional statute, [. . .] We will always dismiss an appeal which has not been filed within thirty (30) days of entry of the final judgment by the district court.

Entry of final judgment means the day the judgment is signed by the district judge. The thirty (30) days appeal period begins to run the day after the judgment is signed by the district judge." *The Navajo Tribe of Indians v. Yellowhorse, Inc.*, 5 Nav. R. 133, 134 (Nav. Sup. Ct. 1987).

4. Final orders

"In the case of *Chuska Energy Co. v. Navajo Tax Comm'n*, we construed the word 'final' in our appellate jurisdiction statute . . . to mean the procedural stage where 'all the substantial rights of the parties have been determined in the lower tribunal.' 5 Nav. R. 98, 102 (1986)." *Ramah Navajo Community School v. Navajo Nation*, No. SC-CV-17-99, slip op. at 3 (Nav. Sup. Ct. July 25, 2001).

"Thus, a final order will generally show on its face that the case has been decided on the merits, the substantial rights of the parties have been determined, and there are no further proceedings remaining in the lower court on the merits of the case." *Tsosie v. Charlee*, 6 Nav. R. 280, 282 (Nav. Sup. Ct. 1990).

5. Sufficiency of notice

"Deposit in the mail is not the equivalent of filing a notice of appeal for purposes of the rule governing time within which a notice of appeal must be filed." *Pioche, Sr. v. Begay*, 6 Nav. R. 403, 404 (Nav. Sup. Ct. 1991).

§ 802. Reserved

§ 803. Scope of the appeal

Appeals shall be limited to the issues of law raised in the record on appeal.

History

CD-94-85, December 4, 1985.

Library References

Appeal and Error ⇨671(1).
Indians ⇨27(7), 32(7), 38(6).
Westlaw Topic Nos. 30, 209.

C.J.S. Indians §§ 20, 60 to 62, 139 to 143,
152 to 153, 163.

Annotations

1. Construction and application

"This Court's review on appeal is limited to questions of law. [] Thus, this Court may set aside a finding of fact only if evidence in the record is insufficient, as a matter of law, to support the finding. This Court must uphold the district court's finding of negligence if the evidence most favorable to that finding is sufficient to establish the defendant's negligence." *Wilson v. Begay*, 6 Nav. R. 1, 3 (Nav. Sup. Ct. 1988).

2. Standard of review

"The parameters of discretion are whether the district court acted within the rules, principles and customs applicable to the facts of the case. We will not overturn a discretionary decision unless the record shows that there was an actual abuse of discretion. *Little v. Begay*, 7 Nav. R. 353, 354 (1998)." *Singer v. Nez*, No. SC-CV-04-99, slip op. at 4 (Nav. Sup. Ct. July 16, 2001).

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Note 2

“As a general principle, we will give considerable deference to a district court’s exercise of discretion.” *Higdon v. Nelson*, 7 Nav.R. 158, 159 (1995).

“This Court will review evidentiary rulings of the district court under the abuse of discretion standard. If this Court holds an evidentiary ruling incorrect, we must still accept the factual finding it supports, unless the incorrect evidentiary ruling affects the substantial rights of the

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parties.” *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 317 (Nav. Sup. Ct. 1998).

“Generally, this Court reviews questions of law decided by the district courts *de novo*. [. . .] We give no deference to the district court’s determination on questions of law.” *Rough Rock Community School v. Navajo Nation*, 7 Nav. R. 313, 316 (Nav. Sup. Ct. 1998).

§ 804. Proceedings on appeal

A. The Chief Justice of the Supreme Court shall preside at all proceedings before the Supreme Court. If the Chief Justice is unable to preside for whatever reason, he or she shall designate in writing a presiding Justice from the Associate Justices.

B. The Chief Justice of the Supreme Court may designate in writing any District Court Judge of the Courts of the Navajo Nation to sit on an appeal panel if the Chief Justice or an Associate Justice is unable to serve for whatever reason.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

Library References

Courts ⇨70.
Indians ⇨32(7).
Westlaw Topic Nos. 106, 209.

C.J.S. Courts § 123.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Subchapter 11. Rules of General Construction

§ 851. Construction

This Title shall be so construed as to effectuate its general purposes and in such a manner as to assure judicial independence, the right of access to fair and independent remedies, the observance of Diné bi beenahaz’áanii, and the protection of the rights guaranteed by the Navajo Nation Bill of Rights.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 852. Amendment

This Title may be amended by two-thirds (2/3) vote of the full membership of the Navajo Nation Council at a regular session of the Navajo Nation Council,

upon favorable recommendation by the Judiciary Committee of the Navajo Nation Council.

History

CO-72-03, October 24, 2003.
CD-94-85, December 4, 1985.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 853. Severability

If any provision of this title or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application and to this end, the provisions of this title are severable.

History

CD-94-85, December 4, 1985.

Library References

Indians ☞32(4.1).
Statutes ☞64(1).
Westlaw Topic Nos. 209, 361.
C.J.S. Statutes §§ 83 to 85.

Chapter 7. Navajo Nation Arbitration Act

Section

- 1101. Short title
- 1102. Jurisdiction
- 1103. Written agreement to submit controversy to arbitration is valid
- 1104. Duty of court on application of party to arbitrate
- 1105. When court may appoint arbitrators
- 1106. Qualification of Arbitrators
- 1107. Powers of arbitrators
- 1108. Notice and hearing
- 1109. Right to be represented by attorney or Navajo tribal courtadvocate; effect of waiver
- 1110. Authority of arbitrators to issue subpoenas and administer oaths; service of subpoenas; depositions; compelling person to testify
- 1111. Award of arbitrators
- 1112. Modification of award
- 1113. Expenses and fees for arbitrators
- 1114. Confirmation of an arbitration award by court
- 1115. When court may vacate award
- 1116. When court may modify or correct award
- 1117. Judgment upon granting order confirming, modifying or correctingaward; costs and disbursements
- 1118. Application to court to be by motion; notice and hearing to be in manner provided by law
- 1119. Appeals

§ 1101. Short title

This Act may be cited as the Navajo Nation Arbitration Act.

History

CJY-26-04, July 20, 2004.

§ 1102. Jurisdiction

An agreement providing for arbitration in the Navajo Nation may be enforced by the Navajo Nation district court in the judicial district where the parties to the controversy reside or may be personally served.

History

CJY-26-04, July 20, 2004.

§ 1103. Written agreement to submit controversy to arbitration is valid

A written agreement to submit any existing or future controversy to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of the contract.

History

CJY-26-04, July 20, 2004.

§ 1104. Duty of court on application of party to arbitrate

A. On application of a party showing an arbitration agreement and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to determine the issue raised and shall order or deny arbitration accordingly.

B. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications to compel arbitration, the application shall be made therein. Otherwise, the application shall be made in the court of proper venue.

C. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

D. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated has not been shown.

History

CJY-26-04, July 20, 2004.

§ 1105. When court may appoint arbitrators

If the arbitration agreement provides a method of appointment of arbitrators this method shall be followed. In the absence thereof, or if the agreed method fails or cannot be followed, or when an arbitrator fails or is unable to act and his successor has not been appointed, the court on application of a party shall appoint one (1) or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

History

CJY-26-04, July 20, 2004.

§ 1106. Qualification of Arbitrators

The qualifications of a person allowed to serve as an arbitrator, under this Act shall be set by the Navajo Nation Judicial Branch.

History

CJY-26-04, July 20, 2004.

§ 1107. Powers of arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by law.

History

CJY-26-04, July 20, 2004.

§ 1108. Notice and hearing

A. The arbitrators shall appoint a time and place for the hearing and serve the parties with notice either personally or by registered mail not less than ten (10) days before the hearing. Appearance at the hearing waives the notice. The arbitrators may adjourn the hearing from time to time as necessary, and on request of a party or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

B. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

C. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If during the course of the hearing an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy.

History

CJY-26-04, July 20, 2004.

§ 1109. Right to be represented by attorney or Navajo tribal court advocate; effect of waiver

A party may be represented by a member in good standing of the Navajo Nation Bar Association at any arbitration proceeding or hearing. A waiver of representation at an arbitration proceeding made prior to the proceeding is ineffective.

History

CJY-26-04, July 20, 2004.

§ 1110. Authority of arbitrators to issue subpoenas and administer oaths; service of subpoenas; depositions; compelling person to testify

A. The arbitrators may issue subpoenas for the attendance of witnesses, for the production of books, records, documents and other evidence and may administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

B. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner designated by the arbitrators.

C. All provisions of law compelling a person under subpoena to testify are applicable.

History

CJY-26-04, July 20, 2004.

§ 1111. Award of arbitrators

A. The award shall be in writing and signed by the arbitrators joining in the decision. A copy shall be delivered to each party personally, or by registered mail or as provided in the agreement.

B. An award shall be made within the time fixed by the agreement, or if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

C. An award against the Navajo Nation shall be limited to the amount of the underlying contract.

History

CJY-26-04, July 20, 2004.

§ 1112. Modification of award

A. On application of a party or an order of the court, the arbitrators may modify the award:

1. When there was an evident miscalculation of figures or description of a person or property referred to in the award;
2. When the award is imperfect as to form not affecting the merits of the controversy; or
3. For the purpose of clarifying the award.

B. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice shall be given promptly to the opposing party, stating he must serve his objections within ten (10) days from receipt of the notice.

History

CJY-26-04, July 20, 2004.

§ 1113. Expenses and fees for arbitrators

A. The arbitrators' fees shall be set by regulation adopted by the Navajo Nation Supreme Court in accord with 7 N.N.C. § 601.

B. The arbitrators' expenses, fees and other costs, not including counsel fees, incurred in the arbitration shall be paid as provided in the award, unless otherwise provided in the arbitration agreement.

History

CJY-26-04, July 20, 2004.

§ 1114. Confirmation of an arbitration award by court

Upon application of a party the court shall confirm the award unless within the time limits allowed grounds are urged for vacating or modifying the award.

History

CJY-26-04, July 20, 2004.

§ 1115. When court may vacate award

A. Upon application of a party the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;
2. There was evident partiality by an arbitrator appointed as a neutral, or corruption of any of the arbitrators or misconduct prejudicing the rights of any party;
3. The arbitrators exceeded their powers;
4. The arbitrators refused to postpone the hearing upon sufficient cause being shown, or refused to hear evidence material to the controversy or otherwise conducted the hearing as to substantially prejudice the rights of a party; or

5. There was no arbitration agreement, the issue was not adversely determined by a court as provided by law and the applicant did not participate in the arbitration hearing without raising the objection. The fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.

B. An application for vacating an award shall be made within ninety (90) days after delivery of a copy of the award to the applicant, or if predicated upon corruption, fraud or other undue means it shall be made within ninety (90) days after the grounds are known or should have been known.

C. In vacating the award on grounds other than stated in subsection (A)(5) the court may order a rehearing before new arbitrators chosen as provided in the agreement or by the court. If the award is vacated on grounds set forth in paragraph (A)(3) or (4) of this section the court may order a rehearing before the arbitrators who made the award or their successors appointed. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

D. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

History

CJY-26-04, July 20, 2004.

§ 1116. When court may modify or correct award

A. Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person or property referred to in the award;
2. The arbitrators awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

B. If the application is granted, the court shall modify and correct the award as to intent and shall confirm the award as so modified and corrected. Otherwise the court shall confirm the award as made.

C. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History

CJY-26-04, July 20, 2004.

§ 1117. Judgment upon granting order confirming, modifying or correcting award; costs and disbursements

Upon the granting of an order confirming, modifying or correcting an award, the judgment shall conform and be enforced as any other judgment. Costs of the application, proceedings and disbursements may be awarded by the court.

History

CJY-26-04, July 20, 2004.

§ 1118. Application to court to be by motion; notice and hearing to be in manner provided by law

An application to the court for relief shall be by motion and shall be heard in the manner provided by law or rule of court. Notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action unless otherwise specified by the parties.

History

CJY-26-04, July 20, 2004.

§ 1119. Appeals

An appeal to the Navajo Nation Supreme Court may be taken from:

- A. An order denying the application to compel arbitration;
- B. An order granting an application to stay arbitration;
- C. An order confirming or denying confirmation of an award;
- D. An order modifying or correcting an award;
- E. An order vacating an award without directing a rehearing; or
- F. A final judgment or decree entered by the court.

History

CJY-26-04, July 20, 2004.

Title 8

Decedents' Estates

Chapter	Section
1. Descent and Distribution	1

Chapter 1. Descent and Distribution

Section
1. Jurisdiction
2. Determination of heirs
3. Approval of wills

§ 1. Jurisdiction

The Family Court of the Navajo Nation shall have original jurisdiction over all cases involving the descent and distribution of deceased Indians' unrestricted property found within the territorial jurisdiction of the Court.

History

CJA-5-59, January 9, 1959.	CAU-46-89, August 16, 1989 (codified at 7
CO-69-58, October 16, 1958.	N.N.C. § 252), which established the jurisdic-
Revision note. "Tribal" changed to "Fami- ly", and "Tribe" changed to "Nation". See	tion of Family Courts.

Cross References

Descent and distribution of grazing permits, see 3 N.N.C. § 785.
Disposition of land use permit, personal property and improvements on death of assignee, see 3 N.N.C. §§ 154 and 217.

Code of Federal Regulations

Issuance of patents in fee, certificates of competency, removal of restrictions, and sale of certain Indian lands, see 25 CFR § 152.1 et seq.
Probate of Indian estates, see 25 CFR § 15.1 et seq.

Library References

Descent and Distribution ¶90(2), 91(3), 142.	C.J.S. Descent and Distribution §§ 91, 125.
Indians ¶32(7).	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Westlaw Topic Nos. 124, 209.	

United States Code

Descent and distribution of property, see 25 U.S.C. §§ 348, 371-379.

Annotations

1. Construction and application "The family court has original jurisdiction over the descent and distribution of "deceased Indians' unrestricted property" (probate jurisdiction)." <i>In the Matter of the Estate of Kindle,</i>	No. SC-CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).
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8 N.N.C. § 1

Note 2

2. Wrongful death actions

“[I]n a wrongful death action, the claims and damages are those of the survivors and the proceeds are not part of the decedent’s estates.” *In the Matter of the Estate of Tsinahnajinnie*, No. SC–CV–80–98, slip op. at 9 (Nav. Sup. Ct. January 31, 2001).

“For future guidance, we hold that it is not necessary to open a probate case to appoint an

DECEDENTS’ ESTATES

administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children.” *In the Matter of the Estate of Tsinahnajinnie*, No. SC–CV–80–98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

§ 2. Determination of heirs

A. When any member of the Navajo Nation dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be an heir of the decedent may bring a suit in a Family Court of the Navajo Nation to have the court determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of heirs shall be made unless all the possible heirs known to the court, to the President of the Navajo Nation, and to the claimant have been notified of the suit and given full opportunity to come before the court and defend their interests. Possible heirs who are not residents of the Navajo Nation under the jurisdiction of the court must be notified by mail and a copy of the notice must be preserved in the record of the case.

B. In the determination of heirs the court shall apply the custom of the Navajo Nation as to inheritance if such custom is proved. Otherwise the court shall apply state law in deciding what relatives of the decedent are entitled to be heirs.

C. Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the examiner of inheritance would have jurisdiction, the Family Court of the Navajo Nation may distribute only such property as does not come under the jurisdiction of the examiner of inheritance, and the determination of heirs by the court may be reviewed, on appeal, and the judgment of the court modified or set aside by the said examiner of inheritance, with the approval of the President of the Navajo Nation, if law and justice so require.

History

CJA–1–59, January 6, 1959.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Descent and Distribution ☞71.
Indians ☞18, 32(7).
Westlaw Topic Nos. 124, 209.

C.J.S. Descent and Distribution § 82.
C.J.S. Indians §§ 60 to 62, 114, 116, 118 to 121, 139 to 143, 152.

Annotations

1. Custom

“The choice of law statute in our short probate code requires the application of Navajo inheritance customs, but if a custom is not

“proved,” the court may apply state law to determine the heirs of a decedent.” *In the Matter of the Estate of Kindle*, No. SC–

CV-38-99, slip op. at 4 (Nav. Sup. Ct. August 2, 2001).

"Enacted in 1959 and never amended, Section 2(b) provides that the court shall apply the Navajo custom as to inheritance, if such custom is proven, in order to determine the heirs." *In re: Estate of Thomas*, 6 Nav. R. 51, 52 (Nav. Sup. Ct. 1988).

The word "custom" for the purposes of this section not only includes customs which may be testified to, judicially noticed, proved by expert testimony or otherwise shown by evidence, but it includes recorded opinions and decisions of the Navajo Courts not dealing with statutory interpretation or the application of principles of state or general Anglo-European law, and some learned treatises on Navajo ways. *In the Matter of the Estate of Boyd Apachee*, 4 Nav. R. 178 (Nav. Ct. App. 1983).

2. Wrongful death actions

"A personal representative who brings a wrongful death action on behalf of heirs is a nominal party and that person holds the recovery in trust for the named beneficiaries." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 9 (Nav. Sup. Ct. January 31, 2001).

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

"The confusion over what cause of action applies and who the beneficiaries of that action

should be arises because the Navajo Nation does not have wrongful death or survivor's action statutes." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 4 (Nav. Sup. Ct. January 31, 2001).

3. Standing to petition

"Our probate code, at 8 N.N.C. § 2 (A) (1995 ed.), permits 'any member claiming to be an heir' to petition the family court to determine heirs and divide property. We [Navajo Supreme Court] assume that 'member' relates back to the term 'member of the Navajo Nation' in the first part of the statute." *In the Matter of the Estate of Kindle*, No. SC-CV-38-99, slip op. at 6 (Nav. Sup. Ct. August 2, 2001).

4. Oral wills

"In following *Estate of Lee* [1 Nav. R. at 31], the Navajo courts recognized the validity of an oral will when it is made by the testator in the presence of all of his or her immediate family and all members of the immediate family agree that the testator orally made known his or her last will before them. We hold today that the immediate family includes all of the children of the testator and the spouse if alive." *In re: Estate of Thomas*, 6 Nav. R. 51, 53 (Nav. Sup. Ct. 1988).

5. Immediate family

"In the present case, the immediate family of Joe Thomas includes all of his eight children, whether or not they resided with him at his homesite. Because not all of those children were present at the time the alleged oral will was made, there is not valid oral will." *In re: Estate of Thomas*, 6 Nav. R. 51, 54 (Nav. Sup. Ct. 1988).

§ 3. Approval of wills

When any member of the Navajo Nation dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Family Court of the Navajo Nation shall, at the request of any member of the Navajo Nation named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent, as under 8 N.N.C. § 2. A will shall be deemed to be valid if the decedent had a sane mind and understood what he or she was doing when he or she made the will and was not subject to any undue influence of any kind from another person, and if the will was made in accordance with a proved Navajo custom or made in writing and signed by the decedent in the presence of two witnesses who also signed the will. If the court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs; but no distribution of property

shall be made in violation of a proved Navajo custom which restricts the privilege of Navajo Nation members to distribute property by will.

History

CJA-1-59, January 6, 1959.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇨18, 32(7).

Wills ⇨25, 50, 94 to 125, 155 to 159, 203 to 433.

Westlaw Topic Nos. 209, 409.

C.J.S. Indians §§ 60 to 62, 114, 116 to 121, 139 to 143, 152.

C.J.S. Wills §§ 5, 7, 52, 99, 171, 200 to 316, 345 to 355, 357 to 358, 445 to 605, 607 to 807, 813 to 818, 2026 to 2038, 2057 to 2062.

Annotations

1. Authority of state court

Where will had been admitted to probate in Navajo Tribal Court of Indian Offenses, Arizona Superior Court, on petition to admit will to probate, did not have authority to inquire into execution of will, and should have admitted it to probate. *In re Lynch's Estate*, 9 Ariz. 354, 377 P.2d 199 (1962).

2. Oral dispositions

If all of his immediate family are present and agree that his wishes will be honored after his death, a Navajo may, under custom, orally state who shall have his property after his death. *In re Estate of Lee*, 1 Nav.R.27 (Nav. Ct. App. 1971).

3. Wrongful death actions

"For future guidance, we hold that it is not necessary to open a probate case to appoint an administrator or administratrix for wrongful

death claims. Any person who has a claim can bring his or her own claim. There is the special case of actions on behalf of children." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7 (Nav. Sup. Ct. January 31, 2001).

4. Custom

"The family court applied a rule of Navajo common law that insurance proceeds should be distributed to the 'immediate family.' This rule, as it is applied to distribution of an estate without a will, under Navajo custom, states that non-producing property (i.e., money) should go to the 'immediate family.' *In the Matter of the Estate of Boyd Apachee*, 4 Nav.R. 178, 182-183 (Window Rock Dist. Ct. 1983)." *In the Matter of the Estate of Tsinahnajinnie*, No. SC-CV-80-98, slip op. at 7-8 (Nav. Sup. Ct. January 31, 2001).

Title 9

Domestic Relations

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18. Elder Protection Act	1801

Chapter 1. Marriage

Section

1. Validity generally
2. Plural marriages void
3. Methods of contracting marriage
4. Requirements generally
5. Marriage licenses—Issuance
6. Form
7. Return
8. Validation of marriage
9. Procedure for judgment of validity
10. Governmental determinations

§ 1. Validity generally

A. Marriages contracted outside of Navajo Indian Country are valid within Navajo Indian Country if valid by the laws of the place where contracted.

B. Marriages may be validly contracted within Navajo Indian Country by meeting the requirements of 9 N.N.C. §§ 3 and 4.

History

CAP-36-93, April 23, 1993.
CO-54-56, October 29, 1956.
CF-2-54, February 11, 1954.

1922-1951 Res. p. 84, July 8, 1944.
CJ-2-40, June 3, 1940.

Library References

Indians ⇐32(11).
Marriage ⇐3, 12.1.
Westlaw Topic Nos. 209, 253.

C.J.S. Conflict of Laws § 90.
C.J.S. Indians §§ 135 to 153.
C.J.S. Marriage §§ 4 to 6, 9 to 10.

§ 2. Plural marriages void

All plural marriages contracted, whether or not in accordance with Navajo custom, shall be void.

9 N.N.C. § 2

DOMESTIC RELATIONS

History

CAP-36-93, April 23, 1993.

1922-1951 Res. p. 86, July 12, 1945.

Note. Former § 2, "Mixed marriages", was rescinded by CAP-36-93. § 2 was formerly codified at § 3 and reenacted at § 2.

Revision note. Slightly reworded for purposes of statutory form.

Cross References

Bigamy, see 17 N.N.C. § 451.

Library References

Bigamy ↔1.

Indians ↔32(11).

Marriage ↔11.

Westlaw Topic Nos. 55, 209, 253.

C.J.S. Bigamy §§ 2 to 6, 8.

C.J.S. Indians §§ 135 to 153.

C.J.S. Marriage § 18.

§ 3. Methods of contracting marriage

A marriage may be contracted within the Navajo Nation by any of the following procedures:

A. The parties may contract marriage by signing a Navajo Nation marriage license in the presence of two witnesses. The witnesses shall also sign the license to acknowledge that the license was signed by the parties. In such cases the marriage shall be valid regardless of whether or not a ceremony is held; or

B. The contracting parties may marry according to the rites of any church, in which case they, the officiating clergyman, and two witnesses shall sign in the places provided on the face of the marriage license. The authority to officiate at marriages of any person signing a Navajo Nation marriage license as a clergyman shall not be questioned; or

C. The contracting parties may be married by any judge of the Navajo Nation Courts where the parties have first signed and completed a marriage license; or

D. The contracting parties engage in a traditional Navajo wedding ceremony which shall have substantially the following features:

1. The parties to the proposed marriage shall have met and agreed to marry;

2. The parents of the man shall ask the parents of the woman for her hand in marriage;

3. The bride and bridegroom eat cornmeal mush out of a sacred basket;

4. Those assembled at the ceremony give advice for a happy marriage to the bride and groom;

5. Gifts may or may not be exchanged;

6. The person officiating or conducting the traditional wedding ceremony shall be authorized to sign the marriage license, or

E. The contracting parties establish a common-law marriage having the following features:

1. Present intention of the parties to be husband and wife;
2. Present consent between the parties to be husband and wife;
3. Actual cohabitation;
4. Actual holding out of the parties within their community to be married.

History

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

Note. Section 3 was formerly codified at § 4.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(11).

Marriage ⇄12 to 23, 25(5).

Westlaw Topic Nos. 209, 253.

C.J.S. Indians §§ 135 to 153.

C.J.S. Marriage §§ 5, 9 to 12, 19 to 26, 30, 36, 84.

Annotations

1. Common law marriage

“There cannot be a marriage without a voluntary agreement or consent between the parties to be married. And a husband cannot be a mere boyfriend. Ms. Medina, defendant’s alleged spouse, has testified to her belief that the defendant is her boyfriend, therefore the mutual present consent to be husband and wife is lacking.” *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct. 1988).

2. Evidence of marriage

“The parties must carry out their agreement to be husband and wife by actual cohabitation. In other words, they must openly live together in the same place as husband and wife.” *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct. 1988).

§ 4. Requirements generally

In order to contract a Navajo Nation marriage, the following requirements must be fulfilled:

A. Both parties must be unmarried. If either party has been previously married, the marriage must have been dissolved by death of the spouse or by a valid decree of divorce.

B. Both parties must be at least eighteen (18) years of age.

C. In cases where the female is pregnant, the Courts of the Navajo Nation may authorize the marriage of minors with consent of the parents or legal guardian of the minors.

D. Parties who are Navajo Nation members, or who are eligible for enrollment, may not be of the same maternal clan or biological paternal clan. The provisions of this subsection shall not affect the validity of any marriages legally contracted and validated under prior law.

E. Parties may not be related within the third degree of affinity. The provisions of this subsection shall not affect the validity of any marriage legally contracted and validated under prior law.

History

CAP-36-93, April 23, 1993.

CO-54-56, October 29, 1956.

Note. Section 4 was formerly codified at § 5. 3

9 N.N.C. § 4

DOMESTIC RELATIONS

Library References

Indians ☞32(11).
Marriage ☞4.
Westlaw Topic Nos. 209, 253.

C.J.S. Indians §§ 135 to 153.
C.J.S. Marriage §§ 7, 13.

Annotations

1. Intention to be married

“There cannot be a marriage without a voluntary agreement or consent between the parties to be married. And a husband cannot be a mere boyfriend. Ms. Medina, defendant’s alleged spouse, has testified to her belief that the defendant is her boyfriend, therefore the mutual present consent to be husband and wife is lacking.” *Navajo Nation v. Murphy*, 6 Nav. R. 10, 13 (Nav. Sup. Ct. 1988).

2. Jurisdiction

“[R]equires a jurisdictional foundation in the judicial district where the cause of action is held.” *In the Matter of Validation of Marriage of: Whitehorse and Bekis*, No. SC-CR-30-00, slip op. at 2, fn 1, (Nav. Sup. Ct. March 17, 2003).

§ 5. Marriage licenses—Issuance

A. The Navajo Office of Vital Records shall issue Navajo Nation marriage licenses and shall keep a record of such. Licenses are not required in order to establish a marriage under the provisions of this part.

B. Before issuing any marriage license, the Navajo Office of Vital Records shall ascertain by questioning the applicants, by requiring them to fill out a form, that they meet all the requirements of 9 N.N.C. § 4.

C. Any person authorized to issue Navajo Nation marriage licenses may issue such licenses to qualified applicants regardless of their places of residence.

D. A fee of fifteen dollars (\$15) shall be paid upon the issuance of a license.

E. No license shall be issued by the Navajo Office of Vital Records until three days after the parties first apply for a license and only after the parties submit the results of a blood test.

History

CAP-36-93, April 23, 1993.
CO-54-56, October 29, 1956.

Note. Section 5 was formerly codified at § 6.

Library References

Indians ☞32(11).
Marriage ☞25(3).

Westlaw Topic Nos. 209, 253.
C.J.S. Indians §§ 135 to 153.

§ 6. Form

The form of Navajo Nation marriage licenses shall be substantially as follows:

NAVAJO NATION

MARRIAGE LICENSE

Authority is hereby given for the marriage of the following named persons:

DOMESTIC RELATIONS

9 N.N.C. § 6

Man		Woman
_____	Name	_____
_____	Census Number	_____
_____	Residence	_____
_____	Age	_____
_____	Mother's Clan	_____
_____	Father's Clan	_____

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, _____.

Title

MARRIAGE CERTIFICATE

I, the man named above, hereby take the woman named above for my lawful wife; and I, the woman named above, hereby take the man named above for my lawful husband.

I hereby certify that the man and woman named above were married this day in a ceremony at which I officiated. (This *paragraph may be crossed out if the parties are not married before a clergyman, medicineman, or traditionalist.*)

IN WITNESS WHEREOF, we have hereunto set our hands this ___ day of _____ in the presence of the witnesses whose names appear below.

_____ Witness	_____ Contracting party
_____ Address of Witness	
_____ Witness	_____ Contracting party
_____ Address of Witness	

Clergyman/Medicineman
Traditionalist

Address of Clergyman
Medicineman/Traditionalist

RETURNED AND FILED FOR RECORD this ___ day of _____, and recorded in Book _____ of Marriage Licenses and Certificates on page ___, Number _____.

Navajo Agency Census Clerk

9 N.N.C. § 6

DOMESTIC RELATIONS

History

CAP-36-93, April 23, 1993.
CO-54-56, October 29, 1956.
CJ-59-57, July 29, 1957, validated marriages which might have been invalid because the wrong form of license was returned to the Navajo Agency Census Office between January 1, 1957, and January 1, 1958, inclusive.
Note. Section 6 was formerly codified at § 7.

Library References

Indians ↻32(11).
Marriage ↻25(2).
Westlaw Topic Nos. 209, 253.
C.J.S. Indians §§ 135 to 153.

§ 7. Return

A. Persons obtaining a Navajo Nation marriage license must return the same to the Navajo Office of Vital Records within 30 days, whether or not they go through with the contemplated marriage.

B. Failure to return the license shall not affect the validity of any marriage.

History

CAP-36-93, April 23, 1993. CJA-1-59, January 6, 1959, adopted the Law and Order regulations of the Department of the Interior contained in 25 CFR, Part 11. CO-54-56, October 29, 1956.
Note. Section 7 was formerly codified at § 8 and was amended generally by CAP-36-93.

Library References

Indians ↻32(11).
Marriage ↻32.
Westlaw Topic Nos. 209, 253.
C.J.S. Indians §§ 135 to 153.
C.J.S. Marriage § 35.

§ 8. Validation of marriage

All purported marriages contracted within the territorial jurisdiction of the Navajo Nation, wherein the parties were or are recognized as man and wife in their community, may be validated and recognized as valid marriages from the date of their inception. The Family Courts of the Navajo Nation shall have subject matter jurisdiction pursuant to this section to make a judicial determination that a marriage meets the requirements of §§ 3 and 4 for contracting of a marriage, and to cure any defect in a ceremony which does not exactly conform to the requirements for a ceremony set forth in § 3. The Peacemaker Courts may also make this determination upon referral from the Family Court. Marriages need not be solemnized by church, state, or Navajo custom ceremony to be recognized as valid under § 3 (D) of this part.

History

CAP-36-93, April 23, 1993.
CF-2-54, February 11, 1954.
Tribal Council Res. 1922-1951 Res. p. 84, July 18, 1944.
Note. Section 8 was formerly codified as "Not contracted by church, state, or Tribal custom ceremony generally" at 2 N.N.C. § 61 and was renamed, amended generally and reenacted at § 8 by CAP-36-93.
Revision note. Slightly reworded for purposes of statutory form.

Cross References

Validation of marriages where wrong form of license returned, see note under § 6 of this title.

Library References

Indians ↻32(11).
 Marriage ↻26, 55.
 Westlaw Topic Nos. 209, 253.

C.J.S. Indians §§ 135 to 153.
 C.J.S. Marriage §§ 30, 33, 35, 49.

Annotations**1. Intent**

The intent of this section seems to be to cure defects in form and procedure in otherwise lawful marriages. *In re Daw*, I Nav. R. 1 (1969).

1954 are clearly validated but the Tribal Council did not specifically outlaw common law marriages after that date. *In re Daw*, I Nav. R. 1 (1969).

2. Common law marriages

Marriages in which the partners were recognized as being married prior to February 1,

§ 9. Procedure for judgment of validity

A. Any person, claiming that his or her marriage may be validated pursuant to 9 N.N.C. § 8, may file a petition in the Family Court or Peacemaker Court of the Navajo Nation for a judgment declaring that such marriage be validated. If the petitioner's spouse in such alleged marriage is known to the petitioner to be living, such spouse must also sign the petition, or be named as defendant and notified of the suit. If the petitioner's spouse in such alleged marriage is not known to the petitioner to be living, the petitioner must prove to the satisfaction of the court that such spouse is dead or has been absent for five successive years, without being known to the petitioner within that time to be living, or the petition shall be dismissed.

B. If the petitioner, having complied with subsection (A) of this section, proves to the satisfaction of the court that he or she and his or her alleged spouse were recognized as man and wife in their community, the court shall issue a judgment that such petitioner and spouse were validly married. If feasible, the Court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment.

C. Any judgment of validity of marriage issued by a Court of the Navajo Nation in accordance with Subsection B of this section may be forwarded to the Navajo Office of Vital Records which may then cause the marriage to be recorded and a certificate of marriage to be issued to the petitioner.

D. In cases where a child whose parents are deceased contends that such parents' marriage may be validated by 9 N.N.C. § 8, such child may file a petition in the Family Court or Peacemaker Court of the Navajo Nation for a judgment that such marriage be so validated. If such petitioner proves to the satisfaction of the court that his parents are deceased and that they were recognized as man and wife in their community, the court shall issue a judgment that such parents were validly married on such date. If feasible, the court shall also ascertain the date of inception of such marriage and shall recite such date in the judgment. Such judgment may be forwarded to the Navajo Office of Vital Records for recording and issuance of a certificate of marriage.

9 N.N.C. § 9

DOMESTIC RELATIONS

History

CAP-36-93, April 23, 1993.
CF-14-57, February 4, 1957.

Note. Section 9 was formerly codified at 2 N.N.C. § 62 and was amended generally and reenacted at § 9 by CAP-36-93.

Library References

Indians ↻32(11).
Marriage ↻55.
Westlaw Topic Nos. 209, 253.

C.J.S. Indians §§ 135 to 153.
C.J.S. Marriage §§ 35, 49.

§ 10. Governmental determinations

All marriages recorded on any official document of the Navajo Office of Vital Records or any Navajo Nation Tribal Enrollment Office shall be deemed to be valid marriages under Navajo law, whether these marriages are contracted by Navajo custom, or pursuant to a Navajo Nation or state license. These documents shall be deemed to constitute a governmental determination of the Navajo Nation as to the existence and validity of the marriage noted in the record. This section shall apply retroactively and prospectively to all marriages recorded in official documents of the Navajo Nation.

History

CAP-36-93, April 23, 1993.
Note. CAP-36-93 added § 10 and repealed former 2 N.N.C. § 63 “Defect in ceremony”.

Library References

Indians ↻32(11).
Marriage ↻32, 50(1).
Westlaw Topic Nos. 209, 253.

C.J.S. Indians §§ 135 to 153.
C.J.S. Marriage §§ 35, 56 to 60.

Chapter 3. Husband and Wife

Section

201. Antenuptial agreements
202. Separate property—Definitions
203. Liability for debts
204. Married women
205. Community property—Definition
206. Capacity of persons under age of majority
207. Personal property; disposition
208. Liability for community debts
209. Legal capacity of married women—Generally
210. Necessaries—Power of wife to contract debts
211. Action to collect debt; order of execution
212. Marital rights in property acquired after moving into Navajo Indian Country

United States Code

Evidence of marriage of white men and Indian women, see 25 U.S.C. § 183.
Rights of Indian women marrying white men; Tribal property, see 25 U.S.C. § 182.
Rights of white men marrying Indian women; Tribal property, see 25 U.S.C. 181.

§ 201. Antenuptial agreements

A. Parties intending to marry may enter into agreements not contrary to good morals or law. They shall not enter into an agreement or make a renunciation the object of which is to alter the law of descent of property, either with respect to themselves or inheritance by their children or posterity which either may have by another person, or with respect to their common children.

B. A minor capable of contracting matrimony may enter into an agreement authorized by subsection (A) of this section with the written consent of both parents if both are living, and if not, with the consent of the survivor. If both parents are dead, the minor may enter such agreements with the written consent of his/her guardian.

C. A matrimonial agreement must be acknowledged before an officer authorized to acknowledge deeds.

D. No matrimonial agreement shall be altered after the solemnization of the marriage.

History

CJ-42-56, July 18, 1956.

Revision note. In subsection (A) “good morals of law” was changed to “good morals or law” for purpose of clarity (1978).

Library References

Husband and Wife ⚭29, 31.
Indians ⚭32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 135 to 153.

§ 202. Separate property—Definitions

A. All property, real and personal, of the husband, owned or claimed by him before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is his separate property.

B. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is her separate property.

C. The earnings and accumulations of the wife and the minor children in her custody while she lives separate and apart from her husband are the separate property of the wife.

History

CJ-42-56, July 18, 1956.

Library References

Divorce ⚭252.3(3).
Husband and Wife ⚭5 to 10(6).
Indians ⚭32(11).

Westlaw Topic Nos. 134, 205, 209.
C.J.S. Divorce §§ 521 to 525.
C.J.S. Indians §§ 135 to 153.

§ 203. Liability for debts

The separate property of the husband or wife is not liable for the debts of the other contracted before marriage.

History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ☞13, 18.
Indians ☞32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 135 to 153.

§ 204. Married women

Married women have the sole and exclusive control of their separate property. The separate property of a married woman is not liable for the debts or obligations of the husband, and it may be sold, mortgaged, conveyed or bequeathed by the woman who owns it as if she were not married.

History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ☞110, 111.
Indians ☞32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 135 to 153.

§ 205. Community property—Definition

All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife and her minor children while she lives separate and apart from her husband, is the community property of the husband and wife.

History

CJ-42-56, July 18, 1956.

Library References

Divorce ☞252.3(3).
Husband and Wife ☞248.5 to 260.
Indians ☞32(11).

Westlaw Topic Nos. 134, 205, 209.
C.J.S. Divorce §§ 521 to 525.
C.J.S. Indians §§ 135 to 153.

Annotations**1. Construction and application**

“We do not believe that section 205 plays no role in the division of marital property pursuant to section 404. We believe that section 205 means that the trial court shall distribute the property based on a preference for equal division of community property.” *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

“Property acquired during the marriage is presumed to be community property unless shown to be separate. [. . .] Inherited property is separate, even if acquired during the marriage. [. . .] Separate property comingled

with community property is still separate if it can be clearly traced and identified.” *In the Matter of the Estate of Benally*, 5 Nav. R. 174, 177 (Nav. Sup. Ct. 1987).

2. Community property, generally

“The Begays’ [Mutual Help Housing] ‘lease purchase’ agreement is community property, and its disposition is not governed by the agreement; therefore, it is subject to Navajo Nation laws controlling disposition of community property.” *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

§ 206. Capacity of persons under age of majority

A. Lawfully married men and women eighteen (18) years of age or over shall not be under legal disability by reason of their minority with regard to any

transaction affecting their real or personal community property, and they shall as to such property possess all the rights and liabilities in estates and property usually attached to and assumed by persons of the age of twenty-one (21) years and over.

B. A dissolution of marriage shall not deprive either party who is eighteen (18) years of age or over at the time of dissolution of authority to enter into transactions affecting the community property acquired during coverture and which may be vested in either or both of them as the result of dissolution of the marriage.

History

CJ-42-56, July 18, 1956.

Library References

Divorce ⇨169.

Indians ⇨6.5, 32(11).

Infants ⇨22, 23.

Westlaw Topic Nos. 134, 209, 211.

C.J.S. Divorce §§ 267 to 268, 761, 765 to 766.

C.J.S. Indians §§ 135 to 153.

C.J.S. Infants §§ 126, 136, 146.

§ 207. Personal property; disposition

During coverture, community personal property may be disposed of by the husband only.

History

CJ-42-56, July 18, 1956.

Revision note. Word “community” was inserted before the word “personal” for the purpose of clarity (1978).

Library References

Husband and Wife ⇨265, 267.

Indians ⇨23, 32(11).

Westlaw Topic Nos. 205, 209.

C.J.S. Indians §§ 30, 135 to 153.

§ 208. Liability for community debts

The community property of the husband and wife is liable for the community debts contracted by the husband during marriage unless specially excepted by law.

History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ⇨268.

Indians ⇨24, 32(11).

Westlaw Topic Nos. 205, 209.

C.J.S. Indians §§ 12, 31, 135 to 153.

§ 209. Legal capacity of married women—Generally

Married women of the age of twenty-one (21) years and upwards have the same legal rights and are subject to the same legal liabilities as men of the age of twenty-years (21) years and upwards except the right to make contracts binding the common property of the husband and wife.

9 N.N.C. § 209

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History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ☞265, 267.
Indians ☞24, 32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 12, 31, 135 to 153.

§ 210. **Necessaries—Power of wife to contract debts**

The wife may contract debts for necessities for herself and her children upon the credit of her husband.

History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ☞268(4).
Indians ☞24, 32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 12, 31, 135 to 153.

§ 211. **Action to collect debt; order of execution**

In an action to collect a debt for necessities for the wife and her children, the wife and her husband shall be sued jointly and the court shall decree that execution be levied first upon the common property, second upon the separate property of the husband and third upon the separate property of the wife.

History

CJ-42-56, July 18, 1956.

Cross References

Execution generally, see 7 N.N.C. § 705.

Library References

Husband and Wife ☞269, 270(11).
Indians ☞24, 32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 12, 31, 135 to 153.

§ 212. **Marital rights in property acquired after moving into Navajo Indian Country**

Marital rights in property acquired in Navajo Indian Country during marriage by Navajo Indians shall be controlled by the laws of the Navajo Nation.

History

CJ-42-56, July 18, 1956.

Library References

Husband and Wife ☞246.
Indians ☞32(11).

Westlaw Topic Nos. 205, 209.
C.J.S. Indians §§ 135 to 153.

Chapter 5. Divorce

Section

- 401. Grounds for divorce
- 402. Residence
- 403. Filing fee
- 404. Settlement of property rights; custody and care of children
- 405. Certificate of divorce; issuance
- 406. Record of divorces
- 407. Remarriage

History

Revision note. Jurisdiction in Domestic relation matters now rests with the "Family Courts" pursuant to CAP-36-93, April 23, 1993, and CAU-46-89, August 16, 1989. Within this chapter the necessary additions have been made for clarity (1994). See 7 N.N.C. § 252.

§ 401. Grounds for divorce

The Family Courts of the Navajo Nation are authorized to dissolve all marriages, whether consummated by Tribal custom, church, or state ceremony upon any of the following grounds:

- A. That the party in whose behalf it is sought to have the divorce granted was under the legal age for marriage, unless after attaining the legal age such party for any time freely cohabited with the other as husband and wife.
- B. That the former husband or wife of either party under a Tribal custom or other ceremony was living and the marriage with such former husband or wife was not properly dissolved.
- C. Unlawful voluntary sexual intercourse of a married person with one of the opposite sex.
- D. When either party has willfully abandoned the other, or caused the complaining party to leave against his or her wishes, for the term of six (6) months preceding commencement of the action.
- E. When one of the parties uses intoxicating drinks, or narcotics habitually to the mental anguish of the other.
- F. When one party inflicts grievous bodily injury or grievous mental suffering upon the other.
- G. Neglect on the part of the husband to support his family according to his means, station in life, and ability.
- H. Inability to live together in agreement and harmony.
- I. In favor of the husband when the wife was pregnant at the time of marriage by other than her husband, husband having been ignorant thereof, provided action is commenced within a reasonable time after the fact is known to the husband.
- J. Voluntary separation of husband and wife for a period of one (1) year or more.

9 N.N.C. § 401

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History

Tribal Council Res. 1922–1951 Res. p. 82, July 17, 1944. ty contained in Section 161.28, Title 25, CFR” were omitted as unnecessary (1978).

Revision note. Slightly reworded for purposes of statutory form. Words “under authori-

Cross References

Jurisdiction of Family Courts of the Navajo Nation in divorce cases, see 7 N.N.C. § 252.

Library References

Divorce ⇌12 to 38.

Indians ⇌32(11).

Westlaw Topic Nos. 134, 209.

C.J.S. Divorce §§ 13 to 70, 77 to 78.

C.J.S. Indians §§ 135 to 153.

Annotations

1. Jurisdiction

“Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled

within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation.” *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

§ 402. Residence

The complaining party shall have resided on the Navajo Nation or on any lands allotted, Tribally purchased, public domain, land leased by the Navajo Service, or otherwise set aside for administration by the Bureau of Indian Affairs for the benefit of the Navajo Nation, at least 90 days prior to the commencing of any action for the dissolution of any marriage before the Courts of the Navajo Nation will entertain the action.

History

Tribal Council Res. 1922–1951 Res. p. 82, July 17, 1944.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Divorce ⇌62.

Indians ⇌32(11).

Westlaw Topic Nos. 134, 209.

C.J.S. Divorce § 99.

C.J.S. Indians §§ 135 to 153.

Annotations

1. Residency requirement

“Under the foregoing the Court holds that dissolution of marriage is an action affecting the status of marriage and that the Navajo Tribal Courts have jurisdiction to grant a dissolution of marriage when one of the spouses is domiciled

within the territorial jurisdiction of the Navajo Nation if the complaining party has met the residency requirements even though the other spouse is domiciled outside the Navajo Nation.” *Yazzie v. Yazzie*, 5 Nav. R. 66, 70 (Nav. Sup. Ct. 1985).

§ 403. Filing fee

A filing fee of ten dollars (\$10.00) must be paid to the Family Courts of the Navajo Nation before such Courts will entertain an action for the dissolution of any marriage.

History

Tribal Council Res. 1922–1951 Res. p. 82,
July 17, 1944.

Library References

Indians Ⓒ32(7, 11).
Westlaw Topic No. 209.
C.J.S. Indians §§ 60 to 62, 135 to 153.

§ 404. Settlement of property rights; custody and care of children

Each divorce decree shall provide for a fair and just settlement of property rights between the parties, and also for the custody and proper care of the minor children.

History

CJ–3–40, June 4, 1940.

Cross References

Navajo Nation Child Support Enforcement Act, see 9 N.N.C. § 1701 et seq.

Library References

Divorce Ⓒ6.
Indians Ⓒ32(11).
Westlaw Topic Nos. 134, 209.
C.J.S. Divorce §§ 5, 10, 15, 97 to 98.
C.J.S. Indians §§ 135 to 153.

Annotations**1. Construction with other law**

Since nothing is specifically stated in the Navajo Nation Code as to how community property is to be divided upon divorce, 7 N.N.C. § 204 of the Navajo Tribal Code is controlling in the matter. *Johnson v. Johnson* 3 Nav. R. 5 (1980).

2. Particular cases

Under Navajo tradition, a land use permit given from a father to a son cannot be characterized as his separate property, nor as community property since land use permits belong to the entire family and are used for the benefit of the family. The District Court therefore properly applied Navajo tradition and custom in awarding land use permits, grazing permits and all other property connected with a farm to wife in divorce proceedings; the award and distribution of the property rights between the parties was a fair and just settlement pursuant to the Navajo Tribal Code. *Johnson v. Johnson* 3 Nav. R. 5 (1980).

3. Purpose

“The purpose of equitable distribution statutes such as section 404 is to award property to spouses such as to reflect their contributions of material and labor to the marriage and to put them on an equal footing, not to penalize or reward them for their acts during the mar-

riage.” *Begay v. Begay*, 6 Nav. R. 160, 164 (Nav. Sup. Ct. 1989).

“Section 404 does not mandate equal division of community property. It grants the trial court discretion to make unequal divisions of community property.” *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

“In most instances, community property is to be divided equally. [. . .] Where property is divided pursuant to a divorce, however, the Tribal Code directs the trial court to ‘provide for a fair and just settlement of the property rights between the parties.’” *Begay v. Begay*, 6 Nav. R. 160, 162 (Nav. Sup. Ct. 1989).

“The Court agrees that an equal division of marital property is not mandated. This does not mean, however, that there is not be a balancing of all the circumstances of the parties. In fact, this balancing of circumstances is precisely why an equal division of property is not required in most jurisdictions. Under the flexibility thus allowed a court may, for example, offset one party’s lower earning capacity by a larger share of the property. The desired end result is for the parties to start divorced life on some sort of equitable basis.” *Livingston v. Livingston*, 5 Nav. R. 35, 36 (Nav. Ct. App. 1985).

9 N.N.C. § 404

Note 4

4. Community property

“The Begays’ [Mutual Help Housing] ‘lease purchase’ agreement is community property, and its disposition is not governed by the agreement; therefore, it is subject to Navajo Nation laws controlling disposition of community property.” *Begay v. Begay*, 6 Nav. R. 160, 161 (Nav. Sup. Ct. 1989).

5. Child support

“Back child support obligations may be satisfied as part of the process of making a ‘fair and just settlement of property rights’ pursuant to 9 N.T.C. § 404.” *Alonzo v. Martine*, 6 Nav. R. 395, 398 (Nav. Sup. Ct. 1991).

6. Intervention by children

“There is no question that Navajo common law grants a child . . . a right to be heard, considering his maturity, in a case involving that child’s custody.” *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 8 (Nav. Sup. Ct. March 5, 2001).

“[I]n our courts, under proper circumstances a child may intervene in an action between his or her parents where that child’s rights or interests are affected. Whether intervention is proper is within the sound discretion of the trial court and that determination should be made

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after examining the child’s best interests and whether the child’s interests are adequately represented by the existing parties.” *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 7 (Nav. Sup. Ct. March 5, 2001).

7. Guardian ad litem

“Another option is to appoint a spokesperson for the Appellant. This is more in line with Navajo common law where an adult usually makes the child’s wishes known.” *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

“Just like many jurisdictions, the role and duties of our guardians ad litem are undefined. We want a guardian who will do a thorough review of the case, including witness interviews and a complete examination of all documentation on the child, and then give an independent, accurate and reliable report to the court as a commentator, but not an advocate. We are leery of situations where a court gives too much weight to a guardian’s report, without the court making its own independent judgment of the child’s best interests.” *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

§ 405. Certificate of divorce; issuance

A certificate of divorce shall be issued by the Family Courts of the Navajo Nation when a divorce is granted.

History

CJ-3-40, June 4, 1940.

Library References

Divorce ⇨152.

Indians ⇨32(11).

Westlaw Topic Nos. 134, 209.

C.J.S. Divorce §§ 222, 230 to 234.

C.J.S. Indians §§ 135 to 153.

§ 406. Record of divorces

All divorces granted by the Family Courts of the Navajo Nation must be recorded in the agency office.

History

CJ-3-40, June 4, 1940.

Library References

Divorce ⇨152.

Indians ⇨32(11).

Westlaw Topic Nos. 134, 209.

C.J.S. Divorce §§ 222, 230 to 234.

C.J.S. Indians §§ 135 to 153.

§ 407. Remarriage

No person, married by Tribal custom, who claims to have been divorced shall be free to remarry until a certificate of divorce has been issued by the Courts of the Navajo Nation.

History

CJ-3-40, June 4, 1940.

Library References

Divorce ☞320.

Indians ☞32(11).

Westlaw Topic Nos. 134, 209.

C.J.S. Divorce § 764.

C.J.S. Indians §§ 135 to 153.

Chapter 7. Adoption**Section**

- 601. Who may be adopted
- 602. Who may adopt
- 603. Consent to adoption—Parents
- 604. Child
- 605. Withdrawal
- 606. Petition for adoption
- 607. Form
- 608. Transfer of case
- 609. Investigation
- 610. Temporary order; final judgment
- 611. Effect of final judgment
- 612. Registration of final judgment; amendment of records; inspection
- 613. Confidential nature of proceedings and record
- 614. Adoption of adults
- 615. Policy on adoption of children

History

Revision note. Jurisdiction in domestic relation matters now rests with the “Family Courts” pursuant to CAP-36-93, April 23, 1993, and CAU-46-89, August 16, 1989. Within this chapter the necessary additions have been made for clarity (1994). See 7 N.N.C. § 252.

§ 601. Who may be adopted

Any minor who is a member of the Navajo Nation and is brought in person before any Navajo Nation Court may be adopted, irrespective of place of birth or place of residence.

History

CN-63-60, November 18, 1960.

Uniformity of interpretation. CN-63-60, § 14, provided: “This resolution shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.”

CF-12-57, which established a procedure for the adoption of members of the Tribe, was repealed by CN-63-60, § 15.

Tribal Council Res. 1922-1951 Res. p. 85, July 19, 1944, which gave the Court of Indian Offenses jurisdiction of adoption proceedings, was repealed by CF-12-57, § 15.

9 N.N.C. § 601

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CN-9-39, November 21, 1939, provided procedure under which persons who were not Navajos could be adopted.

Cross References

Jurisdiction of Family Courts of the Navajo Nation in adoption cases, see 7 N.N.C. § 252.
Navajo Nation policy on adoption of children, see 9 N.N.C. § 615.

Library References

Adoption ⇌5. Westlaw Topic Nos. 17, 209.
Indians ⇌6.10. C.J.S. Adoption of Persons §§ 18 to 24.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

§ 602. Who may adopt

The following persons are eligible to adopt a child:

- A. A husband and wife jointly, or either the husband or wife, if the other spouse is a parent of the child to be adopted.
- B. An unmarried person who is at least twenty-one (21) years of age.
- C. A married person at least twenty-one (21) years of age who is legally separated from his or her spouse.
- D. In the case of a child whose parents are not married, the child's unmarried father.

History

CN-63-60, November 18, 1960.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Adoption ⇌4. C.J.S. Adoption of Persons §§ 13 to 17, 23 to 24.
Indians ⇌6.10. Westlaw Topic Nos. 17, 209.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

§ 603. Consent to adoption—Parents

- A. The adoption of a child may be ordered when there have been filed written consents to the adoption executed by the parents if living, or the surviving parent if one is dead.
- B. The consents required by Subsection (A) of this section shall be signed in the presence of the judge or clerk of the court or acknowledged before a notary public.
- C. The minority of the parents shall not be a bar to the right of consent nor shall it invalidate such consent.

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9 N.N.C. § 605

D. The Navajo Nation Court shall have the authority to approve adoptions without a parent's consent where:

1. The parent is dead; or
2. The court finds after a hearing that the parent has abandoned the child for more than one (1) year or is unfit to have custody.

History

CN-63-60, November 18, 1960.

Library References

Adoption ⇄7.2, 7.5.
Indians ⇄6.10.
Westlaw Topic Nos. 17, 209.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

Annotations

- 1. Consent required** *the Matter of Adoption of J.L.B.*, 6 Nav. R. 314, 316 (Nav. Sup. Ct. 1990).
"A valid consent to an adoption is a jurisdictional requirement for an adoption . . ." *In*

§ 604. Child

The consent of the child, if twelve (12) years of age or over, shall be required for adoption. Such consent shall be in writing and shall be signed in the presence of the judge or clerk of court or acknowledged before a notary public.

History

CN-63-60, November 18, 1960.

Library References

Adoption ⇄7.1, 7.5.
Indians ⇄6.10.
Westlaw Topic Nos. 17, 209.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

§ 605. Withdrawal

A consent to adoption may not be withdrawn except by permission of the court given before entry of the final judgment of adoption.

History

CN-63-60, November 18, 1960.

Library References

Adoption ⇄7.6.
Indians ⇄6.10.
Westlaw Topic Nos. 17, 209.

9 N.N.C. § 605

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United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

§ 606. Petition for adoption

A. A petition for adoption shall be substantially in the form shown in 9 N.N.C. § 607 and shall be filed with the Court in duplicate.

B. One copy of the petition shall be retained by the Court. The other shall be sent to the Agency Branch of Welfare.

C. Any written consents required by these regulations must be attached to the petition.

D. Upon filing of a petition, the Court shall order a date for hearing not more than 90 days from the date of filing of the petition.

History

CN-63-60, November 18, 1960.

Library References

Adoption ↻11.
Indians ↻6.10.

Westlaw Topic Nos. 17, 209.
C.J.S. Adoption of Persons §§ 76 to 77, 87.

Annotations

1. Signature
The petitioners themselves must actually sign the petition for adoption, not the counsel for the petitioners. In the Matter of the Adoption of S.C.M., 4 Nav. R. 167 (1983).

§ 607. Form

IN THE FAMILY COURT OF THE NAVAJO NATION

HELD AT _____

PETITION FOR ADOPTION

In the Matter of the adoption of, _____

Census No. _____ a Minor.

To the Family Court of the Navajo Nation:

This petition for the adoption of the above-named minor respectfully shows:

- (1) The names and addresses of the petitioners are: (give full name, age, and address)
(2) Check the proper statement:
(a) The petitioners are husband and wife []
(b) The petitioner is married to the natural father or mother of the child []
(c) The petitioner is an unmarried person or a person legally separated from his or her spouse, and is over the age of twenty-one (21) years []
(d) The petitioner is the unmarried natural father of the child
(3) The above-named minor was born on _____ (date of birth, if known) and is a member of the Navajo Nation. If the child is twelve (12) years of age or over, the child's written consent to adoption is attached hereto.
(4) The mother and father of said child give their consent to the adoption of said child by the petitioners, a copy of said consent being attached hereto, or the

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9 N.N.C. § 609

following facts exist which excuse consent on the part of the parent(s) to the adoption:

- (5) A full description and statement of value of all the property owned or possessed by said minor child is as follows:

WHEREFORE, the petitioner(s) pray that the court set a time for hearing this matter and thereafter adjudge that the said child may be adopted by the petitioner(s).

The undersigned hereby declare that all facts represented in the above petition are true.

Date:

History

CN-63-60, November 18, 1960.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Adoption ⇌11.
Indians ⇌6.10.

Westlaw Topic Nos. 17, 209.
C.J.S. Adoption of Persons §§ 76 to 77, 87.

§ 608. Transfer of case

If the judge believes the convenience of the parties and the welfare of the child would be served, he/she may order any adoption case transferred to another Family Court of the Navajo Nation.

History

CN-63-60, November 18, 1960.

Library References

Adoption ⇌10.
Indians ⇌6.10.

Westlaw Topic Nos. 17, 209.
C.J.S. Adoption of Persons §§ 74 to 75.

§ 609. Investigation

A. Upon filing of a petition for adoption the court shall request the Agency Branch of Welfare, with the technical assistance of the state and other government branches of welfare, to make an investigation. Such investigation shall include the history of the child; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have bearing on the adoption or custody and of which the court should have knowledge.

B. The report of the investigation shall be a part of the file in the case and shall contain a definite recommendation for or against the proposed adoption stating the reasons therefor.

History

CN-63-60, November 18, 1960.

Library References

Adoption ☞13.
 Indians ☞6.10.
 Westlaw Topic Nos. 17, 209.

C.J.S. Adoption of Persons §§ 49 to 50, 88 to 97.

Annotations**1. Failure to comply with section**

In absence of the investigation, report and recommendation required by this section, an adoption decree cannot be upheld. *In re Adoption of Tsosie*, 1 Nav. R. 112 (Nav. Ct. App. 1977).

2. Investigation

Petitioner may not have an adoption investigation waived. *In the Matter of the Adoption of S.C.M.* 4 Nav. R. 167 (1983).

§ 610. Temporary order; final judgment

A. Upon examination of the report required in 9 N.N.C. § 609 and after hearing, the court may issue a temporary order giving the care and custody of the child to the petitioner(s) or any suitable person or persons, pending the further order of the court; provided, that if the child is a close blood relative of one of the petitioners, or is the stepchild of a petitioner, or has been living in the home of a petitioner for more than one (1) year preceding the date of filing the petition for adoption, the court may waive the entry of a temporary order and immediately enter a final judgment of adoption. Where a temporary order is entered, the Agency Branch of Welfare may observe the child in his foster home and report to the court within six (6) months on any circumstances or conditions which may have a bearing on his adoption or custody.

B. Upon application by the petitioner after six (6) months from the date of the temporary order, or upon the court's own motion at any time, the court may set a time and place for additional hearing. Notice of the time and place of the hearing shall be served on the Agency Branch of Welfare. The Agency Branch of Welfare may file with the court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the temporary order. After such hearing, the court may enter a final judgment of adoption, if satisfied that the adoption is for the best interest of the child, or may make such other order as it sees fit.

History

CN-63-60, November 18, 1960.

Library References

Adoption ☞14.
 Indians ☞6.10.
 Westlaw Topic Nos. 17, 209.

C.J.S. Adoption of Persons §§ 98 to 102, 124 to 128.

§ 611. Effect of final judgment

A. After the final judgment of adoption is entered, the relations of parent and child and the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the child and the adoptive parents. The status of the child as a member of the Navajo Nation shall not be affected by any adoption, and such child shall not forfeit his rights to inherit from his natural parents by descent or distribution, or otherwise.

DOMESTIC RELATIONS

9 N.N.C. § 613

B. After the final decree of adoption is entered, the natural parents of the adoptive child, except a natural parent who is also an adoptive parent or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for such child and have no rights over such child or to his property by descent or distribution or otherwise.

History

CN-63-60, November 18, 1960.

Cross References

Membership in Navajo Nation by adoption as not possible, see 1 N.N.C. § 702.

Library References

Adoption ⇌20.
Indians ⇌6.10.

Westlaw Topic Nos. 17, 209.
C.J.S. Adoption of Persons §§ 134 to 139.

§ 612. Registration of final judgment; amendment of records; inspection

A. Upon entry of the final judgment of adoption the court shall forward a copy thereof to the Agency Census Office for its records.

B. The order of the court shall direct the Census Office at the Navajo Agency and all Agency Branch Offices located at the subagencies to so amend family listings, and other records, to properly reflect the final judgment of adoption entered by the Navajo Nation Court. These amended records which contain the names and addresses or other information concerning the adopted child and the adopting parents shall cease to be available for public inspection. Only those persons obtaining permission from the Assistant Superintendent (Community Services) of the Navajo Agency or his authorized representative shall be given access to such records. No such permission shall be given unless the best interests of the child will be served thereby. The intent of this subsection is that any information concerning the whereabouts of the adopting parents and adopted child will not be available to the natural parents or parent or other unauthorized persons after final judgment of adoption is decreed by the Navajo Nation Court.

History

CN-63-60, November 18, 1960.

Cross References

Confidential nature of proceedings and record generally, see 9 N.N.C. § 613.

Library References

Adoption ⇌14.
Indians ⇌6.10.
Westlaw Topic Nos. 17, 209.

C.J.S. Adoption of Persons §§ 98 to 102, 124
to 128.

§ 613. Confidential nature of proceedings and record

Unless the court shall otherwise order, all hearings held in proceedings under this chapter shall be confidential and shall be held in closed court without

9 N.N.C. § 613

DOMESTIC RELATIONS

admittance of any person other than interested parties and witnesses. Further, all papers, records or files pertaining to proceedings under this chapter, except the final judgment of adoption, kept by the court or by the Agency Branch of Welfare shall be confidential and withheld from inspection except upon order of the court for good cause shown.

History

CN-63-60, November 18, 1960.

Library References

Indians ↻6.10.
Records ↻32.

Westlaw Topic Nos. 209, 326.
C.J.S. Records §§ 65, 67 to 73.

§ 614. Adoption of adults

A. An adult person may be adopted by any other adult person with the consent of the person to be adopted or his guardian, and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of 9 N.N.C. §§ 601-610 shall not apply to the adoption of an adult person.

B. After a hearing and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the persons involved, a decree of adoption may be entered which shall have the legal consequences stated in 9 N.N.C. § 611.

History

CN-63-60, November 18, 1960.

Library References

Adoption ↻5.
Indians ↻6.10.

Westlaw Topic Nos. 17, 209.
C.J.S. Adoption of Persons §§ 18 to 24.

§ 615. Policy on adoption of children

A. The Navajo Nation Council favors the formal adoption of Navajo children in accordance with the provisions of this chapter in an cases where the parents of such children are dead or where such children are being regularly and continuously neglected by their parents, or where the parents have abandoned such children. The Navajo Nation Council looks with disfavor upon informal arrangements for the custody of such children except for temporary periods pending their formal adoption.

B. In the cases referred to in Subsection A of this section, the Navajo Nation neither favors nor disfavors adoption of Navajo children by persons who are not members of the Navajo Nation, but states as its policy that each case shall be considered individually on its own merits by the Family Court of the Navajo Nation.

C. The Navajo Nation looks with disfavor upon the adoption of Navajo children by nonmembers of the Nation in cases where the parents of the

DOMESTIC RELATIONS

9 N.N.C. § 802

children are living, in good health, and have not abandoned or continuously neglected said children.

History

CN-64-60, November 18, 1960.

Library References

Indians ⚡6.10.
Westlaw Topic No. 209.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

Chapter 9. Guardians

Section

- 801. Petition for appointment
- 802. Investigation of petition
- 803. Appointment
- 804. Responsibility
- 805. Faithful execution of duties; bond

§ 801. Petition for appointment

Any person may petition to the Courts of the Navajo Nation for the appointment of a guardian of the person or estate of any minor or insane Navajo or other Navajo mentally incompetent to manage his property.

History

Tribal Council Res. 1922-1951 Res. p. 87,
December 19, 1945.

Library References

Guardian and Ward ⚡13(1, 3).
Indians ⚡6.2, 6.6.
Mental Health ⚡124.
Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Insane Persons § 132.

§ 802. Investigation of petition

The petition for the appointment of a guardian shall be referred by the Court to a Navajo Service social worker for investigation, study and report back to the Court.

History

Tribal Council Res. 1922-1951 Res. p. 87,
December 19, 1945.

Library References

Indians ⚡6.2, 6.6.
Mental Health ⚡120.
Westlaw Topic Nos. 209, 257A.
C.J.S. Insane Persons §§ 130, 132.

§ 803. Appointment

If, after a hearing upon a petition for the appointment of a guardian, it appears to the Court that the person is incapable of taking care of himself and managing his property, the Court shall appoint a guardian of his person and estate, a copy of which shall be filed at the Agency.

History

Tribal Council Res. 1922–1951 Res. p. 87,
December 19, 1945.

Library References

Guardian and Ward ☞9.5, 13(1).
Indians ☞6.2, 6.6.
Mental Health ☞104, 137.1.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Insane Persons § 111.

§ 804. Responsibility

The guardian appointed by the Court has the care and custody of the person of his ward, and the care and management of his estate until such guardian is legally discharged.

History

Tribal Council Res. 1922–1951 Res. p. 87,
December 19, 1945.

Library References

Guardian and Ward ☞17.
Indians ☞6.2, 6.6, 6.8.
Mental Health ☞179.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Insane Persons §§ 158 to 159.
C.J.S. Right to Die §§ 5 to 6, 8.

§ 805. Faithful execution of duties; bond

The guardian must meet all requirements as maybe described by the court for the faithful execution of his duties, including furnishing bond, if deemed necessary by the court.

History

Tribal Council Res. 1922–1951 Res. p. 87,
December 19, 1945.

Library References

Guardian and Ward ☞14 to 16.
Indians ☞6.2, 6.6.
Mental Health ☞179.

Westlaw Topic Nos. 196, 209, 257A.
C.J.S. Insane Persons §§ 158 to 159.
C.J.S. Right to Die §§ 5 to 6, 8.

Chapter 11. Navajo Nation Children's Code**Subchapter 1. General Provisions****Section**

1001. Purpose

Section

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- 1151. Disposition of a dependent child
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9 N.N.C. § 805

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- 1156. Limitations on dispositional judgments; modification, termination or extension of court orders
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- 1251. Protective services worker; power and duties
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- 1301. Petition; who may file; grounds
- 1302. Contents of petition
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- 1304. Social study prior to disposition; contents
- 1305. Hearing
- 1306. Court order; form; contents
- 1307. Effect of court order

Subchapter 13. Indian Child Welfare Act Provisions

- 1401. Application of the Indian Child Welfare Act in Family Court
- 1402. Full faith and credit; conflict of laws
- 1403. [Reserved]
- 1404. Voluntary placement
- 1405. Family Court wardship

History

CF-14-85, February 8, 1985. Court" pursuant to CAU-46-89, August 16, 1989.
Revision note. References throughout this Code to "Children's Court" changed to "Family

Subchapter 1. General Provisions

§ 1001. Purpose

The Children's Code shall be liberally construed and interpreted to effectuate the following legislative purposes:

- A. To preserve and restore the unity of the family whenever possible to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code;

B. Consistent with the protection of the Navajo community, to prevent children from committing delinquent acts and to offer a program of supervision, care and rehabilitation;

C. To achieve the purposes of the Children's Code in a family environment whenever possible, separating the child from parents and extended family only when necessary for the child's welfare or in the interest of public safety;

D. To separate clearly in judicial and other processes affecting children under the Children's Code the dependent child, the child in need of supervision and the delinquent child, and to provide appropriate options for treatment and rehabilitation of these children;

E. To provide a judicial division separate from the District Courts of the Navajo Nation with procedures through which the provisions of the Children's Code maybe executed and enforced, in which the parties are assured of a fair hearing, and their constitutional and other legal rights recognized and enforced; and

F. To provide a forum in which Navajo children charged to be delinquent or in need of supervision in other jurisdictions may be referred for adjudication and disposition, or for disposition alone.

History

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

Library References

Indians ¶6.5.

Infants ¶12, 132.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 5 to 6, 10, 32, 41, 43 to 44, 95.

Annotations

1. Juvenile custody

"We hold that the Navajo Children's Courts must carefully follow the procedural guidelines as set forth in the Navajo Children's Code. Specifically, that the detention of juveniles must be in a facility designated and certified by the Children's Court, that a detained juvenile has the right to a detention hearing as set forth in the Children's Code, and that the child and parent or guardian must have all their rights explained to them at all phases of the juvenile proceeding, especially the juvenile's right against self-incrimination. In addition, we hold that a juvenile in a delinquency proceeding has the right to representation by an attorney, that Navajo customary due process applies in juvenile proceedings to the same extent as it is applied in adult proceedings, and that customary Navajo practice demands a parent or guardian be notified of and be allowed to speak for the child in juvenile proceedings or to assist the

attorney in preparing the child's case." *In the Matter of A.W.*, 6 Nav. R. 38, 43-44 (Nav. Sup. Ct. 1988).

"Juveniles who are taken into custody experience a gamut of emotions from fear to embarrassment to anger. They have not developed the maturity needed to deal with these emotions and all too often suicide is the result. We, as a Nation, must fulfill our duty to protect our children; therefore, this Court will carefully scrutinize any questions regarding the detention of a juvenile." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

"The protective custody of juveniles must be humane and must provide for 'the care, protection and wholesome mental and physical development' of those children who are detained." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

§ 1002. Definitions

The laws under this subchapter shall be referred to as the Navajo Nation Children's Code, unless the context otherwise requires:

A. "Abandoned" means the failure of the parent to provide reasonable support and maintain regular contact with the child, including the provision of adequate supervision. Failure to maintain a normal parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.

B. "Abuse" means the infliction of physical, emotional or mental injury on a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that his or her health, morals, or emotional well-being is endangered.

C. "Adjudicatory Hearing" means a proceeding in the Family Court to determine whether a child has committed a specific delinquent act as set forth in a petition.

D. "Adult" means a person eighteen (18) years of age or older, or a person who is otherwise emancipated by order of a court of competent jurisdiction.

E. "Agency" means an organization licensed by the Division for adoption or for the provision of foster care.

F. "Child" means an enrolled member of the Navajo Nation or one who is eligible for enrollment with the Navajo Nation, or any other person who is subject to the jurisdiction of the Navajo Nation and is under the age of eighteen (18) years.

G. "Child in Need of Supervision" means a child who:

1. Being subject to compulsory school attendance, is habitually absent from school; or
2. Habitually disobeys the reasonable and lawful demands of his or her parents, guardian or custodian and is ungovernable and beyond control; or
3. Has committed an offense not classified as criminal or one applicable only to children; and
4. In any of the foregoing situations is in need of care or rehabilitation.

H. "Family Court" means the division of the District Court of the Navajo Nation exercising jurisdiction under this Code.

I. "Family Court Judge" means any duly appointed judge of the Family Court division of the Navajo Nation District Court exercising jurisdiction under this Code.

J. "Counsel" means a person who is a member of the Navajo Nation Bar Association.

K. "Court" when used without further qualification, means the Family Court division of the Navajo Nation District Court.

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9 N.N.C. § 1002

L. "Custodian" means a person other than a parent or legal guardian to whom legal custody of a child has been given by order of the Family Court, but does not include a person who has only physical custody.

M. "Delinquent Act" means an act committed by a child which would be designated as a crime pursuant to Title 17 of the Navajo Nation Code and the following offenses within Title 14 of the Navajo Nation Code:

1. Driving while under the influence of intoxicating liquors or drugs;
2. Failure to stop in the event of an accident causing death, personal injuries or damage to property, and
3. Reckless driving.

N. "Delinquent child" means a child who is adjudicated to have committed a delinquent act.

O. "Dependent Child" means a child:

1. Who has been abandoned by his or her parents, guardian or custodian; or
2. Who is without proper parental care and control, or whose subsistence, education, medical or other care or control necessary for his or her well-being is inadequate because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; or
3. Whose parent(s), guardian or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; or
4. Who has been placed for care or adoption in violation of Navajo law, the federal Indian Child Welfare Act,¹ or other federal law; or
5. Who has been physically, emotionally, psychologically or sexually abused by his or her parent, guardian or custodian; or
6. Who has been sexually exploited by his or her parent(s), guardian or custodian; or
7. Whose parent(s), guardian or custodian has knowingly, intentionally or negligently:
 - a. Placed the child in a situation that may endanger his or her life or health; or
 - b. Tortured, cruelly confined or cruelly punished him or her.

P. "Detention" means the temporary placement of a child alleged to have committed a delinquent act who requires custody in physically restricting facilities for the protection of the child or the Navajo Nation pending court disposition.

Q. "Detention Facility" means a place where a child alleged to have committed a delinquent act maybe detained under the Children's Code pending a court hearing.

R. "Division" means the Navajo Division of Social Services.

S. "Domicile" includes a child who physically resides within "Navajo Indian Country" in the custody of his or her parents or custodians. The domicile of a child is that of the custodial parent. The domicile of a child born out of wedlock is that of the natural mother unless otherwise established in the father. Domicile includes the intent to establish a permanent home or where the parents or custodians consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged act(s).

T. "Judge", when used without further qualification, means the judge of the Family Court.

U. "Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child. A person shall not be a guardian except pursuant to an order of a court.

V. "Law Enforcement Officer" means a peace officer, sheriff, deputy sheriff, municipal police officer, or constable.

W. "Legal Custody" refers to the legal status created by the order of a court or tribunal of competent jurisdiction that vests in a person the right to have physical custody of the child, the right to determine where and with whom he or she shall live, the right and duty to protect, train, and discipline the child and to provide him or her with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the child and subject to any existing parental rights and responsibilities; an individual granted legal custody of a child shall exercise his or her rights and responsibilities as custodian personally unless otherwise authorized by the court or tribunal entering the order.

X. "Parent" includes a natural or adoptive parent but does not include any person whose parental rights have been terminated.

Y. "Protective Services" means a program of identifiable and specialized child welfare which seeks to prevent dependency, abuse and exploitation of children by reaching out with social services to stabilize family life, and help preserve the family unit by focusing on families where unresolved problems have produced visible signs of dependency or abuse and the home situation may present actual and potential hazards to the physical or emotional well-being of children.

Z. "Protective Services Worker" means a person who has been selected by and trained pursuant to the requirements established by the Division and assists in carrying out the provisions of this subchapter.

AA. "Protective Supervision" refers to the legal status created by court order under which the child is permitted to remain in his or her own home, or is placed with a relative or other suitable individual with supervision and assistance is provided by the court, a health and social services agency or some other agency designated by the court.

BB. "Shelter Care" means the care of a child placed in a foster home or institution maintained by individuals or organizations to receive and care for children pending court disposition or transfer to another jurisdiction.

¹ 25 U.S.C. § 1901 et seq.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.5.	C.J.S. Infants §§ 5 to 6, 10, 32, 41, 43 to 44,
Infants ⇨12, 132.	95.
Westlaw Topic Nos. 209, 211.	

§ 1003. Family Courts

The Family Courts of the Navajo Nation shall have original exclusive jurisdiction over all matters arising under the Navajo Nation Children's Code.

History

CAU-46-89, August 16, 1989.

Revision note. The sentences "References in this title to the Children's Court shall be deemed to mean Family Courts. References to Children's Courts or Children's Court judges which describe, define, or mandate procedure, responsibility, qualifications, or which impose stan-

dards or requirements shall be deemed to apply only to matters arising under the Children's Code but shall not be deemed to abolish nor diminish any requirements, standards, or mandates as to matters arising under the Children's Code" have been deleted. All such references have been changed pursuant to CAU-46-89, August 16, 1989.

Library References

Courts ⇨174.	Westlaw Topic Nos. 106, 209, 211.
Indians ⇨6.6(2), 6.7(3).	C.J.S. Infants §§ 42, 53 to 54.
Infants ⇨196.	

Subchapter 3. Establishment of Family Court and Probation Office

§ 1051. The Family Court

A. There is established for each Judicial District of the Navajo Nation a division to be known as the Family Court.

B. The procedures in a Family Court shall be governed by the rules of procedure for the district court which are not in conflict with the Children's Code.

C. The Family Court is authorized to cooperate fully with any federal, state, Navajo Nation, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants in-aid to carry out the purposes of this Code.

D. The Family Court, in the exercise of its duties and in exercise of any duties to be performed by other offices under its supervision or control, shall utilize such social services as may be available through the Navajo Nation, federal, or state government.

E. The Family Court may accept or decline state court transfers of child custody proceedings; however, it shall be the policy of the Navajo Nation that,

absent good cause, child custody proceedings involving Navajo children should be heard in the Navajo Family Court.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Courts ☞174.
Indians ☞32(7).

Westlaw Topic Nos. 106, 209.
C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

United States Code

Indian Child Welfare Act, 25 U.S.C. § 1901 et seq.

§ 1052. Court personnel—Appointment, certification, qualifications, duties

A. Family Court Judge.

1. A Family Court judge shall be appointed in each judicial district in the manner and with the same qualifications as provided for in appointment of judges of the district courts. A judge of the district court may be appointed by the Chief Justice of the Navajo Nation to serve as a Family Court judge as the need requires. A judge so appointed shall serve as the Family Court judge during good behavior. The Navajo Nation Council shall have the power to remove a judge for cause and may appoint additional judges if necessity requires.

2. No Family Court judge shall hear a case which he or she has previously participated in as an advocate or in which he or she has a personal interest. The Code of Judicial Conduct of the American Bar Association shall control where conflict of interest exists. No person shall serve as Family Court judge within six (6) months from the time they have been responsible for juvenile legal matters while employed with the Navajo Nation government.

B. Presenting Officer.

1. The office of the Family Court presenting officer is established in each judicial district. The district prosecutor of the Navajo Nation is ex-officio presenting officer for the judicial district.

2. The Chief Prosecutor of the Navajo Nation, after consulting with and upon recommendation of the Family Court judges, shall certify to the Judiciary Committee annually the number of qualified presenting officers needed to carry out the purposes of this Code. The Chief Prosecutor of the Navajo Nation shall be the appointing authority for all presenting officers.

3. The presenting officer shall represent the people of the Navajo Nation in all proceedings under this Code.

4. The presenting officers' qualifications shall be the same as the qualifications of the district prosecutors of the Navajo Nation.

C. Probation Officer.

1. The Probation Office of the Family Court is hereby established. The number of probation officers shall be determined according to subdivision (2).

2. The probation officers of the Family Court shall carry out the duties and responsibilities set forth in this title. The Chief Justice of the Navajo Nation, after consultation with and upon recommendation of the Family Court judges, shall certify annually to the judiciary Committee of the Navajo Nation Council the number of qualified probation officers for the Family Court needed to carry out the objectives of this title.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Cross References

Family Courts, 7 N.N.C. § 252.
Judiciary Committee of the Navajo Nation Council, 2 N.N.C. § 571 *et seq.*

Library References

Courts ☞55 to 58.	C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Indians ☞32(7).	C.J.S. Judges §§ 15 to 24, 27 to 29, 42, 62, 98
Judges ☞5, 7, 11(3), 39 to 50.	to 102, 107 to 132.
Westlaw Topic Nos. 106, 209, 227.	C.J.S. Stenographers §§ 2 to 21.
C.J.S. Courts §§ 107 to 110.	

§ 1053. Probation office; establishment; reporting

A. The Chief Justice of the Navajo Nation may establish juvenile probation offices at each of the agencies comprising the Navajo Nation. The Chief Justice of the Navajo Nation shall be the appointing authority for all probation office personnel. If probation officers are established by the Chief Justice of the Navajo Nation, he or she shall also establish a classification and compensation plan for all positions in the service in accordance with the personnel rules of the Courts of the Navajo Nation.

B. The Probation Offices shall provide the Chief Justice of the Navajo Nation and the Judiciary Committee of the Navajo Nation Council such information as is requested about children coming into contact with the probation offices or the court under the provisions of the Children's Code.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Courts ☞55.	Westlaw Topic Nos. 106, 209.
Indians ☞6.7.	C.J.S. Courts §§ 107 to 109.

§ 1054. Powers and duties of probation officers

A. Probation officers shall have the power and duty to carry out the objectives and provisions of the Children's Code, and shall:

9 N.N.C. § 1054

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1. Make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable.
2. Make predisposition studies and submit reports and recommendations to the Court.
3. Supervise and assist a child placed on probation or under his or her supervision by court order;
4. Perform any other functions designated by the Court.

B. A probation officer does not have the powers of a law enforcement officer. A probation officer may take into custody and place in detention a child who is under his or her supervision as a delinquent child when the probation officer has reasonable cause to believe that the child has violated the conditions of his or her probation or that the child may leave the jurisdiction of the court. A probation officer taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Children's Code relating to custody and detention procedures and criteria.

C. Probation officers shall not act as prosecutors or presenting officers in presenting juvenile matters to the Family Court.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Courts ☞55. Westlaw Topic Nos. 106, 209.
Indians ☞6.7. C.J.S. Courts §§ 107 to 109.

§ 1055. Jurisdiction of the Family Court

A. The Family Court shall have exclusive original jurisdiction over all proceedings under the Family Court in which a child is alleged to be a child in need of supervision, dependent child, or a delinquent child.

B. The Family Court shall have exclusive original jurisdiction of the following proceedings:

1. For the termination of parental rights;
2. For the adoption of a child;
3. To determine custody of, or to appoint a custodian or guardian for a child;
4. For the commitment of a mentally retarded or mentally ill child;
5. To authorize the marriage of a minor who does not have a parent or guardian, or when a parent or guardian refuses to consent, when the law requires consent to the marriage by a parent or guardian.

C. Jurisdiction obtained by a Family Court over a child is retained until terminated by any of the following situations:

1. The child becomes an adult, except where a child becomes an adult during the pendency of proceedings in the Family Court.

DOMESTIC RELATIONS

9 N.N.C. § 1056

2. The case is transferred by the court to the district court pursuant to § 1114 of this Code.

3. When the Family Court enters an order terminating jurisdiction.

D. Territorial jurisdiction. The Family Court may hear child custody matters involving Navajo children wherever they may arise. The Court may decline jurisdiction in appropriate circumstances where a forum with concurrent jurisdiction is exercising its authority. The Family Court shall have jurisdiction over non-Navajo child custody matters arising within the boundaries of Navajo Indian Country when the parties submit to the jurisdiction of the Court or when the best interests of the child require such an arrangement. The Family Court shall have exclusive jurisdiction over any Navajo child who resides or is domiciled within the borders of Navajo Indian Country, or who is a ward of the Family Court.

History

CF-14-85, February 8, 1985.

Previously codified at 9 N.N.C. § 1053 by
CJN-52-69, June 4, 1969.

Cross References

Family Court, 7 N.N.C. § 252.

Library References

Indians ⇨ 6.6(2), 6.7(3), 6.8, 6.10.

Infants ⇨ 196.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 42, 53 to 54.

Annotations

1. Jurisdiction

“In a dependent child case under the Navajo Nation Children’s Code, if any of the factors (residence, domicile, ward of the court) in 9 N.T.C. § 1055(4), is proven by a preponderance of the evidence, then the Children’s Court has

jurisdiction over the Navajo child, even where the alleged conduct giving rise to the petition occurred outside the exterior boundaries of the Navajo Indian Reservation.” *In the Matter of: A.O.*, 5 Nav. R. 121, 123 (Nav. Sup. Ct. 1987).

§ 1056. Shelter care and detention facilities—Standards—Reports

A. The Office of the Chief Justice of the Navajo Nation, in conjunction with the Division, shall develop a Navajo Nation-wide plan for the establishment of district or agency detention and shelter care facilities, or alternatives thereto, for children alleged to be delinquent and detained under the provisions of the Children’s Code. The plan shall be completed within one (1) year after the effective date of the Children’s Code. The plan shall include provisions for transportation services. The plan shall take into consideration existing detention and shelter care facilities and shall be developed in a manner that makes the best use of these facilities. It shall also provide an accurate projection of costs, alternatives for implementation and a cost effectiveness analysis. The plan shall be reviewed and updated every three (3) years.

B. The Navajo Division of Public Safety, in conjunction with the Division, shall seek funds from state, federal, Tribal and other available sources, to construct and operate detention facilities and shelter care and may contract for

detention and shelter care facilities, and services to be provided to the Family Court by other persons.

C. The Division of Health shall promulgate rules concerning health and safety issues for all detention and shelter care facilities which shall include: standards for the sites, design, construction, equipment, care, program, personnel and clinical services. The Division of Health shall license and approve all detention and shelter care facilities within the Navajo Nation meeting the promulgated standards. The Division may establish by rule appropriate procedures for provisional licensure and the waiving of any standards for facilities in existence at the time of adoption of the standards, except it shall not allow waiver of standards pertaining to adequate health and safety protection of residents and staff of the facility. The Division of Health may request assistance from the Division of Social Services for review of care, personnel and clinical services components. No child shall be detained in a detention or shelter care facility unless it is licensed as approved by the Division. Licensure shall be renewed upon full review every two (2) years.

D. The Division of Health shall inspect all detention and shelter care facilities within the Navajo Nation at least every six (6) months and shall require those reports it deems necessary from detention and shelter care facilities. If, as a result of an inspection, a licensed detention or shelter care facility is determined as failing the required standards, its license shall be subject to revocation after a hearing by the Division of Health, but only if alternative detention or shelter care facilities are available within the Navajo Nation. If no other facilities are available, a schedule of compliance shall be drafted. Failure to comply with the schedule shall result in revocation of the facility's license.

E. Any person aggrieved by an administrative decision of the Division of Health rendered under the provisions of this section may petition for the review of the administrative decision by filing a petition requesting judicial review in the Family Court for the district in which the detention or shelter care facility is located.

The District Court's review shall be of the written transcript of the administrative hearing and the decision of the Division. The District Court shall uphold the decision of the Division of Health unless it finds that decision to be:

1. Illegal or in violation of the Indian Civil Rights Act¹ or the Navajo Nation Bill of Rights;
 2. The result of arbitrary or capricious action by the Division of Health;
- or
3. Not supported by substantial evidence; in which case it shall reverse the decision of the Division of Health and remand the manner for appropriate action or further review by the Division of Health.

¹ 25 U.S.C. 1301 et seq.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Asylums ⇨3.	C.J.S. Adoption of Persons §§ 10 to 12.
Indians ⇨6.7(1).	C.J.S. Asylums and Institutional Care Facilities §§ 5 to 8.
Infants ⇨17, 226, 271.	C.J.S. Infants §§ 8 to 9, 271.
Westlaw Topic Nos. 43, 209, 211.	

Subchapter 5. Procedure in the Family Court

§ 1101. Commencement of proceedings by petition

A. Proceedings in the Family Court shall be initiated by the filing of a petition signed by the presenting officer or other member of the Navajo Nation Bar Association.

B. Any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or a law enforcement official upon information and belief, may cause a petition to be initiated by the presenting officer.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.6(3), 6.7(3).	Westlaw Topic Nos. 209, 211.
Infants ⇨197.	C.J.S. Infants § 55.

§ 1102. Venue

A. The venue for Children's Code proceedings shall be determined by the residence or domicile of the child, or the judicial district where the alleged delinquency, dependency or neglect is committed. Venue exists concurrently in the Window Rock District for Navajo children who reside outside Navajo Indian Country.

B. Where the residence of the child and the situs of the alleged delinquency, dependency, or neglect are in different judicial districts, initiating proceedings in one (1) judicial district shall bar the institution of proceedings in the other judicial districts.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.
Revision note. Slightly reworded.

Library References

Indians ⇨6.6(3), 6.7(3).	Westlaw Topic Nos. 209, 211.
Infants ⇨196.	C.J.S. Infants §§ 42, 53 to 54.

§ 1103. Preliminary inquiry and referral

A. Allegations that a child is a child offender or a child in need of supervision shall be referred to the presenting officer, who shall conduct a preliminary investigation to determine the best interest of the child and the Navajo Nation with regard to any action to be taken. Petitions alleging neglect or abuse maybe referred to a probation officer who shall refer them to the appropriate agency for preliminary inquiry to determine the best interest of the child with regard to any action to be taken.

B. During the preliminary inquiry on the petition, the matter may be referred to another appropriate agency and conferences may be conducted for the purpose of affecting adjustments that will obviate the necessity for filing a petition. At the commencement of the preliminary inquiry, the parties shall be advised of their basic rights under Subsections (A)-(E) of this section and no person maybe compelled to appear at any conferences, to produce any papers, or to visit any place. Voluntary agreements for the disposition of a child custody matter may be arranged with the agreement of the parties. A copy of such agreement shall be filed with the Family Court.

C. After completion of the preliminary inquiry on a petition, the presenting officer shall either authorize the filing of a petition or refuse to authorize the filing of a petition.

D. When a child is in detention or custody, and the filing of a petition is not authorized by the presenting officer, the petition shall be dismissed and the child shall be released immediately.

E. On motion by or on behalf of a child, a petition alleging delinquency or need of supervision shall be dismissed with prejudice if it was not filed within thirty (30) days from the date the petition is referred to the presenting officer.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇌ 6.6(3), 6.7(3).
 Infants ⇌ 192.

Westlaw Topic Nos. 209, 211.
 C.J.S. Infants §§ 53, 55.

§ 1104. Petition—Form and content

A petition initiating any proceeding under the Children's Code shall be captioned "In the Children's Court of the Navajo District Court _____ (judicial district)", and entitled, "In the Matter of _____ a child, census number: _____ DOB: _____ and shall set forth with specificity:

A. The facts necessary to invoke the jurisdiction of the Family Court.

B. A statement that the child is in need of supervision, care or rehabilitation.

C. If the child is alleged to be a juvenile offender, a citation to the appropriate section of the Criminal Code or Motor Vehicle Code which the child is alleged to have violated.

DOMESTIC RELATIONS

9 N.N.C. § 1105

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

E. The name, birth date, residence and address of the child.

F. The names and residence addresses of parents, guardians, custodians and spouse, if any, of the child; and if none of the parents, guardians, custodians or spouse, if any, reside or can be found within the Navajo Nation, or if their residence or addresses are unknown, the name of any known adult relative residing within the Navajo Nation, or if none, the known adult relative living nearest to the court.

G. The name of the officer presenting the petition and the date and time presented.

H. Whether the child is in custody, and, if so, the place of detention and the time he was taken into custody.

I. If any matters required to be set forth by this section are not known, a statement that they are not known should be made.

History

CF-14-85, February 8, 1985.

Revision note. Slightly reworded.

Library References

Indians ⇄6.6(3), 6.7(3).

Westlaw Topic Nos. 209, 211.

Infants ⇄197.

C.J.S. Infants § 55.

§ 1105. Filing and dismissal of petition

A. The petition shall be filed with the clerk of the Family Court.

B. A petition alleging that a child is in need of supervision or is a child offender shall be dismissed with prejudice if a preliminary hearing is not held within:

1. Ten (10) days from the date of the petition is filed when a child is in custody.

2. Twenty (20) days from the date of the petition is filed when a child is not in custody or is released.

3. Unless the hearing is continued upon motion of the presenting officer by reason of the unavailability of material evidence and/or witnesses. Such motion must include information regarding the nature of the material evidence presently unavailable and/or the names and addresses of the unavailable witnesses. A continuance not to exceed ten (10) days, if a child is in custody, or twenty (20) days, if said child is not in custody, will be granted only upon a showing by the presenting officer that he has exercised due diligence in his attempts to secure the evidence and/or attendance of witnesses. If a proper showing of diligence is not made, the petition must be dismissed with prejudice.

9 N.N.C. § 1105

DOMESTIC RELATIONS

C. The petition shall not be dismissed for violation of this section if the child is participating in a court ordered diversion.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞ 6.6(3), 6.7(3).
Infants ☞ 197, 202.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 42, 53 to 55.

Annotations

1. Time of hearing

“We hold that, in accordance with the Navajo Children’s Code, a preliminary hearing must be held in a juvenile proceeding of delinquency

within 10 days after a petition is filed if the child is in detention.” *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

§ 1106. Summons; service

A. After a petition is filed, the court shall set a time for a hearing and direct the issuance of summons by the court clerk.

B. A summons shall be issued to a child alleged to be a delinquent child or a child in need of supervision if the child is fourteen (14) years of age or older and to the child’s parents or guardian and to such other persons as the court considers proper or necessary parties.

C. The form of service shall conform to the requirements of the Rules of Civil Procedure of the Navajo Nation.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞ 6.6(3), 6.7(3).
Infants ☞ 198.
Westlaw Topic Nos. 209, 211.

§ 1107. Basic rights

A. A child alleged to be a delinquent child or a child in need of supervision shall, from the time of being taken into custody, be accorded and advised of the privilege against self-incrimination and from the time of detention in a detention facility shall not be questioned except to determine identity and to determine the name of the child’s parents or legal custodian.

B. In a proceeding on a petition alleging delinquency or in need of supervision:

1. An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.
2. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.
3. An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.

C. A child in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the court. If an order of the court is given, the fingerprints or photographs, shall be used only as specified by the court. Any person who willfully violates the provisions of this subsection is guilty of a misdemeanor.

D. In all proceedings on a petition alleging delinquency or need of supervision, and in those instances specified under other provisions of the Children's Code, the Court shall make a preliminary finding on the issue of whether the child's interests are represented by the parties to the proceeding. If the Court determines that the child's interests are not adequately represented by the parties to the proceeding, the Court shall appoint a guardian ad litem to represent the interests of the child.

E. In proceedings on a petition alleging dependency or abuse, the parents, guardian and custodian of the child shall be informed of available legal services and that they have the right to be represented by counsel.

F. The Court, at any stage of a proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if his interests conflict with those of his parent, guardian or custodian. A party to the proceedings or an employee or representative of a party shall not be appointed as guardian ad litem.

G. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

H. Criminal proceedings, actions and other proceedings in the District Court based upon an offense alleged in a petition under the Children's Code, or an offense based upon the conduct alleged in the petition, are barred if the Family Court has initiated separate proceedings or has accepted a child's admission of the allegations of a petition. A proceeding may be subsequently initiated in District Court if the Family Court does not dispose of all relevant issues.

I. In a proceeding on a petition, a party is entitled to the opportunity to introduce evidence and be heard, and to confront and cross-examine witnesses testifying against him, and to admit or deny the allegations in a petition. Provided, in cases transferred to Navajo Nation Courts pursuant to the federal Indian Child Welfare Act¹ where the Family Court petition would be subject to dismissal due to the unavailability of witnesses or the unwillingness of state personnel to testify in Navajo Nation Courts, the Family Court may accept as evidence reports and other public records generated beyond Navajo Indian Country where the best interests of the child require.

J. Where appointment of counsel for the child is made, the Court shall appoint counsel from the members of the Navajo Nation Bar Association and

those appointed shall serve the child without compensation, unless compensation is authorized by the Court.

¹ 25 U.S.C. § 1901 et seq.

History

CF-14-85, February 8, 1985.

Revision note. Slightly reworded.

Library References

Indians ☞6.7.

Infants ☞68.5, 174, 192, 205, 207.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 43 to 45, 51 to 53, 55, 62, 64 to 67.

Annotations

1. Duty to inform

“ . . . [T]he person taking the child into custody for an alleged delinquent act must inform him or her or his or her Miranda rights. [. . .] All during the detention procedure, the child shall not be questioned except to determine the child’s identity and to determine the name of the child’s parents or legal guardian.” *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

2. Right to counsel

“If the child or the child’s parents or guardian cannot afford an attorney, the court will appoint one to represent the child.” *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

“We further hold that in a proceeding alleging the delinquency of a child under the Navajo Children’s Code, the child has the right to be

represented by an attorney.” *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

3. Guardian ad litem

“Just like many jurisdictions, the role and duties of our guardians ad litem are undefined. We want a guardian who will do a thorough review of the case, including witness interviews and a complete examination of all documentation on the child, and then give an independent, accurate and reliable report to the court as a commentator, but not an advocate. We are leery of situations where a court gives too much weight to a guardian’s report, without the court making its own independent judgment of the child’s best interests.” *In the Matter of the Custody of T.M.; Davis v. Means*, No. SC-CV-58-98, slip op. at 9 (Nav. Sup. Ct. March 5, 2001).

§ 1108. Taking into temporary custody

A. A child may be taken into temporary custody:

1. Pursuant to an order of the Court issued because a parent, guardian or custodian failed when requested to bring the child before the Court after having promised to do so at the time the child was released from custody.

2. By a law enforcement officer or protective services worker when he has reasonable grounds to believe that the child has run away from his parents, guardian or custodian.

3. By law enforcement officer or protective services worker if there exist reasonable grounds to believe that the child requires immediate care or medical attention or has been abandoned or is in immediate danger from his/her surroundings and removal from those surroundings is necessary.

4. Pursuant to the laws of arrest, without a warrant, when there exists probable cause to believe that the child committed a delinquent act.

B. Any law enforcement officer or protective services worker having a child in temporary custody for reasons other than the commission of a delinquent act may place the child in a shelter care facility.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇐6.8.

Westlaw Topic Nos. 209, 211.

Infants ⇐192.

C.J.S. Infants §§ 53, 55.

§ 1109. Release or delivery from temporary custody

A. A person taking a child into temporary custody shall, with all reasonable speed:

1. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

2. In the case of an alleged delinquent or child in need of supervision, release the child to the child's parent, guardian or custodian upon a written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian fails when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court; or

3. In the case of the alleged delinquent or child in need of supervision, deliver the child to the probation office or to a place of detention designated by the court.

4. In the case of an alleged neglected or abused child, deliver the child to the Division or to an appropriate shelter care facility; or for an alleged delinquent, child in need of supervision or neglected or abused child, to a medical facility if the child is believed to be suffering from a serious physical or mental condition or illness which requires either prompt treatment or prompt diagnosis.

B. When an alleged delinquent or child in need of supervision is delivered to the probation office or to a place of detention designated by the Court, a probation officer, prior to placing the child in detention, shall review the need for detention and shall release the child from custody unless detention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court. If detention appears inappropriate, the probation officer shall request the presenting officer to petition the Court for a review of its decision.

C. When an alleged neglected or abused child is delivered to the Division, a Division caseworker, prior to placing the child in custody, shall review the need for doing so and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code, or has been ordered by the Court.

D. When a child is delivered to an appropriate shelter care facility, a Division caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless retention is appropriate under the criteria established by the Children's Code or has been ordered by the Court.

E. If a child is taken into custody and is not released to the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than seventy-two (72) hours, to the child's parent, guardian or custodian and to the Court together with a statement providing the reason for taking the child into custody.

F. In all cases when a child is taken into custody, he shall be released to his parent, guardian or custodian in accordance with the conditions and time limits set forth in the Rules of Procedure for the Family Court.

History

CF-14-85, February 8, 1985.

Revision note. Slightly reworded for purposes of statutory form; subsection added for clarity.

Library References

Indians ⇌ 6.8.

Infants ⇌ 192.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 53, 55.

Annotations

1. Release of juvenile

"Once the child is delivered to the probation office or to a place of detention designated by the court, the second step is that the probation officer must review the need for detention before the child is actually placed in detention. [. . .] If the probation officer views the detention as unnecessary under the criteria set forth in 9 N.T.C. § 1110 91985 Cum. Supp., then the child shall be released from custody." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

"We hold that according to 9 N.T.C. § 1109(a)(2), the police should have first attempted to release the appellant to his parent. If the appellant's parent was not available, the

police should have followed 9 N.T.C. § 1109(a)(3) and delivered the appellant 'to the probation office or to a place of detention designated by the court.'" *In the Matter of A.W.*, 6 Nav. R. 38, 40 (Nav. Sup. Ct. 1988).

2. Notice of detention

"Third, the person taking the child into custody must give written notice to the child's parent, guardian or custodian, and to the court 'as soon as possible, and in no case later than seventy-two (72) hours,' after the child is taken into custody. [. . .] This notice shall also contain a statement of the reasons for taking the child into custody." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).

§ 1110. Criteria for detention of children

A. Unless ordered by the Court pursuant to the Children's Code, a child taken into custody shall not be placed in detention prior to the Court's disposition unless:

1. Probable cause exists to believe that if not detained, the child will commit injury to persons or property of others, or cause injury to himself or be subject to injury by others; or
2. Probable cause exists to believe that the child has no parent, guardian, custodian or other person able to provide adequate supervision and care for the child; or
3. Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the Court or its officers.

B. This subchapter shall govern the decision of all persons responsible for determining whether detention is appropriate prior to the Court's disposition.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇐6.7.
 Infants ⇐192.

Westlaw Topic Nos. 209, 211.
 C.J.S. Infants §§ 53, 55.

§ 1111. Place of detention or shelter care

A. A child alleged to be a delinquent child maybe detained pending a court hearing in any of the following places:

1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or
2. A facility operated by a licensed child welfare services agency; or
3. A detention facility approved by the Family Court for children alleged to be delinquent children; or
4. In any other suitable place designated by the Family Court and certified under § 1056, and which meets the standards for detention facilities under the Children's Code.

B. A child alleged to be a child in need of supervision or a dependent child shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent, but shall be detained in the following shelter care facilities:

1. A licensed foster home, or a home otherwise authorized under the law and certified to provide foster or group care; or
2. A facility operated by a licensed child welfare services agency; or
3. Any other suitable place, other than a facility designated for care and rehabilitation of delinquent children, designated by the Family Court and certified by the appropriate authority.

C. The official in charge of a jail or other facility for the incarceration of adult offenders or persons charged with crimes and the arresting law enforcement officer shall inform the probation officers within four (4) working hours and the Court within four (4) working hours or forty-eight (48) consecutive hours if on a weekend, whichever is the shorter time, when an individual, who is or appears to be under the age of eighteen (18) years, is received at the facility, and upon request shall deliver him to the court or the probation officer or transfer him to a facility designated by the Court.

History

CF-14-85, February 8, 1985.

Revision note. Previous reference to "§ 1102" in subsection (A)(4) of this section has been changed to "§ 1056".

Library References

Indians ⇐6.7.
 Infants ⇐192.

Westlaw Topic Nos. 209, 211.
 C.J.S. Infants §§ 53, 55.

§ 1112. Place of temporary custody

A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be delinquent children, but may be detained in the following community-based shelter care facilities:

- A. A licensed foster home or a home otherwise authorized under the law to provide foster care, group care, protective residence; or
- B. A facility operated by a licensed child welfare services agency; or
- C. With a relative of the child who is willing to guarantee to the Court that the child will not be returned to the alleged abusive or neglectful parent, guardian or custodian without the prior approval of the Court; or
- D. Any other suitable place, other than a facility for the care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined and which meets the standards for shelter care facilities established by the Division.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇌6.8.
Infants ⇌192.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 53, 55.

§ 1113. Detention hearing required for detained child, court determination and disposition

A. Where a child who has been taken into custody is not released but is detained:

- 1. A petition shall be filed by the presenting officer with the Court within forty-eight (48) hours excluding Saturdays, Sundays and legal holidays, and, if not filed within the stated time, the child shall be released.
- 2. A detention hearing shall be held within twenty-four (24) hours, excluding Saturdays, Sundays and legal holidays of the filing of a petition to determine whether continued detention is required pursuant to criteria established by the Children's Code.

B. The judge may appoint one or more persons to serve as referees on a full or part-time basis for the purpose of holding detention hearings. The Chief Justice of the Navajo Nation shall approve all contracts with the referees and shall fix their hourly compensation pursuant to the Personnel Policies and Procedures of the Navajo Nation.

C. Written notice of the detention hearing stating the time, place and purposes of the hearing shall be given by the person designated by the Court to the child's parent(s), guardian or custodian, if they can be found, and to the child if the petition alleges that the child is delinquent or in need of supervision.

D. At the commencement of the detention hearing, the judge or referee shall advise the parties of their basic rights provided in the Children's Code, and shall appoint counsel, guardians and custodians, if appropriate.

E. If the judge or referee finds the child's detention is appropriate under the criteria established by the Children's Code, he shall order the detention in an appropriate facility in accordance with the Children's Code.

F. If the judge or referee finds that detention of the child is not appropriate under the criteria established by the Children's Code, he shall order the release of the child, but, in so doing, may order one or more of the following conditions:

1. The child be placed in the custody of a parent, guardian or custodian or relative, or under the supervision of an agency agreeing to supervise the child.
2. Place restrictions on the child's travel, association with other persons or place of abode during the time of release.
3. Impose any other condition deemed reasonably necessary and consistent with the Children's Code, including a condition requiring that the child return to custody if required.

G. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

H. At the detention hearing all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or referee even though it would be otherwise inadmissible in a hearing on the petition.

I. If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or referee shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and an affidavit stating the relevant facts.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇨6.7(3).
Infants ⇨192, 203.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 51 to 53, 55, 62, 64 to 67.

Annotations

1. Rights of juvenile

"Fourth, the presenting officer must file a petition within forty-eight (48) hours from the time the child is taken into custody. [...] Fifth, the court shall hold a detention hearing within twenty-four (24) hours of the filing of the petition to determine whether continued detention is required. [...] The court must give

written notification of the detention hearing to the child's parents, legal guardian or custodian. [...] If the petition alleges that the child is a delinquent child or in need of supervision, the court must also give notice to the child himself. [...] And last, the judge must advise all parties of their basic rights provided for in the Children's Code and shall appoint counsel,

9 N.N.C. § 1113

Note 1

guardians and custodians if appropriate.” *In the Matter of A.W.*, 6 Nav. R. 38, 41–42 (Nav. Sup. Ct. 1988).

2. Hearing required

“ . . . [I]t is not within the court’s discretion to hold a detention hearing, but rather that ‘[a] detention hearing shall be held. . . .’ The court’s failure to hold a detention hearing, along with the other violations, constitutes a clear denial of the appellant’s basic right to proper adjudication as set forth in the Navajo Children’s Code.” *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

3. Right to counsel

“We further hold that in a proceeding alleging the delinquency of a child under the Navajo Children’s Code, the child has the right to be

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represented by an attorney.” *In the Matter of A.W.*, 6 Nav. R. 38, 42 (Nav. Sup. Ct. 1988).

4. Due process

“We hold that due process in juvenile proceedings must be followed as in adult criminal and civil proceedings. However, in juvenile proceedings the Navajo courts must respect the customary role of the parents in defending their child’s rights. Therefore, the Navajo Children’s Courts must afford notice and an opportunity to present and defend their child’s position to the child’s parent or guardian. [. . .] As such, the parent or guardian must be available to represent the child or to assist the child’s counsel in a delinquency proceeding.” *In the Matter of A.W.*, 6 Nav. R. 38, 43 (Nav. Sup. Ct. 1988).

§ 1114. Transfer to District Court–Hearing

A. After a petition has been filed alleging a delinquent act, the court may, before a hearing on the merits, transfer the matter for prosecution in the District Court, if:

1. The child was sixteen (16) years of age or older at the time the conduct alleged to be a delinquent act was committed and the alleged delinquent act would be a crime if committed by an adult; and

2. A hearing on whether the transfer should be made is held in conformity with the rules for a hearing on a petition alleging a delinquent act, except the hearing will be to the Court without a jury; and

3. Written notice of the time, place and purpose of the hearing is given to the child, parents, guardian or custodian at least three (3) days before the hearing; and

4. The Court at the hearing finds there are reasonable grounds to believe that:

a. The child committed the delinquent act alleged; and

b. The child is not amenable to treatment or rehabilitation as a child through available facilities; and

c. The child is not committable to an institution for the mentally retarded or mentally ill; and

d. The interests of the Navajo Nation require that the child be placed under legal restraint or detention.

B. Prior to the hearing, the Juvenile Representative shall prepare for the Court and make available copies to the child, his counsel, or his parents, guardian or custodian, a predispositional report relevant to the issues described in subparagraphs (b), (c), and (d) of paragraph (A) (4) of this section and the court shall hear evidence on subsection (A) and make specific findings in regards thereto.

C. A written transfer order containing specific findings and reasons for the order terminates the jurisdiction of the Family Court over the child with respect to the delinquent acts alleged in the petition. No child shall be prosecuted in

the District Court for a criminal offense originally subject to the jurisdiction of the Family Court unless the case has been transferred as provided in this subsection.

History

CF-14-85, February 8, 1985.

Officer" is the term used at section 1052(B)

Note. Note that subsection (B) refers to a herein.
"Juvenile Representative" although "Presenting

Library References

Indians ☞6.7(3).

Westlaw Topic Nos. 209, 211.

Infants ☞68.7.

C.J.S. Infants §§ 45 to 48, 203.

§ 1115. Adjudicatory hearings; findings; dismissal; disposition

A. Hearing on petitions shall be conducted by the Court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether or not the child committed the alleged delinquent act(s). If no jury is demanded, the hearing will be by the Court without a jury. All hearings on petitions other than those alleging delinquency will be without a jury. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. The Court shall advise persons before the court of their basic rights under the Children's Code and other laws at each separate appearance.

B. All hearings on petitions alleging delinquency of a child shall be open to the general public except after a finding of exceptional circumstances the Court, in its discretion, deems it appropriate to conduct a closed delinquency hearing.

1. All dependency and child-in-need-of-supervision hearings shall be closed to the general public. Only the parties, their counsel, witnesses and other persons requested by a party. and approved by the Court may be present at a closed hearing.

2. Persons the Court finds to have a proper interest in the case or in the work of the Court, including members of the Bar, may be admitted by the Court to closed hearings on the condition that they respect the confidentiality of the proceeding. Accredited representatives of the news media maybe allowed to attend closed hearings at the discretion of the Family Court judge subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent or guardian of that child, and subject to such regulations as the Court deems necessary for the maintenance of order, decorum and for the furtherance of the purposes of the Children's Code.

3. If the Court finds that it is in the best interest of the child, the child may be temporarily excluded from a neglect or abuse hearing and during the

taking of evidence on the issues of need for treatment and rehabilitation in delinquency and need-of-supervision hearings. A child may be temporarily excluded by the Court during a hearing on dispositional issues under the same method.

C. Those persons or parties who intentionally divulge information in violation of Subsection (B) of this section shall be guilty of an offense. Persons found guilty of violating the provisions of this section shall be subject to imprisonment for a term not to exceed ninety (90) days and be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00).

D. The Court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the Court shall proceed to hear evidence on the petition. The Court, after hearing all of the evidence bearing on the allegations of dependency, delinquency or need of supervision shall make and record its findings on whether or not the child is a dependent child or whether or not the acts subscribed to the child were committed by the child. If the Court finds that the allegations on the petition have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings, unless the best interests of the child require otherwise.

E. If the Court finds, on the basis of valid admission to the allegations of the petition, or on the basis of proof beyond a reasonable doubt based upon competent, material and relevant evidence, that the child committed the acts by reasons of which he is alleged to be delinquent or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence on whether or not the child is in need of care or rehabilitation and file its findings thereon. In the absence of evidence to the contrary, evidence, of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the Court finds that a child alleged to be delinquent or in need of supervision is not in need of care or rehabilitation, it shall dismiss the petition and order the child released from any detention or legal custody imposed in the proceedings, or make such other order as it deems proper.

F. If the Court finds on the basis of a valid admission of the allegations of the petition, or on the basis of clear and convincing evidence that the child is dependent or is in need of care or rehabilitation as a delinquent child or child in need of supervision, the Court may proceed immediately or at a continued hearing to dispose of the case.

G. In the dispositional hearing, the Family Court may consider all relevant and material evidence helpful in determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent.

H. By motion of a party or by its own authority, the Court may continue the hearing on the petition for a reasonable time to receive reports and other evidence bearing on the need for care or rehabilitation or in connection with disposition. The Court shall continue the hearing pending the receipt of the

predisposition study and report if that document has not been prepared and received. During any continuance under this subsection, the Court shall make an appropriate order for detention or legal custody.

I. Evaluations, assessments, dispositional reports and other material to be considered by the Court in a juvenile hearing shall be submitted to the Court no later than five (5) days before the scheduled hearing date. An affidavit including reasons why a report has not been completed shall be filed with the Court no later than five (5) days before the scheduled hearing date, if the report will not be submitted before the deadline. The Court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been timely submitted.

History

CF-14-85, February 8, 1985.

Revision note. Slightly reworded.

Library References

Indians ⇐6.7.

Westlaw Topic Nos. 209, 211.

Infants ⇐176, 178, 203, 204, 209, 222, 223.

C.J.S. Infants §§ 51 to 52, 62, 64 to 67.

§ 1116. Predisposition studies; reports and examination

A. After a petition has been filed and the allegations of the petition have been established by admission or after a hearing, the Court shall direct that a predisposition study and report be made in writing by the Division caseworker or other appropriate officer designated by the Court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case.

B. Where there is indication that the child may be mentally ill or mentally retarded, the Court, on motion by the presenting officer or that of other counsel may order the child to be examined by a psychiatrist or psychologist prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as part of the predisposition study and report, shall be conducted on an out-patient basis unless the Court finds that placement in a hospital or other appropriate facility is necessary.

C. The Court, after hearing, may order examination by a physician, psychiatrist or psychologist, of a parent whose ability to care for or supervise a child is an issue before the Court. The parent or custodian may refuse to be examined, but such refusal may be considered by the judge or jury.

D. The Court may order that a child adjudicated as a delinquent child or a child in need of supervision be transferred to an appropriate facility for a period of not more than thirty (30) days for purposes of diagnosis with direction that the Court be given a written report at the end of that period indicating the disposition which appears most suitable.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇨6.7.

Infants ⇨208.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 57 to 61, 63, 68 to 85.

§ 1117. Dependency predisposition studies, reports and examinations

A. Prior to holding a dispositional hearing, the Court shall direct that a predisposition study and report be made in writing to the Court by the Division.

B. The predisposition study required under Subsection A shall contain the following information:

1. A statement of the specific harm to the child that intervention is designed to alleviate;

2. If removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents;

3. A treatment plan consisting of:

a. A description of the specific progress needed to be made by both the parent and the child in order to prevent further harm to the child, a specific plan setting out the steps to be taken by the parents and caseworker and a timetable for their completion, the reasons why such a program is likely to be-useful, the availability of any proposed services and the Division's overall plan for insuring that the services will be delivered;

b. If removal from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent and the child in the home and the in-home treatment programs which have been considered and rejected;

c. A description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent occurs or continues; and

d. A description of the behavior that will be expected before a determination is made that supervision of the family or placement is no longer necessary.

C. A copy of the predisposition report shall be provided by the Division to counsel for all parties at least five (5) days before the dispositional hearing.

History

CF-14-85, February 8, 1985.

Revision note. Slightly reworded.**Library References**

Indians ⇨6.6.

Infants ⇨208.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 57 to 61, 63, 68 to 85.

§ 1118. Social and legal records—Inspection

A. Social, medical, psychiatric and psychological records of the Court concerning a child and produced or recorded by requirement or authority

contained in the Children's Code, including reports of preliminary inquiries, predisposition studies and supervision records of probationers shall be open to inspection only by the following:

1. The judge, Division caseworkers, probation officers and Court personnel;
2. Representatives of any agency providing supervision and having legal custody of the child;
3. Representatives of the Division;
4. Any other person, by order of the Court, having a legitimate interest in the particular case or the work of the Court.

B. All or any part of records or information secured from records listed in subsection (A), when presented to the Court in a proceeding under the Children's Code, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the child's best interests.

C. Except as permitted by this section, whoever discloses, makes use or knowingly permits the use of information concerning a child before the Court, directly or indirectly derived from the records listed in subsection (A), or acquired in the course of official duties, shall be subject to ninety (90) days in jail or a two hundred fifty dollars (\$250.00) fine, or both.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇨ 6.6(3), 6.7(3).
 Infants ⇨ 133.

Westlaw Topic Nos. 209, 211.
 C.J.S. Infants §§ 57, 69 to 85.

§ 1119. Sealing of records

A. On motion by or on behalf of an individual who has been the subject of a petition filed under the Children's Code or on the Court's own motion, the Court may vacate its findings, orders and judgments on the petition and order the legal and social files and records of the Court, probation services and of any other agency in the case sealed. If requested in the motion, the Court shall also order law enforcement files and records sealed. An order sealing records and files may be entered if the Court finds that:

1. Two (2) years have lapsed since the final release of the individual from legal custody and supervision, or two (2) years have lapsed since the entry of any other judgment not involving legal custody or supervision.
2. The individual has not, within the two (2) years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor or found delinquent or in need of supervision by a court, and no proceeding is pending seeking such a conviction or finding.

B. Reasonable notice of the motion shall be given to:

1. The Family Court presenting officer;

2. The authority granting the release, if the final release was from a parole or probation agency,

3. The law enforcement officer, department and central records depository having custody of the law enforcement files and records if such records are included in the motion;

4. Any other agency having custody of records or files subject to the sealing order.

C. Upon entry of the sealing order, the proceedings in the case shall be expunged and all index references shall be deleted; the Court, law enforcement officers and departments and agencies shall reply, and the individual may reply to an inquiry that records with respect to such person have been expunged. Copies of the sealing order shall be sent to each agency or official named herein.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the Court only:

1. Upon motion by the individual who is the subject of the records and only to those persons named in the motion;

2. In its discretion, in an individual case, to any clinic, hospital or agency that has the individual under care or treatment, or to persons engaged in fact-finding or research in work related to the child's welfare.

E. Any finding or allegation of delinquency or need of supervision subsequent to the sealing order may by Court order be used as a basis to set aside the sealing order.

F. A person who has been the subject of a petition filed under the Children's Code shall be notified of the right to have records sealed by the Court at the end of the dispositional stage.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇨6.6(3), 6.7(3).
Infants ⇨133.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 57, 69 to 85.

§ 1120. Damages to or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution

A. Any person may recover damages, not to exceed five thousand dollars (\$5,000), in a civil action in a court or tribunal of competent jurisdiction, from the parent, guardian or custodian of a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action and that the parent, guardian or custodian failed to provide adequate supervision of the child.

B. Recovery of damages under this section is limited to actual damages proved in the action, taxable Court costs, and, in the discretion of the Court, reasonable attorney's fees to be fixed by the Court or tribunal.

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9 N.N.C. § 1122

C. Nothing contained in this section limits the discretion of the Court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Children’s Code.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇄32(7).
Parent and Child ⇄13.5.
Westlaw Topic Nos. 209, 285.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
C.J.S. Parent and Child §§ 191, 309 to 315.

§ 1121. Motor Vehicle Code violations

A. The District Court of the Navajo Nation shall have original exclusive jurisdiction of the following Motor Vehicle Code violations involving a child when the person alleged to have committed the violation is a child who has reached his fifteenth (15) birth date:

1. Driving while under the influence of intoxicating liquor or drugs;
2. Failure to stop or leaving the scene in the event of an accident causing death or personal injuries;
3. Reckless driving.

B. If a child is charged with any of the violations specified in Subsection (A) of this section, the child maybe transferred to the Family Court at the discretion of the District judge. Upon transfer, the child shall be proceeded against in the same manner as a child alleged to be a delinquent child.

C. Any Motor Vehicle Code violation by a child, including those specified in Subsection (A) of this section, shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code, and shall not be subject to confidentiality provisions of the Children’s Code.

D. No court may incarcerate a child who has been found guilty of any Motor Vehicle Code violation without first securing the approval of the Family Court.

History

CF-14-85, February 8, 1985.

Cross References

Navajo Nation Motor Vehicle Code, 14 N.N.C. § 100 et seq.

Library References

Indians ⇄6.7.
Infants ⇄68.5, 196.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 42 to 45, 53 to 54.

§ 1122. Court costs and expenses

A. The following expenses shall be a charge upon the funds of the Court upon their certification by the Court:

1. The expenses of service of summons, notices, subpoenas and other like expenses incurred in any proceeding under the Children’s Code;

2. Reasonable compensation of a guardian ad litem appointed by the Court.

B. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the Court finds that they are financially able to pay all or part of the costs and expenses in Subsection (A) of this section, the court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the Court for remittance to those to whom compensation is due, or if costs and expenses have been paid by the Court, to the Court.

C. Whenever legal custody of a dependent child or a child in need of supervision is vested in someone other than the child's parents, the Court, after notice to the parents or other persons legally obligated to support the child and after a hearing and a finding that they are financially able to afford all or part of the costs and expenses of the support and treatment, may order such parents or other legally obligated persons to pay to the court for remittance to the custodian in the matter a reasonable sum that will cover all or part of the expenses of the support and treatment of the child.

D. If the parent or other legally obligated person willfully fails or refuses to pay the sum ordered, the Court may proceed with contempt charges. An order for payment maybe filed, and, if filed, shall have the effect of a civil judgment.

History

CF-14-85, February 8, 1985.

Library References

Indians ⇌ 6.6(3), 6.7(3).
Infants ⇌ 212.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 57, 69 to 85.

§ 1123. Duty to report child abuse; penalty for failure to report

A. Any licensed physician, resident or intern examining, attending or treating a child, any law enforcement official, registered nurse, visiting nurse, school teacher or social worker acting in his or her official capacity, or any other person having reason to believe that serious injury or injuries have been inflicted upon the child as a result of abuse, neglect or starvation, shall report the matter immediately to:

1. The appropriate Navajo Nation, state or federal health and social service department in the agency where the child resides; or
2. The presenting officer of the judicial District where the child resides.

B. An oral report shall be made promptly by the recipient of the report under paragraph (1) or (2) of Subsection (A) of this Section to the presenting officer by telephone or in person and a written report shall be submitted to the presenting officer as soon thereafter as possible. The written report shall contain the names and addresses of the child and his or her parents, guardian or custodian, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries and other information that might be helpful in establishing the cause of injuries and the identity of the person or

persons responsible for the injuries, and where the child has been referred or can be found.

C. Any person failing, neglecting or refusing to report a suspected case of child abuse, neglect or starvation shall be guilty of a misdemeanor and shall be punished by fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6.
 Infants ☞13.5.
 Westlaw Topic Nos. 209, 211.

§ 1124. Admissibility of report in evidence; immunity of person reporting

A. In any proceeding alleging child abuse or neglect under the Children's Code resulting from a report submitted under § 1123, or in any proceeding in which the report or any part of its contents is sought to be introduced in evidence, the report or its contents or any facts related thereto or to the condition of the child who is the subject of the report shall not be subject to a physician-patient privilege or similar privilege or rule against disclosure.

B. Any person reporting an instance of suspected child abuse, neglect or starvation, or participating in a judicial proceeding brought as a result of a report submitted under § 1123 shall be presumed to be acting in good faith and shall be immune from civil or criminal liability that might otherwise be incurred or imposed by law, unless a finding is made that the person acted in bad faith or with malicious purpose.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6. Westlaw Topic Nos. 209, 211.
 Infants ☞13.5(2), 173.1, 207. C.J.S. Infants §§ 51 to 52, 62, 64 to 67.

Subchapter 7. Disposition

§ 1151. Disposition of a dependent child

A. In the disposition phase of every case under this Code, the Court shall give priority to placement of the child with the closest relative who is found qualified to receive and care for the child by the Court after investigation by the Court counselor or an agency designated by the Court.

B. If a child is found to be dependent, the Court may in its judgment make any of the following dispositions in the best interests of the child:

9 N.N.C. § 1151

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1. Permit the child to remain with his parents, guardian or custodian subject to conditions and limitations prescribed by the Court;
2. Place the child under protective supervision of the Division;
3. Transfer legal custody of the child to any of the following:
 - a. An agency responsible for the care of dependent children;
 - b. A child-placing agency able to assume responsibility for the education, care and maintenance of the child and which is licensed or otherwise authorized by law to receive a child for placement into foster care, including a child care institution or a family home; or
 - c. A relative or other individual who, after study by the Family Court counselor or agency designated by the Court, is found by the Court to be qualified to receive and care for the child; or
4. Make such other disposition as may be necessary to serve the best interests of the child.

C. Any parent, guardian or custodian of a child who is placed in the legal custody of the Division or other person shall have reasonable rights of visitation with the child as determined by the Court unless the Court finds that the best interests of the child preclude any such visitation.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ☞ 6.6, 6.8.
Infants ☞ 222, 226.

Westlaw Topic Nos. 209, 211.
C.J.S. Adoption of Persons §§ 10 to 12.

§ 1152. Disposition of adjudicated delinquent child or a child in need of supervision

A. If a child is found to be delinquent, the Court may impose a fine not to exceed the fine which would be imposed if the child were an adult and may enter its judgment making any of the following dispositions for supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for the disposition of a dependent;
2. Transfer legal custody to an agency responsible for the care and rehabilitation of delinquent children;
3. Place the child on probation under such conditions and limitations as the Court may prescribe.

B. If a child is found to be in need of supervision, the Court may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

1. Any disposition that is authorized for the disposition of a dependent child;
2. Transfer legal custody to an agency responsible for the care of children in need of supervision, but not to one which is designed for custody of delinquent children; or

3. Place the child on probation under those conditions and limitations the Court may prescribe.

C. Unless a child found to be dependent or in need of supervision is also found to be delinquent, the child shall not be confined in an institution established for the care and rehabilitation of delinquent children. No child found to be delinquent or in need of supervision shall be committed or transferred to a facility used for execution of sentences of persons convicted of crimes.

D. Whenever the Court vests legal custody in an agency, institution or department it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports and other information in its possession pertinent to care and treatment of the child.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.7, 6.8.
Infants ⇨223.
Westlaw Topic Nos. 209, 211.

Annotations

1. **Juvenile detention** not be viewed as punitive." *In the Matter of*
"As juvenile proceedings are not criminal but *A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).
rather civil in nature, juvenile detention must

§ 1153. Disposition of a mentally ill or mentally retarded child

If, at any stage of a proceeding under the Children's Code, the evidence indicates that the child is mentally retarded or mentally ill, the Court shall transfer legal custody of the child for a period not exceeding thirty (30) days to an appropriate agency for further study evaluation and a report on the child's condition. The Court may thereafter issue an appropriate decree.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.8. Westlaw Topic Nos. 209, 211.
Infants ⇨227. C.J.S. Infants §§ 42, 53 to 54, 69, 83 to 85.

§ 1154. Continuance under supervision without judgment—Consent decree—Disposition

A. At any time after the filing of a delinquency or in need-of-supervision petition, and before the entry of a judgment, the Court may, on motion of the presenting officer or counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and

conditions negotiated with probation services and agreed to by all the parties affected. The Court order continuing the child under supervision pursuant to this section shall be known as a “consent decree”.

B. If the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the presenting officer after consultation with probation services, the Court shall consider the objections and the reasons therefore, and may in its discretion enter the consent decree.

C. A consent decree shall remain in force for a period not to exceed six (6) months unless the decree is discharged sooner by probation services. Prior to the expiration of the six (6) months period, and upon the application of probation services or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his counsel and he shall have thirty (30) days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.

D. If, prior to discharge by probation services or the expiration of the consent decree, the child allegedly fails to fulfill the terms of the decree, the presenting officer may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted in the same, manner as proceedings on petitions to revoke probation. If the child is found to have violated the terms of the consent decree, the Court may:

1. Extend the period of the consent decree; or
2. Make any other disposition which would have been appropriate in the original proceeding.

E. A child who is discharged by probation services or who completes a period under supervision without reinstatement of the original delinquency or need of supervision judgment shall not be in jeopardy again in any court for the same offenses alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child and his parents for damages arising from his conduct.

F. A judge who, pursuant to this section, elicits or examines information or material involving a child that would be inadmissible in a hearing on the allegations of the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency or need of supervision petition if:

1. A consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or
2. A consent decree is granted but the delinquency or in-need-of-supervision petition is subsequently reinstated.

History

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

Revision note. Slightly reworded.

Library References

Indians ☞6.7.
Infants ☞223.1.
Westlaw Topic Nos. 209, 211.

§ 1155. Interlocutory disposition order in cases where service is made by publication; effect

A. If the service of a summons upon any party is made by publication the Court may conduct a provisional hearing upon the allegations of the petition, make findings and enter an interlocutory order of disposition if:

1. The petition alleges that the child is dependent, in need of supervision or delinquent; and
2. The summons served upon parties other than those served by publication, in addition to other requirements:
 - a. States that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place;
 - b. Requires the party served to appear and, if appropriate, to answer the allegations of the petition at both the provisional and final hearing; and
 - c. States that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing; and
3. The child is personally before the Court at the provisional hearing on petitions alleging delinquency and in need of supervision, but the Court may waive the presence of the child in dependency cases.

B. All relevant provisions of the Children's Code shall apply to preliminary hearings, but the Court's findings and order of disposition shall have only an interlocutory effect pending the final hearing on the petition.

C. The interlocutory order shall have the following effect on the rights and duties of the party served by publication:

1. If the party served by publication fails to appear at the final hearing on the petition, the findings and interlocutory orders shall become final without further evidence, shall be entered as a judgment and shall have the same effect as if made at the final hearing; or
2. If the party served by publication appears at the final hearing, the interlocutory findings and orders shall be vacated and disregarded, and the hearing shall proceed upon the allegations of the petition as otherwise provided by the Children's Code without regard to this section.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.4.
Infants ⇨221.
Westlaw Topic Nos. 209, 211.

§ 1156. Limitations on dispositional judgments; modification, termination or extension of court orders

A. A judgment vesting legal custody of a child in an agency shall remain in force for an undetermined period not exceeding two (2) years from the date entered, except that no child shall be ordered for more than one (1) year to an institution for the housing of delinquent children without further order of the Court. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the custody and rehabilitation of delinquent children divests the Court of jurisdiction at the time of transfer of custody and:

1. The agency to which legal custody is transferred has the exclusive power to parole or release the child;

2. The supervision of a child after release under paragraph (1) of this subsection may be conducted by the agency in conjunction with the Probation Office of the Navajo Nation, or any other suitable agency or under any contractual arrangements deemed appropriate;

3. A child or his guardian may petition the Family Court for review of agency decision denying parole or termination.

B. A judgment vesting legal custody of a child in an individual shall remain in force for two (2) years from the date entered and automatically terminate at the end of the two (2) years unless terminated or extended by order of the Court.

C. A judgment of probation or protective supervision shall remain in force for an undetermined period not exceeding two (2) years from the date entered.

D. A child shall be released by an agency, and probation or supervision shall be determined by probation services or the agency providing supervision when it appears to the probation officer that the purpose of the order has been achieved before the expiration of the two-year period. A release and the reasons therefor shall be reported promptly to the Court in writing by the releasing authority.

E. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by:

1. A child, whose legal custody has been transferred to a person, and who requests the Court for a modification or termination of the judgment alleging that the transfer of legal custody is no longer necessary and that the person has denied application for release of the child or has failed to act upon the application within a reasonable time; or

2. A person vested with legal custody, or responsibility for protective supervision, who requests the Court for an extension of the judgment on the

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grounds that the requested action is necessary to safeguard the welfare of the child or the public interest.

F. At any time prior to the expiration of a judgment transferring legal custody, the court may extend the judgment for an additional period of one (1) year if it finds that the extension is necessary to safeguard the welfare of the child or the interest of the Navajo Nation.

G. Prior to the expiration of a judgment of probation or protective supervision, the Court may extend the judgment for an additional period of one (1) year if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

H. When a child reaches eighteen (18) years of age all judgments affecting the child then in force automatically terminate.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇌6.4 to 6.8. Westlaw Topic Nos. 209, 211.
Infants ⇌221 to 222, 230. C.J.S. Adoption of Persons §§ 10 to 12.

§ 1157. Judgment; noncriminal nature; nonadmissibility

The Court shall enter a judgment setting forth the Court's findings and disposition in the proceeding. A judgment in proceedings on a petition under the Children's Code shall not be deemed a conviction of a crime nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Navajo Nation program or obtaining Navajo Nation employment. The disposition of a child and any evidence given in a hearing in court shall not be admissible as evidence against the child in any other case or proceeding before or after reaching majority.

History

CF-14-86, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇌6.4. Westlaw Topic Nos. 209, 211.
Infants ⇌221, 223.1, 232. C.J.S. Infants §§ 57, 69 to 85.

Annotations

1. **Construction and application** not be viewed as punitive." *In the Matter of A.W.*, 6 Nav. R. 38, 41 (Nav. Sup. Ct. 1988).
"As juvenile proceedings are not criminal but rather civil in nature, juvenile detention must

§ 1158. Appeals

A. Any party may appeal from a final judgment of the Family Court to the Supreme Court of the Navajo Nation in the manner provided by the rules of the

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Court. The appeal shall be heard by the Supreme Court based on the files, records and transcript of the Family Court proceeding. The name of the child shall not appear in the record on appeal. The case number from the Family Court shall be used on all documents filed with and issued by the Supreme Court.

B. The appeal to the Supreme Court shall not stay the judgment appealed from, but the Supreme Court may order a stay upon an application consistent with the provisions of the Children’s Code, if suitable provision is made for the care and custody of the child. If the order appealed from grants the legal custody of the child to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practical time.

C. The Supreme Court shall affirm the Family Court’s judgment or it shall modify the Court’s judgment and remand the child to the jurisdiction of the Family Court for disposition consistent with the Supreme Court’s decision.

D. A child who has filed a notice of appeal shall be furnished an electronically recorded transcript of the proceedings, or as much of it as is requested without cost, upon the filing of an affidavit that the child or the person who is legally responsible for the care and support of the child is not able to pay for the cost thereof.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇄6.6(3), 6.7(3). Westlaw Topic Nos. 209, 211.
Infants ⇄241 to 254. C.J.S. Infants §§ 86 to 91.

§ 1159. Procedural matters under the Children’s Code

A. The Court may allow, on its own motion or the motion of the presenting officer or counsel for the child, amendment of a petition or motion to add additional issues, findings or remedies raised during the proceeding.

B. Upon application of a party or on its own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and the production of records, documents or other tangible objects.

C. The Court may cite a person for contempt of court for disobeying the Court’s order or for obstructing or interfering with the proceedings of the Court or the enforcement of its orders.

D. In any proceeding under the Children’s Code, either on motion of a party or on the Court’s own motion, the Court may make an order restraining the conduct of any party over whom the Court has obtained jurisdiction.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Contempt ⚡7, 12 to 21115, 20.	C.J.S. Contempt §§ 13 to 14, 16 to 18, 22 to 27, 29, 31, 33.
Indians ⚡6.6(3), 6.7(3).	C.J.S. Infants § 55.
Infants ⚡197, 201.	C.J.S. Injunctions § 13.
Injunction ⚡3.	
Westlaw Topic Nos. 93, 209, 211, 212.	

§ 1160. Purchase of care from private agency by public agency

When the legal custody of a child is vested in the Division under the provisions of the Children's Code the Division may transfer physical custody of the child to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the Division covering the care and treatment the child is receiving. Frequency of reports will be determined by the Division. The Division may see the child with reasonable notice to the private agency.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⚡6.8.	C.J.S. Infants §§ 8 to 9.
Infants ⚡17.	C.J.S. Social Security and Public Welfare § 124.
Social Security and Public Welfare ⚡194.30.	
Westlaw Topic Nos. 209, 211, 356A.	

§ 1161. Probation revocation; disposition

A child on probation incident to an adjudication as a delinquent child or a child in need of supervision who violates a term of the probation maybe proceeded against in a probation revocation proceeding. Revocation of probation shall be part of the initial proceeding and is began by filing in the original proceeding a petition styled as a "Petition to Revoke Probation". Petitions to Revoke Probation shall be subject to the same procedures as petitions alleging delinquency. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt. The hearing shall be before the Court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a finding of probation violation is made, the Court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⚡6.7.	Infants ⚡225.
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Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 69, 83 to 85.

Subchapter 9. Protective Services

§ 1251. Protective services worker; power and duties

A. Protective services workers shall be employed by the Division.

B. The Division may cooperate with such state and community agencies as are necessary to achieve the purposes of this chapter. The Division may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Navajo Nation Council or its designate.

C. A protective services worker shall:

1. Receive reports of dependent, abused or abandoned children and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis.

2. Receive from any source, oral or written information regarding a child who may be in need of protective services.

3. Upon receipt of any report or information pursuant to paragraph (1) or (2) of this subsection immediately:

a. Notify the appropriate law enforcement agency;

b. Make a prompt and thorough investigation which shall include a determination of the nature, extent, and cause of any condition which is contrary to the child's best interests and the name, age, and condition of other children in the home.

4. Take a child into temporary custody if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings and that his removal is necessary. Law enforcement officers shall cooperate with the Division to remove a child from the custody of his parents, guardian, or custodian when necessary.

5. After investigation, evaluate and assess the home environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. He shall determine whether any of such children is a child in need of protective services.

6. Offer to the family of any child found to be a child in need of protective services appropriate services, which services may include, but shall not be restricted to, protective services.

7. Within thirty (30) days after a referral of a potential child in need of protective services, submit a written report of his investigation and evaluation to the presenting officer and to a central registry maintained by the Division.

8. No child shall remain in temporary custody for a period exceeding seventy-two (72) hours, excluding Saturdays, Sundays and holidays, unless a dependency petition is filed.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ☞6.6.	Westlaw Topic Nos. 209, 211.
Infants ☞17.	C.J.S. Infants §§ 8 to 9.

§ 1252. Limitations of authority, duty to inform

A. Before offering protective services to a family, a worker shall inform the family that he has no legal authority to compel the family to receive such services and of his authority to initiate a dependency petition in the Family Court.

B. If the family declines the offered services, the worker may initiate a dependency petition in Family Court alleging a child in need of protective services if he believes it to be in the child's best interest.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ☞6.6.	Westlaw Topic Nos. 209, 211.
Infants ☞17.	C.J.S. Infants §§ 8 to 9.

§ 1253. Central registry

A. The Division shall maintain a central registry of reports, investigations and evaluations made under the Children's Code. The registry shall contain the information furnished by Navajo Nation personnel throughout the Navajo Nation, including protective services workers, probation officers, Division case-workers and Indian Child Welfare program employees.

B. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years.

C. Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Division to the Family Court, social services agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Navajo Nation. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the child's file.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ☞6.6.	Infants ☞133.
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Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 57, 69 to 85.

§ 1254. Immunity of participants; nonprivileged communications

Any person making a complaint, providing information or otherwise participating in the child protective services program shall be immune from civil or criminal liability for such action, unless such person acted with malice or unless such person has been charged with or is suspected of abusing, abandoning or neglecting the child in question.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ☞6.6.
Infants ☞17.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 8 to 9.

Subchapter 11. Termination of Parent-Child Relationship

§ 1301. Petition; who may file; grounds

A. Any person or agency that has a legitimate interest in the welfare of a child, including, but not limited to, a relative, foster parent, the Division, or a privately licensed child welfare agency, may file a petition for the termination of the parent-child relationship alleging grounds contained in subsection (B). Any person may provide information showing that the parent-child relationship should be terminated to the Presenting Officer, and the Presenting Officer may initiate a petition based on such information.

B. Evidence sufficient to justify the termination of the parent-child relationship shall include any of the following grounds; the Court may also consider the best interests of the child:

1. That the parent has abandoned the child or that the parent has made no effort to maintain a parental relationship with the child.
2. That the parent has seriously neglected or willfully abused the child.
3. That the parent is unable to discharge parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period.
4. That the parent is deprived of his or her civil liberties due to the conviction of a felony, and the offense is of such nature as to show the unfitness of such parent to have custody and control of the child, or if the sentence of such parent is of such length that the child will be deprived of a normal home for a period of years.
5. That the parents have voluntarily relinquished their rights to a child or have consented to adoption.

History

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

Revision note. Slightly reworded.

Library References

Indians ☞6.6.

Infants ☞155 to 159, 197, 200.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants §§ 31, 36 to 40, 43 to 44, 51 to 52, 55, 62.

§ 1302. Contents of petition

A. A petition for the termination of the parent-child relationship filed pursuant to this chapter shall include, to the best information or belief of the petitioner:

1. The name and address of the petitioner;
2. The name, sex, date and place of birth, census number and residence of the child;
3. The basis for the Court's jurisdiction;
4. The relationship of the petitioner to the child or the fact that no relationship exists;
5. The names, addresses, and dates of birth, and census numbers of the parents, if known;
6. The names and addresses of the persons having legal custody or guardianship of the person or acting in loco parentis to the child, or the organization or authorized agency having legal custody or providing care for the child;
7. The grounds on which termination of the parent-child relationship is sought; and
8. The names and addresses of persons, or authorized agencies or officers thereof to whom or to which legal custody or guardianship of the person of the child might be transferred.

B. A copy of any relinquishment or consent, if any, previously executed by the parent shall be attached to the petition. Where placement outside Navajo Indian Country is contemplated, a consent or relinquishment shall conform with the provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913.

History

CF-14-85, February 8, 1985.

CJN-52-69, June 4, 1969.

Library References

Indians ☞6.6.

Infants ☞197.

Westlaw Topic Nos. 209, 211.

C.J.S. Infants § 55.

§ 1303. Notice; waiver; guardian ad litem

A. After a petition for termination of parental rights has been filed, the clerk of the Family Court shall set a time and place for hearing. Notice thereof shall

be given to the parents of the child, the person having physical custody of the child, the person having legal custody of the child, any individual standing in loco parentis to the child and the guardian ad litem, if any, as provided in the rules for service of process in civil actions.

B. The hearing shall take place no sooner than ten (10) days after the completion of service of notice.

C. Notice and appearance may be waived by a parent before the Court or in writing and attested to by two (2) or more credible witnesses who are eighteen (18) or more years of age subscribing their names thereto in the presence of the person executing the waiver. The waiver shall contain language explaining the meaning and consequences of the waiver and the effect of termination of parental rights. The parent who has executed such a waiver shall not be required to appear, unless the child may be placed outside Navajo Indian Country, in which case the requirements of the Indian Child Welfare Act, 25 U.S.C. § 1913, must be complied with.

D. When termination of the parent-child relationship is sought under § 1301 (B) (3), the Court shall appoint a guardian ad litem for the alleged incompetent parent. The Court may otherwise appoint a guardian ad litem as deemed necessary for any party.

E. The presenting officer, upon the request of the Court, the Division, or on his own motion, may intervene in any proceeding under this subchapter to represent the interest of the child.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇌ 6.6.	Westlaw Topic Nos. 209, 211.
Infants ⇌ 198, 205.	C.J.S. Infants §§ 51 to 52, 62, 64 to 67.

§ 1304. Social study prior to disposition; contents

A. Upon the filing of a petition, the Court shall order the Division, an agency or other person selected by the Court to conduct a complete social study. A written report shall be submitted to the Court prior to hearing, except that when an agency is the petitioner, either in its own right or on behalf of a parent, a report in writing of the social study made by such agency shall accompany the petition. The Court may order any additional studies it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child, and such other facts as may be pertinent to the parent-child relationship. The report submitted shall include a specific recommendation on the termination of the parent-child relationship and the reasons therefor.

B. The Court may waive the requirement of the social study when the Court finds that it is in the best interest of the child.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ⇨6.6.	Westlaw Topic Nos. 209, 211.
Infants ⇨208.	C.J.S. Infants §§ 57 to 61, 63, 68 to 85.

§ 1305. Hearing

Cases filed under this subchapter shall be heard by the Court in a closed hearing. Only such persons whose presence the judge finds to have a direct interest in the case or in the work of the Court shall be admitted provided that such persons shall not disclose any information obtained at the hearing. The Court may require the presence of any parties and witness it deems necessary to the disposition of the petition, except that a parent who has executed a waiver pursuant to § 1303, or has relinquished his rights to the child shall not be required to appear at the hearing unless placement outside Navajo Indian Country is contemplated.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Revision note. Previous reference to “§ 1304” has been changed to “§ 1303”.

Library References

Indians ⇨6.6.	Westlaw Topic Nos. 209, 211.
Infants ⇨203.	C.J.S. Infants §§ 51 to 52, 62, 64 to 67.

§ 1306. Court order; form; contents

A. Every order of the Court terminating the parent-child relationship or transferring legal custody or guardianship of the person of the child or providing for protective supervision of the child shall recite the findings upon which such order is based, including findings pertaining to the Court’s jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

B. If the Court finds grounds for the termination of the parent-child relationship it shall terminate such relationship and take one of the following courses of action:

1. Appoint an individual as guardian of the child’s person;
2. Appoint an individual as guardian of the child’s person and vest legal custody in another individual or in an authorized agency; or
3. Place the child for adoption or order that an adoptive placement for the child be found.

C. The Court shall also make an order fixing responsibility for the child’s support. The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.

D. Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, provided that where the Court finds that the

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best interests of the child require substitution or supplementation of parental care and supervision, the Court shall make such orders as are necessary.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6.
Infants ☞222, 226, 228.
Westlaw Topic Nos. 209, 211.

C.J.S. Adoption of Persons §§ 10 to 12.
C.J.S. Infants §§ 42, 53 to 54.

§ 1307. Effect of court order

An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit and receive support from the parent. This right of inheritance and support shall be terminated by a final order of adoption.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6.
Infants ☞232.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 57, 69 to 85.

Subchapter 13. Indian Child Welfare Act Provisions

Code of Federal Regulations

Tribal resumption of jurisdiction over child custody proceedings, see 25 CFR § 13.1 et seq.

§ 1401. Application of the Indian Child Welfare Act in Family Court

The Family Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, where they do not conflict with the provisions of this chapter. The procedures for state courts in the Indian Child Welfare Act shall not apply in the Family Court unless specifically provided for in this chapter.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

changed to "Family Court" pursuant to
CAU-46-89, August 16, 1989.

Revision note. Previous references to "Children's Court" in this subchapter have been

Library References

Indians ☞6.5.
Westlaw Topic No. 209.

§ 1402. Full faith and credit; conflict of laws

A. State child custody orders involving Navajo children may be recognized by the Family Court only after a full independent review of such state proceeding has determined:

1. The state court had jurisdiction over the Navajo child;
2. The provisions of the Indian Child Welfare Act, 25 U.S.C. § 1901 *et seq.*, were properly followed;
3. Due process was provided to all interested persons participating in the state proceeding; and
4. The state court proceeding does not violate the public policies, customs, or common law of the Navajo Nation.

B. Tribal child custody orders involving Navajo children shall be recognized by the Family Court after the Court has determined:

1. That the Tribal court exercised proper subject matter and personal jurisdiction over the Navajo parties; and
2. Due process was accorded to all interested parties participating in the Tribal court proceeding.

C. Because of the vital interest of the Navajo Nation in its children and those children who may become members of the Navajo Nation, the statutes, regulations, public policies, customs and common law of the Navajo Nation shall control in any proceeding involving a Navajo child.

History

CF-14-85, February 8, 1985.
CJN-52-69, June 4, 1969.

Library References

Indians ¶6.5.
Westlaw Topic No. 209.

§ 1403. [Reserved]**§ 1404. Voluntary placement**

The Family Court shall have exclusive jurisdiction over voluntary placements, both temporary and permanent, of Navajo children who are domiciled or reside within Navajo Indian Country. Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be approved by and filed with the Family Court. The Family Court may require that the voluntary placement provisions of the Indian Child Welfare Act, 25 U.S.C. § 1913, be followed where the child is to be placed outside of Navajo Indian Country and the best interests of the child require.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6(2).
 Infants ☞196.

Westlaw Topic Nos. 209, 211.
 C.J.S. Infants §§ 42, 53 to 54.

§ 1405. Family Court wardship

Any Navajo child who is domiciled or resides within Navajo Indian Country and is voluntarily placed outside of Navajo Indian Country shall be made a ward of the Family Court. A copy of any consent executed by the parents of such Navajo child and the location of the placement shall be filed with the Family Court. A report on the location of the child shall be filed annually with the Family Court. Wardship attaches to the child when he or she physically leaves Navajo Indian Country. Any placement of a Navajo child in violation of this section may be invalidated upon petition to the Family Court and the Court shall make such orders at that time as will protect the Court's wardship over the child's best interests.

History

CF-14-85, February 8, 1985.

Library References

Indians ☞6.6(2).
 Infants ☞222.
 Westlaw Topic Nos. 209, 211.

Chapter 13. Domestic Abuse Protection Act**Subchapter 1. General Provisions****Section**

- 1601. Short title
- 1602. Policy
- 1603. Findings
- 1604. Purpose
- 1605. Definitions

Subchapter 3. Protection Orders

- 1651. Jurisdiction
- 1652. Peacemaker Court
- 1653. Who may file a petition
- 1654. Standard of proof, defenses
- 1655. Temporary protection orders, ex parte
- 1656. Telephonic or facsimile applications and orders
- 1657. Pro se petitioners
- 1658. Confidentiality
- 1659. Evidence, hearsay exception
- 1660. Available relief
- 1661. Service of process

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- 1662. Duration of protection orders
- 1663. Violation of protection orders
- 1664. Vacation of protection orders
- 1665. Fees; filing, service, copies
- 1666. Comity
- 1667. Mutual protection orders

History

CJY-53-93, July 23, 1993.

Note. Sample forms and instructions for this Act are available at each District Court as well as those agencies specified at § 1657(c).

§ 1601. Short title

This Act may be cited as the “Domestic Abuse Protection Act”.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞15.1.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.
C.J.S. Indians §§ 135 to 153.

§ 1602. Policy

It is the policy of the Navajo Nation to demonstrate respect for members of the Navajo family and clan. This respect has long been a tradition of the People, and is reflected throughout Navajo history and culture. Abuse against persons in a domestic setting has a lasting and detrimental effect on: (1) the individuals who directly experience the abuse; (2) the entire family and clan, as members indirectly experience the abuse; and (3) the Navajo Nation, as the victims and abusers carry the adverse effects of domestic abuse out of the family and into society itself. It is in the Nation’s best interest to protect family and clan members from abuse. Accordingly, the Navajo Nation will not tolerate domestic abuse perpetrated against any person.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞15.1.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.
C.J.S. Indians §§ 135 to 153.

§ 1603. Findings

The legislature of the Navajo Nation finds that:

- A. Many persons are beaten, raped, harassed, or otherwise subjected to abuse within the family and clan setting;
- B. Some persons are killed as a result of abuse within the family and clan setting;

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C. Children suffer lasting emotional damage as direct targets of domestic abuse, and by witnessing the infliction of domestic abuse on other family and clan members;

D. The increase in the population of elderly Navajo citizens, the lack of services available for these citizens, and the changing family structure indicates that laws are necessary to insure the protection of elders within the family and clan setting, and in their caretaking settings;

E. All persons have the right to live free from violence, abuse, or harassment;

F. Domestic abuse in all its forms poses a major health and law enforcement problem to the Nation;

G. Domestic abuse can be prevented, reduced, and deterred through the intervention of law;

H. The legal system's efforts to prevent abuse in the family and clan setting will result in a reduction of violent behavior outside of the family and clan setting;

I. Abuse among family and clan members is not a "family matter," which justifies inaction by law enforcement personnel, prosecutors, or courts, but an illegal encounter which requires full application of protective laws and remedies;

J. An increased awareness of domestic abuse, and a need for its prevention, gives rise to the legislature's intent to provide maximum protection to victims of abuse in the family and clan setting; and

K. The integrity of the family, clan and of Navajo culture and society will be maintained by legislative efforts to remedy domestic abuse.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞15.1.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.
C.J.S. Indians §§ 135 to 153.

§ 1604. Purpose

A. The purpose of this Act is to protect all persons: men, women, children, elders, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Navajo Nation, from all forms of domestic abuse as defined by this Act and by Navajo Nation law. The Act shall be liberally construed and interpreted in order to achieve its purposes.

B. The Act embodies the intent of the legislature to promote the following goals:

1. To recognize the illegal nature of domestic abuse;
2. To provide victims of domestic abuse with the maximum protection from abuse that can be made available under the law;

3. To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family or clan setting, or others with whom the abuser has continuing contact;
4. To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;
5. To facilitate the reporting of domestic abuse;
6. To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and
7. To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the individual, the family, culture, and society.

C. Nothing in this Act shall be construed to alter or diminish the existing authority of the courts of the Navajo Nation to provide remedies to address domestic abuse and prevent tortious conduct, including remedies provided by American common law, the law of equity, and Navajo common law.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞15.1.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.
C.J.S. Indians §§ 135 to 153.

Annotations

1. Purpose

“The purpose of the act is to protect persons from all forms of domestic abuse.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

2. Construction and application

“The act limits the authority of the family courts to addressing violent and abusive conduct.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

3. Family court

“These sections do not give the court authority to divest another party of a homesite lease or a home attached to land granted to him or her

by a previous court order.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4-5 (Nav. Sup. Ct. January 7, 2004).

“The court can grant exclusive possession of a place of residence as well as give temporary possession of personal property to a victim, each for a specified and limited period.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

“Therefore, a family court cannot in a DAPA proceeding decide land dispute issues, including homesite leases and ownership of structures attached to the land.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

§ 1605. Definitions

These definitions shall be liberally construed so as to protect all persons who are subjected to domestic abuse. As used in this Act:

A. Domestic abuse

1. “Domestic abuse” means the infliction of any of the following acts upon a victim as defined in § 1605 (B):

- a. “Assault”—an attempt to cause bodily harm to another through the use of force, or the creation in another of a reasonable fear of imminent bodily harm;

b. “Battery”—application of force to the person of another resulting in bodily harm or an offensive touching;

c. “Threatening”—words or conduct which place another in fear of bodily harm or property damage;

d. “Coercion”—compelling an unwilling person, through force or threat of force, to:

(1) Engage in conduct which the person has a right to abstain from; or

(2) Abstain from conduct which the person has a right to engage in;

e. “Confinement”—compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

f. “Damage to property”—damaging the property of another;

g. “Emotional abuse”—using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;

h. “Harassment”—conduct which causes emotional alarm and distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity. Examples of harassing conduct include, but are not limited to the following:

(1) Unwelcome visiting or following of a person;

(2) Unwelcome sexual propositioning, reference to body functions or attributes, or other comments of a sexual nature;

(3) Unwelcome communications, made by phone or by other methods, containing intimidating, taunting, insulting, berating, humiliating, offensive, threatening, or violent language; or

(4) Unwelcome lingering around the home, school, or work place of a person.

i. “Sexual abuse”—any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person’s consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or from a minor under any circumstance; and

j. “Other conduct”—any other conduct that constitutes an offense or a tort under the law of the Navajo Nation.

2. Domestic abuse does not mean a victim’s act of self-defense made in reasonable response to an abuser’s act of domestic abuse.

B. “Victim” means any of the following persons who have been directly affected by domestic abuse as defined in § 1605(A):

1. Any member or former member of the abuser’s household or immediate residence areas;

2. Any person involved in, or formerly involved in, an intimate relationship with the abuser;

3. Any person who interacts with the abuser in an employment, academic, recreational, religious, social or other setting;

4. Any offspring of the abuser;
5. Any relative or clan member of the abuser;
6. Any elderly person; or
7. Any vulnerable person. Examples of vulnerability which give rise to the protection of this Act include, but are not limited to, emotional and physical disabilities and impairments.

C. “Abuser” means any person who engages in conduct defined as domestic abuse under § 1605(A) against any of the persons defined as victims under § 1605(B).

D. “Protection order” means a court order that restrains the abuser from doing certain acts upon threat of penalty or sanction. Such an order may contain requirements to adjust the relationship of the parties and prevent further abuse. The term includes any emergency, temporary or domestic abuse protection orders issued by the Court.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ⇨15.1.
Indians ⇨32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.
C.J.S. Indians §§ 135 to 153.

Annotations

1. Domestic abuse

“The term ‘domestic abuse’ covers many kinds of misconduct, including harassment and damage to property.” *Morris v. Williams*, 7 Nav. R. 426, 427 (Nav. Sup. Ct. 1999).

to argue land dispute matters. While disputes over land may trigger conduct arising to the level of domestic abuse, the Navajo Nation courts are only empowered to deal with the conduct. They cannot decide land titles or boundaries under the Act.” *Morris v. Williams*, 7 Nav. R. 426, 427-428 (Nav. Sup. Ct. 1999).

2. Scope of court’s authority

“The clear thrust of the Act is to protect people from harm. It is not designed to be used

Subchapter 3. Protection Orders

§ 1651. Jurisdiction

A. Courts

1. The Navajo Nation Family Courts shall have jurisdiction over all proceedings under this chapter, except those proceedings initiated under § 1663 (A).

2. A protection order may be sought as an independent civil action, or joined with any other civil action over which the Family Courts have jurisdiction.

3. Any person within the territorial jurisdiction of the Navajo Nation may seek remedies for protection within such jurisdiction, regardless of where the abuse occurred. The Court may provide remedies to protect victims within the Navajo Nation and to prevent future conduct.

4. Acts of domestic abuse which violate an existing Navajo Nation court order but which occur beyond the territorial jurisdiction of the Navajo Nation remain subject to the jurisdiction of the Court.

5. Provisions of this Act which call for criminal penalties apply only to those persons over which the Navajo Nation has criminal jurisdiction.

B. Venue

A petition for a protection order maybe filed in any district in which:

1. The petitioner resides;
2. The respondent resides;
3. The alleged abuse occurred; or
4. The victim is temporarily located.

C. Non-exclusive relief

1. The remedies and procedures provided in this Act are in addition to, and not in lieu of, any other available civil or criminal remedies. A petitioner shall not be barred from relief under this Act because of other pending proceedings or existing judgments.

2. Relief shall be available under this Act without regard to whether the petitioner has initiated divorce proceedings or sought other legal remedies.

3. As to domestic relations proceedings, if custody or support have already been adjudicated, the terms of a previous court order may be incorporated into a protection order. Custody or visitation arrangements specified in an existing order may be modified in a protection order upon a showing of changed circumstances and for the purpose of preventing further domestic abuse.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.

Indians ☞32(11).

Justices of the Peace ☞31, 34(1).

Westlaw Topic Nos. 62, 209, 231.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

C.J.S. Justices of the Peace §§ 26, 47.

Annotations

1. Scope of court's authority

"The best interests of a child are paramount in custody decisions and a determination of paternity. We decide today that a Navajo court lacks jurisdiction to grant a putative father custody of minors in a temporary protection order without a legal determination establishing paternity and a parent-child relationship. In this regard, not even a putative father has standing to request custody. A paternity determination is a legal precondition in granting custody to a putative parent." *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 6 (Nav. Sup. Ct. March 11, 2003).

2. Paternity required

"In *Davis*, we stated that (1) a putative father has no standing to request custody or visitation until a legal determination of paternity is made, (2) in the best interests of the child, a further inquiry must be made to ensure a wholesome child-parent relationship exists and (3) the legal determination of paternity can be made in a DAPA proceeding, even at the *ex parte* stage . . . The family court erred when it granted custody and visitation without first making the jurisdictional determination concerning Crank's paternity." *Sombrero .v Keahnie-Sanford*, No. SC-

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9 N.N.C. § 1653

CV-41-02 slip op. at 4 (Nav. Sup. Ct. September 15, 2003).

3. Jurisdiction

“The family court however lacks jurisdiction to hear a criminal case, meaning the prosecutor

is required to file the criminal complaint in the district court.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6 (Nav. Sup. Ct. May 24, 2004).

§ 1652. Peacemaker Court

The Supreme Court of the Navajo Nation may allocate authority to the Navajo Peacemaker Court to provide for remedies to address domestic abuse, as defined in 9 N.N.C. § 1605 (A). The following conditions shall apply to any grant of authority made to the Navajo Peacemaker Court under the Act:

A. The victim shall be given the option of having her or his petition heard by a qualified peacemaker or by the Family Court. If the victim consents to go before a peacemaker, any such consent shall be in writing, read to the victim in her or his primary language, and signed by the victim.

B. The written consent shall also advise the victim that, if at anytime during the proceeding the victim expresses the desire to have the petition heard by a Navajo Nation Family Court, the proceeding shall be removed to the Family Court.

C. Only peacemakers who have received specialized training in their primary language on the causes, symptoms and dynamics of domestic abuse shall be qualified to hear domestic abuse cases.

History

CJY-53-93, July 23, 1993.

Library References

Indians ⇄32(11).
Westlaw Topic No. 209.
C.J.S. Indians §§ 135 to 153.

§ 1653. Who may file a petition

A person may seek a protection order:

- A. For herself or himself;
- B. On behalf of a minor child;
- C. On behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;
- D. On behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; or
- E. As a next friend of a victim.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞18.
 Indians ☞32(11).
 Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace § 16.
 C.J.S. Domestic Abuse and Violence § 6.
 C.J.S. Indians §§ 135 to 153.

§ 1654. Standard of proof, defenses

A. The civil standard of proof shall apply to proceedings under this Act, except for proceedings under § 1663(A) and § 1663(B) (3). A court shall grant a protection order when a preponderance of the evidence shows that it is more likely than not that an act of domestic abuse has occurred or is about to occur. The order's purpose shall be to prevent the occurrence or recurrence of abuse.

B. A petitioner shall not be denied relief under this Act because:

1. The petitioner used reasonable force in self defense against the respondent;
2. The petitioner has previously filed for a protection order and subsequently reconciled with the respondent;
3. The petitioner has not filed for a divorce; or
4. The petitioner or the respondent is a minor.

C. The following shall not be considered a defense in a proceeding for the issuance or enforcement of a protection order under this Act:

1. Intoxication;
2. Spousal immunity; or
3. Provocation.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.
 Indians ☞32(11).
 Westlaw Topic Nos. 62, 209.
 C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.
 C.J.S. Indians §§ 135 to 153.

§ 1655. Temporary protection orders, ex parte

A. Petition, motion and order.

1. Upon the filing of a Petition for Domestic Abuse Protection Order and Motion for Temporary Protection Order the court shall immediately grant or deny the petitioner's Motion for Temporary Protection Order without a hearing or notice to the respondent. The court shall grant the motion if it determines that an emergency exists.

a. A petitioner shall demonstrate an emergency by showing that:

- (1) The respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or
- (2) The petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection order.

b. Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.

c. The Temporary Protection Order may include any relief permitted by § 1660 (B) of this Act and any other relief necessary to prevent further domestic abuse.

d. The Temporary Protection Order shall direct the respondent to appear at a hearing to show cause why the court should not issue a Domestic Abuse Protection Order.

e. Upon issuing the Temporary Protection Order, the Court shall immediately provide for notice to the respondent and notify law enforcement of the order under § 1661 of this Act.

2. If the Court finds that an emergency does not exist, the Court shall deny the petitioner's Motion for a Temporary Protection Order and schedule a hearing on the Petition for Domestic Abuse Protection Order.

a. The Court shall schedule the hearing within fifteen (15) days of the petition's filing.

b. The Court shall provide for notice to the Respondent according to § 1661(A)(1) of this Act.

3. The Court shall give a Motion for Temporary Protection Order priority over all other docketed matters and shall issue an order granting or denying the motion on the day it is filed.

B. Hearing, Domestic Abuse Protection Order.

1. The Court shall schedule a full hearing within fifteen (15) days after granting or denying a Temporary Protection Order.

a. The respondent may move the Court to dissolve or modify any Temporary Protection Order within those fifteen (15) days.

b. The respondent must give at least five (5) days notice of the motion to the petitioner. The Court shall give priority to such motions.

2. If the petitioner fails to appear at the hearing, the Court may continue the hearing for up to fifteen (15) days, or dismiss the petition without prejudice. Any Temporary Protection Order shall remain in effect during the continuance.

3. If the respondent fails to appear after receiving notice, the hearing shall go forward.

4. If, after a hearing, the Court finds by a preponderance of the evidence that the alleged domestic abuse occurred, the Court shall issue a Domestic Abuse Protection Order. The order may include the relief granted in any Temporary Protection Order and any additional relief that the Court deems necessary.

5. No Domestic Abuse Protection Order shall be issued without notice to the respondent and a hearing.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞16.
 Indians ☞32(11).
 Westlaw Topic Nos. 62, 209.

C.J.S. Domestic Abuse and Violence §§ 3 to 4,
 6, 18.
 C.J.S. Indians §§ 135 to 153.

§ 1656. Telephonic or facsimile applications and orders

An official of the Office of the Prosecutor, of a Navajo Nation Chapter, or an officer of the Navajo Nation Police may apply for an Emergency Protection Order by telephone or facsimile (“fax”).

A. The official or officer shall fill out an Application for Emergency Protection Order, specifying his or her reasonable grounds to believe that a victim is in immediate and present danger of domestic abuse.

B. The official or officer shall then contact a judge of the Navajo Nation courts by telephone or fax.

C. Any Navajo Nation Family Court judge may receive and act upon such applications.

D. A judge may issue an Emergency Protection Order by telephone or fax upon finding that:

1. A reasonable person would believe that an immediate and present danger of domestic abuse exists; and
2. An Emergency Protection Order is necessary to prevent the occurrence or recurrence of domestic abuse.

E. The Emergency Protection Order may include any relief permitted by § 1660(B) of this Act and any other relief necessary to prevent further domestic abuse.

F. The official or officer shall record the order on an Emergency Protection Order form and, by his or her signature, certify that the writing is a verbatim transcription of the judge’s order. The certification of any such official or officer shall be prima facie evidence of the validity of the order.

G. The official or officer shall then give a copy of the order to the protected party, and serve a copy of the order on the restrained person.

H. The originals of the Application and Emergency Protection Order shall be filed with the Court no later than 9 a.m. the next court day.

I. The Emergency Protection Order shall expire no later than the close of judicial business the next court day after its issuance, unless the issuing judge indicates otherwise.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.
 Indians ☞32(11).
 Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.
 C.J.S. Domestic Abuse and Violence §§ 7 to
 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

§ 1657. Pro se petitioners

A. A victim of domestic abuse may petition the Court for protection without the assistance of legal counsel.

B. The petition and any accompanying documents may be handwritten or typed.

C. The following agencies shall keep and make available standard forms approved by the Navajo Nation courts for use in domestic abuse proceedings:

1. Navajo Nation Family and District Courts;
2. Navajo Nation Offices of the Prosecutor; and
3. Navajo Nation Police Departments.

D. The above-named agencies shall:

1. Provide information concerning:
 - a. The availability of protection orders;
 - b. Procedures for obtaining protection orders;
 - c. How to proceed without legal representation; and
 - d. The right of the petitioner to have her or his place of residence remain secret;
2. Prohibit non-legal staff from rendering advice or services that call for the professional judgment of a lawyer or advocate;
3. Provide timely, free assistance to victims of domestic abuse in filing for protective relief,
4. Train their employees to aid victims of domestic abuse in filling out the necessary forms;
5. Keep the addresses of victims confidential; and
6. Keep a record of each case in which they assist a victim in filing for a protection order. The record shall include the following information:
 - a. A copy of the papers filed with the Court;
 - b. Names, genders, and relationship of the parties;
 - c. A description of the domestic abuse, any weapons involved and any resulting injuries;
 - d. Dates of the domestic abuse and dates of filing for protective relief, and
 - e. The source(s) of all information obtained.

E. The above-named agencies shall make the standard forms available to other community organizations which may interact with victims such as shelters, chapters, schools, hospitals, and offices of the Navajo Housing Authority.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.

Indians ☞32(11).

9 N.N.C. § 1657

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Westlaw Topic Nos. 62, 209.
C.J.S. Breach of the Peace §§ 14, 19 to 21.
C.J.S. Domestic Abuse and Violence §§ 7 to
16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

§ 1658. Confidentiality

A petitioner seeking protection shall not be required to reveal her or his address or place of residence except to the judge, in chambers, for the purpose of determining jurisdiction and venue.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ⇨20.
Indians ⇨32(11).
Westlaw Topic Nos. 62, 209.
C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to
16, 18 to 21, 23.
C.J.S. Indians §§ 135 to 153.

§ 1659. Evidence, hearsay exception

A court shall admit into evidence as an exception to the hearsay rule learned treatises or other reliable materials which describe and explain the “battered women’s syndrome” or otherwise examine the impact of violence upon victims.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ⇨20.
Indians ⇨32(11).
Westlaw Topic Nos. 62, 209.
C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to
16, 18 to 21, 23.
C.J.S. Indians §§ 135 to 153.

§ 1660. Available relief

A. In any proceeding in which a petition for a protection order is filed, once the petitioner has met the burden of proof, the Court shall grant any relief necessary to prevent further abuse. Available relief includes but is not limited to the following:

1. No further abuse. The Court may order the respondent to refrain from further threatening, harassing, or harming the victim or committing any act of domestic abuse;
2. Exclusive possession. The Court may grant exclusive possession of the residence or household to the victim regardless of whether the residence is owned jointly, or owned solely by the abuser. The Court may order the respondent to vacate the residence;
3. Stay away. The Court may order the respondent:
 - a. To stay away from the victim and others who may be endangered;

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- b. Not to enter or linger outside of petitioner’s or any family or clan member’s residence, place of work, or school; or
- c. To leave and remain away from any reasonably-defined geographic area;
- 4. No contact. The Court may order the respondent not to initiate contact with the petitioner in person, in writing, by phone, or through others unless otherwise specified by the Court;
- 5. Rent and mortgage payments. The Court may order the respondent to pay rent or make mortgage payments on a residence occupied by the petitioner if the respondent is found to have a duty to support the victim or other members of the household;
- 6. Alternative housing. The Court may order the respondent to pay for shelter or temporary housing for the victim if the victim cannot remain in her or his home due to the danger of recurrence of domestic abuse;
- 7. Child custody.
 - a. The Court may award either party immediate, temporary custody of any minor children of the parties until further order of the Court, or the Court may enter a permanent custody order;
 - b. In determining custody, the Court shall presume that an abusive parent is unfit to have custody of the minor children. The respondent may rebut the presumption by showing that he or she is not abusive of the children and his or her abuse of others does not adversely affect the children.
- 8. Visitation. The Court may grant the non-custodial parent visitation with any minor children of the parties.
 - a. If disclosing the victim’s address for purposes of visitation may endanger the victim, the Court may order alternative arrangements. Example: The petitioner drops the children off and the respondent picks them up at a pre-arranged neutral place such as a relative’s home;
 - b. If there is evidence that the abuser may endanger the children, the Court may order supervised visitation in a public location or may deny visitation entirely,
- 9. Payment of support. The Court may order the non-custodial parent to pay child support if that parent is found to have a duty to pay such support;
- 10. Monetary compensation. The Court may order the respondent to compensate the petitioner for the losses suffered as a direct result of the respondent’s acts of domestic abuse, including, but not limited to, medical expenses, loss of earnings or other income, cost of repair or replacement of real or personal property, moving or other travel expenses, and attorney’s fees;
- 11. Possession of personal property. The Court may order the respondent to give temporary possession of personal property to the petitioner or victim including automobiles, checkbooks, keys, documents, and other personal property;

12. Nondisposition of property. The Court may order either party or both parties not to transfer, encumber, or otherwise dispose of specified property mutually owned or leased by the parties;

13. Counseling. The Court may order either or both parties to attend any counseling which the Court finds will address the problems underlying the parties' domestic abuse;

14. Substance abuse counseling. If the Court finds that substance abuse was a factor in the domestic abuse, the Court may order either or both parties to attend counseling or enter a rehabilitation program for substance abuse;

15. Payment of costs of counseling. The Court may order the respondent to pay for the costs of any counseling ordered under §§ 1660(A)(13) and (14);

16. Law enforcement supervision of return to residence. The Court may order the police to accompany the victim to a residence to collect her or his personal belongings, to take physical custody of the children, and/or to take physical possession of the residence;

17. Court costs and fees. The Court may order the respondent to pay to the Court the costs of the proceeding, including filing fees, fees for service of process, and photocopy costs.

18. Security or bond. To assure compliance with any court order, the Court may require the respondent to post a bond, deposit money with the Court, or pledge property as security. Upon determining that the respondent has violated the order, the Court may require payment or transfer of the bond, money, or property to the petitioner or to the Navajo Nation.

19. Other relief. The Court may grant such other relief as it deems necessary.

B. Ex parte relief. Any Emergency Protection Order or Temporary Protection Order granted without a hearing may include the following relief described above: (1) No further abuse; (2) Exclusive possession; (3) Stay away; (4) No contact; (7) Immediate temporary custody; (11) Possession of personal property; (12) Nondisposition of property; (16) Law enforcement supervision of return to residence; (19) Other relief.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ⇨16.
Indians ⇨32(11).
Westlaw Topic Nos. 62, 209.

C.J.S. Domestic Abuse and Violence §§ 3 to 4,
6, 18.
C.J.S. Indians §§ 135 to 153.

Annotations

1. Defendant's rights

"Davis, the mother, must be given the opportunity to defend herself against the allegations of violent acts, which presumably placed her children in danger. Should Halloway, the puta-

tive father, satisfy his burden of proof that the mother did indeed commit acts of violence, 9 N.N.C. § 1660 (A) of the DAPA authorizes the granting of child custody once the mother fails to rebut the presumption." *Davis v. Crownpoint*

Family Court, No. SC-CV-46-01, slip op. at 5-6 (Nav. Sup. Ct. March 11, 2003).

2. Burden of proof

“First, for this section to operate, the mother must be found abusive in a hearing and the father has the burden to prove his case. Secondly, once found abusive, the inference that the mother is unfit can be rebutted by the mother to show that she is not abusive of the children and that her abuse of others does not adversely affect them.” *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 5 (Nav. Sup. Ct. March 11, 2003).

3. Due process rights

“The finding by the court that Davis, the mother, is unfit without a hearing or without

proof to the satisfaction of the court by the putative father that she committed acts of abuse, violates her due process rights. For these reasons, we conclude that the Crownpoint Family Court violated the mother’s due process rights by misapplying section 1660 (A) (7) (b) of the *Domestic Abuse Protection Act*.” *Davis v. Crownpoint Family Court*, No. SC-CV-46-01, slip op. at 6 (Nav. Sup. Ct. March 11, 2003).

4. Court’s authority

“A court can prohibit by a DAPA order the transfers, encumbrances or dispositions of specified property mutually owned or leased by the parties.” *In the Matter of Sheppard v. Dayzie*, No. SC-CV-66-00, slip op. at 4 (Nav. Sup. Ct. January 7, 2004).

§ 1661. Service of process

A. Upon entering a protection order under this Act, the Court shall immediately:

1. Provide for notice to the respondent.

a. The court clerk shall hand-deliver any protection order, petition, motion, summons, notice of hearing, or other documents filed with the Court, to the proper person(s) for service upon the respondent.

b. Any officer of the Navajo Police, court official, member of the Office of the Prosecutor or court-appointed process server may serve process within the Navajo Nation in a proceeding under this Act.

c. Service outside of the Navajo Nation shall be completed according to Rule 4(e) (2) of the Navajo Rules of Civil Procedure.

d. If personal service cannot be made, the Court may serve the respondent by certified mail, return receipt requested. The return receipt, when received by the Court, shall constitute prima facie evidence that the respondent received notice of the proceedings.

2. Notify law enforcement. The court clerk shall provide a copy of the protection order to the police department(s) with jurisdiction over the residence of the petitioner, and over any other addresses listed in the order.

B. The Navajo Nation Police Department shall:

1. Upon receipt of documents pursuant to § 1661 (A) (1), personally serve the documents upon the respondent immediately. Service of protection orders shall take priority over all routine police business.

2. Upon receipt of a protection order pursuant to § 1661 (A) (2), file the order in a protection order registry. Each Navajo Nation Police Department shall maintain a registry of all protection orders. The orders shall be indexed by the names of both the petitioner and the respondent.

History

CJY-53-93, July 23, 1993.

Library References

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| Breach of The Peace ☞20.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.
C.J.S. Breach of the Peace §§ 14, 19 to 21. | C.J.S. Domestic Abuse and Violence §§ 7 to
16, 18 to 21, 23.
C.J.S. Indians §§ 135 to 153. |
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§ 1662. Duration of protection orders

A. A protection order shall be effective upon the respondent as soon as he or she has knowledge of the order. Verbal communication of the existence of a protection order shall constitute sufficient notice.

B. A Temporary Protection Order shall remain in effect until the Court holds a hearing and issues a Domestic Abuse Protection Order, or until the Court dismisses the petition.

C. A Domestic Abuse Protection Order shall remain in effect for five (5) years, unless otherwise specified by the judge.

D. Renewal, extension or modification of protective orders.

1. The petitioner may petition the Court to renew or extend a protection order at any time before its expiration. In an emergency, the Court may issue an extension or renewal ex parte pursuant to the provisions for ex parte relief set forth in § 1655 of this Act.

2. The Court may modify a protection order upon showing by either party of unanticipated problems or changed circumstances.

History

CJY-53-93, July 23, 1993.

Library References

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| Breach of The Peace ☞16, 20.
Indians ☞32(11).
Westlaw Topic Nos. 62, 209.
C.J.S. Breach of the Peace §§ 14, 19 to 21. | C.J.S. Domestic Abuse and Violence §§ 3 to 4,
6 to 16, 18 to 21, 23.
C.J.S. Indians §§ 135 to 153. |
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§ 1663. Violation of protection orders

A. Criminal violations.

1. If, after receiving notice of a protection order, the respondent disobeys the order, he or she commits the offense of interfering with judicial proceedings. The Court may refer such violations to the Office of the Prosecutor for prosecution.

2. A police officer with knowledge of the violation shall immediately arrest the respondent if there exists probable cause to believe that he or she has violated a protection order. The respondent shall be arrested whether or not such violation occurred in the presence of the officer. The violation shall then be referred to the Office of the Prosecutor for prosecution.

3. The respondent shall then be criminally prosecuted.

B. Contempt of court, forfeiture of bond, money, or property.

1. Any person who has reason to believe that the respondent has violated a protection order or has refused to carry out a judgment, order, or condition imposed by the Court may move the Court for an Order to Show Cause, pro se.

2. The Court shall hold a hearing within fifteen (15) days to determine whether the respondent violated the protection order or refused to carry out any judgment, order, or condition.

3. If the Court finds, beyond a reasonable doubt, that the respondent violated the protection order, the Court shall hold the respondent in criminal contempt of court. The Court may punish the respondent with imprisonment of up to one hundred eighty (180) days, a fine of up to two hundred fifty dollars (\$250.00), or both. Further, the Court may require forfeiture of any bond posted, money deposited, or property pledged as security to assure compliance with the order under § 1660(A) (18).

4. If the Court finds, by a preponderance of the evidence, that an individual has refused to carry out a judgment, order, or condition imposed by the Court, the Court may hold that person in civil contempt of court. To compel the person to carry out the judgment, order, or condition, the Court may incarcerate that individual for up to one hundred eighty (180) days, or impose such other penalties as the Court deems necessary to compel compliance.

C. Hearings on alleged violations of protection orders shall be expedited.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ⇨15.1, 20.

Indians ⇨32(11).

Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18 to 21, 25.

C.J.S. Domestic Abuse and Violence §§ 2 to 3, 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

Annotations

1. Construction and application

“The law requires a finding that a person violated a term of a protection order before jail becomes an option. The courts are prohibited from imposing a jail sentence on a person simply on the basis of the person’s admission to an allegation in a domestic abuse protection petition.” *In re: Petition of Austin, Sr. For Habeas Corpus*, 7 Nav. R. 346, 348 (Nav. Sup. Ct. 1998).

2. Procedure

“After a hearing, held fifteen (15) days after the order to show cause is issued, the family court can hold the respondent in criminal contempt upon a finding beyond a reasonable doubt that he or she violated the order.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

“There is an alternative procedure, whereby any ‘person’ who believes the respondent has violated a protection order can move the family court for an order to show cause.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6-7 (Nav. Sup. Ct. May 24, 2004).

“If a respondent in a Domestic Abuse Protection Act (DAPA) case violates a protection order, the family court or the police department may refer the incident to the prosecutor for criminal prosecution.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 6 (Nav. Sup. Ct. May 24, 2004).

3. Penalties

“DAPA authorizes the family court to incarcerate the respondent for up to one hundred and eighty days and/or fine him or her two

9 N.N.C. § 1663

Note 3

hundred fifty dollars (\$250.00).” *Thompson v. Greyeyes*, No. SC–CV–29–04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

DOMESTIC RELATIONS

§ 1664. Vacation of protection orders

A. A party who wishes to have a protection order vacated must move the Court for an order.

B. A protection order shall be vacated only by court order.

C. In determining whether or not to vacate a protection order, the Court shall consider the following factors:

1. Whether either or both of the parties have attended counseling and for how long;
2. Whether the respondent has attended substance abuse counseling and for how long;
3. Whether the circumstances have changes so as to remove the danger to the petitioner from the respondent; and
4. Any other factors the Court deems relevant.

D. The court clerk shall provide a copy of any subsequent order to all police departments to whom a copy of the original protection order was delivered under § 1661 A.2.

E. All Navajo enforcement agencies shall enforce any protection order that has neither expired nor been vacated, regardless of the current status of the parties’ relationship.

History

CJY–53–93, July 23, 1993.

Library References

Breach of The Peace ⇨20.

Indians ⇨32(11).

Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

§ 1665. Fees; filing, service, copies

The Court shall not charge the petitioner any fee for filing, copies, forms, service of process, or any other services associated with petitioning for a protection order. The Court may order the respondent to pay costs and fees.

History

CJY–53–93, July 23, 1993.

Library References

Breach of The Peace ⇨20.

Indians ⇨32(11).

Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

§ 1666. Comity

A. Any protection order issued pursuant to this Act shall be effective throughout the Navajo Nation.

B. Upon determining that a foreign court had jurisdiction to enter a protection order, a Navajo Nation court may issue an order recognizing that protection order and according it comity. Once recognized, a protection order shall be enforced as if it were an order of a court of the Navajo Nation.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.

Indians ☞32(11).

Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

§ 1667. Mutual protection orders

Mutual protection orders shall not be granted unless the respondent files a petition for protection and makes a separate showing of domestic abuse pursuant to this Act.

History

CJY-53-93, July 23, 1993.

Library References

Breach of The Peace ☞20.

Indians ☞32(11).

Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

C.J.S. Indians §§ 135 to 153.

Chapter 17. Child Support Enforcement Act**Subchapter 1. General Provisions****Section**

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DOMESTIC RELATIONS

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- 1714. Exemption from limitation—Statute of limitations not applicable
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- 1717. Writs of Assistance, Specific Performance, and Bonds
- 1718. Foreign Orders and Comity
- 1719. Request for Peacemaker Assistance
- 1720. Coordination of Peacemaker Courts
- 1721. Temporary Support Orders
- 1722. Amendments

§ 1701. Short Title

This Act shall be known as the Navajo Nation Child Support Enforcement Act.

Library References

Child Support ☞440 to 498.
Indians ☞6.9.
Westlaw Topic Nos. 76E, 209.

C.J.S. Parent and Child §§ 167, 175, 204, 210
to 211, 216, 223, 235 to 236, 238 to 242.

United States Code

Title IV(D) of the Social Security Act, Child Support and Establishment of Paternity, 42 U.S.C. § 651, et seq., 42 U.S.C. § 654.

Annotations

1. Construction of federal law

“Any interpretation of Title IV–D of Social Security Act, dealing with child support enforcement, that results in exclusion of large percentage of Indian children and their parents from its benefits is unreasonable and contrary to language and purposes of the Act. *Howe v. Ellenbecker*, D.S.D.1991, 774 F.Supp. 1224, affirmed 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49.”

“Title IV–D of Social Security Act, dealing with child support enforcement, conferred private cause of action under § 1983 upon recipients of Aid to Families with Dependent Children (AFDC) to challenge state’s refusal to assist them in obtaining child support enforcement from absent parents living on Indian reservations. *Howe v. Ellenbecker*, C.A.8 (S.D.) 1993, 8 F.3d 1258, certiorari denied 114 S.Ct. 1373, 511 U.S. 1005, 128 L.Ed.2d 49.”

§ 1702. Statement of Policy

A. It is the public policy of the Navajo Nation to implement the values of Navajo common law regarding parentage and children. Children are the most valuable gift of creation. They must be loved and receive care. There is a parental duty to establish a child’s parentage for identity in family and clan relations. Parents and relations have a duty to nourish and support children. Where there is disharmony in the family, parents will subordinate their interests in favor of their children.

B. Children shall be maintained, as completely as possible, from the resources of their parents. This Act establishes an administrative process for the establishment of parentage; the establishment, modification and enforcement of child support obligations; and adds remedies to those already existing for child support enforcement. This Act shall be liberally construed to effectuate the policy stated herein; and these remedies shall be in addition to, and not in lieu of, those in existing law.

C. The state agencies within the States of Arizona, New Mexico, and Utah which are charged with the statewide provision of services to individuals under Title IV(D) of the Social Security Act¹ may utilize the administrative and judicial review processes provided for in this Act, to the extent that they negotiate agreements with the Navajo Nation for the performance of administrative functions by the Navajo Nation. Absent such agreements, the Navajo Nation shall have no obligation to provide services under this Act to state Title IV(D) agencies. In no manner is this Act intended, nor is it to be deemed, to relieve the States of Arizona, New Mexico and Utah from providing equal protection of the laws of their respective states and the United States to their citizens.

¹ 42 U.S.C. § 651 et seq.

History

CD-111-94, December 14, 1994. Adopting the Navajo Nation Child Support Enforcement Act.

Library References

Child Support ☞440 to 498.
Indians ☞6.9.
Westlaw Topic Nos. 76E, 209.

C.J.S. Parent and Child §§ 167, 175, 204, 210 to 211, 216, 223, 235 to 236, 238 to 242.

§ 1703. Definitions

For purposes of this Act:

A. “Absent Parent” means a parent of (a) child(ren) either during the course of marriage or outside of marriage who is not providing the custodial parent with child support for the benefit of the child(ren), or who is bound by an administrative or court order to pay a child support obligation.

B. “Administrative Order” unless otherwise indicated means an order issued by the Office of Hearings and Appeals establishing and/or modifying parentage of and/or liability for public debt and/or child support for any child(ren).

C. “Child” means any person under the age of 18 who is not emancipated according to the laws of the Navajo Nation who is alleged to be the natural or adopted offspring of an absent or custodial parent.

D. “Child Support” means the financial obligation an absent parent has towards his or her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the absent parent, or by parentage of any child(ren). The financial obligation of an absent parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the Office of Hearings and Appeals, or the courts.

E. “Court” shall mean any family court of the Navajo Nation or a court of another state or territory having jurisdiction to determine an absent parent’s liability for child support.

F. "Court Order" means any order, judgment, or decree of a court establishing or modifying parentage for (a) child(ren) and/or liability for public debt and/or child support for any child(ren).

G. "Custodial Parent" means the parent who holds legal custody of the child(ren) pursuant to a court order, or who exercises physical custody of the child(ren) on the basis of agreement between the parents or the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.

H. "Division" unless otherwise indicated means the Navajo Nation Division of Human Resources, or its successor.

I. "Garnishment" means the process whereby an order is directed to an employer, bank or agent, holding monies or property of an absent parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

J. "Gross Income" is income from any source, including but not limited to, salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest, trust income, annuities, capital gains, unemployment compensation, worker's compensation, disability insurance benefits, tips, gifts, prizes, and alimony. It includes in-kind and non-cash income, calculated at reasonable market value.

K. "Income Tax Refund Interception" is a remedy whereby any income tax refund of an absent parent shall be intercepted directly from the United States, state, Navajo Nation, or other Indian Nation for the payment of public and/or support debt.

L. "Parent" means the natural or adoptive mother or father of a child.

M. "Parentage" means the condition of being the natural or adoptive mother or father of any child(ren) and includes both the paternity and maternity of any child(ren).

N. "Public Assignment of Child Support Rights" means the assignment of child support rights by the custodial parent to the Navajo Nation, or any state or federal agency. Such assignment may be in connection with the payment of benefits under the federal Aid to Families with Dependent Children (AFDC) to or for the benefit of any child(ren) by the Navajo Nation, or any state or federal agency, as a consequence of the failure of an absent parent to provide child support to any child(ren).

O. "State Lottery and Indian Gaming Winnings" means any and all monies and/or goods and/or services which are awarded to an individual as a consequence of a state and/or Indian Nation gaming operation.

P. "Child Support Rights" means the rights of a custodial parent to receive child support from an absent parent as determined under the law of the Navajo Nation or comparable laws of any other jurisdiction or territory.

Q. "Wage Assignment" means a voluntary written assignment of earned wages which is submitted by an employee to an employer, authorizing the

employer to pay the earned wages of the employee to or for the benefit of a child.

R. “Wage Execution” is a remedy which can be included in an administrative or court order directing an employer to make payments to or for the benefit of a child from the earned wages of any employee.

Library References

Child Support ⇐440 to 498.

Indians ⇐6.9.

Westlaw Topic Nos. 76E, 209.

C.J.S. Parent and Child §§ 167, 175, 204, 210

to 211, 216, 223, 235 to 236, 238 to 242.

§ 1704. Public Assignment of Child Support Rights, Establishment and Amount of Obligation

A. Assignment. A public assignment of child support rights constitutes an obligation owed by the absent parent to the Navajo Nation, or any state or federal agency. The assignment may be connected to the payment of AFDC benefits to, or for the benefit of, the child(ren).

1. A custodial parent who receives AFDC benefits in his or her own behalf or for the benefit of a child shall assign all accrued child support rights for the AFDC beneficiary child(ren), to the Navajo Nation, or other federal or state agency which made AFDC payments to the custodial parent.

2. A custodial parent who does not receive AFDC benefits may apply for services from the Division under this Act upon their voluntary assignment of all accrued child support rights to the Navajo Nation. Provided, that the Division may charge non-AFDC recipient custodial parents fees for services provided under this Act, in accord with the fee schedule established pursuant to § 1711 of this Act.

3. The assignment of child support rights includes the right to prosecute any action to establish parentage, and to establish, modify, and/or enforce the amount of child support obligation, pursuant to this Act or any other provision of applicable Navajo Nation law. All such actions shall be brought in the name of the Navajo Nation, or such other federal or state agency which made AFDC payments to the custodial parents.

4. The custodial parent shall have the right to refuse to assign support rights to the Navajo Nation, or other federal or state agency, for good cause, based upon the best interests of the child(ren).

B. Obligation. The absent parent’s child support obligation shall be established through the administrative process provided in this Act, or by a voluntary agreement which meets the requirements of § 1716 of this Act.

1. The obligation shall commence at the time of the entry of the administrative order which establishes the amount of the child support payable by the absent parent, or on the date on which the absent parent signs the voluntary agreement.

2. If there is an administrative order, the amount of the child support obligation shall be the amount set in the administrative order.

3. Until there is an administrative order entered, the amount of the child support obligation shall be presumed to be the amount determined in writing by the Division as part of the administrative process established under this Act, in accordance with the Navajo Nation Child Support Guidelines.

Library References

Indians ☞6.9. C.J.S. Social Security and Public Welfare
 Social Security and Public Welfare ☞194.19. § 122.
 Westlaw Topic Nos. 209, 356A.

Annotations

- 1. Construction and application** child support.” *Bedoni v. Navajo Nation Office of Hearing and Appeals, and Calvin Biakeddy*, No. SC-CV-13-02, slip op. at 2 (Nav. Sup. Ct. September 4, 2003).
- “Section 4(A)(III) does not provide OHA with authority to modify child support beyond that in Section 8(F). The Act does not grant OHA authority to review or modify court-ordered

§ 1705. Notice of Public Assignment of Child Support Rights

When the Navajo Nation or any other state and/or federal agency has received an assignment of child support rights, the Division may issue a Notice of Public Assignment of Child Support Rights. Service shall be by certified mail, restricted delivery. Provided, that where an attempt to serve by certified mail is unsuccessful, personal service shall be made by any person designated by the Division who has reached the age of eighteen (18) years, and who is neither identified as a child nor a custodial parent under the Notice of Assignment of Child Support Rights. The notice shall include:

- A. A statement providing the name(s) of the child(ren) for whom parentage is alleged and for whom child support is being sought, and the name of the custodial parent;
- B. A statement of the child support obligation accrued, and a demand for immediate payment, for those cases wherein a court or administrative order has established the child support obligation; or
- C. A statement of the child support obligation which the Division has determined to be appropriate, in accord with the Navajo Nation Child Support Guidelines, for those cases in which no court or administrative order has established the child support obligation;
- D. A statement that if the alleged absent parent disagrees with the claim of their parentage of the child(ren), the amount of the child support obligation or the periodic payment required thereon, the alleged absent parent must file a written answer and request for hearing, within thirty (30) days of service, with the Division, which shall immediately transmit the written answer and request for hearing to the Office of Hearings and Appeals;
- E. A statement that if no timely written answer is received, the Office of Hearings and Appeals shall enter an order in accord with the Notice of Public Assignment of Child Support Rights;

F. A statement that as soon as an administrative order is entered, the absent parent's property, without further notice or hearing, will be subject to collection action, including but not limited to wage execution, garnishment, income tax refund interception, state and Indian gaming winnings interception, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of Navajo Indian Country and personal property wheresoever located;

G. A statement that the absent parent is responsible for notifying the Division of any change of address or employment;

H. A statement of all fees associated with the administrative child support enforcement process which may be charged against the absent parent;

I. A statement indicating that the entry of default against the absent parent will result in the entry of a self-executing judgment for wage execution in the amount of the public debt;

J. Such other information as the Division deems appropriate.

Library References

Indians ⇨6.9. C.J.S. Social Security and Public Welfare
 Social Security and Public Welfare ⇨194.19. § 122.
 Westlaw Topic Nos. 209, 356A.

§ 1706. Navajo Nation Child Support Guidelines

The Navajo Nation Supreme Court shall, following public hearings conducted by the Division and in accord with the requirements of 7 N.N.C. § 601, establish a scale of minimum child support contributions. This scale shall be used to determine the amount an absent parent shall pay for support of his or her child(ren) pursuant to this Act.

A. The Navajo Nation Child Support Guidelines must, at a minimum:

1. Take into consideration all gross income of the parents;
2. Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child(ren) for housing, clothing, food, education, health care, recreation, and goods and services required by physical and/or mental disability;
3. Provide for the child(ren)'s health care needs, through health insurance coverage which supplements those health care goods and services provided by the Federal Government, where appropriate;
4. The circumstances which may support a written finding on the record of a judicial or administrative proceeding for the award of child support, in reducing support contributions on the basis of hardship to the absent parent or other children while considering the best interest of the child(ren) who are the subject of the judicial or administrative proceeding; and
5. Provide for review and revision, where appropriate, of the child support guidelines at least once every four (4) years to ensure that the

amounts provided for in the guidelines are periodically adjusted for increases or decreases in the costs associated with the care and support of children within the Navajo Nation.

B. The Supreme Court of the Navajo Nation shall accept and compile pertinent and reliable information from any available source in order to establish a scale of minimum support contributions. Copies of the scale shall be made available to the Division, the Office of Hearings and Appeals, courts, prosecutors, and persons admitted to the practice of law in the Navajo Nation, and shall be considered public records of the Navajo Nation.

Library References

Child Support ☞142 to 148.
Indians ☞6.9.

Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child § 224.

§ 1707. Adjustments to Gross Income

A. When calculating the gross income of a parent for purposes of this Act, the following adjustments to gross income shall be made as deductions from gross income:

1. Amounts of court-ordered alimony and child support actually paid; and
2. Amounts necessary for minimal costs of food, shelter, clothing, and transportation in maintenance of the parent; and
3. Amounts paid in mandatory taxes and social security deductions.

B. The provisions of § 1707, subsection (A) notwithstanding, the best interests of the child(ren) shall take precedence. Child support amounts shall be sufficient to provide for the basic needs of the child(ren). In cases wherein adjustments to gross income of a parent under § 1707, subsection (A)(ii), would result in insufficient child support to any of the children of the absent parent, the needs of the child(ren) shall take precedence over the needs of the absent parent.

Library References

Child Support ☞83 to 84.
Indians ☞6.9.

Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child § 167.

§ 1708. Administrative Hearings

A. Scheduling of Hearing. Upon receipt of a written answer from the alleged absent parent pursuant to § 1705 of this Act, the Office of Hearings and Appeals shall schedule a hearing before a hearing officer. The administrative hearing shall be held within the judicial district in which the custodial parent resides, unless another venue is agreed upon by the parties. Telephonic administrative hearings are permitted as well as the telephonic administration of oaths. The administrative hearing shall be scheduled within 30 days of the receipt of the written answer, unless continued for cause by the hearing officer.

B. Issues for Determination in Administrative Hearing

1. Parentage. Unless the alleged absent parent has stipulated to his or her parentage of the child(ren), the hearing officer shall determine whether the alleged absent parent is the parent of the child(ren). The hearing officer shall make a specific finding of fact regarding whether the alleged absent parent is the parent of the child(ren). The standard for proof of parentage shall be by clear and convincing evidence.

2. Amount of Child Support Obligation. The hearing officer shall establish the amount of the child support obligation of the absent parent by using the Navajo Nation Child Support Guidelines provided in § 1706. The hearing officer shall make a specific finding of fact regarding the amount of the child support obligation. The standard of proof for establishment of the amount of the child support obligation shall be by preponderance of the evidence.

C. Procedures. The hearing shall be conducted according to procedures established by the Office of Hearings and Appeals. These procedures shall provide due process to the parties and shall, at a minimum, authorize:

1. The inspection of property, examination and production of pertinent records, books, information, or evidence;
2. The subpoena of any person for testimony under oath concerning all matters related to the establishment of parentage and child support;
3. The admission of pertinent testimony and evidence upon which the issues of parentage and child support shall be determined; and
4. The making of a permanent record of the proceedings, through electronic recording or other method.

D. Default. If the alleged absent parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order of parentage, and child support obligation pursuant to the notice. Within 20 days of the administrative hearing, the hearing officer shall enter an order stating the establishment of parentage, and the child support obligation of the absent parent.

E. Miscellaneous Content of Order

1. Each order for child support or maintenance payments shall include an order that the absent parent and custodial parent notify the Office of Hearings and Appeals of any change of employer or change of address within 10 days of such change.

2. In the event the order contains a determination of child support obligation, the order shall be in favor of the child through its custodial parent or guardian when the Navajo Nation, or other federal or state agency, is not making AFDC payments in behalf of the child.

3. In the event the order contains a determination of child support payments, the order shall provide for garnishment, wage execution, state and Indian gaming winnings and income tax refund interception as means for execution on any unpaid child support obligation.

F. Modification of Order. The child support obligation of an absent parent may, after entry of an administrative order, be modified prospectively upon

entry of an order by the Office of Hearings and Appeals. Either parent may petition the hearing officer for an order based on a showing of a change of circumstances requiring the other parent to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning parent on the other parent in the same manner as the notice under § 1705 of this Act. A hearing shall be set not more than 30 days from the date of service.

Library References

Child Support ⇐465.
 Indians ⇐6.9.
 Westlaw Topic Nos. 76E, 209.

Annotations

1. Retroactive modifications

“Even if the OHA had the authority to change a court-ordered child support payment, it may not retroactively change a child support order. The Act grants OHA authority to change its administrative orders prospectively. Section 8(F). It is notably silent on retroactive changes,

thereby excluding them from OHA’s powers. OHA should not have more power to change court orders than it has to change its own administrative orders.” *Bedoni v. Navajo Nation Office of Hearing and Appeals, and Calvin Biakeddy*, No. SC-CV-13-02, slip op. at 2 (Nav. Sup. Ct. September 4, 2003).

§ 1709. Judicial Review

A. Appeal

1. The Navajo Nation Supreme Court shall hear appeals on the record from administrative decisions made by the Office of Hearings and Appeals pursuant to this Act.

2. Any party may secure judicial review of an administrative order made pursuant to this Act by filing an appeal with the Navajo Nation Supreme Court within twenty (20) days after the administrative decision is filed in the Office of Hearings and Appeals.

B. Appeal on Record. The appeal to the Navajo Nation Supreme Court shall be an appeal on the record established before the Office of Hearings and Appeals and shall be strictly limited to the issues of the parentage of the child(ren), the amount of public debt and child support liability of the absent parent.

C. Standard of Review. The Navajo Nation Supreme Court shall not reconsider questions of fact which have been determined by the Office of Hearings and Appeals. The Navajo Supreme Court may reverse or modify the decision of the Office of Hearings and Appeals if the administrative findings, conclusions or decisions are, as a matter of law:

1. Clearly erroneous in view of the reliable, probative, and substantial evidence in the record, when viewed in its entirety; or
2. Arbitrary and capricious or characterized by abuse of discretion.

Library References

Child Support ☞535 to 559.
Indians ☞6.9.

Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child §§ 243 to 244, 256.

§ 1710. Docket of Order

A true copy of any administrative order made pursuant to § 1705 or 8 of this Act may be filed with the clerk of any Court in the Navajo Nation. The clerk shall docket the order in the judgment docket. Upon docketing, the order shall have all the force and effect of a docketed order of the Family court, including but not limited to the ability to enforce such an order pursuant to the Navajo Rules of Civil Procedure and the laws of the Navajo Nation.

Library References

Child Support ☞465.
Indians ☞6.9.
Westlaw Topic Nos. 76E, 209.

§ 1711. Power of the Division

A. Except where otherwise indicated, the Division shall have the power to promulgate rules and regulations necessary to carry out the provisions of this Act.

B. The Division shall have the authority to conduct a child support enforcement program under this Act, including the authority to investigate claims of parentage and child support obligation, to locate absent parents, and to establish and modify child support obligations through the administrative process contained in this Act.

C. Except where otherwise indicated, the Division shall have the power to certify to official acts.

D. The Division shall have the power to require alleged absent parents to undergo blood testing and/or DNA testing, in accordance with rules and regulations promulgated by the Division, for the purpose of obtaining evidence relevant to the parentage of child(ren). Navajo traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing. The Division may require the alleged absent parent to reimburse the Division for the costs of such blood testing and/or DNA testing.

E. The Division shall be exempt from any filing fees required of individuals in the courts of the Navajo Nation.

F. The Division shall have the authority to report the names and social security numbers of absent parents and the amounts of unpaid public and/or support debt to credit reporting bureaus, and professional licensing agencies.

G. The Division shall have the power to set or reset the schedule of fees required on the establishment and enforcement of public debt and child support, including application fees, filing and other fees associated with the administrative process.

H. The Division shall have the power to utilize funds which it collects pursuant to this Act through a revolving cost account for the operation of child support enforcement services, subject to appropriation of such funds by the Navajo Nation Council. Provided, that state and federal funds shall not be supplanted by fees collected by the Division.

Library References

Child Support ⇐465.
Indians ⇐6.9.
Westlaw Topic Nos. 76E, 209.

§ 1712. Wage Execution and Garnishment

A. The Office of Hearings and Appeals may order wage execution in any order issued pursuant to Sections 5 or 8 of this Act. Wage execution shall be utilized in all cases wherein an employer of an absent parent can be identified.

B. The Office of Hearings and Appeals may require garnishment of earnings to enforce a child support order pursuant to this Act in cases wherein wage execution may not be an available remedy, due to the lack of an identified employer, or for other reasons.

Library References

Child Support ⇐442.
Indians ⇐6.9.
Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child § 236.

§ 1713. Wage assignments

An absent parent may execute a wage assignment as will be sufficient to meet the child support obligation calculated by reference to the order of the Office of Hearings and Appeals, or a voluntary agreement entered into pursuant to § 1716 of this Act.

No employer shall refuse to honor a wage assignment executed pursuant to this Act. An assignment made pursuant to this section shall be binding upon the employer one (1) week after service upon the employer of a true copy of the assignment. Payment of monies pursuant to a wage assignment shall serve as payment of all such wages assigned under any contract of employment. No employer may discharge or prejudice any employee because his wages have been subjected to an assignment for child support.

Library References

Child Support ⇐442.
Indians ⇐6.9.
Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child § 236.

§ 1714. Exemption from limitation—Statute of limitations not applicable

No support lien, wage assignment, or garnishment shall be deemed invalid or nonactionable due to the expiration of the statute of limitations on any action for failure to provide child support or maintenance for any child(ren). No statute of limitations shall be effective to prevent the establishment, modification and/or enforcement of parentage and/or child support for any child from birth until the child reaches the age of eighteen (18).

Library References

Child Support ↯442, 451, 463.
 Children Out-of-Wedlock ↯38.
 Indians ↯6.9.
 Westlaw Topic Nos. 76E, 76H, 209.

C.J.S. Children Out-of-Wedlock §§ 48, 67, 81
 to 82.
 C.J.S. Parent and Child §§ 236, 240.

§ 1715. Government records

A. The Division may request and shall receive information from the records of all divisions, departments, boards, bureaus or other agencies of the Navajo Nation, and the same are authorized to provide such information as is necessary for this purpose.

B. The Division may make such information available only to those officials of the Navajo Nation which are authorized to locate parents who have failed to provide child support for their child(ren) to establish, modify, or enforce court orders for child support, or to establish parentage. This information may be given to them only upon their assurance that it will be used in connection with their official duties under the child support enforcement program.

C. Disclosure of information under this subsection shall comply with § 402(a)(9) of the Social Security Act. In all support proceedings before the Office of Hearings and Appeals, there shall be compulsory disclosure by both parties of their respective financial status.

Library References

Child Support ↯465.
 Indians ↯6.9.
 Westlaw Topic Nos. 76E, 209.

§ 1716. Enforceable voluntary agreement

A. Content of Agreement. A custodial parent may enter into an agreement with the alleged absent parent.

1. At a minimum, the agreement shall establish the parentage of the child(ren) and the amount of child support which shall be paid by the absent parent to the custodial parent. In no circumstance will an agreement be approved or enforced which provides for a level of child support which is less than that provided for by the Navajo Nation Child Support Guidelines established pursuant to § 1706 of this Act.

2. By the terms of the agreement, the absent parent must submit personally to the jurisdiction of the Office of Hearings and Appeals for enforcement and modification of the agreement, and consent to entry of an administrative order in accordance with the terms of the agreement. The agreement may be obtained by the parties through their own actions, or utilizing the services of the Navajo Nation Peacemaker.

B. Submission and Filing of Agreement

1. In the event that no request for hearing has been filed with the Office of Hearings and Appeals under § 1705 of this Act, and no action has been filed before a court, the voluntary agreement shall be submitted to the

Division for approval and filed with the Division, which shall maintain the voluntary agreement in its records for possible modification and/or enforcement under the provisions of this Act.

2. In the event that an administrative hearing has been requested from the Office of Hearings and Appeals, the voluntary agreement shall be submitted to the Office of Hearings and Appeals for its approval and enforcement under the provisions of this Act.

C. Timing of Agreement

1. Such agreement may be entered into at any time prior to the issuance of a final administrative order establishing or modifying parentage, or child support obligation, either before or after service of process, or at any time while said order is still in effect. No agreement shall be entered into before the birth of the child unless the Office of Hearings and Appeals finds that there are special circumstances making it advisable to do so.

2. The voluntary agreement shall be submitted to the Division or the Office of Hearings and Appeals for approval and enforcement. After said agreement is approved by the Division or the Office of Hearings and Appeals, it shall be filed but judgment shall not be rendered unless there is a default of the child support payments agreed upon, when, upon motion of the Division judgment shall be rendered and entered forthwith.

Library References

Child Support ⚖️43.
Indians ⚖️6.9.
Westlaw Topic Nos. 76E, 209.

§ 1717. Writs of Assistance, Specific Performance, and Bonds

A. Upon application by the Division, The Navajo Nation Family court may issue a writ of assistance to enforce any court or administrative order issued pursuant to this Act. Administrative and court orders recognized through comity have res judicata authority.

B. The Navajo Nation Family court may specifically enforce any agreement made pursuant to this Act and approved by the Division, Office of Hearings and Appeals, or the Navajo Peacemaker.

C. The Navajo Nation Family court may require a party to submit a commercial, personal surety, or other bond to satisfy the terms of an order issued pursuant to this Act, and enforce such bond in proceedings against the principal and sureties.

D. The Navajo Nation Family court, upon a showing that an absent parent has failed to obey an administrative or court order to pay a support or public debt, will issue an order to show cause against the absent parent.

Library References

Child Support ⚖️440.
Indians ⚖️6.9.
Westlaw Topic Nos. 76E, 209.

C.J.S. Parent and Child §§ 175, 236, 239 to 240.

§ 1718. Foreign Orders and Comity

A. Court and administrative orders, judgments or decrees of other Indian nations, states or federal agencies, which relate to child support enforcement are enforced in the Navajo Nation under the doctrine of comity. Authentic foreign orders will be enforced as an order of the Navajo Nation where the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order, personal service of process was made on such person, the administrative or court proceedings offered substantial justice to such person, and the order does not violate Navajo Nation public policy. For purposes of this Act, the Office of Hearings and Appeals shall have the authority to consider court and administrative orders, judgments or decrees of a foreign jurisdiction for comity recognition.

B. A foreign order is authenticated by reasonable proof that the document tendered to the Office of Hearings and Appeals is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.

C. Unless defects in jurisdiction or public policy are apparent on the face of the foreign order, the burden is upon the person against whom it is to be enforced to contest the validity of the order. Upon a failure to respond to notice and the opportunity to contest the order, the Office of Hearings and Appeals may enforce it as a Navajo Nation order.

D. Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Office of Hearings and Appeals may adopt some or all of its provisions as an original order of the Office of Hearings and Appeals.

Library References

Indians ⇨6.9.
Westlaw Topic No. 209.

§ 1719. Request for Peacemaker Assistance

The Division may request the assistance of the Navajo Peacemaker in resolving parentage and child support issues, if agreed to by both the custodial parent and alleged absent parent.

Library References

Indians ⇨6.9.
Westlaw Topic No. 209.

§ 1720. Coordination of Peacemaker Courts

Peacemakers must coordinate their activities with the Division. Agreements reached through the peacemaking process must meet the requirements of § 1716 of this Act.

Library References

Indians ⌘6.9.
Westlaw Topic No. 209.

§ 1721. Temporary Support Orders

In any action under the Domestic Violence Protection Act, any action affecting dissolution of marriage, or in any other action provided for under Navajo Nation law, wherein the Navajo Nation Family Court has made a temporary order concerning the care, custody, and suitable support or maintenance of the child(ren), the Division shall have the authority to enforce such order as set forth by the Navajo Nation Family Court.

Library References

Child Support ⌘465.
Indians ⌘6.9.
Westlaw Topic Nos. 76E, 209.

§ 1722. Amendments

This Act may be amended from time to time by the Navajo Nation Council upon recommendation of the Division of Human Resources, and the Human Services, Health and Social Services, and Judiciary Committees of the Navajo Nation Council.

Library References

Child Support ⌘3.
Indians ⌘6.3(1).
Westlaw Topic Nos. 76E, 209.
C.J.S. Parent and Child §§ 156, 247.

Chapter 18. Elder Protection Act**Subchapter 1. General Provisions****Section**

- 1801. Short title
- 1802. Statement of Policy
- 1803. Purpose
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§ 1801. Short title

This Act will be known and cited as the “Diné Elder Protection Act.”

History

CO-70-96, October 25, 1996, Approving the Diné Elder Protection Act.

Library References

Criminal Law ☞1222.1.
Indians ☞6.2.
Westlaw Topic Nos. 110, 209.

§ 1802. Statement of Policy

It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for Diné elders. Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition; vested in Diné elders is the hope of the Navajo Nation to retain its tribal history, culture, language and tradition. Navajo elders provide stability by being role models for their children and grandchildren to whom they demonstrate long-standing commitment to family, marriage, employment, profession and other social institutions. Based upon these premises, it is in the Nation’s best interest and welfare to protect its elders from abuse, neglect, mistreatment, exploitation, and other mistreatment.

Library References

Criminal Law ☞1222.1.
Indians ☞6.2.
Westlaw Topic Nos. 110, 209.

§ 1803. Purpose

The purpose of the Diné Elder Protection Act is to protect elders within the jurisdiction of the Navajo Nation from abuse and neglect. The Act will be liberally interpreted in order to achieve this purpose. This Act is not intended to abrogate any existing civil or criminal laws of the Navajo Nation.

Library References

Criminal Law ☞1222.1.
Indians ☞6.2.
Westlaw Topic Nos. 110, 209.

§ 1804. Definitions.

These definitions will be liberally construed so as to protect all elders. As used in this Act:

A. Abuse includes:

1. Assault, an attempt to cause bodily harm to another person through the use of force, or the creation in another of a reasonable fear of imminent bodily harm.

2. Battery, application of force to the person of another resulting in bodily harm or an offensive touching.

3. Threatening, words or conduct which place another in fear of physical or other harm on any person or on property.

4. Coercion, compelling and unwilling person, through force or threat of force to engage in or abstain from conduct which the person has a right to abstain from or engage in.

5. Unreasonable confinement, intimidation or cruelty, acts which result in physical harm or pain or mental anguish of an elder by any person, particularly anyone such as a spouse, a child, other family members, caregiver(s) or other persons recognized by Navajo statutory or common law as having a special relationship with the elder.

6. Sexual abuse, any physical contact with an elder for emotional or physical gratification of the person making the contact and to which the elder does not give informed consent or for which the consent is obtained by intimidation or fraud.

7. Emotional abuse, infliction of threats, humiliation, or intimidation.

8. Intimidation, willfully placing another in fear of harm by coercion, extortion or duress.

9. Exploitation, the use of funds, property (including grazing permits, livestock and homesites) or other resources of an elder for personal gain without the informed or true consent of the elder, or the gaining of funds, property (including grazing permits, livestock and homesites) or other resources of an elder by threat, humiliation, intimidation, or other coercion. Exploitation is also failure to use the funds, property, or other resources of any elder for the elder's benefit or according to the elder's wish.

10. Abandonment, desertion of an elder by the elder's family or caregiver(s), which includes refusing or neglecting to provide for an elder when there is a duty to do so.

11. Breach of a fiduciary duty, breach by a family member or caregiver of his or her fiduciary duties toward an elder.

B. Caregiver includes:

1. A person who is required by Navajo statutory or common law to provide services or resources to an elder; or

2. A person who has undertaken to provide care or resources to an elder; or

3. An institution or agency or employees or agents of an institution or agency which provides or is required by Navajo statutory or common law, or state or federal law or tribal-state agreement to provide services or resources to an elder.

C. Elder for the purposes of this Act, is a person subject to the jurisdiction of the Navajo Nation and who is at least fifty-five (55) years of age or older.

D. Emergency is a situation in which an elder is immediately at risk of death or injury.

E. Family is the immediate circle of relatives, including spouse, biological/clan/adopted children, grandchildren, in-laws, siblings, aunts, uncles, nieces, nephews, first, second and third cousins, biological, clan and adopted parents.

F. Good faith means an honest belief or purpose and the lack of intent to defraud.

G. Incapacity means the current functional inability of a person to sufficiently understand, make and communicate informed decisions as a result of mental illness, mental deficiency, physical illness, or disability, or chronic use of drugs or liquor, as determined by the Navajo Nation Family Courts. Incapacity may vary in degree and duration.

H. Least restrictive alternative is an approach which allows an elder the most independence and freedom from intrusion, consistent with the elder's needs, by requiring that the least drastic method of intervention is used to protect the elder from harm.

I. Neglect occurs when any person fails to provide basic needs, supervision, services, or resources necessary to maintain the minimum physical and mental health of an elder as required by Navajo law. Neglect also includes:

1. Preventing or interfering with delivery of necessary services and resources to an elder.
2. Failing to report abuse, neglect, or exploitation of an elder when there is reasonable suspicion.
3. Failing to provide services or resources essential to the elder's practice of customs, traditions, or religion.
4. Leaving of child(ren) for indefinite periods of time by parents/legal guardians in the care of elders who may resort to using their limited resources in meeting needs of the child(ren).

J. Retaliation consists of threatening, harming, or otherwise interfering with an individual reporting elder abuse, including threats or injury to a person's family, property, and employment status of the reporter or the reporter's family in any way.

Library References

Criminal Law ☞1222.1.
Indians ☞6.2.
Westlaw Topic Nos. 110, 209.

§ 1805. Elder Protection Services

A. Consistent with available resources, the Navajo Area Agency on Aging will have a duty to provide necessary protection services to an elder who has been or is being abused, neglected or exploited. Any protection services provided shall be the least restrictive alternative available and necessary to meet the needs of the elder, the elder's family and caregiver(s). When possible, the affected elder and the elder's family and caregiver(s) shall be consulted in determining what services shall be provided.

9 N.N.C. § 1805

DOMESTIC RELATIONS

B. Consistent with § 1815, the Navajo Division of Health or any other interested person or party may file a petition seeking an Elder Protection Order when good cause exists to believe that an elder is abused, neglected, exploited or incapacitated and is therefore suffering harm.

C. The elder, the elder's family or caregiver(s), if financially able to do so, will pay for some or all of the cost of services or resources provided to the elder pursuant to this Act.

D. Before providing any services, the Navajo Division of Health will inform the elder to the protections services which will be provided and possible alternatives to these services, if any.

Library References

Breach of The Peace ☞15.
Criminal Law ☞1222.1.
Indians ☞6.2.

Westlaw Topic Nos. 62, 110, 209.
C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.

§ 1806. Regulations

The Navajo Division of Health may adopt and issue regulations establishing criteria and procedures which comply with the policy and requirements of this Act for:

- A. Receiving reports of suspected elder abuse or neglect.
- B. Investigating all reports or suspected abuse or neglect.
- C. Initiating petitions for failure to report, for making bad faith reports or elder abuse and neglect, for interference or retaliation for an elder abuse or neglect investigation, and for confidentiality violations.
- D. Seeking and securing elder protection warrants.
- E. Determining whether an incident is an emergency and necessitating immediate removal or the elder from the home where abuse is reported.
- F. Making referral for criminal investigation.
- G. Establishing and providing elder protective services.
- H. Initiating procedures for determining incapacity of the elder.
- I. Implementing and ensuring confidentiality requirements.

Library References

Health ☞366.
Indians ☞6.2.
Westlaw Topic Nos. 198H, 209.

§ 1807. Duty to Report Abuse or Neglect of an Elder

Suspected abuse or neglect of an elder will be reported to the Navajo Division of Health by any person who has good reason to suspect that an elder has been or is being abused or neglected.

Library References

Criminal Law ☞1225.
 Health ☞196.
 Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
 C.J.S. Criminal Law § 1732.

§ 1808. Immunity of Reporting

A person who in good faith makes a report pursuant to Section 1807 of this Act is immune from civil or criminal liability.

Library References

Criminal Law ☞1225.
 Health ☞196.
 Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
 C.J.S. Criminal Law § 1732.

§ 1809. Bad Faith Report; Civil Penalty; Damages; Criminal Liability

Any person who knowingly makes a false report of a suspected elder abuse is subject to a civil penalty of up to seven hundred fifty dollars (\$750.00). The Navajo Nation Family Court will assess the penalty after petition, notice, an opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Further, the false reporter will be subject to any civil suit brought by or on behalf of the person(s) named as the suspected abusers in the false report for damages suffered as a result of the false report. The person is also subject to any criminal penalties as set forth in the Navajo Nation Code or as allowed by this Act.

Library References

Criminal Law ☞1225.
 Health ☞196.
 Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
 C.J.S. Criminal Law § 1732.

§ 1810. Receiving Reports; Report Content; Retention of Report

- A. The Division of Health will receive all reports of elder abuse or neglect.
- B. The report may be oral or in writing and to the extent possible it will contain:
 1. The elder's name, address and location of home, telephone number, census (if applicable) and social security number.
 2. Name, address, location, telephone number of person(s) or agency which is suspected to abusing or neglecting elder.
 3. The nature and degree of incapacity of the elder, if any.
 4. The name, address, location, telephone number of witnesses.
 5. The name, address, location, telephone number of the elder's caregiver(s).
 6. A description of the acts which are alleged to be abuse or neglect.
 7. Any other information that the reporter believes might be helpful in establishing the cause of the abuse or neglect.
 8. If possible, the reporter will sign the report. However, a report may be made anonymously.

9 N.N.C. § 1810

DOMESTIC RELATIONS

C. All reports will remain on file for a period of seven (7) years, even if it is determined that there is insufficient evidence to pursue any legal action. In the event that the Navajo Division of Health determines that the report was made in bad faith, the report will so indicate.

Library References

Criminal Law ☞1225.
Health ☞367.
Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
C.J.S. Criminal Law § 1732.

§ 1811. Investigations.

A. Within the limits of available resource, the Navajo Division of Health will investigate the report within seventy-two (72) hours, including weekends and holidays, and prepare a written report of the investigation which will include the information as set forth in paragraph B of Section 1810, as well as the results of interviews, observations, assessments and other fact-finding information. If possible, the investigator will conduct personal interviews with the elder, elder's family and caregiver(s), persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circumstances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse or neglect will be ascertained. The investigator will personally assess the elder's living conditions, with assistance of the Office of Environmental Health and the Navajo Department of Law Enforcement, as necessary.

B. An elder, the elder's family and caregiver(s) will be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they will be informed as soon as possible, but not later than forty-eight (48) hours after an investigation begins.

C. An elder may refuse to accept elder protection services, even if there is good cause to believe that the elder has been or is being abused, provided that he/she is able to care for him/herself and has the capacity to understand the nature of the services offered.

D. The elder's family or caregiver(s) may refuse for themselves, but not for the elder, elder protection services offered pursuant to this Act, unless the elder cannot take care for him/herself or lacks the capacity to understand the nature of the services offered.

E. An elder, the elder's family or caregiver(s) may refuse to allow an investigator into their home and the investigator will so inform the elder, the elder's family and caregiver(s) of this right.

F. The investigator will inform the elder's family and caregiver(s) or their rights as allowed by the Navajo Nation Bill of Rights, whenever it appears that the investigation may lead to criminal charges being filed under Navajo Nation law.

G. The elder, elder's family and caregiver(s) will be served personally with a petition filed pursuant to this Act.

H. The elder, elder's family and caregiver(s) have the right to personally attend any hearing pertaining the determination of the elder's capacity.

I. The elder, elder's family and caregiver(s) have the right to be represented by counsel at all hearings.

J. The elder, elder's family and caregiver(s) have the right to seek independent medical, psychological, or other evaluations at their own expense.

Library References

Criminal Law ☞1224(1).
Health ☞367.
Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
C.J.S. Criminal Law §§ 1724 to 1725, 1728.

§ 1812. Elder Protection Investigation Warrant

A. The investigator may petition the Navajo Nation Family Court for an Elder Protection Investigation Warrant.

B. The Navajo Nation Family Court may issue an Elder Protection Investigation Warrant upon a showing of probable cause by the investigator that elder abuse or neglect has occurred and that the family, caregiver(s) of the elder, or the elder has refused the investigator access. The Elder Protection Investigation Warrant is enforceable through contempt proceedings as provided under the Navajo Rules of Civil Procedure.

C. The warrant allows the investigator to assess the elder's living conditions and interview the elder without the family's, the caregiver's or the elder's consent. The purpose of the interview is to determine whether or not reasonable grounds exist to believe that the elder is incapacitated or has been subjected to abuse or neglect.

Library References

Indians ☞6.2.
Searches and Seizures ☞129.

Westlaw Topic Nos. 209, 349.
C.J.S. Searches and Seizures § 189.

§ 1813. Referral for Criminal Investigation

A report of suspected elder abuse or neglect will be referred to appropriate law enforcement officers if the investigation indicates that the criminal laws of the Navajo Nation or applicable federal criminal laws have been violated.

Library References

Criminal Law ☞1224(1).
Health ☞367.
Indians ☞6.2.

Westlaw Topic Nos. 110, 198H, 209.
C.J.S. Criminal Law §§ 1724 to 1725, 1728.

§ 1814. Emergency Procedures and Protection Order

If, after investigation, the investigator has reasonable cause to believe that an emergency exists, the investigator will act immediately to protect the elder,

including transporting the elder for medical treatment, placement in a group home or emergency shelter. Within seventy-two (72) hours of such action, the Navajo Division of Health will petition the Navajo Nation Family Court for an Elder Protection Order as provided for in Section 1815 of this Act.

Library References

Breach of The Peace ☞20.

Criminal Law ☞1224(1).

Indians ☞6.2.

Westlaw Topic Nos. 62, 110, 209.

C.J.S. Breach of the Peace §§ 14, 19 to 21.

C.J.S. Criminal Law §§ 1724 to 1725, 1728.

C.J.S. Domestic Abuse and Violence §§ 7 to 16, 18 to 21, 23.

§ 1815. Elder Protection Order

A. The Navajo Division of Health or any other person or party may petition the Navajo Nation Family Court for an Elder Protection Order. This petition will contain allegations that elder abuse, neglect or exploitation has occurred or that the elder is incapacitated and cannot appropriately care for him or herself.

B. The Navajo Nation Family Court may issue an Elder Protection Order after affording notice to all affected parties and holding a hearing which demonstrates by clear and convincing evidence that the elder is incapacitated and that elder abuse, neglect or exploitation has occurred.

C. If the Navajo Nation Family Court determines that an elder is abused, neglected, exploited or incapacitated and cannot care for him or herself, the Family Court may issue an Elder Protection Order which provides appropriate protective services for the elder. Such protective services, subject to available resources, may include, but are not limited to, the following:

1. Removing the elder from the abusive or neglectful situation for not longer than 14 days.
2. Removing the person or persons who have abused or neglected an elder from the elder's home.
3. Restraining the person or persons who have abused or neglected an elder from continuing such acts.
4. Requiring an elder's family or caregiver(s) or any other person(s) with a fiduciary duty to the elder to account for the elder's funds and property.
5. Requiring any person who has abused or neglected an elder to pay restitution to the elder for any damages which occurred as a result of that person's wrongdoing.
6. Appointing, pursuant to 9 N.N.C. § 801, et seq., a representative or guardian for the elder or the elder's estate, in the event that the Family Court determines that the elder is incapable of taking care of him or herself or managing his or her property.
7. Naming a representative payee.
8. Ordering the Navajo Division of Health to prepare a plan to deliver elder protection services which provides the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

D. An Elder Protection Order will be issued for a period not to exceed six (6) months, unless the Family Court determines that the elder is incapacitated and as a result is incapable of taking care of him or herself, in which case the Elder Protection Order may be indefinite.

E. An Elder Protection Order may be extended as many times as necessary to protect the elder, but only after notice and opportunity for hearing is given and a determination is made based on clear and convincing evidence that such an order is necessary for the protection of the elder. Each extension will be for a period not to exceed 30 days.

F. Whenever the Family Court determines that an Elder Protection Order should be issued, it may refer the case to the Peacemaker Division, unless it makes a determination that a referral to the Peacemaker Division is infeasible, inappropriate or futile. Such referral may be part of an Elder Protection Order. Upon referral, the Peacemaker Division will attempt to resolve conflicts between the elder and the elder's family and/or caregiver(s) using traditional methods and in accordance with Peacemaker Division rules.

Library References

Breach of The Peace ☞15.
Indians ☞6.2.
Westlaw Topic Nos. 62, 209.

C.J.S. Breach of the Peace §§ 14, 18, 21, 25.
C.J.S. Domestic Abuse and Violence §§ 2 to 3.

§ 1816. Confidentiality of Reporter, Records, Hearing.

A. The name of the person who makes a report of abuse or neglect as required by Section 1807 of this Act is confidential and may not be released to any person unless the reporter consents to the release or such release is ordered by the Navajo Nation Family Court. The Navajo Nation Family Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the Navajo Nation Court finds that disclosure is needed to protect the elder. The reporter's name will be released only to the extent that the Family Court determines necessary to protect the elder.

B. Any record of an investigation of elder abuse or of a Navajo Nation Court hearing regarding elder abuse will be kept confidential. Such records shall be available to the elder, the elder's family or caregiver, and others who require these records in order to provide services to the elder.

C. A hearing held pursuant to this Act will be closed and confidential. Only person essential to the matter before the court may attend the hearing. No person who attends or testifies at such a hearing will reveal information about the hearing unless ordered to do so by the Navajo Nation Family Court.

Library References

Criminal Law ☞1225.
Indians ☞6.2.

Westlaw Topic Nos. 110, 209.
C.J.S. Criminal Law § 1732.

9 N.N.C. § 1817

DOMESTIC RELATIONS

§ 1817. Severability.

Should any provision of this Act or its applicability be found to be invalid by the Courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision will be given full force and effect. To this extent, the provisions of this Act are severable.

Library References

Indians ↻6.3(1).
Statutes ↻64(2).
Westlaw Topic Nos. 209, 361.

C.J.S. Statutes §§ 87, 89 to 90, 94 to 97, 99,
102 to 104, 107.

Title 10

Education

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United States Code

Contracts for Education of Indians, see 25 U.S.C. § 458e.
 Education of Indians, see 25 U.S.C. § 271 *et seq.*
 Treaties. Education and schools, see Art. 6 of Treaty of 1868.

Code of Federal Regulations

Education contracts under Johnson-O'Malley Act, see 25 CFR § 273.1 *et seq.*
 Federal schools for Indians, see 25 CFR § 31.0 *et seq.*
 Indian education policies, see 25 CFR § 32.1 *et seq.*
 Student rights and due process procedures, see 25 CFR § 42.1 *et seq.*

Chapter 1. Policy and Planning

Subchapter 1. Miscellaneous Provisions

Section

1. Compliance with requirements of Navajo Nation law
2. Changes in educational program or operation; discussion; Approval
3. [Repealed]
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110. Curriculum
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113. Professional training for educators
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116. School counseling services
117. Student code
118. School attendance
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120. Bus routes and transportation
121. School facilities and operations
122. Vocational education and career education
123. Vocational rehabilitation and opportunities for the handicapped
124. Post-secondary education
125. Navajo Community College
126. Adult education
127. Early childhood programs

Subchapter 1. Miscellaneous Provisions

§ 1. Compliance with requirements of Navajo Nation law

All educational programs in operation on the Navajo Nation will meet the requirements of the educational laws of the Navajo Nation.

History

CN-61-84, November 14, 1984.
1922-1951 Res. p. 114, February 20, 1947.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2. Changes in educational program or operation; discussion; approval

A. It shall be the policy of the Navajo Nation that any agency, organization, or group proposing and planning a new school facility, expansion or change-over of an existing facility, a change in school site, a transfer from Bureau to public school operation, a change from boarding school to day school operation, establishment or changes of bus routes, or any other change in educational policy or operation, which may affect the lives of local citizens, shall consult with the Navajo Nation for full discussion of such proposed changes.

B. Further, any agency, organization, or group proposing such changes shall consult and discuss such plans with appropriate Bureau of Indian Affairs' staff, with the Education Committee of the Navajo Nation Council, with local

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10 N.N.C. § 4

Chapter officers, with the people of the communities to be affected, either directly or indirectly, with local school boards and with the Navajo Division of Education.

C. It shall also be the policy of the Navajo Nation that official endorsement of such changes or proposals by the Navajo Nation shall be withheld until every effort has been made by the responsible agency, organization, or group to obtain the approval and endorsement of the Navajo People affected, and Navajo Nation laws regarding the planning and undertaking of such change or proposal have been complied with. Such endorsement of proposed plans or changes shall be obtained prior to the implementation of such educational programs.

History

CN-61-84, November 14, 1984.
CS-78-57, September 17, 1957.

Cross References

Powers of the Education Committee, see 2 N.N.C. § 484(B)(6).

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 3. [Repealed]

History

CN-61-84, November 14, 1984.
ACA-15-54, April 8, 1954.

§ 4. Size and location of facilities

A. It is the declared policy of the Navajo Nation, in every instance and to the fullest extent possible, for its Education Committee to work closely with all relevant education providers and governmental entities on the size and location of all educational facilities to be constructed for Navajo students in order that maximum benefit can be obtained from them by the Navajo People.

B. The Education Committee is authorized to approve and recommend to the appropriate standing committee(s) of the Navajo Nation Council, the approval of site locations on the Navajo Nation for any educational facility, including school houses or buildings, residential facilities, teacher and faculty quarters including areas sufficient for power and light, gas, sewers and other necessary facilities. The Education Committee shall refer all off-Reservation sites or facilities for Navajo children to the Navajo Nation Council.

C. All educational facilities constructed on the Navajo Nation or for the education of Navajo students shall be constructed in compliance with the laws of the Navajo Nation regarding school facilities, including 10 N.N.C. § 121, "School Facilities and Operations", of the Navajo Education Policies.

10 N.N.C. § 4

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History

CN-61-84, November 14, 1984.
CJA-6-60, January 14, 1960.

Revision note. Reworded for purposes of statutory consistency. See generally, CD-68-89, December 15, 1989.

Cross References

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 481 *et seq.*

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 5. Vocational training

A. It is the policy of the Navajo Nation to cooperate and collaborate with any unions desiring to participate in similar training programs which they may maintain to the end that the classification of Navajo workers in a representative number of skills, crafts, and trades becomes a reality before they become members of a union rather than to have them join unions first as common laborers and thereafter attempt to improve their classifications within the framework of the unions.

B. All programs providing vocational training in the Navajo Nation or for the benefit of Navajo students shall cooperate with the Navajo Nation in implementing the Navajo Education Policies, including 10 N.N.C. § 122, “Vocational Education and Career Education”, of the Navajo Education Policies.

History

CN-61-84, November 14, 1984.
CA-48-58, §§ 1, 4, August 27, 1958.

Revision note. Former subsection (A) deleted; other paragraphs relettered.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Vocational training program, see 25 U.S.C. § 309.

Code of Federal Regulations

Vocational training for adult Indians, see 25 CFR § 27.1 *et seq.*

Subchapter 2. Navajo Education Policies

§ 101. Short title

This subchapter shall be cited as the “Navajo Education Policies”.

History

CN-61-84, November 14, 1984.

Cross References

Navajo Education Policy Statement, see also CAU-43-61, August 29, 1961.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 102. Mission statement

The human resource of the Navajo Nation is its most valuable resource. The Navajo Nation, as a sovereign nation, has a responsibility to its people to oversee their education in whatever schools or school systems they are being educated, to assure that their education provides excellence in the academic program and high, realistic expectations for all students. An appropriate education for Navajo People is one that fosters:

- A. The formulation of age, grade and/or developmentally appropriate competencies in all basic areas of academic and cognitive skills;
- B. Competence in English language skills and knowledge of American culture;
- C. Competence in Navajo language skills and knowledge of Navajo culture;
- D. The development of Navajo and United States citizenship;
- E. Self-discipline and a positive self-concept;
- F. Preparation for lifetime responsibilities in the areas of employment, family life, recreation and use of leisure;
- G. An attitude toward education which encourages lifetime learning.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

- 1. **Consent to policies** School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).
“We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the

§ 103. Definitions

Subject to the additional definitions (if any) contained in the subsequent sections of this subchapter, and unless the context otherwise requires, in this subchapter, the following definitions shall apply:

10 N.N.C. § 103

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A. “Navajo Nation” includes the Navajo Reservation and the Navajo People as a whole, considered as a distinct cultural, ethnic, geographical and political entity.

B. “Navajo Nation” also means the government of the Navajo Nation, or signifies that some power or attribute of the Navajo Nation as a government is intended.

C. “Culture” means a set of shared patterns of behavior developed by a group of people in response to the requirements of survival. These sets include: established patterns of relationships (interpersonal and kinship); values (behavior, material possessions, individual characteristics, attitudes); language; technology, acquisition and use of knowledge; planning for the future; governing structure; education; economics; and spiritual relationships.

D. “Congruent Curriculum” means a curriculum which is planned, ongoing and systematic; in which goals and objectives are clearly articulated; which brings about a match among (1) what the teacher teaches, (2) what should be taught, and (3) what students actually learn; and which reflects excellence.

E. A “School” is a place or institution for teaching and learning.

F. “Local Schools” are all schools serving kindergarten through 12th grade, or any part of that grade span, located within the Navajo Nation or serving the Navajo Nation. The term shall include bordertown residential facilities operated to facilitate attendance at public schools when the subject matter of a policy statement is applicable to residential facilities and the governing boards of residential facilities. The meaning of “local school” in regard to Navajo Nation school board elections shall be determined by the Navajo Nation laws regarding school board elections, rather than by this section.

G. “Schools within the Navajo Nation” or “schools Located within the Navajo Nation” are those local schools located within the exterior boundaries of the Navajo Nation in areas subject to Navajo Nation jurisdiction; those BIA residential facilities located near the immediate borders of the Navajo Nation and serving primarily Navajo student populations; and those schools operated on contract by authorization of the Navajo Nation.

H. “Schools Serving the Navajo Nation” are all schools within the Navajo Nation and all schools established within Navajo “Indian Country” for the education of Navajo students or receiving significant funding for the education of Navajo students such as public schools receiving Impact Aid funds.

I. A “Compelling Governmental Purpose” is a purpose which would withstand strict scrutiny in regard to the nature of the governmental interest being advanced, the means chosen to accomplish it, and the impact on the protected privacy interest of parents in choosing an appropriate education for their children.

J. “School Governing Boards” or “Local School Boards” are the governing boards with responsibility for establishing policy and overseeing the operation of a local school.

K. “Cognitive Skills” are skills involved in the process of knowing, in the broadest sense, including perception, memory, judgment, analysis, conception, deduction, induction and thinking.

L. “Vocational Education” is an area of instruction designed to prepare the student to enter into an adult occupation with appropriate academic, occupational and life skills. Vocational education programs should include vocational exploration, vocational core skill development and entry level training.

M. “Career Education” consists of efforts aimed at focusing education and supportive actions of the community in ways that will help individuals acquire and utilize the knowledge, skills and attitudes necessary for each to make work a meaningful, productive and satisfying part of his or her way of living. Career education is not taught as a separate school subject. Rather, it is integrated into all subject areas at all levels, using activities that encourage students to acquire basic skills and make career decisions based upon what they learn about themselves and the world of work.

N. “Early Childhood Programs” are those developmental and educational programs operated for children at the preschool level. The term can include kindergarten programs that are operated independently of and apart from any local school.

O. “Navajo Preference” means that in the recruitment, employment, retention and promotion of personnel, preference is given to an applicant who is an enrolled member of the Navajo Nation and who is equally qualified as one or more non-Navajos for a given position. Navajo preference may mean Indian preference where such an interpretation is mandated by applicable state, federal or contract requirements.

P. “Indian Preference” means that preference is given to a Native American applicant who is equally qualified as one or more non-Indian applicants for a given position.

History

CN-61-84, November 14, 1984.

Revision note. Slightly reworded for statutory form.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

- 1. **Consent to policies** School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated Educational Policies*’ which apply to all schools within the Navajo Nation, and to which the *School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).

§ 104. Responsibility and authority of the Navajo Nation

A. The Navajo Nation has an inherent right to exercise its responsibility to the Navajo People for their education by prescribing and implementing edu-

cational policies applicable to all schools within the Navajo Nation and all educational programs receiving significant funding for the education of Navajo youth or adults. At the same time, the Navajo Nation recognizes the legitimate authority of the actual education provider, whether state, federal, community controlled or private. The Navajo Nation commits itself, whenever possible, to work cooperatively with all education providers serving Navajo youth or adults or with responsibilities for serving Navajo students to assure the achievement of the educational goals of the Navajo Nation established through these policies and in other applicable Navajo Nation laws.

B. The laws and policies of the Navajo Nation are applicable to the maximum extent of the jurisdiction of the Navajo Nation in the operation of all local schools.

C. The Navajo Nation specifically claims for its people and relies upon the responsibility of the government of the United States to provide for the education of the Navajo People, based upon the Treaty of 1868 and the trust responsibility of the federal government toward Indian tribes. The Navajo People also claim and rely upon their rights as citizens of the states within which they reside to a non-discriminatory public education. In exercising its responsibility and authority for the education of the Navajo People, the Navajo Nation does not sanction or bring about any abrogation of the rights of the Navajo Nation or the Navajo People based upon treaty, trust or citizenship, nor does it diminish the obligation of the federal government or of any state or local political subdivision of a state.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

1. **Consent to policies** School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).
“We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the

§ 105. Education Agency of Navajo Nation

A. The Navajo Division of Education is the administrative agency within the Navajo Nation with responsibility and authority for implementing and enforcing the educational laws of the Navajo Nation. The Division as the Education Agency of the Navajo Nation exercises, to the extent permitted by law and agreement, functions comparable to the departments of education of the several states in regard to the schools within the Navajo Nation and other schools and educational programs serving significant numbers of Navajo youth and adults. In exercising its responsibilities, the Division shall seek to work cooperatively with local school governing boards.

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10 N.N.C. § 105

B. The Division of Education is under the immediate direction of an Executive Director, subject to the overall direction of the President of the Navajo Nation. In carrying out its responsibilities the Division, through the Executive Director, is authorized and directed to:

1. Establish cooperative arrangements with other divisions and programs within the Navajo Nation and with education organizations and entities;
2. Negotiate cooperative arrangements and intergovernmental agreements with local, state and federal agencies and governmental bodies, subject where required, to the approval of the appropriate Navajo Nation governing authority,
3. Inquire into the educational situation of Navajo students in any school or educational program located within the Navajo Nation or receiving program funds for the education of Navajo youth or adults;
4. Determine the impact of educational programs on Navajo students by inquiring into areas of concern, such as achievement data, test results, budgets, language proficiency, special educational programs, supplemental programs, staffing, social and economic variables, curriculum, health and safety, adequacy of facilities, and other areas of inquiry relevant to the educational situation of Navajo students;
5. Comply with federal and, where appropriate, state requirements regarding confidentiality of records;
6. Report the results of its inquiries to the Education Committee of the Navajo Nation Council and to the school boards, communities and other entities serving the Navajo Nation affected by the subject matter of these inquiries;
7. Make recommendations in its reports for the improvement of Navajo education;
8. Report at least annually to the Navajo Nation Council on the state of Navajo education; and

The authority to make inquiries granted to the Division in this subsection extends to all affected school sites and all appropriate records.

C. The Navajo Division of Education shall be available to work with schools, school districts, school governing boards, local communities and other appropriate entities to develop plans for the implementation of Navajo educational policies, to coordinate utilization of available resources and to assist in the development of new resources. The Division shall assure that its staff have and receive appropriate professional training in order to keep informed of current educational methodologies and techniques.

D. The Education Committee of the Navajo Nation Council has oversight responsibility for the Navajo Division of Education and for the implementation of education legislation. The Committee exercises such powers and responsibilities over Navajo education as are prescribed by its Plan of Operation (2 N.N.C. § 481 *et seq.*) and in other Navajo Nation laws. The Education

10 N.N.C. § 105

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Committee exercises oversight responsibility regarding the recruitment and operation of post-secondary education programs within the Navajo Nation.

E. The Navajo Division of Education is subject to and carries out laws adopted by the Navajo Nation Council.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.

Schools ⇐47.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 81 to 92, 174.

Annotations

1. Consent to policies

“We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).

2. Apportionment

It is clear that the Navajo Nation Council has delegated the Education Committee as the appropriate body to finally approve all school board apportionment plans. *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 175 (1996).

§ 106. School boards—Local control of schools

A. The Navajo Nation encourages and supports local control of Navajo education. Administration of a local school shall be under the guidance and direction of the local governing board.

B. All local school boards operating schools within the Navajo Nation are subject to its educational laws to the full extent of the jurisdiction of the Navajo Nation. Local school boards are responsible for assuring the implementation of the Navajo educational policies at the local level. In addition, local school boards are responsible for establishing local educational policies and priorities.

C. In administering the schools under their charge, local school boards shall give timely notice of their meetings and conduct their meetings at times and places convenient to the public, especially parents, and shall carry out their deliberations and decision-making in open meetings, except in such cases as disciplinary matters, individual personnel matters, discussion of litigation, where the need for privacy clearly outweighs the public’s right to know.

D. School boards shall develop written policies regarding school governance, personnel matters, staff conduct, student conduct, teacher evaluation, parental involvement, residential policies, graduation requirements, academic policies and related topics, and shall assure that these policies are communicated to administration, staff, students and parents. School board policies shall be implemented in a consistent and impartial manner.

History

CN-61-84, November 14, 1984.

Cross References

School Boards, see 10 N.N.C. § 201 *et seq.*

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations**1. Construction and application**

It is therefore obvious that while the schools remain minimally self-sufficient, they have been inextricably intertwined with the Navajo Nation government and their local Navajo communities from their inception. The Appellant schools have characteristics of both public and private schools; therefore, we agree with the District Court that the schools are “local community schools,” or “other schools” under the meaning of section 2(EE) of the Election Code. We hold that the Election Code applies to the Appellants.

Rough Rock Community School Board, Inc. v. Navajo Nation, 7 Nav. R. 168, 171-172 (1996).

2. Consent to policies

“We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).

§ 107. Parental involvement

A. Local schools shall encourage participation by parents of students in their school programs. Parents should be involved in planning, developing and evaluating educational programs, developing curriculum, and school activities. Appropriate procedures shall be developed by each local school to facilitate parental involvement and to assist parents in inquiring and learning about the education their children are receiving.

B. Educational aspirations and cultural values of Navajo parents should be respected in the development of policies and programs within each school.

C. Parental involvement in education includes the right of parents to choose the type of school and educational program in which their minor children shall be educated. Choices of day or residential attendance and of federal, state, community controlled or private school are appropriate parental options which should be limited only by the most compelling governmental purposes. Parental action or inaction in regard to the education of children which endangers or disregards the welfare of those children is not protected by this section. This subsection shall not justify any parent in disregarding laws concerning compulsory attendance or school transfer.

D. Parents have a responsibility to support the educational efforts of the local schools, to assure the regular attendance of their children in school, and to exercise supervision and guidance over their children.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Sending child to school out of State without consent, see 25 U.S.C. §§ 286, 287.
School boundaries, see 25 U.S.C. § 2004.

§ 108. Navajo preference and Indian preference

A. The ultimate goal of the Navajo Nation is self-determination. In order to assure the survival and growth of the Navajo Nation as a people of distinct language and culture and with a domestic economic base, the Navajo Nation requires Navajo preference in employment of school and educational personnel in all schools within the Navajo Nation. In addition, whenever application of the Navajo preference policy does not result in the selection of a Navajo applicant or candidate, a policy of Indian preference shall be applied to the remaining applicants or candidates. Local school governing boards and education administrators responsible for hiring shall comply with the requirements of this policy in regard to the recruitment, employment, promotion and retention of all personnel.

B. All schools and school systems operating within the Navajo Nation shall seek the professional services of competent Navajo educators, counselors, administrators and support personnel to adequately serve the linguistically and culturally unique children of the Navajo People. In addition, all affected schools and school districts shall give preference to Navajo personnel in providing professional training opportunities, subject to the needs of the schools to obtain specialized training opportunities for staff serving particular functions. In seeking educational and support personnel, schools and school districts shall include within the position description, as a preferred qualification, a knowledge and familiarity with the Navajo language, culture and people.

C. The local governing board of a school or school district may waive the requirements of this section by a formal vote of the board. Such waiver may apply only to individual employment, retention or promotion decisions, as determined by the board on a case-by-case basis. In each case where a waiver of Navajo preference-based hiring, retention or promotion occurs, the local governing board shall make a written record of the occurrence for inclusion in the official minutes of the board.

History

CN-61-84, November 14, 1984.

Cross References

Navajo Preference in Employment Act, see 15 N.N.C. § 601 et seq.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Operation and financial support of the Bureau of Indian Affairs funded school system, see 25 U.S.C. § 2001 et seq.

Annotations

- 1. **Consent to policies** School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).
 “We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the

§ 109. Education standards

A. The Navajo Nation shall identify the need for appropriate educational standards in various subject areas and shall develop educational standards to assure the provision of a high quality education for Navajo students in all schools serving the Navajo Nation. These standards shall in no way limit the freedom of local school systems to exceed these requirements.

B. The Navajo Division of Education shall coordinate with other governmental entities and education providers in designing and implementing educational standards appropriate to the various schools and school systems. The Division shall consider the requirements of applicable state and federal laws and the concerns of education managers, parents, community members, and teachers in the development of educational standards. Navajo educational standards shall avoid actual conflict with the requirements of state and federal or private accrediting entities having jurisdiction over the schools unless there is no practical means of implementing Navajo educational policies without such conflict or unless the conflict is permitted by the external law.

C. In implementing this policy, the Navajo Division of Education shall act with the approval of the Education Committee of the Navajo Nation Council to establish a procedure to adopt proposed standards and/or amend existing standards and present subsequent proposed resolutions to the Navajo Nation Council.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇄8.
 Westlaw Topic No. 209.
 C.J.S. Indians § 48.

Annotations

- 1. **Consent to policies** School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).
 “We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the

§ 110. Curriculum

A. Each school serving the Navajo Nation shall have a written, congruent curriculum which contains clearly articulated instructional goals and objectives. The curriculum of each school shall be based on the needs of the students served. The culture, values, and individual interests of the Navajo students shall be recognized and integrated into all curricula. The curriculum

should provide all students with opportunities to broaden their interests and career objectives and promote personal and intellectual growth appropriate to their individual differences.

B. The instructional program shall reflect the special needs of these students and yet be flexible enough to allow any modifications necessary to accommodate the need of students to acquire full knowledge of basic skills, including but not limited to science, computer science, mathematics, social studies, reading, writing, language skills and cognitive skills. Special programs shall be available for gifted and handicapped students and for students requiring remedial instruction.

C. The use of curriculum committees is encouraged at all levels of schools to review the validity and relevance of curricula. Curriculum content shall be reviewed on a periodic basis. The review should utilize student assessments, standardized test scores, student progress reports, and school evaluation reports. Each school shall involve the staff, parents and community in program planning, provide in-service training in curriculum development and implement a curriculum improvement approach. Any new curriculum or educational program shall be structured to meet the needs of the specific school and shall be adopted by the governing board of the school.

D. Career education shall be integrated into the basic curriculum from the preschool level to establish a working relationship between what is taught in the classroom and what is needed on the job and in professional occupations. At the secondary, vocational and post-secondary levels, the curriculum should incorporate into the basic program career exploration, career guidance, awareness of vocational and educational opportunities and occupational skills.

History

CN-61-84, November 14, 1984.

Library References

Indians ☞8.

Schools ☞164.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 701,
782 to 785, 817.

§ 111. Education in Navajo language

The Navajo language is an essential element of the life, culture and identity of the Navajo People. The Navajo Nation recognizes the importance of preserving and perpetuating that language to the survival of the Nation. Instruction in the Navajo language shall be made available for all grade levels in all schools serving the Navajo Nation. Navajo language instruction shall include to the greatest extent practicable: thinking, speaking, comprehension, reading and writing skills and study of the formal grammar of the language.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

§ 112. Education in Navajo culture and social studies

The survival of the Navajo Nation as a unique group of people growing and developing socially, educationally, economically and politically within the larger American Nation requires that the Navajo People and those who reside with the Navajo People retain and/or develop an understanding, knowledge and respect for Navajo culture, history, civics and social studies. Courses or course content that develops knowledge, understanding and respect for Navajo culture, history, civics and social studies shall be included in the curriculum of every school serving the Navajo Nation. The local school governing board, in consultation with parents, students and the local community, shall determine the appropriate course content for the Navajo culture component of the curriculum.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

§ 113. Professional training for educators

A. It is the responsibility of the local schools and school districts serving the Navajo Nation to employ professional Navajo educators, to recruit those who are most qualified and competent to work with the Navajo student population, and to create incentives to improve staff performance. Local school boards and administrators shall take leadership to provide professional training opportunities for their personnel and to encourage and provide both opportunities and guidance for those individuals who desire to advance themselves in the education field, obtain or expand their professional certification, or obtain training in their specialized areas. Staff development shall include both certified and non-certified personnel. Educators of Navajo children have the responsibility to upgrade their teaching and administrative skills to maintain relevant, coherent instructional techniques at all levels of formal education.

B. All schools and school districts serving the Navajo Nation shall develop appropriate Navajo culture awareness and sensitivity programs as an integral

10 N.N.C. § 113

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part of their in-service training programs for all personnel. The Navajo Nation through its Education Committee shall establish general guidelines for the implementation of these programs.

History

CN-61-84, November 14, 1984.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Indian education personnel, see 25 U.S.C. § 2012.

§ 114. Special education

A. Local schools and educational programs serving the Navajo Nation shall assure that handicapped and gifted Navajo students receive educational and support services and resources that are adequate to meet their special educational needs and that are both appropriate and non-discriminatory in terms of Navajo language, learning styles and culture. The Navajo Nation supports the essential policies made explicit within the “Education for All Handicapped Act”¹ concerning the provision of a free, appropriate public education in the least restrictive environment and the procedural rights and safeguards afforded handicapped students and their parents. No school or educational program shall discriminate against any student or applicant for services on the basis of handicap.

B. The Navajo Nation shall coordinate with other agencies to provide personnel preparation services for special education and related service needs to increase the availability of qualified Navajo special education personnel.

¹ 20 U.S.C. § 1415 et seq.

History

CN-61-84, November 14, 1984.

Library References

Indians ☞8.
Schools ☞148(2).
Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.
C.J.S. Schools and School Districts §§ 700 to
702, 717, 719.

United States Code

Educational assistance of children with disabilities, see 20 U.S.C. § 1411 et seq.
Early childhood development programs regulations and rules of general applicability, see 25 U.S.C. § 2019.
Infants and toddlers with disabilities, see 20 U.S.C. § 1431 et seq.

§ 115. Education of Navajo gifted, talented and highly motivated students

All local schools serving the Navajo Nation shall identify the strengths of gifted, talented and highly motivated students and shall provide appropriate

educational planning which will challenge and nurture each student's level of development to its highest potential. Students shall be provided an opportunity to work at their appropriate developmental level of ability rather than being limited to a normative level.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 116. School counseling services

All schools serving the Navajo Nation shall maintain competent, appropriately staffed counseling programs. Counseling staff shall have an awareness of Navajo culture and tradition, particularly as these relate to the individual needs and life circumstances of the students. The counseling program shall be concerned with the physical, cultural, intellectual, vocational and emotional growth of each student.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 117. Student code

Under the guidance of the local school boards, parent committees and parents, a written code of student conduct, rights and responsibilities shall be developed and maintained by each school serving the Navajo Nation. School disciplinary procedures should be corrective, based upon a disciplinary action plan incorporated into the code of student conduct. The disciplinary action plan should provide for notification and involvement of parents from the earliest stages of the disciplinary process. Each school governing board shall determine the appropriateness of corporal punishment in its disciplinary programs.

History

CN-61-84, November 14, 1984

Library References

Indians ⇐8.	C.J.S. Indians § 48.
Schools ⇐169.	C.J.S. Schools and School Districts §§ 789 to
Westlaw Topic Nos. 209, 345.	791.

§ 118. School attendance

A. Every person who has a Navajo child or Navajo children under his or her care between the ages of five (5) and eighteen (18) years shall assure the attendance of the child or children in school. For purposes of this section, a child shall be deemed to be five (5) years old only if he or she has a fifth birthday prior to September first of the school year to which this policy is applied. This policy applies to attendance by children who have not yet graduated from high school. Local school governing boards shall develop programs to improve regular school attendance in compliance with this policy.

B. Any adult residing in the Navajo Nation who violates the provisions of this section shall be subject to the penalties prescribed in 17 N.N.C. §§ 222 and 223 for petty misdemeanors. Any Navajo minor residing in the Navajo Nation who violates the provisions of this section shall be subject to the jurisdiction of the Family Courts of the Navajo Nation.

C. The Education Committee of the Navajo Nation Council shall develop regulations and procedures to enforce the compulsory attendance laws. The Navajo Division of Education shall work with appropriate agencies within the Navajo Nation, school boards, schools, school districts, Chapters, parent committees and state and federal governmental entities to develop appropriate and innovative measures and educational programs to decrease the dropout rate, reduce absenteeism and to meet the educational needs of students who have been unable to function effectively in the regular school setting.

D. The Navajo Nation discourages transfers from one school to another, particularly transfers which occur during the school year and jeopardize the student's academic progress. The Navajo Division of Education is directed to work cooperatively with all schools and school systems serving Navajo students to develop procedures to minimize excessive and inappropriate student movement between schools.

History

CN-61-84, November 14, 1984.

Library References

Indians ☞8.

Schools ☞160.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 734 to 739.

United States Code

Regulations by Secretary of the Interior to secure attendance at school, see 25 U.S.C. § 282.

§ 119. Substance and alcohol abuse

Navajo Nation law prohibits the possession or consumption of drugs and alcoholic beverages on the Navajo Nation. 17 N.N.C. §§ 390-395, §§ 410-412. All local schools shall discourage the utilization and consumption of drugs and alcoholic beverages through relevant academic or preventive guidance programs for all Navajo youth. Schools along with other community resources

shall encourage a positive self-concept, provide factual information and encourage personal responsibility. Schools shall work with other community service providers to seek and develop programs and resources to assist students addicted to the use of alcohol and other mind altering substances so that they may fully participate in the school program.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 120. Bus routes and transportation

Adequate bus transportation is of vital importance to the Navajo Nation to improve school attendance and increase the day attendance opportunities for Navajo students. Adequate bus transportation systems for students shall be established to ensure safe transport of Navajo students to and from school. Local school board policy governing the transportation of pupils shall meet or exceed all applicable state and federal safety regulations. The Navajo Nation, through the Education Committee and the Transportation and Community Development Committee, shall work in a joint and cooperative effort with the states in which the Navajo Nation is located and the Bureau of Indian Affairs to adopt adequate school bus routes, to avoid excessively long bus travel and to develop a comprehensive school transportation plan. The Navajo Nation may enter into agreements with the federal government, states, counties, local schools and school districts within and bordering the Navajo Nation to implement school transportation plans. In apportioning funds for road construction and maintenance, the Navajo Nation, federal, state and local (county) government shall consider school transportation needs for day attendance as a priority consideration. This section shall not justify the closure of any school nor the denial of day attendance opportunities to students within a school's day attendance area.

History

CN-61-84, November 14, 1984. to the "Transportation and Community Development Committee". See 2 N.N.C. § 420 *et seq.*
Revision note. Reference to the "Tribal Roads and Transportation Committee" changed

Library References

Indians ⇐8. C.J.S. Indians § 48.
Schools ⇐159.5. C.J.S. Schools and School Districts §§ 744 to 756.
Westlaw Topic Nos. 209, 345.
C.J.S. Civil Rights § 134.

United States Code

School boundaries, see 25 U.S.C. § 2004.

§ 121. School facilities and operations

A. All educational programs located within the Navajo Nation or serving significant numbers of Navajo students shall be housed in facilities that are accessible, appropriate to the purposes for which they are used, and maintained in good repair. The Bureau of Indian Affairs is responsible, either directly or through contract, to maintain in good repair, all educational facilities owned or operated by the Bureau or operated with funding from the Bureau. This subsection shall not be interpreted to justify the closure of any school facility in a manner contrary to the provisions of Subsection (B) of this policy or in violation of any Navajo Nation, state or federal law, regarding school closures.

B. The Navajo Division of Education shall establish joint planning efforts with schools and school systems in the Navajo Nation and with those educational institutions receiving federal funding to educate Navajo students to accomplish the following provisions:

1. When planning construction, expansion, consolidation, or closure of any school or school residential unit serving the Navajo Nation, the decision-making entity shall, from the initial stages, consult with the affected school boards and school board organizations, the Education Committee of the Navajo Nation Council, the Navajo Division of Education, affected Chapters and local communities and with those students, parents, and staff who use the facility, and shall incorporate the desires of these parties into their plans to the greatest extent feasible.

2. The construction, expansion, and renovation of any school facility shall conform to all applicable state and federal health and safety regulations, to established safety and building codes and to laws regarding environmental assessments and environmental impact.

3. In planning for the construction of any new educational facility, consideration shall be given to the development of an appropriate physical environment including but not limited to considerations of location, size, alternate use, and the extent to which the proposed facility will benefit unserved and inappropriately served populations, including students required to travel daily on the bus for an excessive amount of time.

History

CN-61-84, November 14, 1984.

Library References

Indians ↻8.

Schools ↻67.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 381 to 382.

United States Code

Suspension or discontinuance of schools, see 25 U.S.C. §§ 292, 292a.

Sale or conveyance of lands purchased for day school or other Indian administrative uses, see 25 U.S.C. §§ 293, 293a.

Annotations

1. Consent to policies

“We note, for example, that there are ‘Navajo Educational Policies’ which apply to all schools within the Navajo Nation, and to which the

School District agreed in its lease.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-13-98, slip op. at 8 (Nav. Sup. Ct. June 5, 2000).

§ 122. Vocational education and career education

A. The Navajo People have a right to education in basic, technical, employability, managerial, and entrepreneurial skills. The Navajo Nation shall advocate with federal, state and private sources for adequate funding of vocational and career education programs. The Navajo Nation shall integrate educational planning with economic planning and develop agreements and joint efforts for the sharing of vocational educational costs, facilities and programs. In order to increase the vocational opportunities available to Navajo youth and adults and to make the most efficient use of existing vocational educational resources, the Education Committee and the Human Services Committee of the Navajo Nation Council shall coordinate, with other entities, the development of comprehensive vocational educational planning.

B. Career education shall be integrated into the basic curriculum of all schools in all appropriate content areas and at all grade levels.

C. Vocational education programs shall be realistically designed to serve the needs of individuals of secondary school age or older including those who have academic, socioeconomic, cultural, physical, attitudinal or other handicaps, and who need or can profit from, the instruction. Vocational education programs should include instruction-in basic skills, communication, social interaction, occupationally specific skills and responsibility skills that are required for employment. Vocational education program offerings should be determined on the basis of identified needs, employment statistics, current occupational surveys, and local, state and national labor market demands, including the demands of new and emerging occupations. They should reflect the skills needed to develop the Navajo economy.

History

CN-61-84, November 14, 1984.

Services Committee”. See 2 N.N.C. § 601 et seq.

Revision note. Reference to the “Labor and Manpower Committee” changed to the “Human

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 123. Vocational rehabilitation and opportunities for the handicapped

A. All Navajo People are entitled to participate fully in the economic, social, cultural and political life of the Navajo Nation without regard to any handicapping condition. All public and private entities within the Navajo Nation shall cooperate with the Navajo Nation Council on the Handicapped in implementing this policy. Every public and private entity within the Navajo Nation shall:

10 N.N.C. § 123

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1. Recognize handicapped Navajo People as potentially productive members of society;
2. Encourage the handicapped Navajo population to reach optimum levels of economic independence and political, societal and cultural participation; and
3. Make reasonable accommodation to the special needs of handicapped persons, including the need for site accessibility, in regard to employment, housing, public accommodations, social services, transportation, recreation, educational and training opportunities, and community services and assure the availability of these services on an equitable, non-discriminatory basis.

B. The Navajo Nation Council on the Handicapped is responsible for assuring that all Navajo People have an opportunity to realize their potential to the extent of their physical and mental capabilities. The Council has such powers and responsibilities as are prescribed in its Plan of Operation and in other applicable Navajo Nation law. The Council shall work with other appropriate Navajo Nation governmental entities and with all service providers, public and private, to:

1. Establish coordination and joint planning for delivery of services to handicapped Navajos from birth through adulthood as close to home as possible;
2. Establish a continuum of appropriate services for all degrees of disability and all stages of the life cycle;
3. Eliminate service gaps and avoid duplication of services; and
4. Maximize available resources.

History

CN-61-84, November 14, 1984.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Vocational rehabilitation services grants, see 29 U.S.C. § 741.

§ 124. Post-secondary education

A. The future development of the Navajo Nation depends upon the education and skills of the Navajo People. In exercising its responsibilities in regard to financial assistance and post-secondary program oversight, the Navajo Nation shall give attention to the social, educational, economic and other developmental needs of the Navajo Nation, as well as to the welfare and personal needs of the individual student.

B. In providing financial assistance to students in post-secondary programs, the Office of Navajo Nation Scholarship and Financial Assistance Program (“ONNSFA”) shall develop policies and procedures which:

1. Provide career guidance to scholarship applicants;
2. Foster academic excellence and encourage scholarship recipients to pursue academically rigorous fields of study;
3. Encourage Navajo students to remain within their post-secondary educational programs until the completion of their degrees and to return and provide service to the Navajo Nation;
4. Encourage applicants to choose post-secondary programs which are appropriate to their career needs and to their academic preparation;
5. Make appropriate provision for the financial assistance needs of those students pursuing post-secondary vocational programs and for otherwise capable students who require remedial instruction;
6. Provide academic scholarships for students with high academic achievement;
7. Enable students to prepare, retrain and upgrade their skills for new and changing professions and occupations on a fulltime or part-time basis;
8. Encourage pursuit of graduate level degrees, particularly in fields which support the developmental goals of the Navajo Nation; and
9. Provide a range of financial assistance resources including academic scholarships, grants based on need, student loans and privately-endowed grants and scholarships.

C. Navajo Nation financial aid funds should be utilized in combination with state, federal and private resources, such as Pell grants, loans, college work study, tuition waivers, endowments, special grants and scholarships and innovative programs so that adequate financial assistance may be made to as many qualified post-secondary students as possible.

D. An Office of Academic Scholarship shall be established within the Navajo Division of Education. The Office shall:

1. Establish criteria for and oversee the provision of academic, scholarships to students of high academic achievement, without regard to assessed financial need;
2. Establish criteria for and oversee the provision of graduate fellowships; and
3. Provide for the development and administration of endowed programs of academic scholarships, fellowships and grants.

E. Post-secondary educational programs which recruit and/or serve students within the Navajo Nation shall be realistically designed to serve the educational needs of Navajo students and shall comply with the laws of the Navajo Nation.

History

CN-61-84, November 14, 1984. sections (B) and (D) have been deleted and/or
Revision note. References to the “Navajo Tribal Higher Education Department” in sub- changed to the “Office of Navajo Nation Scholarship and Financial Assistance Program”.

Cross References

See also the Plan of Operation for the Office of Navajo Nation Scholarship and Financial Assistance Programs within the Division of Education, and the ONNSFA Policies and Procedures.

Library References

Colleges and Universities ☞9.25.
 Indians ☞8.
 Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities § 33.
 C.J.S. Indians § 48.

§ 125. Navajo Community College

A. Navajo Community College is the officially chartered institution of post-secondary education for the Navajo Nation. It was established by the Navajo Nation Council, pursuant to Resolutions CN-95-68 and CJN-60-70. The College is established to provide post-secondary academic, vocational, technical and adult education programs; special and handicapped education programs; and community services in accordance with its Plan of Operation and other applicable Navajo Nation laws. The College provides instruction leading to certification in Navajo culture, language and other related fields and serves as a training center for educators and other professionals.

B. The College is authorized to develop plans and procedures with other post-secondary institutions for the coordination of post-secondary education programs and courses offered within the Navajo Nation, including upper division and graduate academic and vocational programs, under the oversight and guidance of the Education Committee of the Navajo Nation Council.

C. The Navajo Nation shall assist and support Navajo Community College in the pursuit of its unique and special educational mission.

History

CN-61-84, November 14, 1984.

Library References

Colleges and Universities ☞3.
 Indians ☞8.
 Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 5 to 6.
 C.J.S. Indians § 48.

United States Code

Navajo Community College; purpose, see 25 U.S.C. § 640a *et seq.*

§ 126. Adult education

The Navajo adult population has a right to educational programs that meet their educational needs and aspirations, and that are accessible to them in terms of proximity to home and work, time of day and expense. The Navajo Nation recognizes the importance of adult education and encourages public and private entities to develop and offer programs of adult education including, but not limited to adult basic education, pre-GED and GED education, basic vocational education, community education, consumer education, health education, and related adult programs. The Navajo Nation shall include adult education as a permanent component within its educational planning. All administrative entities within the Navajo Nation with responsibilities for education, training, community health, and related areas shall coordinate to assure that adult education opportunities are afforded to the Navajo population

consistent with Navajo Nation laws and policies, and shall seek ways of improving the number, quality and availability of adult educational offerings.

History

CN-61-84, November 14, 1984.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 127. Early childhood programs

Parents and persons having custody of Navajo children of preschool age are encouraged to enroll them in programs of early childhood education. Early childhood programs should employ a comprehensive developmental approach to help children achieve the social competence and pre-academic skills which are associated with positive school performance and healthy psycho-social adjustment. Early childhood programs shall work closely with parents, parent policy boards and local communities in developing and implementing their program plans. Administrative entities within the Navajo Nation with responsibility for education, child development, licensed day care, and related areas shall coordinate to assure that early childhood programs serving Navajo children are competently and compassionately administered in accordance with Navajo Nation laws and policies.

History

CN-61-84, November 14, 1984.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Educational assistance of children with disabilities, see 20 U.S.C. § 1411 et seq.
Early childhood development programs regulations and rules of general applicability, see 25 U.S.C. § 2019.
Infants and toddlers with disabilities, see 20 U.S.C. § 1431 et seq.

Chapter 3. School Boards

Subchapter 1. Local Community School Boards

Section

- 201. Establishment
- 202. Membership
- 203. Composition
- 204-205. [Superseded]
- 206. Compensation

Section

- 207. Powers, authority and duties
- 208. Officials
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Subchapter 3. Agency School Boards

- 251. Establishment
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Subchapter 5. Navajo Area School Board Association

- 301. Executive Board
- 302. Powers and duties
- 303. Officers
- 304. Meetings
- 305. Funding

Cross References

School Boards—Local Control of Schools, 10 N.N.C. § 106.
School Board Elections, Navajo Election Code, 11 N.N.C. § 1 *et seq.*

Subchapter 1. Local Community School Boards

§ 201. Establishment

The Chapters of the Navajo Nation are authorized to establish such local Navajo Community School Boards as are suitable for their respective areas. Such local community school boards shall have the governance of schools funded or operated by the Bureau of Indian Affairs for the education of Navajo students.

History

CN-61-84, November 14, 1984.
CAU-87-69, August 8, 1969.

Cross References

Qualifications for office, see 11 N.N.C. § 8(D)(4).

Library References

Indians ⇌8.
Schools ⇌52.
Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.
C.J.S. Schools and School Districts §§ 110 to 111, 118, 132.

United States Code

Self-determination and Education Assistance, see 25 U.S.C. § 450 et seq.
Tribally Controlled School Grants, see 25 U.S.C. § 2501 et seq.

Annotations

1. Construction and application

It is therefore obvious that while the schools remain minimally self-sufficient, they have been inextricably intertwined with the Navajo Nation government and their local Navajo communities from their inception. The Appellant schools have characteristics of both public and private

schools; therefore, we agree with the District Court that the schools are “local community schools,” or “other schools” under the meaning of section 2(EE) of the Election Code. We hold that the Election Code applies to the Appellants. *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 171-172 (1996).

§ 202. Membership

Any enrolled member of the Navajo Nation may serve as a member of a Local Community School Board, provided that:

- A. The member is a resident of the Chapter he or she will represent;
- B. The member is twenty-one (21) years of age or over; and
- C. The member is not an employee of the school upon whose board he or she would serve.

History

CAU-87-69, August 8, 1969.

Cross References

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

Library References

Indians ⇐8.
Schools ⇐53(2).
Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.
C.J.S. Schools and School Districts §§ 112, 114.

§ 203. Composition

A local Navajo Community School Board shall be composed of not less than three nor more than seven members as established by the chapter or chapters having jurisdiction over the local School Board.

History

CAU-87-69, August 8, 1969.

Exceptions to provision. CAU-37-84, August 7, 1984, specifically waived the provisions of 10 N.N.C. § 203 to permit the ten members of the local school boards of the Chuska Boarding

School and the Tohatchi Boarding School to serve as a consolidated school board of the Consolidated Chuska Tohatchi Bureau of Indian Affairs Boarding School until the expiration of the terms of the current members.

Cross References

Composition of School Board; apportionment for School Board Elections, see 11 N.N.C. § 11.

Library References

Indians ⇐8.

Westlaw Topic No. 209.

10 N.N.C. § 203

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C.J.S. Indians § 48.

Annotations

1. Apportionment

It is clear that the Navajo Nation Council has delegated the Education Committee as the appropriate body to finally approve all school

board apportionment plans. *Rough Rock Community School Board, Inc. v. Navajo Nation*, 7 Nav. R. 168, 175 (1996).

§§ 204 to 205. [Superseded]

History

CAP-23-90, April 6, 1990.

§ 206. Compensation

All local Navajo Community School Board members shall receive payment for discharging their duties at rates set by the Education Committee of the Navajo Nation Council in consultation with the school boards, in accordance with regulations developed pursuant to P.L. 59-561.

History

CN-38-79, November 27, 1979.

CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

§ 207. Powers, authority and duties

A. The local Navajo Community School Boards are authorized to solicit funds from such other sources as they may choose, and such School Boards may disburse these funds in any manner related to the performance of their duties and functions. The School Boards shall file yearly statements of account with their respective Agency School Boards.

B. In order to effectuate local control of schools on the Navajo Nation, all proposals relating to management or instruction of such schools shall be submitted to the School Boards for their consideration and consent. The School Boards shall have the authority to advise the Agency School Administrator in charge of hiring and replacement of both to-grant its approval and disapproval of administrative and instructional personnel.

C. The School Boards shall work in cooperation with the principals of the schools which they serve, shall participate in the total aspect of school operation such as finance, personnel, school plant management, transfer of school facilities and educational program, shall strive to maintain constant good relations between the school and the surrounding community, shall determine policies relating to the use of school facilities after hours, shall cooperate with other local agencies for the improvement of the community generally, and shall

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10 N.N.C. § 209

initiate such activities involving both curricular and extra-curricular aspects of school functions, as will foster increased community participation in education.

D. A School Board shall report any disagreements either among its members or between it and school officials, to the Agency or InterAgency School Boards, if such disputes are incapable of resolution at the Board level.

E. The adopted operating plans of the present existing boards or groups will be utilized and incorporated under this section.

History

CAU-87-69, August 8, 1969.

Cross References

Powers of School Board Committee, see 2 N.N.C. § 484.

Responsibility and authority of the Navajo Nation, see 10 N.N.C. § 104.

Composition of School Board; apportionment for School Board Elections, see 11 N.N.C. § 11.

Library References

Indians ⇄8.

Schools ⇄55.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 15 to 17, 142 to 145, 147, 206, 254, 356, 401.

§ 208. Officials

Each Local Navajo Community School Board shall elect a President, Vice-President, and a Treasurer, and such other officials as are deemed necessary.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

§ 209. Meetings

Meetings shall be held at least once per calendar month during the school term, and at such other times as the President of the School Boards shall deem advisable. The President, in calling any meetings of the Board, shall give a minimum of three (3) days notice to each member of the Board.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.

Schools ⇄57.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 148 to 152, 155.

§ 210. [Superseded]

History

CAP-23-90, April 6, 1990.

Subchapter 3. Agency School Boards

§ 251. Establishment

A. The Chapters of the Navajo Nation, in cooperation with the Local School Boards within their jurisdiction, are authorized to establish Agency School Boards.

B. Agency School Boards shall be established in agencies having schools drawing students from more than one Chapter served by a Local School Board, including but not limited to the Chinle, Crownpoint, Many Farms, Shiprock, and Tuba City Boarding Schools.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 252. Composition

Each Agency School Board shall be composed of members elected or appointed by the Local Boards within the Agency. Each Local Board shall appoint or elect one person to serve on the Agency Board. In no event shall an Agency Board have more members than the total number of schools within the Agency.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 253. Powers; duties

A. The Agency School Board shall meet as necessary to request and review reports from Local School Boards relating to projects and activities carried out by these Local School Boards.

B. The Agency Board shall plan workshops and other training activities for members of Local School Boards.

C. The Agency Board shall review and approve any financial statements submitted by any Local School Board within its jurisdiction. If an Agency

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10 N.N.C. § 255

Board finds that any Local School Board has mismanaged or otherwise misappropriated funds available to it, the Agency Board may require the Local School Board to submit for its approval all future disbursements of Local School Board funds, for a period at the discretion of the Agency Boards. The Agency Board shall have general powers to oversee and superintend the activities of Local School Boards, and to assure that the activities of such Local Boards comply with and implement the purposes of this chapter.

D. The Agency Boards, where it is feasible, shall handle the affairs of their respective Agency bordertown dormitories.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 254. Officials

Each Agency School Board shall elect a President, a Vice-President, and a Treasurer, and other officials as necessary.

History

CAU-87-69, August 8, 1969.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 255. Meetings

Agency School Boards shall meet either monthly or at such intervals as established, but in no event shall meet less than four times per year.

History

CAU-87-69, August 8, 1969.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Subchapter 5. Navajo Area School Board Association

History

1974 amendment. The name "InterAgency School Board Association" by CF-25-74, February 14, 1974. School Boards" as adopted by CAU-87-69, August 8, 1969, was changed to "Navajo Area

§ 301. Executive board

The members of the Navajo Area School Board Association shall elect 13 members from such Navajo Area School Board to act along with its officers, as an executive board. The purpose of this executive board shall be the conducting of such business as may arise between meetings of the Navajo Area School Board. This executive board shall adopt such Bylaws as it sees fit for the proper and orderly conduct of business.

History

CF-25-74, 5, February 14, 1974.
CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 302. Powers and duties

In cooperation with the Education Committee of the Navajo Nation Council, the Navajo Area School Board Association shall have the following powers and duties:

A. A Navajo Area School Board Association shall consider programs and problems of Navajo Nation-wide significance and for off-Reservation schools such as Intermountain, Chemawa, Albuquerque, Stewart, Chilocco, Fort Sill, Phoenix, Riverside, and Sherman.

B. The Navajo Area School Board Association shall make recommendations to the Education Committee of the Navajo Nation Council concerning all Navajo Area Schools and Local School Boards.

C. The Navajo Area School Board Association shall plan such activities for Navajo Area Schools and Local School Boards as are required in order that the Navajo Area and Local School Boards may effectuate the purpose of this chapter.

D. The Navajo Area School Board Association shall take all actions necessary to provide opportunities for local school boards to share educational problems of mutual concern and to assist them in developing solutions to these problems.

E. The Navajo Area School Board Association will from time to time meet with the Education Committee of the Navajo Nation Council to review the progress of education on the Navajo Nation, and make any proposals which in

the opinion of the Navajo Area School Board Association would “improve” education in the Navajo Nation.

F. The Navajo Area School Board Association shall recommend to the Education Committee of the Navajo Nation Council such policies, procedures, goals, and aims, or such workshops as are required to implement the intent of this chapter.

History

CF-25-74, February 14, 1974.
CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 303. Officers

The Navajo Area School Board Association shall establish a President, a Vice-President, and a Treasurer, and such other officers as are required.

History

CF-25-74, February 14, 1974.
CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 304. Meetings

The Navajo Area School Board Association shall meet at intervals, set by a majority of its members, but in no event shall it meet less than four (4) times a year.

History

CF-25-74, February 14, 1974.
CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 305. Funding

The Navajo Area School Board Association in cooperation with the Education Committee of the Navajo Nation Council shall solicit funds as are necessary to support its activities, and any activities of Local or Area School Boards, from available sources. Any funds procured by any Area Boards in

excess of cost requirements for their respective activities shall be dispersed to Local School Boards in a manner established by the Area School Board.

History

CF-25-74, February 14, 1974
CAU-87-69, August 8, 1969.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Chapter 5. School Attendance

Section

- 501. Annual enrollment and school attendance
- 502. Compulsory school attendance—Generally
- 503. Application of state and Navajo Nation laws
- 504. Plans and procedures for enforcement

§ 501. Annual enrollment and school attendance

A. An annual enrollment and school attendance “drive” shall be conducted between the first of August and the fifteenth of November of each year.

B. The goal of the “drive” shall be to insure the enrollment and continued attendance of all Navajo children between the ages of 6 and 16 in available schools.

C. The Education Committee and the President of the Navajo Nation shall be responsible for detailed planning, coordination and stimulation of this “drive”.

D. All Navajo Nation Council members and Chapter officers shall be responsible for disseminating information regarding the “drive” in their local communities.

History

CO-38-55, October 13, 1955.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 502. Compulsory school attendance—Generally

Education in Navajo schools shall be compulsory as to children between the ages of five (5) and eighteen (18) years as prescribed and defined in 10 N.N.C. § 118 of the Navajo Education Policies.

History

CN-61-84, November 14, 1984.
 1922-1951 Res. p. 114, February 20, 1947.

Library References

Indians ⇐8.	C.J.S. Indians § 48.
Schools ⇐160.	C.J.S. Schools and School Districts §§ 734 to 739.
Westlaw Topic Nos. 209, 345.	

United States Code

Regulations by Secretary of the Interior to secure attendance at school, see 25 U.S.C. § 282.

§ 503. Application of state laws and Navajo Nation laws

The Navajo Nation Council consents to the application of state compulsory school attendance laws to the Indians of the Navajo Nation and their enforcement on Indian lands of the Navajo Nation wherever an established public school district lies or extends within the Navajo Nation. In addition, 10 N.N.C. § 118 of the Navajo Education Policies regarding compulsory attendance shall apply to all Navajo minors between the ages of 5 and 18 and to all persons having care and custody of such minors who are within the civil or criminal jurisdiction of the Navajo Nation.

History

CN-61-84, November 14, 1984.
 CA-39-52, 1952, August 11, 1952.
Revision note. Slightly reworded.

Library References

Indians ⇐8.
 Westlaw Topic No. 209.
 C.J.S. Indians § 48.

United States Code

Regulations by Secretary of the Interior to secure attendance at school, see 25 U.S.C. § 282.

§ 504. Plans and procedures for enforcement

A. The Education Committee of the Navajo Nation Council, after consultation with the President of the Navajo Nation, is authorized and directed to develop plans and procedures in conjunction with local schools, communities, parents and other governmental entities for the enforcement of the compulsory school attendance laws among the Navajo Nation, including, but not limited to, provision for bringing action against responsible parents in Navajo Nation Courts.

B. The Education Committee is further authorized to designate areas where such plans and procedures shall be implemented.

C. The Education Committee is directed to continue to encourage regular school attendance through all means available.

History

CN-61-84, November 14, 1984.

CO-66-58, October 17, 1958.

Revision note. Slightly reworded.

Library References

Indians ⇐8.

Schools ⇐160.

Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.

C.J.S. Schools and School Districts §§ 734 to 739.

United States Code

Regulations by Secretary of the Interior to secure attendance at school, see 25 U.S.C. § 282.

Chapter 7. Clothing for School Children [Repealed]**Chapter 9. Loans and Scholarships**

Subchapter 1. Loans

Section

901. Condition precedent

902. Purposes

903. Scholastic requirements

904. Amount

905. Repayment

Subchapter 3. Scholarships

951. Scholarship Trust Fund-Establishment

952. Trust or non-profit educational foundation; establishment

953. Investment

Subchapter 5. Scholarship and Financial Assistance Programs [Repealed]**History**

Note. Subchapter 5, "Scholarship and Financial Assistance Programs" repealed by CJY-56-94, July 20, 1994, subject to adoption of the Navajo Nation Scholarship and Financial

Assistance Policies and Procedures and the Navajo Education Appeals Committee Plan of Operation.

Subchapter 7. Navajo Education and Scholarship Foundation

1101. Navajo Education and Scholarship Foundation

1102. Name; place; duration

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- 1103. Status
- 1104. Purposes and powers
- 1105. Dissolution of the Corporation
- 1106. Board of Trustees
- 1107. Officers of the Corporation
- 1108. Advisory Council of the Navajo Education and Scholarship Foundation, Inc.
- 1109. Indemnification of officers and directors
- 1110. Amendment of Articles
- 1111. Bylaws
- 1112. Agent for service of process
- 1113. Jurisdiction

Code of Federal Regulations

Administration of educational loans, grants and other assistance for higher education, see 25 CFR § 40.1 et seq.

Subchapter 1. Loans

§ 901. Condition precedent

A. Applicants for educational loans must first seek all available assistance on a non-reimbursable basis.

B. Procedures and requirements for the granting of student loans shall comply with 10 N.N.C. § 124 of the Navajo Education Policies.

History

CN-61-84, November 14, 1984.
ACMA-45-60, March 10, 1960.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 902. Purposes

Educational loans shall be considered for the following purposes only:

A. To supplement scholarship grants, personal funds and/or family assistance in order to meet required and necessary expenses.

B. To make full loans to students who for justifiable reasons cannot obtain assistance in accordance with subsection (A) of this section, and who are otherwise eligible for a loan.

History

ACMA-45-60, March 10, 1960.

Library References

Colleges and Universities ☞9.25(2).
Indians ☞8.
Westlaw Topic Nos. 81, 209.
C.J.S. Colleges and Universities § 34.
C.J.S. Indians § 48.

§ 903. Scholastic requirements

A student attending college shall comply with the requirements of the Office of Navajo Nation Scholarship and Financial Assistance Programs for eligibility for student loans in regard to credit hours and grade point average.

History

CN-61-84, November 14, 1984.

replaced the former Higher Education Department.

ACMA-45-60, March 10, 1960.

Revision note. The Office of Navajo Nation Scholarship and Financial Assistance Programs

Library References

Indians ☞8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

§ 904. Amount

The Office of Navajo Nation Scholarship and Financial Assistance Programs shall determine the maximum amount of student loans authorized by this subchapter.

History

CN-61-84, November 14, 1984.

replaced the former Higher Education Department.

ACMA-45-60, March 10, 1960.

Revision note. The Office of Navajo Nation Scholarship and Financial Assistance Programs

Library References

Indians ☞8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

§ 905. Repayment

A. Repayment of educational loans shall be scheduled for not less than twenty-five dollars (\$25.00) per month, payments to begin not later than six (6) months after completion of the course.

B. In the event a student drops out of school before his course is completed, for reasons other than health or military service, the repayment of the loan shall begin not later than six (6) months from the date of separation.

History

ACMA-45-60, March 10, 1960.

Library References

Colleges and Universities ☞9.25(2).

C.J.S. Colleges and Universities § 34.

Indians ☞8.

C.J.S. Indians § 48.

Westlaw Topic Nos. 81, 209.

Subchapter 3. Scholarships

History

Note. For current information regarding the status of Navajo Nation Scholarships and Scholarship Trust Funds, contact the Office of Navajo Nation Scholarship and Financial Assistance Programs within the Navajo Division of Education.

§ 951. Scholarship Trust Fund—Establishment

There is established a Scholarship Trust Fund in order to provide a permanent source of income to pay for the college and higher education of Navajos and, insofar as surplus income may be available, for their secondary education and vocational training.

History

CF-36-57, February 15, 1957.

Library References

Colleges and Universities ¶9.25(1).
Indians ¶8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities § 33.
C.J.S. Indians § 48.

§ 952. Trust or non-profit educational foundation; establishment

A trust or a non-profit educational foundation, or both, shall be established for a period of not less than twenty (20) years to administer the scholarship funds.

History

CM-53-57, May 28, 1957.

Library References

Indians ¶8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 953. Investment

The President of the Navajo Nation, with the consent and approval of the Budget and Finance Committee and the Navajo Nation Council, is authorized to proceed with the investment of the Scholarship Fund in a manner consistent with prudent investment practices for funds of this nature, and to enter into such contracts as may be required in connection therewith, taking into consideration, but not limited to, the forces of inflation which may greatly reduce the real value of the fund over a period of years, the immediate cash return required, the safety of principal, and the availability of funds when required.

History

CM-53-57, May 28, 1957.
Revision note. Reference to the "Advisory Committee" replaced by the "Budget and Finance Committee and the Navajo Nation Council". See 2 N.N.C. § 374(B) (1).

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Subchapter 5. Scholarship and Financial Assistance Program [Repealed]

History

Note. Subchapter 5, “Scholarship and Financial Assistance Programs” repealed by CJY-56-94, July 20, 1994 subject to adoption of the Navajo Nation Scholarship and Financial Assistance Policies and Procedures and the Navajo Education Appeals Committee Plan of Operation.

CJY-56-94, July 20, 1994.
ACAP-78-85, April 29, 1985.
ACS-322-71, September 28, 1971.
ACO-136-65, October 18, 1965.
CAU-58-65, August 3, 1965.
CAU-53-61, August 29, 1961.

Subchapter 7. Navajo Education and Scholarship Foundation

§ 1101. Navajo Education and Scholarship Foundation

The Navajo Education and Scholarship Foundation is a nonprofit corporation chartered under the authority of the Navajo Nation.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

1. Validity

“The Court understands the desire of the Advisory Committee to continue to have input into NESF. As was described earlier in this opinion, the Court generally will not examine the motives behind a legislative act of the act itself is proper and valid. The opposite is also true. The Court will not examine the motives behind a legislative act if the act itself is improper or invalid. The act of the Advisory Committee on February 25, 1987, was not according to the law of the Navajo Nation and the best of inten-

tions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1102. Name; place; duration

A. The name of the corporation shall be Navajo Education and Scholarship Foundation, Inc.

B. The principal place of business of this corporation shall be at Window Rock, Navajo Nation (Arizona).

C. The duration of the corporation shall be perpetual.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

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tions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

2. Construction and application

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1103. Status

This corporation is a non-profit, nonmembership corporation organized exclusively for educational and charitable purposes.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

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1. Validity

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§ 1104. Purposes and powers

A. This corporation is organized, and shall at all times be operated, exclusively to benefit the Navajo Nation and to carry out the educational purposes

thereof; provided that it shall do so through activities themselves qualifying as charitable or educational within the meaning of § 501(C)(3) of the Internal Revenue Code of the United States (or the corresponding provision of any future United States Internal Revenue Law), including but not necessarily limited to the advancement of education.

B. In furtherance of these activities the corporation shall solicit funds from private and public sources for the support of broad educational goals and programs benefitting Navajo People. It shall use what funds it acquires for some or all of the following activities and for other activities not inconsistent with the purposes set forth herein as from time to time may be directed by the Board of Trustees:

1. To provide financial assistance to Navajo students enrolled in academic and vocational educational institutions, and institutions and activities which provide the training and develop the skills necessary to the survival and well-being of Navajos and the Navajo Nation.

2. To provide financial assistance and support to academic and vocational educational institutions, and to other institutions and activities, judged suitable to provide the training and to develop the skills necessary to the survival and well-being of Navajos and the Navajo Nation.

C. The corporation shall have the power to receive and administer funds for educational and charitable purposes, consistent with the provisions of articles of incorporation and applicable law. To that end, and only in furtherance of said purposes, the corporation may take and hold by bequest, devise, gift, grant, purchase, or otherwise, either absolutely or jointly with another, any property, real, personal, tangible, or intangible, or any interest therein, without limitation as to amount or value; to sell, convey, or otherwise dispose of such property, and to invest, reinvest, or deal with the principal or income thereof in such a manner as, in the judgment of the directors, will best promote the purposes of the corporation, without limitation except such as maybe contained in the instrument under which such property is received, these articles of incorporation, the bylaws of the corporation, or any laws applicable thereto.

D. The corporation shall be empowered to enter contracts, and also to incur debts and liabilities not in excess of the value of its uncommitted assets.

E. The corporation shall enjoy all powers necessary or convenient to achieve the purposes for which it is organized, including the power to sue and be sued in its corporate name and capacity.

F. The corporation shall have the power, in general, to do any and all acts and things, within or without the Navajo Nation, and to exercise any and all powers which may now or hereafter be lawful for the corporation to do or exercise, under and pursuant to the laws of the Navajo Nation and any other applicable law, provided, however, that it is not empowered to engage in any activity which is not in furtherance of its purposes above-described.

G. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation. The corporation shall not participate or intervene in (including the publishing or

distributing of statements) any political campaign on behalf of any candidate for public office.

H. No part of the income of the corporation shall inure to the benefit of any trustee, or officer of the corporation, or of any other private person, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its purposes above-described.

I. The corporation shall utilize a fund accounting system. Income to the corporation shall be accounted for in such a manner as to permit tracking of the use of such income from receipt to authorized expenditure.

J. Notwithstanding any other provisions of these articles of incorporation, the corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under § 501 (C) (3) of the Internal Revenue Code of 1954¹ (or the corresponding provision of any future United States Internal Revenue Law); or by a corporation, contributions to which are tax-deductible under § 170(C) (2) of the Internal Revenue Code of 1954² (or the corresponding provision of any future United States Internal Revenue Law).

¹ 26 U.S.C. § 501(c)(3).

² 26 U.S.C. § 170(c)(2).

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇄8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

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1. Validity

“The Court understands the desire of the Advisory Committee to continue to have input into NESF. As was described earlier in this opinion, the Court generally will not examine the motives behind a legislative act of the act itself is proper and valid. The opposite is also true. The Court will not examine the motives behind a legislative act if the act itself is improper or invalid. The act of the Advisory Committee on February 25, 1987, was not according to the law of the Navajo Nation and the best of inten-

tions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1105. Dissolution of the Corporation

In the event of the liquidation or dissolution of the corporation, whether voluntary or involuntary, no director, trustee, officer of the corporation, or any other private person shall be entitled to any distribution or division of its assets. Any assets remaining to the corporation at dissolution or liquidation, after paying or providing for its liabilities, shall be distributed to one or more non-

profit, charitable organizations which are tax-exempt under § 501 (C) (3) of the Internal Revenue Code¹ or its successors.

¹ 26 U.S.C. § 501(c)(3).

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF) ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

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1. Validity

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2. Construction and application

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1106. Board of Trustees

A. There shall be a board of trustees with a membership of nine, each of whom shall be an enrolled member of the Navajo Nation. Members of the board of trustees shall be educators and other representatives of the Navajo people with a known concern for the quality of Navajo education and its effect on the life of Navajos; the culture and traditions of the Diné; and the development of Navajo institutions.

B. The board of trustees shall elect a chairperson, a secretary, and five members of the Executive Committee. The Chairman of the Board of Trustees shall serve as Chairperson of the Executive Committee.

C. The executive committee shall be empowered to act for the board of trustees in the absence of the board, and in all matters delegated to the executive committee by the full board either through the bylaws or by resolution. The executive committee shall not act contrary to an adopted policy or resolution of the board of trustees. Actions of the executive committee shall have full legal effect when executed consistent with these articles, the bylaws, and the resolutions of the board of trustees, and where no legal obligation is impaired, may be superseded by subsequent board action, provided that no action of the executive committee may compromise or otherwise infringe upon the authority and responsibilities vested in the officers of the corporation.

D. The board of trustees shall establish policy and general directions for the corporation; shall elect the principal officers of the corporation who shall

manage the affairs of the corporation under the policies and directions established by the board; and shall elect the members of the advisory council.

E. The nine members of the board of trustees shall as directed by the presently existing board of trustees serve in groups of three for staggered periods of one (1), two (2) and three (3) years commencing with the adoption of these articles of incorporation by the board of trustees of the Navajo Education and Scholarship Foundation, Inc., at the time then serving.

F. Successor members of the board of trustees shall be elected by a majority vote of a quorum of the board of trustees then serving.

G. The nine members of the board of trustees shall serve for their designated term and until the election of their successor except when that designated term shall be abbreviated by resignation or by vote of a two-thirds majority of the members of the board of trustees then serving.

H. The board of trustees shall meet annually in October on the Navajo Nation; and at such other times and places as may be directed by the executive committee.

I. A majority of those members present and voting at a duly called meeting of the board of trustees at which a quorum is present shall be sufficient to determine all matters before the board of trustees except where otherwise provided in these articles of incorporation or by-laws duly adopted pursuant thereto.

J. By direction of the executive committee of the board of trustees, matters including election of members of the board of trustees may be submitted by mail ballot. A majority of the board in such case shall consist of the vote of five of the nine members of the Board. The executive director shall conduct such ballot on behalf of the board and of the executive committee and shall certify in writing the results of any such mail or telephone ballot to the appropriate body.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Revision note. Slightly reworded for statutory consistency.

Library References

Indians ⇄8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

Annotations

1. Validity

“The Court understands the desire of the Advisory Committee to continue to have input into NESF. As was described earlier in this opinion, the Court generally will not examine the motives behind a legislative act of the act itself is proper and valid. The opposite is also true. The Court will not examine the motives behind a legislative act if the act itself is improper or

invalid. The act of the Advisory Committee on February 25, 1987, was not according to the law of the Navajo Nation and the best of intentions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

2. Construction and application

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo

10 N.N.C. § 1106

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Note 2

Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not

have the power to grant corporate charters." *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1107. Officers of the Corporation

A. The officers of the corporation shall be an executive director, a secretary, and a treasurer; provided, however, that the board of trustees may direct that the secretary and treasurer be the same person in which event the officer shall be known as the secretary-treasurer.

B. Officers shall be elected by a majority vote of the Board of Trustees, except that if the secretary and treasurer are employees of the corporation, the executive director shall recruit them, negotiate their terms of employment, employ and train them, and direct their activities.

C. The executive director shall not be a member of the board of trustees, but shall attend all meetings of the board and of its committees and have full floor privileges without vote. The executive director shall be a full time employees of the corporation under contract. The contract may be renegotiated at any time during its term by mutual agreement in writing of the executive director and the board of trustees as evidenced by a majority vote of the board.

D. The secretary and treasurer of the corporation may be a member of the board of trustees. If not a member, the secretary and treasurer shall attend meetings of the board of trustees and its committees as directed by the executive director. If employees of the corporation, the secretary and treasurer shall be under contract subject to the same provisions for renegotiation and termination as provided for the executive director.

E. The executive director, secretary, and treasurer shall serve during the term of their contract and successor contracts thereto, and until the election and qualification of their successors.

F. A vacancy occurring in any office shall be filled for the unexpired term by a person elected by a majority of the executive committee of the board of trustees, subject to ratification by a majority vote of the full voting membership of the board of trustees at its next meeting thereafter.

G. The executive director shall act for the corporation and in its name as chief executive officer, in conformity with its articles of incorporation and bylaws, and with the policies, budgets and general or special authorities established by resolution of the Board, to:

1. Manage the affairs of the organization as its chief executive officer;
2. Establish and, from time to time, amend tables of organization and administrative practices and procedures of the corporation for its efficient and effective operation;
3. Arrange through purchase, lease, grant or otherwise for offices, furniture, facilities, equipment;
4. Recruit, employ, fix the compensation and benefits of, and remove, employees of the corporation, including the secretary and treasurer of the corporation if such are employees of the corporation;

5. Select and contract with consultants and professional services contractors;

6. Negotiate and execute contracts, grants and other agreements committing the organization to the receipt or disposition of cash or to the acquisition, holding, or disposition of property;

7. Complain for or defend the corporation, or otherwise represent its interests, in any judicial, administrative, or legislative proceedings;

8. Settle, adjust, and compromise any claim, demand, right of, by or for or against the organization;

9. Exercise such other authority as may be necessary and proper to carry out the authorities granted herein;

10. Delegate and redelegate any or all of such authorities to other employees provided that monetary commitments are limited to five hundred dollars (\$500.00) or such other amount as the Executive Committee may from time to time establish.

H. The secretary of the corporation shall record the minutes of all meetings of the corporation, and subject to election or appointment for such purpose, of the board of trustees and of the executive committee; and shall perform such other duties as are delegated to him by the executive director. The minutes of the corporation, the board, and of the executive committee shall be kept available at all times at the principal place of business for inspection by any trustee or the executive director.

I. The treasurer of the corporation shall have custody of all funds of the corporation; shall keep a full and accurate account of receipts and expenditures as directed by the executive director; shall make disbursements in accordance with the approved budget and as authorized by the executive director; shall present a financial statement at every meeting of the corporation and at other times when requested to do so by the chairperson of the board of trustees or the executive director; and shall make a full report at the annual meeting of the corporation. The treasurer shall be responsible for the maintenance of such books of account and records as conform to the requirements of the articles and bylaws. All such books of account and records shall be kept available for examination at the principal office by any trustee or the executive director.

J. The books of account and records shall be examined and audited annually by an independent auditor hired by the board of trustees for that purpose who, satisfied that the treasurer's annual report is correct shall sign a statement of that fact.

K. All official records of the corporation shall be safely maintained at the principal place of business by the officers of the corporation. Upon demand by any member of the board, the executive director, or the duly elected and qualified successor of an officer of the corporation, shall make available the appropriate corporate books of account and records at the principal place of business of the corporation for immediate inspection of and delivery to the successor to any officer of the corporation.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Revision note. Slightly reworded for statutory consistency.

Library References

Indians ⇨8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

Annotations**1. Validity**

“The Court understands the desire of the Advisory Committee to continue to have input into NESF. As was described earlier in this opinion, the Court generally will not examine the motives behind a legislative act of the act itself is proper and valid. The opposite is also true. The Court will not examine the motives behind a legislative act if the act itself is improper or invalid. The act of the Advisory Committee on February 25, 1987, was not according to the law of the Navajo Nation and the best of inten-

tions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

2. Construction and application

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1108. Advisory Council of the Navajo Education and Scholarship Foundation, Inc.

A. There shall be an advisory council of no more than forty (40) persons in equal classes of one (1), two (2), and three (3) years appointed at the time of the effective date of these articles of incorporation by the board of trustees. The advisory council shall have the right to attend all meetings of the corporation and the board of trustees, to have floor privileges at those meetings, and to be notified of those meetings and the agenda therefor. Members of the advisory council shall not have a right to vote at meetings of the corporation or the board of trustees, nor for their ballots to be counted for other than advisory purposes on matters before the corporation, board of trustees, or executive committee, whether ballots are taken at a meeting or by mail or telephone.

B. Successors to advisory council members appointed as provided above and additions to that membership shall be elected without restriction by the board of trustees of the corporation upon nomination to the board by the advisory council, by members of the board of trustees, and by the executive director. Members may be removed without cause by a majority vote of the members of the board of trustees.

C. The chairperson of the advisory council and such other officers of the council as may be determined by the council to be appropriate shall be elected by a majority vote of those present and voting at any meeting of the advisory council, to serve for a term of one (1) year or until a successor has been qualified and seated. The chairperson of the advisory council shall be an ex officio member without vote of the board of trustees of the corporation.

D. At each annual and special meeting of the board of trustees and of the corporation the chairperson of the advisory council shall report to the board and corporation such matters as that chairperson may deem appropriate. The board of trustees and corporation shall by resolution respond to each matter for which the chairperson of the advisory council requests a response.

E. The organizing meeting of the advisory council shall be at the time and place designated by the presently existing board of trustees for the organizing meeting of the board of trustees and of the corporation. The chairperson of the board of trustees shall serve as chairpersons pro tem of the advisory council until such time as the council shall have elected its officers. Thereafter, the advisory council shall meet at the call of the chairperson of the advisory council, the chairperson of the board of trustees, or the executive director.

F. The executive director shall be an ex officio member without vote of the advisory council. The executive director shall have full floor privileges at any meeting and at each meeting of the Council shall report to the council concerning the affairs of the corporation.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).
ACN-183-86, Amended NESF Articles of Incorporation.

Revision note. Slightly reworded for statutory consistency.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

1. Validity

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tions will not make it so.” *Benally v. Gorman*, 5 N. Rep. 272, 283 (W.R.D.C. 1987).

2. Construction and application

“The Court holds that the Advisory Committee chartered the NESF and that the Navajo Nation ratified that by subsequent acts. This holding is very limited as it pertains to the NESF. Advisory Committee has the power to create and abolish tribal entities. It does not have the power to grant corporate charters.” *Benally v. Gorman*, 5 N. Rep. 272, 282 (W.R.D.C. 1987).

§ 1109. Indemnification of officers and directors

A. Each elected trustee and officer of the corporation now or hereafter serving as such shall be indemnified by the corporation against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as such trustee or officer or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such trustee or officer; and the corporation shall reimburse each such person for all expenses including legal expenses, actually and reasonably incurred by him or

her in connection with such claim or liability, provided, however that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with any claim or liability arising out of his or her own wilful misconduct or gross negligence.

B. The right of indemnification herein above provided for shall not be exclusive of any rights to which any director or officer of the corporation may otherwise be entitled by law.

C. The bylaws may contain further provisions as to indemnification, not inconsistent with the foregoing.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations

1. Validity

“The Court understands the desire of the Advisory Committee to continue to have input into NESF. As was described earlier in this opinion, the Court generally will not examine the motives behind a legislative act of the act itself is proper and valid. The opposite is also true. The Court will not examine the motives behind a legislative act if the act itself is improper or invalid. The act of the Advisory Committee on February 25, 1987, was not according to the law of the Navajo Nation and the best of inten-

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2. Construction and application

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§ 1110. Amendment of Articles

These articles of incorporation may be amended by a majority vote of the Board of Trustees. Prior written notice of at least two weeks shall be given to all members of the Board of Trustees of any proposed change in the articles. No proposed amendment or alteration of this Plan of Operation shall take effect until the same is approved by the Government Services Committee of the Navajo Nation Council.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

Revision note. Slightly reworded.

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Annotations**1. Validity**

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§ 1111. Bylaws

The Board of Trustees shall adopt bylaws for the corporation by majority vote of the members of the board with vote, and the same may be and the same, may be taken by mail ballot. Bylaws may be amended by the board by majority vote of the members of the board with vote, and the same may be taken by mail ballot.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Revision note. Slightly reworded.

Library References

Indians ⇐8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

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§ 1112. Agent for service of process

The executive director of the foundation, is appointed the agent for service of process for the corporation. The mailing address to which any notice required by law may be mailed is: Executive Director, Navajo Education and Scholarship Foundation, Inc., PO Box 2360, Window Rock, Arizona, 86515.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Revision note. Slightly reworded.

Library References

Indians ⇐8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

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§ 1113. Jurisdiction

The Courts of the Navajo Nation shall have jurisdiction over all causes of action brought against the corporation and all causes of action involving the corporation which arise within the jurisdiction of the Navajo Nation.

History

ACO-171-83, Established Navajo Educational Scholarship Foundation (NESF).

ACN-183-86, Amended NESF Articles of Incorporation.

Library References

Indians ⇐8.

Westlaw Topic No. 209.

C.J.S. Indians § 48.

Annotations**1. Validity**

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Chapter 11. Land for School Sites

Section

1201. Withdrawal of land for school purposes; leases and permits Authority
1202. Rent

§ 1201. Withdrawal of land for school purposes; leases and permits— Authority

A. Withdrawals of Navajo Nation land, and the issuance of leases and permits for the use of such land for school or other legitimate educational purposes are authorized and subject to applicable Navajo Nation law.

B. All such withdrawals, leases and permits shall provide for cancellation in case the land embraced ceases to be used primarily for school or other legitimate educational purposes for an uninterrupted period of two (2) years or for interrupted periods of six (6) months or more totaling two (2) years.

C. Such withdrawals, permits, and leases may provide for use of the land for teachers' housing, and other noncommercial uses reasonably connected with education, in addition to the primary use as a site for a school or other educational facility.

D. All lessees receiving leases pursuant to this chapter are subject to the laws of the Navajo Nation in regard to the occupation of and activities conducted upon the leased premises.

History

CN-61-84, November 14, 1984.
CJ-37-58, July 21, 1958.
CN-76-53, November 6, 1953.

Revision note. Slightly reworded for purposes of statutory consistency.

Cross References

Resources Committee authority, see 2 N.N.C. § 691 *et seq.*
Education Committee authority, see 2 N.N.C. § 481 *et seq.*
Transportation and Community Development Committee authority, see 2 N.N.C. § 420 *et seq.*

Library References

Indians ⇨8.
Schools ⇨68.
Westlaw Topic Nos. 209, 345.

C.J.S. Indians § 48.
C.J.S. Schools and School Districts §§ 362 to 368.

Annotations

1. Tribal boundaries

Exception to general rule under *Montana* that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers on non-Indian fee land located within reservation boundaries, which permits a tribe to exercise civil authority over conduct of nonmembers on fee lands within reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of tribe, grants Indian tribes nothing

beyond what is necessary to protect tribal self-government or to control internal relations. *Atkinson Trading Co. v. Shirley*, 121 S.Ct. 1825 (2001).

While as a general proposition the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers on non-Indian fee land located within reservation boundaries, under *Montana* rule, two possible bases exist for tribal jurisdiction over non-Indian fee land: first, a tribe may regulate, through

10 N.N.C. § 1201

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taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with tribe or its members, through commercial dealings, contracts, leases, or other arrangements, and second, a tribe may exercise civil authority over conduct of nonmembers on fee lands within reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or welfare of tribe. *Atkinson Trading Co. v. Shirley*, 121 S.Ct. 1825 (2001).

Exception to *Montana* rule, that absent Congressional direction, Indian tribes lack civil authority over conduct of nonmembers on non-Indian land within a reservation, exists for activities of nonmembers who enter consensual

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relationships with tribe or its members, through commercial dealing, contracts, leases, or other arrangements. *Strate v. A-1 Contractors*, 117 S.C. 1404 (1997).

When accident occurred on a portion of public highway maintained by state under federally granted right-of-way over Indian reservation land, tribal courts could not entertain civil action against allegedly negligent driver and driver's employer, neither of whom was a member of tribe, absent a statute or treaty authorizing tribe to govern conduct of nonmembers on highway in question; such a case fell within state or federal regulatory and adjudicatory governance. *Strate v. A-1 Contractors*, 117 S.C. 1404 (1997).

§ 1202. Rent

A. No rent shall ever be charged or accepted for withdrawals, permits, or leases of tax exempt Navajo Nation land used primarily for school or other legitimate educational purposes, provided that Navajo children or adults be admitted without discrimination to schools or other educational activities conducted on such lands.

B. Such withdrawals, permits, or leases shall expressly provide that they are rent-free in consideration of the tax-exempt status of the land embraced within them and other Navajo Nation land in the same state, and that rent on the land embraced must be paid at the reasonable appraised rental value, but at not less than ten dollars (\$10.00) per acre, annually, whenever any Navajo Nation land in the same state as withdrawal, permit, or lease ceases to be tax exempt.

History

CJ-37-58, July 21, 1958.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Chapter 13. Adult Education Program

Section

1401-1404. [Repealed]
1405. Adult education planning; program; development; purpose
1406-1407. [Repealed]

§§ 1401 to 1404. [Repealed]

History

CN-61-84, November 14, 1984.
CF-12-61, February 14, 1961.

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10 N.N.C. §§ 1406 to 1407

§ 1405. Adult education planning; program; development; purpose

A. The Navajo Nation, through the Education Committee of the Navajo Nation Council, shall develop plans for the improvement of adult education opportunities so that all Navajo People residing on or near the Navajo Nation, who desire and can profit from additional training, will be provided with opportunities therefor. The Education Committee shall work with all educational providers, private sources and governmental entities concerned with adult education in the planning process.

B. The adult education plans shall have for their purpose the improvement of the minds, interests and living conditions of the greatest possible number of adult Navajos.

History

CN-61-84, November 14, 1984.
CF-12-61, February 14, 1961.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§§ 1406 to 1407. [Repealed]

History

CN-61-84, November 14, 1984.
CF-12-61, February 14, 1961.

Chapter 15. Economic Opportunity [Repealed]

History

ACAU-123-8 1, August 28, 198 1. ACAP-175-70, April 17, 1970.
ACAP-78-76, April 2, 1976. ACAP-36-65, April 7, 1965.

Chapter 17. Development and Training Programs [Superseded]

History

CD-68-89, December 15, 1989; Economic
Development Committee, 2 N.N.C. § 721 *et. seq.*
CO-55-61, October 5, 1961.

Chapter 19. Diné College

Section

2001. Establishment; charter

Section

- 2002. Purposes
- 2003. Board of Regents; selection; qualifications
- 2004. Term of Office
- 2005. Resignation and removal
- 2006. Vacancies
- 2007. Meetings; special meetings; notice; meeting items; executive session
- 2008. Quorum
- 2009. Faculty representative
- 2010. Officers and support personnel
- 2011. Board action
- 2012. Bylaws
- 2013. Committees
- 2014. Compensation
- 2015. Conflicts of interest
- 2016. Responsibility of the Board of Regents
- 2017. Powers and authority of the Board of Regents
- 2018. Bonds
- 2019. Planning, zoning, sanitary and building regulations
- 2020. Tax exemption
- 2021. Sovereign Immunity
- 2022. Amendments
- 2023. Relation to Navajo Nation government

History

Chapter 20, §§ 2101–2123 redesignated as Chapter 19, §§ 2001–2023.

ACO–90–79, October 16, 1979.

CAP–35–97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter.

Note. Former Chapter 19, “Community College”, §§ 2001–2010 and §§ 20512063 superseded by ACO–90–79, October 16, 1979.

See generally, ACO–333–71, CJN–60–70, ACJN–144–70, CN–96–68, CN–95–68, and CJY–87–68.

Code of Federal Regulations

Grants to Navajo Community College, see 25 CFR § 41.20 et seq.

United States Code

Navajo Community College, see 25 U.S.C. §§ 640a to 640c–3.

§ 2001. Establishment; charter

Diné College is chartered and established as a nonprofit educational institution wholly owned by the Navajo Nation, to act for and on behalf of the Navajo Nation Council within its areas of responsibility as defined by this chapter. The charter previously granted by Resolution CN–95–68 of the Navajo Nation Council is hereby amended. Diné College shall have the authority as a distinct and semi-independent agency of the Navajo Nation Council, within the limits and guidelines set forth in this chapter, to conduct its activities anywhere within the Navajo Nation or elsewhere.

History

CAP–35–97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter.

ACO–90–79, Plan, § II, October 16, 1979.

Library References

Colleges and Universities ↔3.
 Indians ↔8.
 Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 5 to 6.
 C.J.S. Indians § 48.

United States Code

Navajo Community College, see 25 U.S.C. § 640a et seq.

§ 2002. Purposes

Diné College is created by the Navajo Nation Council for the following purposes:

A. To provide educational opportunities to the Navajo People and others in areas important to the economic and social development of the Navajo Nation through:

1. College Degree Program: which provides students with certificate programs, associate, baccalaureate, graduate. And post-graduate degrees when such degree programs are accredited.
2. Technical Skills Program: which provides students with technical training and skills in fields that allow direct employment opportunities.
3. Navajo and Native American Studies Program: which provides learning experiences enabling students to develop a clear sense of identity, learn the Navajo language and develop unique skills useful to Navajo and Native American communities.
4. Creating and enforcing student respect for the rights of others and preservation of orderly, democratic and traditional values.

B. To provide services to Navajo communities by:

1. Assessing and identifying community needs;
2. Developing programs and working with other agencies to meet community educational needs; and
3. Providing other services to the communities related to the educational process.

C. To provide the following additional services related to the effective operation of the college facility and programs:

1. Continually study and inventory the educational needs of the Navajo Nation, and develop long-range plans to meet these needs, including implementation of a plan to obtain accreditation for the Diné College as a baccalaureate and postgraduate institution.
2. Provide a research and technical assistance to the Navajo Nation Council and its committees, the Navajo Nation and its departments and agencies, and other organizations and enterprises.
3. Extend and offer educational opportunities by establishing multiple remote campuses and distributive learning centers.
4. Offer students career counseling and placement services.
5. Evaluate and improve the effectiveness of Diné College programs by maintaining communication with former students.

6. Provide effective administrative support and student services to assure full utilization of the educational programs and maximum efficient use of budgeted funds.

7. Encourage educational excellence in Diné College students by developing high scholastic standards to measure accomplishment and award degrees to students meeting such standards.

D. Diné College shall formulate and deliver land-grant institution programs in natural and rural development, classroom instruction, extension and research consistent with the Equity in Educational Land Grant Status of 1994,¹ and thereby participate and collaborate fully with entities of the Navajo Nation and with other land grant colleges and universities to meet the human resource development needs of the Navajo people and others.

¹ Pub.L. 103-382, Title V, Pt. C, Oct. 20, 1994, 108 Stat. 4048.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2003. Board of Regents; selection

A. The full authority and control over Diné College, and responsibility for accomplishment of its purposes, is delegated to a Board of Regents. Subject to other applicable laws, employees and officials of the Navajo Nation and candidates for Navajo Nation offices, shall not interfere with or interrupt the day-to-day activities of the Board of Regents or Diné College employees carrying out college education programs.

B. The Board of Regents shall consist of eight (8) members, including the Chairperson of the Education Committee or the committee’s designee, the Director of the Division of Diné Education, and the President of the Diné College Student Body who shall be full official members. Five shall be enrolled members of the Navajo Nation and subject to confirmation and removal by the Government Services Committee of the Navajo Nation Council to each of the five agencies of the Navajo Nation. In the event that the Government Services Committee within thirty (30) days declines or fails for any reason to pass a resolution confirming an appointment made by the President, the appointee shall not sit as a Regent and the President shall submit an alternative appointee within two weeks of the Government Services Committee action declining to confirm the appointment, or the expiration of the thirty (30) day period for confirmation.

C. Qualifications for Diné College Board of Regents Candidates:

1. All appointed members of the Board of Regents must meet the following qualifications:

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10 N.N.C. § 2004

- a. Must maintain continuous residence and voter registration within a Chapter within the Agency of the Navajo Nation which they are appointed to represent, during the period of their term; and
- b. Must be at least eighteen (18) years of age at the time of the appointment; and
- c. Must not be an employee of the Diné College; and
- d. Must not have a conflict of interest arising from any Navajo Nation, state, or federal laws regarding his or her appointment; and
- e. Must not have been convicted of a felony within the five (5) years preceding the date of appointment.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979. **Revision note.** Slightly reworded for purposes of statutory form.

Library References

Colleges and Universities ☞7.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2004. Tenure

A. The Chairperson of the Education Committee, the Director of the Division of Diné Education, and the President of the Student Body shall serve while they hold their respective offices.

B. Appointed members shall serve six (6) year terms. Each of the five appointed members shall serve staggered terms, to be determined by lot at the time of the first meeting of the Board of Regents following confirmation of the first set of appointed members seated under the provisions of § 2003. At the initial meeting of this Board, the members shall determine by lot which agency representative shall serve a six, five, four, three and two year term. The terms for future appointed agency representatives shall continue to be staggered in accord with the results of this lot. Each of the appointed members shall serve with full rights and privileges until his successor has been duly appointed, qualified and seated.

C. Members may be reappointed for no more than two (2) successive terms.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2005. Resignation and removal

Any Regent, except the Chairperson of the Education Committee, the Director of the Division of Diné Education, and the President of the Student Body, may resign at any time by giving written notice to the President of the Board of Regents. Such resignation shall take effect at the time specified in the notice without the necessity of acceptance. Any appointed member may be removed by the Government Services Committee when, in their judgment, the best interests of Diné College will be served thereby.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7.	C.J.S. Colleges and Universities §§ 15 to 18.
Indians ☞8.	C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.	

§ 2006. Vacancies

Vacancies on the Board of Regents that occur for any reason shall be filled by appointment in accordance with § 2003 and confirmed by the Government Services Committee for the balance of that member's term.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7.	C.J.S. Colleges and Universities §§ 15 to 18.
Indians ☞8.	C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.	

§ 2007. Meetings, special meetings; notice; meeting items; executive session

A. The Board of Regents shall have an annual meeting on the first Wednesday of October each year at 10:00 A.M. at the Diné College campus at Tsaile, Navajo Nation (Arizona), and such other regular meetings at such time and place as established by the Board, but not less than one meeting each quarter.

B. Special meetings may be called upon at least twenty-four (24) hours actual notice to all Regents by the President or the Vice-President of the Board of Regents or by any three Regents acting in concert.

C. Any matter pertaining to Diné College may be discussed and acted upon by the Board at any regular or special meeting at which a quorum is present and notice requirements were met.

D. The Board may vote to declare all or any part of any meeting involving personnel matters, litigation or other confidential matters to be an executive

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10 N.N.C. § 2009

session and closed to everyone except Regents, and such other persons as are expressly requested to attend. No resolutions shall be passed or formal action taken in executive session.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ↻7.
Indians ↻8.
Westlaw Topic Nos. 81, 209.
C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2008. Quorum

A quorum for any meeting of the Board shall be five (5) members, and no formal action of the Board shall be valid unless a quorum is present. The quorum requirement shall be met only by actual physical presence of Regents and not by any other representation or proxy, except that the chairperson of the Education Committee of the Navajo Nation Council may send the Vice Chairperson or a member of the Education Committee.

History

ACO-90-79, October 16, 1979. CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACAU-10 1-84, August 23, 1984.

Library References

Colleges and Universities ↻7.
Indians ↻8.
Westlaw Topic Nos. 81, 209.
C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2009. Faculty representative

The faculty of Diné College shall select a representative to attend all regularly scheduled open meetings of the board, to serve as a liaison and promote direct and open communications about the concerns and opinions of the faculty. When present, the representative shall be extended an opportunity to address the board and participate in board discussion.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Indians ↻8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2010. Officers and support personnel

Any Regent may serve in any office, but each officer must be a current member of the Board of Regents. At the annual meeting, the Board of Regents shall select the following officers to perform the following duties:

A. **President.** The President of the Board of Regents shall preside at all meetings during which he or she is present, except as he may voluntarily delegate such function to another. He or she shall have the authority to call special meetings of the Board and certify resolutions as provided in this chapter, and in general perform all duties incident to the office of Board President, including such duties as may be described in the Bylaws or policies and regulations or assigned to him or her by the Board of Regents.

B. **Vice-President.** The Vice-President of the Board of Regents shall preside at all meetings of the Board in the absence of the President, and shall discharge any other duties assigned by the President or the Board.

C. **Secretary.** The Secretary shall have overall responsibility to maintain complete and accurate minutes of all meetings, and all resolutions or other formal Board action to be properly recorded, indexed and retained for future reference, and shall see that all required notices are duly given. The Secretary shall have authority to attest to official records of Diné College and the Board of Regents, to certify resolutions as provided in this chapter.

D. **Treasurer.** The Treasurer shall have overall responsibility for proper control and accounting of Diné College funds in an advisory capacity. He or she shall maintain liaison between the Board of Regents and the Controller and Business Manager of Diné College and bring appropriate financial information and recommended action to the attention of the Board. The Treasurer shall have no direct authority over the expenditure or investment of Diné College funds except as may be expressly granted by formal Board resolution, and may be required by the Board to give a bond for his or her faithful performance.

E. **Support Personnel.** The Board may request the College President, through administrative staff, to provide secretarial or other assistance to the Board.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2011. Board action

All official action of the Board shall require formal motion, a second and an affirmative vote of a majority of those Regents present, and voting at duly called regular or special meetings of the Board with a quorum present or a duly

formed committee, and shall be reduced to writing and certified by the presiding officer or secretary. The written form may be a separate and distinct resolution or maybe contained in the official minutes of the meeting, in which event the minutes shall be properly certified. No individual power or authority to act for or on behalf of Diné College shall attach to any Regent by virtue of that office, except as may be expressly given by this chapter, the Bylaws, or resolution of the Board.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7. C.J.S. Colleges and Universities §§ 15 to 18.
 Indians ☞8. C.J.S. Indians § 48.
 Westlaw Topic Nos. 81, 209.

§ 2012. Bylaws

The Board may adopt, and amend from time to time, Bylaws to govern the conduct of its meetings and establish procedures for the orderly transaction of business. Such Bylaws may further define the duties, authority and responsibility of officers of the Board, and cover such other matters as are normal and appropriate to similar corporate Bylaws. The Bylaws shall be effective to the extent they are not repugnant to this chapter or the applicable laws and regulations of the Navajo Nation and the United States. Whenever adopted or amended, a copy of the Bylaws will be transmitted to the President of the Navajo Nation and to the Education Committee.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. **Revision note.** Reference to the “Advisory Committee” has been changed to the “Education Committee”. See 2 N.N.C. § 484(B)(4). ACO-90-79, October 16, 1979.

Library References

Colleges and Universities ☞7. C.J.S. Colleges and Universities §§ 15 to 18.
 Indians ☞8. C.J.S. Indians § 48.
 Westlaw Topic Nos. 81, 209.

§ 2013. Committees

The Board may select such committees as it deems appropriate from among its members to work in general or specialized areas of responsibility, and may empower such committees to act for and on behalf of the Board to the extent it desires.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2014. Compensation

By formal resolution, the Board may establish rates of compensation and procedures for payment and reimbursement of expenses of Board members, consistent with applicable policies and regulations of the Navajo Nation. The Board shall have discretionary authority to provide different rates for officers and committee members as it sees fit, or for any Regent assigned a special responsibility. A copy of any resolution establishing or amending any financial benefit to the Board, or any member of the Board, shall be promptly transmitted to the President of the Navajo Nation and to the Education Committee.

History

<p>CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.</p>	<p>Revision note. Reference to the “Advisory Committee” has been changed to the “Educational Committee”. See 2 N.N.C. § 484(B)(4).</p>
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Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2015. Conflicts of Interest

A. No contract or other transaction between Diné College and any one of the Regents, or between Diné College and any corporation, partnership, firm or legal entity in which one or more of the Regents has an interest, directly or indirectly, shall be valid for any purpose, unless the entire interest of the Regent or Regents has been fully disclosed as required by the Ethics in Government Law, and the proposed contract or transaction is approved by the affirmative vote of at least a majority of the Board members who are not so interested. The discussion and vote shall take place while the interested Regent or Regents remove themselves from the meeting.

B. In its discretion, the Board of Regents may submit questions of conflicts of interest to the Ethics and Rules Committee of the Navajo Nation Council for review and an advisory opinion.

History

<p>CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter.</p>	<p>ACO-90-79, October 16, 1979. Revision note. Slightly reworded for purposes of statutory form.</p>
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Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C. § 3741 *et seq.*

Library References

Indians ↔8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2016. Responsibility of the Board of Regents

The Board of Regents shall have overall responsibility to the Navajo Nation Council for the accomplishment of the purposes of Diné College as stated in this chapter, and more specifically shall:

A. Report and be responsible to the Navajo Nation Council and its Education Committee for progress towards the fulfillment of the purposes of Diné College. The Board of Regents shall prepare and submit a written Annual Report to the Navajo Nation Council, or as otherwise requested by the Council or the Education Committee, to be delivered verbally by the President of the Board or such other representative designated by the Board, when requested.

B. Maintain and safeguard the funds of Diné College according to reasonable and prudent financial accounting standards and practices, and utilize such funds for the long range accomplishment of the purposes of Diné College. The Board of Regents shall be accountable for all Navajo Nation, federal and other funds entrusted to it, which accountability shall include retaining a reputable and accountable independent firm of certified public accountants to examine the books and accounts of Diné College, and to prepare and deliver an opinion and report of said accounts and financial procedures to the Board of Regents and to the Navajo Nation Council at least annually. However, no individual Regents shall be held personally liable, and shall be indemnified against liability by Diné College, for any action or decision made by that Regent in good faith belief that the action or decision was in the best interests of Diné College and within the scope of his authority. The Controller of the Navajo Nation, the Budget and Finance Committee and the Education Committee shall be advised what accounting firm is selected to perform the annual examination and audit.

C. Establish the policies and procedures to be followed by Diné College in its pursuit of the purposes stated in this chapter, and employ or retain qualified personnel or outside assistance as necessary to define proper and effective policies and procedures.

D. Administer the routine and special affairs of Diné College through employment of qualified and competent staff of educational and administrative personnel, extending an employment preference to qualified members of the Navajo Nation.

E. Conduct the business of Diné College in an authorized and lawful manner, and subject to applicable laws retain qualified and competent attorneys for consultation with the Board and preserving and defending the legal rights and interests of Diné College.

F. Communicate with appropriate committees and representatives of the Navajo Nation Council, United States Congress, and federal, state and private

agencies in a position of responsibility and authority to support the mission and objectives of Diné College, and submit appropriate proposals and applications for financial, technical and other assistance as may be available and consistent with the purposes of Diné College.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter.

ACO-90-79, October 16, 1979.

Revision note. Slightly reworded for purposes of statutory form. References to the "Ad-

visory Committee" have been changed to the "Education Committee". See 2 N.N.C. § 484(B)(4).

Library References

Colleges and Universities ☞7.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2017. Powers and authority of the Board of Regents

A. Diné College is a creation of the Navajo Nation Council, shall be under the control of the Navajo Nation Council and shall be governed by laws, rules, regulations and policies duly enacted by the Navajo Nation Council or the Education Committee pursuant to its delegated authorities; it shall have perpetual succession.

B. Diné College, through its Board of Regents, shall have the following powers which it may exercise consistent with the purposes for which it is established:

1. To adopt and use an official seal by causing it, or a facsimile thereof, to be impressed or affixed or in other manner reproduced.

2. To make agreements and incur liabilities which may be appropriate to enable Diné College to accomplish any or all of its purposes, to borrow money for such purposes at such rates of interest as Diné College may determine, to issue notes, bonds and other obligations subject to the provisions hereof concerning the issuance of its obligations, and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property and income with the approval of the Navajo Nation Council. Diné College shall not have power to mortgage, pledge, or encumber any real estate or tangible property of the Navajo Nation, nor any such property in which the Navajo Nation has an interest.

3. To make agreements with and to borrow money to a maximum single transaction limit of two million dollars (\$2,000,000), from any governmental agency (federal, state or local), the Navajo Nation or any other legal entity or bank, or organization, and to agree to and perform any conditions attached thereto. Any loan in excess of two million dollars (\$2,000,000) must have prior approval by the Budget and Finance Committee of the Navajo Nation Council.

4. To take and hold by purchase, lease, gift, devise or bequest, or otherwise; to own, hold, use, and otherwise deal in and with any real or

personal property, or any interest therein; and to sell, convey, mortgage, pledge, create a security interest in, lease or otherwise dispose of all or any part of its property and assets. Diné College shall not have power to sell, convey, mortgage, pledge or encumber any real estate or tangible property of the Navajo Nation, nor any such property in which the Navajo Nation has an interest, and any leases or subleases of Diné College shall require approval by the Resources Committee of the Navajo Nation Council.

5. To invest its funds from time to time in any certificates of deposit or similar investments, tangible or intangible personal property, or real property located within Navajo Country, to lend money for its lawful purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned. Investment in real property outside Navajo Country may only be made with the prior approval of the Budget and Finance Committee of the Navajo Nation Council.

6. To purchase insurance for any property or against any risks or hazards.

7. To establish and maintain such bank accounts as may be necessary and proper.

8. To hire employees, including all necessary administration and instructional personnel and other educational assistants and such officers, agents, and employees, permanent or temporary, as it may require, and to delegate to such officers and employees such powers or duties as the Board of Regents shall deem proper and to fix their compensation, all in accordance with this chapter.

9. To adopt such rules, regulations and Bylaws as the Board of Regents deems necessary and proper.

10. To establish standards for graduation, admission and attendance and to prescribe the course of study to be followed, to charge tuition, board charges, rent, student union fees or such other fees and charges necessary to operate the College.

11. To issue, upon the recommendation of the faculty, diplomas to such persons as have satisfactorily completed the required programs of studies of the Diné College and to confer appropriate degrees.

12. To acquire, by purchase or otherwise construct, enlarge, improve, equip, complete, operate, control, maintain, and operate any property suitable for use as an educational facility, including but not limited to the following types of buildings: classrooms, dormitories, dining halls, and offices.

13. To promulgate rules and regulations for the protection of both private and Diné College property, and persons on the campus. Specifically the Board of Regents may adopt reasonable rules regarding use of Diné College facilities, parking on campus, and conduct of visitors and residents on College property. The Board may adopt a schedule of fines to enforce its rules, and shall also have authority to expel persons from the campus for repeated violations.

10 N.N.C. § 2017

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14. To establish and operate, on a continual basis, a campus police and security force in order to enforce applicable Diné College, Navajo Nation, federal and state laws and regulations and to handle other duties relating to public safety on Diné College property. Employees of the campus police and security force who hold valid current commissions as police officers of the Navajo Nation shall be entitled to exercise all powers of a commissioned police officer of the Navajo Nation while on Diné College property.

15. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which this charter and chapter is granted, and to discharge the responsibilities placed upon the Board of Regents herein.

16. The College has such other powers and duties as are prescribed in 10 N.N.C. § 125 of the Navajo Education Policies.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. “Advisory Committee” have been changed to the “Navajo Nation Council”. See 2 N.N.C. § 102 (B).

CN-61-84, November 14, 1984.

ACAU-99-84, August 22, 1984. ACO-90-79, October 16, 1979.

Revision note. Slightly reworded for purposes of statutory form. All references to the

Note. All powers and authority of the Navajo Community College Board of Regents are subject to applicable Navajo Nation law.

Library References

Colleges and Universities ☞7.

Indians ☞8.

Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.

C.J.S. Indians § 48.

§ 2018. Bonds

A. The College may, with the review of the Navajo Nation Controller and the approval of the Budget and Finance Committee of the Navajo Nation Council, issue bonds from time to time in its discretion for any of its lawful purposes. Bonds, including the terms, conditions and covenants contained in the resolution authorizing such bonds, shall evidence claims against and obligations of the College which are justiciable in the Navajo Nation Courts. Any resolution authorizing bonds to which revenues are pledged may contain such covenants with the future holder or holders of the bonds as to the management and operation of the affected facilities, the imposition and collection of fees and charges for commodities and services furnished thereby, the disposition of such fees and revenues, the issuance of future bonds, the creation of future liens and encumbrances against such facilities, the carrying of insurance, the keeping of books and records, the deposit and paying out of revenues and bond proceeds, the appointment and duties of a trustee, and other pertinent matters as may be deemed proper by the Board of Regents.

B. The College may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

1. Exclusively from the income and revenues of the project financed with the proceeds of such bonds, or with such income and revenues together

with a grant from the federal, state or local government in aid of such project;

2. Exclusively from the income and revenues of certain designated projects whether or not they were financed in whole or in part with the proceeds of such bonds; or

3. From its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues of any project, projects or other property of the Diné College.

C. The bonds and other obligations of the Diné College shall not be considered to be obligations general, special or otherwise of the Navajo Nation, nor to be securities or a debt of the Navajo Nation and shall not be enforceable against the Navajo Nation, and the bonds and obligations shall so state on their face. However, the Navajo Nation Council may by separate action guarantee such bonds on behalf of the Navajo Nation.

D. Any coupons shall be signed by the Treasurer of the Diné College. Any authorized officer may execute or cause the bonds to be executed with a facsimile signature in lieu of his or her manual signature, provided at least one signature on such bonds shall be manual. The seal of the Diné College may be printed, stamped, engraved, or photographed on the bonds in lieu of impressing the seal thereon. Facsimile signatures may be used on any coupons.

E. Bonds shall be issued and sold in the following manner:

1. Bonds of the Diné College shall be authorized by resolution adopted by the vote of an absolute majority of the Board of Regents, and may be issued in one or more series.

2. The bonds shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be payable in such medium of payments at such places and be subject to such terms of redemption, with or without premium, as such resolution may provide.

3. The bonds may be sold at public or private sale at not less than par.

4. Bonds issued hereunder shall be executed in the name of the Diné College, shall be signed by the President or the Vice-President of the Board of Regents under the official seal of the Diné College and shall be attested by the Secretary of the Board of Regents.

5. The bonds, any coupons pertaining thereto, and other securities, bearing the signatures of the officers in office at the time of the signing thereof, shall be the valid and binding obligations of the Diné College, notwithstanding that before the delivery thereof and payment therefor, any and all of the persons whose signatures appear thereon have ceased to fill their respective offices.

6. Any officer authorized or permitted to sign any bonds, any coupons, or any other securities, at the time of their execution and of a signature certificate pertaining thereto, may adopt as and for his own facsimile signature, the facsimile signature of his predecessor in office in the event that such

facsimile signature appears upon the bonds, coupons and other securities pertaining thereto, or any combination thereof.

7. The Board of Regents, in any resolution authorizing the issuance of bonds or other securities hereunder or in any instrument or other proceedings pertaining thereto, may create special funds and accounts for the payment of the cost of a project, of operation and maintenance expenses, of the securities, including the accumulation and maintenance of reserves therefor, of improvements, including the accumulation and maintenance of reserves therefor, and of other obligations pertaining to the securities, any project or otherwise in connection with the College.

8. The Diné College may employ legal, fiscal, engineering, and other expert services in connection with any project or otherwise appertaining to the Diné College and the authorization, sale and issuance of bonds and other securities hereunder. Employment of legal counsel shall be subject to applicable laws of the Navajo Nation.

9. The Diné College is authorized to enter into any contracts or arrangements, not inconsistent with the provisions hereof, with respect to the sale of bonds or other securities hereunder, the employment of bond counsel, and other matters as the Board of Regents may determine to be necessary or desirable in accomplishing the purposes hereof.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979. **Note.** The issuance of bonds is subject to applicable Navajo Nation law.

Cross References

Issuance of bonds for capital improvement projects, see 12 N.N.C. § 1300 et seq.

Library References

Colleges and Universities ☞6(1). C.J.S. Colleges and Universities § 10.
Indians ☞8. C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.

§ 2019. Planning, zoning, sanitary and building regulations

All property of the Diné College shall be subject to the planning, zoning, sanitary and building laws and regulations applicable to the locality in which the Diné College property is situated.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2020. Tax exemption

The property and funds of the Diné College are declared to be public property used for essential public and governmental purposes and such property and the Diné College are exempt from all taxes and special assessments of the Navajo Nation and other authorities.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, October 16, 1979.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2021. Sovereign Immunity

The Navajo Nation Sovereign Immunity Act shall be applicable to the Diné College and the Diné College Board of Regents.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. ACO-90-79, Plan, § VIIIIC, October 16, 1979. **Revision note.** Slightly reworded for purposes of statutory form.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 et seq.

Library References

Indians ⇐32(6).
Westlaw Topic No. 209.
C.J.S. Indians § 51.

§ 2022. Amendments

The Navajo Nation Council is authorized to consider and grant final approval on behalf of the Navajo Nation to any amendments or modifications to this chapter. This authority, however, is subject to and limited by the continuing integrity of the portions of this chapter entitled “Bonds” and any other portion justifiably relied upon by any purchaser of bonds or holder of bonds issued by Diné College or any other evidences of indebtedness issued by Diné College, to the extent that any modifications or amendments hereafter approved by the Navajo Nation Council may not have the effect of prejudicing the rights of such purchasers or holders, or detract from the validity of such bonds or evidences of indebtedness and their enforcement.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2023. Relation to Navajo Nation government

The Diné College is subject to the laws of the Navajo Nation.

History

CAP-35-97, April 24, 1997. Adopting Amendments of the Navajo Community College Charter. CN-61-84, November 14, 1984. **Revision note.** Slightly reworded.

Cross References

Crownpoint Institute of Technology (previously known as “Navajo Skill Center”), see 15 N.N.C. § 1201 *et seq.*

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

Chapter 20. Diné Language Head Start Act**Section**

2201. Establishment
2202. Purpose
2203. Definitions
2204. Implementation
2205. Program Procedures
2206. Amendments

§ 2201. Establishment

The Navajo Nation Diné Language Act (hereinafter referred to as the “Act”) is hereby established to ensure the preservation and education of the Navajo (Diné) language. The Navajo (Diné) language is an essential element of the life, culture, tradition and identity of the Navajo (Diné) people. The Navajo (Diné) people recognize the importance of continuing and perpetuating the Navajo (Diné) language to the survival of the Navajo Nation. Instruction in the Navajo (Diné) language shall include to the greatest extent practicable, thinking, speaking, comprehending, reading, writing and the study of the formal grammar of the Navajo (Diné) language.

History

CJY-52-01, July 17, 2001, Approving & Adopting the Diné Language Head Start Act.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 *et seq.*

§ 2202. Purpose

The Navajo (Diné) language shall be the instrument of educating, and reinforcing the importance of the continuation, comprehension and communication of the Navajo (Diné) language within the Navajo Nation Department of Head Start. The purpose of having the Navajo (Diné) language as an instrument of instruction within the Navajo Head Start program is to enable children to communicate freely and effectively through the Navajo (Diné) language, not as a second or foreign language but the language of the Navajo (Diné) people. The Navajo Nation is committed to ensure that the Navajo (Diné) language will survive and prosper. The Navajo (Diné) language must be used to ensure the survival of the Navajo (Diné) people and their future, to maintain the Navajo (Diné) way of life, and to preserve and perpetuate the Navajo Nation as a sovereign nation.

History

CJY-52-01, July 17, 2001, Approving & Adopting the Diné Language Head Start Act.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

§ 2203. Definitions

A. Navajo Head Start Programs—Programs inclusive of all Navajo Early Head Start and Head Start Programs.

B. Staff Members or Staff—Paid or unpaid individuals who have responsibilities related to children and their families who are enrolled in Navajo Head Start programs.

C. Navajo Immersion—All communication, interaction, and instruction is conducted in the Navajo (Diné) language throughout the Navajo Head Start programs.

D. “Level”—There are three different levels of Navajo immersion. Each requires that a greater portion of the day be all in the Navajo (Diné) language. The following are the levels of “Situational Immersion,” “Partial Immersion,” and “Full Immersion”:

1. “Situational Immersion”—The specific language that is used in specific, recurring situations almost everyday are conducted in the Navajo (Diné) language.

2. “Partial Immersion”—A level of Navajo (Diné) language in which the first hour or more of each day is conducted in the Navajo (Diné) language. This applies to Head Start programs operating as Partial Immersion classrooms.

3. “Full Immersion”—A level of Navajo (Diné) language in which all instruction, communication and interaction is conducted in the Navajo (Diné) language. This applies to Head Start programs operating as Full Immersion classrooms.

History

CJY-52-01, July 17, 2004. Approving and Adopting the Diné Language Head Start Act.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

§ 2204. Implementation

A. The Navajo (Diné) Immersion section shall be responsible for providing education and technical assistance to Head Start staff to infuse the Navajo (Diné) language into the daily instruction of Head Start children at all centers and Homebase programs. The Navajo Immersion shall develop and implement policies and procedures for the implementation of Navajo (Diné) language into the curriculum of the Navajo Head Start programs. The Navajo (Diné) language shall be the primary language of instruction, communication and interaction in all Navajo Head Start programs. Navajo Nation Head Start employees will interact and be responsible to develop, implement and participate in the children’s social and cognitive abilities in the Navajo (Diné) language. The English language shall be utilized as a secondary language and shall be provided as an additional instrument of instruction, communication and interaction in all the Navajo Head Start programs.

1. The Navajo Nation Department of Head Start shall develop and implement policies and procedures for the continuation of the Navajo (Diné) language in the curriculum of the Navajo Head Start program in accordance with this Act.

2. The Navajo Nation Department of Head Start shall ensure the Navajo Immersion Program’s participation in all classroom activities tailored around the Navajo (Diné) language’s implementation process using the three levels of immersion. These levels will accomplish the transition into Full Immersion.

History

CJY-52-01, July 17, 2004. Approving and Adopting the Diné Language Head Start Act.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq..

§ 2205. Program Procedures

The Navajo Head Start program will utilize all resources necessary to comply with this Act. The Navajo Immersion program shall establish an appropriate Navajo (Diné) language curriculum to ensure the full implementation of the Navajo (Diné) language within all Navajo Head Start programs.

History

CJY-52-01, July 17, 2004. Approving and Adopting the Diné Language Head Start Act.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

§ 2206. Amendments

This act shall not be amended unless such amendments are approved by 2/3 of the full membership of the Navajo Nation Council.

History

CJY-52-01, July 17, 2004. Approving and Adopting the Diné Language Head Start Act.

United States Code

Native American Languages Act, see 25 U.S.C. § 2901 et seq.

Chapter 21. American Indian School of Medicine

Section

- 2301. Establishment; charter; location
- 2302. Powers and duties
- 2303. Degrees
- 2304. Suit
- 2305. Immunity from tax
- 2306. Board of Regents
- 2307. Officers
- 2308. Board of Advisors
- 2309. Students
- 2310. Limitation on powers
- 2311. Limitation on pecuniary gain
- 2312. Indemnity

§ 2301. Establishment; charter; location

A. The Navajo Nation Council established and chartered the American Indian School of Medicine to serve American Indian people and Alaskan Natives specifically, and all people generally. The Navajo Nation Council constitutes the Board of Regents and their successors, appointed in accordance with this chapter, a body corporate under the name of the American Indian School of Medicine (hereinafter referred to as “the School”). The School shall be known and have perpetual duration by that name as a non-profit educational corporation. The School shall operate as such on the Navajo Nation and elsewhere in accordance with this chapter and any Bylaws it may adopt, subject to applicable federal and Navajo Nation laws and regulations. The members of the Board of Regents, the officers, and the employees of the School shall not be personally liable for the School’s obligations. The School shall be liable for the acts of its officers and agents when acting within the scope of their authority.

B. The principal office of the School shall be on the Navajo Nation at Shiprock, New Mexico, on land provided by the Navajo Nation as described in Resolution ACMA-72-75 which is incorporated by reference, with offices, facilities, and programs in other locations, as directed by the Board of Regents.

History

CF-8-77, February 24, 1977.

Library References

Colleges and Universities ☞3.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 5 to 6.
C.J.S. Indians § 48.

§ 2302. Powers and duties

The School shall plan, initiate, organize, and operate educational programs in medicine and other health professions which are designed specifically to be responsive to the needs and requirements of American Indian and Alaskan Native students. The School is authorized, in connection therewith, to:

A. Initiate, cooperate with, and participate in and operate, programs or organizations which are in support of health professions education for American Indians and Alaskan Natives;

B. Employ the faculty and staff required to operate the School, and fix their compensation;

C. Employ auditors, legal counsel, and other persons and firms appropriate to review, evaluate, assist, advise, and make recommendations regarding the operation of the School;

D. Negotiate and enter into affiliation agreements and other cooperative arrangements with other schools, universities, health service or medical training facilities, or other organizations, including federal agencies;

E. Enter into agreements, including the borrowing of money and the incurring of liabilities;

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10 N.N.C. § 2302

F. Invest its funds from time to time in real or personal property, lend money for its corporate purposes, and hold real and personal property as security;

G. Determine the depository for School funds, the persons entitled to draw against these funds, and the persons entitled to borrow on behalf of the School;

H. Take by purpose, lease, gift, devise or bequest, or otherwise, and own, hold, use and otherwise deal in and with real and personal property and any interest therein; and sell, rent, lease, transfer, mortgage, pledge, create a security interest in, encumber, and otherwise use and dispose of all or any part of the School's property and assets. The School shall not have the power to sell, transfer, mortgage, pledge, or encumber any real estate or tangible property of the Navajo Nation, or in excess of limits established by the Navajo Nation;

I. Solicit, accept, acquire, collect, and own pledges, donations, and contributions;

J. Adopt and use a corporate seal;

K. Adopt and enforce rules, regulations, and Bylaws;

L. Insure that the School becomes and remains fully accredited according to Tribal, state, regional, and national standards;

M. Prescribe the course of study to be followed and textbooks, apparatus, and facilities to be used, and charge tuition, board charges, rent, fees, and such other charges as are necessary to operate the School;

N. In general, have and exercise all other powers which a non-profit educational corporation customarily has, provided that all of the School's activities and powers shall be directed toward the public rather than private interests, and particularly toward the interests of American Indians and Alaskan Natives, either directly or through other tax exempt organizations or public entities;

O. Notwithstanding any of the foregoing, the School is organized and shall be operated exclusively for educational purposes and shall not carry on any activity not permitted to be carried on by an organization:

1. Exempt under § 501(c)(3) of the Internal Revenue Code and its Regulations, as they now or hereafter exist; or

2. Contributions to which are deductible under § 170(c)(2) of such Code and Regulations.

P. No part of the activities of the School shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the School shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

History

CF-8-77, February 24, 1977.

Library References

Colleges and Universities ⇨5.
 Indians ⇨8.
 Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 8, 41.
 C.J.S. Indians § 48.

§ 2303. Degrees

The Navajo Nation Council authorizes the Board of Regents to award the Doctor of Medicine (M.D.) Degree and such other degrees, awards, and certificates of achievement and proficiency as the Board of Regents deems appropriate, after formal accreditation by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges.

History

CF-8-77, February 24, 1977.

Library References

Indians ⇨8.
 Westlaw Topic No. 209.
 C.J.S. Indians § 48.

§ 2304. Suit

The Navajo Nation gives its consent to allow the School to sue and be sued in its corporate name upon any contract, claim or obligation arising, out of its activities, and to allow the School by contract to waive any immunity from suit which it might otherwise have; but under no circumstances shall the Navajo Nation be liable for the debts and obligations of the School, nor shall the land, funds or other real or personal property of the Navajo Nation be subject to execution or levy on account of the debts or obligations of the School. Nothing contained herein nor in any other provision of this chapter shall be construed to waive the right of the Navajo Nation to assert the defense of sovereign immunity in any lawsuit against the Navajo Nation, and nothing contained herein nor in any other provision of this chapter shall impair the validity of this defense; the right of the Navajo Nation to assert this defense is and shall remain inviolate.

History

CF-8-77, February 24, 1977.

Library References

Colleges and Universities ⇨10.
 Indians ⇨8.
 Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 48 to 51.
 C.J.S. Indians § 48.

§ 2305. Immunity from tax

For the purpose of aiding and cooperating in the planning, undertaking, construction, and operation of the School, the Navajo Nation shall not, at present, levy or impose any real or personal property taxes or special assessments or other taxes upon the School or any of its property.

History

CF-8-77, February 24, 1977.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2306. Board of Regents

A. The School shall be controlled and managed by a Board of Regents (hereinafter referred to as “the Board”). The School shall not have members. The Board shall consist of 11 members, who all shall preferably, but not necessarily, be American Indians or Alaskan Natives. They shall be generally representative of American Indian and Alaskan Native people and shall be dedicated and committed to the purposes of the School.

B. The members of the Board shall be appointed by the President of the Navajo Nation and confirmed by the Government Services Committee of the Navajo Nation Council, from qualified nominations made by the current Board and the President of the Navajo Nation. Nominations shall be solicited from and maybe submitted by recognized Indian tribes, major Indian organizations, and other interested parties.

C. The initial Board shall be appointed for one (1) year. Beginning the second year, appointments shall be divided into three groups, the first to serve for one (1) year, the second to serve for two (2) years, and the third to serve for three (3) years. Thereafter, all terms shall be for three (3) years. Members shall be eligible for reappointment. Vacancies on the Board shall be filled by appointment as specified in subsection (B) of this section.

D. Board members may resign at any time or may be removed from office by a vote of not less than two-thirds of the Board members then in office. Board members who fail to attend, fail to send a representative or fail to submit written statements or recommendations concerning the action of the Board for three consecutive Board meetings shall be removed as a Board member.

E. The Board shall make a formal report on the status, operation, needs, and accomplishments of the School to the Education Committee of the Navajo Nation Council at least annually.

F. There shall be an Executive Committee, which shall be a standing committee, and such other committees as determined by the Board.

G. The annual meeting of the Board shall be held at the time and place fixed by the Chairperson of the Board. Special meetings shall be held at the time and place fixed by the Chairperson and may be called by the Chairperson or the Chief Executive Officer.

History

CF-8-77, February 24, 1977. **Revision note.** Reference to the “Advisory Interim board. ACMA-26-78, March 15, Committee” at subsection (E) has been changed 1978.

10 N.N.C. § 2306

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to the "Education Committee". See 2 N.N.C. § 484(B)(4).

Library References

Colleges and Universities ☞7.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities §§ 15 to 18.
C.J.S. Indians § 48.

§ 2307. Officers

The principal officers of the Board shall be a Chairperson, a Vice-Chairperson, a Secretary, and a Treasurer. There shall also be a Chief Executive Officer of the School and such other officers as the Board may decide. No one person may hold more than one office, except that an officer may also be a member of the Board. Officers shall perform the duties and have the powers assigned by the Board, incident to the office, and provided in this chapter.

History

CF-8-77, February 24, 1977.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2308. Board of Advisors

A Board of Advisors to the Board of Regents may be appointed. The Board of Advisors shall have no operating authority or responsibility so far as the School is concerned, but shall be expected to provide guidance, consultation, recommendations, and assistance necessary or appropriate to further the development of the School. The Board shall be appointed by the President of the Navajo Nation upon recommendation by the Board of Regents.

History

CF-8-77, February 24, 1977.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2309. Students

Qualified American Indian and Alaskan Native applicants shall be given preference in admission. Development and expansion of the School shall be by such phases and numbers as the Board prescribes.

Students shall be selected under standards and procedures developed and prescribed by the Board, with the approval of the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges. The standards and procedures shall emphasize the

requirement that students demonstrate sincere motivation, dedication, and intent to practice their profession in medically underserved areas with a high concentration of American Indians and Alaskan Natives.

History

CF-8-77, February 24, 1977.

Library References

Colleges and Universities ☞9.15.
Indians ☞8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities § 30.
C.J.S. Indians § 48.

§ 2310. Limitation on powers

The School may exercise only those powers which are in furtherance of its tax exempt purpose and activities, and which may be exercised by an organization:

- A. Exempt under § 501(c)(3) of the Internal Revenue Code ¹ and its Regulations, as they now or hereafter exist; and
- B. Contributions to which are deductible under § 170(c)(2) ² of such Code and Regulations.

¹ 26 U.S.C. § 501(c)(3).

² 26 U.S.C. § 170(c)(2).

History

CF-8-77, February 24, 1977.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2311. Limitation on pecuniary gain

The School shall not have or issue shares of stock. The School shall not afford pecuniary gain, incidentally or otherwise, to its Board members or officers, and no part of the income or profit or net earnings of the School shall inure to the benefit of, or be distributed to, its Board members or officers, except that the School may reimburse Board members and officers for all reasonable, actual expenses incurred in pursuit of their duties on behalf of the School, may pay reasonable compensation for services rendered, and may make distributions and confer benefits in furtherance of its purposes, either directly or by contribution to organizations then exempt under § 501(c)(3) of the Internal Revenue Code ¹ and its Regulations, as they now or hereafter exist. Upon dissolution of the School, the assets will be distributed exclusively for charitable medical purposes.

¹ 26 U.S.C. § 501(c)(3).

History

CF-8-77, February 24, 1977.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2312. Indemnity

The School shall indemnify each Board member and officer of the School and each former Board member and officer against expenses and liability reasonably incurred in connection with any action, suit or proceeding in which the Board member or officer is involved or made a party by reason of being or having been such, except in relation to matters as to which the indemnity shall be adjudged to be liable for negligence or misconduct in the performance of duty to the School. The foregoing right of indemnification shall not exclude other rights to which any Board member or officer may be entitled as a matter of law, and it shall include the right to reimbursement of any amount and expenses paid or incurred in settling any such action, suit or proceedings if the settlement is approved by the Board.

History

CF-8-77, February 24, 1977.

Library References

Colleges and Universities ⇐7.	C.J.S. Colleges and Universities §§ 15 to 18.
Indians ⇐8.	C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.	

Chapter 23. Toyei Opportunity Center and Sheltered Industries Program [Deleted]

§§ 2501 to 2504. [Deleted]

History

Sections 2501-2504, established by charter to Toyei Industries Inc., as a private non-profit corporation organized under the laws of the Navajo Nation, were amended by ACJN-18-77, June 1, 1977, and CAP-13-79, April 25, 1979, which granted a

Chapter 26. Navajo Education Appeals Committee

Section

- 2601. Establishment
- 2602. Purpose
- 2603. Membership, Term of Office, and Voting
- 2604. Chairperson, Vice Chairperson and Chairperson Pro Temp
- 2605. Meetings; Quorum

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10 N.N.C. § 2603

Section

- 2606. Compensation of Committee Members
- 2607. Duties, Responsibilities and Authorities
- 2608. Staff
- 2609. Reporting
- 2610. Disclosure of Interest
- 2611. Code of Conduct
- 2612. Privacy Act Statement
- 2613. Legislative Oversight
- 2614. Amendments

§ 2601. Establishment

There is hereby established the Navajo Education Appeals Committee as the appellate body for the Office of Navajo Nation Scholarship and Financial Assistance (hereinafter referred to as ONNSFA) of the Division of Diné Education, within the Executive Branch of the Navajo Nation Government.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2602. Purpose

The purpose of the Navajo Education Appeals Committee is to hear appeals of scholarship and/or financial assistance grievances that cannot be resolved administratively by the ONNSFA.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Colleges and Universities ☞9.25. C.J.S. Colleges and Universities § 33.
Indians ☞8. C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.

§ 2603. Membership, Term of Office, and Voting

A. The Navajo Education Appeals Committee shall consist of five (5) members to be confirmed by the Government Services Committee of the Navajo Nation Council and serve at the pleasure of the Education Committee of the Navajo Nation Council, as follows:

1. One member shall be the Chairperson of the Education Committee of the Navajo Nation Council or the Committee's designee;
2. One member shall be appointed by the President of Diné College; provided, that the appointee shall not be a student attending Diné College;

10 N.N.C. § 2603

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3. One member shall be appointed by the President of Crownpoint Institute of Technology; provided, that the appointee shall not be a student attending Crownpoint Institute of Technology;

4. One member shall be appointed by the President of the Navajo Nation; provided, that the appointee shall be a representative from the Office of the President/Vice President;

5. One member shall be appointed by the Navajo Area Director of the Indian Health Services; provided, that the appointee shall be a representative from the Indian Health Services.

B. The initial appointed members of the Navajo Education Appeals Committee shall vacate their seats at the expiration of December 1994. Thereafter, all members shall be chosen every four (4) years in December.

C. Each member shall have the power to vote on all matters before the Navajo Education Appeals Committee.

D. A simple majority vote of the quorum shall hold.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Colleges and Universities ¶9.25.
Indians ¶8.
Westlaw Topic Nos. 81, 209.

C.J.S. Colleges and Universities § 33.
C.J.S. Indians § 48.

§ 2604. Chairperson, Vice Chairperson and Chairperson Pro Temp

A. The Chairperson and Vice Chairperson of the Committee shall be selected by a majority vote of the Committee.

B. At any Committee meeting where the duly appointed Committee Chairperson and Vice Chairperson are absent, the majority of those Committee members present may select a Pro Temp Chairperson to conduct the Committee meeting.

C. The Chairperson, or in his absence, the Vice Chairperson shall vote only in the event of a tie vote by the regular voting members.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ¶8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2605. Meetings; Quorum

A. All meetings of the Navajo Education Appeals Committee shall be held at the Division of Diné Education, Window Rock, Navajo Nation (Arizona).

B. The Navajo Education Appeals Committee shall conduct a regular meeting every second Wednesday of each month to hear appeals.

C. Should an appeal require immediate attention, the Chairperson of the Navajo Education Appeals Committee may call and convene a special meeting, provided that funds are available; and notices are posted at Window Rock Tribal offices, published in the local newspapers and announced on the local radio at least one (1) day before the meeting.

D. A quorum shall consist of a simple majority of the voting members of the Navajo Education Appeals Committee.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ⇄8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2606. Compensation of Committee Members

The Navajo Education Appeals Committee members shall be compensated, as follows:

A. Upon the availability of funds, Committee members attending Committee meetings may receive forty dollars (\$40.00) per diem for each day official business is conducted and mileage at twenty-four cents (24¢) per mile for use of a private vehicle. The Chairperson of the Navajo Education Appeals Committee may receive, as compensation for extra time spent by the Chairperson beyond meetings to execute Committee business, sixty dollars (\$60.00) per diem for each meeting day. For each complete meeting, Committee members may be paid mileage equal to one round trip to Window Rock, Navajo Nation (Arizona), from their residence and return, according to the official mileage chart of the Controller.

B. Full per diem shall be paid only for attendance of at least three (3) hours of meeting or until all agenda items are concluded.

C. Compensation for Committee members shall come from Public Law 93-638 contract funds.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ☞8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2607. Duties, Responsibilities and Authorities

The Navajo Education Appeals Committee shall have the duty, responsibility and authority to:

A. Review, examine and investigate requests for an appeal in accordance to the appellate procedures outlined in the Office of Navajo Nation Scholarship and Financial Assistance Policies and Procedures.

B. Determine whether facts exist which constitute any violation(s) of or noncompliance with any requirements, restrictions, prohibitions or other provision of the Office of Navajo Nation Scholarship and Financial Assistance Policies and Procedures.

C. Subpoena the attendance and testimony of witnesses, production of records and documents as it deems necessary.

D. Dismiss any request for an appeal which lacks sufficient facts to constitute a violation of or noncompliance with the Office of Navajo Nation Scholarship and Financial Assistance Policies and Procedures.

E. Reverse any decision by the ONNSFA if said decision is found by the Navajo Education Appeals Committee to be in violation of or noncompliance with any requirements, restrictions, prohibitions or other provisions of the Office of Navajo Nation Scholarship and Financial Assistance Policies and Procedures.

F. Recommend the adoption of rules and procedures governing the conduct of administrative examinations, investigations, and/or hearings, to the Education Committee of the Navajo Nation Council.

G. Issue a written decision regarding its determinations no later than five (5) working days after the appeals has been heard.

H. The written decision of the Navajo Education Appeals Committee shall be final.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Colleges and Universities ☞9.25.	C.J.S. Colleges and Universities § 33.
Indians ☞8.	C.J.S. Indians § 48.
Westlaw Topic Nos. 81, 209.	

§ 2608. Staff

The Division of Diné Education Administration staff shall assist the Navajo Education Appeals Committee in execution of the Navajo Education Appeals

Committee authorities by providing technical or other support services. The ONNSFA staff shall assist the Navajo Education Appeals Committee by providing access to pertinent documents within the students' files, pursuant to the Navajo Nation Privacy and Access to Information Act, that would assist the Committee in deliberating and reaching a decision.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2609. Reporting

The Navajo Education Appeals Committee shall submit a report on a quarterly basis concerning all actions and any recommendations to the Education Committee of the Navajo Nation Council.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2610. Disclosure of Interest

Any member of the Navajo Education Appeals Committee having a personal, financial and/or proprietary interest in the appeal shall recuse him or herself and not participate in the review. This shall be recorded in the minutes of the committee meeting.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C. § 3741 *et seq.*

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2611. Code of Conduct

All members of the Navajo Education Appeals Committee shall be subject to the Navajo Nation Ethics in Government Law and other applicable laws of the Navajo Nation.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C. § 3741 *et seq.*

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2612. Privacy Act Statement

A. All student files shall be kept confidential by the ONNSFA. In order for the ONNSFA to disclose information regarding a student to the Navajo Education Appeals Committee, the student must submit a signed disclosure statement to the ONNSFA, specifying the individuals and/or entities to receive this information.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Cross References

Navajo Nation Ethics in Government Law, see 2 N.N.C. § 81 *et seq.*

Library References

Indians ⇐8.
Westlaw Topic No. 209.
C.J.S. Indians § 48.

§ 2613. Legislative Oversight

Pursuant to 2 N.N.C. § 484(B)(4), the Education Committee of the Navajo Nation Council shall have the authority to serve as the legislative oversight committee of the Division of Diné Education, within the Executive Branch of the Navajo Nation Government.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

EDUCATION

10 N.N.C. § 2614

§ 2614. Amendments

The Navajo Education Appeals Committee Plan of Operation may be amended from time to time by the Government Services Committee of the Navajo Nation Council, upon recommendation of the Education Committee of the Navajo Nation Council.

History

CO-87-94, October 19, 1994, Approving the Creation of the Navajo Education Appeals Committee.

Title 12

Fiscal Matters

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United States Code

Care and investment of Indian monies, see 25 U.S.C. § 151 et seq.
 Disbursement of monies to Indians, see 25 U.S.C. § 111 et seq.
 Use of Navajo Tribal funds on deposit in United States Treasury, see 25 U.S.C. § 637.

Code of Federal Regulations

Financial activities, 25 CFR § 101.1 et seq.

Chapter 1. Office of the Auditor General

Section

1. Establishment
2. Purpose
3. Staffing, organization and scheduling of work
4. Duties, responsibilities and authority of the Auditor General
5. Disclosure of records
6. Audit reports, actions and follow-ups
7. Procedures for addressing audit findings and implementing recommendations
8. Duties of audited programs
9. Sanctions for failure to implement Plan
10. Amendment of the Plan of Operation

§ 1. Establishment

There is established the Office of the Auditor General under the Navajo Nation Council.

12 N.N.C. § 1

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History

CJY-60-91, July 19, 1991.
CF-4-85, February 5, 1985.
ACO-132-84, October 11, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 2. Purpose

A. The purpose of the Office of the Auditor General shall be to provide continuing professional audit and management services to the Navajo Nation government with regard to the adequacy of management and accounting systems, procedures, practices and internal controls, including but not limited to:

1. Conducting financial audits and reviews of financial records of chapters, related Navajo Nation entities and contractors to the Navajo Nation in accordance with government auditing standards;
2. Conducting performance audit reviews of Navajo Nation government programs, departments and divisions;
3. Providing management advisory services to the Navajo Nation;
4. Assisting the Office of the Prosecutor and Ethics and Rules Office in the investigation of possible fraud and/or misappropriation of assets of the Navajo Nation; and
5. Assisting in the building of an effective, responsive, strong and accountable government.

B. The Office of the Auditor General may, from time to time, perform professional services for organizations and entities not accounted for by the Department of Financial Services of the Navajo Nation and obtain revenue therefore, payable to the Navajo Nation government.

History

CD-80-02, December 30, 2002.
CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.
ACO-132-84, October 11, 1984.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 3. Staffing, organization and scheduling of work

A. There are established the positions of the Auditor General, other auditors, systems analysts, support staff and such other positions as may be necessary to carry out the purpose of the Office of the Auditor General.

B. The Auditor General shall be appointed by the Speaker, Navajo Nation Council, at a negotiated salary subject to confirmation by the Navajo Nation Council and shall serve at the pleasure of the Navajo Nation Council. The Auditor General shall be an actively licensed Certified Public Accountant,

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12 N.N.C. § 4

Certified Internal Auditor and/or other comparable certification to fulfill the purpose of the office. The Auditor General shall be bound by a professional code of ethics and standards of the accounting and auditing profession as regulated by the Board of Accountancy of the licensing state or other applicable licensing agency. The Auditor General shall be knowledgeable in performance, compliance and financial auditing, public administration, and governmental financial and fiscal policies. The Auditor General may be removed at any time by majority vote of the Navajo Nation Council.

All other personnel shall be hired and compensated pursuant to Navajo Nation policies and procedures relating to qualifications, experience, Navajo preference, salaries, etc., and subject to workload requirements and budgetary constraints.

C. The Speaker, Navajo Nation Council, may appoint an Acting Auditor General to serve during the vacancies of the Auditor General, pending formal action by the Navajo Nation Council. Such Acting Auditor General shall be subject to the same professional requirements required of the Auditor General in § 3(B), above.

D. An organizational chart of the Office of the Auditor General is provided in the office's current Plan of Operation. This chart is subject to future changes in scope and budgetary restrictions.

E. The scheduling of the audits for any fiscal year will be done in accordance with sound professional practice, giving priority, to the extent practicable, where requested or when the interests of the Navajo Nation so require.

History

CD-80-02, December 30, 2002.
CJY-60-91, July 19, 1991.
CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 4. Duties, responsibilities and authority of the Auditor General

The Auditor General is authorized and directed to:

A. Formulate, implement and maintain continuing audit programs and take such action as may be deemed necessary for the accomplishment of the purpose of the office.

B. Establish and maintain all necessary liaison and communication with the officials of the Navajo Nation government, entities, and chapters, mineral and business lease operators and state and federal agencies for the furtherance and accomplishment of the purpose of the office.

C. Coordinate with the Division of Community Development and the Office of the Controller in the development of accounting, financial-related and audit regulations for use by the chapters; and work with the Office of the Prosecutor

and Ethics and Rules Office, if necessary, to secure records necessary for completing chapter audits and in the investigation of possible fraud and/or misappropriation of assets of the Navajo Nation.

D. Be responsive to the requests of management for specific information, review or audit of any aspect of Navajo Nation and chapter operation.

E. Prepare and present to the Budget and Finance Committee of the Navajo Nation Council, and to the appropriate elements of management, clear and concise reports of the results of internal audit reviews and examinations, prepared in accordance with generally accepted auditing standards and governmental auditing standards as promulgated by the Comptroller General of the United States.

F. Serve as one of the principal advisors to the Navajo Nation Council regarding accounting, systems and procedures, program, departmental and divisional operations and financial and business matters.

G. Participate in management decisions when new fiscal procedures are being established or existing fiscal procedures modified and also in various task forces, committees and commissions.

H. Exercise supervisory control and direction of all personnel within the office and maintain the highest standards of audit quality, ethics, independence and confidentiality. Review, modify and approve audit programs, audit reports and recommendations. Schedule and prioritize audits.

I. Represent the Office of the Auditor General in executive and legislative planning.

J. Represent the Navajo Nation government within the areas of responsibility and authority of the office and as authorized by the Office of the Speaker, Navajo Nation Council, in relations with all persons and organizations outside the Navajo Nation, and in matters relating to cooperative activities with state or federal agencies, pertaining to audit. Interface with the Navajo Nation's independent auditors.

K. Provide, to the extent necessary, training programs and library resources for the development of a well-qualified professional audit staff. Maintain a continuing education program designed to qualify staff personnel to meet the governmental auditing standards.

L. Conduct limited examinations of specific financial transactions and provide other administrative support services to the Navajo Nation government as and when requested and as directed by the Navajo Nation Council.

M. Enter into agreements, as deemed necessary with Navajo Nation, state or federal departments or offices for the sole purpose of accomplishing the objectives of the office, subject to review by and approval of the Intergovernmental Relations Committee.

N. Update the Plan of Operation and policy guidelines for the Office of the Auditor General as and when necessary, to implement the objectives and policies of the Navajo Nation administration.

O. Conduct audit follow-ups and take other necessary actions to assist in the implementation of audit recommendations in accordance with requests therefore and the directions of the Navajo Nation Council.

P. While conducting audits (financial, performance and compliance) and operations appraisals of Navajo Nation programs, divisions, or chapters, give emphasis to: effectiveness, accountability, responsiveness to the needs of the Navajo people, adherence to goals and objectives, policies and plans of operation; safeguarding of Navajo Nation assets and properties; proper use of labor, equipment, funds and properties; services to the community; compliance with applicable Navajo Nation, state and federal laws, agreements, policies or procedures; and adequacy and efficiency of personnel.

Q. Conduct, or participate in the conduct of, examinations of financial statements of Navajo Nation affiliated entities, contractors to the Navajo Nation and others, in accordance with generally accepted auditing standards.

R. Conduct operations audits of Navajo Nation programs, divisions, departments and Navajo Nation affiliated entities as requested by such entities or by the Navajo Nation Council.

S. Delegate authority to members of the staff as and when necessary.

T. Report directly to the Speaker, Navajo Nation Council, on all operational issues and be responsible thereto for the accomplishment of the purposes of the office.

U. In general, do everything necessary and convenient and assume such other duties and responsibilities as may be deemed advisable, to accomplish the purpose of this office in the best interest of the Navajo Nation.

V. Serve as the sole authority within the Navajo Nation for issuance of audit reports or reports covering limited examinations of specific financial transactions.

History

CD-80-02, December 30, 2002.
CJY-60-91, July 19, 1991.
CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.
Note. Slightly reworded.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 5. Disclosure of records

A. Officials and employees of all Navajo Nation programs, divisions, entities, chapters, and enterprises shall make their books and records available to the staff of Office of the Auditor General upon request and extend every courtesy and cooperation to such representatives while they are performing their official duties.

B. The requested information shall be made available within a reasonable period of time.

History

CD-80-02, December 30, 2002.
 CJY-60-91, July 19, 1991.
 CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Note. Slightly reworded.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 6. Audit reports, actions and follow-ups

A. The Auditor General shall submit all Navajo Nation program, division, chapter, and enterprise audit reports with findings and recommendations to the Budget and Finance Committee of the Navajo Nation Council for their review. Upon receipt of the reports, review shall begin within a reasonable period of time so as to implement the audit recommendation(s) in a timely manner.

B. The Office of the Auditor General shall conduct such post-audit follow-ups as are deemed necessary. The results of such post-audit follow-ups shall be similarly reported as specified by (A), above.

History

CO-96-99, October 20, 1999.
 CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.
 ACO-132-84, October 11, 1984.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 7. Procedures for addressing audit findings and implementing recommendations

A. Within ten (10) working days after receipt of the final draft of an audit report from the Office of the Auditor General, the audited program will submit written comments to the Auditor General that present the audited program's overall response to the final draft of the audit report. The audited program may request an extension of up to five (5) working days for justified reasons and approval by the Auditor General. Failure of an audited program to submit a response shall be deemed to constitute an acceptance of the final draft of the audit report by the program. The response should not exceed five pages and should generally describe how audit findings made in the final draft of the audit report will be corrected. If the audited program disputes any portion of the final draft of the audit report, the response shall state the reasons therefor.

The term "audited program", as used, includes all Navajo Nation programs, divisions, chapters, enterprises, or other entities of Navajo Nation government.

B. A copy of the audited program's response will be published as part of the audit report issued to the Budget and Finance Committee, the standing committee having oversight responsibility for the audited program, the Navajo Nation Council and public.

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12 N.N.C. § 7

C. Within thirty (30) calendar days after the release of the audit report, the audited program will submit a corrective action plan to the Auditor General. The corrective action plan will address each finding presented in the report in one of the following ways:

1. Audited program agrees with the audit findings and will immediately implement the recommendations within a stated time period.

2. Audited program agrees with the audit findings but considers that immediate implementation of the recommendation is not feasible. Audited program will state the reasons why implementation should be delayed and the expected time frame for implementation.

D. Upon receipt of the audited program's corrective action plan, the Auditor General shall review the plan to determine its effectiveness. Upon approval of the plan the Auditor General shall present the audit report, and the audited program shall present the corrective action plan to the Budget and Finance Committee for review. The Auditor General will comment and identify any potential deficiencies in the corrective action plan, if warranted. The Budget and Finance Committee will approve the audit report and the corrective action plan by resolution.

E. The standing committee or committees having oversight responsibility for the audited program shall be served with copies of the audit report and the corrective action plan. The oversight committee may request the Auditor General to brief them on the audit report.

F. Six (6) months after the submission of the corrective action plan, the audited program will provide to the Auditor General a written report on the status of all recommendations.

1. The status report shall describe actions taken to implement the corrective action plan and the results of those actions. The report should disclose any problems that have affected the audited program's ability to implement the corrective action plan in a timely manner and state how the audited program plans to address these problems.

2. The Auditor General will review the implementation status report and, if warranted, will conduct test work to verify actions taken and/or problems encountered. The Auditor General will provide a copy of the status report along with the Auditor General's opinion regarding the success of the audited program's implementation effort to the Budget and Finance Committee and the standing committee or committees having oversight responsibility for the audited program.

G. Twelve (12) months after the release of the audit report, the Auditor General will conduct a follow-up review to document the status of the implementation. The audited program shall provide data and information, as requested by the Auditor General, to verify action taken. The Auditor General shall issue a written report on the audited program's progress in implementing the corrective action plan. As part of the follow-up report, the Auditor General shall recommend action to be taken by the Budget and Finance Committee and

present the report to the standing committee or committees having oversight responsibility for the audited program.

H. The Auditor General shall report the results of the follow-up review and the status of the correction plan to the Budget and Finance Committee.

I. Based on the follow-up review and any recommendations made by the standing committee having oversight responsibility for the audited program, the Budget and Finance Committee will determine what actions should be taken.

History

CD-80-02, December 30, 2002.
CO-96-99, October 20, 1999.

Note. New § 7, previous § 7 now found at
12 N.N.C. § 10.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 8. Duties of audited programs

Once audit findings and a corrective action plan are approved by the Budget and Finance Committee, the Navajo Nation program, division, chapter, enterprise or entity which is the subject of the corrective action plan shall have a duty to implement the corrective action plan according to the terms of the plan.

History

CO-96-99, October 20, 1999.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 9. Sanctions for failure to implement plan

A. Whenever the Auditor General determines through the periodic review established in § 6 or § 7 that program, division, chapter, enterprise or entity has failed to implement the corrective action plan approved by the Budget and Finance Committee within the time table set by the corrective action plan or the Auditor General, the Auditor General shall immediately report that failure to the Controller of the Navajo Nation and to the Budget and Finance Committee.

B. As a sanction for failure to implement the corrective action plan, the Controller shall cause ten percent (10%) of monies payable from any governmental fund of the Navajo Nation as defined at 12 N.N.C. § 810(R) to be withheld after the recommended sanction is approved by the Budget and Finance Committee and issued to the program, division, chapter, enterprise or entity until such time as the program, division, chapter, enterprise or entity demonstrates to the Auditor General that the corrective action plan has been implemented. Once proof of implementation of the corrective action plan has been demonstrated, the Auditor General shall immediately report this compli-

ance to the Controller who shall then release all withheld funds to the program, division, chapter, enterprise or entity.

C. In addition, the director of any program, division, or entity of the Navajo Nation which fails to implement a corrective action plan, as reported by the Auditor General, shall have twenty percent (20%) of their salary withheld by the Controller after the recommended sanction is approved by the Budget and Finance Committee until such time as the program, division, enterprise or entity which is subject to his or her direction demonstrates to the Auditor General that the corrective action plan has been implemented. Whenever the audited program is a chapter of the Navajo Nation, twenty percent (20%) of any payment prospectively due the chapter officials shall be withheld by the Controller and the chapter government. Once proof of implementation of the corrective action plan has been demonstrated, the Auditor General shall immediately report this compliance to the Controller and, where applicable, the chapter government, who shall then release the withheld salary to the director of the program, division, enterprise, or entity or to the chapter official.

D. Any director or chapter official whose salary or other payments are withheld pursuant to § 9(C) shall have the right to have the withholding reviewed by the Navajo Nation Office of Hearings and Appeals. Review shall be limited to a determination of whether the audit recommendation or corrective action plan bears a rational relationship to the audit report, was approved by the Budget and Finance Committee, whether the corrective action plan was implemented within established time tables and whether the time tables for implementation were reasonable. The withholding of salary shall be upheld if there is a preponderance of evidence in support of these factors. The decision of the Office of Hearings and Appeals shall be final and no appeal shall lie to the courts of the Navajo Nation.

History

CD-80-02, December 30, 2002.

CO-96-99, October 20, 1999.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 10. Amendment of the Plan of Operation

This Plan of Operation may be amended from time to time by the Navajo Nation Council upon the recommendation of the Intergovernmental Relations Committee of the Navajo Nation Council. The request for amendment shall be originated by the Auditor General.

History

CO-96-99, October 20, 1999.

CJY-60-91, July 19, 1991.

CF-4-85, February 5, 1985.

ACO-132-84, October 11, 1984.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 2. Office of the Controller

Section

- 201. Establishment; purpose; composition
- 202. Controller; Acting Controller; other personnel
- 203. Duties, responsibilities and authority of Controller

History

Subchapters 3, 5, 7, 9, and 11 repealed by were derived from CJN-60-71, June 8, 1971, CF-5-73, February 1, 1973. Repealed sections and the 1972 Budget.

§ 201. Establishment; purpose; composition

A. There is established the Office of the Controller within the Executive Branch of the Navajo Nation.

B. The purpose of the Office of the Controller shall be the formulation, implementation and execution of the financial plans and policies of the Navajo Nation in order that accurate and complete accounts and reports be rendered, the assets of the Navajo Nation be properly protected and modern methods of financial management be implemented.

C. There shall be, within the Office of the Controller:

- 1. Two secretaries;
- 2. A systems and procedures analyst;
- 3. Three accounting managers, one of which shall oversee an Accounts Receivable Department and a Budget Control Department; one of which shall oversee an Accounts Payable Department and a General Accounting Department; and one of which shall oversee a Cashier's Department, a Payroll Department and an Office Services Department.

History

CF-5-73, February 1, 1973.
1972 Budget, Div. 4, Dept. 10, §§ I, II, V.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 202. Controller; Acting Controller; other personnel

A. There is established the position of Controller, and such other positions as may from time to time be budgeted by the Navajo Nation Council, or by any other source acceptable to the President, Navajo Nation.

B. The Controller shall be appointed by the President of the Navajo Nation, at a negotiated salary with the approval of the Navajo Nation Council and shall

serve at the pleasure of the Navajo Nation Council. The President of the Navajo Nation, with the consent of the Budget and Finance Committee, may appoint an Acting Controller to serve during vacancies of the Controller pending formal action by the Navajo Nation Council.

C. All other personnel shall be hired and compensated pursuant to usual Navajo Nation policies and procedures.

History

1972 Budget, Div. 4, Dept. 10, § III. Council. The Budget and Finance Committee has been delegated oversight authority for the Division of Finance, including the Office of the Controller. See 2 N.N.C. § 374(B)(16).
Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no longer a standing committee of the Navajo Nation

Cross References

Budget and Finance Committee of the Navajo Nation Council, 2 N.N.C. § 374(B)(16).

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 203. Duties, responsibilities and authority of Controller

The Controller shall:

A. Report directly to the President of the Navajo Nation, on operational matters of the Office of the Controller.

B. Report to the Navajo Nation Council and its committees concerning the financial condition of the Navajo Nation and be solely responsible to the Council and the Budget and Finance Committee concerning the propriety of financial transactions, and compliance with Council or committee directives.

C. Formulate overall financial policy and procedures for the Navajo Nation Council and take such action as is necessary for the accomplishment and enforcement thereof.

D. Exercise supervisory control and direction of all sections and divisions under the Controller.

E. Represent all areas of the Controller’s responsibility at executive level planning.

F. Develop and coordinate programs of financial management at all levels within the Navajo Nation government.

G. Represent the Navajo Nation government in the areas of the Controller’s responsibility.

H. Delegate authority to subordinates as required for efficient operation.

I. Serve as Chairperson, Investment Committee for the administration of the Navajo Nation’s investment programs, and be responsible to the Navajo Nation Council and the Budget and Finance Committee for the proper execution of the investment program.

J. Plan and conduct program and budget development and review.

K. Act as an advisor to the Budget and Finance Committee.

History

1972 Budget, Div. 4, Dept. 10, § IV.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 3. Navajo Nation Procurement Act

Subchapter 1. General Provisions

Section

- 301. Purposes, Rules of construction
- 302. Requirement of good faith
- 303. Application of this Act
- 304. Severability
- 305. Construction against implicit repealer
- 306. Effective date
- 307. Determinations
- 308. Definitions
- 309. Public access to procurement information
- 310. Collection of data concerning public procurement
- 311. Retention of procurement records
- 312. Reporting of anti-competitive practices

Subchapter 2. Regulations Required by this Act

- 320. Navajo Nation procurement regulations

Subchapter 3. Source Selection and Contract Formation

- 330. Methods of source selection
- 331. Competitive sealed bidding
- 332. Competitive sealed proposals
- 333. Small purchases
- 334. Emergency procurement
- 335. Sole source procurement
- 336. Record of small purchases, sole source procurement and emergency procurement
- 337. Cancellation of invitations for bids or requests for proposals
- 338. Responsibility of bidders and offerors
- 339. Pre-qualification of suppliers

Subchapter 4. Procurement of Construction Services

- 340. Responsibility for selection of methods of construction contracting management
- 341. Bid security

- 342. Contract performance and payment bonds
- 343. Bond forms and copies
- 344. Contract clauses and their administration
- 345. Fiscal responsibility
- 346. Architect-engineer and land surveying services

Subchapter 5. Contract Administration

- 350. Contract clauses and their administration
- 351. Right to inspect plant
- 352. Right to audit records
- 353. Types of contracts
- 354. Multi-term contracts
- 355. Cost principles regulations required

Subchapter 6. Legal and Contractual Remedies

- 360. Authority to resolve protested solicitations and awards
- 361. Authority to debar or suspend
- 362. Administrative review
- 363. Scope of administrative review
- 364. Presumed finality of decisions

Subchapter 7. Compliance with Federal Requirements

- 370. Compliance with federal requirements

Subchapter 8. Amendment

- 371. Amendments

Subchapter 1. General Provisions

§ 301. Purposes, Rules of construction

A. Interpretation. This Act shall be construed and applied to promote its underlying purposes and policies.

B. Purposes and Policies. The underlying purposes and policies of this Act are:

1. To simplify, clarify, and modernize the law governing procurement by the Navajo Nation, to foster effective broad-based competition within the free enterprise system to the extent consistent with the purposes and provisions of the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*;
2. To permit the continued development of procurement policies and practices;

3. To provide for consistent procurement practices;
4. To provide for increased public confidence in the procedures followed in public procurement;
5. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Navajo Nation;
6. To provide increased economy in Navajo Nation procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Navajo Nation;
7. To provide safeguards for the maintenance of a procurement system of quality and integrity.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 302. Requirement of good faith

This Act requires all parties involved in the negotiation, performance, or administration of Navajo Nation contracts to act in good faith.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 303. Application of this Act

A. **General Application.** This Act applies only to contracts solicited or entered into after the effective date of this Act unless the parties agree to its application to a contract solicited or entered into prior to the effective date.

B. **Application to Navajo Nation Procurement.** This Act shall apply to every expenditure of public funds, irrespective of their source, by the Navajo Nation, acting through a division, department, office, or program of the Navajo Nation as defined herein, under any contract. Nothing in this Act or in regulations promulgated hereunder shall prevent any division, department, office, or program of the Navajo Nation or political subdivision of the Navajo Nation from complying with the terms and conditions of any grant, gift, bequest, intergovernmental, joint powers or cooperative agreement. This Act shall not apply to governance certified chapters, who are governed by their own procurement policies.

C. For the purpose of procuring the services of accountants, physicians, dentists, or other licensed professional services, other than attorneys or tribal court advocates, any division, department, office, or program of the Navajo Nation may act as a purchasing agency and contract on its own behalf for such services, subject to this Act and regulations promulgated by the Budget and Finance Committee. The purchasing agency may consult with the Director, Division of Finance, Purchasing Department or authorized designee when procuring such services.

D. Contracts for the services of outside attorneys and tribal court advocates shall be awarded only through the Attorney General of the Navajo Nation. This limitation shall not apply to the employment of attorneys or tribal court advocates by divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, in accord with Navajo Nation law.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 304. Severability

If any provision of this Act is held invalid, such invalidity shall not affect other provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

§ 305. Construction against implicit repealer

Since this Act is a general act, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

§ 306. Effective date

This Act shall become effective upon passage by the Navajo Nation Council.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

§ 307. Determinations

Written determinations required by this Act shall be retained in the appropriate official contract file of the Director, Division of Finance, Purchasing Department or authorized designee or the purchasing agency for the period of three (3) years, unless a different period of time is required by federal or state contract or grant requirements.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇐24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 308. Definitions

A. The words used in this Act shall have their ordinary meanings unless:

1. The context in which they are used clearly requires a different meaning; or
2. A different definition is prescribed for a particular provision.

B. “Architect–Engineer and Land Surveying Services” are those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws the Navajo Nation, or in the absence of Navajo law, the states in which the professional services are to be performed.

C. “Bid” means an offer to perform a contract for the performance of work and labor and/or the delivery of goods at a specified price.

D. “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

E. “Change Order” means a written order signed by the procurement officer or authorized designee, directing the contractor to make changes as authorized by a contract without the consent of that contractor.

F. “Construction” means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

G. “Contract” means all types of Navajo Nation agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction. The term contract does not include agreements, including prime contracts and grants, between the Navajo Nation and federal, state, and local governments for the provision of governmental services to Navajos and other persons within the Navajo Nation.

H. "Contract Modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

I. "Contractor" means any person having a procurement contract with a division, department, office, or program of the Navajo Nation.

J. "Cost-Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this Act, and a fee, if any.

K. "Data" means recorded information, regardless of form or characteristic.

L. "Designee" means a duly authorized representative of a person.

M. "Employee" means an individual drawing a salary from a division, department, office, or program of the Navajo Nation, whether elected or not, and any uncompensated individual performing personal services for any division, department, office, or program of the Navajo Nation.

N. "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

1. Is regularly maintained by a manufacturer or contractor;
2. Is either published or otherwise available for inspection by customers; and
3. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

O. "Division, department, office, or program of the Navajo Nation" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the Executive, Legislative, or Judicial Branch of the Navajo Nation government. It does not mean any other governance certified political subdivision of the Navajo Nation, or an enterprise or authority of the Navajo Nation.

P. "Grant" means the receipt or provision of governmental assistance, whether financial or otherwise, under a program authorized by Navajo Nation, state or federal law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

Q. "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

R. "May" denotes the permissive.

S. "Person" means any business, individual, union, committee, club, other organization, or group of individuals.

T. "Political Subdivision" means governmental units of the Navajo Nation which are created by Navajo Nation law and include the chapters and townsites of the Navajo Nation.

U. "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods and/or services, unless excluded from coverage by some other provision of Navajo Nation law. It also includes all functions that pertain to the obtaining of any goods and/or services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

V. "Procurement Officer or authorized designee" means any person authorized to enter into, make written determinations regarding, and administer contracts. The term also includes an authorized representative acting within the limits of authority.

W. "Proposal" means an offer to perform a contract for the performance of work and labor and/or the delivery of goods sought where it is either not practicable or not advantageous to the Navajo Nation to procure specified types of supplies, services, or construction by competitive sealed bidding.

X. "Purchase description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation.

Y. "Purchasing agency" means any division, department, office, program, and political subdivisions of the Navajo Nation, other than the Division of Finance, Purchasing Department which is authorized by this Act or its implementing regulations, to enter into contracts.

Z. "Regulation" means, for purposes of this Act, the regulations adopted by the Budget and Finance Committee to regulate the procurement of goods and services by the divisions, departments, programs and offices of the Navajo Nation government.

AA. "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

BB. "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

CC. "Responsive bidder" means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

DD. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

EE. "Shall" denotes the imperative.

FF. "Supplies" means all property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇨24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 309. Public access to procurement information

Procurement information shall be available to the public to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇨24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 310. Collection of data concerning public procurement

The Director, Division of Finance, Purchasing Department shall cooperate with the Division of Finance in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies, services, and construction, and employ such trained personnel as may be necessary to carry out this function. All divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, shall furnish such reports as the Director, Division of Finance, Purchasing Department or authorized designee may require concerning usage, needs, and stocks on hand, and the Director, Division of Finance, Purchasing Department or authorized designee shall have the authority to prescribe forms to be used by the divisions, departments, offices, programs, and political subdivisions of the Navajo Nation, in requisitioning, ordering, and reporting of supplies, services, and construction.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇨24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 311. Retention of procurement records

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Government Ser-

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vices Committee. Inspection of all retained documents shall be governed by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 312. Reporting of anti-competitive practices

When for any reason, collusion or other anti-competitive practices are suspected in contracting provided under this Act, a notice of the relevant facts shall be transmitted to the Attorney General.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 2. Regulations Required by this Act

§ 320. Navajo Nation Procurement Regulations

A. Regulations shall be developed by the Division of Finance, Purchasing Department, in consultation with the Business Regulatory Department, Department of Justice and Office of Legislative Counsel, and adopted by the Budget and Finance Committee of the Navajo Nation Council within one (1) year of the passage of this Act, and shall be reviewed for potential revision at least every two (2) years. Navajo Nation procurement regulations shall be consistent with the provisions of the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*

B. The Budget and Finance Committee shall not delegate its power to promulgate procurement regulations.

C. No regulation shall change any commitment, right, or obligation of the Navajo Nation or of a contractor under a contract in existence on the effective date of such regulation.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ↻24.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

Subchapter 3. Source Selection and Contract Formation**§ 330. Methods of source selection**

Unless otherwise authorized by law, all Navajo Nation contracts shall be awarded by competitive sealed bidding, pursuant to 12 N.N.C. § 331 (Competitive Sealed Bidding), except as provided in:

- A. 12 N.N.C. § 332 (Competitive Sealed Proposals);
- B. 12 N.N.C. § 333 (Small Purchases);
- C. 12 N.N.C. § 334 (Emergency Procurement);
- D. 12 N.N.C. § 335 (Sole Source Procurement); or
- E. 12 N.N.C. § 346 (Architect–Engineer and Land Surveying Services).

History

CAU–68–01, August 8, 2001.
 CJY–54–01, July 19, 2001.

Library References

Indians ↻24.
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

§ 331. Competitive Sealed Bidding

Competitive Sealed Bidding shall be the preferred method of source selection, and shall be conducted in a manner consistent with the procedures set forth in the Navajo Nation Business Opportunity Act, 5 N.N.C. § 205.

A. Invitation for bids. An invitation for bids shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The invitation for bids shall set forth the criteria to be used in evaluation of bids which are submitted. The invitation for bids shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Opportunity Act., 5 N.N.C. § 201 *et seq.*

B. Public Notice. Adequate public notice of the invitation for bids shall be issued a reasonable time prior to the date set for the opening of bids. Certified entities under the Navajo Nation Business Opportunity Act shall be provided such notice as set forth in the Navajo Nation Business Opportunity Act. Such notice may include publication in a newspaper of general circulation a reasonable time prior to bid opening.

C. Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The opening of bids shall be performed a manner consistent with the Navajo Nation Business Opportunity Act. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection, to the extent permitted by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

D. Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized by the Navajo Nation Business Opportunity Act, or other provisions of law. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The criteria affecting the bid price and considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

E. Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in accordance with regulations promulgated by the Budget and Finance Committee. After bid opening no changes in bid prices or other provisions of bids prejudicial to the interest of the Navajo Nation or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director, Division of Finance, Purchasing Department or authorized designee or head of a purchasing agency.

F. Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids in a procurement exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed such funds by more than five percent (5%), the Director, Division of Finance, Purchasing Department or authorized designee, or the head of a purchasing agency, is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.

G. Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞6 to 12.	C.J.S. Public Administrative Law And Procedure §§ 7 to 17.
Westlaw Topic Nos. 209, 316A.	

§ 332. Competitive sealed proposals

A. **Conditions for Use.** When, under regulations promulgated by the Budget and Finance Committee, the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer determines in writing that the use of competitive scaled bidding is either not practicable or not advantageous to the Navajo Nation, a contract may be entered into by competitive sealed proposals. The Budget and Finance Committee may provide by regulation that it is either not practicable or not advantageous to the Navajo Nation to procure specified types of supplies, services, or construction by competitive sealed bidding. The competitive sealed proposals process shall be conducted in a manner consistent with the procedures set forth in the Navajo Nation Business Opportunity Act, 5 N.N.C. § 205.

B. **Request for Proposals.** Proposals shall be solicited through a request for proposals. A request for proposals shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement. Purchase descriptions, terms and conditions, and specifications for goods and services shall not be unduly restrictive. The request for proposals shall set forth the criteria to be used in evaluation of proposals which are submitted. The request for proposals shall refer to the preference of Navajo and Indian-owned businesses under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*

C. **Public Notice.** Adequate public notice of the request for proposals shall be given in the same manner as provided in 12 N.N.C. § 331(B) (Competitive Sealed Bidding, Public Notice).

D. **Opening of Proposals.** The opening of proposals shall be performed in a manner consistent with the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with regulations promulgated by the Budget and Finance Committee, and shall be open for public inspection after contract award, to the extent provided in the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

E. **Evaluation Factors.** The request for proposals shall state the relative importance of price and other evaluation factors. The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive offeror whose proposal meets the requirements and criteria set forth in the request for proposals. In the event all proposals in a procure-

ment exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible proposal does not exceed such funds by more than five percent (5%), the Director, Division of Finance, Purchasing Department or authorized designee, or the head of a purchasing agency, is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope to negotiate an adjustment of the proposal price, including changes in the proposal requirements, with the low responsive and responsible offeror, in order to bring the proposal within the amount of available funds.

F. Discussion with Responsible Offerors and Revisions to Proposals. As provided in the request for proposals, and under regulations promulgated by the Budget and Finance Committee, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

G. Award. Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Navajo Nation taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made, and shall be made public to the extent provided in the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞6 to 12.	C.J.S. Public Administrative Law And Procedure §§ 7 to 17.
Westlaw Topic Nos. 209, 316A.	

§ 333. Small purchases

A. Applicability. Any procurement not exceeding fifty thousand dollars (\$50,000) may be made using small purchase regulations adopted by the Budget and Finance Committee, provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. Certified entities under the Navajo Nation Business Opportunity Act shall receive preference in small purchases.

B. Review and Signature Requirements. Small purchases shall require only the following signatures and reviews: program director, division director

or other procurement officer and appropriate representative of the Attorney General's Office (or Office of Legislative Counsel, for small purchases within the Legislative Branch). No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 334. Emergency procurement

Notwithstanding any other provision of law, the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations promulgated by the Budget and Finance Committee; provided that such emergency procurement shall be made with such competition as is practicable under the circumstances. A written determination of emergency shall be made by the executive director of the affected division, in concert with the Director, Division of Finance, Purchasing Department or authorized designee, and a representative of the Attorney General's Office (or the Office of Legislative Counsel for emergency procurements by the Legislative Branch). To the extent possible, certified entities under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.*, shall receive preference in emergency procurement. The written determination and the selection of the particular contractor shall be included in the contract file. No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞6.	C.J.S. Public Administrative Law And Procedure §§ 8 to 9.
Westlaw Topic Nos. 209, 316A.	

§ 335. Sole source procurement

A contract may be awarded for goods and/or services without competition when, under regulations promulgated by the Budget and Finance Committee, the executive director of the affected division or other procurement officer, in concert with the Director, Division of Finance, Purchasing Department or authorized designee, and a representative of the Attorney General's Office, or the Office of Legislative Counsel for procurements by the Legislative Branch,

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determines in writing that there is only one source for the required goods and/or services. Certified entities under the Navajo Nation Business Opportunity Act, 5 N.N.C. § 201 *et seq.* shall receive preference in sole source procurement. The written determination and the selection of the particular contractor shall be included in the contract file. No oversight committee approval shall be required for these contracts.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24. C.J.S. Indians §§ 12, 31.
Public Contracts ☞6. C.J.S. Public Administrative Law And Procedure §§ 8 to 9.
Westlaw Topic Nos. 209, 316A.

§ 336. Record of small purchases, sole source procurement and emergency procurement

A. Contents of Record. The Director, Division of Finance, Purchasing Department shall maintain a record listing all contracts made under 12 N.N.C. § 333 (Small Purchases), 12 N.N.C. § 334 (Emergency Procurement) and 12 N.N.C. § 335 (Sole Source Procurement) for a minimum of five (5) years. The record shall contain:

1. Each contractor's name;
2. The amount and type of each contract; and
3. A listing of the supplies, services, or construction procured under each contract.

B. Submission to Navajo Nation Council. A copy of such record shall be submitted to the Navajo Nation Council on an annual basis. The record shall be available for public inspection to the extent provided by the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 337. Cancellation of invitations for bids or requests for proposals

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, or when it is in the best interests of the Navajo Nation in accordance with regulations promulgated by the Budget and Finance Committee. The reasons therefor shall be made part of the contract file.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞7.	C.J.S. Public Administrative Law And Procedure §§ 10 to 11.
Westlaw Topic Nos. 209, 316A.	

§ 338. Responsibility of bidders and offerors

A. Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the Budget and Finance Committee. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror.

B. Right of Nondisclosure. Information furnished by a bidder or offeror pursuant to this Section shall only be disclosed in accord with the provisions of the Navajo Nation Privacy and Access to Information Act, 2 N.N.C. § 81 *et seq.*

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞11.	C.J.S. Public Administrative Law And Procedure §§ 8 to 9, 12, 16 to 17.
Westlaw Topic Nos. 209, 316A.	

§ 339. Pre-qualification of suppliers

Prospective suppliers may be pre-qualified for particular types of supplies, services, and construction in accordance with regulations promulgated by the Budget and Finance Committee. Solicitation mailing lists of potential contractors shall include but shall not be limited to such pre-qualified suppliers.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 4. Procurement of Construction Services

§ 340. Responsibility for selection of methods of construction contracting management

The Budget and Finance Committee, in consultation and coordination with the Transportation and Community Development Committee, shall promulgate regulations providing for as many alternative methods of construction management as it may determine to be feasible. These regulations shall:

A. Set forth criteria to be used in determining which method of construction contracting management is to be used for a particular project;

B. Grant to the Director, Division of Finance, Purchasing Department or authorized designee, or the head of the purchasing agency responsible for carrying out the construction project the discretion to select the appropriate method of construction contracting management for a particular project; and

C. Require the procurement officer or authorized designee to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 341. Bid security

A. Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer or authorized designee to exceed the amount established by regulation of the Budget and Finance Committee. Bid security shall be a bond provided by a surety company authorized to do business within the Navajo Nation, or the equivalent in cash, or otherwise supplied in a form satisfactory to the Navajo Nation. Nothing herein prevents the requirement of such bonds on construction contracts under the amount set by the Budget and Finance Committee when the circumstances warrant.

B. Amount of Bid Security. Bid security shall be in an amount equal to at least ten percent (10%) of the amount of the bid.

C. Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to Budget and Finance Committee regulations, it is determined that the bid fails to comply in a insubstantial manner with the security requirements.

D. **Withdrawal of Bids.** After the bids are opened, they shall be irrevocable for the period specified in the invitation for bids, except as provided in 12 N.N.C. § 331 (Competitive Sealed Bidding, Correction or Withdrawal of Bids; Cancellation of Awards). If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid security.

History

CAU-68-01, August 8, 2001.
 CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.	C.J.S. Indians §§ 12, 31.
Public Contracts ⇌9.	C.J.S. Public Administrative Law And Procedure § 12.
Westlaw Topic Nos. 209, 316A.	

§ 342. Contract performance and payment bonds

A. **When Required—Amounts.** When a construction contract is awarded in excess of fifty thousand dollars (\$50,000), the following bonds or security shall be delivered to the Navajo Nation and shall become binding on the parties upon the execution of the contract:

1. A performance bond satisfactory to the Navajo Nation, executed by a surety company or otherwise secured in a manner satisfactory to the Navajo Nation, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
2. A payment bond satisfactory to the Navajo Nation, executed by a surety company or otherwise secured in a manner satisfactory to the Navajo Nation, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the contract.

B. **Reduction of Bond Amounts.** The Budget and Finance Committee may promulgate regulations that authorize the Director, Division of Finance, Purchasing Department or authorized designee or head of a purchasing agency to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond.

C. **Authority to Require Additional Bonds.** Nothing in this Section shall be construed to limit the authority of the Navajo Nation to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (A) of this Section.

History

CAU-68-01, August 8, 2001.
 CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.	C.J.S. Indians §§ 12, 31.
Public Contracts ⇌41.	C.J.S. Public Administrative Law And Procedure §§ 41, 43, 46.
Westlaw Topic Nos. 209, 316A.	

§ 343. Bond forms and copies

A. Bond Forms. The Budget and Finance Committee shall promulgate by regulation the form of the bonds required by this Act.

B. Certified Copies of Bonds. Any person may request and obtain from the Navajo Nation a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution, and delivery of the original.

History

CAU-68-01, August 8, 2001.

CJY-54-01, July 19, 2001.

Library References

Indians ☞24.

Westlaw Topic No. 209.

C.J.S. Indians §§ 12, 31.

§ 344. Contract clauses and their administration

A. Contract Clauses. The Budget and Finance Committee shall promulgate regulations requiring the inclusion in Navajo Nation construction contracts of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

1. The unilateral right of the Navajo Nation to order in writing:
 - a. Changes in the work within the scope of the contract; and
 - b. Changes in the time of performance of the contract that do not alter the scope of the contract work;
2. Variations occurring between estimated quantities of work in a contract and actual quantities;
3. Suspension of work ordered by the Navajo Nation; and
4. Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses may be included in a contract:
 - a. When the site conditions within the contract are specifically negotiated;
 - b. When the contractor provides the site or design; or
 - c. When the parties have otherwise agreed with respect to the risk of differing site conditions.

B. Price Adjustments.

1. Adjustments in price pursuant to clauses promulgated under Subsection (A) of this Section shall be computed in one or more of the following ways:
 - a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;

c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

d. In such other manner as the contracting parties may mutually agree; or

e. In the absence of agreement by the parties, by a unilateral determination by the Navajo Nation of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Navajo Nation in accordance with applicable sections of the regulations promulgated by the Budget and Finance Committee.

2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is proposed.

C. Additional Contract Clauses. The Budget and Finance Committee shall promulgate regulations requiring the inclusion in Navajo Nation construction contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and
4. Termination of the contract in whole or in part for the convenience of the Navajo Nation.

D. Modification of Required Clauses. The Director, Division of Finance, Purchasing Department or the head of a purchasing agency may vary the clauses promulgated by the Budget and Finance Committee under Subsection (A) and Subsection (C) of this Section for inclusion in any particular Navajo Nation construction contract, provided that any variations are supported by a written determination that states the circumstances justifying such variations, and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 345. Fiscal responsibility

Every contract modification, change order, or contract price adjustment under a construction contract with the Navajo Nation in excess of ten percent

(10%) of the original contract amount shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the procurement officer or authorized designee shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ¶24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 346. Architect-engineer and land surveying services

A. Applicability. Architect-engineer and land surveying services shall be procured as provided in this Section except as authorized by 12 N.N.C. § 334 (Small Purchases), 12 N.N.C. § 335 (Emergency Procurement), and 12 N.N.C. § 336 (Sole Source Procurement).

B. Policy. It is the policy of the Navajo Nation to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts for architect engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

C. Architect-Engineer Selection Committee. In the procurement of architect-engineer and land surveying services, the Director, Division of Finance, Purchasing Department or the head of a purchasing agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Director, Division of Finance, Purchasing Department and a representative of Navajo Design and Engineering Services shall comprise the Architect-Engineer Selection Committee for each architect engineer and land surveying services contract over two

hundred fifty thousand dollars (\$250,000). The Selection Committee for architect-engineer and land surveying services contracts under this amount shall be established in accordance with regulations promulgated by the Budget and Finance Committee. The Selection Committee shall evaluate current statement of qualifications and performance data on file with the Navajo Nation, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms (if at least three firms respond to the solicitation) regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms (if at least three firms respond to the solicitation) deemed to be the most highly qualified to provide the services required.

D. Negotiation. The procurement officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the procurement officer or authorized designee determines in writing to be fair and reasonable to the Navajo Nation. In making this decision, the procurement officer or authorized designee shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the procurement officer or authorized designee be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the procurement officer or authorized designee determines to be fair and reasonable to the Navajo Nation, negotiations with that firm shall be formally terminated. The procurement officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the procurement officer or authorized designee shall formally terminate negotiations. The procurement officer or authorized designee shall then undertake negotiations with the third most qualified firm. Should the procurement officer or authorized designee be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the procurement officer or authorized designee shall select additional firms in order of their competence and qualifications, and the procurement officer or authorized designee shall continue negotiations in accordance with this Section until an agreement is reached.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇐24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 5. Contract Administration

§ 350. Contract clauses and their administration

A. Contract Clauses. The Budget and Finance Committee may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

1. The unilateral right of the Navajo Nation to order in writing:
 - a. Changes in the work within the scope of the contract; and
 - b. Temporary stopping of the work or delaying performance; and
2. Variations occurring between estimated quantities of work in a contract and actual quantities.

B. Price Adjustments.

1. Adjustments in price pursuant to clauses promulgated under Subsection (A) of this Section shall be computed in one or more of the following ways:

- a. By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - b. By unit prices specified in the contract or subsequently agreed upon;
 - c. By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
 - d. In such other manner as the contracting parties may mutually agree; or
 - e. In the absence of agreement by the parties, by a unilateral determination by the Navajo Nation of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the Navajo Nation in accordance with applicable sections of the regulations promulgated by the Budget and Finance Committee.
2. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is proposed.

C. Additional Contract Clauses. The Budget and Finance Committee may promulgate regulations including, but not limited to, regulations permitting or requiring the inclusion in Navajo Nation contracts of clauses providing for appropriate remedies and covering the following subjects:

1. Liquidated damages as appropriate;
2. Specified excuses for delay or nonperformance;
3. Termination of the contract for default; and
4. Termination of the contract in whole or in part for the convenience of the Navajo Nation.

5. Modification of Clauses. The Director, Division of Finance, Purchasing Department or authorized designee or the head of a purchasing agency may vary the clauses promulgated by the Budget and Finance Committee

under Subsection (A) and Subsection (C) of this Section for inclusion in any particular Navajo Nation contract; provided that any variations are supported by a written determination that states the circumstances justifying such variation and provided that notice of any such material variation be stated in the invitation for bids or request for proposals.

D. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 351. Right to inspect plant

The Navajo Nation may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Navajo Nation.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 352. Right to audit records

A. Audit of Cost or Pricing Data. The Navajo Nation may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

B. Contract Audit. The Navajo Nation shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract

or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five (5) years from the date of final payment under the prime contract and by the subcontractor for a period of five (5) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 353. Types of contracts

Subject to the limitations of this Section, any type of contract which will promote the best interests of the Navajo Nation may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 354. Multi-term contracts

Unless otherwise provided by law, a contract may be entered into for any period of time deemed to be in the best interests of the Navajo Nation provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for completion of the contract.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 355. Cost principles regulations required

The Budget and Finance Committee shall promulgate regulations setting forth cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, provided that, such cost principles may be modified by contract.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇄24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 6. Legal and Contractual Remedies**§ 360. Authority to resolve protested solicitations and awards**

A. Right to Protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director, Division of Finance, Purchasing Department or the head of a purchasing agency. The protest shall be submitted in writing within fourteen (14) days after such aggrieved person knows or should have known of the facts giving rise thereto.

B. Authority to Resolve Protests. The Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer, with the approval of the Attorney General's Office, shall have the authority to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

C. Decision. If the protest is not resolved by mutual agreement, the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer shall promptly issue a decision in writing. The decision shall:

1. State the reasons for the action taken; and
2. Inform the protestant of its right to administrative review as herein provided.

D. Notice of Decision. A copy of the decision under Subsection (C) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

E. Finality of Decision. A decision under Subsection (C) of this Section shall be final and conclusive, unless fraudulent or the person adversely affected by the decision appeals administratively in accordance with 12 N.N.C. §§ 362 and 363.

F. Stay of Procurement During Protests. In the event of a timely protest under Subsection (A) of this Section, or under 12 N.N.C. §§ 362 and 363, the Navajo Nation shall not proceed further with the solicitation or with the award of the contract until the Director, Division of Finance, Purchasing Department, after consultation with the Attorney General's Office (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) and the head of the using agency or the head of a purchasing Agency, makes a written determination that the award of that contract without delay is necessary to protect substantial interests of the Navajo Nation.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ⇌24.
Public Contracts ⇌5.1.

Westlaw Topic Nos. 209, 316A.
C.J.S. Indians §§ 12, 31.

§ 361. Authority to debar or suspend

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director, Division of Finance, Purchasing Department or the head of a purchasing agency, after consultation with the using agency and the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the using agency and the Attorney General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Budget and Finance Committee.

B. Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Navajo Nation contractor;
3. Conviction under antitrust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded the Director, Division of Finance, Purchasing Department or the head of a Purchasing agency, with concurrence of the Attorney

General (or Office of Legislative Counsel, in the case of a Legislative Branch procurement) to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and

5. Any other cause which the Director, Division of Finance, Purchasing Department or the head of a purchasing agency, with the approval of the Attorney General, or Office of Legislative Counsel, in the case of a Legislative Branch procurement, determines to be so serious and compelling as to affect responsibility as a Navajo Nation contractor, including debarment by another governmental entity for any cause listed in regulations of the Budget and Finance Committee.

C. Decision. The Director, Division of Finance, Purchasing Department or authorized designee or the head of a purchasing agency shall issue a written decision to debar or suspend. The decision shall:

1. State the reasons for the action taken; and
2. Inform the debarred or suspended person involved of his or her rights to administrative review as provided in this Article.

D. Notice of Decision. A copy of the decision under Subsection (C) of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

E. Finality of Decision. A decision under Subsection (C) of this Section shall be final and conclusive, unless fraudulent or the person adversely affected by the decision appeals administratively in accordance with 12 N.N.C. §§ 362 and 363.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.	C.J.S. Indians §§ 12, 31.
Public Contracts ☞11.	C.J.S. Public Administrative Law And Procedure §§ 8 to 9, 12, 16 to 17.
Westlaw Topic Nos. 209, 316A.	

§ 362. Administrative review

The Office of Hearings and Appeals shall have the jurisdiction to hear and decide appeals of decisions under this Act.

History

CAU-68-01, August 8, 2001. CJY-54-01, July 19, 2001.

12 N.N.C. § 362

FISCAL MATTERS

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 363. Scope of administrative review

A. The Office of Hearings and Appeals shall have jurisdiction to review and determine de novo:

1. Any protest of a solicitation or award of a contract by an aggrieved actual or prospective bidder or offeror, or a contractor; and
2. Any appeal by an aggrieved party from a determination by the Director, Division of Finance, Purchasing Department, the head of a purchasing agency, or a designee of either officer authorized by this Act.

B. Time Limitation on Filing an Appeal. The aggrieved person shall file his or her appeal within twenty (20) days of the receipt of a decision.

C. Decision. The decision of the Office of Hearing and Appeals shall make a determination based on the preponderance of the evidence on the issue of whether the actions of the Division of Finance, Purchasing Department or other purchasing agency were consistent with the provisions of this Act and the procurement regulations promulgated by the Budget and Finance Committee. The solicitation or award of a contract shall be upheld unless it is shown by a preponderance of the evidence that the actions of the Division of Finance, Purchasing Department or other purchasing agency violated a specific provision of this Act or the procurement regulations promulgated by the Budget and Finance Committee.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ☞24.
Public Contracts ☞5.1.
Westlaw Topic Nos. 209, 316A.
C.J.S. Indians §§ 12, 31.

§ 364. Presumed finality of decisions

Determinations by the Office of Hearings and Appeals shall be final and conclusive.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 7. Compliance with Federal Requirements

§ 370. Compliance with federal requirements

Where a procurement involves the expenditure of federal assistance or contract funds, the Division of Finance, Purchasing Department shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not presently reflected in this Act.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ⇐24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Subchapter 8. Amendment

§ 371. Amendments

This Act may be amended by the Navajo Nation Council at any time.

History

CAU-68-01, August 8, 2001.
CJY-54-01, July 19, 2001.

Chapter 4. General Provisions**Section**

501. Navajo Nation fiscal year

§ 501. Navajo Nation fiscal year

The Fiscal Year of the Navajo Nation shall, beginning on October 1, 1996, commence on October 1 of each year and end on September 31 of the following year.

History

CF-22-96, February 27, 1996.
CS-57-89, September 14, 1989.
CF-17-77, February 8, 1977.

Note. The words "beginning on October 1, 1989," have been deleted.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

Chapter 5. Deposit of Funds

Section

601. Deposit of Navajo Nation funds
602. Bank balances

§ 601. Deposit of Navajo Nation funds

A. Navajo Nation funds in custody of the Navajo Nation may be deposited in an approved depository.

B. The individual depositories shall be subject to the approval of the Budget and Finance Committee of the Navajo Nation Council the Navajo Nation Council and the General Superintendent.

History

CO-64-58, October 10, 1958.

Note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See 2 N.N.C. § 374(B)(1) for the fiscal management authority of the Budget and Finance Committee and the Navajo Nation Council.

Previously approved depositories. ACJY-194-70, July 14, 1970; ACN-77-53, November 17, 1953.

CS-35-54, September 7, 1954.

1922-1951 Res. p. 368, October 14, 1949.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

United States Code

Deposit of Indian monies, see 25 U.S.C. § 151 *et seq.*

§ 602. Bank balances

It shall be the policy of the Navajo Nation to maintain bank balances sufficient to provide for the operating requirements of the Navajo Nation in accordance with sound business practices.

History

CO-64-58, October 10, 1958.

CS-35-54, September 7, 1954; CJ-60-53, July 31, 1953; 1922-1951 Res. p. 642, July 12,

1951; and ACN-77-53, November 17, 1953, limited amount of deposit in any one approved depository.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 7. Appropriations

Section

800. Purpose
810. Definitions
820. Overall budget policies
830. Budget planning and preparation

Section

- 840. Budget approval, adoption and certification
- 850. Budget implementation, monitoring and control
- 860. Capital improvement process
- 870. Local government improvement funds
- 880. Amendments

History

CMY-22-04, May 21, 2004.

CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

Note. Section 801 was deleted.

§ 800. Purpose

The Navajo Nation government has a fiduciary responsibility to account for public funds, to manage finances wisely, and to plan for the adequate funding of services desired by the Navajo People, including the provision and maintenance of public facilities. This Act is designed to establish the policies and procedures for the preparation, adoption and implementation of the annual Navajo Nation Comprehensive Budget. In order to achieve this purpose, this Act has the following objectives for the Comprehensive Budget’s performance:

- A. To fully protect the Navajo Nation government’s policy making ability by ensuring that important policy decisions are made in a manner consistent with rational planning.
- B. To provide sound principles to guide the important fiscal decisions of the Navajo Nation, including the adoption of Generally Accepted Accounting Principles.
- C. To set forth principles to efficiently fund the cost of government within available resources, to the extent consistent with services desired by the public or mandated by Navajo law, and which minimize financial risk.
- D. To employ policies which distribute the costs of government services between the branches, divisions, departments, and programs and which provide available funds to operate desired programs.
- E. To provide for essential public facilities and provide for the maintenance of the Navajo Nation’s existing public facilities.

History

CN-97-98, November 24, 1998.

CO-89-98, October 20, 1998.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 810. Definitions

For the purposes of this Act and sections of this Act, the following definitions shall apply:

- A. “Appropriation” means the legislative act of designating funds, excluding externally restricted funds, for a specific purpose in accordance with the

applicable budgeting principles, policies and procedures contained in this Chapter.

B. “Branch Chief” means the President, Speaker, and Chief Justice of the Navajo Nation.

C. “Budget Impact Analysis” means an assessment by the Office of Management and Budget of the fiscal consequences of funding or failing to fund a particular branch, division, department, program, office, entity or activity.

D. “Budget Reallocation” means the redesignation of appropriated or budgeted funds from one account to another account or to a newly-created account for a different use or purpose.

E. “Capital Budget” means the amounts appropriated for the current year of the Capital Improvement Plan.

F. “Capital Improvement” means a major project undertaken by the Navajo Nation that is generally not recurring on an annual basis and which fits within one or more of the following categories:

1. All projects requiring debt obligation or borrowing;
2. Any acquisition or lease of land;
3. Purchase of major equipment or vehicles, with a life expectancy of five (5) years or more, valued in excess of an amount to be established by the Controller;
4. Major building improvements that are not routine maintenance expenses and that substantially enhance the value or extend the useful life of a structure;
5. Construction of new buildings or facilities including engineering, design, and other pre-construction costs with an estimated cost in excess of an amount to be determined by the Controller; and/or
6. Major equipment or furnishings required to furnish new buildings or other projects, the cost of which is above a certain amount to be established by the Controller.

G. “Capital Improvement Plan” means a recurring multi-year plan for capital improvements identifying each capital improvement project, the expected beginning and ending date for each project, the amount to be expended in each year, and the method of financing those expenditures.

H. “Comprehensive Budget” means a budget which includes a Capital and an Operating Budget covering all governmental proprietary and fiduciary funds for each annual fiscal year.

I. “Condition of Appropriation or Expenditure” means a specific contingency placed on an appropriation by the Navajo Nation Council at the time the appropriation is made creating legal conditions precedent to the expenditure of funds. Appropriated funds or any other funds received by the Navajo Nation on which a condition of appropriation or expenditure is placed may not be lawfully expended until the condition of appropriation or expenditure is met. It is the responsibility of the Controller to ensure that funds are expended in accordance with the conditions placed on the appropriation or expenditure.

J. “Financing” means the act of identifying and acquiring the funds necessary to accomplish the Capital Improvement Plan. It shall include, among other things, lease/purchase arrangements, multi-year purchase contracts, bond issuance and grants.

K. “Fiscal Year” means the fiscal year of the Navajo Nation as established by the Navajo Nation Council.

L. “Governmental Unit” means any subdivision of the Navajo Nation government, including chapters or other local units of government.

M. “Legislative Concern” means a comment, directive or recommendation made by the Navajo Nation Council, by virtue of its legislative oversight authority and pursuant to its authority as the governing body of the Navajo Nation, raising an issue of concern with respect to the internal functioning of the three Branches. Such concerns are advisory in nature, but do not create legal conditions precedent to the expenditure of appropriated funds. In order for a particular legislative concern to be appended to a budget resolution, it must be voted upon and adopted by a majority of the Navajo Nation Council. Legislative concerns which are not voted upon, will not be appended to the budget resolution, but will be referred to the appropriate Branch Chief in memorandum form by the Speaker of the Navajo Nation Council.

N. “Local Government Projects” means government improvement projects that include, but are not limited to, house wiring, bathroom additions and projects that address individual or community needs but which may not meet the requirements for, or definition of, capital improvement projects.

O. “Object Code Transfer” means the transfer of appropriated funds from one object code to another object code within the same account while still maintaining the original intent of the appropriation account.

P. “Operating Budget” means a plan of financial operation embodying an estimate of proposed expenditures for a fiscal year and the proposed means of financing them (i.e., revenue estimates).

Q. “Program Budget” means an account, designated by the Office of Management and Budget, or series of accounts, related to a specific function, objective, or purpose.

R. “Spending Authority” means the legislative act by the Navajo Nation Council of authorizing the expenditure of appropriated funds which have been accepted by the Navajo Nation through the appropriate approval process.

S. All funds of the Navajo Nation government shall be classified and defined as follows:

1. “Government Fund Types.” Governmental funds are those groups of accounts which account for most governmental functions of the Navajo Nation. The acquisition, use and balances of the Navajo Nation’s expendable financial resources and the related liabilities (except those accounted for in proprietary funds and the long-term obligations account group) are accounted for through governmental funds. The measurement focus is based upon determination of changes in financial position, rather than upon net income

determination. The following are the Navajo Nation's governmental fund types:

- a. "General Fund." This Fund is the general operating fund of the Navajo Nation. It is used to account for all financial resources except those required to be accounted for in another fund.
 - b. "Special Revenue Fund." This Fund is used to account for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditures for specified purposes. This Fund includes externally restricted funds which is defined as funds received by the Navajo Nation from sources other than the Navajo Nation for a specific purpose.
 - c. "Capital Projects Fund." This Fund is used to account for the financial resources and expenditure for the acquisition or construction of those capital improvements defined in Subsection (F) above (other than those financed by proprietary funds and fiduciary funds).
2. "Proprietary Fund Types." Proprietary funds are used to account for the Navajo Nation's ongoing organizations and activities which are similar to business operations in the private sector. The measurement focus is upon determination of net income and capital maintenance. The following are the Navajo Nation's proprietary fund types:
- a. "Enterprise Fund." This Fund is used to account for Navajo Nation operations that are financed and operated in a manner similar to private business enterprises—where the intent is that the costs of providing goods or services to the public be financed or recovered primarily through user charges: or where a periodic determination of revenues earned, expenses incurred, and/or net income is appropriate for accountability purposes.
 - b. "Internal Service Fund." This Fund is used to account for the financing of goods or services provided (inter and intergovernmental) on a cost-reimbursement basis.
3. "Fiduciary Fund Types." Fiduciary funds are used to account for assets held by the Navajo Nation in a trustee capacity or as an agent for individuals, private organizations, other governmental units, and/or other funds. These funds include but are not limited to expendable and nonexpendable trust funds, and pension trust funds, etc. Expendable trust funds are accounted for in a manner similar to governmental funds. Nonexpendable trust funds and pension trust funds are accounted for in a manner similar to proprietary funds.
4. The foregoing definitions concerning fund types shall not be deemed to create any exceptions to the Navajo Nation Sovereign Immunity Act.

History

CMY-22-04, May 21, 2004.
CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.
CO-89-98, October 20, 1998.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 820. Overall budget policies

A. Comprehensive Budget. The Navajo Nation government shall operate pursuant to a Comprehensive Budget.

B. Budget Impact Analysis. All requests for appropriation of Navajo Nation funds shall be subject to budget impact analysis, which shall include, but not be limited to, needs and costs evaluations, based on objective criteria.

C. Long Term Fiscal Viability. The Navajo Nation shall prepare each annual budget to ensure the long-term ability to provide services at levels set by the Navajo Nation government.

D. Balanced Budget. The Navajo Nation budget shall balance revenues and expenditures. Appropriations may not exceed available revenues.

E. Recurring Operating Costs Paid From Recurring Revenues. The Nation shall budget all recurring operating expenses, including maintenance of capital facilities, from recurring revenues. Long-term debt shall not be used to finance recurring operating expenses.

F. Non-Recurring Revenues. The Nation shall restrict non-recurring revenues to budget non-recurring expenditures. In addition, non-recurring revenues will be budgeted only after an examination by the Controller to determine whether or not the revenues are subsidizing an imbalance between recurring revenues and expenditures, and expenditures may be authorized only if a long-term (three-to-five year) forecast shows that the operating deficit will not continue. Otherwise, non-recurring revenues will be added to the Unreserved, Undesignated Fund balance. This provision may be amended or waived only by a two-thirds vote of the full Council.

G. Matching Requirements. Funds appropriated to match funds from external sources shall be maintained in separate accounts administered by the Controller. If matching funds are not obtained from the external sources, the appropriated funds shall revert to the Unreserved, Undesignated Fund balance.

H. Long-Term Debt. Annual debt service for long-term debt shall not exceed eight percent (8%) of annual recurring revenue and long-term debt shall not be authorized until the impact of annual debt service on the annual operating budget, including sinking fund contributions, has been analyzed and a determination has been made that debt service payments are in compliance with this Section.

I. Capital Budget. Development of the Capital Budget shall be coordinated with development of the Operating Budget. All budget requests for capital improvements shall be in compliance with an adopted Capital Improvement Plan and shall not be approved unless in compliance with the Plan.

J. Establishment of Reserves. For the General Fund, the Minimum Fund balance for Unreserved, Undesignated Fund balance shall be maintained at a

level equal to the amount required to operate the Navajo Nation government for six (6) months based upon the Operating Budget for the prior fiscal year, excluding expenditures for Capital Improvement projects as determined by the Controller. The Minimum Fund balance may be amended only by 2/3 vote of the full membership of the Navajo Nation Council. The Controller shall keep the Office of the President, the Office of the Speaker and the Budget and Finance Committee of the Navajo Nation Council advised at least quarterly as to the status of the Minimum Fund balance for Unreserved, Undesignated Fund balance. Further, Unreserved, Undesignated Fund balance shall not be utilized for funding recurring expenditures or operations of the Navajo Nation government.

K. Receipt of Additional Revenues. Funds received in excess of the initial or current revenue projection shall be deposited into the General Fund Unreserved, Undesignated Fund balance unless otherwise designated by the Navajo Nation Council.

L. Supplemental Appropriations. The Navajo Nation Council may adopt and approve supplemental appropriations to the Annual Comprehensive Budget during the fiscal year. Supplemental appropriations of General Funds within the current fiscal year are permitted, if and when additional sources of revenues above and beyond the initial or current revenue projections are projected and which are also in excess of the reserve amount set forth at § 820(J). Upon notification from the Controller of additional projected funds, the Budget and Finance Committee may convene budget hearings for the purpose of hearing and considering requests for supplemental appropriations. Supplemental appropriations to programs or activities with approved fiscal year operating budgets must be supported by additional recurring revenues for the same fiscal year. The Budget and Finance Committee, at the recommendation of the respective oversight standing committee(s), may recommend supplemental appropriations to the Navajo Nation Council. Supplemental appropriations made from non-recurring revenues shall only be made for non-recurring operations or purposes, as set forth at § 820(F). The Controller of the Navajo Nation shall be responsible for designating recurring and non-recurring revenues and purposes.

M. Office of Management and Budget. The Office of Management and Budget, as authorized by its Plan of Operation as amended, shall be responsible for consolidation and preparation of all phases of the Navajo Nation budget. The Office shall coordinate the overall preparation, adoption and implementation of both the annual operating and capital budgets of the Navajo Nation. All requests for annual operating funds and supplemental funds shall be submitted to the Office of Management and Budget for budget impact analysis and other appropriate action.

N. Appropriations Lapse. Appropriations approved by the Navajo Nation Council will lapse at the end of the fiscal year unless otherwise designated by the Navajo Nation Council. Appropriations to the chapters of the Navajo Nation shall not lapse at the end of the fiscal year provided that the chapters shall budget those funds in the subsequent fiscal year in accordance with the

purposes and conditions originally set forth by the Navajo Nation Council in its appropriations.

O. Distributions to Chapter. Where not otherwise prohibited by existing law, any appropriation intended for distribution to all chapters of the Navajo Nation shall be allocated as follows: fifty percent (50%) of the appropriation shall be divided equally among all chapters and the remaining fifty percent (50%) shall be divided proportionately among the chapters using a percentage equal to that figure which the number of registered voters in each chapter bears to the whole of registered Navajo Nation voters as determined by the most current voter registration figures available as of the date of the appropriation.

P. Navajo Nation Grants. Any entity of the Navajo Nation requesting a grant from the Navajo Nation through the submission of a budget request shall first meet the following requirements:

1. The program receiving the grant shall have an approved plan of operation;
2. The budget request shall be a part of a recommended division or branch budget;
3. The respective oversight committee for the division or branch shall have made an affirmative recommendation on the request.

Q. Local Government Funds are used to address the improvement needs of the local governments that may consist of, but are not limited to, house wiring and bathroom additions. An amount equal to the actual cost of proposed projects but not to exceed twenty-five percent (25%) of that year's capital improvement appropriation will be appropriated into the Local Government Improvement Funds for these projects. Additional amounts may be appropriated from time-to-time or may be obtained from other sources.

History

CJY-42-04, July 23, 2004.
 CMY-22-04, May 21, 2004.
 CAP-18-04, April 23, 2004.

CN-97-98, November 24, 1998.
 CO-89-98, October 20, 1998.

Library References

Indians ↻32(4.1).
 Westlaw Topic No. 209.

§ 830. Budget planning and preparation

A. Budget Format. Prior to initiation of the annual budget process, the Office of Management and Budget shall identify a budget format (i.e., Line-item, Performance, Program, Zero-base, etc.) that will assist the Navajo Nation in correlating budget costs to alternative services levels and alternative policies that will affect those service levels. The budget format identified shall also include quantitative performance measures (i.e., demand, workload, efficiency and effectiveness).

B. Long Term Revenue Projections. The Controller shall prepare an annual long term revenue projection for use by the Navajo Nation government. This

long term revenue projection shall include all sources of funds and revenues available for use by the Navajo Nation government within at least the next three (3) fiscal years. The annual long term revenue projection shall be submitted by the Controller to and be reviewed by the Budget and Finance Committee. The Budget and Finance Committee will present the same to the Branch Chiefs by the end of the second quarter of each fiscal year. A written narrative describing the methodology utilized to estimate revenues and a discussion of key variables affecting the actual revenue, including assumptions made, shall be included in the report. If deemed necessary by the Controller, the long-term revenue projection may be changed as economic circumstances require. Changes to the long-term revenue projection shall be reported in the manner set forth in this paragraph.

C. Annual Revenue Projection. The Controller shall review and recommend an annual fiscal year revenue projection for all revenue generating sources for all governmental, proprietary and fiduciary funds of the Navajo Nation. The annual fiscal year revenue projection shall be submitted for review by the Budget and Finance Committee of the Navajo Nation Council, and will serve as the official revenue estimate at the beginning of the annual budget process for the next fiscal year. The Budget and Finance Committee will present the annual fiscal year revenue projection to the Branch Chiefs by the end of the second quarter of each fiscal year. A written narrative describing the methodology utilized to estimate revenues and discussion of key variables affecting the actual revenue, including assumptions made, shall be included in the report.

D. External Funding Projection. The Office of Management and Budget shall prepare an estimate of all external funding to be received by the Navajo Nation in the upcoming fiscal year and shall present this information to the Budget and Finance Committee and the Controller by the end of the second quarter of each fiscal year.

E. Long Term Expense Projection. The Office of Management and Budget shall prepare an annual long term expense projection which includes all projected expenditures for at least the next three (3) fiscal years for operations, programs, projects and transfer payment to the Navajo people or to outside non-Navajo Nation government entities. Such report shall be presented to the Branch Chiefs and the Budget and Finance Committee by the end of the second quarter of each fiscal year. This report, along with the long term revenue projection and the annual General Fund revenue projections and the external funding projection is intended to provide guidance to the Branches of the Navajo Nation government in preparation and adoption of the Navajo Nation budget for the next fiscal year.

F. Approval of Revenue Projections. The Budget and Finance Committee shall review the long-term and the fiscal year revenue projections and may approve them by resolution.

G. President's Budget Preparation Message. The President may prepare an annual budget preparation message. This budget preparation message may

include the President's vision of expected goals and objectives and broad priorities for the fiscal year Navajo Nation Comprehensive Budget. This Section does not amend, nor is it in addition to, any powers granted to the President pursuant to 2 N.N.C. § 1005.

H. Budget Instructions and Planning Base Amounts. The Office of Management and Budget shall prepare budget instructions for each fiscal year which shall be approved by the Budget and Finance Committee no later than thirty (30) days after the Controller releases the annual revenue projection as delineated at § 830(C). The budget instructions shall include fiscal, operational, policy guidelines, budget development timelines and planning base amounts for each fiscal year for the Executive Branch, the Judicial Branch and the Legislative Branch.

I. Preparation of the Budget. Based upon the priorities and budget ceilings established by the method described in Subsection (H), each branch, division, department, and program of the Navajo Nation government shall prepare a budget request, which shall be submitted to the Office of Management and Budget pursuant to the time lines established in the annual Budget Instructions Manual. Each division, department and program director shall provide training on the budget process for their program field staff and involve said staff in the development of the budget request upon actual needs and identification of unmet needs. This proposed budget shall state the overall goals and objectives and broad priorities for the entire Navajo Nation budget.

History

CJA-10-00, January 28, 2000.
 CN-97-98, November 24, 1998.
 CO-89-98, October 20, 1998.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 840. Budget approval, adoption and certification

A. Oversight Committee and Budget and Finance Committee Review and Approval. Each oversight committee shall review and make recommendations to the Budget and Finance Committee concerning the budget in accordance with the annual budget instructions. The oversight committees may hold public hearings at each agency with programs under their oversight and take testimony on the budget. The oversight committees shall make recommendations concerning the budget and pass resolutions recommending appropriations and conditions of appropriations for activities within their respective areas of oversight to the Budget and Finance Committee pursuant to the time-lines established in the Budget Instructions Manual. Oversight committee recommendations shall not exceed the planning base amounts set pursuant to § 830(H). The Budget and Finance Committee shall consult and negotiate with the respective oversight committees if any changes are to be made before making final recommendations to the Navajo Nation Council. Changes made

pursuant to this consultation and negotiation process shall neither increase nor decrease the planning base amount set for the Executive Branch divisions, the Judicial Branch and Legislative Branch, but shall be limited to internal reallocations of the planning base amounts for the entities. The Budget and Finance Committee shall review and make recommendations concerning the budget according to the annual budget instructions. The Budget and Finance Committee shall make recommendations concerning the budget and submit it to the Navajo Nation Council pursuant to the time lines established in the Budget Instructions Manual.

B. Navajo Nation Council Budget Deliberations and Adoption. The Speaker of the Navajo Nation Council shall convene a special budget session each year for the purpose of adopting a comprehensive budget for the next fiscal year and approving the Capital Improvement Plan. The Speaker of the Navajo Nation Council, on behalf of the Navajo Nation Council, is authorized to request the attendance of Navajo Nation government officials to provide information to assist the Navajo Nation Council in its deliberations and may exercise subpoena power in the manner prescribed in 2 N.N.C. § 185. Prior to Navajo Nation Council deliberation of the proposed comprehensive budget, the latest external audit of the combined financial statements of the Navajo Nation will be presented to the Navajo Nation Council by the external auditors. The adoption of the annual Navajo Nation comprehensive budget and any other findings, recommendations, mandates, policies and procedures of the Navajo Nation Council shall be enacted by a formal resolution of the Navajo Nation Council. The Navajo Nation Council shall adopt the comprehensive budget no less than twenty (20) days prior to the expiration of each fiscal year.

C. Budget Certification. The Speaker of the Navajo Nation Council shall certify the resolution of the Navajo Nation Council adopting and approving the annual Navajo Nation comprehensive budget, and shall forward the certified resolution and exhibits to the Navajo Nation President for consideration, pursuant to 2 N.N.C. § 1005(C)(10).

History

CJA-10-00, January 28, 2000.
CN-97-98, November 24, 1998.
CO-89-98, October 20, 1998.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 850. Budget implementation, monitoring and control

A. Budgetary Monitoring and Expenditure Controls. The Controller and Office of Management and Budget shall monitor actual expenditures versus budgeted expenditures and report to the Budget and Finance Committee with respect to the overall budget status of the Navajo Nation; and to the Branch Chiefs with regard to their respective branches. Such reports shall be made on a quarterly basis. The Controller, with the approval of the Navajo Nation

Council, may restrict expenditures by selected expense codes or line items in the event that actual revenues fall significantly behind the projected revenues.

B. Budget Performance Measures. The Office of Management and Budget shall be responsible for developing a system for evaluating whether requirements have been met for all of Navajo Nation branches, divisions, departments, and programs. Evaluation standards will be developed in consultation with the relevant branch, division, department, and program. The Office of Management and Budget shall include the projected performance measures for each branch, division, department and program in the compilation of the annual budget for submission to the Budget and Finance Committee and the Navajo Nation Council.

C. Program Evaluation. The purpose of a program evaluation is to determine and recommend to the appropriate Branch Chief the recommendations for positive program improvement and whether a program warrants continuation at its current level of activity or modified to a new level or should be discontinued. All Navajo Nation branches, divisions, departments, and programs shall be required to develop a detailed annual plan with performance indicators for each ensuing fiscal year.

D. The Branch Chiefs shall establish a system for periodic policy review and evaluation of program performance within their respective branches.

E. All recipients of Navajo Nation funds shall provide, upon request, any information or data necessary to conduct program performance review and evaluation.

History

CN-97-98, November 24, 1998.
CO-89-98, October 20, 1998.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 860. Capital improvement process

A. Administrative Framework

1. The Capital Improvement Office within the Division of Community Development under the Executive Branch shall be responsible for the administration, coordination and development of the Capital Improvement Plan as defined herein. The Controller and the Office of Management and Budget shall assist the Capital Improvement Office with methods of financing the Capital Improvement Plan.

2. All Capital Improvement funding requests shall be submitted to the Capital Improvement Office, which shall evaluate all requests in accordance with objective criteria approved by the Transportation and Community Development Committee of the Navajo Nation Council.

B. Development of Capital Improvement Plan

1. The proposed Capital Improvement Plan shall consist of a multi-year plan for capital expenditures, including a detailed one-year capital improvement budget. The proposed Capital Improvement Plan shall include a listing of projects in order of priority and proposed year of construction or acquisition. Data on each project shall include:

- a. The anticipated capital cost of each project;
- b. The anticipated source of capital funds for each project;
- c. The estimated annual operating cost or savings for each project;
- d. The estimated completion data of each project;
- e. The adopted plan or policy, if any, which each project would help to implement;
- f. The viable alternatives that were considered for each project with the reasons the proposed project is the most cost-effective and practical alternative for meeting the stated objective; and
- g. The project's ranking in whatever sequencing/priority setting system is used as a basis for evaluation of capital improvement project proposals.

2. The Capital Improvement Office shall be responsible for the development of a priority ranking system which takes into consideration factors such as project cost, feasibility, project value and benefit to the community as a whole, which shall be presented to the Transportation and Community Development Committee for approval.

C. Approval of the Capital Improvement Plan

1. The Capital Improvement Plan, as developed by the Capital Improvement Office, is subject to the approval of the Navajo Nation Council upon recommendation of the Transportation and Community Development Committee.

2. The appropriation portion of the Capital Improvement Plan is subject to approval of the Navajo Nation Council upon recommendation of the Budget and Finance Committee. Any modification or amendment affecting the approved Capital Improvement Plan is subject to review and concurrence by the Transportation and Community Development Committee prior to consideration by the Navajo Nation Council.

3. The Transportation and Community Development Committee is authorized to and may convene public hearings for the purpose of obtaining public input with respect to the proposed Capital Improvement Plan. A formal report containing all public comments shall be compiled by the appropriate legislative advisors and made available to the Budget and Finance Committee of the Navajo Nation Council during its deliberations concerning the Capital Improvement Plan.

D. Capital Budget Preparation Calendar

The Capital Improvement Plan and Capital Budget will be developed in accordance with the following chronological sequence of activities:

1. Establish a process for gathering chapter needs to produce a needs base budget that truly reflects the chapter needs.

2. By ten (10) months prior to the beginning of the fiscal year, the Capital Improvement Office shall prepare an inventory list of existing tribally owned facilities for the purpose of determining need for renewal, replacement, expansion, or retirement of the same facilities.

3. By nine (9) months prior to the beginning of the fiscal year, the Capital Improvement Office shall prepare a report for all affected officials on the current status of previously approved capital improvement projects. The report shall contain information on which projects are to be continued, the amount of funds required to continue or complete affected projects, determining the amount of remaining funds from projects completed or discontinued, and summaries as to the progress of previously approved capital improvement projects.

4. By eight (8) months prior to the beginning of the fiscal year, the Capital Improvement Office, Office of Management and Budget, and the Controller shall perform financial analysis and financial programming for the purpose of determining the level of capital expenditures the Navajo Nation can safely afford over the term of the Capital Improvement Plan and to determine the selection and scheduling of funding sources to be designated for the Capital Improvement Plan.

5. By seven (7) months prior to the beginning of the fiscal year, the Capital Improvement Office shall compile and objectively evaluate all capital improvement funding requests. In addition to other eligibility requirements provided in the objective criteria, all requests for capital improvement shall include a statement of need and justification for the project, net effect on the Navajo Nation's operating budget, and its proposed scheduling during the term of the Capital Improvement Plan. The Capital Improvement Office shall place emphasis on relative need and cost in evaluating each capital improvement funding request in conjunction with the priority rating system approved by the Transportation and Community Development Committee.

6. By six (6) months prior to the beginning of the fiscal year, the Capital Improvement Office shall have finalized a six (6) year Capital Improvement Plan for consideration and approval by the Transportation and Community Development Committee. Upon review and approval by the Transportation and Community Development Committee, the Capital Improvement Plan will be submitted to the Office of Management and Budget to be incorporated in the recommended capital budget which shall be made a part of the comprehensive budget for purposes of recommending the Capital Improvement Plan to the Navajo Nation Council.

7. By five (5) months prior to the beginning of the fiscal year, the Office of Management and Budget shall submit the appropriation portion of the capital budget to the Budget and Finance Committee for recommendation to the Navajo Nation Council within the recommended comprehensive budget. Any recommended amendments affecting the Capital Improvement Plan shall be reviewed and concurred by the Transportation and Community Development Committee.

E. Capital Budget Monitoring

1. The Capital Improvement Office shall maintain a current record on all projects within the recommended Capital Improvement Plan for information purposes.

2. The Office shall submit quarterly progress reports on the capital budget to the Transportation and Community Development Committee and the Budget and Finance Committee.

History

CN-97-98, November 24, 1998.
CO-89-98, October 20, 1998.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 870. Local government improvement funds

(Add text from resolution)

History

CMY-22-04, May 21, 2004.
CAP-18-04, April 23, 2004.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 880. Amendments

This Appropriations Act may be amended from time to time by the Navajo Nation Council upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council; provided that amendments to these sections of this Act related to either Capital Improvement Process or the Local Government Improvement Fund shall be upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CMY-22-04, May 21, 2004. CN-97-98, November 24, 1998.
CAP-18-04, April 23, 2004. CO-89-98, October 20, 1998.

Chapter 8. Navajo Nation Permanent Fund

Section

- 901. Establishment
- 902. Investment of the Fund
- 903. Definition of principal and income
- 904. Expenditure of Fund principal
- 905. Expenditure of Fund income
- 906. Annual audited report
- 907. Amendments

Section

908. Expenses

909. Payment of bond obligation

§ 901. Establishment

There is established the “Navajo Nation Permanent Fund” (hereinafter the “Fund”). Each year the Navajo Nation Council shall budget a sum equal to at least twelve percent (12%) of any and all projected revenue of the Navajo Nation including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall thereafter be used only as provided in this Chapter. In the event actual revenue fails to meet projected revenue, or excess projected revenue, the amount appropriated and transferred shall be adjusted to equal twelve percent (12%) of actual revenue. Transfers may be made in one or more installments.

History

CJY-53-85, July 25, 1985.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 902. Investment of the Fund

All amounts deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following limitations:

A. The funds shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments intended to produce maximum growth of the investments with a high degree of safety. In addition, the Fund may be invested in any other investments approved by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Management of the investments may be delegated to third parties by written contract recommended by the Navajo Bond Financing and Investment Committee and approved by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-53-85, July 25, 1985.

Note. The Budget and Finance Committee is authorized to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment, and management of all funds. See 2 N.N.C. § 374(B)(1).

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 903. Definition of principal and income

A. “Fund principal” shall consist of all Navajo Nation Council contributions made pursuant to the twelve percent (12%) yearly commitment of all revenues of the Navajo Nation, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities, plus any additional contributions from any source.

B. “Fund income” shall consist of all earnings generated by the principal of the Fund.

History

CJY-53-85, July 25, 1985.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 904. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds majority of those voting in an election open to all registered Navajo voters or as set forth in § 909 of this Chapter. The Navajo Nation Council may place such a referendum on the ballot of any general or special election by a two-thirds vote of the Council.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 905. Expenditure of Fund income

No Fund income shall be expended, except as set forth in §§ 908 and 909 of this Chapter, for a period of twenty (20) years from date of the first Navajo Nation contribution to the Fund. Thereafter, ninety-five percent (95%) of the Fund income maybe expended in accordance with a plan for its use covering at least a five-year period adopted by resolution of the Navajo Nation Council provided that the expenditure of income in any fiscal year shall not exceed the income earned during that year. The remaining five percent (5%) of the Fund income shall be reinvested in the Permanent Fund.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 906. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within ninety (90) days of the end of each fiscal year, a report shall be distributed to the Navajo Nation Council and the President of the Navajo Nation. The report shall be written in easily understandable language. The report must include financial statements audited by independent outside auditors, a statement of the amount of money received by the Navajo Nation Permanent Fund from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 907. Amendments

This Chapter may be amended by a majority vote of the Navajo Nation Council except as follows:

A. Sections 903 and 904 may only be amended by referendum adopted in the manner prescribed for the expenditure of Fund principal in § 904.

B. Section 905 may be amended only by ninety percent (90%) vote of all of the members of the Navajo Nation Council.

C. Section 907 may not be amended or repealed until after forty (40) years from the date of enactment of this Chapter.

History

CJY-53-85, July 25, 1985.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 908. Expenses

All expenses directly associated with the administration and management of the Navajo Nation Permanent Fund shall be paid from the Fund income as

approved by the Budget and Finance Committee of the Navajo Nation Council and the Navajo Nation Council. Such expenses shall include an investment advisor and management fees, pursuant to a duly approved contract, audit costs, and other related expenses.

History

CJY-53-85, July 25, 1985.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 909. Payment of bond obligation

In the event of an imminent default of any Navajo Nation bond obligation, the Navajo Nation Permanent Fund income and principal in that order may be used as a source of payment by two-thirds vote of the Navajo Nation Council.

History

CJY-53-85, July 25, 1985.

Chapter 9. Navajo Nation Road Fund Management Plan

Section

- 1001. Establishment
- 1002. Purpose
- 1003. Administration
- 1004. Fund management
- 1005. Rules and regulations
- 1006. Reserved
- 1007. Reserved
- 1008. Effective date
- 1009. Audit requirement
- 1010. Amendments

History

Previously Reserved.	was enacted by CF-6-62, February 16, 1962.
Previous Chapter 9, "Banking Services" (§ 1001) has been deleted. The deleted section	See also CAP-29-65, April 8, 1965, CAP-33-65, April 13, 1965.

§ 1001. Establishment

There is hereby established the Navajo Nation Road Fund Management Plan (hereinafter "Fund") for use by the Department of Transportation within the Division of Community Development, and the Transportation and Community Development Committee of the Navajo Nation Council shall provide legislative oversight.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1002. Purpose

The purpose of this Fund is to establish a special fund account, and its necessary sub-accounts, to defray the cost of government services for the development, construction and maintenance of transportation projects that have not been included in the current short-term construction plans by federal government agencies and programs, state, or county highway maintenance programs.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1003. Administration

A. Funding source. The funding source of this Fund shall be funds generated from the Navajo Nation Fuel Excise Tax, and other funds appropriated or allocated by the Navajo Nation Council.

B. Legislative oversight. The Transportation and Community Development Committee of the Navajo Nation Council shall be the legislative oversight for funds appropriated under this Fund.

C. Program management. The Navajo Nation Department of Transportation shall have the authority and responsibility to use the funds for eligible road projects and as matching funds in conformance with § 1004 and with concurrence by the Transportation and Community Development Committee of the Navajo Nation Council.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1004. Fund management

A. Fund accounting

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and

revenue and expenditure statement. The day-to-day Fund accounting shall be performed by the Navajo Nation Division of Finance, in accordance with generally accepted accounting principles.

2. The Navajo Department of Transportation, or any other designated program, shall account for the money spent out of the Fund. Such accounting shall be included as part of the quarterly program reports submitted to the Transportation and Community Development Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Funding eligible projects. The funds shall be used for roads within the Navajo Nation that cannot be addressed by the federal government agencies, Indian Reservation Roads, state, or county highway or road maintenance programs; and shall be used for eligible matching funds projects.

1. Eligible road maintenance projects:
 - a. Pothole repairs;
 - b. Blading & graveling of all dirt roads;
 - c. Culvert replacement;
 - d. Drainage channel maintenance;
 - e. Traffic signal & street light maintenance and operation;
 - f. Chip sealing; or
 - g. Other maintenance required under an interagency agreement.
2. Eligible project development/planning projects:
 - a. Feasibility studies including centerline identification;
 - b. Survey;
 - c. Environmental assessments;
 - d. Archaeological assessments; or
 - e. Planning, engineering & design.
3. Eligible community/economic development access projects:
 - a. Access roads;
 - b. Parking lots; or
 - c. School bus route improvement, school bus stops/shelters.

4. Eligible matching funds projects. The Fund shall be used to meet required matching funds for transportation projects funded by federal, state, or county transportation programs or other public entities, that have not been addressed by the Navajo Nation Capital Improvement Program or other tribal budget programming.

C. Funding allocation process.

1. The Navajo Nation Department of Transportation may use the recommendations from any entity in formulating the annual Navajo Nation Road Funding Plan. The Navajo Nation Road Funding Plan shall specify the eligible projects and eligible matching funds projects to be funded.

2. The Navajo Nation Department of Transportation shall submit the Navajo Nation Road Funding Plan to the Transportation and Community Development Committee for annual approval.

FISCAL MATTERS

12 N.N.C. § 1008

3. Expenditures from this Fund shall be made in accordance with established Navajo Nation budget policies and procedures and shall be budgeted each fiscal year through the Navajo Nation annual budgeting process.

4. Expenditures from this Fund shall not be used for the following Navajo Nation account line items:

Personnel, Wages, Taxes and Benefits	#1000 through 1300
Travel Expenses	#2000 through 2950
Meetings	#6400 through 6450

5. The Navajo Nation Road Fund Management Plan shall not be deemed to waive or amend any requirements of law concerning the recovery of indirect costs, including 2 N.N.C. § 824(B)(9).

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1005. Rules and regulations

The Navajo Nation Department of Transportation, upon approval by the Transportation and Community Development Committee, is authorized to promulgate rules and regulations from time to time as may be necessary to carry out the provisions and policies of this Fund. The effectiveness and enforceability of the provisions of the Act shall not be dependent upon the adoption of regulations pursuant to this section.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1006. [Reserved]

§ 1007. [Reserved]

§ 1008. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2003 and shall remain in effect until the Navajo Nation Council terminates this Fund by resolution.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

§ 1009. Audit requirements

Independent auditors shall annually audit the Fund as part of the overall audit of the Navajo Nation government.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1010. Amendments

The Navajo Nation Fund Management Plan may be amended from time to time by the Budget and Finance Committee of the Navajo Nation Council upon recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CAU-71-01, August 24, 2001.
CJY-56-01, July 19, 2001.

Chapter 10. Navajo Nation Trust Funds

**Subchapter 1. Navajo Nation Trust
Fund for Handicapped Services**

Section

- 1101. Establishment
- 1102. Investment of the Fund
- 1103. Definition of principal and income
- 1104. Expenditure of Fund principal
- 1105. Expenditure of Fund income
- 1106. Annual audited report
- 1107. Amendments
- 1108. Expenses

**Subchapter 2. Navajo Nation Trust
Fund for Vocational Education**

- 1111. Establishment
- 1112. Investment of the Fund
- 1113. Definition of principal and income
- 1114. Expenditure of Fund principal

FISCAL MATTERS

12 N.N.C. § 1010

- 1115. Spending policy
- 1116. Annual audited report
- 1117. Amendments
- 1118. Expenses

**Subchapter 3. Navajo Nation Trust Fund
for Senior Citizens Services**

- 1121. Establishment
- 1122. Investment of the Fund
- 1123. Definition of principal and income
- 1124. Expenditure of Fund principal
- 1125. Expenditure of Fund income
- 1126. Annual audited report
- 1127. Amendments
- 1128. Expenses

**Subchapter 4. Navajo Nation Trust Fund
for Navajo Preparatory School, Inc.**

- 1131. Establishment
- 1132. Investment of the Fund
- 1133. Definition of principal and income
- 1134. Expenditure of Fund principal
- 1135. Expenditure of Fund income
- 1136. Annual audited report
- 1137. Amendments
- 1138. Expenses

Subchapter 5. 1982 Chapter Claims Fund

- 1141. Establishment
- 1142. Investment of the Fund principal/use of interest earnings
- 1143. Distribution of interest earnings
- 1144. Chapter use of Fund
- 1145. Reinvestment into the Fund

**Subchapter 6. Trust Fund for Chapter
Government Nation Building**

- 1151. Establishment
- 1152. Investment of the Fund
- 1153. Definition of principal and income
- 1154. Expenditure of Fund principal
- 1155. Expenditure of Fund income
- 1156. Annual audited report
- 1157. Amendments
- 1158. Expenses

Subchapter 7. Navajo Nation Local Governance Trust Fund

- 1159. Purpose
- 1160. Establishment
- 1161. Fund management
- 1162. Definition of principal and income
- 1163. Expenditure of Fund principal
- 1164. Expenditure of Fund income
- 1165. Annual audited report
- 1166. Amendments
- 1167. Expenses

Subchapter 8. Navajo Engineering and Construction Authority Trust Fund for Scholarships

- 1171. Establishment
- 1172. Investment of the Fund
- 1173. Definition of principal and income
- 1174. Expenditure of Fund principal
- 1175. Expenditure of Fund income
- 1176. Annual audited report
- 1177. Amendments
- 1178. Expenses

Subchapter 9. Navajo Nation Veterans Trust Fund

- 1181. Establishment
- 1182. Purpose
- 1183. Fund investment
- 1184. Expenditure of Fund principal
- 1185. Definition of principal and income
- 1186. Expenditure of trust Fund
- 1187. Expenses
- 1188. Amendments

Subchapter 10. Navajo Engineering and Construction Authority Trust Fund for Scholarships and Financial Assistance

- 1191. Establishment
- 1192. Investment of the Fund
- 1193. Definition of principal and income
- 1194. Expenditure of Fund principal
- 1195. Expenditure of Fund income
- 1196. Annual Audited Report
- 1197. Amendments
- 1198. Expenses

Subchapter 1. Navajo Nation Trust
Fund for Handicapped Services

§ 1101. Establishment

There is established, the “Navajo Nation Trust Fund for Handicapped Services” [hereinafter called the “Fund”], with an initial appropriation of seven million dollars (\$7,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 1102. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 1103. Definition of principal and income

A. “Fund principal” shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. “Fund income” shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇐32(4.1).
Westlaw Topic No. 209.

§ 1104. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1105. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income shall be used as Navajo Nation grants to supplement Navajo Nation government and non-Navajo Nation government programs and projects that provide services to Navajo handicapped citizens. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation.

B. Navajo Nation grants to Navajo Nation government and non-Navajo Nation government programs and projects shall be awarded in accordance with rules and regulations developed by the Office of the President and Vice-President in consultation with the Health and Social Services Committee and the Education Committee of the Navajo Nation Council and approved by the Government Services Committee of the Navajo Nation Council.

History

CMA-16-90, March 29, 1990.
CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1106. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Handicapped Services from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1107. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1104 may only be amended as provided for in § 1104.

History

CD-68-86, December 12, 1986.

§ 1108. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

**Subchapter 2. Navajo Nation Trust
Fund for Vocational Education**

§ 1111. Establishment

There is established, the “Navajo Nation Trust Fund for Vocational Education” [hereinafter called the “Fund”], with an initial appropriation of six million dollars (\$6,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1112. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1113. Definition of principal and income

A. “Fund principal” shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. “Fund income” shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1114. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1115. Spending policy

A. Four percent (4%) of the Fund (Market Value) shall be used as Vocational Education Scholarship Grants to Navajo students wishing to attend vocational education institutions and to apprentices and practitioners selected to participate in the Navajo Traditional Apprenticeship Project on an annual basis. The market value to be used in determining the budget amount will be the previous

fiscal year end market value of the Fund. The excess of Fund income over expenses shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Vocational Education Scholarship Grants to Navajo students wishing to attend vocational education institutions and to apprentices and practitioners wanting to participate in the Navajo Traditional Apprenticeship Project shall be awarded in accordance with rules and regulations developed by the Division of Dine Education approved by the Education Committee of the Navajo Nation Council.

History

CJY-58-98, July 22, 1998.
CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1116. Annual audited report

The Fund shall be audited annually by independent, outside auditors. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Vocational Education from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1117. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1114 may only be amended as provided for in § 1114.

History

CD-68-86, December 12, 1986.

§ 1118. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Subchapter 3. Navajo Nation Trust Fund
for Senior Citizens Services

§ 1121. Establishment

There is established, the “Navajo Nation Trust Fund for Senior Citizens Services” [hereinafter called the “Fund”], with an initial appropriation of seven million dollars (\$7,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1122. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1123. Definition of principal and income

A. “Fund principal” shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. “Fund income” shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1124. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1125. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income shall be used as Navajo Nation Grants to supplement Navajo Nation government and non-Navajo Nation government programs and projects that provide services to Navajo senior (elderly) citizens. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Navajo Nation Grants to non-Navajo Nation government programs and projects shall be awarded in accordance with rules and regulations developed by the Office of the President and Vice-President in consultation with the Health and Social Services Committee of the Navajo Nation Council and approved by the Government Services Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1126. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Senior Citizens Services from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-68-86, December 12, 1986.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1127. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1124 may only be amended as provided for in § 1124.

History

CD-68-86, December 12, 1986.

§ 1128. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

Subchapter 4. Navajo Nation Trust Fund
for Navajo Preparatory School, Inc.

§ 1131. Establishment

There is established and continued, the “Navajo Nation Trust Fund for Navajo Preparatory School, Inc.” [hereinafter called the “Fund”], in the amount of three hundred thirty-eight thousand eight hundred twenty-three dollars and ninety cents (\$338,823.90) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter.

History

CJY-77-99, July 22, 1999.
CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1132. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1133. Definition of principal and income

A. “Fund principal” shall consist of all Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation Processes and Procedures; and any contributions made by any parties or entities.

B. “Fund income” shall consist of all earnings (interest, dividends, etc.) generated by the principal of the Fund.

History

CD-68-86, December 12, 1986.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1134. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of Navajo Nation Council.

History

CD-68-86, December 12, 1986.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1135. Expenditure of Fund income

Six percent (6%) of the Fund Market Value shall be used as education scholarships for Navajo Preparatory School high school graduates wishing to pursue post-secondary education, provide opportunities for faculty/staff development and enrichment, and maintenance and development funds for the Navajo Preparatory School facilities located at 1220 West Apache, Farmington, New Mexico. The market value to be used in determining the budget amount will be the previous fiscal year end market value of the Fund. The excess of Fund income over expenses shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

History

CJY-77-99, July 22, 1999.
CD-68-86, December 12, 1986.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1136. Annual audited report

The Fund shall be audited annually by independent outside auditors. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Navajo Preparatory School, Inc. from each investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJY-77-99, July 22, 1999.
CD-68-86, December 12, 1986.

Library References

Indians ¶32(4.1).
Westlaw Topic No. 209.

§ 1137. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council except that § 1134 may only be amended as provided for in § 1134 upon the recommendation of the Education Committee of the Navajo Nation Council.

History

CJY-77-99, July 22, 1999.
CD-68-86, December 12, 1986.

§ 1138. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CD-68-86, December 12, 1986.

Library References

Indians ¶32(4.1).
Westlaw Topic No. 209.

Subchapter 5. 1982 Chapter Claims Fund

§ 1141. Establishment

There is established the 1982 Chapter Claims Fund with an initial contribution of twenty-two million two hundred thousand dollars (\$22,200,000) from the Navajo Nation's Claims Case Settlement, United States Court of Claims, Docket Number 353.

History

CD-33-83, December 13, 1983. of twenty-two million two hundred thousand dollars (\$22,200,000) received from the Navajo Tribe's Claims Case Settlement, Docket Number 353."
Note. Language derived from Navajo Nation Council resolution CD-33-83, December 13, 1983, "Approving Plan for Use and Distribution

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1142. Investment of the Fund principal/use of interest earnings

The Navajo Nation shall permanently invest the principal of the claims settlement monies and the chapters shall use interest earnings to finance local projects and programs including assistance to elderly and veterans.

History

CD-33-83, December 13, 1983.
Note. Heading added.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1143. Distribution of interest earnings

The interest accrued on the principal of the Fund shall be distributed annually to each chapter based on population count.

History

CD-33-83, December 13, 1983.
Note. Heading added.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1144. Chapter use of Fund

Each chapter shall determine the most appropriate use of all funds received, provided that all Fund uses must be for the common benefit of chapter members and for the general economic development of the local chapters.

History

CD-33-83, December 13, 1983.
Note. Heading added.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1145. Reinvestment into the Fund

Part of the interest earned shall be put back into the principal before distribution is made to the chapters.

History

CD-33-83, December 13, 1983.
Note. Heading added.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

**Subchapter 6. Trust Fund for Chapter
Government Nation Building****§ 1151. Establishment**

There is established, the “Navajo Nation Trust Fund for Chapter Government Nation Building” [hereinafter called the “Fund”], with an initial contribution of Claims Settlement Funds in the amount of thirty-two million five hundred thousand dollars (\$32,500,000) plus accrued interest, as approved and accepted by the Navajo Nation Council in Resolution CJN-29-86. Additional appropriations may be made from time to time by the Navajo Nation Council; provided, however, additional sources of revenue and/or funds are available for such appropriation. Any money deposited into the Fund, plus accrued interest, shall thereafter be used only as provided hereinafter.

History

CD-67-86, December 12, 1986.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1152. Investment of the Fund

All amounts of money deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following provisions:

A. The Fund shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments and invested to reproduce maximum growth with a reasonably high degree of safety.

B. The management of investments shall be vested with the Budget and Finance Committee of the Navajo Nation Council. The Navajo Bond Financing and Investment Committee shall serve as technical advisors to the Budget and Finance Committee of the Navajo Nation Council. All investment objectives shall be approved by the Budget and Finance Committee of the Navajo Nation Council and appropriate investment agreements or contracts executed accordingly.

History

CD-67-86, December 12, 1986.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1153. Definition of principal and income

A. “Fund principal” shall consist of the initial deposit of Claims Settlement Funds, any additional Navajo Nation Council appropriations made pursuant to the Navajo Nation Appropriation laws, and any contributions made by any other parties or entities.

B. “Fund income” shall consist of all earnings (interest, dividends, etc.), generated by the principal of the Fund.

History

CD-67-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1154. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of Navajo Nation Council.

History

CD-67-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1155. Expenditure of Fund income

A. Ninety-five percent (95%) of the Fund income may be distributed annually to each certified Navajo chapter based on registered voters. Each chapter shall determine the most appropriate use of all funds received; provided, that all Fund uses must be for the common benefit of chapter members and for the general, social and economic development of the local chapters, and chapter operating and maintenance expenses; and provided that expenditure is pursuant to an annual chapter budget approved by the voting members of the chapter.

B. Five percent (5%) of the Fund income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

C. The Navajo Revenue Sharing Program is hereby continued as a Navajo Nation program and shall henceforth be called the Chapter Government Nation Building Program and delegated administrative responsibility for distribution of the ninety-five percent (95%) share of Fund income to certified chapters.

D. Guidelines for utilization of funds distributed to the certified Navajo chapters will be developed and recommended for approval by the Budget and Finance Committee of the Navajo Nation Council.

History

CD-67-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1156. Annual audited report

The Fund shall be audited annually. Within ninety (90) days of the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council, certified chapters and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Fund from each investment during the reporting period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CD-67-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1157. Amendments

Any section(s) herein may be amended by a majority vote of the full membership of the Navajo Nation Council, except that § 1154 may only be amended as provided for within § 1154.

History

CD-67-86, December 12, 1986.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1158. Expenses

All annual expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved and executed contract(s) for such services.

History

CD-67-86, December 12, 1986.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 7. Navajo Nation Local Governance Trust Fund

§ 1159. Purpose

The purpose of the Local Governance Trust Fund is to provide an incentive for chapters to attain governance certification, as well as allow them organizational funding so they can develop programs and services in line with their goals, the Local Governance Act and Navajo Nation policy. Additionally, the Fund will provide a continuing source of revenues to governance-certified chapters.

History

CD-84-00, December 14, 2000.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1160. Establishment

There is established the “Navajo Nation Local Governance Trust Fund” (Fund) with an initial appropriation as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council.

A. Beginning in Fiscal Year 2002, each year the Navajo Nation Council shall budget a sum equal to at least two percent (2%) of any and all projected revenue of the Navajo Nation, including, but not limited to, revenues received from taxes, oil and gas mining/minerals, timber, land rentals, right-of-way payments, interest/dividends, gain on sale of securities and other revenue producing activities for transfer to the Fund; this provision shall terminate at the end of Fiscal Year 2006.

B. Beginning in Fiscal Year 2007, the Fund shall annually receive fifty percent (50%) of the income available from the Navajo Nation Permanent Fund pursuant to 12 N.N.C. § 905.

C. Any monies deposited into the Fund, plus accrued interest, shall be used only as provided in the Fund plan of operation.

History

CD-84-00, December 14, 2000.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1161. Fund management

All amounts of money deposited in the Fund shall be invested as soon as is reasonably practical in accordance with the following provisions:

A. The Fund shall be invested in accordance with the degree of care exercised by reasonable and prudent managers of large investments and invested to produce maximum growth with a reasonably high degree of safety.

B. The management of investments shall be vested with the Investment Committee of the Navajo Nation. All investment objectives shall be approved by the Budget and Finance Committee of the Navajo Nation Council and appropriate investment agreements or contracts executed accordingly.

History

CD-84-00, December 14, 2000.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1162. Definition of principal and income

A. “Fund income” means all earnings (interest, dividends, etc.) generated by the Fund principal.

B. “Fund principal” means the initial deposit of monies by the Council, any additional Navajo Nation Council appropriations, and any contributions made by any other parties or entities.

History

CD-84-00, December 14, 2000.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1163. Expenditure of Fund principal

A. An incentive program is established to assist chapters in becoming governance certified in the manner set forth in 26 N.N.C. § 102. Fund principal and interest may be expended for this program in the following manner:

1. Each chapter which is, or becomes, governance certified, pursuant to 26 N.N.C. § 102 of the Local Governance Act, shall receive a grant of one hundred sixty thousand dollars (\$160,000) at the time of governance certification or, if already governance certified at the time of adoption of the Fund, upon final adoption of the Fund legislation.

2. Incentive monies distributed to the chapters pursuant to this provision shall in no event exceed one hundred sixty thousand dollars (\$160,000) per chapter as a one-time grant.

B. With the exception of Fund principal designated in Subsection (A) of this Section, Fund principal shall not be expended except pursuant to a referendum adopted by two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place such a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of the Navajo Nation Council.

History

CD-84-00, December 14, 2000.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ↻32(4.1).

Westlaw Topic No. 209.

§ 1164. Expenditure of Fund income

Fund income shall be expended as follows:

A. Four percent (4%) of the average annual market value of the Fund shall be distributed annually to governance certified Navajo chapters based upon a formula recommended by the Transportation and Community Development Committee of the Navajo Nation Council and established by the Budget and Finance Committee of the Navajo Nation Council. The amount of funds to be distributed pursuant to this provision shall not exceed the total of Fund income, as determined by § 1161(B), then available in the Fund. In conformity with the Local Governance Act, 26 N.N.C. § 1, *et seq.*, each governance certified chapter shall determine the most appropriate use of all funds received with the following exceptions:

1. Chapters may not use the distributions from this Fund for per capita distributions.
2. Chapters may not use the distributions from this Fund for the purchase of agricultural products for distribution or resale to chapter members.
3. Chapters may not use the distributions from this Fund to pay for training or instructional expenses of chapter officials or chapter employees, including travel expenses incident to training or instruction.
4. Chapters may not use the distributions from this Fund to pay stipends or meeting attendance fees to chapter officials or employees.
5. Chapters may not use the distributions from this Fund to pay travel expenses of any kind to chapter officials or chapter employees.
6. Chapters may not use the distributions from this Fund to purchase motor vehicles for the use of chapter officials or employees.

B. Of the four percent (4%) of the average annual market value to be distributed pursuant to Subsection (A) of this Section, a maximum of ninety-five percent (95%) of the proceeds will be used for distribution to the chapters, as set forth above and a minimum of five percent (5%) will be used for administrative purposes as set forth in § 1167.

History

CD-84-00, December 14, 2000.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1165. Annual audited report

The Fund shall be audited annually, and the Navajo Nation shall include the Fund in its annual audit and report. The report shall be distributed to the members of the Navajo Nation Council, governance certified chapters and interested members of the Navajo public.

History

CD-84-00, December 14, 2000.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1166. Amendments

Any section herein may be amended at the recommendation of the Transportation and Community Development Committee and adopted by a two-thirds vote of the full membership of the Navajo Nation Council, except that § 1163 may only be amended as provided for in § 1163(B).

History

CD-84-00, December 14, 2000.

§ 1167. Expenses

All annual expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved and executed contracts for such services.

History

CD-84-00, December 14, 2000.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Subchapter 9. Navajo Nation Veterans Trust Fund

§ 1181. Establishment

The “Navajo Nation Veterans Trust Fund” hereinafter the “Trust Fund” is established with an initial appropriation of six million dollars (\$6,000,000) from revenues from Undesignated Tribal Reserves. Any funds deposited into the Trust Fund, plus accrued interest, shall be used only as provided for as explained hereinafter.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1182. Purpose

The purpose of the Trust Fund is to provide funding for veterans programs, projects and services or activities which may include, but not limited to program/project development, community/economic development, housing, training and employment opportunities, leveraging or matching funds for exemplary projects, protection and advocacy services, financial assistance of benefits and services, education and scholarship, and survivor’s benefits for the surviving spouses of deceased veterans.

The Navajo Nation has a clear understanding and responsibility to its Navajo Nation veterans based on Navajo Nation Council Resolution CJ-5-40 which pledged its people the loyalty to the system which recognized minority rights and the Navajo way of life. Many more than 16,000 Navajo veterans have served their country in war or peacetime from World War I, World War II, Korean, Vietnam, Persian Gulf and to the present.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1183. Fund investment

All monies deposited in the Trust Fund shall be invested in accordance with Investment Policies of the Navajo Nation as adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1184. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Trust Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of the Navajo Nation Council.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1185. Definition of principal and income

A. Trust Fund principal shall consist of all Navajo Nation Council appropriations made pursuant to the tribal appropriation processes and procedures; and any contributions made by any parties or entities.

B. Trust Fund income shall consist of all earnings (interest, dividends, etc.) generated by the principal and interests of the Fund.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1186. Expenditure of Trust Fund

The Fund income shall not be expended, except as provided in § 1187, from Fiscal Year 1998 to Fiscal Year 2003. From Fiscal Year 2004, the Fund income shall be expended as following:

A. Four percent (4%) of the average market value of the Fund covering the past three (3) fiscal years will be used as supplemental funding for programs and services to benefit veterans, as noted under § 1182 on an annual basis. The market value of the Fund at the end of the previous twelve (12) quarters will be used to determine the average market value of the Fund for expenditure (i.e. budget purposes). The excess of the Fund income over expenditures shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Tribal grants to non-tribal government programs and projects shall be awarded in accordance with rules and regulations developed by the Department of Navajo Veterans Affairs, in consultation with the Human Services

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Committee of the Navajo Nation Council and, if required, the Navajo Nation Council.

C. Of the four percent (4%) of the Fund (Market Value), ninety-five percent (95%) of the proceeds will be used for Subsections (A) and (B) of this Section and five percent (5%) will be used for administrative purposes, and this will be reviewed further by the Office of Management and Budget and the Program.

Except as provided at § 1187, all Trust Fund income distribution shall be determined pursuant to all eligible Navajo veterans and distributed among those applicable Navajo Nation chapters to be expended in accordance with § 1182 of this Plan.

History

CJY-46-98, July 20, 1998.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

§ 1187. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Trust Fund income as approved by the Budget and Finance Committee of the Navajo Nation Council prior to the distribution of income under § 1186. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CJY-46-98, July 20, 1998.

§ 1188. Amendments

And section or sections herein may be amended upon the recommendation of the Human Services Committee and the Budget and Finance Committee of the Navajo Nation Council by majority vote of the full membership of the Navajo Nation Council except that § 1184 may only be amended as provided herein.

History

CJY-46-98, July 20, 1998.

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

Subchapter 10. Navajo Engineering and Construction Authority
Trust Fund for Scholarships and Financial Assistance

§ 1191. Establishment

There is hereby established, the “Navajo Engineering and Construction Authority Trust Fund for Scholarships and Financial Assistance” (Fund), with an initial appropriation of one million dollars (\$1,000,000) as approved by the Navajo Nation Council. Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of revenue and/or funds are available for appropriation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided hereinafter. Dividends declared by NECA to the Navajo Nation in accordance with 5 N.N.C. § 1972 shall be designated as a Special Revenue Fund to specifically fund scholarship and financial assistance to eligible Navajo college students.

History

CAP-25-03, April 25, 2003.
CJA-5-97, January 21, 1997.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1192. Investment of the Fund

A. All amounts of money deposited in the Fund shall be invested as soon as practical in accordance with Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

B. A Parental Investment Plan shall be established to allow the Navajo people to invest a portion of their salary to be able to financially support their children who wish to attend college.

History

CJA-5-97, January 21, 1997.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1193. Definition of principal and income

A. Fund principal shall consist of all Navajo Nation appropriations made pursuant to the tribal appropriation process and procedures; and any contributions made by parties or entities.

B. Fund income shall consist of all earnings (interest dividends, etc.) generated by the principal of the Fund.

History

CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1194. Expenditure of Fund principal

Fund principal shall not be expended except pursuant to a referendum adopted by a two-thirds vote of all registered Navajo voters. The Navajo Nation Council may place a “Referendum to Expend Fund Principal” on the ballot of any primary, general or special election by a two-thirds vote of the full membership of the Navajo Nation Council.

History

CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1195. Expenditure of Fund income

A. Ten percent (10%) of the Fund (market value) shall be used as scholarships and financial assistance on an annual basis. The market value to be used in determining the budget amount will be the previous fiscal year end market value of the Fund. The unexpended portion of the Fund (market value) income shall be reinvested in the Fund to cover the rate of inflation and to provide for reasonable Fund growth.

B. Scholarships and financial assistance to Navajo students wishing to attend post-secondary institutions and colleges shall be awarded in accordance with Policies and Procedures of the Office of Navajo Nation Scholarship and Financial Assistance.

History

CAP-25-03, April 25, 2003.
CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1196. Annual Audited Report

The Fund shall be audited annually by outside external auditors. At the end of each fiscal year, an audit report shall be distributed to the members of the Navajo Nation Council and interested members of the Navajo public. The report shall be written in easily understandable language. The report shall include financial statements, a statement of the amount of money received by the Navajo Nation Trust Fund for Undergraduate Scholarships from each

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investment during the period, a statement of investments of the Fund including an appraisal at market value, a description of Fund investment activity during the period covered by the report, a statement of the Fund performance and other information relevant to the management of the Fund.

History

CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1197. Amendments

Any section or sections herein may be amended by the majority vote of the full membership of the Navajo Nation Council except that § 1194 may only be amended as provided for in § 1194.

History

CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1198. Expenses

All expenses directly associated with the administration and management of the Fund shall be paid from the Fund income as approved by the Budget and Finance and Committee of the Navajo Nation Council. Such expenses shall include investment advisory and management fees, audit costs and other related expenses, all pursuant to duly approved contracts for such services.

History

CJA-5-97, January 21, 1997.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Chapter 12. Investment Program

Section

- 1201. Authorization
- 1202. Authority and duties of Navajo Nation officials; Budget and Finance Committee
- 1203. Authority to initiate and maintain investment program for Navajo Nation funds
- 1204. Authority to enter into contracts in connection with investment of Navajo Nation funds

History

Note. This chapter should be read in light of CD-68-89, December 15, 1989. See 2 N.N.C. the amendments made to 2 N.N.C. by § 374(B)(1).

§ 1201. Authorization

The Navajo Nation Council approves and authorizes an investment program that, within statutory authority and limitations, shall provide maximum flexibility to the Secretary of the Interior as to choice of depositories and securities in which Navajo Nation monies may be deposited and/or invested, with an objective of obtaining optimum interest income and retaining reasonable fluidity in the investment portfolio so as to meet current disbursing needs.

History

CMY-59-66, May 6, 1966.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 1202. Authority and duties of Navajo Nation officials; Budget and Finance Committee

A. In furtherance of the objectives of 12 N.N.C. § 1201, the Controller of the Navajo Nation is authorized and directed on July 1 and January 1 of each year to prepare estimates of cash requirements and to submit not later than July 10 and January 10, respectively, each year, such estimates, together with recommendations concerning investment maturity dates to a designated investment officer or employee of the Bureau of Indian Affairs.

B. The Controller is directed to report at regular intervals to the Budget and Finance Committee concerning investments made pursuant to the Navajo Nation investment program.

C. The Budget and Finance Committee is authorized and directed to exercise such control as is necessary, incidental or desirable in carrying out the intent of Resolutions CMY-59-66 and CO-105-66. Such authority of the Budget and Finance Committee shall include, but not be limited to, authority to request reports from the Controller regarding all investments of Navajo Nation funds, authority to request and/or authorize the gathering of such information as is necessary to determine what rates of interest were available, where investments were made, what banks and securities were investigated prior to making such investments, and why a particular bank was selected in any given instance, and such other information as may be pertinent to the investment program.

History

CO-105-66, October 5, 1966.
CMY-59-66, May 6, 1966.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1203. Authority to initiate and maintain investment program for Navajo Nation funds

The Navajo Nation Council authorizes the President of the Navajo Nation, with the consent and approval of the Budget and Finance Committee, to initiate and maintain a prudent, well-managed investment program for Navajo Nation funds presently held in trust by the Secretary of the Interior, and the President is authorized to withdraw funds from the U.S. Treasury for this purpose in an amount not to exceed twenty million dollars (\$20,000,000).

History

CJY-82-68, July 11, 1968.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1204. Authority to enter into contracts in connection with investment of Navajo Nation funds

The Navajo Nation Council authorizes the President of the Navajo Nation, with the consent and approval of the Budget and Finance Committee, to enter into such contracts as may be required in connection with the investment of Navajo Nation funds, taking into consideration the following:

- A. The forces of inflation which may reduce the value of Navajo Nation funds over a period of years;
- B. The safety of the funds invested;
- C. The return to the Navajo Nation in interest, dividends, and increase in the value of investments;
- D. The availability of funds when required; and
- E. Other factors consistent with sound investment practices.

History

CJY-82-68, July 11, 1968.

Note. Slightly reworded for purposes of statutory form.

Cross References

Budget and Finance Committee of the Navajo Nation Council, 2 N.N.C. § 371 *et seq.*

Library References

Indians ☞24.
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Chapter 13. Bond Financing Act

Section

- 1300. Purpose
- 1310. Definitions
- 1320. Long term debt policies
- 1330. Financing of capital improvements and related projects
- 1340. Interim financing of capital improvements and related projects
- 1350. Amendments

§ 1300. Purpose

The Act authorizes the issuance of bonds by the Navajo Nation to finance capital improvement projects included in the Capital Improvement Plan and authorizes other governmental units to issue bonds to finance capital improvements in a manner that is consistent with the policies and procedures set forth in the Act. Notwithstanding the Appropriations Act, or any overlap with other legislation, this Act takes precedence. To achieve this purpose, this Act has the following objectives:

- A. To provide financing for capital improvement projects, infrastructure, and capital expenditures, as defined in 12 N.N.C. § 800 et seq.
- B. To enhance economic development for the Navajo Nation and its peoples by prudent use of tax-exempt and taxable financing and to take advantage of the Indian Governmental Tax Status Act of 1982,¹ as amended.

¹ 26 U.S.C. § 7871.

History

CO-83-01, October 18, 2001.

Library References

Indians ☞ 32(4.1).
Westlaw Topic No. 209.

§ 1310. Definitions

For purposes of this Act and sections of this Act, the following definitions shall apply:

A. “Bond” means any evidence of indebtedness issued or entered into by a governmental unit, including any interest-bearing obligation of a governmental unit that obligates such governmental unit to pay the holder thereof a specified sum of money at specific intervals and to repay the principal amount of the obligation at maturity, together with any bond, note, obligation, loan agreement, financing lease, certificate of participation, bank loan, financing agreement or similar instrument or agreement issued or entered into by a governmental unit. As used in this Chapter, the term “bond” may refer to a general obligation bond, a revenue bond or a refunding bond related to either, as the context so requires.

B. “Bond fund” means any debt service fund, debt service reserve fund, sinking fund, rebate fund, reserve or replacement fund or other special fund or account established in connection with the issuance of any bond.

C. “Bond-related costs” mean:

1. The costs and expenses of issuing, administering and maintaining bonds, including paying bond debt service, paying the costs of credit enhancement devices, paying administrative costs and expenses, including costs of consultants, advisors or other professional service providers appointed, retained or approved by the Navajo Nation or other governmental unit;
2. The cost of funding any bond fund;
3. Capitalized interest on bonds;
4. Rebates, interest or penalties due to the United States in connection with any bond issued as a tax-exempt obligation; and
5. Any other costs or expenses that the Navajo Nation or other governmental unit determines is necessary or desirable in connection with the issuance of any bond.

D. Pursuant to 12 N.N.C. § 810(F), Appropriation Act, “Capital Improvement” means a major project undertaken by the Navajo Nation or other governmental unit that is generally not recurring on an annual basis and which fits within one or more of the following categories:

1. All projects requiring debt obligation or borrowing.
2. Any acquisition or lease of land.
3. Purchase of equipment or vehicles, with a reasonably expected economic life of five (5) years or more, valued in excess of fifty thousand dollars (\$50,000).
4. Major building improvements that are not routine maintenance expenses and that substantially enhance the value or extend the useful life of a structure.
5. Construction or acquisition of buildings or facilities including engineering, design, and other pre-construction costs with an estimated cost in excess of an amount to be determined by the Controller.
6. Acquisition, installation or rehabilitation of equipment or furnishings required to furnish buildings, improvements or other projects, the cost of which is above a certain amount to be established by the Controller.
7. Infrastructure Assets. Are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams and lighting systems.

Buildings, except those that are an ancillary part of a network of infrastructure assets, should not be considered.

E. “Credit enhancement device” means a letter of credit, line of credit, liquidity facility, municipal bond insurance policy or other device or facility used to enhance the creditworthiness or marketability of bonds.

F. “Full faith and credit” means the full taxing power and borrowing power of a governmental unit, plus any other revenue pledged in payment of interest and repayment of principal of a bond issued by the governmental unit.

G. “General obligation bond” means a bond issued by a governmental unit that is backed by the full faith and credit of the governmental unit issuing the general obligation bond. General obligation bonds also may be secured by a pledge of revenues designated by the governmental unit.

H. “Governmental unit” means the Navajo Nation, any enterprise, authority or commission established by the Navajo Nation and any political subdivision of the Navajo Nation, including chapters or any other local units of government created pursuant to the Local Governance Act.

I. “Long-term debt” means the unmatured principal of debt instruments and other forms of noncurrent or long-term general obligation liabilities that were not specific liabilities of any proprietary or trust fund and were not current liabilities properly recorded in the governmental funds.

J. “Navajo Nation” means, for purposes of this chapter, the Navajo Nation acting through its Council, the Budget and Finance Committee of the Council and the duly authorized officers of its Executive Branch. As used in this Chapter, Navajo Nation does not include any enterprise, authority or commission established by the Navajo Nation or any political subdivision of the Navajo Nation, including chapters and other local units of government.

K. “Refunding bond” means an advance refunding or current refunding bond issued by a governmental unit for the purpose of paying, defeasing, redeeming or retiring a previously issued bond.

L. “Revenues” mean all taxes, oil and gas, mining/minerals, land rentals, interest/dividends, gain on sale of securities and other revenue producing activities and all other income and receipts of whatever kind or character derived by or to which a governmental unit is entitled from the operation, sale or use of facilities, projects, utilities or systems owned or operated by the governmental unit and other revenues legally available to be pledged to secure a bond or to be designated as revenues from which a bond will be payable.

M. “Revenue bond” means a bond issued by a governmental unit, the payment of interest and repayment of principal of which is secured by the revenues pledged or designated to be payable for such purpose by a governmental unit.

History

CO-83-01, October 18, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1320. Long term debt policies

A. Per 12 N.N.C. § 820(H), Long-term debt limitation. Annual debt service for long-term debt shall not exceed the sum of (i) eight percent (8%) of annual unrestricted recurring revenue, and (ii) projected annual project revenue, as calculated by the Controller, and long-term debt shall not be authorized until

the impact of annual debt service on the annual operating budget, including sinking fund contributions, has been analyzed and a determination has been made that debt service payments are in compliance with this Section. For purposes of this Section, “annual debt service” payments for long-term debt shall only include the payment of scheduled principal, interest, costs associated with any credit enhancement device and other bond-related costs reasonably estimated to be or become payable in connection with any long-term debt consisting of a general obligation bond of the Navajo Nation or any other bond backed by the full faith and credit of the Navajo Nation which is not subject to annual appropriation by the Nation. “Projected annual project revenue” shall refer to annual revenues generated by a capital improvement or other project financed with either general obligation bonds of the Navajo Nation or other bonds backed by the full faith and credit of the Navajo Nation, as certified to the Controller on an annual basis by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider acceptable to the Controller.

B. Use of proceeds from long-term debt will be restricted to financing capital improvement projects and will not be used to finance current operations or normal repairs and maintenance.

C. The Navajo Nation normally will rely on internally generated funds and/or grants to finance its capital improvement needs. Bonds will be issued to finance a capital improvement project when it is an appropriate means to achieve a fair allocation of costs between current and future beneficiaries; and when it is determined that the project will be substantially completed within three (3) years from issuance of bonds. Bonds shall not, in general, be issued to fund capital improvement projects solely because insufficient funds are budgeted at the time of acquisition or construction.

History

CO-83-01, October 18, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1330. Financing of capital improvements and related projects

A. General Obligation Bonds. A governmental unit may issue general obligation bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements for such governmental unit. Additionally, the Navajo Nation, through its Controller, may issue general obligation bonds for the financing of specific capital improvements for the Navajo Nation or any other governmental unit pursuant to an authorizing resolution or ordinance adopted or enacted by either its Council or the Budget and Finance Committee of the Council, provided that such improvements are part of an approved Capital Improvement Plan. The Controller shall review a request from the Navajo Nation to issue

general obligation bonds. If the Controller can certify that funding is available to pay principal and interest within the limitations of the general revenues of the Navajo Nation and other designated available revenues, the issuance of general obligation bonds by the Navajo Nation to fund the capital improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing general obligation bonds on behalf of the Navajo Nation and thereafter shall identify the requirements for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. General obligation bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing general obligation bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting borrowing and other financing authority and powers to the governmental unit, including § 103 of the Local Governance Act, no governmental unit shall issue general obligation bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue general obligation bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.

The Controller may, in providing the certification or approval required by the foregoing paragraph, retain the services of financial advisors, accountants, appraisers, feasibility consultants and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Business and Procurement Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301, et seq.)

B. Revenue Bonds. A governmental unit may issue revenue bonds upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body for the financing of specific capital improvements or for any other lawful public purpose identified by such governmental unit. Additionally, the Navajo Nation, through its Controller, may issue revenue bonds for the financing of specific capital improvements, provided that such improvements are part of an approved Capital Improvement Plan, pursuant to an authorizing resolution or ordinance adopted or enacted by either its Council or the Budget and Finance Committee of the Council, and provided further that the specific revenue stream upon which payment of principal and interest on the bonds will be made shall be identified and pledged to the payment of the bonds at the time the bonds are issued. The Controller shall review a request from the Navajo

Nation to issue revenue bonds in light of guidelines. If the Controller can certify that funding within any applicable limitations are available from the identified revenue sources, the issuance of revenue bonds by the Navajo Nation to fund the proposed improvements may be presented to the full Council or to the Budget and Finance Committee for approval or rejection only. The Controller shall have the responsibility for issuing revenue bonds on behalf of the Navajo Nation and thereafter shall identify the requirements for payment of interest and principal on such bonds as part of the annual budget planning and preparation process until such time as the bonds are retired. Revenue bonds issued by a governmental unit other than the Navajo Nation shall be subject to all budgetary, approval and other requirements applicable to the governmental unit issuing revenue bonds. In addition, notwithstanding the provisions of any law applicable to an issuing governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including § 103 of the Local Governance Act, no governmental unit shall issue revenue bonds unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to issue revenue bonds an application fee in an amount sufficient to pay all costs associated with such review and approvals.

The Controller may, in providing the certification or approval required by the foregoing paragraph, retain the services of financial advisors, accountants, appraisers, feasibility consultants and other appropriate professional service providers and reasonably rely on the opinions, findings, statements and conclusions provided by such persons. Fees and costs associated with such services shall be paid by the Controller from application fees required to be paid to the Controller by the issuing governmental unit, as established by the Controller from time to time. All procurement of services must comply with applicable Navajo Nation laws, including the Navajo Preference in Employment Act, the Navajo Business and Procurement Act, and the Navajo Nation Procurement Act (12 N.N.C. § 301, et seq.)

A governmental unit issuing a revenue bond may pledge to the payment of such bonds, or may make a revenue bond payable from, all or any portion of:

1. The revenues of any revenue producing facility owned or operated by or providing services to such governmental unit or financed by the revenue bond;
2. The revenues of a public utility or system, or an addition or extension to the public utility or system, where the improvements, projects or facilities financed by the revenue bond are a portion of the public utility or system;
3. All or any portion of any other revenues of the governmental unit, regardless of whether such revenues are related to the improvements, projects or facilities financed by the revenue bond.

If a governmental unit determines that it is necessary to provide additional security for revenue bonds, the governmental unit may mortgage, grant security interests in or otherwise encumber facilities, projects, utilities or systems

owned or operated by the governmental unit. Such security may be given in favor of the holders of revenue bonds, a trustee therefor or as security for its obligations arising under any credit enhancement device. A governmental unit may obtain a credit enhancement device for revenue bonds provided that such credit enhancement device shall be payable solely from revenues, the proceeds of revenue bonds, and the other additional security provided for in this paragraph.

C. Pledge of Nation's Full Faith and Credit. Only a bond issued by the Navajo Nation as a general obligation bond of the Navajo Nation in compliance with all provisions and requirements of this Chapter shall be backed by the full faith and credit of the Navajo Nation. No bond issued by a governmental unit, other than a general obligation bond of the Navajo Nation, shall be backed by the full faith and credit of the Navajo Nation unless the full faith and credit of the Navajo Nation has been specifically pledged to the payment of such bond by the Navajo Nation Council, the Controller has consented to such pledge, and the bond has been issued in compliance with all provisions and requirements of this Chapter for the issuance of a general obligation bond by the Navajo Nation. The Navajo Nation, acting through its Controller, may condition the lending of the full faith and credit of the Navajo Nation to back bonds issued by another governmental unit upon the satisfaction of such terms and conditions and the payment of such fees and charges as the Controller may establish from time to time.

D. Bond Issuance. In issuing bonds, a governmental unit may:

1. Subject to the limitations contained in this Chapter, establish the maturity schedules, interest rates, including fixed, variable or adjustable interest rate terms, tender or redemption provisions, provisions for capitalized interest and other bond terms;

2. Appoint a bond trustee and bond counsel and retain the services of financial advisors, underwriters, paying agents, legal counsel and other professional service providers in connection with the issuance of bonds;

3. Execute and deliver any necessary or appropriate agreement or other document in connection with obtaining a credit enhancement device;

4. Enter into covenants for the benefit of bondholders and the provider of any credit enhancement device to improve the security of bondholders or the provider of a credit enhancement device, or to maintain the tax-exempt status of interest payable on bonds;

5. Establish such bond funds as may be necessary or desirable to pay debt service, to secure bonds and for any other purpose reasonably related thereto; and

6. To apply bond proceeds to pay bond related costs.

E. Limitation on Bond Maturity. All long term debt issued will be repaid within a period not to exceed the expected useful lives of the capital improvement projects financed by the long term debt as certified to the Controller by a financial advisor, feasibility consultant, accountant or other appropriate professional service provider reasonably acceptable to the Controller. For purposes of this Section, the reasonably expected remaining economic life of a bond

financed capital improvement shall be determined as of the date on which bonds are issued based on the expected remaining economic life of the equipment and other components of the bond financed improvement. Land shall not be taken into account in determining the economic life of a capital improvement, except that, in the event twenty-five percent (25%) or more of the proceeds of a bond issue financing such improvement are expended to acquire land, such land shall be treated as having an expected remaining economic life of thirty (30) years, and shall be taken into account in determining the reasonably expected remaining economic life of the bond financed improvement.

F. Investment of Bond Proceeds and Funds. Prior to the expenditure of bond proceeds for the purposes authorized by this Chapter, including the payment of bond related costs, such proceeds and investment earnings thereon, together with all other amounts held in any bond fund, shall be invested at the direction of the issuing governmental unit in accordance with and subject to the limitations of the applicable laws and regulations of the Navajo Nation and the governmental unit and in compliance with the investment policies established by the Controller from time to time for such proceeds and funds.

G. Refunding Bonds. A governmental unit that is authorized to issue general obligation bonds or revenue bonds pursuant to § 1330(A) or § 1330(B) may from time to time in its discretion upon the adoption of an authorizing resolution or the enactment of an ordinance by its governing body issue refunding bonds for the purpose of paying, defeasing, redeeming or retiring bonds previously issued by such governmental unit. Refunding bonds may, however, be issued by a governmental unit, only after such governmental unit has complied fully with the refunding rules applicable to such bonds issued by the Controller from time to time, including the payment of any fees required to be paid by the governmental unit to the Controller.

H. Manner of Sale. Bonds issued pursuant to this Chapter may be sold by a governmental unit pursuant to a public competitive bid or at a private negotiated sale, as determined by the governmental unit in accordance with prudent financial management practices. A governmental unit issuing bonds shall take all reasonable measures directed by the chief financial officer of the governmental unit to assure compliance by the governmental unit with the requirements of all applicable securities laws. In determining an appropriate manner of sale and in making recommendations to comply with applicable securities laws, a governmental unit and its chief financial officer may rely on the advice of its financial advisor or bond counsel, and may in its discretion retain the services of special counsel, financial advisors, investment bankers and other appropriate experts and reasonably rely on the advice and opinions provided by such persons.

I. Execution of Bonds. Bonds issued pursuant to this Chapter shall be signed by the chief executive and the chief financial officer of the governmental unit issuing bonds, by either manual or facsimile signature. For bonds issued by the Navajo Nation, the chief executive and the chief financial officer shall be the President and the Controller of the Navajo Nation, respectively. For bonds

issued by a chapter, the chief executive and the chief financial officer shall be the chapter President and its Secretary/Treasurer, respectively. For bonds issued by a governmental unit other than the Navajo Nation or a Chapter, the chief executive and the chief financial officer shall be those persons designated as such for the governmental unit in the charter, legislation, plan of operation or other authority creating such unit. No person executing a bond on behalf of a governmental unit shall be liable personally on the bond by reason of the issuance thereof. In the event that a person whose signature appears on a bond as that of the chief executive or chief financial officer of the governmental unit ceases to hold such office prior to the delivery of a bond, the signature of such person shall, nevertheless, be valid and sufficient for all purposes, the same as if such person had remained in office until delivery.

J. Severability. If any provision of this Chapter, or its application to any governmental unit or circumstance is held invalid, the remainder of the provisions of this Chapter, and their application to any governmental unit or circumstance, shall not be affected.

K. Changes in Law. No provision of law applicable to a governmental unit issuing bonds hereunder that is enacted or adopted following the issuance of a bond, or any ordinance, resolution, initiative, referendum or other action adopted or taken subsequent to the issuance of a bond shall be given any force or effect if to do so would materially impair any obligation or covenant made with the holder of such bond or the interest of the provider of any credit enhancement device supporting or securing such bonds.

History

CO-83-01, October 18, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1340. Interim financing of capital improvements and related projects

A. Subject to any applicable limitations imposed by this Chapter, other applicable laws and regulations of the Navajo Nation or contained in any charter, ordinance or resolution applicable to such governmental unit, a governmental unit may borrow money by entering into a credit agreement, or issuing notes, warrants, short-term promissory notes, commercial paper or other obligations:

1. To provide interim financing for capital improvements to be undertaken by the governmental unit; or
2. To refund outstanding obligations incurred pursuant to this Section.

B. To secure obligations authorized under this Section, a governmental unit may:

1. Pledge its anticipated taxes, grants, other revenues, the proceeds of any bonds, or any combination thereof;

2. Segregate any pledged funds in separate accounts, which may be held by the governmental unit, the Controller or third parties;

3. Enter into contracts with third parties to obtain credit enhancement devices to provide additional security for obligations authorized by this Section;

4. Establish any reserves deemed necessary for the payment of the obligations; and/or

5. Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of obligations, which shall constitute enforceable contracts with such owners.

C. Obligations authorized by this Section which are issued in anticipation of taxes or other revenues, and any obligations authorized by this Section which are issued to refund them, shall not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal year of the governmental unit in which the taxes or other revenues are expected to be received. Obligations issued in anticipation of taxes or other revenues shall not be issued in an amount greater than eighty percent (80%) of the amount budgeted by the governmental unit to be received in the fiscal year in which the obligations are issued.

D. Obligations authorized by this Section, which are issued in anticipation of a grant, shall mature not later than one (1) year after the date the grant is estimated to be received. Obligations issued to provide interim financing for capital assets shall mature not later than one (1) year from the estimated completion or acquisition of the capital assets.

E. Refunding obligations issued pursuant to Subsection (A)(1) of this Section shall mature as soon as the issuing governmental unit deems practicable and no later than eighteen (18) months after the refunding obligations are issued.

F. Except as provided in this Section, obligations authorized by this Section may be in any form and contain any terms, including provisions for redemption at the option of the holder of the obligation and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

G. The issuing governmental unit, in the ordinance or resolution authorizing the issuance of obligations under this Section, may delegate to the chief financial officer of the governmental unit or, in the case of the Navajo Nation, the Controller, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations and other terms and conditions of such obligations which are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to applicable requirements of law and such limitations and criteria as may be set forth in such ordinance or resolution. Except to the extent of any such delegation, the ordinance or resolution of the

12 N.N.C. § 1340

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governmental unit authorizing the issuance of obligations under this Section shall contain:

1. The maximum effective rate of interest the obligations shall bear;
2. The manner of sale;
3. The discount, if any, the governmental unit may allow;
4. The terms and conditions by which the obligations may be redeemed prior to maturity;
5. The maturities of the obligations;
6. The form and denominations of the notes or other obligations; and
7. All other material terms and conditions related to the sale of the obligations.

H. The governmental unit may contract with third parties to serve as issuing, paying and authenticating agents for any obligations authorized by this Section.

I. Obligations authorized by this Section may be sold by a governmental unit pursuant to a public competitive bid or at a private negotiated sale upon such terms as the governmental unit finds advantageous, with such disclosure or other measures to comply with the requirements of applicable securities laws as the governmental unit deems appropriate.

J. Notwithstanding the provisions of any law applicable to a governmental unit, including without limitation those granting, borrowing and other financing authority and powers to the governmental unit, including § 103 of the Local Governance Act, no governmental unit shall borrow money for the purposes permitted by this Section unless such governmental unit has made application to the Controller and such application has been reviewed and approved by the Controller and, with respect to legal matters, approved by the Department of Justice. The Office of the Controller shall charge each governmental unit proposing to borrow money pursuant to this Section an application fee in an amount sufficient to pay all costs associated with such review and approvals.

History

CO-83-01, October 18, 2001.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1350. Amendments

A. This Bond Financing Act may be amended by a majority vote of the full membership of the Navajo Nation Council upon the recommendation of the Budget and Finance Committee of the Navajo Nation Council.

History

CO-83-01, October 18, 2001.

Chapter 14. Contingency Funds

Section

1401. Approval of expenditures

§ 1401. Approval of expenditures

A. The Budget and Finance Committee is authorized to approve expenditures from contingency funds available in the yearly Navajo Nation budget to meet emergent and unusual conditions not more specifically provided for elsewhere in the budget.

B. The President of the Navajo Nation is authorized to approve expenditures necessary in his or her discretion from contingency funds available in the Navajo Nation budget, provided that such expenditures shall not exceed five hundred dollars (\$500.00) for any one case.

History

CAP-10-63, April 24, 1963.

CD-68-89, December 15, 1989. See 2 N.N.C.

CJ-36-58, July 21, 1958.

§§ 374(B)(1) and 1005(C)(6) and (7).

Note. This section should be read in light of the amendments made to 2 N.N.C. by

Library References

Indians ⇄32(4.1).

Westlaw Topic No. 209.

Chapter 15. Navajo Business and Procurement Act

Section

1501. Title

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1504. Eligibility and compliance under the Act

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1512. Prior inconsistent law repealed

1513. Severability of the Act

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1515. No waivers or other exceptions

1516. Effective date and amendment

§ 1501. Title

This Act shall be known and cited as the Navajo Business and Procurement Act.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇐24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1502. Purpose

The purpose of this Act is to protect the resources and financial integrity of the Navajo Nation and to promote sound governmental practices. Therefore, compliance with this Act shall be a condition precedent to transacting or granting any business opportunity, contract, procurement activity; or processing any easement, permit, lease transaction; or considering any loan application by or from the Navajo Nation to any individual, business, corporation, partnership, or other entity other than the Navajo Nation.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇐24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1503. Definitions

A. For purposes of this Chapter, “Navajo Nation” shall be defined as:

1. The Navajo Nation Council, its standing committees, and Navajo Nation Council Delegates;
2. The President and Vice-President of the Navajo Nation;
3. All committees, boards, and commissions of the Navajo Nation government;
4. All certified chapters of the Navajo Nation;
5. All grazing committees, land boards, and farm boards of the Navajo Nation;
6. All divisions, departments, and programs operating under the authority of and within the Executive Branch of the Navajo Nation government;
7. All programs under and within the Judicial Branch of the Navajo Nation government;
8. All enterprises of the Navajo Nation; Navajo Community College, Crownpoint Institute of Technology, and any other entity owned in whole or part by the Navajo Nation; and
9. All other programs and entities who receive at least fifty-one percent (51%) of their funding either directly from the Navajo Nation government or are authorized by the Navajo Nation government to receive federal or state grants or other monies on behalf of the Navajo Nation.

B. “Business” shall mean any individual or association of individuals engaged in commerce, trade, or the buying and selling of commodities or services whether or not for profit; and shall include each person associated with such business for eligibility purposes.

C. “Business Opportunity” shall mean:

1. The availability of any opportunity from the Navajo Nation to engage in or provide governmental or administrative services; procurement, business, commerce or trade activities, or the buying and selling of commodities or services; or

2. The receipt of any business certification or advantage pursuant to the Navajo Nation Business Opportunity Act; or

3. The receipt of any contract, lease, easement, permit, loan, monies, or funds from the Navajo Nation not expressly exempted.

D. “Contract” shall include but not be limited to any subcontract; or grant/subgrant of funds for a specific purpose.

E. “Corporation” shall mean any corporate or chartered entity formed under any Navajo Nation, state, or federal law; and shall include for eligibility identification purposes, all of its board of directors, officers, and controlling shareholders (persons owning of record or beneficially at least twenty-five percent (25%) of the issued and outstanding stock or beneficial interest of the corporation).

F. “Delinquent Accounts Receivable” shall mean any monetary amount owed to the Navajo Nation which is not expressly exempted and is at least thirty (30) days past due.

G. “Easement” shall mean any right-of-way or limited right to use Navajo Nation realty including any transfer, assignment, or extension thereof.

H. “Individual” shall mean any natural person and shall include the person’s spouse pursuant to applicable principles of community property law.

I. “Lease” shall mean any lease, sublease or operating agreement (or any transfer, assignment or extension thereof) for the possession and use of Navajo Nation realty excluding homesite leases.

J. “Other Entity” shall mean any other individual, business, company or other organization or entity not covered in Subsections (B),(E),(H), and (K) excluding the federal government and its instrumentalities; and shall include each associated individual for eligibility identification purposes.

K. “Partnership” shall mean any partnership formed under any Navajo Nation or state law or any group of two (2) or more individuals who hold themselves out as a partnership, formally or informally, including but not limited to joint venture partners, brokers, dealers, etc., and shall include each individual partner for eligibility identification purposes.

L. “Permit” shall mean any permit (excluding grazing and land use permits), license or revocable agreement for the temporary use of Navajo Nation

12 N.N.C. § 1503

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realty or personalty or the grant of authority to allow specific acts including any transfer, assignment, or extension thereof.

M. "Procurement" shall mean the purchase or lease of goods and services by the Navajo Nation.

History

CD-62-86, December 11, 1986. Center" is now the "Crownpoint Institute of Technology" pursuant to ACJA-7-87, January 2, 1987.

Note. Slightly reworded and reorganized for purposes of statutory form. The "Navajo Skill

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

1. **Construction and application** *Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 96, 98 (Nav. Sup. Ct. 1994).
"The ONLR fits under the definition of Navajo Nation in the Procurement Act." *PC & M*

§ 1504. Eligibility and compliance under the Act

A. The determination of eligibility of an applicant for each and every transaction subject to this Act shall be made initially by the appropriate department or entity of the Navajo Nation, as defined in § 1503(A) which receives an applicant's request for consideration for a business opportunity, procurement activity or loan.

B. As a condition precedent to further review and processing by the Navajo Nation, such eligibility of the applicant shall be confirmed by either:

1. Evidence of compliance verifying the initial eligibility of the applicant in that none of the conditions cited in § 1505(A)-(D) below are applicable; or
2. Evidence of clearance verifying that the applicant has since remedied all applicable bases for previous ineligibility cited in § 1505(A)-(D) below and is now eligible as an applicant in conformance with this Act.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1505. Ineligibility

No applicant individual, business, corporation, partnership or other entity shall be eligible to do any business with the Navajo Nation as set forth in § 1502 (i.e., as a contractor, grantee, consultant, broker, dealer, vendor, supplier, permittee, lessee, easement or loan recipient, etc.); or receive any certifica-

tion or advantage under the Navajo Nation Business Opportunity Act; or receive any contract, purchase order (P.O.), request for direct payment (R.D.P.), or other accounts payable order for procurement from the Navajo Nation; or be granted a Navajo Nation easement, permit or lease, or loan of any type from the Navajo Nation if any one of the following circumstances apply:

A. If there is an outstanding money judgment in favor of the Navajo Nation from a court of competent jurisdiction or a valid delinquent accounts receivable debt which is due and owing to the Navajo Nation from that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity; or

B. If under any transaction, contract or legal relationship with the Navajo Nation, there has been evidence of default of materially deficient business practices or failure to meet a material contractual or financial obligation to the Navajo Nation or failure to materially comply with applicable laws or material delay by that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, resulting in monetary or other detriment to the Nation which remains uncured; or

C. If that applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, has been found to have engaged in unlawful or criminal actions or other activities which adversely reflects on the honesty and moral character of said party(ies) so as to make any dealings with the Navajo Nation undesirable; or

D. If the individual or any individual(s) of the applicant entity either in its present form or in any other identifiable capacity as an individual, business, corporation, partnership or other entity, has been convicted of a criminal offense within the previous ten (10) years under any Navajo Nation, state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or committing a criminal offense relating to obtaining a public/private contract or in the performance of such contract.

History

CD-62-86, December 11, 1986.

Library References

Indians ¶24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1506. Removal of ineligibility

A. Any individual, business, corporation, partnership or other entity may remove a determination of ineligibility based on § 1505(A) of this Act by paying in full all outstanding amounts owed to the Navajo Nation. Such payment shall not be contingent in any way on the future eligibility of the party(ies)

12 N.N.C. § 1506

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under this Act. Only upon full and complete payment, will the individual, business, corporation, partnership or entity be considered eligible under § 1505(A) for application for business opportunities, procurement activities and loans from the Navajo Nation.

B. Removal of a determination of ineligibility based on § 1505(B), (C) and (D) shall be set forth in rules and regulations promulgated pursuant to § 1511 herein.

History

CD-62-86, December 11, 1986.

Library References

Indians ⚡24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1507. Right of offset

If the applicant entity in its present form or any other identifiable capacity as an individual, business, corporation, partnership or other entity, has an outstanding money judgment against it in favor of the Navajo Nation or a delinquent accounts receivable debt which is due and owing to the Navajo Nation, upon due notice the Navajo Nation may offset its money claim against any amount it owes to or has an account payable to the individual, business, corporation, partnership or other entity.

History

CD-62-86, December 11, 1986.

Library References

Indians ⚡24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

1. Construction and application

“The Navajo Business and Procurement Act permits the Navajo Nation, upon due notice, to offset its money claim against any amount it owes to a business.” *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).

2. Purpose

“The Navajo Business and Procurement Act was created to enforce the Navajo Nation Collection System in the best interests of the Navajo Nation.” *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 96, 98 (Nav. Sup. Ct. 1994).

§ 1508. Administrative review process

A. Any applicant may file a written appeal within seven (7) calendar days of receipt of a determination of ineligibility or notice of intent to offset with a Hearing Officer appointed for this purpose. The Hearing Officer shall act upon and render a final decision within thirty (30) days from the date of receipt of the protest. All final decisions shall include a statement of findings of fact, conclusions and the reasons therefor.

B. The Hearing Officer shall be appointed by the President of the Navajo Nation.

History

CD-62-86, December 11, 1986.

Library References

Indians ↻24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

- 1. **Construction and application** requires the hearing officer to make findings of fact, conclusions of law, and a decision.” *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).
“The Navajo Business and Procurement Act permits a party to appeal a notice of intent to offset to a hearing officer. That section also

§ 1509. Final appeal

A final decision of the Hearing Officer may be appealed to the Navajo Nation courts. Such appeal shall be limited to questions of law and the Hearing Officer’s findings of facts shall be sustained, provided there is some basis in the evidence for such findings.

History

CD-62-86, December 11, 1986.

Library References

Indians ↻24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

Annotations

- 1. **Construction and application** *PC & M Construction Company, Inc. v. Navajo Nation, et al.*, 7 Nav. R. 58, 59 (Nav. Sup. Ct. 1993).
“The Navajo Business and Procurement Act provides for an appeal of the hearing officer’s decision to the Navajo Nation Supreme Court.”

§ 1510. Construction of the Act

Eligibility and compliance under this Act shall be construed as an additional requirement which is a condition precedent to the application of other appropriate Navajo Nation laws, rules, regulations and program requirements. Nothing in this Act shall be construed to waive or supersede such other applicable law, program, or Navajo Nation requirements unless said requirements are inconsistent with this Act, in which event § 1512 shall apply. Any action(s) by employees or officials of the Navajo Nation in violation of this statute shall be null and void.

History

CD-62-86, December 11, 1986.

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1511. Delegation of authority/responsibility for monitoring and enforcement

The Division of Finance, the Division of Economic Development and the Department of Justice in conjunction with the Office of the Attorney General are delegated the authority and responsibility to promulgate rules and regulations as necessary, and to monitor, enforce and implement the intent of this Act. Said rules and regulations shall require the approval of the Government Services Committee of the Navajo Nation Council.

History

CD-62-86, December 11, 1986. solved Clause #10), and 2 N.N.C. § 341 *et seq.*
Note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15, 1989 (Re- for the authority of the Government Services Committee.

Library References

Indians ⇨24, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 12, 31.

§ 1512. Prior inconsistent law repealed

All prior Navajo Nation laws, regulations, rules and provisions of the Navajo Nation Council previously adopted, to the extent they are inconsistent with this Act, are repealed.

History

CD-62-86, December 11, 1986.

§ 1513. Severability of the Act

If any provision of this Act is held invalid by any court of competent jurisdiction, the remaining provisions of the Act shall have full force and effect.

History

CD-62-86, December 11, 1986.

§ 1514. Express exceptions under the Act

The following transactions are expressly exempted from compliance and consideration under this Act: gifts, homesite leases, grazing and land use permits, educational scholarships, educational loans, and water use assessments for Navajo-owned farms and irrigation projects.

History

CD-62-86, December 11, 1986.

Library References

Indians ↻24, 32(4.1).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 12, 31.

§ 1515. No waivers or other exceptions

No waiver of or other exception to any requirement of this Act shall be granted except by valid resolution of the Navajo Nation Council.

History

CD-62-86, December 11, 1986.
Revision Note. Slightly reworded for purpose of statutory form.

§ 1516. Effective date and amendment

The effective date of this Act shall be thirty (30) days after adoption by the Navajo Nation Council and shall remain in effect until modified or repealed by the Navajo Nation Council.

History

CD-62-86, December 11, 1986.

Chapter 17. Business and Industrial Development Fund

Section

- 1701. Establishment
- 1702. Purpose
- 1703. Definitions
- 1704. Program Administration
- 1705. Fund Management
- 1706. Eligibility Requirements
- 1707. Compliance with the Navajo Sovereign Immunity Act
- 1708. Compliance with the Navajo Nation Ethics in Government Law
- 1709. Audit Requirements
- 1710. Amendments

§ 1701. Establishment

A. The Navajo Nation Council established the Navajo Nation Business and Industrial Development Fund with an initial appropriation of thirty million dollars (\$30,000,000). Additional appropriations may be made from time to time by the Navajo Nation Council provided that additional sources of funds are available for appropriation. All money deposited into the Fund, plus accrued interest, shall be used only as provided herein.

B. Based upon the discussion of the Navajo Nation Council the initial capital contribution of twenty-five million dollars (\$25,000,000) was increased to thirty million dollars (\$30,000,000) with the understanding that the addition-

12 N.N.C. § 1701

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al five million dollars (\$5,000,000) contribution would be utilized for small business development at the chapter level.

C. Therefore, twenty-five million dollars (\$25,000,000) will be utilized for financing larger tourism, commercial and industrial development projects, and five million dollars (\$5,000,000) will be utilized for financing small business development at the chapter level.

History

CJY-33-88, July 28, 1988.
CF-3-88, February 3, 1988.
CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1702. Purpose

The purpose of this Fund is to establish a special Navajo Nation fund for providing financing for business and industrial development. The Fund will be utilized for Navajo Nation participation in large tourism, commercial and industrial development projects and small business development projects through various forms of financing including, but not necessarily limited to: direct Navajo Nation investment, direct loans, loan guarantees, or other forms of debt security instruments. Further, to the maximum extent possible, the Fund will be utilized to leverage other sources of funding for project development and implementation.

History

CJY-33-88, July 28, 1988.
CF-3-88, February 3, 1988.
CAU-45-87, August 13, 1987.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 1703. Definitions

The following words used in this Fund Management Plan shall have the following meaning unless the context clearly indicates otherwise, and the singular whenever used herein shall include the plural:

A. "Government Services Committee" means the Government Services Committee, a duly authorized standing committee of the Navajo Nation Council (see 2 N.N.C. § 341 *et seq.*).

B. "B & F" means the Budget and Finance Committee of the Navajo Nation Council (see 2 N.N.C. § 371 *et seq.*).

C. "Division of Economic Development" means the Division of Economic Development, a duly authorized division of the Navajo Nation government (see 2 N.N.C.).

D. “Direct Loan” means the act of financing through the lending of principal to a party for a specific small business, tourism, commercial or industrial development purpose, whereby the principal plus interest will be repaid through an agreed upon schedule of payments or upon demand.

E. “Direct Navajo Nation Investment” means the commitment of monies for the purpose of obtaining a return which may be in the form of, among other things, dividends, rents, profits or creation of permanent jobs for Navajos; the term *investment* may include transactions such as direct or indirect purchase of stocks, bonds, real estate and personal property, etc.; and the procurement of services for economic development master planning, marketing and feasibility studies, engineering and architectural designing, surveying and platting where the same is necessary to the initiation or continuation of a Navajo Nation approved tourism, commercial and industrial development project.

F. “EDC” means the Economic Development Committee, a duly authorized standing committee of the Navajo Nation Council (see 2 N.N.C. § 721 *et seq.*).

G. “Fund” means the Business and Industrial Development Fund as authorized and established by Resolution CAU-45-87, August 13, 1987.

H. “Financing” means the act or process of providing and/or raising funds for business, tourism, commercial or industrial development within the Navajo Nation’s territorial jurisdiction. Such financing may include, but are not necessarily limited to: direct tribal investment, direct loans, loan guarantees or other forms of debt security.

I. “Loan Guaranty” means the designation of specified Fund assets as security for a loan or debt obligation from some source other than the Fund by a party or parties seeking to locate a commercial or industrial enterprise, or to locate, improve or expand a small business enterprise within the Navajo Nation’s territorial jurisdiction.

J. “Navajo Nation” means the Navajo Nation government, including its Legislative, Judicial and Executive branches.

K. “Navajo Nation’s Territorial Jurisdiction” means all Navajo lands as defined in 7 N.N.C. § 254.

L. “Navajo Tribe” means collectively the individuals who are registered Navajos and constitute the membership of the Navajo Tribe/Nation.

M. “N.N.C.” means the Navajo Nation Council, the governing body of the Navajo Nation (see 2 N.N.C. § 101 *et seq.*).

N. “Debt Security” means an asset in the Fund which is pledged to secure a debt obligation of the Navajo Nation and/or which names the Navajo Nation as guarantor.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15,

12 N.N.C. § 1703

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1989 (Resolved Clause #10), and 2 N.N.C. § 341 *et seq.* for the authority of the Government Services Committee. CANDO is no longer an entity of the Navajo Nation. See 2 N.N.C. for the authority of the Division of Economic Development.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1704. Program Administration

A. Legislative Oversight—The Economic Development Committee of the Navajo Nation Council shall review and approve all proposed economic development plans which require the use of Business and Industrial Development Funds and/or assets; and shall be the central point of contact for all economic development activities. Further, the EDC shall have the authority to establish process and procedures for review and approval of Fund project financing.

B. Program Management—The Division of Economic Development has the following delegated duties and responsibilities in matters involving the development of business and industrial development projects and the administration of the Fund:

1. To participate in administering the Fund, and any other funds designated for business and economic development;
2. To plan, implement and manage Navajo development projects including, but not necessarily limited to: (a) expanding, diversifying and privatizing existing Navajo Nation enterprises; (b) planning, developing and constructing facilities and services to capture a major share of the tourism market in the southwestern United States; and (c) improving industrial parks and related infrastructure to increase their attractiveness to industry;
3. To market and solicit proposals from major outside businesses and industries to locate facilities and operations on Navajo Nation industrial sites and assist them in bringing projects to the point of implementation; and
4. To develop policies, proposed regulations and procedures pertaining to specific projects, plans or funds for review and approval by the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-88, July 28, 1988.
CF-3-88, February 3, 1988.
CAU-45-87, August 13, 1987.

ACAU-196-87, August 26, 1987.
Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 1705. Fund Management

A. Fund Manager—The Chief Financial Officer (CFO) of the Division of Economic Development shall maintain the following duties and authorities in matters involving the administration and management of the Fund:

1. Coordinate with the Division of Finance and others as appropriate to manage the Fund and other funds earmarked for development purposes;

2. Develop and recommend appropriate arrangements for project financing; and

3. Administer the Commercial Lending Program of the Navajo Nation through loan officers stationed at the Regional Business Development Offices. In addition to administering current funds for commercial credit, the CFO will develop other financing assistance programs, including loan packaging, loan guarantees, “leveraging” and other methods. The CFO may recommend to the Economic Development Committee of the Navajo Nation Council standards, guidelines and procedures for the approval of loans to improve commercial lending practices.

B. Fund Accounting—The records and books of account for the fund shall be kept separate from the Navajo Nation General Fund as a separate fund with its own “Balance Sheet and Revenue and Expenditure Statement.” Day to day accounting shall be performed by the Division of Finance in accordance with generally accepted accounting practices.

C. Investment Goals and Objectives:

1. The Navajo Nation Council approved the creation of the Fund to be administered and managed in accordance with the established Navajo Nation Investment policies and procedures as provided for by the Budget and Finance Committee of the Navajo Nation Council.

2. The Fund shall be invested in accordance with established Investment Objectives and Policies until such time the Budget and Finance Committee, upon the advice and recommendations of the Fund manager and the Navajo Nation Investment Committee, adopts Investment Objectives and Policies specific to the Business and Industrial Development Fund.

D. Project Financing Practices

1. The Fund may be used to fund different types of financing. These may include: (a) direct Navajo Nation investment; (b) loans; (c) loan guarantees; and (d) various other forms of debt security. The Fund will be apportioned for administrative and financing purposes as follows:

a. Small Business Development Funds. No more than five million dollars (\$5,000,000) of the initial capital contribution shall be designated “Small Business Development Funds” and may be used to provide direct loans/or loan guarantees to projects. Such projects must promote the development of Navajo owned small businesses at the chapter level within the Navajo Nation or within close proximity to the Navajo Nation.

b. Tourism, Commercial and Industrial Development Funds. The remaining twenty-five million dollars (\$25,000,000) of the initial capital contribution to the Fund shall be designated “Tourism, Commercial and Industrial Development Funds” and may be used to provide for direct Navajo Nation financing of industrial, commercial or tourism development projects located anywhere within the Navajo Nation’s territorial jurisdiction. Any interest earnings, rents, dividends, profits due to the Navajo Nation as a result of project financing from this portion of the Fund shall be deposited into this portion of the Fund.

2. Upon approval of this Fund Management Plan, the Division of Economic Development, in consultation with the appropriate Navajo Nation officials and Legislative authorities, will develop the policies, rules and regulations for implementation of the Fund financing programs.

History

CJY-33-88, July 28, 1988.

CF-3-88, February 3, 1988.

See also CAU-45-87, August 13, 1987.

See also ACAU-195-87, August 26, 1987.

See also BFJA-22-87, January 12, 1987.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇨32(4.1).

Westlaw Topic No. 209.

§ 1706. Eligibility requirements

A. Compliance with the Navajo Business and Procurement Act. Compliance with the provisions of the Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*, is a condition precedent to any transactions or granting of any business opportunity, contract, procurement activity; or processing any easement, permit, lease transaction; or considering any loan application by or from the Navajo Nation to any individual, business, corporation, partnership or entity other than the Navajo Nation. Therefore, “eligibility and compliance under the Act” as defined in 12 N.N.C. § 1504 must be satisfied and met prior to further consideration and processing of any application or request for project financing through the Fund.

B. General Application Requirements

1. Once the provisions of Subsection (A) above are satisfied, the party requesting and seeking funding must satisfy the following general application requirements:

a. **Nature of Business.** The party must be engaged in or actively pursuing the creation of an enterprise for the sale (either wholesale or retail), manufacturing, warehousing or distribution of a product or service;

b. **Employment.** The party must be adding or creating new permanent Navajo Nation based employment opportunities, or retaining Navajo jobs that would otherwise be lost;

c. **Ownership/Equity Interest or Representative Capacity.** The party must demonstrate; (a) Sole Proprietorship—one hundred percent (100%) proof of ownership; or (b) Partnership or Joint Venture—the party must hold at least a fifty-one percent (51%) equity position in the business or company; or (c) Corporation—the party must demonstrate that participation in the contract has been authorized by corporate resolution and that the party is authorized to represent the corporation;

d. **Minimum Capital Investment Requirement.** The party must, at a minimum, provide capital investment of twenty percent (20%) of the cost of the project from sources independent of the Fund or any other

Navajo, state or federal sources. The party must provide proof that said twenty percent (20%) minimum capital investment is available and can be drawn from a verified source or sources. This provision is not applicable to the Navajo Small Business Development Fund;

e. Benefit. The proposed project, if implemented, must directly benefit the members and residents of the Navajo Nation; and

f. Submission of a Standard Business Plan. The party must demonstrate a genuine desire for the success of the proposed project as evidenced by submission of a standard business plan elements and sub-elements:

(1) Business Summary. General business description (name, location and plant description, product, market and competition, management expertise), business goals, summary of financial needs and application of funds, projected earnings and potential returns to investors;

(2) Description of Products and/or Services. Describe: products; proprietary position: patents, copyrights, and legal and technical considerations; and compare products/services to competitors' products/services;

(3) Detailed Market Analysis. A detailed analysis describing the total market, industry trends, the target markets, and competition;

(4) Detailed Marketing Plan. Describe: overall strategy, pricing policy and methods of selling, distributing and servicing products;

(5) Management and Organization. Describe and/or submit: form of business organization, board of directors composition, officers within organization chart and responsibilities, resumes of key personnel, staffing plan and number of employees, facilities planned, other capital improvements, and operating plan and schedule of upcoming work for next one to two (2) years; and

(6) Financial Data. Submit: financial statements (five (5) years to present); and five-year financial projections (first year by quarters; remaining years annually) for: profit and loss statements, balance sheets, cash flow charts and capital expenditure estimates. Explain: projections, key business ratios, use and effect of new funds, and potential return to investors.

2. Upon approval of this Fund Management Plan, the Division of Economic Development in consultation with the appropriate Navajo Nation officials and Legislative authorities, will further develop specific policies, rules and regulations for implementation of the above general application requirements.

History

CJY-33-88, July 28, 1988.
 CF-3-88, February 3, 1988.
 CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Navajo Business and Procurement Act, 12 N.N.C. § 1501 *et seq.*

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1707. Compliance with the Navajo Sovereign Immunity Act

Under the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, the Navajo Nation and certain elected officials of the Navajo Nation are immune from suit and/or may not be subpoenaed or otherwise compelled to appear or testify in the courts of the Navajo Nation, or any proceeding which is under the jurisdiction of the courts of the Navajo Nation concerning any matter involving such official's actions pursuant to his or her official duties; except as provided for in § 554 of the citation above; and in the event that such a suit must be brought against the Navajo Nation and/or its duly authorized representatives, in actions involving project financing through the Fund, then the procedure defined within § 555 of the same citation above must be followed.

History

CJY-33-88, July 28, 1988.
CF-3-88, February 3, 1988.
CAU-45-87, August 13, 1987.

Revision Note. Slightly reworded for purpose of statutory form.

Cross References

Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 1708. Compliance with the Navajo Nation Ethics in Government Law

The Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*, requires accountability to the people of the Navajo Nation by their elected, appointed and assigned public officials and employees in exercising the authority vested or to be vested with them as a matter of public trust, through the following provisions:

A. Establishing and requiring adherence to standards of conduct to avoid such conflicts of interest as the use of public offices, employment or property for private gain, the granting and exchange of favored treatment to persons, businesses or organizations; and the conduct of activities by such officials and employees which permits opportunities for private gain or advantage to influence government decisions.

B. Providing for a more informed electorate by requiring the disclosure of significant economic and business interests and affiliations of public officials which involve any potential for conflict with the primary interests of the people and government of the Navajo Nation; and

C. Requiring public officials and employees to abstain from, using any function of their office or duties, in a manner which could place, or appear to place, their personal economic or special interests before the interests of the general public.

D. All provisions of the Act must be fulfilled throughout the process of review and approval of any application or request for project financing through the Fund.

History

CJY-33-88, July 28, 1988.
 CF-3-88, February 3, 1988.
 CAU-45-87, August 13, 1987.

Revision Note. Slightly reworded for purpose of statutory form.

Cross References

Navajo Nation Ethics in Government Law, 2 N.N.C. § 3741 *et seq.*

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 1709. Audit requirements

The Fund shall be audited annually by independent outside auditors. Within sixty (60) days of the end of each fiscal year, a certified audit report shall be distributed to the members of the Navajo Nation Council. The report shall be written in easily understandable language. The report shall include standard financial statements, and any other financial statements required by federal or Navajo Nation laws.

History

CJY-33-88, July 28, 1988.
 CF-3-88, February 3, 1988.
 CAU-45-87, August 13, 1987.

Library References

Indians ⇄32(4.1).
 Westlaw Topic No. 209.

§ 1710. Amendments

Any section(s) may be amended by a majority vote of a quorum of the Navajo Nation Council based upon recommendation from the Government Services Committee of the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council.

History

CJY-33-88, July 28, 1988.
 CF-3-88, February 3, 1988.
 CAU-45-87, August 13, 1987.

Note. Slightly reworded for purposes of statutory form. The Advisory Committee is no

longer a standing committee of the Navajo Nation Council. See CD-68-89, December 15, 1989 (Resolved Clause #10), and 2 N.N.C. § 341 *et seq.* for the authority of the Government Services Committee. See 2 N.N.C. § 721

et seq. for the authority of the Economic Development Committee.

Chapter 18. Oil and Gas Development Special Revenue Fund

Section

- 1801. Establishment
- 1802. Purpose
- 1803. Program administration
- 1804. Fund management
- 1805. Effective period
- 1806. Audit requirements

§ 1801. Establishment

There is established the “Oil and Gas Development Special Revenue Fund” (hereinafter “Fund”). During the first fiscal year, the Office of the Controller shall deposit into such Fund a sum not less than three million dollars (\$3,000,000) from any additional sources of income that becomes available to the Navajo Nation. During the four (4) fiscal years thereafter, the Office of the Controller shall deposit into such Fund a sum not less than three million dollars (\$3,000,000) per fiscal year from general revenue sources. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided herein.

History

CO-97-99, October 20, 1999.

Library References

Indians ⇄ 16.10.
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

§ 1802. Purpose

The purpose of this Fund is to establish a special fund to provide financing for development projects and related costs of the Navajo Nation Oil and Gas Company, Inc. (hereinafter “Company”) in furtherance of the Navajo Nation Energy Policy announced in January 1992 and pursuant to its corporate charter.

History

CO-97-99, October 20, 1999.

Library References

Indians ⇄ 16.10.
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

§ 1803. Program administration

A. Legislative Oversight. The Resources Committee of the Navajo Nation Council shall review and approve all requests from the Company which will require the use of money from the Fund for development projects.

B. Program Management. As authorized in its federal charter, the Company shall use the funds:

1. To own and operate, directly or through subsidiary corporations, joint ventures, associations, partnerships or otherwise, any oil and/or gas production, operating, refining, drilling or marketing businesses; and any motor or fossil fuel distributing, trucking, jobber, wholesale, or retailing and related business.
2. To form subsidiary corporations and to enter into and form partnerships, joint ventures, associations and other business arrangements.
3. To conduct activities in all phases of the oil and gas industry either within or outside of Navajo Indian Country.
4. To engage in any lawful business with the powers permitted to a corporation organized pursuant to 25 U.S.C. § 477.

History

CO-97-99, October 20, 1999.

Library References

Indians ⇄ 16.10.
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

§ 1804. Fund management

A. Fund Accounting.

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund as a separate fund with its own balance sheet and revenue and expenditure statement. Day to day accounting for the Fund shall be performed by the Navajo Division of Finance in accordance with generally accepted accounting principles.

2. The Company shall account for the funds spent out of the Fund. Such accounting shall be included as part of the annual report of the Company submitted to its shareholder's representatives.

B. Investment Goals and Objectives. All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

1. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and
2. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

12 N.N.C. § 1804

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C. Financing Practices. The Fund shall be used to finance development projects and related costs for the Company related to the oil and gas industry in furtherance of the Navajo Nation Energy Policy announced in January 1992, including, but not limited to, enhancement of crude oil marketing, purchase of existing oil or gas production, exploration and development of new oil wells, development of a vertically integrated oil company, development or acquisition of a pipeline, development or acquisition of a refinery, and participation in energy generation projects.

History

CO-97-99, October 20, 1999.

Revision Note. Slightly reworded for purpose of statutory form.

Library References

Indians ⇄ 16.10.

Westlaw Topic No. 209.

C.J.S. Indians §§ 107 to 108.

§ 1805. Effective period

The effective date of the Fund shall be the beginning of Fiscal Year 2000, and the Fund shall be maintained for five fiscal years thereafter. At the end of the fifth full fiscal year, any funds remaining in the Fund that have not been budgeted by the Company, in consultation with the Resources Committee of the Navajo Nation Council, for projects contemplated under § 1804(C) shall be returned to the Navajo Nation, and this Chapter shall expire, unless extended by resolution of the Navajo Nation Council.

History

CO-97-99, October 20, 1999.

§ 1806. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CO-97-99, October 20, 1999.

Library References

Indians ⇄ 16.10.

Westlaw Topic No. 209.

C.J.S. Indians §§ 107 to 108.

Chapter 19. Insurance Services Fund

Section

1901. Insurance Services Fund

§ 1901. Insurance Services Fund

A. There is created in the treasury of the government of the Navajo Nation a series of funds to be known as the Insurance Services Fund.

B. All monies received by the Insurance Services Department for insurance purposes shall be deposited into this Insurance Services Fund.

C. In addition to those monies contributed or appropriated pursuant to Subsection (B) of this Section, any premium refunds, reimbursements, lien recoveries and interest accrued on monies deposited into this Fund shall remain in this Fund.

D. Monies deposited to this Fund shall be expended according to fund management plans approved by the Insurance Commission and the Budget and Finance Committee. These fund management plans will be actuarially based with amounts in excess of reserve requirements being refunded to the participants of the various insurance programs.

E. Notwithstanding the foregoing, the Insurance Commission may, in its discretion, direct some balance to be maintained in these funds in anticipation of claims and other expenses related to the provision of Insurance Services.

History

CJA-17-99, January 28, 1999.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

Chapter 20. Capital Outlay Match Funding Special Revenue Fund

Section

- 2001. Establishment
- 2010. Purpose
- 2020. Program administration
- 2030. Fund management
- 2040. Effective date
- 2050. Audit requirements
- 2070. Amendments

§ 2001. Establishment

There is hereby established the “Capital Outlay Match Funding Special Revenue Fund” (hereinafter “Fund”). During the annual appropriation the Navajo Nation Council shall appropriate two million dollars (\$2,000,000) to the Fund from any sources of income that becomes available to the Navajo Nation. Any money deposited into the Fund, plus accrued interest, shall be used only as provided herein. These funds shall not lapse on an annual basis, pursuant to 12 N.N.C. § 820(N).

History

CD-85-00, December 14, 2000.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 2010. Purpose

The purpose of this Fund is to establish a special fund to provide match funding and cost reimbursement for the States of Arizona, Utah and New Mexico partially funded capital outlay projects. Often times said states will require the Navajo Nation to match fund and/or cost reimburse the capital outlay projects that benefit the Navajo people residing on the Navajo Nation in the respective States, and there is no ready source of funds within the budget of the Navajo Nation to make the match and/or cost reimbursement. This Fund is created to address this deficiency.

History

CD-85-00, December 14, 2000.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 2020. Program administration

A. Legislative oversight. The Transportation and Community Development Committee of the Navajo Nation Council shall review and approve all requests from the Navajo local chapters and Navajo government branches, divisions, departments and programs that require the use of money from the Fund for match funding and/or cost reimburse capital outlay projects that are partially funded by the State of Arizona, Utah or New Mexico.

B. Program management. The Capital Improvement Office of the Division of Community Development shall have the authority and responsibility to use the Fund to match fund and/or cost reimburse capital outlay projects that are partially funded by the States of Arizona, New Mexico and Utah with concurrence by the Transportation and Community Development Committee of the Navajo Nation Council in conformance with § 2030(C), Matching Practices. Such requests for funding road and airport projects shall follow the established process including the capital improvement project policies and procedures.

History

CD-85-00, December 14, 2000.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

§ 2030. Fund management**A. Fund accounting**

1. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and revenue and expenditure statement. The day-to-day accounting for the Fund shall be performed by the Navajo Nation Division of Finance in accordance with generally accepted accounting principles.

2. The Capital Improvement Office shall account for the money spent out of the Fund. Such accounting shall be included as part of the quarterly program reports submitted to the Transportation and Community Development Committee of the Navajo Nation Council and the Navajo Nation Council.

B. Investment goals and objectives. All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

1. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and

2. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

C. Matching and cost reimbursement practices. The Fund shall be used to match fund and/or cost reimburse capital improvement projects, as defined at 12 N.N.C. § 810(F) of the Navajo Nation Appropriations Act, that are partially funded by the States of Arizona, Utah and New Mexico for the construction of, including but not limited to, preschool buildings, chapter houses and multi-purpose buildings on the Navajo Nation. The monies can be used to fund any stage of the projects such as planning, designing, required clearances, construction, etc. The Transportation and Community Development Committee of the Navajo Nation Council shall approve the use of the monies in the Fund. This provision shall not deemed to waive or amend any requirement of law concerning the recovery of indirect costs, including 2 N.N.C. § 824(B)(9).

History

CD-85-00, December 14, 2000.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 2040. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2001 and shall remain in effect until the Navajo Nation Council terminates the Fund by resolution.

History

CD-85-00, December 14, 2000.

12 N.N.C. § 2050

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§ 2050. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CD-85-00, December 14, 2000.

Library References

Indians ☞32(4.1).
Westlaw Topic No. 209.

§ 2070. Amendments

This Fund Plan of Operation shall be amended by the Navajo Nation Council from time to time upon the recommendation of the Transportation and Community Development Committee of the Navajo Nation Council.

History

CD-85-00, December 14, 2000.

Chapter 21. Navajo Nation Water Rights Claim Fund

Section

- 2101. Establishment
- 2102. Purpose
- 2103. Expenditure of the Fund; authorization; Fund expenditure plan
- 2104. Fund accounting
- 2105. Investment of the Fund
- 2106. Audit requirements
- 2107. Amendments
- 2108. Effective date

§ 2101. Establishment

There is hereby established the “Navajo Nation Water Rights Claim Fund” (hereinafter the “Fund”). During the annual operating budget appropriations the Navajo Nation Council shall appropriate no less than two million dollars (\$2,000,000) to the Fund from any and all projected revenue. Additional money may be added to the Fund at any time. Any money deposited into the Fund, plus accrued interest, shall be used only as provided in this Chapter. These funds shall not lapse on an annual basis pursuant to 12 N.N.C. § 820(N), but shall be a continuing account.

History

CMY-47-02, May 17, 2002.

Library References

Indians ☞16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2102. Purpose

The purpose of this Fund is to provide assured annual funding for the protection of the Nation's water rights in the States of Arizona, Utah and New Mexico. On April 9 and 12, 2002, the Navajo Nation Council received reports from the Navajo Nation water rights experts, Navajo Department of Justice, Navajo Nation President, and Navajo people all indicating that the Navajo Nation must diligently pursue and protect the Navajo Nation's water rights in the Little Colorado River, Colorado River Main Stem, San Juan River in Utah and San Juan River in New Mexico. As used in this Chapter, water rights shall mean the development, filing and adjudication or settlement of claims in any jurisdiction and the establishment and operation of whatever program or offices are deemed necessary to further the purposes stated herein.

History

CMY-47-02, May 17, 2002.

Library References

Indians ☞16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2103. Expenditure of the Fund; authorization; Fund expenditure plan

A. The Fund shall be expended pursuant to a Fund Expenditure Plan.

B. The Navajo Nation Water Rights Claim Commission shall establish the policies and priorities for the expenditure of the Fund and the Commission is hereby delegated the authority to approve the budget and expenditure of the Fund. Said policies and priorities shall be developed and in place by August 1, 2002.

C. The Navajo Nation Water Rights Commission, the Attorney General, the Controller, the Budget and Finance Committee, and the Resource Committee are hereby authorized to promulgate a Fund Expenditure Plan specifying the procedures for requesting the use of money from the Fund.

History

CMY-47-02, May 17, 2002.

Library References

Indians ☞16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2104. Fund accounting

A. The records and books of account for the Fund shall be kept separate from the Navajo Nation General Fund with its own balance sheet and revenue and expenditure statement. The day-to-day accounting for the Fund shall be performed by the Division of Finance in accordance with generally accepted accounting principles.

12 N.N.C. § 2104

FISCAL MATTERS

B. The Office of the Attorney General shall account for the money spent out of the Fund. Such accounting shall be included as a part of the quarterly program reports submitted to the Resources Committee of the Navajo Nation Council and the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

Library References

Indians ⇌ 16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2105. Investment of the Fund

All monies deposited into the Fund shall be invested as soon as practicable in accordance with:

A. The degree of care exercised by reasonable and prudent managers of investments intended to produce maximum growth of the investments with a high degree of safety; and

B. The Investment Objectives and Investment Policies of the Navajo Nation as formally adopted by the Budget and Finance Committee of the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

Library References

Indians ⇌ 16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2106. Audit requirements

The Fund shall be audited annually by independent auditors as part of the overall audit of the Navajo Nation government.

History

CMY-47-02, May 17, 2002.

Library References

Indians ⇌ 16.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 101 to 106.

§ 2107. Amendments

This Chapter may be amended only by ninety percent (90%) vote of all members of the Navajo Nation Council and upon the recommendation of the Resources Committee of the Navajo Nation Council.

History

CMY-47-02, May 17, 2002.

§ 2108. Effective date

The effective date of the Fund shall be the beginning of Fiscal Year 2003 and shall remain in effect until the Navajo Nation Council terminates the Fund by resolution.

History

CMY-47-02, May 17, 2002.

Chapter 23. Diné Higher Education Grant Fund

Section

- 2301. Establishment
- 2302. Purpose
- 2303. Fund Administration
- 2304. Effective Period

§ 2301. Establishment

There is established the “Diné Higher Education Grand Fund” (hereinafter “Fund”). The Fund shall be held in trust for the governmental units set forth herein. Thereafter, the Office of the Controller shall deposit into such fund the sum of seven million two hundred thousand dollars (\$7,200,000) per fiscal year from annual recurring revenue sources. Any money deposited into the Fund plus accrued interest, shall be used only as provided herein. And furthermore, the Diné College, Crownpoint Institute of Technology and Navajo Nation Scholarship and Financial Assistance Program shall not request supplemental appropriations during the life of this Act.

History

CJY-39-04, July 23, 2004.

§ 2302. Purpose

The purpose of this Fund is to establish a special fund to provide funds as developed and subject to approval by the Education Committee and recommended to the Navajo Nation Council.

History

CJY-39-04, July 23, 2004.

§ 2303. Fund Administration

A. Legislative Oversight. The Navajo Nation Council Education Committee shall review and approve all requests from the governmental units, which will require the use of money from the Fund for development and operating projects.

12 N.N.C. § 2303

FISCAL MATTERS

B. Program Management. As authorized by their enabling legislation or plan of operations, the governmental units shall use the funds:

- 1. Diné College
 - a. To operate and maintain programs, facilities, and maintenance.
 - b. To enter into and form partnerships, joint ventures, associations, and other initiatives and arrangements.
 - c. To conduct activities in all areas of higher education.
- 2. Crownpoint Institute of Technology
 - a. To operate and maintain programs, facilities, and maintenance.
 - b. To enter into and form partnerships, joint ventures, associations, and other initiatives and arrangements.
 - c. To conduct activities in all areas of higher education.
- 3. Office of Navajo Nation Scholarship & Financial Assistance
 - a.¹ To provide financial assistance to eligible applicants at the undergraduate, graduate, and dissertation levels.

C. Fund Distribution

The Fund shall be distributed yearly in the following amounts:

Diné College	\$4,200,000
Crownpoint Institute of Technology	\$1,500,000
Scholarship & Financial Assistance	\$1,500,000

D. Fund Management

1.² Fund Accounting. The records and books of account for the governmental units shall be kept separate from the Navajo General Fund as a separate Fund with its own Balance Sheet and Revenue and Expenditure Statement. Day to day accounting for the Fund shall be performed by the governmental units in accordance with generally accepted accounting principles. The Governmental units shall account for the funds spent out of the Fund. Such accounting shall be included as part of the Annual Audit of the Navajo Nation submitted to the Navajo Nation Council.

¹ So in original; no B.3.b was enacted.

² So in original; no D.2. was enacted.

History

CJY-39-04, July 23, 2004.

§ 2304. Purpose

The effective date of the Fund shall be the beginning of Fiscal Year 2006, and shall be maintained for twenty (20) fiscal years thereafter.

History

CJY-39-04, July 23, 2004.

Title 13

Health and Welfare

Chapter	Section
1. Food Service Sanitation Code	1
2. Civil Tobacco Liability Enforcement and Recovery Act	401
3. Slaughterhouses and Meat Processing Establishments	501
5. Retail Food Store Sanitation Code	901
6. Food and Beverage Vending Machine Sanitation Code	1301
7. Navajo Nation Mobile Home Park Code	1401
9. Dog and Cat Control	1701
11. Burials	1901
13. Tuberculosis or Other Contagious Disease	2101
15. Child Day Care Centers	2301
17. Nursing Homes	2501
19. Midwives	3101
21. Discharge of Sulfur	3151
23. Navajo Nation HIV/AIDS Code	3201
25. Navajo Nation Human Research Code	3251
31. Community Works Program	3301
33. Assistance to Needy	3501
35. Contributions to Worthy Causes	3701
37. Navajo Nation Work Experience Program	3901
51. Navajo Home Health Agency	4301
53. [Rescinded]	4501
55. Navajo Nation Safety Committee [Deleted]	4701
57. Navajo Nation Council on Handicapped	4801
59. Alcohol and Drug Abuse Task Force	4901

Cross References

Division of Health, see 2 N.N.C. § 1601 *et seq.*
 Water development and improvement generally, see 22 N.N.C. § 1 *et seq.*

United States Code

Contracts for medical attention for Indians, see 25 U.S.C. §§ 452–454.
 Construction of health facilities, financial assistance by Surgeon General, see 42 U.S.C. § 2005 *et seq.*
 Indians afflicted with contagious or infectious diseases, see 25 U.S.C. § 198.

Code of Federal Regulations

Indian health services, see 42 CFR § 136.1 *et seq.*
 Native American housing assistance, see 24 CFR § 1000.1 *et seq.*

Chapter 1. Food Service Sanitation Code

Subchapter 1. General Provisions

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45. Product thermometers
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47. Chilis and peppers
48. Food display and service—Potentially hazardous foods
49. Milk and cream dispensing
50. Nondairy product dispensing
51. Condiment dispensing
52. Ice dispensing
53. Dispensing utensils
54. Re-service
55. Display equipment
56. Re-use of tableware
57. Food transportation—General

Subchapter 3. Personnel

81. Employee health—General
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84. Employee practices—General

Subchapter 4. Equipment and Utensils

111. Materials—General
112. Solder
113. Wood
114. Plastics
115. Mollusk and crustacea shells
116. Single-service
117. Design and fabrication—General
118. Accessibility
119. In-place cleaning

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- 120. Pressure spray cleaning
- 121. Thermometers
- 122. Non-food-contact surfaces
- 123. Ventilation hoods
- 124. Existing equipment
- 125. Equipment installation and location—General
- 126. Table-mounted equipment
- 127. Floor-mounted equipment
- 128. Aisles and working spaces

Subchapter 5. Cleaning Sanitization and Storage of Equipment and Utensils

- 151. Equipment and utensil cleaning, sanitizing and storage cleaning frequency
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- 192. Drains
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- 194. Toilet design
- 195. Toilet rooms
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- 200. Lavatory maintenance
- 201. Garbage and refuse—Containers
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Subchapter 7. Construction and Maintenance of Physical Facilities

- 221. Floor construction
- 222. Floors carpeting
- 223. Prohibited floor covering
- 224. Floor drains
- 225. Mats and duckboards;
- 226. Floor junctures
- 227. Utility line installation
- 228. Walls and ceilings—Maintenance
- 229. Construction
- 230. Exposed construction
- 231. Utility line installation
- 232. Attachments
- 233. Covering materials installation
- 234. Cleaning physical facilities—General
- 235. Utility facility
- 236. Lighting—General
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- 239. Special ventilation
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- 242. Poisonous or toxic materials—Materials permitted
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- 293. Ice
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- 333. Issuance of sanitation permit
- 334. Suspension of permit, license, or certificate
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- 336. Service of notice
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- 340. Access
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- 343. Inspection report Form 300.3
- 344. Examination and condemnation of food—General
- 345. Review of plans—Submission of plans
- 346. Pre-operational inspection
- 347. Procedure when infection is suspected—General
- 348. Remedies—Penalties
- 349. Injunctions

History

CMY-28-86, May 2, 1986.
ACMA-37-60, March 9, 1960.

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

Subchapter 1. General Provisions

§ 1. Purpose

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 2. Definitions

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

B. “Act” means the Federal Food, Drug and Cosmetic Act of June 25, 1938,¹ as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

KK. “Toxic” means any substance which may have an adverse physiological effect on a person or persons.

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

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

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

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

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

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

¹ 21 U.S.C. § 301 et seq.

² 21 U.S.C. § 321.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 3. Captions

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 2. Food Care

§ 31. Food supplies—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 32. Special Requirements

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 33. Food protection—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 34. Emergency occurrences

In the event of a fire, flood, power outage, sewage flooding or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the Health Advisor, who shall take whatever reasonable action is necessary to protect the public health.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 35. Food Storage—General

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

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

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

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

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

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

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

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

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

H. Food products in storage shall not be stored against the wall. Storage shall be at least six (6) inches from any wall surface and be accessible for inspection.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 36. Refrigerated storage

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

B. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F or below unless maintained in accordance with § 37 of these regulations.

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 37. Hot storage

A. Sufficient hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F located to measure the air temperature in the coolest part of the facility and located to be easily readable. Recording thermometers, accurate to 3°F may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as bainmaries, steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 38. Food preparation—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 39. Raw fruits and raw vegetables

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 40. Cooking potentially hazardous foods

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

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

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

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 41. Dry milk and dry milk products

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 43. Reheating

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 44. Nondairy products

Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only when stored in sanitized, covered containers not exceeding one gallon capacity and cooled to 45°F or below within four (4) hours after preparation.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 45. Product thermometers

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 46. Thawing potentially hazardous foods

Potentially hazardous foods shall be thawed:

- A. In refrigerated units at a temperature not to exceed 45°F; or
- B. Under potable running water of a temperature of 70°F or below, with sufficient water velocity to agitate and float off loose food particles into the overflow; or
- C. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- D. As part of the conventional cooking process.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 47. Chilis and peppers

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 48. Food display and service—Potentially hazardous foods

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 49. Milk and cream dispensing

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

B. Cream or half-and-half shall be provided in an individual service container, a protected pour-type pitcher, or drawn from a refrigerated dispenser

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designed for such service. When pour-type dispensers are emptied, they shall be washed and sanitized before re-use.

C. When canned evaporated or condensed milk is used, the tops of cans will be thoroughly cleaned and punctured with an instrument. Open canned milk will be refrigerated at 45°F or below between use or serving periods and at no time remain out of refrigeration more than two (2) hours total time.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 50. Nondairy product dispensing

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 51. Condiment dispensing

A. Condiments, seasoning and dressing for self-service use shall be provided in individual packages, from dispensers, or from containers protected in accordance with § 55 of these regulations.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 52. Ice dispensing

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 53. Dispensing utensils

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

- A. Stored in the food with the dispensing utensil handle extended out of the food; or
- B. Stored clean and dry; or
- C. Stored in running water; or
- D. Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 54. Re-service

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 55. Display equipment

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 56. Re-use of tableware

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 57. Food transportation—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

Subchapter 3. Personnel

§ 81. Employee health—General

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞384.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 82. Personal cleanliness—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 83. Clothing—General

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 84. Employee practices—General

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 4. Equipment and Utensils

§ 111. Materials—General

Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonab-

sorbent and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors, color, or taste, or contribute to the contamination of food.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 112. Solder

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 113. Wood

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 114. Plastics

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 115. Mollusk and crustacea shells

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 116. Single-service

Reuse of single-service articles is prohibited.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 117. Design and fabrication—General

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

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

C. Equipment containing bearings and gears requiring unsafe lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food onto food-contact surfaces. Only safe lubricants shall be used on equipment designed to receive lubrication of bearings and gears on or

within food-contact surfaces. These lubricating materials shall meet 21 CFR 178.3570.

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 118. Accessibility

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 119. In-place cleaning

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 120. Pressure spray cleaning

Fixed equipment designed and fabricated to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 121. Thermometers

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 122. Non-food-contact surfaces

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 123. Ventilation hoods

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 124. Existing equipment

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 125. Equipment installation and location—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 126. Table-mounted equipment

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

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

1. It is small and light enough to be moved easily by one person; and
2. It has no utility connection, or has a utility connection that disconnects quickly, or has flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 127. Floor-mounted equipment

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

1. Sealed to the floor; or
2. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearances; or
3. Elevated on legs to provide at least a six-inch clearance between the floor and equipment, except that vertically mounted floor mixers may be elevated to provide at least a four-inch clearance between the floor and equipment if no part of the floor under the mixer is more than six inches from cleaning access.

B. Equipment is easily movable if.

1. It is mounted on wheels or casters; and
2. It has no utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 128. Aisles and working spaces

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

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

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

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

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

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

D. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day, except that this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 152. Wiping cloths

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

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

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

¹ 7 U.S.C. § 136 et seq.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 153. Manual cleaning and sanitizing

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

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

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

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

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

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 154. Mechanical cleaning and sanitizing

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

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

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

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

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

F. Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove food particles and soil prior to being washed in a dishwashing/warewashing machine unless a pre-wash cycle is a part of the dishwashing/warewashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces

are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.

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

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

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

1. Single-tank stationary-rack, dual-temperature machine:
 - Wash temperature 150°F
 - Final rinse temperature 180°F
2. Single-tank, stationary-rack, single-temperature machine:
 - Wash temperature 165°F
 - Final rinse temperature 165°F
3. Single-tank, conveyer machine:
 - Wash temperature 160°F
 - Final rinse temperature 180°F
4. Multi-tank, conveyer machine:
 - Wash temperature 150°F
 - Pumped rinse temperature 160°F
 - Final rinse temperature 180°F
5. Single-tank, pot, pan, and utensil washer (either stationary or moving-rack):
 - Wash temperature 140°F
 - Final Rinse temperature 180°F

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 155. Drying

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 156. Equipment and utensils—Handling

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

History

CW-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 157. Equipment and utensils—Storage

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

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

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

of the utensil to the consumer. All unused pre-set tableware will be collected for washing and sanitizing immediately after customer meal period.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 158. Single-service articles

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 159. Prohibited storage area

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

Subchapter 6. Sanitary Facilities and Controls

§ 181. Water supply—General

Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to the Safe Drinking Water Act, Public Law 93-523.¹

¹ 42 U.S.C. § 300-f et seq.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.
 C.J.S. Waters §§ 495 to 497.

§ 182. Transportation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.
 C.J.S. Waters §§ 495 to 497.

§ 183. Bottled water

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).

Waters and Water Courses ☞196.
 Westlaw Topic Nos. 178, 209, 405.

C.J.S. Waters §§ 495 to 497.

§ 184. Water under pressure

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 185. Steam

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Steam ☞1, 5.
Westlaw Topic Nos. 178, 209, 362.
C.J.S. Steam §§ 2, 6 to 13.

§ 186. Sewage—General

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

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞176, 371.
Food ☞5, 6.
Indians ☞32(4.1).
Municipal Corporations ☞713.
Waters and Water Courses ☞202.
Westlaw Topic Nos. 149E, 178, 209, 268, 405.
C.J.S. Municipal Corporations § 1537.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656, 659 to 665.

§ 187. Plumbing—General

Plumbing shall be sized, installed, and maintained according to the latest edition of the Uniform Plumbing Code. There shall be no cross connection between the potable water supply and any nonpotable or questionable water

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supply nor any source of pollution through which the potable water supply might become contaminated.

History

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Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 188. Nonpotable water system

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 189. Backflow

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 190. Grease traps

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 191. Garbage grinders

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 192. Drains

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.
Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 193. Toilet facilities—Toilet installation

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

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

History

CMY-28-86, May 2, 1986.

Library References

Civil Rights ☞1021.
 Food ☞5, 6.
 Indians ☞32(4.1).

Westlaw Topic Nos. 78, 178, 209.
 C.J.S. Civil Rights §§ 4 to 5, 8, 13.

§ 194. Toilet design

Toilets and urinals shall be designed to be easily cleanable.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 195. Toilet rooms

Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 196. Toilet fixtures

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 197. Lavatory facilities—Lavatory installation

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 198. Lavatory faucets

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 199. Lavatory supplies

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 200. Lavatory maintenance

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 201. Garbage and refuse—Containers

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 202. Storage

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

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

C. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Gar-

bage and refuse containers, dumpsters and compactor systems located outside shall be stored on or above a smooth surface of nonabsorbent materials such as concrete or machine-laid asphalt that is kept clean and maintained in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 203. Disposal

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 204. Insect and rodent control—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 205. Openings

Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for

windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight-fitting and free of breaks. Screening material shall not be less than 16 mesh to the inch.

History

CMY-28-86, May 2, 1986.

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

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 221. Floor construction

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 222. Floor carpeting

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 223. Prohibited floor covering

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 224. Floor drains

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 225. Mats and duckboards

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 226. Floor junctures

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

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History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 227. Utility line installation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 228. Walls and ceilings—Maintenance

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 229. Construction

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Westlaw Topic No. 178.

§ 230. Exposed construction

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1, 4.1).
Westlaw Topic Nos. 178, 209.

§ 231. Utility line installation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 232. Attachments

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 233. Covering material installation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 234. Cleaning physical facilities—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 235. Utility facility

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 236. Lighting—General

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

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

1. At least 20 foot candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and
2. At least 10 foot candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas This shall also include dining areas during cleaning operations.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 237. Protective shielding

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 238. Ventilation-General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 239. Special ventilation

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 240. Dressing rooms and areas

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 241. Locker areas

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 242. Poisonous or toxic materials—Materials permitted

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 243. Labeling of materials

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

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞423.
Food ☞5, 6.

Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 178, 209.

§ 244. Storage of materials

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞420, 424.
Food ☞5, 6.

Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 178, 209.

§ 245. Use of materials

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

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

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞420.
Food ☞5, 6.

Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 178, 209.

§ 246. Personal medications

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 247. First-aid supplies

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 248. Premises and building—General

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 249. Living areas

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 250. Laundry facilities

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 251. Linens and clothes storage

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 252. Cleaning equipment storage

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 253. Animals

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 254. Fire and electrical safety

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

History

CMY-28-86, May 2, 1986.

Subchapter 8. Mobile Food Units**Library References**

Food ☞5, 6.	Indians ☞32(4.1).
Health ☞392.	Westlaw Topic Nos. 178, 198H, 209.

§ 271. Mobile food service—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 272. Restricted operation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 273. Single-service articles

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 274. Water system

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 275. Waste retention

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

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞354.
Food ☞5, 6. Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 178, 209.

§ 276. Commissary—Base of operations

- A. Mobile food units shall operate from a commissary or other fixed food service establishment and shall report at least daily to such location for all supplies and for all cleaning and servicing operations.
- B. The commissary or other fixed food service establishment used as a base of operations for mobile food units shall be constructed and operated in compliance with the requirements of these regulations.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 277. Servicing area and operations—Servicing area

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

mobile food unit or where mobile food unit do not contain waste retention tanks.

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

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

History

CMY–28–86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 278. Servicing operations

A. Potable water servicing equipment shall be installed to meet the Health Advisor's approval and shall be stored and handled in a way that protects the water and equipment from contamination.

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

History

CMY–28–86, May 2, 1986.

Subchapter 9. Temporary Food Service

Library References

Food ☞5, 6. Westlaw Topic Nos. 178, 209, 405.
Indians ☞32(4.1). C.J.S. Waters §§ 495 to 497.
Waters and Water Courses ☞196.

§ 291. Temporary food service establishments—General

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

History

CMY–28–86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 292. Restricted operations

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 293. Ice

Ice that is consumed or that contacts food shall, be made under conditions meeting the approval of the Health Advisor. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 294. Equipment

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 295. Single-service articles

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 296. Water

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 297. Wet storage

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

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§ 298. Wastewater

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

History

CMY-28-86, May 2, 1986.

Note. Slightly reworded for purposes of statutory clarity.

Library References

Environmental Law ☞354.

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 149E, 178, 209.

§ 299. Handwashing

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 300. Floors

Floors shall be effectively treated to control dust.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 301. Walls and ceilings of food preparation areas

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

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

History

CMY-28-86, May 2, 1986.

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

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

Subchapter 10. Compliance Procedures

§ 331. Permits, licenses, or certificates—General

No person shall operate a food service establishment who does not have a valid sanitation permit issued to him by the regulatory authority. Only a person who complies with the requirements of this Code shall be entitled to receive or retain such a sanitation permit. Sanitation permits are not transferable. A valid permit shall be posted in every food service establishment. Food processing operations, i.e., canneries, must have a valid sanitation permit issued by the Regulatory Authority and meet the requirements of the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 332. Certifications

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 333. Issuance of sanitation permit

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

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applicant, the location and type of the proposed food service establishment, and the signature of each applicant.

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 334. Suspension of permit, license, or certificate

A. The Regulatory Authority or Health Advisor may, without warning, notice, or hearing suspend any sanitation permit to operate a food service establishment if the holder of the permit does not comply with the requirements of this Code, or if the operation of the food service establishment otherwise constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by § 334(B) of this Code. When a sanitation permit is suspended, food service operations shall immediately cease. Whenever a permit, license, or certificate is suspended, the holder of the permit, license, or certificate shall be afforded an opportunity for hearing within ten (10) days of receipt of a request for hearing.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 335. Revocation of sanitation permit

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 336. Service of notice

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 337. Hearings

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place designated by it. Any oral testimony given at the hearing shall be recorded verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Regulatory Authority shall make a final finding based upon the complete hearing records and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the sanitation permit, by the Regulatory Authority, within ten (10) days after the hearing.

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History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 338. Application after revocation

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 339. Inspections—Inspection frequency

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 340. Access

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 341. Report of inspections

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 342. Correction of violations

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

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

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

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

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

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

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

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

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

History

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

§ 344. Examination and condemnation of food—General

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 345. Review of plans—Submission of plans

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 346. Pre-operational inspection

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 347. Procedure when infection is suspected—General

When the Health Advisor has reasonable cause to suspect possible disease transmission by an employee of a food service establishment, it may secure a

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morbidity history of the suspected employee or make any other investigation as indicated and shall take appropriate action. All investigations shall be conducted in compliance with the provisions of the Privacy Act, and information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

- A. The immediate exclusion of the employee from employment in food service establishments;
- B. The immediate closing of the food service establishment concerned until, in the opinion of the Health Advisor, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and/or
- D. Adequate medical and laboratory examination of the employee and of other employees and of his/her and their body discharges.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 5, 6.
Health ☞384.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 348. Remedies-Penalties

- A. The Regulatory Authority shall execute and enforce the provisions of this Act and in that enforcement is vested with all powers relating to inspecting, sampling, condemnation and embargoing of hazardous substances granted to it with respect to this Code.
- B. If any person shall violate directly or indirectly, through his officers or employees, any of the provisions of this Act, or regulations promulgated thereunder, the Regulatory Authority may order the correction of the violation within such reasonable period of time as the commissioner may prescribe. Such order shall be complied within the time specified.
- C. Any person violating any of the provisions of this Act or orders of regulations promulgated thereunder shall be liable to a penalty of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), and for the second and each succeeding violation, double that of the proceeding infraction, to be collected in a civil action by the Regulatory Authority and deposited in the Navajo Nation General Funds account. Where the violation is of a continuing nature, each day during which it continues, after the date given by which the violation must be eliminated in the order by the Regulatory Authority, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.
- D. The Regulatory Authority is hereby authorized and empowered to compromise and settle any claim for a penalty under the section in such amount in

the discretion of the Regulatory Authority as may appear appropriate and equitable under all of the circumstances.

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞12 to 16.

Westlaw Topic Nos. 178, 209.

Indians ☞32(4.1, 13).

C.J.S. Indians § 157.

§ 349. Injunctions

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

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

Chapter 2. Civil Tobacco Liability Enforcement and Recovery Act

Section

- 401. Short title
- 402. Findings and purpose
- 403. Definitions
- 404. Liability for tobacco-related illnesses
- 405. Independent, non-exclusive remedy; preservation of causes of action
- 406. Abrogation of certain defenses
- 407. Joint and several liability; market share recovery
- 408. Recovery in a single action; use of statistics
- 409. Civil penalties
- 410. Amount of awardable attorneys' fees
- 411. Effective date
- 412. Severability

§ 401. Short title

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ↻32(4.1).
Products Liability ↻59.

Westlaw Topic Nos. 209, 313A.
C.J.S. Products Liability § 65.

§ 402. Findings and purpose

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

B. According to the United States Surgeon General, Native Americans have “substantially higher” smoking rates than any other group in the general United States population. Data compiled by the National Center for Health Statistics shows that the overall prevalence of cigarette smoking among American Indians and Alaska Natives was forty-eight and two-tenths percent (48.2%) in 1978 and thirty-nine and two-tenths percent (39.2%) in 1994–5.

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

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

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

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

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

H. It is the intent of the Navajo Nation and the Indian Health Care Improvement Act¹ that the Navajo Nation recover the costs of providing health care services from third parties held liable for such costs. It is intended that the Navajo Nation shall recover from a liable tobacco manufacturer the costs of treating the tobacco-related illnesses of tribal members.

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

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

¹ 25 U.S.C. § 1601 et seq.

History

CJY-80-99, July 23, 1999.

Library References

Indians ☞32(4.1).

Products Liability ☞59.

Westlaw Topic Nos. 209, 313A.

C.J.S. Products Liability § 65.

§ 403. Definitions

A. “Tribal member” means any member of the Navajo Nation.

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

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

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

E. A “restraint of trade” means a contract, combination, or conspiracy between two or more persons in restraint of trade or commerce. It is a restraint of trade hereunder to agree not to research, develop, manufacture or

sell less harmful tobacco products, or to advertise tobacco based on comparative health claims.

F. An “unfair” act or practice is one which:

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

G. A “deceptive” act or practice is one which has the tendency or capacity to deceive concerning a material fact which a person could be expected to consider in determining whether to commence or continue using tobacco products or a particular brand or type of tobacco product, whether or not any person has in fact been misled, deceived or damaged thereby. It includes the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact. Actual reliance by a person is not required. Nor is it necessary to prove intent to deceive. In evaluating representations and omissions hereunder, the test is whether the act or practice has the tendency or capacity to deceive or mislead the least sophisticated consumer. The technical correctness of a representation is irrelevant if the capacity to deceive or mislead is found.

H. “Unconscionable acts or practices” include, without limitation:

1. Withholding, suppressing or altering information concerning the deleterious health effects of tobacco products in any manner which deprives consumers or governmental authorities of such information;
2. Making insupportable, bad-faith claims of attorney client privilege or work product protection in order to suppress information about the adverse health effects of tobacco;
3. Deliberately enhancing the addictive qualities of tobacco products through such means as increasing the bioavailability of nicotine in tobacco smoke and breeding or selecting strains of tobacco plants that have unusually high nicotine content;
4. Designing ventilation holes and other technology to provide the smoker with higher levels of “tar” and nicotine than those documented in F.T.C. tests; and
5. Not informing “low tar” or “light” smokers of the proper manner in which to smoke those products in order to obtain the lower “tar” and nicotine levels advertised by the tobacco manufacturers.

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

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

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
Products Liability ⚡59.

Westlaw Topic Nos. 209, 313A.
C.J.S. Products Liability § 65.

§ 404. Liability for tobacco-related illnesses

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

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

1. That a tobacco manufacturer, in the research, design, manufacture, distribution, marketing or sale of a tobacco product, did one or more of the following:
 - a. Conspired to restrain trade or engage in restraints of trade;
 - b. Committed an unfair or deceptive act or practice;
 - c. Committed an unconscionable act or practice;
 - d. Was negligent or produced a defective product unreasonably dangerous to the user or consumer who received or will receive medical assistance; or
 - e. Violated any other duties owed under the law of the Navajo Nation.
2. That the tobacco manufacturer’s perpetration of any such act as enumerated in Subsection (B)(1) was a factor in tribal members’ use of unreasonably unsafe tobacco products.
3. That the tobacco products caused the health conditions for which the Nation seeks reimbursement; and
4. The amount of compensatory damages and the appropriateness of any other relief sought.

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
Products Liability ⚡59.

Westlaw Topic Nos. 209, 313A.
C.J.S. Products Liability § 65.

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

A. The right of the Navajo Nation to a cause of action against a tobacco manufacturer hereunder shall be independent of and not construed to affect

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any rights or causes of action by an individual tribal member to recover damages or other relief as a result of tobacco-related illness. In the event that recovery of health care expenditures had been achieved hereunder, and the individual tribal member thereafter recovers damages from a tobacco manufacturer, then the tobacco manufacturer shall be entitled to a setoff for the amount of any such recovery which represents the expenditure on behalf of the individual tribal member.

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
Products Liability ⚡59.

Westlaw Topic Nos. 209, 313A.
C.J.S. Products Liability § 65.

§ 406. Abrogation of certain defenses

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

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
Products Liability ⚡59.

Westlaw Topic Nos. 209, 313A.
C.J.S. Products Liability § 65.

§ 407. Joint and several liability; Market share recovery

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

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ☞32(4.1).

Products Liability ☞59.

Westlaw Topic Nos. 209, 313A.

C.J.S. Products Liability § 65.

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

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

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

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

History

CJY-80-99, July 23, 1999.

Library References

Indians ☞32(4.1).

Products Liability ☞59.

Westlaw Topic Nos. 209, 313A.

C.J.S. Products Liability § 65.

§ 409. Civil penalties

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

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

B. No more than five thousand dollars (\$5,000) per advertisement where such advertisement violates this Act; or

C. Not more than one hundred thousand dollars (\$100,000) per unfair act or practice as provided in sections 404(B)(1)(b) and 403(F) of this Act.

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1), 37.
 Products Liability ⚡59.
 Westlaw Topic Nos. 209, 313A.

C.J.S. Indians § 22.
 C.J.S. Products Liability § 65.

§ 410. Amount of awardable attorneys' fees

The Nation may recover attorneys' fees and costs if it prevails on any claims against any or all of the defendants. The attorneys' fees recoverable under this Act shall be in an amount representing a reasonable hourly rate per hour of work expended plus a multiplier. The multiplier shall have a benchmark of twenty percent (20%) of all amounts recovered hereunder, including damages and civil penalties but not costs. Deviation from the benchmark shall be permitted only if a manifest injustice would occur.

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
 Products Liability ⚡59.

Westlaw Topic Nos. 209, 313A.
 C.J.S. Products Liability § 65.

§ 411. Effective date

This Act, being deemed of immediate importance, takes effect upon enactment, although recovery may be had hereunder for acts occurring prior to the effective date.

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
 Westlaw Topic No. 209.

§ 412. Severability

In the event that any provision of this Act is ruled to be void or unenforceable for any reason, the courts shall give full effect to all other provisions of this Act.

History

CJY-80-99, July 23, 1999.

Library References

Indians ⚡32(4.1).
 Statutes ⚡64(7).

Westlaw Topic Nos. 209, 361.
 C.J.S. Statutes § 88.

Chapter 3. Slaughterhouses and Meat Processing Establishments

Subchapter 1. Generally

Section

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- 502. Alterations or new construction; approval of plans
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Subchapter 1. Generally

§ 501. Definitions

For the purposes of these regulations, the following definitions shall apply:

- A. "Animal" shall mean cattle, sheep, swine, or goat.
- B. "Area Director" shall mean the Navajo Agency Area Director or his designated representative.
- C. "Carcass" shall mean all parts, including viscera, of a slaughtered animal that are capable of being used for human food.
- D. "Employee" shall mean any individual who is employed in any establishment used as a slaughterhouse or meat processing establishment.
- E. "Establishment" shall mean any building, room, or other location occupied or used for slaughtering meat animals or preparing meat food products for human consumption, including meat-canning, curing, smoking, salting, packing, rendering, sausage manufacture, or where any other similar operation is conducted, and shall include all detached buildings or rooms under the control of the operator of the establishment and used in any capacity in connection with its operation.
- F. "Health Advisor" shall mean the United States Public Indian Health Service, Window Rock Field Office, Medical Officer in Charge, or his designated representative.
- G. "Health and Social Services Committee" shall mean the Health and Social Services Committee of the Navajo Nation Council.
- H. "Meat" shall mean the edible part of the muscle of cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing.
- I. "Meat Food Product" shall mean any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, or goat.

J. "Person" shall mean any individual, firm, corporation, partnership, corporate group or association.

K. "President" shall mean the President of the Navajo Nation or his designated representative.

L. "Sanitation Permit" shall mean a written permit issued by the Health and Social Services Committee upon the recommendation of the Health Advisor, reflecting a slaughterhouse or meat processing operator's compliance with these regulations.

M. "Transportation Vehicle" shall mean any vehicle used in the transportation of meat, or meat products, outside of an establishment.

History

ACJA-13-63, January 17, 1963. ACJA-13-63 adopted regulations, attached thereto, defining and regulating sanitation at slaughterhouses and meat-processing establishments; establishing the minimum requirements governing the construction, maintenance, and operation; fixing the responsibilities and duties of owners and operators; authorizing inspection and providing penalties for violations.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(3) and (4).

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 502. Alterations or new construction; approval of plans

Whenever any alteration, modification, or new construction of a slaughterhouse or meat-processing establishment is contemplated by the operator or prospective operator, three sets of plans and specifications shall be submitted to the Health Advisor for review of such plans, and he shall recommend approval or such modifications necessary for approval to the President.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞2.
Health ☞392.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 503. Employees

A. No person who is affected with any disease in a contagious or infectious form, or who is a carrier of such diseases, or any person who has an open sore or lesion, shall work in any establishment, and no establishment shall employ any such person or persons.

B. All employees shall wear clean, washable outer garments and shall keep their hands clean at all times while engaged in handling meat, meat products, utensils or equipment.

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C. Employees shall not expectorate or use tobacco in any form, in any room where meat or meat food products are handled, prepared, or stored.

D. The use of caps or hair nets is required of all employees working in processing rooms.

History

ACJA-13-63, § 6.10, January 17, 1963.

Cross References

Handwashing facilities, see 13 N.N.C. § 610.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 504. Inspections; authority; number; report

A. The President, Health Advisor, and Area Director shall have the power to enter at reasonable times, the property and buildings for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter.

B. The President, Health Advisor, and Area Director are empowered and authorized to make inspections of slaughterhouses and meat-processing establishments and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer systems.

C. It shall be the duty of owner or person in charge of the slaughterhouse or meat-processing establishment to give the President, Health Advisor, or Area Director, free access to such premises at reasonable times for the purpose of inspections.

D. Inspections of slaughterhouse or meat-processing establishments shall be made at least once every twelve (12) months or more often if the President, Health Advisor, or Area Director deems it necessary for the protection of the health of the people.

E. When the inspection is made by the Health Advisor, he will leave with the management, or person in charge of the slaughterhouse or meat-processing establishment, a copy of the completed inspection report which indicates the sanitary conditions of the slaughterhouse or meat-processing establishment. The report shall be displayed in a prominent place on the premises, and one copy forwarded to the President with the recommendations as to necessary action. Also, one copy shall be forwarded to the appropriate person in the Bureau of Indian Affairs interested in such matters. A copy of the inspection report shall also be filed in the records of the Health Advisor.

History

ACJA-13-63, § 3, January 17, 1963.

Note. Insertion of word "President", see CD-68-89, December 15, 1989, resolve § 9.

Library References

Food ☞3.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

Subchapter 3. Sanitation Permits**§ 551. Requirement**

A. No person shall operate a slaughterhouse or meat-processing establishment on the lands of the Navajo Nation who does not possess a valid sanitation permit issued to him by the Health and Social Services Committee.

B. The failure to obtain or maintain a sanitation permit may be cause for termination of a slaughterhouse or meat-processing establishment lease granted by the Health and Social Services Committee.

History

ACJA-13-63, January 17, 1963.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454 (B) (2).

Library References

Food ☞3.
 Indians ☞32(4.1, 9).
 Westlaw Topic Nos. 178, 209.
 C.J.S. Indians §§ 130 to 132, 134.

§ 552. Application; form and contents

Application for sanitation permits shall be in writing signed by the applicant and shall include the following:

- A. The name and address of the applicant; and
- B. The location and legal land description of the slaughterhouse or meat-processing establishment.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞3.
 Indians ☞32(4.1, 9).
 Westlaw Topic Nos. 178, 209.
 C.J.S. Indians §§ 130 to 132, 134.

§ 553. Inspection

Before a permit is issued, the Health Advisor shall inspect the slaughterhouse or meat-processing establishment for which an application for permit has been filed to determine its compliance with the provisions of this chapter.

13 N.N.C. § 553

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History

ACJA-13-63, January 17, 1963.

Cross References

Inspections generally, see 13 N.N.C. § 504.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 554. Issuance

Upon certification of the Health Advisor that a slaughterhouse or meat-processing establishment for which an application for a permit has been filed meets the requirements of this chapter, the President shall issue a sanitation permit.

History

ACJA-13-63, § 2.5, January 17, 1963.

Note. Insertion of word “President”, see CD-68-89, Resolve #9, December 15, 1989.

Cross References

Permit requirement, see 13 N.N.C. § 551.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 555. Hearing on denial of application

Any person whose application for a permit has been denied may request and shall be granted a hearing before the Health and Social Services Committee under the procedure provided by 13 N.N.C. § 682.

History

ACJA-13-63, January 17, 1963.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 556. Display

A sanitation permit shall be displayed in a prominent place within the premises.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 557. Transfer

A sanitation permit shall not be transferable.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 558. New ownership or control—Notice

Every person who succeeds to the ownership or control of a slaughterhouse or meat-processing establishment shall give notice in writing to the President of the Navajo Nation within ten (10) days after having purchased, received by transfer, or gift, or otherwise acquired interest in or control of any slaughterhouse or meat-processing establishment. Such notice shall include the name and address of the previous owner of the slaughterhouse or meat-processing establishment.

History

ACJA-13-63, January 17, 1963.

Note. Insertion of word “President”, see CD-68-89, Resolve #9, December 15, 1989.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 559. Application for permit

Each person who succeeds to the ownership or control of a slaughterhouse or meat-processing establishment shall within ten (10) days file an application for a sanitation permit to be issued to him in the manner provided in this subchapter. Failure to file such application within the 10-day period shall result in suspension of the privilege to operate such slaughterhouse or meat-processing establishment until compliance with this provision.

History

ACJA-13-63, § 2.3, January 17, 1963.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 560. Suspension or revocation

A. Whenever upon inspection of any slaughterhouse or meat processing establishment which holds a permit, conditions or practices are found to exist which are in violation of any provisions of this subchapter, the President shall give notice in writing to the person to whom the permit was issued of such conditions or practices that unless such conditions and practices are corrected within a reasonable period of time, as recommended by the Health Advisor, the permit shall be suspended.

B. At the end of such period, the Health Advisor shall reinspect such slaughterhouse or meat-processing establishment and if such conditions or practices have not been corrected he shall so advise the President, who will give notice in writing to the permittee that the permit has been suspended. Upon receipt of notice of suspension, such person shall cease operation of such establishment at once.

C. Any person whose permit has been suspended, or has received notice from the President that his permit will be suspended unless certain conditions or practices at the slaughterhouse or meat-processing establishment are corrected, may request and will be granted a hearing on the matter before the Health and Social Services Committee as provided by 13 N.N.C. § 682. When no petition for such hearing shall have been filed within ten (10) days following the day when such permit was suspended, such permit shall be deemed to have been automatically revoked.

History

ACJA-13-63, January 17, 1963.

Note. Insertion of word "President", see
CD-68-89, Resolve #9, December 15, 1989.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

Subchapter 5. Sanitation Requirements

§ 601. Premises for establishments

A. No establishment shall be located in barns, sheds, or other buildings not designed or suitable for the slaughtering of animals or for processing of meat and/or meat products; nor shall any slaughtering be done in a manner wherein the carcasses are exposed to dust, dirt, fowls, flies, insects, rodents, cats, dogs, or any other possible source of contamination.

B. The premises of every establishment, including the docks and areas where cars and vehicles are loaded and unloaded, driveways, approaches,

yards, pens, and alleys, shall be paved or properly graded and drained, and kept clean.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 602. Floors

A. The floors in all rooms of the establishment shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair.

B. The floors of killing rooms and refrigerated rooms shall be constructed of impervious material such as dense concrete, or vitrified floor brick of good quality laid on a concrete base, and shall be sloped to permit easy drainage. Killing floors shall be provided with floor drains.

C. The floors in all other rooms of the establishment shall be constructed of dense concrete, vitrified floor brick of good quality laid on a concrete base, tile, terrazzo, tight wood, or other impervious material. Wood floors containing wide cracks, holes, or loose fitting planks are prohibited.

History

ACJA-13-63, January 17, 1963.

Cross References

Cleaning floors, see 13 N.N.C. § 614.
Drainage of floors, see 13 N.N.C. § 607.
Washing floors, see 13 N.N.C. § 612.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 603. Walls, ceilings, partitions and posts

Walls, ceilings, partitions, and posts of all workrooms shall be well plastered or finished with wood, tile, metal, or other impervious material, and shall be suitably finished so as to be washable, and shall be kept clean and in good repair.

History

ACJA-13-63, January 17, 1963.

Cross References

Washing walls, see 13 N.N.C. § 612.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 604. Doors, windows and other openings

A. Doors, windows and other openings to the outside of the establishment shall be fitted with self-closing screen doors and window screens of not coarser than 16 gauge mesh wire or 18 gauge plastic screen during the fly season, unless other effective means are provided to prevent the entrance of flies.

B. Fans of sufficient power to prevent entrance of flies and other insects shall be provided at all otherwise ineffectively protected openings.

History

ACJA-13-63, January 17, 1963.

Cross References

Exclusion of insects generally, see 13 N.N.C. § 618.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 605. Lighting

There shall be adequate lighting in all workrooms of the establishment. Sufficient artificial lighting shall be provided at places where, or at times when, natural lighting is not available. At least 20 foot candles in all areas should be provided except meat inspection and work surfaces which shall have 40 foot candles.

History

ACJA-13-63, January 17, 1963.

Library References

Health ☞392.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 198H, 209.

§ 606. Ventilation

All workrooms shall be well ventilated and shall be free from disagreeable odors, condensation, vapor and smoke. Exhaust fans or ventilating hoods shall be provided wherever necessary. The walls, ceilings, and overhead structures of rooms and compartments in which any product is prepared, handled, or stored shall be kept reasonably free from moisture.

History

ACJN-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 607. Drainage

Floors which require flushing during operations must have a sufficient number of floor drains, properly spaced, to adequately carry off the floor drainage. Each floor drain must be equipped with a deep-seal trap; the drainage lines shall be properly vented to the outside in accordance with the National Plumbing Code, as stated in 13 N.N.C. § 616. In no case shall a drain line be less than four inches in diameter and should be larger where required.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Health ☞392.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 608. Water supply

A. The water supply shall be ample, of safe and sanitary quality, and with adequate facilities for its distribution in the plant and its protection against contamination and pollution. Every establishment shall make known and whenever required, shall afford opportunity for inspection of the source of its water supply, the storage facilities, and the distribution system. Equipment using potable water shall be so installed as to prevent back-siphonage into the potable water system.

B. Nonpotable water is permitted only in those parts of establishments where no edible product is handled or prepared, and then only for limited purposes such as on ammonia condensers not connected with the potable water supply, in vapor lines serving inedible product-rendering tanks. Nonpotable water is not permitted for washing floors, areas, or equipment involved in trucking materials to and from edible products departments, nor is it permitted in hog-scalding vats, dehairing machines, or vapor lines serving edible products rendering equipment, or for cleanup of shackling pens, bleeding areas, or runways within the slaughtering department. In all cases, nonpotable water lines shall be clearly identified (painted yellow) and shall not be cross-connected with the potable water supply.

C. Running hot and cold water, under pressure, shall be easily accessible in all rooms in which meat or meat food products are prepared, and utensils are washed. Outlets and connections to fixtures and equipment shall be so installed as to prevent backflow into the water distribution system, or shall be equipped with backflow preventers.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 609. Toilet and dressing room facilities

A. Every establishment shall have convenient flush-type toilets, separate and apart from rooms where processing; manufacturing, packing, canning, storing or selling of any meat or meat food product is conducted. All toilet room doors shall be provided with springs or checks to make them self-closing. The toilet room or rooms shall be well lighted and ventilated and shall be maintained in a sanitary condition, free from flies. An approved handwashing sign shall be posted in a conspicuous place in all toilet rooms.

B. A supply of toilet tissues shall be provided in toilet rooms at all times.

C. Adequate lockers, or facilities in dressing rooms, shall be provided in, or shall be convenient to, meat-processing establishments for the storage of employees' clothing. Such locker or dressing rooms shall be kept in a clean and orderly condition and shall be separate and apart from any room or rooms where the process of production, processing, manufacturing, packing, canning, storing, selling, or distribution of any meat or meat food product is conducted. Hampers for soiled clothes shall be located in locker or dressing rooms and shall not be located in processing rooms.

History

ACJA-13-63, January 17, 1963.

Cross References

Handwashing facilities generally, see 13 N.N.C. § 610.

Library References

Food ☞5, 6.
 Health ☞392.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 198H, 209.

§ 610. Handwashing facilities

A. Adequate handwashing facilities, including hot and cold running water, soap and sanitary towels, shall be provided in or adjacent to all toilet rooms and in any other locations in the establishment where the nature of the work requires frequent use of such facilities. The use of a common towel is prohibited. No employee shall begin work after visiting the toilet room or handling any disease contaminated product, or before resuming work after having been absent from the work area for any reason, without first thoroughly washing his hands and arms with clean water and soap.

B. Each lavatory shall be supplied with a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl to facilitate washing arms as well as hands. Lavatories in work areas in new establishments, or those areas undergoing major alterations or additions, shall be supplied with foot, elbow, or knee controls.

History

ACJA-13-63, January 17, 1963.

Cross References

Toilet and dressing room facilities generally, see 13 N.N.C. § 609.

Library References

Food ☞5, 6.

Health ☞392.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 198H, 209.

§ 611. Equipment—Generally

A. All equipment used in an establishment which comes in contact with meat or meat products, except workbenches and tables, shall be constructed of metal or other impervious materials, and shall be free of crevices, seams, and joints, and shall be kept clean and in good repair.

B. Workbenches and tables shall be constructed of metal, tight-fitting removable hardwood planks or both, or of other impervious materials.

C. Handtrucks used in establishments for the transportation of unpackaged meat shall be of smooth metal construction. Trucks and receptacles used for inedible material shall be of similar construction and shall bear some conspicuous and distinctive mark, and shall not be used for handling edible products.

D. Metal containers used for storage or transportation of meat shall be so constructed as to be easily cleanable and shall be kept clean and in good repair. Such containers shall not be painted on the inner surfaces.

E. Utensils containing or plated with cadmium, lead, or other poisonous substances shall not be used.

F. All containers other than those of metal construction which are used for transportation or storage of unwrapped meat or meat food products shall be kept clean and in good repair and shall be lined with new clean paper material of a type which does not tear easily or disintegrate during use but remains intact when moistened by the product. The use of newspapers or soiled wrappings is prohibited. Burlap shall not be used as a wrapping for meat or meat products unless the product is first wrapped with a good grade of paper or cloth which will prevent contamination with lint or other foreign matter.

G. Scabbards for knives or similar devices for temporary retention of knives, steels, etc., shall be constructed of rust-resisting metal and shall be so constructed that they can be readily cleaned and shall be kept clean.

H. Racks, receptacles or other equipment used for retaining such parts as the head, tongue, tail, thymus glands, viscera, and other usable meats shall be constructed of metal and shall be constructed so as to prevent contact of said meats with the floor.

I. Mechanized equipment, such as meat choppers and agitators, shall be protected so that contamination of the product with grease or metal particles is avoided.

J. Broken window glass or broken light bulbs in all rooms where meat or meat food products are handled shall be immediately replaced.

History

ACJA-13-63, January 17, 1963.

Cross References

Calf, sheep and goat equipment, see 13 N.N.C. § 620.
Cattle equipment, see 13 N.N.C. § 619.
Hog equipment, see 13 N.N.C. § 621.
Washing equipment, see 13 N.N.C. § 612.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 612. Washing equipment, floors and walls

A. An ample supply of steam or hot water shall be easily accessible to workrooms and adequate facilities for washing and cleaning equipment shall be provided.

B. Equipment washing sinks shall be provided with running hot and cold water and shall drain into open-trap drains connected directly to the sewerage system.

C. Adequate hose connections shall be provided for hot and cold water under sufficient pressure to be used for cleaning and washing floors, walls, and stationary equipment.

D. Adequate brushes, detergents, and other similar materials shall be provided for cleaning and washing equipment. Wire brushes or steel wool shall not be used for cleaning equipment coming in contact with the product. A separate wash area shall be provided for the washing of movable equipment.

E. Cleaning shall be accomplished by the use of warm water (100°F to 120°F) containing an adequate amount of detergent to remove grease. The wash water shall be changed at sufficient intervals to keep it reasonably clean and free from precipitated grease.

F. Equipment and utensils used for processing meat and meat products shall be thoroughly cleaned at the end of each day's operations and at such other times as shall be necessary in order to prevent contamination of meat and meat food products. Such cleaning shall remove grease and other soils, and shall leave no visible surface film or deposit.

G. After cleaning, all utensils shall be sanitized by one of the following methods: (1) after rinsing, complete immersion in a warm chlorine bath for at least two minutes with at least 100 parts per million of chlorine; or (2) complete immersion in 180°F water bath for a period of not less than two minutes.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 613. Rails

All overhead rails for the movement of carcasses shall be kept clean and free from rust. Rails shall be placed in such a way as to prevent carcasses or parts of carcasses from touching the floors or walls.

History

ACJA-13-63, January 17, 1963.

Cross References

Equipment generally, see 13 N.N.C. § 611.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 614. Operation generally

A. Meats and meat food products shall be prevented from falling on the floor or coming in contact with any unclean or disease-producing materials.

B. Carcasses, after slaughter and evisceration, shall be moved from the killing floor to the chilling room without delay.

C. Slaughtering and processing shall not be conducted in the same room at the same time.

D. Water supplied to wash beef carcasses or for scraping hog carcasses shall be under pressure at all times. The use of cloths or rags to wash or wipe carcasses is prohibited.

E. During operations, the floors in killing and processing rooms and areas shall be kept reasonably free from processing wastes, including blood, paunch contents, manure, scraps, grease, dirt, water, and litter. Where processing is conducted at short, irregular intervals, wastes shall be removed from the floors and properly disposed of immediately following each period of processing. Floors shall be thoroughly cleaned at the end of each day's operations. Those sections of walls, partitions, posts, ceilings and exposed overhead structures in killing rooms or areas, in other processing rooms, and in refuse rooms which become soiled during meat processing shall be thoroughly cleaned after each day's operations.

F. Sawdust used on floors of meat-cutting rooms and refrigerated rooms must be changed frequently enough to keep it fresh and clean.

G. Such practices as spitting on whetstones, spitting on the floor, or placing skewers, tags, or knives in the mouth are prohibited.

H. Care shall be taken to prevent the contamination of products with perspiration, hair, cosmetics, medicaments and the like. Rooms and compartments used for edible products shall be separate and distinct from those used for inedible products.

I. Processing and storage rooms of establishments used for inedible materials shall be maintained in an acceptably clean condition. The rooms and compartments in which any meat or meat food products are prepared or handled shall be free from dust and from odors from dressing and toilet rooms, catch basins, hide cellars, casing rooms, inedible tank, fertilizer rooms and livestock pens.

J. Hides and pelts shall be promptly removed from the slaughter room. The room where hides are kept shall be completely separate from other rooms in the establishment.

K. Calves dressed with the skin or hide on shall be thoroughly cleaned and washed before being placed in rooms where other meat or meat food products are kept.

L. Animals awaiting slaughter shall not be kept on the killing floor. If it is necessary to keep them in the main building, pens shall be provided in a section partitioned from the killing floor and processing rooms. The floors in the pens shall be of concrete or other nonabsorbent material and provided with suitable drains. All manure and other excrement from the pens shall be removed daily.

M. Equipment, utensils, packaging materials and meat food product ingredients shall be stored in a suitable location and protected from contamination. Single-service containers and all wrapping or lining material shall be packaged and shall be transported and stored under sanitary conditions.

N. Vehicles and cars in which any meat or meat food products are transported inside an establishment shall be kept in a clean and sanitary condition.

O. It is prohibited to skin, butcher, cut-up or dress any animal, or the meat or other parts of any animal, that died from natural causes, disease, or accident and was therefore not slaughtered and bled out properly in any room of an establishment where animals are slaughtered, dressed and prepared for human food, or in any room in an establishment where meats or meat food products are prepared or handled for human food.

P. No portion of any building used in connection with the processing of meat or meat food products shall be used for domestic purposes.

Q. No eating shall be allowed in the slaughtering or meat processing rooms.

History

ACJA-13-63, January 17, 1963.

Cross References

Floors generally, see 13 N.N.C. § 602.

Transportation vehicles, see 13 N.N.C. § 625.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 615. Refrigeration

A. The refrigeration provided in the chilling rooms shall be capable of reducing the internal temperature of carcasses to 36°F within twenty-four (24) hours.

B. Carcasses which have been chilled to 36°F shall be held at 40°F, or below until shipped from the establishment unless further cut up prior to such shipment.

C. Immediately after being cut up, the meat shall be replaced in refrigerated rooms maintained at temperatures of 40°F, or below.

D. Frozen meat or meat products shall be stored at a temperature of 0°F, or lower.

E. Sufficient refrigeration space shall be available for the refrigeration of each carcass immediately after completion of the dressing operation. There shall be sufficient room in the chilling rooms to permit free circulation of air between the carcasses.

F. A chill cooler and separate holding coolers may be provided, or both may be combined in one room. The chill cooler must have floors of concrete properly sloped to a drain. Wells must be smooth-finished Portland cement plaster or glazed tile. The room must be sealed. Floors of other coolers must be of concrete; walls of smooth finished Portland cement plaster or glazed tile and the room sealed. The door between the slaughtering department and the chill cooler must be clad with rust-resistant metal.

G. Rails should be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact of the carcasses. If overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them, and the pipes properly connected to the drainage system. If wall-coil systems are used, the drip pans must be installed beneath the coils.

H. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area must be separately drained.

History

ACJA-13-63, January 17, 1963.

Cross References

Transportation vehicles, see 13 N.N.C. § 625.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 616. Disposal of wastes

A. All waste shall be properly disposed of and all inedible products and trash shall be kept in suitable receptacles in such a manner as not to become a nuisance.

B. Containers used for the collection and holding of solid wastes shall be kept covered or otherwise protected at all times so that the wastes shall not be accessible to flies, rodents, or other vermin.

C. The sewerage system in establishments shall be of sufficient size to handle the sewage at peak production. The drainage pipes shall be of cast or wrought iron and shall be provided with clean-out fixtures, screens and water-seal traps where the sewage enters the disposal system.

D. Liquid wastes from sinks, drains, toilets, and similar fixtures shall empty into a municipal sewer, if available. In the absence of a municipal sewer, sewage disposal shall be accomplished by a method approved by the Health Advisor. Open ditch drainage or open sewerage systems are prohibited.

E. Where grease catch basins are used, they shall be situated on the outside of the establishment, in the open, and the area around the catch basins shall be paved and properly drained. The material which is collected in the catch basins shall be removed as frequently as is necessary. Toilet soil lines shall be separated from the establishment drainage lines to a point outside of the building so as to bypass the grease catch basins.

F. Water-wasting equipment, such as meat-cooking vats, curing vats, and meat-soaking vats, shall drain into the sewerage system by means of a "broker connection" or into an open-trapped drain to avoid continuity of the equipment handling edible products with the drainage system, so that if there is a stoppage in the drainage lines, the wastes cannot back up into and contaminate the equipment and the product contained in it.

G. All overhead drain lines and piping shall be so located and installed, or protected, that leakage and condensation therefrom cannot drip upon meat or meat food products, stored edible products, processing equipment or utensils, facilities for the cleaning of utensils and portable equipment, working or trucking floor areas.

H. All plumbing shall comply with the latest edition of the National Plumbing Code, which shall be on file at the Central Records Room of the Navajo Nation, and shall be so designed as to prevent contamination of the potable water supply through cross-connections or back-siphonage from fixtures.

I. Suitable receptacles shall be provided for blood, offal, and similar materials and such materials shall be placed into an offal tank, or where such tank is not available they shall be removed from the premises daily. In no case shall they be permitted to accumulate in or around the establishment. Receptacles

and vehicles used for storing and transporting such materials shall be kept clean. Stomach and intestinal contents and other refuse shall not be allowed to accumulate on the floor of the slaughter room, and shall not be stored on the premises in any place or in such a manner as to render the establishment insanitary.

History

ACJA-13-63, January 17, 1963.

Cross References

Blood disposal, see 13 N.N.C. § 617.
Drainage generally, see 13 N.N.C. § 607.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 617. Disposal of blood

When blood is not permitted to drain into the sewerage system, it may be collected in a properly constructed metal blow tank and removed from the premises or blown to the blood dryer in such a manner as to create no insanitary conditions.

History

ACJA-13-63, January 17, 1963.

Cross References

Waste disposal generally, see 13 N.N.C. § 616.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 618. Exclusion of insects, rodents, fowl, dogs and cats

A. Every practicable precaution shall be taken to exclude flies, fowl, rats, mice and other vermin from establishments. All outer walls and rooms shall be effectively protected against the entrance and harborage of rodents and insects, and interior walls, partitions, posts, ceilings, and overhead structures shall be free from such harborage.

B. Rodenticide, insecticides, and other toxic materials used in establishments where meat or meat products are processed, stored, or otherwise handled shall be identified, stored, and used in such a manner as to preclude the contamination of meat and meat products or the creation of other health hazards. So-called "rat viruses" shall not be used in any part of an establishment. Residual insecticides shall not be used in meat processing or storage rooms where meat or meat products may be exposed.

13 N.N.C. § 618

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C. Dogs and cats shall be excluded from the inside of the establishment and shall not be allowed any access to offal or refuse awaiting removal on the outside of the establishment.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 619. Cattle

A. A metal knocking box or concrete box with metal door shall be provided for cattle. Provisions also should be made for bringing in cripples.

B. There shall be a dry-landing area at least five feet wide in front of the knocking box. This area should be separately drained.

C. The curbed-in bleeding area shall be at least eight feet wide and seven feet long, so located that blood will not splash upon stunned animals lying in the dry-landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide.

D. There shall be a distance of at least five feet from the curbed-in bleeding area to the siding bed. This area should be separately drained.

E. There shall be a distance of at least 14 feet from the vertical of the drop-off to the vertical of the hoist where carcasses are eviscerated. For multiple bed plants, this distance should be increased to 16 feet.

F. There shall be a distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be somewhat shortened where a single rail handoff is used.

G. There shall be a distance of at least three feet from the header rail to the adjacent wall.

H. There shall be a bleeding rail with its top at least 16 feet above the floor or a traveling hoist on a 1" beam which will provide an equivalent distance of the carcass from the floor.

I. Suitable facilities and adequate floor space for the washing, flushing, and inspection of heads shall be provided.

J. When hides are dropped to a room below, a properly constructed hide chute near the point where hides are removed from the carcasses shall be provided. The chute must have a vented hood with a self-closing, push-in door. The vent should be approximately ten inches in diameter and extend to a point above the roof. Other chutes for inedible and condemned materials must also be of appropriate size and conveniently located and vented.

K. A two-level viscera inspection truck for evisceration except when a moving-top viscera inspection table is used shall be provided.

L. An area for washing and shrouding carcasses shall be provided. This area should be curbed and sloped to a separate drain within the area, or it may have a slope of approximately one-half inch to the foot leading to a separate drain.

M. Dressing rails and cooler rails shall be not less than 11 feet in height.

History

ACJA-13-63, January 17, 1963.

Cross References

Equipment generally, see 13 N.N.C. § 611.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 620. Calves, sheep and goats

A. Bleeding rail with its top approximately 11 feet from the floor shall be provided for calves, sheep and goats. The floor of the bleeding area must be curbed and separately drained.

B. Dressing and cooler rails of such height as to assure a clearance of at least eight inches from the carcasses to the floor shall be provided. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, must be skinned and eviscerated as cattle.

C. Proper facilities shall be provided for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide-on.

D. Suitable facilities for flushing, washing, and inspecting heads, including head-flushing cabinet and head-inspection rack with removable loops shall be provided.

E. Facilities shall be provided for the inspection of the viscera. A hopped metal stand must be provided which accommodates two removable inspection pans. One inspection pan is for the thoracic viscera, while the other is for the abdominal viscera. The pans should have perforated bottoms and handles or hand holds for convenient removal. A sterilizing receptacle should be provided at a convenient location for sterilization of the pans when necessary.

F. Suitable facilities shall be provided for washing sheep carcasses after the removal of the pelt. Calves and sheep must be washed again after they have been eviscerated.

History

ACJA-13-63, January 17, 1963.

Cross References

Equipment generally, see 13 N.N.C. § 611.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 621. Hogs

A. Facilities shall be provided for bleeding hogs in a hanging position over a separately drained, curbed-in bleeding area.

B. A scalding vat and gambreling table, including the platforms, of metal construction shall be provided.

C. A shaving rail of sufficient length to assure that carcasses are properly cleaned shall be provided.

D. A hopped metal stand for the inspection of viscera shall be provided. A sterilizing receptacle should be provided at a convenient location for the sterilization of the pans, when necessary.

E. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight inches between the lowest point of the carcass, or head if left attached, and the floor shall be provided.

History

ACJA-13-63, January 17, 1963.

Cross References

Equipment generally, see 13 N.N.C. § 611.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 622. Hide room

The floor of the hide room, if provided, must be of concrete and properly drained. Walls must be smooth and impervious to at least the highest point of the hide pile. The hide room must not connect with the slaughtering department except for one opening, equipped with a tight-fitting, self-closing door. The hide room must not connect with any other room in which edible products are stored, processed, or handled.

History

ACJA-13-63, January 17, 1963.

Cross References

Floors and walls generally, see 13 N.N.C. §§ 602, 603.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 623. Inedible products department

An inedible products department, completely separate and apart from edible products departments, must be provided. Walls must be of smooth-finish Portland cement plaster, glazed tile, or other approved impervious material.

History

ACJA-13-63, January 17, 1963.

Cross References

Walls generally, see 13 N.N.C. § 603.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 624. Pens

A. A holding pen must be surfaced with an impervious material sloped to drain. A curb must be installed around the outside of the pen to prevent the wash from escaping. An ample supply of water under pressure must be available for washing out the pens. Feeding pens should be located at least 100 feet from the plant. Pens should not be located in front of the plant.

B. Holding and shackling pens should be located outside of, or effectively separated from, the slaughtering department.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 625. Transportation vehicles

A. The name and address of any person transporting meat or meat products outside of an establishment shall be legibly and conspicuously painted or be permanently affixed letters of at least three inches high on each side of all transportation vehicles. All transportation vehicles shall have completely and permanently enclosed areas for meat or meat food product carrying.

B. Meat products being transported in vehicles must be maintained at a temperature of not more than 45°F, during transit. Frozen meats consigned to retail outlets shall be delivered at a temperature not to exceed 20°F.

C. Vehicles used to transport meat and meat products shall be kept in a clean and sanitary condition and shall not be used to transport objectionable materials, such as oil, kerosene, manure, etc. All vehicles and containers must be constructed and all wrappings applied, so as to protect all meat and meat products from dirt, dust, vermin, or any other substance unwholesome or detrimental to public health.

D. Loading and unloading of meat and meat products shall be conducted in a sanitary manner.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 7. Violation of Provisions

§ 681. Notice

A. When the Health Advisor recommends action pursuant to violation of any of the provisions of this chapter, the President shall give notice to the person or persons responsible for such violation.

B. Such notice shall be in writing, include a statement of the reasons for its issuance, allow a reasonable time for the performance of any action required, be served upon the owner or his agent, and contain an outline of remedial action, which if taken will effect compliance with the provisions of this chapter.

C. Such notice or order shall be deemed to have been properly served upon the owner or agent when a copy thereof has been sent by registered mail to his last known address or when he has been served by any other method authorized by the Health and Social Services Committee.

History

ACJA-13-63, January 17, 1963.

Note. Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(3).

Library References

Food ☞12 to 16.
Indians ☞32(4.1, 13).
Westlaw Topic Nos. 178, 209.
C.J.S. Indians § 157.

§ 682. Hearing

A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter may request and shall be

granted a hearing on the matter before the Health and Social Services Committee; provided, that such person shall file in the office of the President a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day notice was served. Upon receipt of such petition, the President shall set a time and place for such hearing before the Health and Social Services Committee and shall give the petitioner written notice thereof.

B. The hearing shall be commenced within a reasonable time, but not later than the next regularly scheduled session of the Health and Social Services Committee following the day on which the petition was filed.

C. At the hearing the petitioners shall be given an opportunity to be heard, and to show cause why such notice should be modified or withdrawn.

D. Any notice served pursuant to 13 N.N.C. § 681 shall automatically become an order if a written petition for a hearing shall not have been filed in the office of the President within ten (10) days after such notice was served.

History

ACJA-13-63, §§ 4.2, 4.3, January 17, 1963.

Note. Insertion of word "President", see CD-68-89, Resolve #9, December 15, 1989.

Cross References

Rules and Regulations, see 2 N.N.C. § 454(B)(5).

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(3).

Library References

Food ☞12 to 16.

Westlaw Topic Nos. 178, 209.

Indians ☞32(4.1, 13).

C.J.S. Indians § 157.

§ 683. Determination

A. After such hearing, the Health and Social Services Committee, with the consultation of the Health Advisor or Area Director shall sustain, modify, or withdraw the notice, depending on the findings as to the compliance or noncompliance with the provisions of this chapter. If the Health and Social Services Committee shall sustain or modify such notice, it shall be deemed to be an order.

B. After a hearing in the case of any notice suspending any permit required by the provisions of this chapter, when such notice shall have been sustained by the Health and Social Services Committee, the permit shall be deemed to have been revoked; provided, however, that the Health and Social Services Committee may grant a further opportunity to comply with the provisions of this chapter.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞12 to 16.
Indians ☞32(4.1, 13).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians § 157.

§ 684. Record of proceedings

The proceedings at such hearings including any findings and decisions of the Health and Social Services Committee shall be reduced to writing and entered as a matter of Navajo Nation record. Such record shall include every notice or order issued in connection with the matter.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞12 to 16.
Indians ☞32(4.1, 13).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians § 157.

§ 685. Emergency action

Whenever the President, upon the advice of the Health Advisor or Area Director, finds that an emergency matter exists which requires immediate action to protect public health, the President may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately, but upon petition to the Health and Social Services Committee, the petitioner will be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of this chapter, the Health and Social Services Committee may continue the order in effect, modify it, or revoke it.

History

ACJA-13-63, January 17, 1963.

Note. Insertion of word "President", see CD-68-89, December 15, 1989, resolve § 9.

Library References

Food ☞12 to 16.
Indians ☞32(4.1, 13).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians § 157.

§ 686. Forfeiture of right to do business

The right of any person, found in violation of the provisions of this chapter and who remains in violation after exhausting remedies provided in 13 N.N.C. § 682, to do business within the Navajo Nation may be forfeited pursuant to the terms contained in the particular slaughterhouse and meat-processing establishment lease.

History

ACJA-13-63, January 17, 1963.

Library References

Food ☞12 to 16.
Indians ☞32(4.1, 13).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians § 157.

Chapter 5. Retail Food Store Sanitation Code

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History

CMY-28-86, May 2, 1986.
ACMA-55-60, March 9, 1960.

Note. Appendix referenced in this Code and the rationale for certain Sections are not included. See CMY-28-86, May 2, 1986.

Subchapter 1. General Provisions

§ 901. Purpose

This code shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 902. Definitions

For the purpose of this Code:

A. “Bulk food” means unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn. For the purpose of this interpretation, the term does

not include fresh fruits, fresh vegetables, nuts in the shell, salad bars¹ and potentially hazardous foods.²

B. “Corrosion-resistant materials” means those materials that maintain acceptable sanitary surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

C. “Display area” means a location or locations, including physical facilities and equipment, where bulk food is offered for customer self-service.

D. “Easily cleanable” means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue can be effectively removed by normal cleaning methods.

E. “Employee” means that permit holder, individual having supervisory or management duties, person on the payroll, family members, volunteer, person performing work under contractual agreement, or any other person working in a food store.

F. “Equipment” means items other than utensils used in the storage, preparation, display, and transportation of food such as stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators and freezers, sinks, ice makers, and similar items used in the operation of a retail food store. This item does not include fork lift trucks or dollies.

G. “Food” means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

H. “Food contact surfaces” means those surfaces of equipment and utensils with which food normally comes into contact, and those surfaces from which food may drain, drip, or splash back onto surfaces, normally in contact with food.

I. “Food service establishment” means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for food. The term includes delicatessen type operations that offer prepared food intended for individual portions services. The term does not include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.

J. “Health Advisor” shall mean the Director, Navajo Area Indian Health Service or an authorized agent.

K. “Hermetically sealed container” means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.

L. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.

M. "Packaged" means bottled, canned, cartoned, bagged, or securely wrapped.

N. "Permit" means the document issued by the regulatory authority which authorizes a person to operate a retail food store.

O. "Person" includes any individual, partnership, corporation, association, or other legal entity.

P. "Person in charge" means individual present in a retail food store who is the supervisor of the retail food store at the time of inspection.

Q. "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, and which is in the form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. Potentially hazardous foods include rice, fried rice, refried beans and baked potatoes. The term does not include: clean, whole, encroached, odor free shell eggs; foods that have a PH level of 4.6 or below or a water activity (a) value of 0.85 or less under standard conditions; food products in hermetically sealed containers processed to prevent spoilage.

R. "Product module" means a food-contact container (multi-use or single-service) designed for customer self-service of bulk food by either direct or indirect means.

S. "Regulatory authority" shall mean the Navajo Division of Health or its successor.

T. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in packaged bulk quantities only. The term does not include establishments which handle only prepackaged, non-potentially hazardous foods; roadside markets that offer only fresh fruits and fresh vegetable for sale; food service establishments; or food and beverage vending machines.

U. "Safe materials" means articles manufactured from or composed of materials that may not reasonable be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in § 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act as used they are "safe" only if they are used in conformity with regulations established pursuant to § 409 or § 706 of that Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in § 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act³ and are used in conformity with all applicable regulations of the Food and Drug Administration.

V. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemicals for enough

time to reduce the bacterial count, including pathogens, to a safe level on cleaned food-contact surfaces of utensils and equipment.

W. “Salvage operations” means operations in which food products which have been subject to possible damage due to accidents, fire, flood, adverse weather or any other similar cause or which may have been rendered unsafe or unsuitable for human consumption or use.

X. “Sanitation permit” means a written permit issued by the Commerce Department of the Navajo Nation or its successor upon the recommendation of the Health Advisor reflecting the retail food stores compliance with the provisions of this chapter.

Y. “Sealed” means free of cracks or other openings that permit the entry or passage of moisture.

Z. “Servicing area” means a designated location or locations equipped for cleaning, sanitizing, drying or refilling product modules or for preparing bulk food.

AA. “Single-service articles” means items used by the retailer of consumer such as cups, containers, lids, and packaging materials, including bags and similar articles, intended for contact with food, and designed for one-time use. The term does not include “single use” articles such as number 10 cans, aluminum pie pans, bread wrappers and similar articles into which food has been packaged by the manufacturer.

BB. “Transportation” (transported) means movement of food within the retail food store or delivery of food from that retail food store to another place while under the control of the person in charge.

CC. “Uniform Plumbing Code” shall mean the International Association of Plumbing and Mechanical Officials, Uniform Plumbing Code, 1982.

DD. “Utensil” means any food-contact implement used in the storage, preparation, transportation, or dispensing of food.

EE. “Warewashing” means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

FF. “Wholesale food” means food processed, packaged, canned, manufactured, stored and sold of resale purposes. This definition will include food storage warehouses.

¹ Salad bars are regulated by the 1976 model Food Service Sanitation Ordinance.

² See §§ 1-101 (o) and 2-503 of the 1982 model Retail Food Store Sanitation Code. Potentially hazardous foods shall not be provided for customer self-service.

³ 21 U.S.C. § 321(s) or (t).

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

Subchapter 2. Food

§ 911. Food supplies—General

A. Food shall be in sound condition and safe for human consumption. Food shall be obtained from sources that comply with the applicable laws relating to food safety. Food prepared in a home shall not be used or offered for sale.

B. Bulk food product modules shall be labeled with either:

1. The manufacturer's or processor's bulk container labeling plainly in view; or

2. A counter card, sign or other appropriate device bearing prominently and conspicuously the common name of the product, a list of ingredients in proper order of predominance and declaration of artificial color or flavor and chemical preservatives if contained in the product.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 912. Special requirements

A. Fluid milk and fluid milk products used or offered for sale shall comply with the Grade "A" standards as specified in the latest edition of the U.S. Food and Drug Administration's Grade A Pasteurized Milk Ordinance, Public Health Service/Food and Drug Administration's Publication No. 229, U.S. Government Printing Office. Dry milk and milk products used or offered for sale shall be made from pasteurized milk and milk products. Raw milk and raw milk products shall be not sold.

B. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be received, and/or repacked in non-returnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the state certification number issued according to the law. Shucked shellfish should be kept in the container in which they were received until used or sold.

C. Each original container of unshucked shellfish (oysters, clams, or mussels) shall be identified by an attached tag, to be retained for a period of ninety (90) days, that states the name and address of the original shellfish processor, the kind and quantity of shellfish and the certification number issued by the state or foreign shellfish control agency, where applicable.

D. Only clean shell eggs meeting only "Grade B" standards or better of the U.S. Department of Agriculture or a state program which has been certified by the U.S. Department of Agriculture, or pasteurized liquid, frozen or dry eggs, or pasteurized dry egg products shall be used or offered for sale.

E. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged.

F. All meat products offered for sale shall be U.S. Department of Agriculture inspected and meet the approval of a state inspection program which has been certified by the U.S. Department of Agriculture. Meat which is state inspected shall only be sold in the state that the product was inspected in.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 913. Food protection—General

A. At all times, including while being stored, prepared, displayed, dispensed, packaged, or transported, food shall be protected from cross-contamination between foods and from potential contamination by insects, insecticides, rodents, rodenticides, probe-type price or probe-type identification tags, unclean equipment and utensils, unnecessary handling; flooding, draining, and overhead leakage or condensation, or other agents of public health significance. The temperature of potentially hazardous foods shall be 45°F (7°C) or below or 140°F (60°C) or above, at all times, except as otherwise provided in this Code. Hermetically sealed packages shall be handled so as to maintain produce and container integrity. Food items that are spoiled or that are in damaged containers that may affect the product and those food items that have returned to, or are being detained by, the retail food store because of spoilage, container damage or other public health considerations shall be segregated and held in designated areas pending proper disposition unless disposed of under the supervision of the Health Advisor.

B. Bulk foods and product modules shall be protected from contamination during display, customer self-service, refilling and storage.

C. Containers of bulk pet foods and bulk non-food items shall be separated by a barrier or open space from product modules.

D. Bulk food returned to the store by the customer shall not be offered for resale.

E. Only containers provided by the store in the display area shall be filled with bulk foods.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6. Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 914. Emergency occurrences

The person in charge of a retail food store that is affected by a fire, flood, extended power outage, or a similar significant occurrence that creates a reasonable probability that food in the retail food store may have been contaminated or that the temperature level of food which is in a potentially hazardous form may have caused that food to have become hazardous to health, shall take such action as is necessary to protect the public health and shall promptly notify the Health Advisor of the emergency.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 915. Food storage—General

A. Food packaged in an immediate closed container, once the container is opened in the retail food store prior to use or retail sale, shall be kept covered. Food, whether raw or prepared, if removed from the immediate closed container in which it was originally packaged prior to use or retail sale, shall be stored in a clean, covered container, except during necessary periods of preparation. Whole and unprocessed fresh raw vegetables and fresh raw fruits shall be exempted from this requirement. Container covers shall be impervious and nonabsorbent. During periods of storage, subprimal cuts of meat shall be covered with single-service wrapping materials. Primal cuts, quarters or sides of meat, or processed meats such as country hams, slab bacon, and smoked or cured sausages, may be hung uncovered on clean sanitized hooks or placed on clean, metal racks in such a manner as to preclude contamination of any food products in storage.

B. Containers of food shall be stored in minimum of six (6) inches [152 millimeters (mm)] above the floor or stored on dollies, skids, racks, or open-ended pallets, provided such equipment is easily movable, either by hand or with the use of pallet-moving equipment that is on the premises and used. Such storage areas shall be kept clean. Cased food packaged in cans, glass, or other waterproof containers need not be elevated when the case of food is not exposed to floor moisture and the storage area is kept clean. Food products in storage shall not be stored against the wall. Storage shall be at least six (6) inches from any wall surface and be accessible for inspection.

C. Food and containers of food shall not be stored under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water has accumulated.

D. Packaged foods shall not be stored in contact with water or undrained ice.

E. A food ingredient, such as flour, sugar, salt, baking powder, cooking oil or vinegar, that is not stored in the original package and is not readily identifiable on sight, shall be stored in a container identifying it by common name.

F. Toilet rooms and their vestibules, and garbage or mechanical room shall not be used for the storage of food.

G. Labels or marking pens shall be available to customers to identify their take-home containers with the common name of the product unless the product is readily identifiable on sight.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 916. Refrigerated/frozen storage

A. Refrigeration units or effectively insulated units shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the air temperature of the unit. The thermometer scale shall be located to be easily readable. Recording thermometers, accurate to 3°F (1°C) may be used in lieu of indicating thermometers.

B. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F (7°C) or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the cooling period shall not exceed four (4) hours. Potentially hazardous food to be transported shall be pre-chilled and held at a temperature of 45°F (7°C) or below unless maintained in accordance with the hot storage requirements of this Code.

C. Potentially hazardous frozen foods shall be kept frozen and should be stored at an air temperature of 0°F (18°C) or below except for defrost cycles and brief periods of loading or unloading.

D. Ice used as a cooling medium for food storage shall not be used or sold for human consumption.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 917. Hot food storage

A. Hot food storage units shall be provided in such number and such capacity to assure the maintenance of potentially hazardous food at the required temperature during storage. Each hot food storage unit storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to 3°F (1°C). The sensing element shall be located to measure the air temperature in the unit at a location that is representative of the temperature in the unit. The thermometer scale shall be located to be easily readable. Recording thermometers accurate to 3°F (1°C) may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as heat lamps, calrod units or insulated food transport carriers, a food product thermometer shall be available and used to check internal food temperature.

B. The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F (60°C) or above, except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of 140°F (60°C) or above unless maintained in accordance with the refrigerated storage requirements of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 918. Food preparation—General

A. Food shall be prepared with a minimum of manual contact. Food shall be prepared on food-contact surfaces and with utensils which are clean and have been sanitized.

B. Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods, each new operation shall begin with food-contact surfaces and utensils which are clean and have been sanitized. Salads and other ready-to-eat foods shall be prepared in separate rooms or in areas that are separated by a barrier or open space from areas used for processing potentially hazardous raw products.

C. Potentially hazardous foods that are in a form to be consumed without further cooking such as salads, sandwiches, and filled pastry products shall be prepared from chilled products.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 919. Raw fruits and raw vegetables

Raw fruits and raw vegetables that will be cut or combined with other ingredients or will be otherwise processed into food products by the retail food store shall be thoroughly cleaned with potable water before being used.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 920. Cooking potentially hazardous foods

Potentially hazardous foods being processed within the retail food store by cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:

A. Poultry, poultry stuffings, stuffed meats, and stuffings containing meat, shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process.

B. Pork and pork products shall be cooked to heat all parts of the food to at least 150°F (66°C), or, if cooked in a microwave oven, to at least 170°F (77°C).

C. When beef roasts under 10 pounds [5 kilograms (kg)] in weight are cooked in a still dry heat oven, the oven shall be preheated to and held at an air temperature of at least 350°F (177°C) throughout the process. If cooked in a convection oven, the oven shall be preheated to and held at an air temperature of at least 325°F (163°C) throughout the process.

1. When beef roasts of 10 pounds [5 kilograms (kg)] or over in weight are cooked in a dry heat oven, the oven shall be preheated to and held at an air temperature of at least 250°F (122°C) throughout the process.

2. Further, in order to meet public health requirements for the processes cited above, the following table lists the minimum internal temperature of the beef roast for the minimum time the roast needs to be held at such temperature.

MINIMUM HOLDING TIMES FOR BEEF ROASTS
AT VARIOUS INTERNAL TEMPERATURES

MINIMUM INTERNAL TEMPERATURE		MINIMUM HOLDING TIME	MINIMUM INTERNAL TEMPERATURE		MINIMUM HOLDING TIME
°F	°C	MINUTES	°F	°C	MINUTES
130	54.4	121	138	58.9	19
131	55.0	97	139	59.5	15
132	55.6	77	140	60.0	12
133	56.1	62	141	60.6	10
134	56.7	47	142	61.1	8
135	57.2	37	143	61.7	6
136	57.8	32	144	62.2	5
137	58.4	24			

D. Beef roasts, if cooked in a microwave oven, shall be cooked to an internal temperature of at least 145°F (63°C).

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 921. Bakery product fillings

A. Custards, cream fillings, and similar products, including synthetic fillings, shall meet the temperature requirement in § 916(B) of this Code following preparation and be maintained at that temperature during storage, transportation, and display. Products with synthetic fillings maybe excluded from this requirement if

1. The food, including the interface between the backer product and its filling, has a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less under standard conditions; or
2. It is handled in such a manner as to preclude contamination with and the growth of pathogenic microorganisms after heat processing; or
3. Other scientific evidence is on file with the Health Advisor demonstrating that the specific product will not support with growth of pathogenic microorganisms.

B. Bakery products with synthetic fillings, which meet the above criteria, may be labeled to state that refrigeration is not required.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 922. Reheating

Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to an internal temperature of 165°F (74°C) or higher before being placed in hot food storage holding units. Food warmers and other hot food holding units shall not be used for the reheating of potentially hazardous foods.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 923. Food product thermometers

Metal stem-type numerically scaled indicating thermometers, accurate to 2°F (1°C) shall be provided and used to assure attainment and maintenance of proper temperatures during preparation of all potentially hazardous foods.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 924. Thawing potentially hazardous foods

Potentially hazardous food shall be thawed:

- A. In refrigerated units at a temperature not to exceed 45°F (7°C); or
- B. Under potable running water at temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow and for a period not to exceed that reasonably required to thaw the food; or
- C. In a microwave oven only when the food will be immediately transferred to conventional cooking units as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- D. As part of the conventional cooking process.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 925. Potentially hazardous foods

Potentially hazardous foods shall be held at an internal temperature of 45°F (7°C) or below or at an internal temperature of 140°F (60°C) or higher during display, except that rare roast beef which is offered for sale hot shall be held at a temperature of at least 130°F (55°C).

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 926. Frozen foods

Foods intended for sale in a frozen state should be displayed at an air temperature of 0°F (-18°C) or below, except for defrost cycles and brief periods of loading and unloading. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers' specifications.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 927. Food display

A. Food on display, other than whole, unprocessed raw fruits and unprocessed raw vegetables, shall be protected from contamination by being packaged, by display cases, by covered containers for self-service, or by similar protective equipment. All food shall be displayed above the floor in a manner that will protect the food from contamination. Hot or cold food units shall be provided to assure the maintenance of potentially hazardous food at the required temperature during display. Potentially hazardous foods shall not be provided for consumer self-service.

B. Bulk foods shall be dispensed only from product modules which are protected by close fitting, individual covers. If opened by the customer, the covers shall be self-closing and shall remain closed when not in use.

C. Customer access to bulk food in product modules shall be limited and controlled to avoid the introduction of contaminants. Means considered suitable include, but are not limited to:

1. Providing a product module depth of no more than 18 inches [457 millimeters (mm)]; and
2. Either locating product modules with access from the top so that there is at least 30 inches (762 mm) between the access point and the floor; or, if the product module access point is less than 30 inches (762 mm) off the floor, providing access from the side or at an angle provided that when the product module is open, the cover extends across the surface of the product and provides overhead protection.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 928. Dispensing utensils

A. To avoid unnecessary manual contact with the food, suitable dispensing utensils and single-service articles shall be used by employees. Consumers who serve themselves bulk food shall be provided suitable dispensing utensils. Dispensing utensils shall be:

1. Stored in the food with the dispensing utensil handle extended out of the food; or
2. Stored clean and dry, or
3. Stored in running potable water.

B. When food sample demonstrations and food promotions are authorized in the retail food store, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 929. Food transportation by the retail food store—General

Food, other than hanging primal cuts, quarters, or sides of meat, and raw fruits and raw vegetables, shall be protected from contamination by use of packaging or covered containers while being transported. All food being transported shall meet the applicable requirements of this Code relating to food protection and food storage. Foods packaged in immediate closed containers

do not need to be overwrapped or covered if the immediate closed containers have not been opened, torn, or broken.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 3. Personnel

§ 951. Employee health—General

No employee, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that cause a disease or while affected with a boil, an infected wound, or an acute respiratory infection, shall work in a retail food store in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.	Indians ☞32(4.1).
Health ☞384.	Westlaw Topic Nos. 178, 198H, 209.

§ 952. Personal cleanliness—General

Employees engaged in food preparation and warewashing operations shall thoroughly wash their hands and the exposed portions of their arms with soap or detergent and warm water before starting work; after smoking, eating or using the toilet; before and after handling raw meat, or raw poultry, or raw seafood; and as often as is necessary during work to keep them clean. Employees shall keep their fingernails trimmed and clean.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 953. Clothing—General

- A. Employees shall wear clean clothing.

B. Employees shall use effective hair restraints where necessary to prevent the contamination of food or food-contact surfaces.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 954. Employee practices—General

A. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods.

B. Employees shall consume food or use tobacco only in designated areas. Such designated areas must be located so that the eating or tobacco use of an employee does not result in contamination of food, equipment, or utensils.

C. All employees working in retail food stores shall have a certificate that they have received training on the prevention of foodborne disease issued by the Health Advisor.

D. Jewelry shall not be worn on hands by employees involved in the handling of food items or warewashing activities.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 4. Equipment and Utensils

§ 981. Materials—General

A. Multi-use equipment and utensils shall be constructed and repaired with safe materials, including finishing materials; shall be corrosion resistant and shall be nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not impart odors colors, taste, nor contribute to the contamination of food.

B. Product modules and utensils shall be constructed of safe materials; and shall be corrosion resistant, nonabsorbent, smooth, easily cleanable and durable under conditions of normal use.

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History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 982. Solder

If solder is used, it shall be composed of safe materials and be corrosion resistant.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 983. Wood

A. Hard maple or equivalent nonabsorbent wood that meets the general requirements sets forth in § 981 of this Code may be used for cutting blocks, cutting boards, and bakers' tables. Wood shall not be used as a food contact surface under other circumstances, except for contact with raw fruits, raw vegetables, and nuts in the shell.

B. Wood shall not be used as a food contact surface.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 984. Plastics and rubber materials

Safe plastic or safe rubber or safe rubber-like materials that are resistant under normal conditions of use to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods, and which meet the general requirements set forth in § 981 of this Code, are permitted for repeated use.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 985. Cutting surfaces

Cutting surfaces subject to scratching and scoring must be resurfaced so as to be easily cleaned, or be discarded when these surfaces can no longer be effectively cleaned and sanitized.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 986. Single-service articles

Single-service articles shall not be reused.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 987. Design and fabrication—General

A. As a general principle, the specifications for design and fabrication of equipment should maintain uniformity with equipment design criteria found in food codes and national equipment standards. Organizations involved with food equipment standards include American Society of Mechanical Engineers (ASME/SNSI), Baking Industry Sanitary Standards Committee (BISSC) and National Sanitation Foundation (NSF).

B. All equipment and utensils, including plastic-ware shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing.

C. Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices. Cast iron may be used as a food-contact surface only if the surface is used for cooking. Threads shall be designed to facilitate cleaning; ordinary “V” type threads are prohibited in food-contact surfaces, except that in equipment such as ice makers, not oil cooking equipment, or hot oil filtering systems, such threads shall be minimized.

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HEALTH AND WELFARE

D. Equipment containing bearings and gears requiring lubricants not made of safe materials shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces shall be lubricated with materials meeting the requirements of 21 CFR 178.3570.

E. Sinks and drain boards shall be sloped to drain and be self-draining.

F. Food-contact surfaces-Product modules, lids, dispensing units and utensils shall be designed and fabricated to meet the requirements for food-contact surfaces.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 988. Accessibility

A. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection:

1. Without being disassembled; or
2. By disassembling without the use of tools; or
3. By easy disassembling with the use of only simple tools, such as mallets, screwdrivers, or open-end wrenches which are kept near the equipment.

B. Individual product modules shall be designed to be easily removable from the display unit for servicing unless the modules are so designed and fabricated that they can be effectively cleaned (and sanitized when necessary) through a manual in-place cleaning procedure that will not contaminate or otherwise adversely affect bulk food or equipment in the adjoining display area.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 989. Cleaned in place (CIP)

Equipment designed and constructed for CIP shall meet requirements equivalent to those contained in § 119 of the Navajo Nation Health Code Title 13, Chapter 1 Food Service Sanitation Ordinance.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 990. Food product thermometers

Indicating thermometers required for immersion into food or cooking media shall be metal stem-type construction, numerically scaled, and accurate to 2°F (1°C).

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 991. Non-food-contact surface

A. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, shall be designed and fabricated to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

B. Surfaces of product module display units, tethers, and all display equipment not intended for food-contact, but which are exposed to splash, food debris or other soiling, shall be designed and fabricated to be smooth, cleanable, durable under conditions of normal use and free of unnecessary ledges, projections or crevices.

C. Tethers shall be designed to be easily removable from the product module for cleaning.

D. The materials for non-food-contact surfaces shall be nonabsorbent or made nonabsorbent by being finished and sealed with a cleanable coating.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 992. Ventilation hoods

Ventilation hoods and devices, where installed, shall be designed to prevent grease or condensation from collecting on walls and ceilings, and from dripping into food or onto food-contact surfaces. Filters or other grease extracting equipment shall be readily removable for cleaning and replacement, if not designed to be cleaned in place. These hoods shall be constructed and maintained in accordance with the latest edition of the National Fire Codes, National Fire Protection Association, Volume 9, 1983.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 993. Maintenance of equipment and utensils

All equipment and utensils shall be maintained in good repair to comply with the requirements of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 994. Equipment installation and location—General

Equipment, including ice makers and ice storage equipment, shall not be located under exposed or unprotected sewer lines, water lines that are leaking or on which condensed water has accumulated, open stairwells, or other sources of contamination.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 995. Table-mounted equipment

A. Table-mounted equipment shall be installed to facilitate the cleaning of the equipment and the adjacent areas.

B. Equipment that is mounted on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a 4-inch

(102 mm) clearance between the table or counter, except that if no part of the table under the equipment is more than 18 inches (457 mm) from cleaning access, the clearance space shall be three inches (76 mm) or more; or if no part of the table under the equipment is more than three inches (76 mm) from cleaning access, the clearance space shall be two inches (51 mm) or more.

C. Equipment is portable within the meaning of § 995(B) of this Code if:

1. It is small and light enough to be moved easily by one person; and
2. It has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning; and
3. It is table-mounted, such as powered mixers, grinders, slicers, tenderizers, and similar equipment; and does not exceed 80 pounds [36 kilograms (kg)], or is equipped with a mechanical means of safety tilting the unit for cleaning.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 996. Floor-mounted equipment

A. Floor-mounted equipment, unless easily movable, shall be:

1. Sealed to the floor; or
2. Elevated on legs to provide at least a 6-inch (152 mm) clearance between the floor and equipment, except that equipment may be elevated to provide at least a 4-inch (102 mm) clearance between the floor and equipment if no part of the floor under the equipment is more than six inches (152 mm) from cleaning access.
3. Display shelving units, display refrigeration units, and display freezer units are exempt from the provisions of § 996(A)(1) and (2) of this Code if they are installed so that the floor beneath the units can be cleaned.

B. Equipment is easily movable if:

1. It is mounted on wheels or casters; and
2. It has no utility connection, has a utility connection that disconnects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.

C. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than 1/32 inch (0.8 mm) and, if exposed to seepage, the space shall be sealed.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 997. Aisles and working spaces

Aisles and working spaces between units of equipment and between equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as dollies, skids, racks, and open-ended pallets shall be positioned to provide accessibility to working areas.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

**Subchapter 5. Cleaning, Sanitization and
Storage of Equipment and Utensils****§ 1031. Equipment and utensil cleaning and sanitization—Cleaning frequency**

A. Utensils and food-contact surfaces of equipment shall be cleaned and sanitized:

1. Each time there is a change in processing between raw beef, raw pork, raw poultry or raw seafood, or a change in processing from raw to ready-to-eat foods;
2. After an interruption of operations during which time contamination may have occurred; and
3. After final use each working day.

B. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment shall be cleaned and sanitized at intervals throughout the day on a schedule based on food temperature type of food, and amount of food particle accumulation.

C. The food-contact surfaces of cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once each day of use, except that this shall not apply for hot oil cooking equipment and hot oil filtering

system. The food-contact surfaces of all baking equipment and pans shall be kept free of encrusted grease deposits and other accumulated soil.

D. Non-food-contact surfaces of equipment, including transport vehicles, shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

E. Tongs, scoops, ladles, spatulas, other appropriate utensils and tethers used by customers shall be cleaned and sanitized at least daily or at more frequent intervals based on the type of food and amount of food particle accumulation or soiling.

F. Product modules, lids and other equipment shall be cleaned prior to restocking, when soiled or at intervals on a schedule based on the type of food and amount of food particle accumulation.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1032. Wiping cloths

A. Cloths or sponges used for wiping food spills on food-contact surfaces of equipment shall be clean and rinsed frequently in one of the sanitizing solutions permitted in § 1033(H) of this Code and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

B. Cloths and sponges used for cleaning non-food-contact surfaces of equipment shall be clean and rinsed as specified in § 1032(A) of this Code and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

C. Single-service disposable towels are permitted in lieu of wiping cloths or sponges if they are discarded after each use.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1033. Manual cleaning and sanitizing

A. For manual rinsing and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and

cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.

B. Drain boards or easily movable utensil tables of adequate size shall be provided for proper storage and handling of soiled utensils prior to cleaning and for cleaned utensils following sanitizing and shall be located so as not to interfere with proper use of the warewashing facilities.

C. Equipment and utensils shall be pre-flushed or pre-scraped and, when necessary, pre-soaked to remove food particles and soil.

D. The sinks shall be cleaned before use.

E. When a three-compartment sink is utilized for warewashing, the operation shall be conducted in the following sequence:

1. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label; and

2. Equipment and utensils shall be rinsed free of detergent and abrasive with clean water in the second compartment; and

3. Equipment and utensils shall be sanitized in the third compartment according to one of the methods included in § 1033 (H) (Items 1–5) of this Code.

F. When a two-compartment sink is utilized for warewashing, one of the following two methods shall be used:

1. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent solution that is kept clean and at a concentration indicated on the manufacturer's label; and shall be sanitized in hot water in the second compartment in accordance with § 1033(H)(1) of this Code; or

2. Equipment and utensils shall be thoroughly cleaned in the first compartment with a hot detergent sanitizer solution that is kept clean and at a concentration indicated on the manufacturer's label; and shall be sanitized in the second compartment in hot water in accordance with § 1033(H)(1) of this Code.

G. When pressure spray methods are utilized for cleaning and sanitizing, the equipment and utensils shall be thoroughly flushed with a detergent-sanitizer solution until the article is free of visible food particles and soil. The detergent-sanitizer solution shall be used in accordance with the manufacturer's instructions and shall be of the type that does not require a potable water rinse when used according to those instructions.

H. The food-contact surfaces of all equipment and utensils shall be sanitized by:

1. Immersion for at least 1/2 minute in clean, hot water of a temperature of at least 170°F (77°C); or

2. Immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine as a hypochlorite and having a temperature of at least 75°F (24°C); or

3. Immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine, having a pH range which the manufacturer has demonstrated to be effective and at a temperature of at least 75°F (24°C); or

4. Immersion for at least one minute in a clean solution containing 200 parts per million of a quaternary ammonium compound and having a temperature of at least 75°F (24°C). The quaternary ammonium compound used shall have been compounded by the manufacturer to assure effectiveness in waters up to 500 parts per million hardness at use concentration; or

5. Immersion in a clean solution containing any other chemical sanitizing agency allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as a hypochlorite at temperature of at least 75°F (24°C) for one minute; or

6. Treatment with steam from materials or additives other than those specified in 21 CFR 173.310 in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

7. Rinsing, spraying, or swabbing with a chemical sanitizing solution of at least twice the strength required for that particular sanitizing solution under § 1033(H)(2), (3) and (5) of this Code in the case of equipment too large to sanitize by immersion.

I. When hot water is used for sanitizing, the following equipment shall be provided and used:

1. An integral heating device or fixture installed in, on or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and

2. A numerically scaled indicating thermometer, accurate to 3°F (1°C) convenient to the sink for frequent checks of water temperature; and

3. Utensil racks or baskets of such size and design to permit complete immersion of utensils and equipment in the hot water.

J. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that measures the parts per million concentration of the solution shall be provided and used.

K. Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1034. Mechanical cleaning and sanitizing

A. Mechanical cleaning and sanitizing equipment and practices shall conform to the provisions contained in 13 N.N.C. § 154 of Navajo Nation Health Code, Food Service Sanitation Ordinance.

B. Facilities and/or equipment shall be available, either in a servicing area or in place, to provide for proper cleaning and sanitizing of all food-contact surfaces including product modules, lids and dispensing utensils.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1035. Drying

Unless used immediately after sanitization, all equipment and utensils shall be air dried. Towel drying shall not be permitted.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1036. Retail food stores without equipment and utensil cleaning facilities

Retail food stores that do not have facilities for proper cleaning and sanitizing of utensils and equipment shall not prepare or package food or dispense unpackaged food other than raw fruits and raw vegetables.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1037. Equipment and utensil handling and storage—Handling

Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1038. Storage

A. Cleaned and sanitized utensils and equipment shall be stored at least six inches (152 mm) above the floor in a clean, dry location in a way that protects them from splash, dust, and other means of contamination. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water had accumulated.

B. Utensils shall be air dried before being stored or shall be stored in a self-draining position.

C. Stored utensils shall be covered or inverted wherever practical.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1039. Single-service articles

A. Single-service articles shall be stored in closed cartons or containers at least six inches (152 mm) above the floor or on easily movable dollies, skids, racks, or open-ended pallets. Such storage shall protect the articles from contamination and shall not be located under exposed or unprotected sewer lines, or water lines that are leaking or on which condensed water had accumulated.

B. Single-serve articles shall be handled in a manner that prevents contamination of surfaces that may come in contact with food.

C. Take-home containers (bags, cups, lids, etc.) provided in the display area for customer use shall be stored and dispensed in a sanitary manner.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1040. Prohibited storage areas

Food equipment, utensils, or single-service articles shall not be stored in locker rooms, toilet rooms or their vestibules, garbage rooms, or mechanical rooms.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 6. Sanitary Facilities and Controls

§ 1071. Water supply—General

Sufficient potable water for the needs of the retail food store shall be provided from a source constructed, maintained, and operated according to the Safe Drinking Water Act, Public Law 93-523.¹

¹ 42 U.S.C. § 300-f et seq.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.
Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 1072. Water delivery

All potable water not provided to the retail food store directly from the source by pipe shall be delivered in a bulk water transport system and shall be transferred to a closed water system. Both of these systems shall be constructed, maintained, and operated meeting the approval of the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1073. Water under pressure

Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1074. Steam

Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6. Westlaw Topic Nos. 178, 209, 362.
Indians ☞32(4.1). C.J.S. Steam §§ 6 to 13.
Steam ☞5.

§ 1075. Sewage—General

All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed, maintained, and operated meeting the approval of the Health Advisor. Non-water carried sewage disposal facilities are prohibited, except as permitted by the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Environmental Law ☞371. Indians ☞32(4.1).
Food ☞5, 6. Westlaw Topic Nos. 149E, 178, 209.

§ 1076. Plumbing—General

Plumbing shall be sized, installed, and maintained according to the latest edition of Uniform Plumbing Code. There shall be no cross-connect between the potable water supply and any other system containing:

- A. Water of unknown or questionable origin; or
- B. Contaminating or polluting substances.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6. Westlaw Topic Nos. 178, 209, 405.
Indians ☞32(4.1). C.J.S. Waters §§ 495 to 497.
Waters and Water Courses ☞196.

13 N.N.C. § 1077

HEALTH AND WELFARE

§ 1077. Nonpotable water system

A nonpotable water system is permitted for air conditioning, equipment cooling, and fire protection, and shall be installed meeting the approval of the Health Advisor. Nonpotable water shall not directly or indirectly contact food or equipment or utensils that contact food. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1078. Backflow

The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where an air gap at least twice the diameter of the water system inlet is not provided between the water supply inlet and the fixture's flood level rim. No hose shall be attached to a faucet that is not equipped with a backflow prevention device.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Waters and Water Courses ☞196.
Westlaw Topic Nos. 178, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 1079. Grease traps

Grease traps, if used, shall be located to be easily accessible for cleaning and shall be placed outside the building.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1080. Garbage grinders

Garbage grinders, if used, shall be installed and maintained meeting the approval of the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1081. Drains

There shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a warewashing machine is located within five feet [152 centimeters (cm)] of a trapped floor drain, the warewasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap if approved by the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1082. Toilet facilities—Toilet installation

A. Toilet facilities shall be installed according to the latest edition of the Uniform Plumbing Code, shall be at least one and no less than the number required, shall be conveniently located, and shall be accessible to employees at all times.

B. Toilet and lavatory facilities shall be provided for the public, as required by Navajo Nation Resolution ACAP-48-82, and shall accommodate handicapped individuals and meet those handicapped standards of the American National Standard Specification A1171-1976 (R1971).

History

CMY-28-86, May 2, 1986.

Library References

Civil Rights ☞1046.	Westlaw Topic Nos. 78, 178, 209.
Food ☞5, 6.	C.J.S. Civil Rights § 23.
Indians ☞32(4.1).	

§ 1083. Toilet design

Toilets and urinals shall be designed to be easily cleanable.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1084. Toilet rooms

Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing solid doors, except for louvers that may be necessary for ventilation system.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1085. Toilet facility maintenance

Toilet facilities, including toilet fixtures and any related vestibules, shall be kept clean and in good repair. A supply of toilet tissue shall be provided at all times. Easily cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1086. Handwashing facilities—Handwashing facility installation

A. Handwashing facilities shall be according to the latest edition of the Uniform Plumbing Code, shall be a least one, and not less than as specified by the Health Advisor, and shall be conveniently located to permit use by all employees in food preparation and warewashing areas. Handwashing facilities shall be accessible to employees at all times. Handwashing facilities shall also be located in or immediately adjacent to toilet rooms or their vestibules. Sinks used for food preparation or for warewashing shall not be used for washing of hands or for any other purpose.

B. When handwashing facilities are not available at the bulk food display area, customers, upon request, are permitted access to handwashing facilities located in employee restroom(s).

C. When sanitary paper towels or disposable towelettes are provided, easily cleanable waste receptacle(s) shall be conveniently provided in the display area.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1087. Handwashing facility faucets

Each handwashing facility shall be provided with hot and cold. water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet used shall be designed to provide a flow of water for at least 15 seconds without the need to reactivate the faucet. Steam mixing valves are prohibited at handwashing facilities.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1088. Handwashing supplies

A supply of hand-cleaning soap or detergent shall be available at each handwashing facility. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each handwashing facility. Common towels are prohibited. If disposal towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1089. Handwashing facility maintenance

Handwashing facilities, soap or detergent dispensers, hand-drying devices, and all related facilities shall be kept clean and in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6. Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1090. Garbage and refuse—Containers

A. Garbage and refuse shall be held in durable, easily cleanable, insect-resistant, and rodent-resistant containers that do not leak and do not absorb liquids. Plastic bags and wet strength paper bags may be used to line these containers. Such bags and durable plastic garbage and refuse containers may be used for storage inside the retail food store.

B. Containers used in food preparation and utensil washing areas shall be kept covered during non-working hours after they are filled.

C. Containers stored outside the establishment, including dumpsters, compactors, and compactor systems, shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

D. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.

E. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, detergent, and hot water or steam, shall be provided and used for cleaning containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1091. Storage

A. Garbage and refuse on the premises shall be stored in a manner to make them inaccessible to insects, rodents and other animals. Outside storage of non-rodent-resistant plastic containers, unprotected plastic bags, wet strength paper bags, or baled units which contain garbage or refuse is prohibited. Cardboard or other packaging material not containing garbage or food wastes need not be stored in covered containers.

B. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect and rodent resistant, and shall be large enough to store all the garbage and refuse containers necessitated by disposal pick-up frequency.

C. Outside storage areas or enclosures, if used, shall be kept clean and be large enough to store all the garbage and refuse containers necessitated by

disposal pick-up frequency. Garbage and refuse containers, dumpsters, and compactors systems located outside, shall be stored on or above a smooth surface of nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean and maintained in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1092. Disposal

A. Garbage and refuse shall be disposed of often enough to prevent the development of objectionable odors and the attraction of insects and rodents.

B. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration and meet the approval of the health advisor. Areas around incineration units shall be kept clean and orderly.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1093. Insect and rodent control—General

Effective measures shall be utilized to minimize the entry, presence, and propagation of rodents, flies, cockroaches, or other insects. The premises shall be maintained in a condition that prevents the harborage or feeding of insects or rodents.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1094. Openings

Openings to the outside shall be effectively protected against the entry of rodents. Outside openings shall, be protected against the entry of insects by tight-fitting, self-closing doors; closed windows; screening; controlled air currents; or other means. Screen doors shall be self-closing, and screens for windows, skylights, transoms, intake and exhaust air ducts, and other openings

to the outside shall be tight-fitting and free of breaks. Screening material shall be not less than 16 mesh to the inch.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 7. Construction and Maintenance Of Physical Facilities

§ 1131. Floors—Floor construction

A. Except as specified in § 1132 of this Code, floors and floor coverings of all food preparation, food storage, and warewashing areas, and the floors of all walk-in refrigerators, dressing rooms, locker rooms, toilet rooms and vestibules, shall be constructed of smooth durable material such as sealed concrete, terrazzo, quarry tile, ceramic tile, durable grades of vinyl asbestos or plastic tile, or tight-fitting wood impregnated with plastic, and shall be maintained in good repair. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.

B. Floors which are water flushed or which receive discharges of water or other fluid wastes or are in areas where pressure spray methods for cleaning are used, shall be provided with properly installed trapped drains. Such floors shall be constructed only of sealed concrete, terrazzo, quarry tile, ceramic tile, or similar materials and shall be graded to drain.

C. In all establishments utilizing concrete, terrazzo, quarry tile, ceramic tile, or similar flooring materials, or where water flush cleaning methods are used, the junctures between walls and floors shall be covered and sealed. In all other cases, the juncture between walls and floors shall be covered so as not to present an open seam of more than 1/32 inch (0.8 mm).

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1132. Floor carpeting

Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting shall not be used in food preparation and warewashing areas, in food storage areas, or in toilet room areas where urinals or fixtures are located.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1133. Prohibited floor covering

Sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials shall not be used as floor coverings. However, these materials maybe used in amounts necessary for immediate spot clean-up of spills or drippage on floors.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1134. Mats and duckboards

Mats and duckboards shall be of nonabsorbent, grease resistant materials, and of such size, design, and construction to facilitate cleaning and shall be maintained in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1135. Utility line installation

Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility service lines and pipes on the floor is prohibited.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1136. Walls and ceilings—Maintenance

Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1137. Construction

The walls, wall coverings, and ceilings of walk-in refrigeration units, food preparation areas, warewashing areas, and toilet rooms and their vestibules shall be smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks and bricks used for interior wall construction in these locations shall be finished and sealed to provide a smooth easily cleanable surface.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1138. Exposed construction

Studs, joists, and rafters shall not be exposed in those areas listed in § 1137 of this Code. If exposed in other rooms or areas, they shall be finished to provide a cleanable surface.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1139. Utility line installation

Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings in those areas listed in § 1137 of this Code. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1140. Attachments

Light fixtures, vent covers, wall mounted fans, decorative materials, and similar attachments to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1141. Covering materials installation

Wall and ceiling covering materials shall be attached and sealed in a manner to be easily cleanable.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1142. Cleaning physical facilities—General

Cleaning of floors, walls, and ceilings shall be done as often as necessary, but preferably during periods when the least amount of food is exposed, such as after closing. Only dustless methods of cleaning floors, walls, and ceilings shall be used, such as vacuum cleaning, wet cleaning, treated-dust mops, or the use of dust-arresting, sweeping compounds with brooms. Floors, mats, duckboards, walls, ceilings, and attachments (e.g., light fixtures, vent covers, wall mounted fans, and similar equipment), and decorative materials (e.g., signs and advertising materials) shall be kept clean.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Westlaw Topic Nos. 178, 209.

§ 1146. Ventilation—General

All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to provisions established by the Health Advisor, and when vented to the outside, shall not create a harmful or unlawful discharge. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1147. Dressing rooms and locker areas—Dressing rooms and areas

If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, food storage, food display, warewashing, or storage of utensils and equipment.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1148. Locker areas

Lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may only be located in the designated dressing rooms or areas or, in food storage rooms or areas containing only completely packaged food or packaged single-service articles.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1149. Poisonous or toxic materials—Materials permitted

Only those poisonous or toxic materials necessary and intended for the maintenance of the establishment, including the cleaning and sanitization of equipment and utensils, and the control of insects and rodents, shall be present in retail food stores, except those items being stored or display for retail sale as described in § 1153 of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1150. Labeling of materials

Containers of poisonous or toxic materials necessary for operational maintenance of the establishment shall be prominently and distinctly labeled. Small working containers of bulk cleaning agents shall be individually labeled for easy identification of contents. Poisonous and toxic products being sold shall be prominently and distinctly labeled. Included on the label of the product being sold shall be the basic first aid recommendations in the event of ingestion, inhalation, etc. Poisonous or toxic products transferred from bulk containers to smaller containers for sale to the public shall meet labeling requirements of this section and should not be transferred into containers similar to those used for food. If food-like containers are used, they must meet labeling requirements of this section, plus the containers shall have child-proof safety lids/caps.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1151. Storage of materials

A. Poisonous or toxic materials necessary for the maintenance of the establishment consist of the following two categories:

1. Insecticides and rodenticides;
2. Detergents, sanitizers, related cleaning or drying agents, and caustics, acids, polishes, and other chemicals.

B. Materials in each of these two categories shall be stored and located to be physically separated from each other; shall be stored in cabinets or in similar physically separated compartments or facilities used for no other purpose; and, to preclude potential contamination, shall not be stored above or intermingled with food, food equipment, utensils, or single-service articles,

except that this latter requirement does not prohibit the convenient availability of detergent sanitizer, or sanitizer at warewashing facilities.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1152. Use of materials

A. Sanitizers, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces, nor in a way that constitutes a hazard to employees or other persons.

B. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, nor in a way other than in full compliance with the manufacturer's labeling.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1153. Storage and display of materials for retail sale

Poisonous or toxic materials stored or displayed for retail sale shall be separated from food and single-service articles by spacing, partitioning, or dividers. These materials shall not be stored or displayed above food or single-service articles.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1154. First-aid supplies and personal medications

Retail food store employee first-aid supplies and personal medications shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1155. Premises—General

A. Retail food stores and all parts of the property used in connection with operations of the establishment shall be reasonably free of litter and articles not essential to the operations or maintenance of the establishment.

B. The walking and driving surfaces of all exterior areas of retail food stores shall be surfaced with concrete, asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to facilitate drainage.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1156. Living areas

No operation of a retail food store shall be conducted in any room used as living or sleeping quarters. Retail food store operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1157. Laundry facilities

A. If provided, laundry facilities in a retail food store shall be restricted to the washing and drying of linens and work clothes used in the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.

B. Separate rooms shall be provided for laundry facilities, except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1158. Linens and work clothes storage

A. Clean work clothes and linens, including articles such as wiping cloths, shall be stored in a clean place and protected from contamination until used.

B. Soiled work clothes and linens, including articles such as wiping cloths, shall be kept in nonabsorbent containers or washable laundry bags until removed from laundering and shall be stored to prevent contamination of food, food equipment and utensils.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1159. Cleaning equipment storage

Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained in good repair and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner to facilitate the cleaning of that storage location.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1160. Animals

A. Live animals shall be excluded from within the retail food store operational areas and from immediately adjacent areas inside the store under the control of the permit holder. This exclusion does not apply to edible fish, crustacea, shellfish, or fish in aquariums.

B. Live or dead fish bait shall be stored separately from food or food products.

C. Patrol dogs accompanying security or police officers shall be permitted in offices, storage areas and outside store premises. Sentry dogs maybe

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permitted to run loose in outside fenced areas for security reasons. Guide dogs accompanying blind persons shall be permitted in sales areas.

D. While on duty, persons employed in the food operational areas of an establishment shall not care for or handle any pets, or patrol/sentry dogs.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1161. Building and premises

Premises and buildings shall be accessible to handicapped individuals. It shall meet the requirements as specified in the American National Standards Specifications A1171-1976 (R1971).

History

CMY-28-86, May 2, 1986.

Library References

Civil Rights ☞1046.
Indians ☞32(4.1).
Westlaw Topic Nos. 78, 209.
C.J.S. Civil Rights § 23.

§ 1162. Fire and electrical safety

Premises and buildings shall comply with the most recent edition of the National Fire Protection Codes.

History

CMY-28-86, May 2, 1986.

Library References

Health ☞392.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

Subchapter 8. Compliance Procedures

§ 1191. Permit to operate—General

No person shall operate a retail food store without a valid sanitation permit to operate such retail food store issued to such person by the Regulatory Authority. Such permit shall not be transferable. A valid sanitation permit shall be posted in every retail food store.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 1192. Certification

Each employee working in a retail establishment must have a valid food service training certificate from the Health Advisor. Each retail establishment must have on duty at least one individual who is currently certified as a food service manager by the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 1193. Issuance of permit

A. Any person desiring to operate a retail food store shall make written application for a sanitation permit to operate such retail food store on forms provided by the Regulatory Authority. Such application shall include the name and address of each applicant, the location and type of the proposed retail food store, and the signature of each applicant.

B. Before approving an application for a sanitation permit to operate a retail food store, the Health Advisor and the Regulatory Authority shall inspect the proposed retail food store to determine compliance with the provisions of this Code.

C. The Regulatory Authority shall promptly issue a sanitation permit upon the recommendation of the Health Advisor to operate a retail food store if its inspection reveals that the proposed retail food store is designed, constructed, and equipped to be operated in a manner that protects the public health.

D. Certain waivers on equipment covered by these regulations may be granted if, in the opinion of the Health Advisor, this does not create a health hazard.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.

C.J.S. Indians §§ 130 to 132, 134.

§ 1194. Suspension of permit

A. The Regulatory Authority or Health Advisor may, upon written notice, without prior warning, notice, or hearing, suspend any sanitation permit to

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operate a retail food store if the operation of the retail food store constitutes an imminent hazard to the public health, such as an extended loss of water supply, an extended power outage, or sewage back-up into the establishment. When such sanitation permit is suspended, retail food store operations shall be suspended immediately.

B. Whenever a sanitation permit to operate a retail food store is suspended, the holder of the permit to operate the retail food store, or the person in charge, shall be notified in writing that the permit to operate the retail food store is, upon service of the notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the holder of the permit within ten (10) days. If a written request is filed within ten (10) days, an opportunity for a hearing with the Regulatory Authority shall be afforded within ten (10) days of receipt of the request. If no written request for a hearing is filed within ten (10) days, the suspension is sustained. The Regulatory Authority shall end the suspension if the reasons for the suspension no longer exist.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1195. Revocation of permit

A. The Regulatory Authority may, after providing opportunity for a hearing, revoke a permit for:

1. Serious violations of this Code; or
 2. Repeated violations of this Code, found in consecutive inspections;
- or
3. Interference with the Health Advisor or Regulatory Authority in the performance of his duty.

B. Before revocation, the Regulatory Authority shall notify the holder of the permit to operate the retail food store, or the person in charge, in writing, of the reasons for which such permit is subject to revocation. The permit to operate the retail food store shall be revoked at the end of the ten (10) days following service of such notice unless a written request for a hearing is filed with the Regulatory Authority by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit to operate the retail food store becomes final.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞12 to 16.

Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1196. Service of notice

A notice provided for in this Code is properly served when it is delivered to the holder of the sanitation permit to operate the retail food store, or to the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of such permit to operate a retail food store. A copy of the notice shall be filed in the records of the Regulatory Authority, Health Advisor, and the Bureau of Indian Affairs.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1197. Hearings

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place it designates. Any oral testimony given at a hearing shall be recorded verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Regulatory Authority shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision, including the reasons(s) for such decision, shall be furnished to the holder of the permit to operate the retail food store, or to the person in charge, by the Regulatory Authority within ten (10) days after the hearing.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1, 9).

Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1198. Application after revocation

Whenever a revocation of a sanitation permit to operate a retail food store has become final, the holder of such revoked permit may make written application for a new permit to operate a retail food store as provided in § 1193 of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.

Indians ☞32(4.1, 9).

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Westlaw Topic Nos. 178, 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 1199. Inspections—Inspection frequency

An inspection of a retail food store shall be performed at least once a year. Additional inspections shall be performed as often as necessary for the efficient and effective enforcement of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1200. Access

Representatives of the Health Advisor and Regulatory Authority, after proper identification, shall be permitted to enter any retail food store at any reasonable time for the purpose of making inspections to determine compliance with this Code. The representatives shall, upon written notice, be permitted to examine records maintained in the retail food store (or other location) to obtain information pertaining to the source of food and supplies in the establishment when deemed necessary for the enforcement of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1201. Report of inspections

Whenever an inspection is made of a retail food store, the findings shall be recorded on the inspection report form set out in § 1203 of this Code. The inspection report form shall summarize the requirements of this Code and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. The rating score of the establishment shall be the total of the weighted point values for all violations, subtracted from 100. A copy of the completed inspection report form shall be given to the person in charge of the establishment at the conclusion of the inspection. The completed inspection report form constitutes an official notice of inspectional findings. It is a public document that shall be made available for public disclosure to any person who requests. Request for such information must be made in writing to the Regulatory Authority, stating the reasons for such requests.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1202. Correction of violations

A. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found, and correction of the violations shall be accompanied within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as may be created by an extended loss of water supply, an extended power outage, or a sewage back-up into the establishment, the establishment shall immediately cease affected retail food store operations. Such operations shall not be resumed until authorized by the Health Advisor.

2. All violations of 4 or 5 point weighted items as described in the inspection report form shall be corrected within the period of time specified by the Health Advisor, but in any event, not to exceed ten (10) days following inspection. Within fifteen (15) days after the inspection, the holder of the permit to operate the retail food store shall submit a written report to the Regulatory Authority stating the action taken to correct the 4 or 5 point weighted violations. Purchase orders or work contracts with a work completion date satisfactory to the Regulatory Authority may be accepted as interim corrective action. A follow-up inspection shall be conducted to confirm correction(s).

3. All 1 or 2 point weighted items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection.

4. When the rating score of the establishment is less than 60, the establishment shall initiate corrective action on all identified violations within forty-eight (48) hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

B. Failure to comply with § 1202(A)(2), (3), and/or (4) may result in revocation of the permit to operate the retail food store.

C. Whenever a retail food store is required under the provisions of § 1194 (A) of this Code to suspend operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to suspend operations no longer exist. Opportunity for inspection shall be offered within a reasonable time. An opportunity for a hearing by the Regulatory Authority will be provided if a written request for a hearing is filed by the holder of the permit to operate the suspension of operations. If such a written request for hearing is received, a hearing shall be held within ten (10) days of receipt of the request. All hearings shall be conducted in accordance with the procedures as described in § 1197 of this Code. If no written request for a hearing is filed within ten

(10) days, the suspension is sustained. The Regulatory Authority shall end the suspension if the reasons for the suspension no longer exists.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞12 to 16.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1203. Inspection report form

History

CMY-23-86, May 2, 1986. See Appendix A for form.

§ 1204. Examination and condemnation of food—General

A. Food may be examined or sampled by the Health Advisor for the purpose of determining compliance with this Code. The Regulatory Authority may place a hold order on any food which it has reason to believe is in violation of any section of this Code and may pose a health hazard to the public, provided:

1. A written notice is issued to the holder of the sanitation permit to operate the retail food store, or to the person in charge; and
2. The notice specifies in detail the reasons(s) for the hold order.

B. The Health Advisor shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, sold, moved from the establishment, or destroyed without permission from the Health Advisor.

C. The Health Advisor shall permit storage of food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

D. The hold order shall state that a request for hearing maybe filed with the Regulatory Authority within ten (10) days, and that if no hearing is requested, the food shall be destroyed. If a request for a hearing is received, the hearing shall be held within twenty (20) days after receipt of the request. On the basis of evidence produced at that hearing, the hold order may be vacated or the holder of the permit to operate the retail food store, or the person in charge, may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Code. If food is to be denatured or destroyed, such action shall be taken under the supervision of the Health Advisor.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1205. Review of plans—Submission of plans

A. Before the construction or major remodeling of a retail food store, and whenever an existing structure is converted to use as a retail food store, properly prepared plans and specifications for such construction, major remodeling, or conversion shall be submitted to the Regulatory Authority and the Health Advisor for review and approval. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The health advisor shall treat such plans and specifications as confidential or trade secret information in accordance with law and shall approve the plans and specifications if they meet the requirements of this Code. No retail food store shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the Health Advisor.

B. Alteration of a retail food store to accommodate self-service of bulk food will constitute major remodeling. This will require submission of plans and specifications for approval.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1206. Review of plans—Preoperational inspection

Whenever plans and specifications are required by § 1205 of this Code, the health advisor or Regulatory Authority shall inspect the retail food store prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1207. Procedure when infection suspected—General

A.¹ When the Health Advisor has reasonable cause to suspect possible disease transmission from any retail food store employee, it may secure a

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morbidity history of the suspected employee, or make any other investigation as indicated and shall take appropriate action. All investigations shall be conducted in compliance with the provisions of the Privacy Act, and information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

1. The immediate exclusion of the employee from employment in retail food stores;
2. The immediate closing of the retail food store concerned until, in the opinion of the Health Advisor, no further danger of disease outbreak exists;
3. Restriction of the employee's services to some area of the establishment where there could be no danger of transmitting disease;
4. Adequate medical and laboratory examination of the employee, of other employees, and of the body discharges of such employees.

¹ So in original; no subsec. (B) was enacted.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Health ☞384.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 1208. Remedies Penalties

A. The Regulatory Authority shall execute and enforce the provisions of this Act and in that enforcement is vested with all powers relating to inspection, sampling, condemnation and embargoing of hazardous substances granted to it with respect to this Code.

B. If any person shall violate directly or indirectly, through his officers or employees, any of the provisions of this Act, or regulations promulgated thereunder, the Regulatory Authority may order the correction of the violation within such reasonable period of time as the commissioner may prescribe. Such order shall be complied with in the time specified.

C. Any person violating any of the provisions of this Act or orders or regulations promulgated thereunder shall be liable to a penalty of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), and for the second and each succeeding violation, double that of the proceeding infraction, to be collected in a civil action by the Regulatory Authority and deposited in the Navajo Nation general funds account. Where the violation is of a continuing nature, each day during which it continues, after the date given by which the violation must be eliminated in the order by the Regulatory Authority, shall constitute an additional, separate and distinct offense, except during the time an appeal from said order may be taken or is pending.

D. The Regulatory Authority is authorized and empowered to compromise and settle any claim for a penalty under this section in such amount in the discretion of the Regulatory Authority as may appear appropriate and equitable under all of the circumstances.

E. Payment of a penalty for any violation of this Act or regulations promulgated thereunder either before or after the institution of proceedings for the collection thereof shall be deemed equivalent to a concession of the violation for which such penalty was claimed.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1209. Injunctions

The regulatory authority or Health Advisor may seek to enjoin violators of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 9. Enactment Provisions

§ 1241. Captions

Sections and other captions are part of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1242. Exceptions

A. Building facilities and equipment in use before the effective date of this Code which do not meet fully all of the design and fabrication requirements of this Code, shall be acceptable if they are in good repair, capable of being maintained in a sanitary condition, and the food-contact surfaces (if any) are in compliance with § 902(R) of this Code.

B. New building facilities and new equipment for which contractual obligations are incurred before the effective date of this Code, and which do not fully meet all the design and fabrication requirements of this Code, shall be

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acceptable if they are capable of being maintained in a sanitary condition and the food-contact surfaces (if any) are in compliance with § 902(F) of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1243. Repealer

Twelve (12) months after the date of adoption and publication of this Code in accordance with law, all codes and parts of codes that conflict with this Code are repealed.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1244. Separability

If any provision or application of any provision of this Code is held invalid, that invalidity shall not affect other provisions or applications of this Code.

History

CMY-28-86, May 2, 1986.

Library References

Indians ☞32(4.1).
Statutes ☞64(2).
Westlaw Topic Nos. 209, 361.

C.J.S. Statutes §§ 87, 89 to 90, 94 to 97, 99,
102 to 104, 107.

§ 1245. Effective Date

This code is effective twelve (12) months after its adoption and publication in accordance with law.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Subchapter 10. Wholesale and Salvage Food Operations

§ 1261. Whole food operations

Any wholesale food operation including food storage warehouses on the Navajo Nation shall meet the provisions of the Food, Drug and Cosmetic Act ¹ along with its amendments, and shall meet the approval of the Health Advisor.

¹ 21 U.S.C. § 301 et seq.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1262. Permits

Any wholesale food operation shall be required to obtain a sanitation permit from the Regulatory Authority.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞3. Westlaw Topic Nos. 178, 209.
Indians ☞32(4.1, 9). C.J.S. Indians §§ 130 to 132, 134.

§ 1263. Salvage operations

Salvage operations shall not be permitted.

History

CMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

Chapter 6. Food and Beverage
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History

CMY-28-86, May 2, 1986.

Note. Appendix referenced in this Code is not included; see CMY-28-86.

Subchapter 1. General Provisions**§ 1301. Purpose**

This code shall be liberally construed and applied to promote its underlying purpose of protecting the public health.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞2.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1302. Definitions

For the purpose of this ordinance:

A. "Bulk food" means a food which when dispensed to the customer is not package, wrapped or otherwise enclosed.

B. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers or supplies are kept, handled, prepared, packaged, or stored for use in vending machines. The term shall not apply to an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.

C. "Condiment" means any food such as salt, pepper, mustard and ketchup that is used to enhance the flavor of other food.

D. "Controlled location vending machine (limited service vending machine)" means a vending machine which:

1. Dispenses only non-potentially hazardous food; and
2. Is of such design that it can be filled and maintained in a sanitary manner by untrained persons at the location; and
3. Is intended for and used at locations in which protection is assured against environmental contamination.

E. "Corrosion-resistant materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and bactericidal solutions, and other conditions of the use environment.

F. "Easily cleanable" means that surfaces are readily accessible and made of such material and finish and so fabricated that residues may be effectively removed by normal cleaning methods.

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G. "Employee" means that permit holder, individual having supervisory or management duties and any other person who handles any food to be dispensed through vending machines, or who comes into contact with food-contact surfaces of containers, equipment, utensils, or packaging materials, used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.

H. "Equipment" means vending machines, ovens, tables, counters, sinks, and similar items, other than utensils used in vending operations.

I. "Food" means any raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

J. "Food-contact surfaces" means those surfaces with which food normally comes into contact, and those surfaces from which food may drain, drip or splash back onto surfaces normally in contact with food.

K. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service or an authorized agent.

L. "Hermetically sealed container" means a container which is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its content after processing.

M. "Law" includes federal, state and local statutes, codes and regulations, and ordinances.

N. "Machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated.

O. "Operator" means any person, who by contract, agreement, or ownerships, takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines.

P. "Packaged" means bottled, canned, cartoned, or securely wrapped.

Q. "Person" includes an individual, partnership, corporation, association, or other legal entity.

R. "Potentially hazardous food" means any food that consists in whole or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients including synthetic ingredients, which is in form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. Potentially hazardous foods will include rice, fried rice, refried beans and baked potatoes. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less under standard conditions.

S. "Readily accessible" means exposed or capable of being exposed for cleaning and inspection without the use of tools.

T. "Regulatory Authority" shall mean the Navajo Division of Health or its successor.

U. "Safe materials" means articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food. If materials are food additives or color additives as defined in § 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act¹ as used, they are "safe" only if they are used in conformity with regulations established pursuant to § 409² or § 706³ of the Act. Other materials are "safe" only if they are not food additives or color additives as defined in § 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act, and are used in conformity with regulations issued under the Act.⁴

V. "Safe temperatures" for potentially hazardous food means temperatures of 45°F (7.2°C) or below or 140°F (60°C) or above.

W. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulative heat or concentration of chemical for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.

X. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.

Y. "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles designed for one time/one person use, and then discarded.

Z. "Utensil" means any implement used in the storage, preparation, transportation or service of food.

AA. "Vending machine" means any self-service device which, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food, either in bulk or in packages, without the necessity of replenishing the device between each vending operation. It shall also include self-service dispensers equipment for coin, paper currency, token, card or key operation and optional manual operation. Unless otherwise stated, vending machine includes controlled location vending machines.

¹ 21 U.S.C. § 321(s) or (t).

² 21 U.S.C. § 348.

³ 21 U.S.C. § 376.

⁴ 21 U.S.C. § 301 et seq.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞2.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

§ 1303. Captions

Sections and other captions are part of this Code.

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History

ACMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1304. Repealer

This code shall be in full force and effect three (3) months after its adoption and publication in accordance with law. At that time, all code and parts of code that conflict with this Code are repealed.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞2.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1305. Separability

If any provision or application of any provision of this Code is held invalid, that invalidity shall not affect other provisions or applications of this Code.

History

ACMY-28-86, May 2, 1986.

Library References

Indians ☞32(4.1).
Statutes ☞64(2).
Westlaw Topic Nos. 209, 361.

C.J.S. Statutes §§ 87, 89 to 90, 94 to 97, 99,
102 to 104, 107.

Subchapter 2. Food Care

§ 1311. Food supplies—General

Food exposed for sale, offered for sale, sold through vending machines and offered to patrons of vending machines shall be sound and free from spoilage, filth, or other contamination and shall be safe for human consumption. The food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1312. Food protection—General

A. At all times, including while being prepared, stored, loaded, displayed, or transported, food intended for sale through vending machines shall be protected from contamination by all agents, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, draining, and overhead leakage or condensation.

B. The temperature of potentially hazardous foods shall be 45°F (7.2°C) or below or 140°F (60°C) or above at all times, except as otherwise provided in § 1313 (G).

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1313. Special requirements

A. Milk and fluid milk products offered for sale through vending machines shall be pasteurized, shall meet the Grade A quality standards as established by law, and shall be dispensed only in individual original containers. Raw milk and raw milk products shall not be sold.

B. Milk and fluid milk products and fluid non-dairy products (creaming agents) shall not be dispensed in vending machines as additional ingredients in hot liquid beverages or other foods.

C. When condiments are provided in conjunction with food dispensed by a vending machine, they shall be:

1. Packaged in individual portions in single-service containers; and
2. Dispensed from sanitary dispensers which are cleaned, rinsed and sanitized and filled at the commissary or at the machine location if sanitary facilities are provided; or
3. Made available from condiment self-service dispensing equipment at those locations having an on-duty attendant.

D. Fresh fruits which may be eaten without peeling shall be thoroughly washed in potable water at the packing plant by the processor, or at the commissary before being placed in the vending machines for dispensing. The washed fruit shall be protected from contamination after the washing process.

E. All food, other than fresh fruit, shall be stored or packaged in clean protective containers, and all food shall be handled and vended in a sanitary manner.

F. Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual, original container or package into which it was placed at the commissary or at the manufacturer's or processor's plant. Potentially hazardous food shall not be dispensed from bulk food machines.

G. Potentially hazardous food shall be maintained at safe temperatures except as follows:

1. During necessary periods of preparation and packaging; and
2. During the actual time required to load or otherwise service the machine and for a maximum machine ambient temperature recovery period of 30 minutes following completion of loading or servicing operation.

H. Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units and thermostatic controls which insure the maintenance of sale temperatures at all times. Such vending machines shall also have automatic controls which prevent the machine from vending potentially hazardous food until serviced by the operator in the event of power failure, mechanical failure or other condition which results in non-compliance with temperature requirements in the food storage compartment.

I. Potentially hazardous food that has failed to conform to the time-temperature requirements of this Code shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

J. Vending machine dispensing potentially hazardous food shall be provided with one or more thermometers which, to an accuracy of 3°F, indicate the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

Subchapter 3. Personnel

§ 1321. Employee health—General

No person, while infected with a communicable disease that can be transmitted by foods or who is a carrier of organisms that cause such a disease, or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in any area of a commissary or vending operation except as specified in § 1394.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Health ☞384.

Indians ☞32(4.1).
Westlaw Topic Nos. 178, 198H, 209.

§ 1322. Personal cleanliness—General

A. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices while engaged in handling foods or food-contact surfaces of utensils or equipment.

B. Employees shall thoroughly wash their hands with soap and warm water immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such servicing operations, employees shall wear clean outer garments, shall not use tobacco in any form, wear hair restraints, and shall keep their fingernails clean and trimmed.

C. Jewelry shall not be worn on the hands of employees involved in the handling of foods or by those employees involved in equipment and utensil washing and sanitizing activities.

D. All employees working in the commissary shall have a valid certificate that they have received training on the prevention of foodborne disease issued by the Health Advisor.

History

ACMY-28-86, May 2, 1986.

Subchapter 4. Equipment and Utensils

§ 1341. Interior construction and maintenance—General

A. The non-food-contact surfaces of the interior of vending machines shall be designed and constructed to permit easy cleaning and to facilitate maintenance operations and shall be kept clean and in good repair. Inaccessible surfaces and areas shall be minimized.

B. All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall preclude routine contact between food and “V” type threaded surfaces except that in equipment where such contact is unavoidable, such as ice makers, such thread shall be minimized. All joints and welds in food-contact surfaces shall be smooth, and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.

C. If solder or other sealer is used on food-contact surfaces, it shall be composed of safe materials and be corrosion resistant.

D. All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed and repaired with safe materials,

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including finishing materials; shall be corrosion-resistant, non-absorbent, easily cleanable and durable under conditions of normal use; and shall be cleaned, rinsed, and sanitized at a frequency established by the Health Advisor based upon the type of product being dispensed.

E. All food-contact surfaces unless designed for in-place cleaning, shall be accessible for manual cleaning, rinsing, sanitizing and inspection:

1. Without being disassembled; or
2. By disassembly without the use of tools; or
3. By easy disassembling with the use of only simple tools such as a screwdriver or an open-end wrench.

F. All food-contact parts or surfaces not designed for in-place cleaning (§ 1341 (G)) shall be cleaned, rinsed and sanitized in clean, portable containers or in utensil washing sinks at the location or at the commissary. Cleaning shall consist of washing in warm water containing a suitable detergent and brushing or wiping, as appropriate. Rinsing shall consist of immersion or wiping with clean clear rinse water. Sanitizing shall be accomplished by.

1. Immersion or rinsing in water of at least 170°F (76.7°C) for 30 seconds; or
2. Immersion for 1 minute in a chemical sanitizing solution containing at least 50 parts per million (p.p.m.) of available chlorine, or 12.5 p.p.m. of available iodine, or 200 p.p.m. of quaternary ammonium sanitizer.

G. In machines designed so that food-contact surfaces are not readily removable, all such surfaces intended for in-place cleaning shall be designed and fabricated that:

1. Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen; and
2. Cleaning and sanitizing solutions will contact all food contact surfaces; and
3. The system is self-draining or capable of being completely evacuated; and
4. The procedures utilized result in thorough cleaning of the equipment.

H. The openings into all nonpressurized containers used for the storage of vendible food, including water, shall be provided with covers which prevent contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths of an inch, and shall be provided with an overlapping over flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food containers unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of safe materials, relatively stable,

and relatively non-absorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

I. The delivery tube or chute and orifice of all bulk food vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall divert condensation or moisture from the normal filling position of the container receiving the food. The ending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept closed except when food is being removed. The cup filling area or platform of controlled location vending machines shall not require a door or cover if there is no opening into the cabinet interior at that point other than for dispensing tube(s) or trapped waste tubing. The dispensing compartment of prepackaged candy and similar product vending machines shall be equipped with a self-closing lid at vending locations where insect or rodent entry into the machine may occur.

J. The food storage compartment and other compartments in refrigerated vending machines which are subject to condensation or cooling water retention shall be self draining or equipped with a drain outlet which permits complete draining. In vending machines designed to store cartoned beverages, diversion devices and retention pans or drains for leakage shall be provided. All such drains, devices, and retention pans shall be easily cleanable.

K. Can and bottle openers which come into contact with the food or the food-contact surfaces of the containers shall be constructed of corrosion-resistant, non-absorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surfaces of the containers shall be constructed of corrosion-resistant, nonabsorbent, and safe materials and shall be kept clean. Cutting or piercing parts of multiuse openers which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1342. Exterior construction and maintenance—General

A. The vending machine shall be of sturdy construction and the exterior shall be designed, fabricated, finished and maintained to facilitate its being kept clean, and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean. The vending machine shall not constitute a safety hazard.

B. Door and panel access openings to the food and container storage spaces of the machine shall be tight fitting, and if necessary, gasketed to prevent the entrance of dust, moisture, insects, and rodents.

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C. All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than 16 mesh to the inch or equivalent. Screening materials for openings into condenser units which are separated from food and container storage spaces shall be not less than 8 mesh to the inch or equivalent.

D. In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space, shall be separated from such space by a dust proof barrier, and when located above, shall be sealed from such space.

E. In order to prevent seepage underneath the machine and to promote cleaning, free standing vending machines shall have one or more of these elevation or movability features:

1. Be light enough to be manually moved with ease by one person; or
2. Be elevated on legs or extended sidewalls to afford, with or without kickplates, an unobstructed vertical space of at least 6 inches (15.24 cm) under the machine; or
3. Mounted on rollers or casters which permit easy movement; or
4. Be sealed to the floor.

F. Where used, kickplates shall be easily removable or be capable of being rotated. These kickplates shall be designed and installed to make the area under the machine easily accessible for routine cleaning without unlocking the cabinet door.

G. Counter type machines shall be:

1. Sealed to the counter; or
2. Mounted on 4-inch (10.16 cm) legs or the equivalent; or
3. Easily moved for cleaning with service connections in place.

H. All service connections through an exterior wall of the machine including water, gas, electrical, and refrigeration connections, shall be grommeted, or closed with no opening over 1/32 inch (0.79 mm) to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food shall be such as to discourage their unauthorized or unintentional disconnection.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1343. Equipment location—General

A. Vending machines, ovens, and other equipment shall be located in a room, area or space which can be maintained in a clean condition and which is

protected from overhead leakage or condensation from water, waste or sewer piping. The immediate area in which the equipment is located shall be well lighted and ventilated. Each vending machine shall be located so that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

B. The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

C. Adequate handwashing facilities, including hot or cold or tempered running water, soap and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1344. Special requirements—Single-service articles

Single-service articles shall be purchased in sanitary packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be furnished to the customer in the original individual wrapper or from a sanitary single-service dispenser. All single-service articles shall be protected from manual contact, dust, insects, rodents, and other contamination.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1345. Other equipment

A. All other equipment at the vending location must be kept clean. Food-contact surfaces, if any, must be cleaned, rinsed and sanitized at a frequency established by the Health Advisor based upon the type of product being dispensed.

B. The cavities and door edges of microwave ovens must be cleaned at least once a day with non-abrasive cleaners and shall be kept free of encrusted grease deposits and other accumulated soil. All doors, seals, hinges, and latch fasteners (screws and related hardware) shall be kept tight and adjusted in

accordance with manufacturer's procedures. Microwave ovens shall be in compliance with applicable safety standards of the U.S. Food and Drug Administration's Center for Devices and Radiological Health.

C. Food-contact surfaces of all equipment and utensils must be protected from contamination at all times including while being transported from the commissary to the vending location.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Westlaw Topic Nos. 178, 209.

Subchapter 5. Sanitary Facilities and Controls

§ 1361. Water supply—General

A. All water used in vending machines shall be of a safe and sanitary quality and from a source constructed and operated according to the Safe Drinking Water Act, Public Law 93-523.¹ Water used as a food ingredient shall be piped to the vending machines under pressure, except that in controlled location vending machines, water may be obtained from a safe source and carried to the machines in containers that are clean and of good sanitary construction.

1. External water fill ports or drawers of controlled location vending machines shall be designed so that covers and drawers are secured to the machine.

2. All plumbing connections and fittings shall be installed and maintained according to the 1982 Uniform Plumbing Code.

B. If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

C. To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, post-mix soft drink vending machines manufactured after January 1, 1975, which are designed with an incoming water supply air gap shall have no copper tubing or other potentially toxic water system tubing between the air gap and the downstream, carbonated water dispensing nozzle.

D. To prevent leaching of toxic materials caused by possible interaction of carbonated water, piping and contact surfaces, post-mix soft drink vending machines which are directly connected to the external water supply system shall be equipped with a double (or two single) spring-loaded check valves or other devices which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. Backflow preventive devices shall be located to facilitate servicing and maintenance. No

copper tubing or other potentially toxic tubing or contact surfaces shall be permitted in or downstream from the check valves or backflow devices. These check valves or device shall be inspected and cleaned or replaced annually.

E. Where spring-loaded check valves are used to prevent the backflow of carbon dioxide into accessible upstream copper or other potentially toxic piping or tubing, a screen of not less than 100 mesh to the inch shall be installed in the water line immediately upstream from the check valves in a location which permits servicing or replacement.

F. In all vending machines in which carbon dioxide is used as a propellant, all food-contact surfaces from the check valves or other protective devices, including the valves or devices, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

¹ 42 U.S.C. § 300-f et seq.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.

Indians ☞32(4.1).

Waters and Water Courses ☞196.

Westlaw Topic Nos. 178, 209, 405.

C.J.S. Waters §§ 495 to 497.

§ 1362. Waste disposal—General

A. All trash and other solid or liquid waste shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in a manner meeting the approval of the health advisor.

B. Self-closing, leak-proof, easily cleanable, insect-proof and rodent-proof waste receptacles shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other items. Plastic bags and wet-strength paper bags may be used to line the receptacles. Soiled waste receptacles shall be cleaned at a frequency to prevent insect and rodent attraction.

C. Waste receptacles shall not be located within the vending machines with the exception of those machines dispensing only packaged food with crown closures; in which case, the closure receptacles maybe located within the machine. Waste receptacles shall not be located under counters or otherwise enclosed in a manner that will create a nuisance or prevent space around and under the counter or enclosure from being easily cleaned and maintained. Suitable racks or cases shall be provided for multiuse containers or bottles.

D. Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. Such machines shall be equipped with an automatic shut-off device at the waste pail or other devices or valves which will place the machine out of operation before the waste pail overflows. Such devices shall prevent water or liquid

product from continuously running in the event of the failure of any single control, high level control, or other flow control device in the liquid product or water system.

E. Controlled location vending machines not connected to a water supply system, and which generate no internal liquid wastes, may be equipped with easily removable drip pans at the dispensing platform in lieu of internal waste containers and automatic shut-off devices.

F. Controlled location vending machines that are connected to a water supply and have no internal waste containers, shall be equipped with at least two independently operated controls to prevent the continued flow of water in event of failure of any single flow control device.

G. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an air gap.

History

ACMY-28-86, May 2, 1986.

Library References

Environmental Law ⌘371.
Food ⌘5, 6.

Indians ⌘32(4.1).
Westlaw Topic Nos. 149E, 178, 209.

Subchapter 6. Compliance Procedures

§ 1381. Permits—General

A. No person shall operate one or more vending machines, other than controlled location vending machines, without a valid permit issued by the Regulatory Authority. Persons who do not comply with the requirements of this Code shall not be entitled to receive or retain such a permit. Permits are not transferrable.

B. The operator's company name and service telephone number shall be displayed on each vending machine or conspicuously adjacent to the vending machine bank.

C. All operators of vending machines shall:

1. Comply with the requirements of this Code;
2. Maintain at the operator's headquarters or at some other designated location within the jurisdiction of the Health Advisor and Regulatory Authority a list of all vending machines operated by such operator within the jurisdiction and the complete address of each machine location and of all commissaries or other establishments from which this machines are serviced. This information shall be available to the Health Advisor upon request, and shall be kept current;

3. Notify the Health Advisor and Regulatory Authority of each new vending machine location at which potentially hazardous food or hot or cold cup beverage vending machines have been placed in operation; and

4. Notify the Health Advisor and Regulatory Authority of any change in operations involving new types of vending machines or conversions of existing machines to dispense products other than those for which the machines were built.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1382. Issuance of permits

A. Any person desiring to operate one or more vending machines, other than controlled location vending machines, shall make written application for a permit on forms provided by the Regulatory Authority.

B. Upon receipt of such application, the Health Advisor shall make an inspection of the commissary, supply storage, servicing, cleaning and sanitizing facilities, and transport facilities, and representative equipment and machine locations to determine compliance with the provisions of this Code. A numbered operator's permit shall be issued to the applicant by the Regulatory Authority after compliance by the operator with the applicable provisions of this Code.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1383. Suspension of permits

A. The Health Advisor or Regulatory Authority may, without prior warning, notice, or hearing, suspend any permit to engage in a vending operation if the operation constitutes a substantial hazard to public health. Suspension is effective upon service of the notice required by § 1383(B). When a permit is suspended, vending operations shall immediately cease. Whenever a permit is suspended, the permit holder shall be afforded an opportunity for a hearing with the Regulatory Authority within ten (10) days of receipt of a request for a hearing.

B. Whenever a permit is suspended, the permit holder or operator shall be notified in writing that the permit is, upon service of the notice, immediately

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suspended, the reasons why, including clear specification of violations, and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the Regulatory Authority by the permit holder within ten (10) days. If no request for hearing is filed within ten (10) days of receipt of the request, the suspension is sustained. Prior to the hearing, the Regulatory Authority may end the suspension if reasons for suspension no longer exists.

C. A sustained suspension may be rescinded by the Regulatory Authority based on the recommendation of the Health Advisor after confirming by inspection that the requirements of this Code have been satisfied.

D. The Regulatory Authority, in lieu of suspending a permit, may suspend applicability of the permit to a particular vending machine, machines, commissary or specific products.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1384. Revocation of permits

Prior revocation, the Regulatory Authority shall notify in writing the permit holder or operator of the reasons for which the permit is subject to revocation. A permit may be revoked for serious or repeated violations of any of the items of this Code as delineated in the inspection report form or for interference with the Health Advisor in the performance of his duties. The permits shall be revoked at the end of ten (10) days following service of a revocation notice unless a request for a hearing is filed with the regulatory authority by the permit holder within such a ten (10) day period. If no request for a hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1385. Service of notices

A notice provided for in this Code is properly served when it is delivered to the permit holder or operator or when it is sent by registered or certified mail, return receipt requested, to the last known address of the permit holder. A copy of any notice shall be filed in the records of the Regulatory Authority.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1386. Hearings

The hearings provided for in this Code shall be conducted by the Regulatory Authority at a time and place designated by it. Based upon the recorded evidence of such hearing, the Regulatory Authority shall make a final finding, and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the permit holder by the Regulatory Authority within ten (10) days of the hearing.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1387. Reallocation

Whenever a permit has been revoked, the holder may make a written application for a new permit as provided in § 1382.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
Indians ☞32(4.1).
Westlaw Topic Nos. 178, 209.

§ 1388. Permit exemption

All controlled location vending machines and vending machines which dispense exclusively: bottled or canned soft drinks; prepackaged ice; prepackaged candy, cookies, crackers, or similar prepackaged, non-potentially hazardous snacks; or, ballgum, nuts, and panned candies are exempt from the requirements of § 1381(A) and § 1381(C), but shall meet all other applicable requirements of this Code.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1389. Inspections—Inspection frequency

The Health Advisor shall select vending locations for inspection by a method which assures the inspection of representative machines and locations serviced by each of the operator's routemen and supervisor. The frequency of inspection and selection of locations shall assure the widest coverage of each operator's locations over the time span deemed available by the Regulatory Authority but, in any case, shall not be less than at least one inspection every six (6) months, except that vending machines as set forth in § 1388 of this Code may be inspected by the Regulatory Authority when there is reason to believe that unsanitary conditions exist. Commissaries shall be inspected at least once every six (6) months.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1390. Access for inspection

The Health Advisory and Regulatory Authority, after proper identification, shall be permitted to enter at any reasonable time, upon any private or public property where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the provisions of this Code. The operator shall make provision for the Health Advisor to have access, either in company with an employee or otherwise, to the interior of all food vending machines operated by him.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1391. Notification of inspection findings

A. Whenever an inspection of food vending machines is made, a copy of the completed inspection form set out in § 1392 shall be furnished to the operator.

B. Whenever the Health Advisor discovers a violation of any provision of this Code, it shall notify the Regulatory Authority and the operator concerned either by the inspection report form set out in § 1392 or by other written notice. Such form or notice, which is a public document shall:

1. Describe the condition found;
2. Provide a specific and reasonable period of time for the correction of the condition; and
3. State that an opportunity for a hearing on inspection findings will be provided if a written request for such hearing is filed with the Regulatory Authority within ten (10) days of receipt of the notice. The Regulatory Authority may also advise the operator in writing that unless the violations are corrected within the specified period of time, any permit issued under the provisions of this Code may be suspended or revoked in accordance with the provisions of Subchapter 6, or court action may be initiated.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1392. Inspection report 307 [See note below]

History

ACMY-28-86, May 2, 1986.

Cross References

See Appendix B, CMY-28-86, May 2, 1986 for report form 307.

§ 1393. Examination and condemnation of food—General

Food may be examined or sampled by the Health Advisor as often as necessary for enforcement of this Code. The Health Advisor may, upon written notice to the permit holder or operator specifying with particularity the reasons therefore, place a hold order on any food which he believes is in violation of this Code. The Health Advisor shall tag, label, or otherwise identify any food subject to the hold order. No food subject to a hold order shall be used, served, sold, or moved to facilities not under control of the permit holder. The Health Advisor shall permit storage of the food under conditions specified in the hold order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished. The hold order shall state that a request for hearing maybe filed within ten (10) days and that if no hearing is requested the food shall be destroyed. A hearing shall be held if so requested, and on the basis of evidence produced at that hearing, the hold order may be vacated, or the permit holder or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of this Code.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

§ 1394. Procedure when infection suspected-General

When the Health Advisor has reasonable cause to suspect the possibility of disease transmission from any employee, it may secure a morbidity history of the suspected employee or make any other investigation as may be indicated and shall take appropriate action. All investigations shall be conducted in compliance with the provisions of the Privacy Act, and morbidity information collected will only be used for epidemiological purposes. The Health Advisor may require any or all of the following measures:

- A. The immediate exclusion of the employee from the commissary or vending operation;
- B. The immediate closing of the commissary and vending operations concerned until, in the opinion of the Health Advisor, no further danger of disease outbreak exists;
- C. Restriction of the employee's services to some area of the establishment where there would be no danger of transmitting disease; and/or
- D. Adequate medical and laboratory examinations of the employee, of other employees and of his or her and their body discharges. The permit handler shall be responsible for all costs incurred.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞3, 12 to 16. Westlaw Topic Nos. 178, 209.
 Indians ☞32(4.1), 37. C.J.S. Indians § 22.

§ 1395. Commissaries, outside jurisdiction of the regulatory authority—General

Food from commissaries outside the jurisdiction of the Regulatory Authority may be sold within the jurisdiction if such commissaries conform to substantially equivalent food service sanitation standards. To determine the extent of compliance with such provisions, the Regulatory Authority may accept reports from the responsible authorities in the jurisdictions where the commissaries are located.

History

ACMY-28-86, May 2, 1986.

Library References

Food ☞5, 6.
 Indians ☞32(4.1).
 Westlaw Topic Nos. 178, 209.

Westlaw Topic Nos. 178, 209.

Chapter 7. Navajo Nation Mobile Home Park Code

Subchapter 1. Generally

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History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961

Subchapter 1. Generally

§ 1401. Title

This act shall be known and cited as the Mobile Home Park Code.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ⇌356. Westlaw Topic Nos. 198H, 209.
Indians ⇌32(10). C.J.S. Indians § 63.

§ 1402. Purpose

The purpose of this Act is to protect the health, safety and welfare of the Navajo Nation by regulating and monitoring all mobile home park operations and activities. All mobile home park operators shall comply with the provisions of this Act. It is the intent of this Act that all provisions herein be liberally construed and implemented to accomplish and fulfill said purpose.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

§ 1403. Definitions

As used in this Code:

A. "Building Code" means the current model uniform code for mobile homes recommended by the International Conference of Building Officials and subsequent revisions.

B. "Dependent Mobile Home" means a mobile home which does not have a toilet, bathtub or shower.

C. "Electrical Code" means the current model uniform code for Mobile Home Parks recommended by the National Fire Protection Association, and subsequent revisions.

D. "Employee" means any individual who is employed in any establishment used as a mobile home park.

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E. “Fire Authority” means the Fire Chief of the Navajo Nation Fire Services or the Fire Chief’s authorized agent.

F. “Gas Code” means that current model uniform code recommended by the National Fire Protection Association, for fuel gas Pipe System and National Fire Protection Association, No. 58, 1983, and subsequent revisions, storage and handing of fuel gases.

G. “Health Advisor” means the Director, Navajo Area Indian Health Service, or the Director’s authorized agent.

H. “Health and Social Services Committee” means the oversight Committee of the Navajo Nation Council empowered to recommend various Navajo Nation legislation to the Navajo Nation Council.

I. “Housing and Urban Development Standards” means the standards adopted by the United States Department of Housing and Urban Development (DHUD) under its Manufactured Housing Standard Program, pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974,¹ Public Law 93-383 and its amendments.

J. “Independent Mobile Home” means a mobile home that has a toilet and a bathtub or shower.

H. “Installation Code” means the current model uniform code for mobile homes recommended by National Fire Protection Association and subsequent revisions.

L. “Installation Permit” means a permit issued by the Licensing Permitting Authority to the owner/operator of the mobile home park defining the installation code requirements so that each mobile home is installed in a safe and sanitary manner.

M. “Licensing/Permitting Authority” means Commerce Department, Division of Economic Development or its successor.

N. “Mobile Home” means any vehicle used, or so constructed as to permit being used as a conveyance upon the public streets or highways, and constructed in such a manner as will permit occupancy thereof, as a dwelling or sleeping place for one or more persons. It shall be more than 20’ in length and greater than or equal to one hundred (100) square feet of gross area and remain in place on site for more than thirty (30) days.

O. “Mobile Home Park” means any plot of ground upon which two or more mobile homes occupied for dwelling or sleeping purposes are parked and where rent is collected and/or are located in place for more than thirty (30) days.

P. “Mobile Home Space” means a plot of ground within a mobile home park designated for the accommodation of one mobile home.

Q. “Navajo Nation Environmental Protection Branch” means the official Navajo Nation department established to develop, initiate and enact policy to protect the natural resources of the Navajo Nation.

R. “Navajo Nation Council” means the official legislative body of the Navajo Nation empowered to adopt, enact and enforce policy and laws on the Navajo Nation’s behalf.

S. “Operator” means any person employed by the owner who oversees the daily operations of the mobile home park.

T. “Owner” means any person in possession of the business site lease agreement with the Navajo Nation.

U. “Person” means any individual, firm, corporation, partnership, corporate group, association, business site lessee(s) and governmental agencies.

V. “Plumbing Code” means the current model uniform code recommended by the International Association of Plumbing and Mechanical Officials, and subsequent revisions.

W. “Recreational Vehicle” means a vehicle less than three hundred (300) square feet in gross area on site and in place less than thirty (30) days.

X. “Regulatory Authority” means the Navajo Division of Health (DH), its authorized agent or successor.

Y. “Sanitation Permit” means a written permit issued by the Regulatory Authority upon the recommendation of the Health Advisor, reflecting a mobile home park operator’s compliance with the provisions of this Act.

Z. “Service Building” means a Building which houses separate toilet facilities for men and women, and with separate bath or shower accommodations.

¹ 42 U.S.C. § 5401 et seq.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ☞356.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1404. Conformity with requirements

The person to whom a sanitation permit for a mobile home park is issued shall at all times operate the park in compliance with provisions of this Act and the regulations issued thereunder, and shall provide adequate supervision to maintain the park, its facilities and equipment in good repair and in a safe and sanitary condition at all times.

History

CJY-47-86, July 17, 1986.

ACD-196-6 1, December 21, 1961.

Library References

Health ☞354.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1405. Register of mobile home and occupants

Every mobile home park owner/operator shall maintain a register containing a record of all mobile homes and occupants using the mobile home park. Such register shall be available to any authorized person inspecting the park and shall be preserved for five (5) years unless some other period is required by the Government Services Committee. Such register shall contain the names and addresses of all mobile home residents staying in the park, the make, model, and state license number of the mobile home, the dates of arrival and departure of each mobile home, and whether or not each mobile home is dependent or independent. This register shall also include the name of the person or company that installed the mobile home.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(4).

Transportation and Community Development Committee powers, see 2 N.N.C. § 423(B)(2) and 423(F)(1).

Library References

Health ☞356.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1406. Inspection authority

A. The Health Advisor and Regulatory Authority shall have the power to enter at reasonable times the property and building of the mobile home park for the purpose of inspecting and investigating conditions.

B. The Regulatory Authority and Health Advisor are empowered and authorized to make inspections and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer system.

C. It shall be the duty of the owner/operator of the mobile home park to give the Regulatory Authority or Health Advisor free access to such premises at reasonable times for the purpose of investigations and/or inspections.

D. Inspection of mobile home parks shall be made at least once every twenty-four (24) months or more often if the Regulatory Authority or Health Advisor deems it necessary for the protection of the health safety and welfare of the public.

E. An inspection report containing violations of this Act found by the Health Advisor or Regulatory Authority shall be forwarded to the owner or operator of the mobile home park. This report shall be made available by the Regulatory Authority to any prospective tenant or authorized officials upon request.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞366, 367.	Westlaw Topic Nos. 198H, 209.
Indians ☞32(10).	C.J.S. Indians § 63.

§ 1407. Rules and regulations authority

The Division of Health will have the authority to promulgate rules and regulations necessary to implement and clarify the provisions of this chapter. Where necessary, the Division of Health will solicit the advise of the Health Advisor, Commerce Department and the Fire Department All rules and regulations promulgated according to this chapter must be approved by resolution by the Health and Social Services Committee of the Navajo Nation Council.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Cross References

Transportation and Community Development Committee powers, see 2 N.N.C. § 423(B)(2) and 423(F)(1).

Library References

Health ☞366, 367.	Westlaw Topic Nos. 198H, 209.
Indians ☞32(10).	C.J.S. Indians § 63.

Subchapter 3. Permits**§ 1451. Requirement**

A. No person shall operate a mobile home park within the jurisdiction of the Navajo Nation who does not possess a valid sanitation permit issued by the Regulatory Authority.

B. The failure to obtain or maintain a sanitation permit shall be just cause for termination of a business site lease for a mobile home park.

C. No owner/operator shall install a mobile home in a mobile home park within the jurisdiction limits of the Navajo Nation without first obtaining an Installation Permit from the Licensing/Permitting authority. Each installation shall require a separate permit.

D. The mobile home park owner/operator shall not allow any mobile home-owner to park a vacant mobile home on the leased premises for any purpose, other than its purpose, without a valid Installation Permit.

History

CJY-47-86, July 17, 1986.	ACD-196-61, December 21, 1961.
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Cross References

Leases, permits, and licenses, see 2 N.N.C. § 724(B).

Library References

Health ⇨369.

Indians ⇨32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1452. Application for permits

A. Application for Sanitation Permits shall be in writing, signed by the owner/operator and shall include the name and address of the applicant, the location and legal description of the mobile home park.

B. Application for Installation Permits shall be in writing signed by the mobile home park owner/operator, providing information on the location and date of installation.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ⇨369.

Indians ⇨32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1453. Inspection

Before a Sanitation Permit and/or Installation Permit is issued, the Health Advisor shall inspect the mobile home park for which a permit application has been filed to determine its compliance with the provisions of this chapter.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ⇨369.

Indians ⇨32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1454. Issuance

Upon recommendation of the Health Advisor that a mobile home park for which an application for a permit has been filed meets the requirements of this chapter, the Regulatory Authority shall issue a sanitation permit and/or installation permit.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ⇨369.

Indians ⇨32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1455. Hearing on denial of application

Any person whose application for a sanitation permit or installation permit has been denied may request and shall be granted a hearing before the Health and Social Services Committee under the procedure provided by 13 N.N.C. § 1552 upon request.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞369. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1456. Display

A sanitation permit shall be displayed in a prominent place within the premises.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞369. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1457. Transfer

A sanitation permit shall not be transferable.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞369. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1458. New ownership or control-Notice

A. A mobile home park can only be leased, subleased, assigned or sold if it has a valid sanitation permit. Owners planning to lease, sublease, assign or sell must give a ten (10) day prior notice to the Health Advisor and the Regulatory Authority. Prospective transferees/buyers shall be provided with copies of the most recent sanitation and safety inspection reports. The deficiencies must be corrected within a time frame established by the Regulatory Authority before a sanitation permit can be issued.

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B. Every person who succeeds to ownership or control of a mobile home park shall give notice in writing to the Regulatory Authority within ten (10) days after having purchased, received by transfer or gift or otherwise acquired interest in or control of any mobile home park.

C. Each person who succeeds to ownership or control of a mobile home park shall within ten (10) days file application for a Sanitation Permit to be issued to such person in the manner provided in this subchapter. Failure to file such application within ten (10) day period shall be pursuant to § 1557 of this Code.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Cross References

Lease transfers, assignments, etc., see 2 N.N.C. § 724(B)(2).

Library References

Health ⇌369.

Indians ⇌32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1459. Suspension or revocation of sanitation permit

A. Whenever upon inspection of any mobile home park, which holds a permit, conditions or practices exist which are in violation of any provisions of this chapter, the Regulatory Authority shall give notice of the violations in writing to the person to whom the sanitation permit was issued, and said notice shall state that unless such conditions or practices are corrected within a reasonable period of time, as recommended by the Health Advisory, the sanitation permit shall be suspended.

B. At the end of such period, the Health Advisor shall reinspect such mobile home park and if such conditions or practices have not been corrected, the Health Advisor will inform the Regulatory Authority that provisions of this chapter are still being violated. The Regulatory Authority will thereupon issue a notice in writing to the owner/operator of the mobile home park that said mobile home park owner/operator is in continued violation of this chapter and that subject sanitation permit has been suspended. The Regulatory Authority will advise the Health and Social Services Committee of the Navajo Nation Council, of the failure to comply with the provisions of this chapter. Upon receipt of the notice, the owner and/or operator shall comply with the notice.

C. Any person whose sanitation permit has been suspended or has received notice from the Health and Social Services Committee that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected may request and shall be granted a hearing on the matter before the Health and Social Services Committee as provided by 13 N.N.C. § 1552. When no petition for such hearing has been filed within ten (10) days following the day when such sanitation permit was suspended, such permit shall be deemed to have been automatically revoked.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞369. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

Subchapter 5. Safety and Sanitation Requirements**§ 1501. Location, space and general layout**

A. Conditions of soil, ground water level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, dust, noise, odors or other adverse influences, and no portion subject to sudden flooding or erosion shall be used for any purpose which would expose persons or property to hazards.

B. Mobile home supports shall not occupy an area in excess of one-third of the respective lot area. The accumulated occupied area of the mobile home, and its accessory structures on a mobile home lot shall not exceed two-thirds of the respective lot area.

C. Each independent mobile home space shall contain a minimum of 2500 square feet, and shall be at least 40 feet wide. Each dependent mobile home space shall contain not less than 1000 square feet and shall be at least 25 feet wide.

D. All mobile homes shall be located at least 25 feet from the property boundary line abutting upon a public street or highway and at least 10 feet from other boundary lines of the development.

E. There shall be a minimum distance of 10 feet between the mobile home support and the abutting street.

F. All mobile home park developments located adjacent to industrial or commercial land uses shall be provided with screening such as fences or natural growth along the property boundary line separating the development and such adjacent nonresidential uses.

G. Independent mobile home spaces in existence on the effective date of this chapter, which have illumination, width or area less than the minimum prescribed in §§ 1501 and 1507(D) and (E), respectively, may continue to operate provided the Health Advisor determines that the criteria would not cause serious threat to the health and safety of the people.

H. Any mobile home installed in a mobile home park will be installed in accordance with the Installation Code.

I. It shall be unlawful for an independent mobile home to be located on a dependent mobile home space.

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J. All mobile home developments shall be provided with safe and convenient vehicular access from abutting public streets or roads to each mobile home lot. Such access shall be provided by streets, driveways, or other means.

K. Entrances to mobile home developments shall have direct connections to a public street and shall be designed to allow free movement of traffic on such adjacent public streets. No parking shall be permitted on the entrance street for a distance of 50 feet from its point of beginning.

L. The street system should provide convenient circulation by means of minor streets and properly located collector streets. Dead-end streets shall be limited in length to 1000 feet and their closed end shall be provided with an adequate turn-around contingent upon the approval of the Health Advisor and Fire Authority.

M. Streets shall be of adequate widths to accommodate contemplated parking and traffic load in accordance with the type of street with 10 feet minimum moving lanes for collector streets, 9 feet minimum moving lanes for minor streets, 7 feet lanes for parallel parking, and in all cases shall meet the following minimum requirements as determined by the Health Authority and Fire Authority:

1. Collector streets with guest parking shall be a minimum width of 34 feet;
2. Collector streets and all other streets except minor streets without parking allowances of 24 feet;
3. Minor streets serving less than 40 lots (no parking) 14 feet; and
4. One-way minor streets serving less than 20 lots (no-parking) 14 feet.

N. Grades of all streets shall be sufficient to insure adequate surface drainage, but should not be more than eight percent (8%). Short runs with a maximum grade of twelve percent (12%) may be permitted, provided traffic safety is assured.

O. Street intersections should generally be at right angles. Offsets at intersections and intersections of more than two streets at one point, shall be avoided.

P. All streets shall be provided with a smooth, hard and dense surface which shall be durable and well drained under normal use and weather conditions. The surface shall be maintained free of cracks and holes and its edge shall be protected by suitable means to prevent traveling and shifting of the base.

Q. The design criteria for automobile parking shall be based upon two parking spaces for each mobile home lot. Parking may be in tandem.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10).

C.J.S. Indians § 63.

§ 1502. Service buildings and permanent buildings

A. Each mobile home park, if it permits dependent mobile homes, must be provided with at least one service building, adequately equipped with flush-type toilet fixtures and other sanitary facilities as required in this section. No service building shall contain less than one toilet for females, one toilet for males, one lavatory and shower or bathtub for each sex, equipped with self-closing doors. All sanitary facilities required by this section shall be located in a service building. All structures, buildings and sanitary facilities must meet the requirements for the handicapped as determined by the Health Advisor.

B. All portions of the structure shall be properly protected from damage by ordinary use and by decay, corrosion, termites and other destructive elements. Exterior portions shall be of such material and be so constructed and protected as to prevent entrance or penetration of moisture and weather.

C. All rooms containing sanitary or laundry facilities shall:

1. Have sound resistant walls extending to the ceiling between the male and female sanitary facilities. Walls and partitions around showers, bathtubs, lavatories and other plumbing fixtures shall be constructed of dense, nonabsorbent, waterproof material or covered with moisture resistant material;

2. Have at least one window of skylight facing directly to the outdoors. The minimum aggregate gross area of window for each required room shall be not less than ten percent (10%) of the floor area served by them;

3. Must have a mechanical exhaust ventilation system device which will provide the room with at least 10 air changes per hour;

4. Toilets shall be located in separate compartments equipped with self-closing doors. Shower stalls shall be of the individual type;

5. The rooms shall be screened to prevent direct view of the interior when the exterior doors are open; and

6. Provide separate compartments for each bathtub or shower and water closet, and a sound resistant wall to separate male and female toilet facilities.

D. Illumination levels shall be maintained as follows:

1. General seeing tasks—5 footcandles;

2. Laundry room work area—40 footcandles; and

3. Toilet room-in front of mirrors—40 footcandles.

E. Hot and cold water shall be furnished to every sink, bathtub and shower. Cold water shall be furnished to every watercloset and urinal. Mobile home parks, with more than 10 dependent mobile homes, shall be provided with the following for every additional 15 dependent mobile homes or fraction thereof, one watercloset for females for every additional 10 dependent mobile homes or fraction thereof, one watercloset for males for every 15 dependent mobile home or fraction thereof; provided that urinals may be substituted for not more than

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one-third of the additional waterclosets required for males under this paragraph.

F. Service building shall have adequate heating facilities to maintain a temperature of 70 degrees during cold water, and to supply adequate hot water during time of peak demands.

G. All sanitary facilities within this services building must be properly cleaned and disinfected at least once per day or more often as necessary.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ☞391.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1503. Water supply

A. An accessible, adequate, safe, and potable supply of water shall be provided in each mobile home park, capable of furnishing a minimum of 200 gallons per mobile home. The development of an independent water supply to serve the mobile home park shall be made only after written approval has been granted by the Health Advisor. Where a public supply of water of such quality is available, connection shall be made thereto and its supply shall be used exclusively.

B. Where an independent or nonpublic water system is used to serve the mobile home park with water obtained from wells, the wells shall have been approved by the Health Advisor. All water supplies shall comply with the Safe Drinking Water Act.¹ (P.L. 93-523 and its amendments.)

C. All water piping shall be constructed and maintained in good working order and be in compliance with the Uniform Plumbing Code. The water piping system shall not be connected with nonpotable or questionable water supplies and shall be protected against the hazards of backflow or backsiphonage. All plumbing alterations and repairs shall be in accordance with the Uniform Plumbing Code.

D. No well-casing, pumping machinery or suction pipe shall be placed in any pit, room or space extending below ground level nor in any room or space above ground which is walled-in or otherwise enclosed, unless such rooms, whether above or below ground have free drainage by gravity to the surface of the ground.

E. The treatment of a private water supply shall meet the approval of the Health Advisor.

F. Drinking fountains may be provided by swimming pools, recreation buildings, and other areas where it is considered necessary to meet the anticipated needs of the mobile home development. If provided, drinking fountains shall be properly located and constructed of impervious material and

shall have an angle jet with nozzle above the overflow rim of the bowl. The nozzle shall be protected by a nonoxidizing mouth guard. The bowl shall be of easily cleanable design, without corners, and the bowl opening shall have a strainer. The drain from a fountain shall have no direct physical connection with a waste pipe, unless the drain is trapped. Drinking fountains shall have a flow pressure of at least 15 pounds per square inch.

G. All water storage reservoirs shall be covered, watertight and constructed of impervious material. Overflows and vents of such reservoirs shall be effectively screened. Manholes shall be constructed with overlapping covers, so as to prevent the entrance of contaminated material. Reservoir overflow pipes shall discharge through an acceptable air gap.

H. All water piping fixtures and other equipment shall be constructed, maintained, located and of a type which meets the approval of the Health Advisor.

I. Fire hydrants, if provided, shall be located within 300 feet of any mobile home, service building or other structure in the development. hydrants shall provide a flow of 500 gallons per minutes. It is highly recommended that at a minimum pressure of 20 pounds per square inch shall be provided at a flow of 250 gallons per minute. The minimum size fire hydrant outlet nozzle shall be 2 1/2 inches. Hose connections shall be compatible to hoses used by the Fire Authority.

J. Water mains and waterlines, installed parallel to or crossing sewer lines, shall meet the approval of the Health Advisor.

K. All water riser pipes and connections shall comply with the Uniform Plumbing Code. Water riser pipes shall extend at least four (4) inches above ground elevation. The water outlet shall be capped when a mobile home does not occupy the lot.

L. Adequate provisions shall be made to prevent freezing of service lines, valves and riser pipes and to protect risers from heating and thawing actions of ground during freezing weather. Surface drainage shall be diverted from the location of the riser pipe.

M. Underground stop and waste valves shall not be installed on any water service.

N. Every well shall be located and constructed in such a manner that neither underground nor surface contaminated will reach the water supply from any source. A minimum distance of 150 feet shall be maintained between the water supply and any sewage disposal system. A minimum distance of 100 feet shall be maintained between the water supply and any other possible source of contamination except that sewers or pipes through which sewage may back up shall be located at least 50 feet from any well or water-suction pipeline. Where such sewers or pipes are especially constructed to provide adequate safe guards, and when specifically authorized by the Health Advisor, such sewers or pipes through which sewage may back up may be closer than 50 feet, but not less than 30 feet from the wall.

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¹ 42 U.S.C.A. § 300-f et seq.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.	Westlaw Topic Nos. 198H, 209, 405.
Indians ☞32(10).	C.J.S. Indians § 63.
Waters and Water Courses ☞196.	C.J.S. Waters §§ 495 to 497.

§ 1504. Sewage disposal

A. All plumbing used for sewage disposal shall be operated and maintained in good working order and shall comply with the Uniform Plumbing Code.

B. Sewer lines shall be constructed in accordance with the Uniform Plumbing Code and meet the approval of the Health Advisor.

C. Where the sewer lines of a mobile home park are not connected to a public sewer, a method of sewage disposal approved by the Health Advisor shall be provided. The design of such sewage treatment facilities shall be based on the maximum capacity of the mobile home park. Effluents from sewage treatment facilities shall not be discharged except with prior approval of the Health Advisor and the Navajo Nation Environmental Protection Branch or its successor. The disposal facilities shall be located where they will not create a nuisance or health hazard to the mobile home park or the owner or occupants of any adjacent property. The approval of the Health Advisor shall be obtained on the type of treatment proposed and on the design of the disposal plan prior to construction.

D. The mobile home park operator shall keep as-built maps on all sewer and waterline and shall include information on valves, manholes, grades or sewer water lines, connections and other information important to the operation and maintenance of the sewer and water systems.

E. All sewer connections and manholes shall be so constructed that they will prevent surface water from entering the sanitary sewers. Proper bedding and backfilling shall be used on all sewer pipes to minimize maintenance problems and prolong the life of the sewage system. A backfill of at least twelve (12) inches of clean earth free from stones, cinder-fill, or large quantities of organic matter shall be provided over all sewer lines.

F. Manholes shall be provided at every change in direction or grade, at the upper end of every main sewer line, at every junction of two or more branch sewers, at intervals of not more than four hundred (400) feet. Cleanouts extending to grade maybe used instead of manholes on sewer lines less than eight (8) inches in diameter. They shall be provided where a manhole would otherwise be necessary and at intervals of not more than one hundred (100) feet. All cleanouts shall be at least four (4) inches in diameter and shall be capped with cleanout plugs. A clearances of at least eighteen (18) inches over cleanouts is necessary for the propose of rodding.

G. All sewer service connections shall comply with the Uniform Plumbing Code.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Environmental Law ☞371.	Westlaw Topic Nos. 149E, 198H, 209.
Health ☞391.	C.J.S. Indians § 63.
Indians ☞32(10).	

§ 1505. Solid waste disposal

A. The storage, collection, and disposal of solid waste in the mobile home park shall be so managed so as not to create health hazards, rodent harborage, insect-breeding areas, accidents, or fire hazards.

B. All solid waste shall be stored in flytight, watertight, rodent-proof containers, which shall be located not more than 150 feet from a mobile home space. Containers shall be provided in sufficient number and capacity to properly store all solid waste.

C. Racks or holders shall be provided for all solid waste containers. Such container racks or holders shall be so designed as to prevent containers from being tipped, to minimize spillage and container deterioration, and to facilitate cleaning around them.

D. All solid waste shall be collected at least twice weekly. Where such collection service is not available from municipal or private agencies, the mobile home park owner or operator shall provide this service in a manner approved by the Health Advisor. Solid waste shall be collected and transported in covered vehicles or covered containers. Containers and vehicles used for the storage and transportation of solid waste, shall be maintained in a clean and sanitary manner.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Environmental Law ☞371.	Westlaw Topic Nos. 149E, 198H, 209.
Health ☞391.	C.J.S. Indians § 63.
Indians ☞32(10).	

§ 1506. Insect and rodent control; obnoxious weeds and debris; animal control

A. Insect and rodent-control measures to safeguard public health as required by the Health Advisor shall be applied in the mobile home park.

B. Pesticide control measures may be required by the Health Advisor to control insects, rodents and/or other vermin which cannot be controlled by other measures. Such methods shall meet the approval of the Health Advisor.

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C. Dogs and cats owned by the occupants or owner of the park shall not be permitted to run at large. These dogs and cats must be vaccinated against rabies. Such provisions shall be made by the park operator not to permit animals to roam at large, i.e., horses, cattle, sheep, goats, etc.

D. The mobile home park operator shall take suitable measures to control all obnoxious weeds, prevent the accumulation of debris and protect the tenants and/or public from stray dogs and cats.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1507. Electric supply; exterior lighting

A. All mobile home parks shall comply with the National Electrical Code.

B. All electrical alterations or repairs in the mobile home park shall be made in accordance with the National Electrical Code.

C. Any wet areas where standing water or conditions of high moisture may exist such as bathrooms, swimming pools, etc., shall have electrical outlets protected with ground-fault circuit-interrupter devices.

D. Potentially hazardous locations such as driveways, and walkways and steps or stepped ramps shall be individually lighted at night with a minimum illumination of at least 0.3 footcandles.

E. Lighting shall be designed to produce a minimum of 0.6 footcandles throughout the street system.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1508. Fuel gas storage; fuel gas piping

A. All LPG and Natural gas piping and LP gas storage containers shall comply with the National Fuel Gas Code.

B. Any modifications of the fuel gas storage or piping systems (LPG/Natural Gas) shall be done in accordance with the National Fuel Gas Code.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.
Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1509. Fire protection

A. The mobile home park area shall meet the approval of the Health Advisor and Fire Authority and shall be subject to the rules and regulations of the Navajo Nation fire prevention authority.

B. All mobile home parks shall be kept free of litter, rubbish and other flammable materials.

C. Fires shall be made only in stoves, incinerators, and other equipment intended for such purposes. Incinerators, if provided, shall meet the approval of the Health Advisor.

D. Portable fire extinguishers of a type ABC of a minimum of five (5) pounds shall be kept by the operator or owner of the park in the event of an emergency and readily available. Each tenant shall be responsible for having a two and one-half (2½) pound portable fire extinguisher and a smoke detector. Fire alarm system shall also be installed in service buildings and at all other locations designated by such Navajo Nation fire prevention authority, and shall be maintained in good operating condition.

E. Where a public water system with a water main of six (6) inches or larger is available to the mobile home park and can provide two hundred fifty (250) gpm at a minimum of twenty (20) PSI, standard fire hydrants shall be located not more than three hundred (300) feet from any mobile home building.

F. Where the water supply system does not provide at least a six (6) inch water main, there shall be provided a two (2) inch frost protected water riser not more than three hundred (300) feet from a mobile home or building.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.
Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1510. Nuisances: prohibition

No obnoxious, troublesome or offensive activity shall be carried on or allowed to exist at a mobile home, or shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. The mobile home park must be maintained in a safe and sanitary manner at all times by the park owner or his agent. It shall be the responsibility of the mobile home park owner to maintain the operation of the park in compliance with Subchapter 3 as part of the lease or rental agreement.

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History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1511. Additions and skirting

A. Skirting of mobile home is permissible, but areas enclosed by such skirting shall be maintained so as not to provide a harborage for rodents, or create a fire hazard as approved by the management. Skirting when used shall comply with the Uniform Building Code.

B. No permanent additions shall be built onto or become a part of any mobile home unless they are in accordance with requirements, established by the Health Advisor, so as not to cause a health or safety hazard.

C. A landing shall be provided by the occupant of the mobile home that mounts flush to but not less than 2" below the main door of the mobile home. The stairs for this landing shall have railing of sufficient strength (i.e., thick rot-treated wood or metal) to protect occupant from potential fall or serious injury. The structure shall be properly maintained at all times.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1512. Alterations, renovations or construction plans

Whenever any alterations, modifications, or new construction of a mobile home park is contemplated by the operator or prospective operator, three (3) sets of plans and specifications shall be submitted to the Regulatory Authority, Health Authority (IHS), and the Fire Authority for their review. These plans must meet the approval of the Health Advisor, Fire Authority, and Regulatory Authority. All alterations, modifications or new construction must be in accordance with the approval plans.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

Subchapter 7. Violation of Provisions

§ 1551. Notice

A. When the Health Advisor recommends action pursuant to violation of any provisions of this chapter, the Regulatory Authority shall give notice to the owner responsible for such violation.

B. Such notice shall be in writing including a statement of the reasons for its issuance; allow reasonable time for the performance of any action required; be served upon the owner or his agent; and contain an outline of remedial action, which if taken will affect compliance with the provisions of this chapter.

C. Such notice shall be deemed to have been properly served upon the owner or his agent when a copy thereof has been sent by registered mail to his last known address or when he has been served by any other method authorized by the Regulatory Authority.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

Library References

Health ☞391.

Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.

C.J.S. Indians § 63.

§ 1552. Hearing

A. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter, within ten (10) days of notice, may submit a written petition to the Regulatory Authority for a hearing before the Health and Social Services Committee which shall set a time and place for such a hearing and will give the petitioner written notice thereof.

B. The hearing shall be scheduled (commenced) at the next duly called Health and Social Services Committee meeting after the day on which the petition was filed; provided, that upon application of the petitioner, the Health and Social Services Committee may postpone the date of the hearing for a reasonable time period if the petitioner has submitted sufficient reason for such postponement. The petitioner shall have the right to representation and shall be given an opportunity to be heard, and to show cause why such notice should be modified or withdrawn.

C. Any notice served pursuant to 13 N.N.C. § 1551 shall automatically become an order if a written petition for a hearing has not been filed in the office of the Regulatory Authority within ten (10) days such notice was served.

D. An aggrieved mobile home park owner shall have the right to legal counsel of his choice for representation.

History

CJY-47-86, July 17, 1986.

ACD-196-61, December 21, 1961.

13 N.N.C. § 1552

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Library References

Health ☞391.
Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1553. Determination

A. After such hearing the Health and Social Services Committee with the consultation of the Health Advisor, will sustain, modify, or withdraw the notice, depending on the findings as to the compliance or noncompliance with these regulations. If the Health and Social Services Committee shall sustain or modify such notice, it shall be deemed to be an order.

B. After a hearing in the case of any notice suspending any permit required by these regulations, when such notice shall have been sustained by the Health and Social Services Committee, the permit shall be deemed to have been revoked; provided, however, that the Health and Social Services Committee may grant a further opportunity to comply with these regulations in its sound discretion.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.
Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1554. Record of proceedings

The proceedings at such hearing including the findings and decisions of the Health and Social Services Committee shall be reduced to writing and entered as a matter of public record. Such record shall include every notice or order issued in connection with the matter.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.
Indians ☞32(10).

Westlaw Topic Nos. 198H, 209.
C.J.S. Indians § 63.

§ 1555. Emergency action

Whenever the Regulatory Authority or the Health Advisor finds that an emergency matter exists which requires immediate action to protect the public health, the Regulatory Authority or Health Advisor may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately, but upon petition to the Health and Social

Services Committee, petitioner shall be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of the Navajo Mobile Home Park Code, the Health and Social Services Committee may continue the order in affect, modify it or revoke it.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1556. Forfeiture of right to do business

Any owner of a mobile home park found in violation of the provisions of this chapter and who remains in violation after exhausting remedies provided in 13 N.N.C. § 1552, may forfeit his right to operate a mobile home park and this business site lease held by an owner shall be terminated and/or revoked upon the recommendation of the Health and Social Services Committee, Economic Development Committee, and the Transportation and Community Development Committee, and upon the final approval of the Government Services Committee or its successor.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1557. Sanction(s)

Any person who violates any provision of this Code shall be fined not less than three hundred (\$300.00) dollars, and each day's failure to comply shall constitute a separate violation.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391. Westlaw Topic Nos. 198H, 209.
Indians ☞32(10). C.J.S. Indians § 63.

§ 1558. Severance clause

Any section, subsection, sentence, clause or phrase in this Code that is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Code.

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History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Statutes ☞64(2).	C.J.S. Statutes §§ 87, 89 to 90, 94 to 97, 99, 102 to 104, 107.
Westlaw Topic Nos. 209, 361.	

§ 1559. Effective date

The effective date of the provisions of this Navajo Nation Mobile Home Parks Code shall be July 20, 1986. Existing and operating mobile home parks will have two (2) years to comply with this Code.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Indians ☞32(10).	C.J.S. Indians § 63.
Statutes ☞255.	C.J.S. Statutes § 395.
Westlaw Topic Nos. 209, 361.	

§ 1560. Prior inconsistent laws

Upon the effective date of this Navajo Nation Mobile Home Parks Code, all prior inconsistent laws, rules, policies, ordinances, and regulations of the Navajo Nation branches, divisions, departments, offices, and political subdivisions thereof, are hereby superseded and/or amended to comply herewith.

History

CJY-47-86, July 17, 1986.
ACD-196-61, December 21, 1961.

Library References

Health ☞391.	Westlaw Topic Nos. 198H, 209.
Indians ☞32(10).	C.J.S. Indians § 63.

Chapter 9. Dog and Cat Control

Section

- 1701. Definitions
- 1702. Licensing
- 1703. Permits
- 1704. Rabies control
- 1705. Notice to Licensing Authority of animal bite
- 1706. Dogs or cats bitten by rabid animals
- 1707. injury to livestock
- 1708. Nuisance
- 1709. Restraint of animals

Section

1710. Vicious animals; liability for dog bites

1711. Impounded animals

1712. Safety provisions

§ 1701. Definitions

In this chapter, the following words and terms shall, unless the context indicates a difference in meaning, have the meaning given herein:

- A. "Animal" means any live dog or cat, domestic or wild.
- B. "Animal Owner" means every person in possession of or who harbors any animal or who shall suffer any animal to remain about the premises.
- C. "Animal Shelter" means any facility operated by a humane society, or governmental agency, or its authorized agents for the purpose of impounding or caring for animals held under authority of this chapter or Navajo Nation law.
- D. "Commercial Animal Establishment" means any pet shop, grooming shop, auction, zoological park, performing animal exhibition or kennel.
- E. "Harboring". The occupant of any premises on which an animal is kept or to which an animal customarily returns for daily food and care, is presumed to be harboring or keeping the animal within the meaning of this chapter.
- F. "Abandonment of Animals". Any owner or owners who leaves an animal off the premises without provision for care or control by another person.
- G. "Kennel" means any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training for a fee, or selling dogs or cats; or any premises of any person harboring dogs or cats over three (3) months of age.
- H. "Licensing Authority" shall mean the Division of Community Development within the Executive Branch of the Navajo Nation.
- I. "Person" means any individual, household, firm, partnership, corporation.
- J. "Licensed Veterinarian". A person with a Doctor of Veterinary Medicine Degree licensed to practice within the United States and the Navajo Nation.
- K. "Rabies Vaccination" shall mean the inoculation of a dog, cat or other animal with a rabies vaccine approved by the Licensing Authority.
- L. "Quarantine". To detain or isolate an animal suspected of being infected with rabies.
- M. "Restraint" means securing an animal by a leash or lead, or under control of a responsible person and obedient to that person's commands, or within a fenced area capable of confining the animal.
- N. "Running at Large" means to be off the premises of the owner and not under the control of the owner or an authorized person over twelve (12) years of age, either by leash or otherwise, but an animal within the automobile or other vehicle of its owner shall be deemed to be upon the owner's premises.

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O. "Dog Pack". Three (3) or more dogs running at large together.

P. "Vicious Animal". Any animal that inflicts unprovoked bites or attacks human beings or other animals either on public or private property, or in a vicious or terrorizing manner, approaches any person in apparent attitude of attack upon the streets, sidewalks or any public grounds or places.

Q. "Bite". A puncture or tear of the skin inflicted by the teeth of an animal.

R. "Health Advisor". A person with specialized training in the identification and control of zoonotic diseases in dogs and cats such as rabies which might infect humans and other animals. This individual may be a representative of the United States Public Health Service, a licensed veterinarian or a designee of the Director of the Community Dog and Cat Control Program.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4.

Indians ☞32(4.1).

Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 11 to 14, 286 to 289.

§ 1702. Licensing

The licensing requirements are as follows:

A. License Required. Any person owning, keeping, harboring, or having custody of any animal three (3) months of age or older within the territorial jurisdiction of the Navajo Nation must obtain a license as herein provided. All licenses shall expire December 31 of each year and the full amount for a required license shall be paid for any fraction of the licensing year. Upon collection of the license fee by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner, description of the animal, the appropriate fee, license numbers, year and location of issuing office.

B. License Displayed. The license tag shall be attached to a collar, harness or other device and shall be worn with the rabies tag by the licensed animal at all times, and shall not be removed from any animal by an unauthorized person. The original license receipt and rabies vaccination certificate shall be retained by the owner or harbinger for inspection by any person charged with the enforcement of this chapter.

C. Rabies Vaccination. No animal shall be licensed without proof of rabies vaccination as provided in the chapter.

D. Duplicate Tags. In the event of loss or destruction of the original license tag, the owner of the animal shall obtain a duplicate tag from the Licensing Authority.

E. License Fees. Licenses and duplicate tags shall be issued by the Licensing Authority after payment of a fee; fees shall be set by the authority. Public notice of fees shall be made in the Navajo Times and by public display of posters.

F. Failure to Obtain or Display License. Any person who fails to obtain, or to display the license tags as provided by subsection (B) shall be required to pay a fine set by the Licensing Authority.

G. Transferability. Animal licenses are not transferable. Any person attaching a license or rabies tags to any animal other than the animal for which such tag was originally issued shall be required to pay a fine set by the Licensing Authority.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4.
Indians ☞32(9).
Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 11 to 14, 286 to 289.
C.J.S. Indians §§ 130 to 132, 134.

§ 1703. Permits

Permit requirements are as follows:

A. Permits Required. No person, partnership or corporation shall operate a commercial animal establishment or animal shelter within the territorial jurisdiction of the Navajo Nation without first obtaining a permit in compliance with this section and with all other licensing laws of the Navajo Nation. All permits shall expire December 31 of each year and all fees shall be prorated for any fraction of the licensing year. Upon collection of the permit by the Licensing Authority, a dated receipt shall be issued indicating the name and address of the owner of the commercial animal establishment, and the appropriate fee.

B. Change in Ownership. If there is a change in ownership of a commercial establishment, the new owner may have the current permit transferred to his name upon payment of a transfer fee.

C. Permit Fees. Animal permits shall be issued upon payment of the applicable fee to be set by the Licensing Authority pursuant to § 1702 (A) (5).

D. License Option. A person operating a kennel for the breeding of dogs or cats may elect to license animals individually.

E. Failure to Obtain Permit. Any person who fails to obtain a permit before opening any facility covered by this section shall pay a fine set by the Licensing Authority.

F. All facilities covered by this section shall be operated in a safe and sanitary manner. Humane treatment of animals covered under this section is required. Penalty for violation of this subsection shall be a fine set by the Licensing Authority and/or revocation of permit.

History

CO-54-84, October 24, 1984.

Library References

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|-----------------------------|---|
| Animals ☞4. | C.J.S. Animals §§ 11 to 14, 286 to 289. |
| Indians ☞32(9). | C.J.S. Indians §§ 130 to 132, 134. |
| Westlaw Topic Nos. 28, 209. | |

§ 1704. Rabies control

Rabies control provisions are as follows:

A. Vaccinations.

1. Every person owning or harboring a dog and cat three (3) months of age or older for five (5) or more days shall have such animals vaccinated against rabies with an approved vaccine by a licensed veterinarian or by persons authorized by the Director. This vaccine shall be listed as an approved vaccine in the most recent Compendium of Animal Rabies Vaccine prepared by the National Association of State Public Health Veterinarians, Inc.

2. Dogs whose vaccination expires during the calendar year will be vaccinated during the months of January, February or March prior to their vaccination expiration date. Cats will be vaccinated during the months of January, February and March prior to their vaccination expiration date for the current calendar year; provided, however, that persons acquiring dogs and cats between April 1 and December 31 shall immediately following acquisition have such animals vaccinated.

B. Certificate of Vaccination. Upon vaccination the veterinarian administering the vaccine, or the authorized persons authorizing rabies vaccine, shall execute and furnish to the owner of the animal as evidence thereof a certificate upon a form furnished by the Licensing Authority. The veterinarian or administrator of a rabies vaccine shall retain a duplicate copy and one copy thereof shall be filed with the Licensing Authority. Such certificate shall contain the following information:

1. The name, address and telephone number of the owner or harborer of the inoculated animal;
2. The date of inoculation;
3. The type of vaccine used including the manufacturer and the serial (lot) number;
4. The date the vaccination expires in the dog and cat;
5. The year and serial number of the rabies tag; and
6. The breed, age, color and sex of the inoculated animal.

C. Rabies Tag. Concurrent with the issuance and delivery of the certificate of vaccination referred to in § 1704(B), the owner of the animal shall attach to the collar or harness of the vaccinated animal a metal tag, serially numbered and bearing the year of issuance, The Licensing Authority shall furnish an adequate supply of such tags to each veterinarian or authorized grantee designated to perform such vaccination, with a fee to be set by the Licensing Authority pursuant to § 1702 (E).

D. Duplicate Tags. In the event of loss or destruction of the original tag provided in subsection (C), the owner of the animal shall obtain a duplicate tag from the Licensing Authority for a fee set by the Licensing Authority pursuant to § 1702 (E).

E. Designation of Qualified Persons. All veterinarians who are duly registered and licensed to practice veterinary medicine in the United States are hereby designated as authorized to vaccinate animals against rabies and to execute certificates of vaccination as provided by law. Also, health advisors, who have received specialized training in vaccinating animals against rabies, are authorized to vaccinate animals.

F. Proof. It shall be unlawful for any person who owns or harbors any dog, cat or other animal to fail or refuse to exhibit a copy of the certificates of vaccination upon demand to any person charged with the enforcement of this chapter.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4, 28.1 to 37.

Indians ☞32(4.1).

Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 11 to 14, 66 to 98, 286 to 289.

§ 1705. Notice to Licensing Authority of animal bite

Requirements when a person is bitten by an animal are as follows:

A. Duty to Report. When any person is bitten by an animal, it shall be the duty of such person or his parent or guardian and the owner or keeper of the animal to immediately notify the Licensing Authority of the incident and the Navajo Nation Police Department.

B. Quarantine of Animals. Any animal which has bitten a person shall be observed for a period of ten (10) days from the date of the bite. The procedure and place of observation shall be designated by the Licensing Authority. If the animal is not confined on the owner's premises, confinement shall be in an authorized Animal Shelter or at any veterinary hospital of the owner's choice. Stray animals whose owners cannot be located shall be confined in an authorized Animal Shelter. The owner of any animal that has been reported as having inflicted a bite on any person shall on demand produce said animal for quarantine as prescribed in this section. Refusal to produce said animal constitutes a violation of this section and each day of such refusal shall constitute a separate and individual violation.

C. Any dog or cat being held in quarantine which develops signs and symptoms which may be indicative of rabies, shall be humanely killed by a Health Advisor and its head/body submitted to a laboratory qualified to conduct rabies analysis.

D. Removal of Animals of Quarantine. No person shall remove from any place of isolation or quarantine any animal which has been isolated or quarantined as authorized without the consent of the Licensing Authority.

13 N.N.C. § 1705

HEALTH AND WELFARE

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4, 28.1 to 37.
Indians ☞32(4.1, 4.1).
Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 11 to 14, 66 to 98, 286 to 289.

§ 1706. Dogs or cats bitten by rabid animals

Any dog or cat bitten by an animal known or proved to be rabid shall be killed immediately by its owner or by a person authorized by the Director, provided that any dog or cat which has been vaccinated at least three (3) weeks before being bitten shall be revaccinated against rabies and confined for ninety (90) days. At the end of the confinement period, the dog or cat shall be released if declared free of rabies by a licensed veterinarian. If, as determined by the veterinarian, the dog or cat develops rabies during the period of confinement, the owner or keeper shall have it killed and properly disposed of.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4, 28.1 to 37.
Indians ☞32(4.1).
Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 11 to 14, 66 to 98, 286 to 289.

§ 1707. Injury to livestock

A. If a dog shall kill or injure any livestock, the owner or keeper of such animal shall be liable for all damages that may be sustained thereby, to be recovered by the party so injured; provided that the livestock is within an area of authorized livestock use.

B. No person shall keep any dog after it is known that dog is liable to kill or injure livestock, and it shall be the duty of the owner to kill, or have killed, the dog upon order of the Licensing Authority after a finding that the dog has killed or injured livestock; provided, however, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog or any person witnessing, such actions to kill such animal while it is upon property controlled by the owner of the livestock. If a dog is observed attacking livestock and wildlife (game animals), individuals authorized by the Director can take appropriate action to prevent these actions.

History

CO-54-84, October 24, 1984.

§ 1708. Nuisance

No animal owner or keeper shall harbor, maintain or permit on any lot, parcel of land or premise under his control, any dog or other animal which by any sound or cry shall disturb the peace and comfort of the inhabitants of the

neighborhood or interfere with any person in the reasonable and comfortable enjoyment of life or property.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞4.

Westlaw Topic Nos. 28, 209.

Indians ☞32(4.1).

C.J.S. Animals §§ 11 to 14, 286 to 289.

§ 1709. Restraint of animals

A. It shall be unlawful for any person owning or having charge of any animal, except a domestic house cat, to permit such animal to run at large, unless such animal is restrained by a leash not to exceed six (6) feet in length and is in charge of a person competent to restrain such animal.

B. Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such animal cannot come into contact with another dog or cat except for planned breeding. Any person permitting a female dog in heat to run at large shall be cited into Navajo Nation Court.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞47.1 to 57.

281, 286, 288, 293, 295 to 296, 298 to 312,

Indians ☞32(4.1).

320, 324 to 332.

Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 137 to 169, 183 to 184, 205,
207, 217 to 218, 224, 230, 243, 274, 276,

§ 1710. Vicious animals; liability for dog bites

A. No person shall keep any animal known to be vicious and liable to attack and injure human beings unless such animal is securely kept so as to prevent injury to any person. The owner of such an animal must post a sign on his property warning others to be aware of the animal.

B. The owner of any dog which bites a person when the person is in or on a public place, or on the property of the owner of the dog, shall be liable for damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner's knowledge of its viciousness.

C. A person is lawfully in or on the private property of the owner of a dog within the meaning of this section when an invitee or guest, or when in the performance of a duty imposed upon him by law or by ordinance.

D. Proof of provocation of the attack by the person injured shall be a defense action for damages.

History

CO-54-84, October 24, 1984.

Library References

Animals ☞66.1 to 76.
Indians ☞32(4.1).
Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 171 to 176, 176(1), 177 to
183, 185 to 193, 198 to 232, 285, 290, 293.

§ 1711. Impounded animals

Provisions for impounded animals are as follows:

A. **Animal Shelter.** An Animal Shelter shall be established for the purpose of caring for any animal impounded under the provisions of this chapter, and such shelter shall be constructed to facilitate cleaning and sanitizing and shall provide adequate heating and water supply. The Animal Shelter shall be operated in a safe and sanitary manner and shall meet Indian Health Services and Navajo Nation standards.

B. **Removal of Animals from Animal Shelter.** It shall be unlawful for any person to remove any impounded animal from the Animal Shelter without the consent of the Licensing Authority.

C. **Removal of Bite Animals from Quarantine.** Animals impounded because of bites shall not be removed from the pound until after the ten (10) days observation period and a release of the Licensing Authority is secured.

D. **Disposition of Impounded Licensed Animals.** As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address and telephone number is attached to the dog or cat collar or harness. Any impounded animal which is licensed may be redeemed by the owner upon payment of the impoundment fee, care and feeding charges, veterinary charges, and such other costs as set by the Licensing Authority. If such animal is not redeemed within eight (8) days, it shall be deemed abandoned and the Licensing Authority may humanely euthanize said animal.

E. **Disposition of Impounded Unlicensed Animals.** As soon as practicable after impoundment, the Licensing Authority shall notify the owner, provided that a name tag including the owner's name, address and telephone number is attached to the dog or cat collar or harness. Any impounded animal which is not licensed may be redeemed upon payment of the payment of the license fee, impound fee, care and feeding charges, veterinary charges, and presentation of proof of rabies vaccination, and such other costs as set by the Licensing Authority. If such animal which is not wearing its tags as required by this Code is not redeemed within three (3) days, it shall be deemed abandoned and the Licensing Authority may humanely euthanize the animal as such.

F. **Impoundment Fee.** An owner reclaiming an impounded cat shall pay a fee to be set by the Licensing Authority, pursuant to § 1702 (A) (5).

G. **Unwanted Animals.** Unwanted and/or wild or untamed dogs and cats can be immediately destroyed or put up for adoption for a fee to be set by the Licensing Authority.

H. **Neutered/Spayed.** All male dogs and cats shall be neutered prior to adoption. All female dogs and cats shall be spayed prior to adoption. The cost

of these services shall be the responsibility of the person/persons adopting the dog and/or cat.

History

CO-54-84, October 24, 1984.

Library References

Animals ⇨103.1 to 110.
Indians ⇨32(4.1).

Westlaw Topic Nos. 28, 209.
C.J.S. Animals §§ 334 to 346.

§ 1712. Safety provisions

Safety provisions are as follows:

A. Interference with the Licensing Authority or Its Authorized Representatives. No one shall interfere with, molest, hinder, or prevent the Licensing Authority or its authorized representatives in the discharge of their duties as herein prescribed, or to violate the provisions of this chapter.

B. Penalty for Violation. Unless otherwise provided in this chapter, any person who violates any of the provisions of this chapter shall be fined no less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

C. Severance Clause. If any section, subsection, sentence clause or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter.

D. Safety Clause. The Navajo Nation Council hereby finds, determines and declares that this chapter is necessary for the immediate preservation of the public’s peace, health and safety.

History

CO-54-84, October 24, 1984.

Library References

Animals ⇨4.
Indians ⇨32(4.1).

Westlaw Topic Nos. 28, 209.
C.J.S. Animals §§ 11 to 14, 286 to 289.

Chapter 11. Burials

Subchapter 1. Generally

Section

- 1901. Navajos
- 1902. Non-Navajos—Generally
- 1903. Husbands, wives or children
- 1904. Unclaimed bodies
- 1905. Removal of bodies
- 1906. Annual allotment for expenses

Subchapter 3. Cemeteries

1951. Designation of sites
 1952. Maintenance
 1953. Administration; delegation of authority

Subchapter 1. Generally

§ 1901. Navajos

Any member of the Navajo Nation, regardless of place of residence or place of death, may be buried in a Navajo Nation cemetery.

History

CF-10-58, February 12, 1958.

Library References

Dead Bodies ⇐4. Westlaw Topic Nos. 116, 209.
 Indians ⇐32(4.1). C.J.S. Dead Bodies §§ 4 to 5.

§ 1902. Non-Navajos—Generally

Dead persons who were not members of the Navajo Nation may be buried in Navajo Nation cemeteries with the approval of the President of the Navajo Nation, or of the Vice-President if the President is absent from Window Rock

History

CF-10-58, February 12, 1958.

Note. Insertion of word "President" pursuant CD-68-89, Resolve #9.

Library References

Dead Bodies ⇐4. Westlaw Topic Nos. 116, 209.
 Indians ⇐32(4.1). C.J.S. Dead Bodies §§ 4 to 5.

§ 1903. Husbands, wives or children

Where a Navajo Indian is buried in a Navajo cemetery, such Indian's non-Navajo husband or wife, or their children, may be buried in the same cemetery without special approval of the President or Vice-President of the Navajo Nation.

History

CF-10-58, February 12, 1958.

Note. Insertion of word "President" pursuant CD-68-89, Resolve #9.

Library References

Dead Bodies ⇐4. Westlaw Topic Nos. 116, 209.
 Indians ⇐32(4.1). C.J.S. Dead Bodies §§ 4 to 5.

§ 1904. Unclaimed bodies

A. It shall be the duty of the Navajo Nation to provide decent burial in a Navajo cemetery for all unclaimed bodies found on Navajo Nation land. In carrying out this duty under this section, the Nation may request the assistance of the appropriate branch of the Navajo Nation.

B. The Navajo Nation shall have a lien on the estates of persons buried under subsection (A) of this section for funeral expenses, but no charge shall be made for burial privileges, or costs of opening or closing the grave.

History

CF-10-58, February 12, 1958.

Library References

Dead Bodies ☞3, 6.
Indians ☞32(4.1).

Westlaw Topic Nos. 116, 209.
C.J.S. Dead Bodies §§ 5 to 6, 13, 22 to 26.

§ 1905. Removal of bodies

Bodies buried in Navajo Nation cemeteries may not be moved without the consent of the next of kin of the deceased. In the event the next of kin cannot be determined or located, then such bodies may be moved, upon approval by the Government Services Committee of the Navajo Nation Council.

History

CO-60-73, October 23, 1973.
CF-10-58, February 12, 1958.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Dead Bodies ☞5.
Indians ☞32(4.1).

Westlaw Topic Nos. 116, 209.
C.J.S. Dead Bodies §§ 7 to 11, 22 to 26.

§ 1906. Annual allotment for expenses

There shall be allotted annually from Navajo Nation funds an amount not to exceed ten thousand dollars (\$10,000) to pay all costs of funeral and/or burial expenses and transportation of bodies of indigent Navajos.

History

1922-1951 Res. p. 44, November 5, 1947.

Library References

Dead Bodies ☞6.
Indians ☞32(4.1).

Westlaw Topic Nos. 116, 209.
C.J.S. Dead Bodies §§ 6, 13, 22 to 26.

Subchapter 3. Cemeteries

§ 1951. Designation of sites

The Government Services Committee is authorized to designate sites for memorial and general cemeteries on the Navajo Nation of not to exceed 10 acres, upon the recommendation of a majority of members of the district delegation to the Navajo Nation Council.

History

CF-10-58, February 12, 1958. **Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.
Tribal Council Resolution 1922-1951 Res. p. 43 amended by CF-10-58, § 6.

Cross References

Committee powers, see 2 N.N.C. § 423(C).

Library References

Dead Bodies ⇨4. Westlaw Topic Nos. 116, 209.
Indians ⇨32(4.1). C.J.S. Dead Bodies §§ 4 to 5.

§ 1952. Maintenance

The Government Services Committee is authorized to provide for improving, safeguarding, and beautifying memorial and general cemeteries as the final resting places for Navajos by adopting such rules and regulations as they see fit.

History

CF-10-58, February 12, 1958. **Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.

Library References

Cemeteries ⇨17. Westlaw Topic Nos. 71, 209.
Indians ⇨32(4.1). C.J.S. Cemeteries §§ 26 to 27.

§ 1953. Administration; delegation of authority

The Government Services Committee is authorized to delegate to such officers and departments of the Navajo Nation, as they see fit, the authority to administer memorial and general cemeteries so far as is consistent with the obligations of the Government Services Committee to the Navajo Nation Council.

History

CF-10-58, February 12, 1958. **Note.** Insertion of words "Government Services" pursuant CD-68-89, Resolve #10.

Library References

Cemeteries ⇨17. Westlaw Topic Nos. 71, 209.
Indians ⇨32(4.1).

C.J.S. Cemeteries §§ 26 to 27.

Chapter 13. Tuberculosis or Other Contagious Disease

Section

2101. Examination, treatment and isolation

§ 2101. Examination, treatment and isolation

A. Any interested party (a friend, relative, spouse or guardian, welfare worker, Navajo Nation elective official, health official, or head of any medical institution) may petition the Navajo Nation Court of the Navajo Nation to issue an order requiring a person subject to the jurisdiction of such Court who is thought to be suffering from tuberculosis, or any other contagious disease, to undergo a medical examination, treatment and isolation as required to protect people of a community from contagion.

B. An Indian diagnosed by a competent physician as being afflicted with tuberculosis or any other contagious disease shall be subject to hospitalization and treatment until his condition is arrested or cured.

C. Prior to hospitalization and treatment for tuberculosis or any other contagious disease, a person shall have the right to participate in any healing ceremonies or religious services he so desires.

D. Any Indian violating this section shall be subject to the penalties provided for disobedience of a lawful order of the Court.

History

CD-59-61, December 4, 1961.

Library References

Health ☞384 to 389.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Chapter 15. Child Day Care Centers

Section

- 2301. Definitions
- 2302. Permits—Requirement; display; application; failure to obtain
- 2303. Succession to ownership or control of center
- 2304. Application inspection; issuance of permit; hearing on denial
- 2305. Rules for admission to center
- 2306. Staff requirements and attendance
- 2307. Personnel; hygiene; conduct
- 2308. Construction of buildings generally—Submission of plans
- 2309. Heat; light; use for other purposes; laundry; storage
- 2310. Swimming and wading pools

13 N.N.C. § 2301

HEALTH AND WELFARE

Section

- 2311. Toilet facilities
- 2312. Sewage; new plumbing
- 2313. Drinking water
- 2314. Sleeping facilities
- 2315. Safety precautions
- 2316. Sanitation requirements
- 2317. Isolation and medical care
- 2318. Play areas and classrooms
- 2319. Infant care requirements
- 2320. Food; nutrition
- 2321. Transportation of children
- 2322. Required records and reports
- 2323. Annual or periodic inspections
- 2324. Notice, hearing and orders
- 2325. Emergency orders; hearing

§ 2301. Definitions

For the purposes of this chapter the following definitions shall apply:

A. "Child day care center" or "center" shall mean child care agency and includes any person who maintains facilities for the purpose of providing care, supervision or training for five or more children not related to the proprietor under the age of sixteen (16) years for periods of more than one (1) hour, but less than twenty-four (24) hours per day, apart from their parents or guardians for compensation, excepting parochial and private educational institutions which are operated for the sole purpose of providing an education to children in substitution for an education in the public school system.

B. "Director" shall mean the person who is responsible for the operation of the child care agency.

C. "Health Advisor" shall mean the Director, Navajo Area Indian Health Service, or his authorized representative.

D. "Sanitation permit" shall mean a written permit issued by the Navajo Office of Environmental Health upon the recommendation of the Health Advisor, reflecting a day care center's director's compliance with these regulations.

E. "Infant" shall mean a child under eighteen (18) months or one who has not yet reached the steady walking stage, or who requires the use of diapers.

History

ACMY-192-71, May 12, 1971.

Library References

Indians ☞ 32(4.1).

Infants ☞ 17.5.

Westlaw Topic Nos. 209, 211.

§ 2302. Permits—Requirement; display; application; failure to obtain

No person shall operate a child day care center on the Navajo Nation unless he possesses a valid Sanitation Permit issued to him by the Navajo Office of

Environmental Health. Such permit shall be displayed in a prominent place within the premises. Application for permits shall be in writing signed by the applicant and shall include the name and address of the applicant and the location and legal description of the child day care center. Failure to obtain or maintain a Sanitation Permit may be cause for termination of a day care center lease.

History

ACMY-192-71, May 12, 1971.

Note. Paragraph slightly reworded for purpose of clarity.

Library References

Indians ⇨32(4.1).

Infants ⇨17.5.

Westlaw Topic Nos. 209, 211.

§ 2303. Succession to ownership or control of center

A. No permit shall be transferrable.

B. Every person who succeeds to ownership or control of a child day care center shall give notice in writing to the Navajo Office of Environmental Health within ten (10) days after having purchased, received by transfer, or gift, or otherwise acquired interest in or control of the center. Such notice shall include the name and address of the previous owner of the center. Each person who succeeds to ownership or control of a child day care center shall, within ten (10) days, file application for a Sanitation Permit to be issued to him in the manner provided in this chapter. Failure to file such application within said ten (10) day period shall result in suspension of the privilege to operate such center until this provision is complied with.

History

ACMY-192-71, May 12, 1971.

Note. Slightly reworded for purpose of clarity.

Library References

Indians ⇨32(4.1).

Infants ⇨17.5.

Westlaw Topic Nos. 209, 211.

§ 2304. Application inspection; issuance of permit; hearing on denial

A. Before a permit is issued, the Health Advisor shall inspect the child day care center for which an application for permit has been filed to determine its compliance with this chapter.

B. Upon certification of the Health Advisor that a child day care center for which an application for permit has been filed meets the requirements of this chapter, the Navajo Office of Environmental Health shall issue a Sanitation Permit.

13 N.N.C. § 2304

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C. Any person whose application for permit under these regulations has been denied may request and shall be granted a hearing before the Government Services Committee under the procedure provided by 13 N.N.C. § 2324.

History

ACMY-192-71, May 12, 1971. Words "Government Services" inserted pursuant CD-68-89, Resolve #10.
Note. Subsection (C) substituted "shall" for "will".

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Indians ⇌32(4.1).
Infants ⇌17.5.
Westlaw Topic Nos. 209, 211.

§ 2305. Rules for admission to center

Each child day care center shall establish rules for admission, which shall include the following:

- A. The child shall be enrolled by his parent or other person responsible for his care;
- B. Information needed for the child's record shall be secured;
- C. Provision shall be made to release children only to a person authorized by parents or guardians; and
- D. The admission plan shall include instructions and authorization for the emergency care of the child in case of accident or illness when the parents or persons responsible cannot be contacted.

History

ACMY-192-71, May 12, 1971. **Note.** Slightly reworded opening paragraph and subsections (C) and (D) for purpose of clarity.

Library References

Indians ⇌32(4.1).
Infants ⇌17.5.
Westlaw Topic Nos. 209, 211.

§ 2306. Staff requirements and attendance

A. When children are in attendance, the director or a qualified person designated by the director shall be on the premises and in charge of the child day care center. The minimum age for the director and his qualified designate shall be twenty (21) years.

B. Children shall be grouped according to age and maturity for supervision, and all groups of children shall be directly supervised at all times. In groups of mixed age, the maximum number of children per staff member shall be that set

for the age bracket the youngest child in the group is in. The maximum number of children in attendance per staff member in child day care centers licensed for more than 10 children shall not exceed:

- 10 infants or children up to age three;
- 15 children three to four (4) years old;
- 20 children four to five years old; and
- 25 children five years old or more.

C. Any child day care center shall have a minimum of two (2) staff members on duty whenever the number of children on the premises exceeds ten (10). In any center where ten (10) or less children are in attendance, only one staff member need be on the premises, providing there is a specific plan in the event of an emergency whereby another staff member is continuously and readily available to relieve the one in charge should an emergency arise.

D. Staff members to be counted in determining the number of staff in proportion to the number of children are the director, teachers, and assistants engaged in care and supervision of children. Other than the director and his designate, the minimum age of staff members shall be eighteen (18) years of age; except that persons sixteen (16) to eighteen (18) years of age may work as staff assistants provided they are under adult supervision at all times. These persons shall be counted as staff when a ratio of one 16- to 18-year-old person to one or more adults is maintained. Domestic and maintenance personnel shall not be included in the count of the number of staff members necessary for child supervision.

E. Sufficient domestic and maintenance personnel shall be employed to insure proper and sanitary food service and preparation, and plant safety and maintenance. No part of the maintenance of the child day care center shall be dependent upon the work of the children under supervision.

History

ACMY-192-71, May 12, 1971.

Note. Partially reworded for purpose of clarity.

Library References

Indians ☞32(4.1).

Infants ☞17.5.

Westlaw Topic Nos. 209, 211.

§ 2307. Personnel; hygiene; conduct

A. Good personal hygiene shall be practiced by all persons working in a child day care center. All personnel shall wear clean outer garments, maintain a high degree of personal cleanliness, wash hands after visiting the toilet room and refrain from using tobacco in any form while engaged in the preparation or service of food or while working directly with the children. Personnel shall not be in the center while ill with a disease in a communicable form, e.g. diarrhea, upper respiratory infections and skin lesions.

B. A member of a child day care center staff, and members of a household if the center is conducted in a private home, shall not be addicted to drugs, a chronic alcoholic, known to have abused children or have been found guilty of immoral conduct involving children.

C. All personnel responsible for supervising children shall refrain from aggressive disciplinary methods which injure or unreasonably frighten children.

History

ACMY-192-7 1, May 12, 197 1.

Note. Subsections (A) and (B) slightly reworded for purpose of clarity.

Library References

Indians ⇌32(4.1).

Infants ⇌17.5.

Westlaw Topic Nos. 209, 211.

§ 2308. Construction of buildings generally—Submission of plans

A. The minimum standards and requirements of this chapter shall apply to all existing and new child day care center buildings except where specific exceptions are permitted by this chapter. Additions to existing child day care buildings, conversion of existing buildings or portions thereof for use as centers, and portions of buildings under going any alteration other than repair, shall meet standards required for new building construction.

B. Preliminary plans and three copies of final work drawings and specifications showing all information adequate to check compliance with this chapter shall be submitted to the Health Advisor before any construction or alteration is started, before any system of water supply, plumbing, sewage, garbage or refuse disposal is installed or materially altered, and before any structural or functional change substantially altering the original design for human occupancy is made.

C. An agency building in existence at the time of the passage of this chapter must comply with all requirements immediately, when feasible, and totally within sixty (60) days. Rooms of new agencies used for preschool headquarters, first or second grade pupils shall not be located above the first story above grade except in buildings of concrete or steel construction.

History

ACMY-192-71, May 12, 1971.

Note. Subsections slightly reworded for purposes of clarity.

Library References

Indians ⇌32(4.1).

Infants ⇌17.5.

Westlaw Topic Nos. 209, 211.

§ 2309. Heat; light; use for other purposes; laundry, storage

A. All rooms used by children shall be adequately heated and cooled. Ventilation shall not subject children to drafts.

B. All parts of all buildings shall be adequately lighted and free of glare. A minimum of 30 sustained foot-candles of illumination shall be maintained at work and play areas, except where higher levels are required by the Health Advisor.

C. No child day care center building shall be located on the same premises or operated in conjunction with a rest home, nursing home, sheltered care home, boarding house, rooming house for adults, or multiple or single dwelling unit where such operations involve the use in common of any facility during hours of child care operation. If a child day care center building is a family residence, the building or portion of building to which children have access shall be used only for child care purposes while it is in operation.

D. Adequate laundry facilities shall be provided unless arrangements are made for a commercial concern with approved facilities to provide services. If laundry is done on the premises, the installation shall comply with applicable codes. Wash water temperature shall be optimum for the material being laundered. Sorting and clean laundry areas must be kept separate and so designated, and the procedure for handling and washing laundry must be approved by the Health Advisor.

E. All agencies shall provide storage space for:

1. Indoor and outdoor play equipment and materials so children can freely use and replace items;
2. Cots and bedding convenient to the napping area, and separate from other storage which would preclude proper sanitation practices; and
3. Each child's clothes and personal belongings.

History

ACMY-192-7 1, May 12, 1971.

Note. Slightly reworded for purpose of clarity.

Library References

Indians ⇨32(4.1).

Infants ⇨17.5.

Westlaw Topic Nos. 209, 211.

§ 2310. Swimming and wading pools

Swimming and wading pools may be installed at the option of the owner and must conform to the minimum rules for semipublic and wading pools. All swimming pools shall be enclosed by a solid wall or fence or chain link fence not less than five feet nor more than six feet in height so as to prevent uncontrolled use and uninvited access. Adequate supervision of the pool's use must be provided at all times. Water play is encouraged. When temporary pool equipment is used there shall be full-time supervision and only clean, fresh

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water shall be used and equipment shall be properly drained, cleaned and stored when not in use.

History

ACMY-192-71, May 12, 1971.

Note. Last two sentences slightly reworded for purpose of clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2311. Toilet facilities

A. An adequate number of toilets and lavatories, easily accessible for use and supervision shall be provided in the following ratio:

1. At least one flush toilet and one lavatory for ten (10) or less children;
2. At least two flush toilets and two lavatories for eleven (11) – twenty-five (25) children;
3. At least one flush toilet and one lavatory for each additional twenty (20) children; and
4. In computing the number of units required, infants who use diapers need not be included.

B. The facilities shall be child-sized or equipped with stairs or platforms, shall be in a condition that allows for thorough cleaning, and shall not open directly to the kitchen.

C. There shall be facilities for the exclusive use of the children while they are in attendance in a child day care center operated in a family home.

D. It is desirable to provide, for children of elementary school age and above, separate facilities for each sex.

E. Toilet rooms shall be ventilated either by windows that open or by mechanical ventilation.

F. Temperate water, under pressure, soap and individual towels of an approved type shall be provided in the lavatories and within reach of the children.

History

ACMY-192-71, May 12, 1971.

Note. Slightly reworded subsections (B) and (C).

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2312. Sewage; new plumbing

All sewage and liquid wastes shall be discharged into a municipal sewage system, or in a manner approved by the Health Advisor. All new plumbing shall comply with applicable codes.

History

ACMY-192-71, May 12, 1971.

Library References

Environmental Law ☞371.
Indians ☞32(4.1).

Infants ☞17.5.
Westlaw Topic Nos. 149E, 209, 211.

§ 2313. Drinking water

Drinking water shall be easily accessible to the children on the playground and in playrooms. Drinking fountains shall be of a type approved for schools with angle jet and orifice guard above the rim and regulated pressure. Only an approved water supply shall be used.

History

ACMY-192-71, May 12, 1971.

Library References

Indians ☞32(4.1).
Infants ☞17.5.
Waters and Water Courses ☞196.

Westlaw Topic Nos. 209, 211, 405.
C.J.S. Waters §§ 495 to 497.

§ 2314. Sleeping facilities

A. A sufficient number of cots or cribs shall be provided with only one child to a crib or cot. Cots and cribs shall be of sound construction and kept clean and repaired. Bedding shall be laundered as needed and always upon change of occupancy.

B. Sufficient staff supervision shall be provided.

C. If used, individual rugs must be clean and comfortable, and shall only be used for rest periods of under five (5) hours. A child shall not be lain in direct contact with the floor.

D. Bunk beds may be used only by child day care centers using them at the time of adoption of this chapter and only with the approval of the Health Advisor.

E. Where a private home is used as a child day care center, a family bed shall not be used by the children.

History

ACMY-192-71, May 12, 1971.

Note. Partially reworded for purpose of clarity.

Library References

Indians ☞32(4.1).
Infants ☞17.5.
Westlaw Topic Nos. 209, 211.

§ 2315. Safety precautions

A. Combustibles.

1. Attic space shall not be used for the storage of readily combustible materials nor for any other purpose unless approved by the fire inspector and the Health Advisor. Furnace rooms and rooms where hot water tanks are located shall not be used for storage of combustibles.

2. All flammable liquids, other than one quart maximum quantity used for medical purposes, shall be stored in approved-type metal safety containers.

3. Combustible waste material shall be kept in metal containers with tight-fitting covers and shall not be accumulated in or around the premises. All paper, cotton, cloth batting, vines, leaves, straw and materials used for decorations or costumes shall be flame-proofed or manufactured of noncombustible material.

4. Trash burning shall be done on the premises only in approved incinerators.

B. Fire.

1. Each new and existing child day care center building with an occupant load of more than twenty-five (25) shall be provided with a manually operated fire alarm system.

2. Portable fire extinguishers shall be installed and maintained in all centers for emergency fire protection. Extinguishers hung on wall brackets shall have the top handhold within five feet of the floor. The use of carbon tetrachloride is prohibited. Each facility should provide a connected garden hose of adequate length to assist in fire fighting. All chemical fire extinguishers must be recharged one (1) year from date of last charge, immediately after use or as otherwise necessary. Such recharge shall be done by a qualified person. Extinguishers shall be tagged showing date of charging and company performing the work. Written instructions shall be posted which shall include special staff assignments and general procedures in case of fire or other disaster. A fire evacuation drill shall be executed at the time of the annual fire inspection.

C. Exits and stairs.

1. A minimum of two exterior exits shall be provided for each floor level in all child care centers. Exit ways shall be kept clear of obstructions and at least thirty (30) feet in width.

2. The door latch activator of required exit doors of all centers shall be located within forty (40) inches of the floor. Required exit doors shall have only one latching device. These devices shall be readily operable from the inside and without the use of a key or any special effort or knowledge.

3. All basement stairways shall be separated from the main floor by a full door at the main floor level and such door shall have a self-closing device and be kept locked when not in use. All stairways leading to rooms used by children of school age shall be equipped with railings suitable for the use of children.

D. Heating equipment. Heating facilities shall be adequately protected to prevent children from contacting them. The use of unvented or open-flame space heaters, portable heaters or sawdust burning furnaces is prohibited. All unused gas outlets shall have the valves removed and shall be capped at the wall or floor with a standard pipe cap. All gas fired devices shall be connected to the gas supply by means of a rigid pipe and equipped with automatic pilot gas shutoff controls. Such systems shall be inspected and serviced as needed and at least annually by a properly qualified person.

E. Electrical wiring. Electrical outlets shall be of a safe type or located out of reach of children. Extension cords shall not exceed seven feet in length and shall not extend from room to room. Cords shall not be stapled or otherwise permanently fastened to walls, fixtures, floors or ceilings and shall not be run on the floor under rugs. Electrical wires extending over outdoor play areas shall be securely supported, fully insulated and located at least 12 feet above the play area. All exposed wiring shall be fully insulated. The installation of any new electrical work or equipment shall comply with all applicable codes. Applicable utility company regulations shall govern service connections.

F. Windows. All low windows or arcadia doors shall be protected sufficiently to assure the safety of the children.

G. Poisons and acids. House and garden insecticides, medicines, flammable liquids in safety cans and all corrosive materials shall be kept in locked storage out of the reach of children. Such storage shall not be in or near food storage areas.

H. Tools and equipment. Garden tools and repair equipment shall be kept in a locked area and may be used by children only under adult supervision.

I. Animals. The operator shall be responsible for the behavior of pets or animals allowed on the premises. All dogs and cats on the premises shall be immunized against rabies.

J. Water temperature. Water used by children shall not exceed 110°F temperature.

K. Telephone. There shall be at least one readily available telephone in the agency.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (B)-(D) slightly reworded for purpose of clarity. Subsection headings added.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2316. Sanitation requirements

A. All agencies shall have and use facilities and equipment adequate to insure sanitation of premises, and have approved storage which shall be ventilated for cleaning supplies and equipment. Facilities for over 25 shall have utility sink properly installed and illuminated.

B. All parts of the premises and all furnishings, equipment and materials shall be kept in a sanitary condition and maintained free of flies, roaches, and other vermin at all times. Fixtures such as lavatories, playroom and kitchen floors shall be scrubbed daily, and more frequently if necessary, with an approved cleaning solution and disinfectant.

C. There shall be sufficient water pressure to meet sanitary needs at all times.

D. Garbage and rubbish shall be stored in containers with tight-fitting covers. Garbage shall be removed from the building daily, or more often if necessary to maintain a sanitary condition. Garbage containers shall be washed and sanitized after emptying. Garbage cans shall be lined with newspapers, paper bags or plastic liners.

E. The use of common drinking utensils is prohibited. Clean, single use cups, dispensed from an approved dispenser, are acceptable. Drinking fountains shall be kept clean and in working condition.

F. Where individual cloth towels, toothbrushes, washcloths or combs are provided for the children, they shall be kept in a sanitary condition.

G. Extra, clean clothing shall be available for the younger children to use in case of accidents.

H. There shall be separate, covered, waterproof, easily cleanable containers for the storage of soiled diapers and clothing. The children shall not have access to the containers. Permanent floor coverings shall be tight, smooth, washable and free from dampness and odors.

I. Appropriate fly control measures, such as screening all windows that open and all other direct openings to the outside other than doors, and placing self-closing devices on all doors to the outside, or any equivalent measure approved by the Health Advisor, shall be taken when flies are prevalent.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (B), (C), and (F) slightly reworded for clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2317. Isolation and medical care

A. Isolation quarters, separate from the other facilities used by the children, shall be provided. A child in isolation shall be supervised at all times.

B. Any child showing symptoms during the day of a fresh cold, sore throat, inflammation, fever, rash, diarrhea, vomiting, etc., shall be immediately isolated from the group. Parents or guardians shall be notified at once and all necessary arrangements for prompt removal of the child shall be made.

C. Personnel shall never give medication, including aspirin, to children without instructions for administering the medication from the physician in charge of the child or written authorization from the parent or guardian.

D. Parents shall be notified immediately of any serious injury to the child that requires some medical attention, or the plan for the emergency care of the child agreed upon under 13 N.N.C. § 2305(D) shall be followed.

E. Emergency telephone numbers for the local fire department, police department, and ambulance service shall be posted conspicuously near the phone.

F. An approved first aid kit, accessible to all personnel and out of reach of children shall be kept in the center. At least one member of the staff on duty shall have received current first aid training.

G. Each child shall be observed by a staff member before he enters the center. A child shall not be accepted at the center if he is obviously ill with a communicable disease.

H. Parents shall be notified if their child has been exposed to a communicable disease, if so requested by a parent.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (A), (C), (D), (F)-(H) slightly reworded for purpose of clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2318. Play areas and classrooms

A. At least 35 square feet of indoor play space per child shall be provided. For children attending an organized school session under the supervision of a teacher, the minimum classroom space shall be 25 square feet while the school session is being conducted. The play area shall be occupied only by the children's play materials, equipment and furniture. The floor space of kitchens, bathrooms, halls and permanent equipment such as built-ins is excluded in computing the minimum dayroom and classroom area.

B. Each child shall have an outdoor play period during good weather. The outdoor playing area shall have at least 75 square feet for each child occupying

the area at any time, shall be easily accessible, fenced adequately to insure the safety of the children and free from hazards such as sharp objects, deep holes, construction equipment, drainage ditches and debris. The outside area shall have a suitable surface with tanbark, sand or a resilient material under swings and play equipment where falls may occur. A hard surfaced area can be provided for wheeled vehicles. Dust shall be kept to a minimum. Shaded areas shall be available during summer months. Outdoor play equipment shall be arranged to minimize hazard from conflicting activities. Any construction or equipment situated on the playground which constitutes a potential safety hazard shall be adequately fenced off so as not to be accessible to children.

C. All new and existing facilities shall provide sufficient materials and play equipment to meet the varied developmental levels and interests of children of different age groups. The equipment, both indoor and outdoor, shall be in sufficient quantity to provide variety and active physical play, shall be in good condition, safe and free of sharp, loose or pointed parts. Painted toys and equipment shall be free of toxic paints, lead, arsenic and guaranteed by the manufacturer as safe. Equipment shall be kept clean.

D. All play areas shall be directly supervised when in use.

E. There shall be provision to separate age groups in the indoor and outdoor areas where a large group of children (over 25) is cared for and the age varies. These groups shall follow the same maximum size and minimum staffing as set forth in 13 N.N.C. § 2306.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (A) and (E) slightly reworded for purpose of clarity.

Library References

Indians ⇌ 32(4.1).

Infants ⇌ 17.5.

Westlaw Topic Nos. 209, 211.

§ 2319. Infant care requirements

A. Child day care centers which enroll infants shall have received permission to do so from the Navajo Office of Environmental Health. An infant shall be considered to be a child under eighteen (18) months, or one who has not yet reached the steady walking stage, or requires use of diapers.

B. Rooms used by infants shall be separated from rooms used by older children. There shall be no passageway through the infants' rooms by children of other age groups going from one area to another. Provisions shall be made for separation of crib infants from toddlers.

C. There shall be continuous supervision of infants while in the center.

D. There shall be hand washing facilities available in the infant area used for diaper changing. Each infant's diapers shall be changed as frequently as needed, and while the infant is in his own crib or on a surface which provides

clean coverings. When changing diapers, the infant shall be washed and dried, using his own individual toilet accessories. Handwashing before and after the care of each infant shall be a routine procedure. There shall be a covered, waterproof container for the storage of soiled diapers and clothing.

E. All rooms in the nursery shall be ventilated by windows or mechanical means sufficient to prevent all objectionable odors, and in such a manner as to avoid direct drafts on the children. A moderate degree of temperature shall be maintained with a minimum of 68°F.

F. Formulas, and special or modified diets for children, should be provided by the parents. If prepared by the center, it shall be prepared in accordance with written instructions from the parent or physician in charge of the child and by a technique approved by the Health Advisor. All infants under six (6) months of age shall be held when being fed from a bottle. Bottles shall be individually labeled for each child. All bottles, nipples and bottle covers shall be washed, rinsed and well drained. Infants shall be spoon fed as soon as they are of sufficient age and allowed to feed themselves as soon as this desire is shown.

G. High chairs shall be equipped with a safety step and shall be constructed so that the chair will not topple.

H. Playpens, walkers, strollers, etc., shall be provided. No more than one child shall be placed in a playpen at one time. Washable toys, large enough so they cannot be swallowed, shall be provided for cribs and playpens. Toys shall have no sharp edges or removable parts.

I. A crib shall be provided for each infant. Each crib shall be of sturdy construction with bars closely spaced so a child's head cannot be caught, and have clean, individual bedding including sheets and blanket. Each mattress shall be completely and securely covered with waterproof material. If plastic materials are used, they shall be heavy, durable and not dangerous to children. A child shall never be placed directly on a waterproof mattress cover. Cribs shall be cleaned and bedding laundered daily, or more often if necessary, and always upon change of occupant. There shall be no restraining device of any type used in cribs. The minimum spacing between cribs shall be two feet on any side.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (A), (C), (D), (F), (G) and (I) slightly reworded for purpose of clarity.

Library References

Indians ☞32(4.1).

Infants ☞17.5.

Westlaw Topic Nos. 209, 211.

§ 2320. Food; nutrition

A. Food preparation, storage and handling areas shall be provided in child day care centers serving food. These areas shall be separated from rooms used

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by children and shall not be used as a passageway by children to travel from one area to another. All food preparation, storage and handling facilities shall be constructed to conform to Chapter 1 of this title.

B. Meals shall be made available to all children at customary meal times. Individual sack lunches provided by the parents are acceptable. A warm meal shall be served the child in the variety and amounts necessary to meet approximately one-third of the "Recommended Dietary Allowances" of the National Council (when sack lunches are not provided by the parent).

C. Meals shall be planned a week in advance and posted. When a child is on a modified diet as prescribed by a physician, the food and snacks served this child shall comply with the dietary regime as requested.

D. Food shall be prepared and served so as to appeal to children and be easily eaten by them. Children shall be given assistance in feeding when necessary, and second servings shall be available.

History

ACMY-192-71, May 12, 1971.

Note. Last sentence of subsection (A) reworded for purpose of clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2321. Transportation of children

A. If transportation is provided, the child day care center is responsible, whether it provides the transportation or contracts it out.

B. The driver shall be between the ages of 21 and 65, have a current chauffeur's license, a pre-service physical and an annual in-service physical, and shall be capable and responsible for the discipline of the children. Unruly children may be denied transportation.

C. The vehicle shall be basically constructed for the transportation of persons, and shall be inspected annually in accordance with state law. All seats shall be securely fastened to the body of the vehicle, and children shall be properly seated with no one standing.

D. All loading and unloading shall be done from the right side of the vehicle and on the side of the street on which the child lives.

E. No child shall be left unattended in a bus or a car.

F. An additional attendant is required when children under two are transported.

G. The agency is responsible for adequate and proper transportation insurance coverage.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (A)-(C) slightly reworded for purpose of clarity.

Library References

Indians ↻32(4.1).

Infants ↻17.5.

Westlaw Topic Nos. 209, 211.

§ 2322. Required records and reports

A. Each agency shall maintain the records set out in subsections (B) and (C) of this section at the agency. The records shall be up to date and available to the Health Advisor on request.

B. The following staff records shall be kept for all personnel, including part-time and volunteer:

1. An application blank giving pertinent information including the employee's name, birth date, experience, education, employment references, person to notify in emergency and social security number;
2. Documental evidence, given by a licensed MD, that the employee had a physical examination within six weeks of employment, a blood test, and which indicated freedom from communicable disease, physical disability such as blindness, deafness and epilepsy, and any other disability which might affect adequate care of the children. A skin test or chest X-ray, negative for evidence of active pulmonary tuberculosis, shall also have been obtained from a physician;
3. Unpaid volunteers are required to present evidence of a negative X-ray or a negative tuberculin skin test given within one (1) year;
4. The negative chest X-ray and skin test report shall be obtained annually, and
5. If the child day care center is conducted in a private home, every member of the household shall be subject to the same physical examination and yearly negative tuberculosis report as are required of the staff.

C. The following individual records shall be kept for all children:

1. Name, address, sex, and date of birth;
2. Names of parents or guardians, and their home and work addresses and telephone numbers;
3. Name, address and telephone number of additional responsible person or persons in case parents or guardians cannot be located;
4. Name and telephone number of family physician or pediatrician;
5. A report by the parents or physicians noting history of immunizations, susceptibility to illnesses, including allergies, and special requirements for health and maintenance such as special diets or extra rest periods; and
6. A record of medication requested by the parent and administered by the center.

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D. Daily attendance records shall be kept of the staff on duty and of all children admitted for any period of the day.

History

ACMY-192-71, May 12, 1971.

Note. Subsections (A)-(C) partially reworded for purpose of clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2323. Annual or periodic inspections

A. The Navajo Office of Environmental Health and the Health Advisor are authorized to make inspections and obtain samples of water and sewage for laboratory analysis to determine the condition of the water and sewer systems.

B. Inspections of child day care centers may be made at least once every twelve (12) months or more often if the Navajo Office of Environmental Health or Health Advisor deems it necessary for the protection of the health of the people.

C. The Navajo Office of Environmental Health or Health Advisor shall have the power to enter, at reasonable times, the property and buildings of the child day care center for the purpose of inspecting and investigating conditions relating to the enforcement of these regulations, and it shall be the duty of the owner or person in charge of the child day care center to give the Navajo Office of Environmental Health or Health Advisor free access to such premises at reasonable times for the purpose of inspections.

D. When the inspection is made by the Health Advisor, he shall leave with the management, or person in charge of the child day care center, a copy of the completed inspection report which indicates the sanitary conditions of the center. The report shall be displayed in a prominent place. A copy of the inspection report shall be sent to the appropriate person in the Bureau of Indian Affairs interested in such matters. A copy of the inspection report shall also be filed in the records of the Health Advisor.

History

ACMY-192-71, May 12, 1971.

Note. Subsection (D) slightly reworded for purpose of clarity.

Library References

Indians ⇄32(4.1).

Infants ⇄17.5.

Westlaw Topic Nos. 209, 211.

§ 2324. Notice, hearing and orders

A. When the Health Advisor recommends action pursuant to violation of any provision of this chapter, the Navajo Office of Environmental Health shall

give notice to the person or persons responsible therefor as hereinafter provided. Such notice shall: (1) be in writing; (2) include a statement of the reasons for its issuance; (3) allow a reasonable time for the performance of any action required; (4) be served upon the owner or his agent; provided that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or when he has been served by another method authorized by the Navajo Office of Environmental Health; (5) and contain an outline of remedial action which, if taken, will effect compliance with the provisions of this chapter.

B. Any person affected by any notice which has been issued in connection with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter before the Navajo Office of Environmental Health; provided, that such person shall file in the office of the President of the Navajo Nation, a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day notice was served. Upon receipt of such petition the Navajo Office of Environmental Health shall set a time and place for such hearing and give the petitioner written notice thereof. At the hearing, petitioners shall be given an opportunity to be heard, and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed; provided, that upon application of the petitioner, the Navajo Office of Environmental Health may postpone the date of the hearing for a reasonable time beyond such ten (10) day period if the petitioner has submitted a good and sufficient reason for such postponement.

C. After such hearing, the Navajo Office of Environmental Health with the consultation of the Health Advisor, shall sustain, modify or withdraw the notice, depending on the findings as to the compliance or noncompliance with this chapter. If the Navajo Office of Environmental Health shall sustain or modify such notice, it shall be deemed to be an order. Any notice served pursuant to 13 N.N.C. § 2323 shall automatically become an order if a written petition for hearing shall not have been filed in the office of President of the Navajo Nation, within ten (10) days after such notice was served. After a hearing, in the case of any notice suspending any permit when such notice shall have been sustained by the Navajo Office of Environmental Health the permit shall be deemed to have been revoked; provided, however, that the Government Services Committee may grant a further opportunity to comply with this chapter in its sound discretion.

D. The proceedings at such hearing, including the findings and decisions of the Navajo Office of Environmental Health shall be reduced to writing and entered as a matter of public record. Such record shall include every notice or order issued in connection with the matter.

History

ACMY-192-71, May 12, 1971.

Note. Words "President" inserted pursuant
CD-68-89, Resolve #9.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Indians ⇨32(4.1).
 Infants ⇨17.5.
 Westlaw Topic Nos. 209, 211.

§ 2325. Emergency orders; hearing

Whenever the Navajo Office of Environmental Health upon the advice of the Health Advisor, finds that an emergency matter exists which requires immediate action to protect public health, the Navajo Office of Environmental Health may, without notice or hearing, take such action and issue such order as is deemed necessary to meet the emergency. Notwithstanding any other provision of this chapter, such order shall be effective immediately, but upon petition to the Navajo Office of Environmental Health shall be afforded a hearing as soon as possible. After such hearing, depending upon the findings as to compliance or noncompliance with the provisions of these regulations the Navajo Office of Environmental Health may continue the order in effect, modify it or revoke it.

History

ACMY-192-71, May 12, 1971.

Note. Slightly reworded for purposes of clarity.

Library References

Indians ⇨32(4.1).
 Infants ⇨17.5.
 Westlaw Topic Nos. 209, 211.

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Subchapter 1. Generally

§ 2501. Definitions

For the purposes of this chapter the following definitions shall apply:

A. "Administrator" shall mean the permittee or the person designated by the permittee to supervise the care and administrative functions of the nursing home.

B. "Ambulatory resident" shall mean a resident or patient of the home who, unaided, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs.

C. "Annex" shall mean a subsidiary building to the main building located on the same premises as the nursing home.

D. "Approved" shall mean acceptable to the enforcing authority based on his determination as to conformance with appropriate standards and good public health practices.

E. "Automatic fire detection system" shall mean a system which automatically detects a fire condition and actuates an audible fire alarm signal device.

F. "Automatic sprinkler system" shall mean a system of specially sized piping connected to sprinkler heads and installed in accordance with standards outlined in N.F.P.A. Pamphlet No. 13, "Sprinkler Systems."

G. "Basement" shall mean a room or area which is one-half or more of its clear height below the elevation of the grounds adjoining the building on all sides.

H. "Bed-patient-bedfast" shall mean a person who is not an ambulatory patient as described above.

I. "Director of nursing" shall mean a registered nurse who shall have the responsibility for over-all planning, instruction and supervision of nursing care administered to patients by all personnel.

J. "Government Services Committee" shall mean the Government Services Committee of the Navajo Nation Council.

K. "Hazardous areas" shall mean boiler or furnace room, basement or attic used for storage of combustible material; workroom, such as carpenter shop, maintenance shop, and paint shop; central storeroom for furniture mattresses; and other similar areas intended to contain combustible materials.

L. "Health Committee" shall mean the Health and Social Services Committee of the Navajo Nation Council.

M. "Licensed practical nurse," abbreviated L.P.N., shall mean a person licensed by the Arizona State Board of Nurse Registration and Nursing Education for the State of Arizona to practice as a licensed practical nurse.

N. "New home" shall mean a nursing home never having been duly licensed or an existing nursing home where there has been a change in the ownership.

O. "NIHAO" shall mean the Navajo Indian Health Area Office of the United States Public Health Service.

P. "Nursing home" shall mean any nursing home, convalescent home, institution, home place or facility for the accommodation, care, treatment or boarding of two or more aged, sick, infirmed, convalescent, invalid, mentally ill, incompetent, decrepit, blind, disabled, injured, infected or chronically ill person, drug addict, dipsomaniac, or alcoholic, for which accommodation, care, treatment, or boarding, a charge is made or compensation is required or expected, whether by fee or gift; provided, however, that the accommodation, care, treatment, or boarding in a household or family, for compensation or otherwise of a person related by blood to head of such household or family, or to his or her spouse, shall not be deemed to constitute a nursing home within the meaning of this chapter; and provided further that the provisions of this chapter shall not apply to any nursing home, hospital, clinic, treatment center, institution or other facility operated or maintained by or under the jurisdiction of the federal government.

13 N.N.C. § 2501

HEALTH AND WELFARE

Q. "Nursing unit" shall mean a grouping of 40 to 60 beds around a central area, which is the nurses' station and which contains the charts, medicines, and other medical necessities for those beds.

R. "Patient-resident" shall mean a person who receives personal care or nursing care in a nursing home.

S. "Permit" shall mean a certificate to operate a nursing home on the Navajo Nation. "License" shall have the same meaning.

T. "Permittee" shall mean a person having a valid permit to establish, conduct or maintain a nursing home on the Navajo Nation, issued in accordance with this chapter.

U. "Person" shall mean a natural person or persons, firm, partnership, association, corporation, organization or other legal entity.

V. "Registered nurse," abbreviated R.N., shall mean a person currently licensed by the Board of Nurse Registration and Nursing Education for the State of Arizona.

History

ACS-219-69, September 16, 1969.

Redesignation of Advisory Committee to Government Services Committee, see § 2501 (J), CD-68-89, December 15, 1989.

Note. ACS-219-69 adopted regulations, attached thereto, for the licensing of nursing homes in the Navajo Nation.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2502. Permits—Requirements

A. No person shall establish, conduct or maintain a nursing home on the Navajo Nation without a permit issued by the Government Services Committee. The permit shall be issued on the basis of compliance with all standards or regulations adopted or established by the Government Services Committee.

B. Each permit shall be issued only to the person to conduct a nursing home on the premises described in the application and shall not be transferable or assignable to another nursing home or person. A separate permit shall be required for homes maintained on separate premises, even though operated under the same management or ownership, provided a separate permit shall not be required for separate buildings on the same grounds.

C. The permit shall be posted in a conspicuous place on the premises.

History

ACS-219-69, September 16, 1969.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Westlaw Topic Nos. 198H, 209.

§ 2505. Denial, revocation or denial of renewal

A. An application for a permit to operate a nursing home on the Navajo Nation may be disapproved and the issuance of a permit denied for:

1. Failure to meet any of the standards prescribed by these regulations;
2. Insufficient nursing personnel, lack of qualifications of nursing personnel or lack of training and experience to properly care for the number and type of patients; and/or
3. Previous denial or revocation of a permit to own or operate a nursing home on the Navajo Nation.

B. A permit may be revoked or renewal denied for:

1. Cruelty or indifference to the welfare of the patients;
2. Misappropriation of real or personal property of the residents without the consent of the resident or the immediate family; or
3. Failure to meet the standards prescribed by the Government Services Committee.
4. The revocation, suspension, or denial of permit shall become final ten (10) days after a notice is mailed or served, unless the applicant or permittee shall within ten (10) days file a written request for a hearing with the Health and Social Services Committee.

C. The Health and Social Services Committee shall hold hearings upon request of the applicant or permittee for any nursing home affected by the denial, suspension, revocation, or refusal to issue a permit. The following procedures shall be followed:

1. A notice from the Health and Social Services Committee will be sent by registered mail to the applicant or permittee advising him of the date and location of the hearing.
2. All testimony shall be under oath and shall be recorded and a copy of the procedures shall be sent to the applicant or permittee.
3. The NIHAO shall present the evidence supporting the denial or revocation of the permit and the applicant or permittee shall have the right to cross-examine. The applicant or permittee shall have an opportunity to present evidence to show cause as to why he should be granted a permit or why his permit should be continued.
4. On the basis of the evidence presented at the hearing, the Health and Social Services Committee shall make a determination specifying its findings of fact and conclusion of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or permittee.
5. Any applicant or permittee or the NIHAO, aggrieved by the decision of the Health and Social Services Committee after a hearing, may, within thirty (30) days after the mailing or serving of notice of the decision, appeal to the Government Services Committee of the Navajo Nation Council for a review of the Health and Social Services Committee's decision. Pending final disposition of the matter, the status quo of the applicant or permittee

shall be preserved, except as the Government Services Committee otherwise orders in the interest of the Navajo People.

6. Upon failure of the applicant or permittee or their duly authorized representative to appear at the hearing, the denial, suspension or revocation shall be final.

History

ACS-219-69, September 16, 1969.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Library References

Health ⇌276.

Indians ⇌32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2506. Inspections

A. The NIHAO is empowered and authorized to make inspections and to determine the conditions of the nursing home.

B. The NIHAO shall have the power to enter, at reasonable times, the property and buildings of the nursing home for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter.

C. It shall be the duty of the operator-administrator of the nursing home to give the NIHAO free access of such premises at reasonable times for the purposes of inspections.

D. Inspections of nursing homes may be made as often as deemed necessary for the protection of the health and safety of the residents.

E. When the inspection is made by the NIHAO, a written report will be prepared and submitted to the operator/administrator. Copies of the written report, which indicates the conditions of the nursing home, will be forwarded to the Health and Social Services Committee, with recommendations as to necessary action.

F. The nursing home shall also be subject to periodic sanitation and fire inspections by those officials of the Navajo Nation and the Bureau of Indian Affairs authorized to do so by applicable Navajo Nation and federal law.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.

Indians ⇌32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2507. Decisions and interpretations

All decisions and interpretations made by the Government Services Committee shall be final.

History

ACS-219-69, September 16, 1969.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Library References

Health ⇌276.

Indians ⇌32(4.1).

Westlaw Topic Nos. 198H, 209.

Subchapter 3. Construction Standards

§ 2551. Plans and specifications

A. Two sets of preliminary plans describing new buildings, major alterations or additions to existing buildings for which a request is made to obtain a license for a nursing home, shall be submitted to the President of the Navajo Nation, who shall forward them to the Window Rock Field Office, United States Public Health Service, Division of Indian Health, for review and recommendations. Approval or disapproval with recommendations for compliance shall be made by the Health and Social Services Committee of the Navajo Nation Council. Preliminary plans shall be drawn to scale and shall include the following:

1. Rooms or spaces to be included in each department;
2. Functions or services to be performed in each room; including size of rooms and kind and size of equipment each will contain.
3. Drawings of each floor showing relationship of various departments and services;
4. Proposed roads, walks, service and entrance courts and parking areas;
5. Brief description of type of construction;
6. Description of site and type of construction; and
7. Owner's name and address, address and location of proposed facility.

B. After the preliminary plans have been approved by the President of the Navajo Nation, final working drawings and specifications shall be prepared and submitted to the Health and Social Services Committee for review and approval. Final working drawings shall be complete and distinctly drawn.

C. Separate drawings shall be prepared for each of the following branches of work: architectural, structural, mechanical, and electrical. Specifications shall be complete and shall contain detailed and descriptive information about the building and equipment.

D. All plans shall be drawn by a registered professional architect and shall bear his name and registry number.

E. At least two complete sets of plans and specifications shall be submitted for review, one of which shall be retained in the office of the NIHAO.

F. All construction shall be in strict compliance with the approved plans and no changes shall be made without written approval from the NIHAO.

History

ACS-219-69, September 16, 1969.

Note. Word "President" inserted pursuant CD-68-89, Resolve #9.

Library References

Health ⇨276.

Indians ⇨32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2552. Foundations, materials and methods

A. Foundations shall rest on natural solid ground and shall be carried to a depth of not less than one foot below estimated frost line or shall rest on leveled rock or load-bearing piles when solid ground is not encountered. Footings, piers, and foundation walls shall be adequately protected against deterioration from ground water. Proper soil bearing values shall be established for the soil at the proposed site of the home.

B. Nursing homes shall be constructed of materials which have a full two-hour fire rating, except for non-bearing walls, partitions, ceilings, and roof areas which may have only a one-hour fire rating. The ceiling of basements shall have a fire rating of at least two (2) hours. Walls enclosing stairways, elevators, laundry and trash chutes and other vertical shafts, boiler rooms and rooms used for storage of combustible materials shall be of two-hour fire resistive construction.

C. Fire resistive ratings and practices shall be determined on the basis of standards of Underwriters' Laboratories, Inc., "Building Materials List", and the National Fire Codes.

D. All existing buildings which are to be converted to nursing homes and which do not meet the above construction standards for fire resistive ratings shall conform to paragraph 2364 of N.F.P.A., Code 101, and shall be protected by a complete automatic sprinkler system installed in accordance with plans which have been approved by the NIHAO. All other requirements for nursing homes shall be met regardless of whether it is a converted building or a building constructed for the express purpose for occupancy as a nursing home.

E. Any additional building (outbuilding) or any addition to an existing licensed nursing home, which is to be used as a part of, or annex to, a nursing home for housing patients, shall be constructed in accordance with N.F.P.A. Code 101, paragraphs 2312a and 2312b, Regulating New Construction, Additions and Conversions. The buildings shall be connected so traffic will not be required to pass through rooms other than halls, corridors, lounges or dining rooms. Plans and specifications shall be submitted to NIHAO and approval received in writing before construction of such building is begun or before an existing building is occupied. All such buildings shall meet all other requirements of the standards governing construction, fire safety, patient facilities and operation of the nursing home.

13 N.N.C. § 2552

HEALTH AND WELFARE

F. Nursing homes shall be of structural design with sufficient strength to support all dead, live and lateral loads without exceeding the working stresses permitted for materials used in the construction. Special provisions shall be made for machine or apparatus loads which would cause greater stress than that specified as the minimum live load.

History

ACS-219-60, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2553. Site

A. No nursing home shall be located more than three miles from a responding fire station as measured along public thoroughfares unless the facility is protected by an approved automatic sprinkler system.

B. No nursing home shall be located more than thirty (30) miles from a practitioner of the healing arts licensed by the State of Arizona or certified by United States Public Health Service who has agreed to be called and will respond to calls in an emergency.

C. The nursing home should be located where competent medical consultation is available, and where employees can be recruited and retained.

D. The home shall not be located near insect breeding areas, sources of undue noise such as airports or near a cemetery.

E. The home shall be located where transportation is readily available within a reasonable distance on all weather roads.

F. All weather roads and sidewalks shall be provided within the lot lines to the main entrance and service entrance.

G. When possible, the home should be located where water in sufficient quantity and of acceptable quality can be obtained from a community supply, and where water carried waste can be discharged into a community sewerage system. If community water or sewerage systems are not available, the site shall be sized and so located to facilitate construction of individual water supply and/or waste disposal systems in accordance with recommended standards of the United States Public Health Service.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2554. General design; facilities

A. No patient rooms shall have more than four beds, and each bed in each multi-bed room shall be provided with curtains, blinds, or similar fire resistive equipment for privacy. All patient rooms shall provide at least eighty (80) square feet of floor space per bed in multiple-bed rooms and at least one hundred (100) square feet per bed in single-bed rooms. Space and room arrangement shall permit spacing of beds at least three feet apart in multiple-bed rooms and no bed shall be located closer than two feet from any wall except for the head or foot of the bed.

B. A minimum of one single room for each sex per each ten (10) beds shall be provided for incompatible patients or patients required to be isolated.

C. All patient rooms shall be outside rooms with window space equal to at least one eighth ($\frac{1}{8}$) of the floor space. No hallway or any location commonly used for other than bedroom purposes shall be used for patient beds. No room shall be used for a patient's room which can only be reached by passing through another patient's room. Bedrooms shall not open into any room in which food is prepared, served or stored, or into a utility room, dining room or communal bathroom. Patients of the opposite sex shall not be housed in the same bedroom or ward except in cases of husband and wife. All patient rooms shall be numbered.

D. No patient shall be housed in a basement, attic story, trailer house, or any room other than an approved patient room.

E. At least one nurses' station shall be provided for each floor or for each sixty (60) patients or major fraction thereof and shall be equipped with the following facilities:

1. Locked medicine cabinet or closet, complete with running water for preparation of medications;
2. Space allowance must be made for a refrigerator to store medications;
3. Nurses call system connected to call stations between each two beds in two-bed rooms and four-bed rooms, and one in each one bed room;
4. Storage space for current patient charts;
5. Desk and chair space; and
6. Nurses toilet and lavatory facilities.

F. The following facilities shall be located on each patient floor or for each sixty (60) patients or major fraction thereof

1. A utility room which is divided into a clean and dirty area; (See Title 53 of Hill-Burton Act for appropriate standards.)
2. Facilities for flushing and sanitizing bedpans;
3. Toilet facilities:
 - a. When centralized toilets are used, a toilet room containing at least one lavatory and one water closet shall be provided for each eight patients of each sex. At least one water closet enclosure shall have

minimum dimensions of five feet by six feet to permit toilet training. If private or semi-private toilet facilities are provided, a separate training toilet with minimum dimensions of five feet by six feet shall be provided on each patient floor and located conveniently to the patient area;

b. If private or semi-private toilet facilities are located between patient rooms, they shall be used only by those patients occupying the rooms adjacent to the toilet rooms. Patients from other areas of the home shall not be permitted to pass through other patient rooms to gain access to toilet facilities;

c. At least one toilet room for each sex shall be located adjacent to the dining room and/or recreation area; and

d. Public toilet facilities for each sex shall be provided conveniently to the lobby or waiting room;

4. Closet for clean linen storage;

5. Closet for storage of equipment and daily working supplies;

6. Janitors closet with hot and cold running water, storage shelves, janitors sink and racks for storing cleaning equipment;

7. At least one bathtub or shower on each patient floor for each ten (10) patients (separate for each sex);

8. At least one treatment room for each nursing unit; and

9. Nourishment kitchen. (See Title 53 of Hill-Burton Act for appropriate standards.)

G. The following facilities shall be provided and located convenient to but separate and apart from the patient care area:

1. Food service department consisting of the following:

a. Food preparation area.

b. Dishwashing (separate from food preparation and serving area). An approved, properly installed mechanical dishwashing machine shall be provided in nursing homes with ten (10) or more patients.

c. Refrigeration.

d. Garbage disposal facilities.

e. Employee dining area.

f. Janitors closet with hot and cold running water, shelves, janitors sink and racks for storing of cleaning equipment.

g. Storage space for supplies, staples and other food items not requiring refrigeration.

2. Housekeeping facilities with:

a. Space for storage of clean linens.

b. Separate room for soiled linens.

3. Mechanical equipment room or rooms for heating and air handling.

4. Employees facilities consisting of room for changing clothes with:

a. Lockers for storage of personal effects.

b. Toilet and lavatory facilities.

5. Storage space as follows:

- a. General storage at rate of fifteen (15) square feet per patient bed to be used for storage of supplies and equipment. This general storage space shall be concentrated in one area.
 - b. Storage room for residents clothing.
 - c. Storage for outdoor equipment.
6. Gas or oil fired incinerator.
- H. Residents dining, recreation, and occupational activities space shall be provided at the rate of at least twenty-five (25) square feet for seventy-five percent (75%) of the total beds in the nursing home.
- I. Outside recreation or sitting area shall be provided at the rate of at least fifty (50) square feet per patient bed.
- J. Wheelchair and stretcher storage and parking area.

History

ACS-219-69, September 16, 1969.

Library References

Health ⚡276.
 Indians ⚡32(4.1).
 Westlaw Topic Nos. 198H, 209.

Library References

Health ⚡276.
 Indians ⚡32(4.1).
 Westlaw Topic Nos. 198H, 209.

United States Code

Hill-Burton Act, see 42 U.S.C.A. § 291 et seq.

§ 2555. General specifications

The following general specifications shall apply to all new construction, converted buildings, additions to existing buildings and remodeling of existing licensed buildings:

A. If laundry and trash chutes are located inside the building, they shall have a minimum diameter of two feet, shall be constructed of fire resistive material and shall be equipped with a flushing ring and automatic sprinkler head at the top of each chute. Each laundry and trash chute shall be vented to the atmosphere and have a floor drain in the room in which the chute terminates. An elbow and self-closing door shall be provided at the point of discharge of each chute.

B. Ceiling heights shall be as follows:

- 1. Boiler room—Twelve (12) feet, except that a lesser height may be used for small buildings using a domestic type package unit. If a boiler is set in a pit, the height may be measured from the pit floor:
- 2. Laundry—Eleven (11) feet.
- 3. Food preparation area—Ten (10) feet.

13 N.N.C. § 2555

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4. Patient rooms and corridors—Eight (8) feet.

C. All doors through which patients must pass shall be at least three feet eight inches wide; except doors to private or semi-private toilet rooms which may have a width of thirty-six (36) inches.

D. All corridors shall have a minimum width of eight (8) feet.

E. Handrails shall be provided on both sides of all corridors and stairways used by patients.

F. All stairways shall be at least three feet eight inches wide as measured between handrails if the handrails project more than three and one-half inches.

G. Thresholds at interior doorways shall be flush with the floor.

H. Approved angle-jet drinking fountains shall be located in patient corridors, in treatment areas, and in the lobby of the home. The drinking fountains shall be installed so they may be used by wheelchair patients.

I. Enclosures or partitions around water closets and showers which are to be used by patients shall have handrails on both sides.

J. Hardware on water closet enclosures shall be operable from both sides and all doors on water closet enclosures shall open outward.

K. Lavatories shall be installed with brackets and designed so wheelchair patients may slide wheelchairs underneath.

L. All bathtubs used by patients shall have handrails at the side and ends of the tub. Bathtubs shall not be elevated.

M. Floors of the following areas shall have smooth waterproof surfaces that are easily cleanable and resistant to heavy wear:

Toilet room	Bedpan rooms	Sterilizing
Bathrooms	Utility rooms	Locker rooms
Shower rooms	Janitors closets	Laundry rooms
Patient rooms	General storage	

N. Floors of the following areas shall be waterproof, greaseproof, smooth, easily cleaned and resistant to heavy wear:

Kitchens	Dining rooms
Food preparation rooms	Housekeeping storage rooms
Recreation rooms	

O. The walls and bases of the following areas shall have smooth surfaces with painted or equal washable grease-resistant finish in light color. The base of the walls shall be waterproof and free from spaces which might harbor vermin and insects:

Kitchen	Housekeeping storage rooms
Food preparation rooms	Utility rooms
Dining rooms	Locker rooms

P. The walls of the following areas shall have smooth, washable, water-proof, painted, glazed or similar finishes to a point above the splash or spray line:

Toilet rooms	Bedpan rooms	Sterilizing rooms
Bathroom	Utility rooms	Laundry rooms
Showers	janitors closets	General storage rooms
Kitchens	Dishwashing rooms	Spaces with sinks

Q. Interior finish of all exitways, storage rooms, and all areas of unusual fire hazard shall have a flame spread rating of less than twenty (20). Interior finish of patient rooms, patient day rooms, and other areas occupied by patients shall have a flame spread rating of less than seventy-five (75). Interior finishes of other areas shall have a flame spread rating of less than seventy-five (75), except that ten percent (10%) of the aggregate wall and ceiling areas of any space may have a flame spread rating up to two hundred (200). Interior finish materials shall be classified in accordance with their average flame spread rating on the basis of tests conducted in accordance with ASTM Standard No. E84. All acoustical materials used in the above areas shall withstand washing.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2556. Electrical installations

A. All electrical installations or alterations to existing systems shall comply with standards of the National Electrical Code as published by the National Fire Protection Association. All electrical equipment shall be new and shall meet the standards and bear the approved label of the Underwriters' Laboratory.

B. Each area of the nursing home shall be provided with sufficient number of electrical outlets to meet the use requirements of the particular area and special attention shall be given to the laundry, food service department, physical and occupational therapy and other specialized areas.

C. The following shall be provided in all patient areas:

1. Patient bedrooms shall be provided with lights for general illumination, a night light and a reading light for each bed.

2. General illumination and night lights shall be controlled by switches located at the door to the room.

3. All switches in patient rooms shall be of an approved mercury or equal, quiet operating type.

4. Each bedroom shall have at least one duplex receptacle located at the head of each patient bed and at least one duplex receptacle located elsewhere in the room where it is easily accessible.

13 N.N.C. § 2556

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5. Emergency lighting shall be provided for all corridors, exitways, and stairways and shall be supplied by an emergency generator or battery powered units equipped with an automatic throwover switch to provide automatic throwover to the emergency lighting system in case of failure of regular power.

6. If ceiling lights are used, they shall be of an indirect type and designed and installed so they will not shine in the patient's eyes.

7. Night lights shall be provided for all corridors, toilet rooms, stairways and patient rooms, and all nursing unit corridors shall have grounding type receptacles installed not more than fifty (50) feet apart.

D. Lighting levels shall be provided as listed in 13 N.N.C. § 2565.

E. All light fixtures, wiring and equipment shall be tested by a competent electrician and certification made in writing to show that the system is free from grounds, shorts or open circuits.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2557. Plumbing

A. All parts of the plumbing system shall comply with the standards set forth in the "Report of Public Health Service Technical Committee on Plumbing Standards."

B. Plumbing fixtures requiring both hot and cold water which are accessible to patients shall be supplied with water which is thermostatically controlled to provide a maximum water temperature of 125°F at the fixture.

C. Drinking fountains shall be provided at the rate of one for each twenty-five (25) patients or at least one for each floor and shall be of angle-jet type and meet the standards of the American Standard Specifications A.S.A. Z 4.2-1942.

D. Hot water storage tank or tanks shall have a capacity of at least eighty percent (80%) of the total consumption during peak periods.

E. Recirculating pumps shall be used for all hot water lines extending more than 100 feet from the source of hot water supply to assure that hot water will be readily available at each hot water fixture.

F. Each fixture such as lavatories, water closets, sinks, showers, and janitors sinks shall be provided with a valve or fixture stop to permit repair of the fixture without disrupting the flow of water to other fixtures in the building.

G. All plumbing lines, both hot and cold, shall be sanitized before the nursing home is occupied.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2558. Heating and ventilation

A. All steam, hot water, warm air heating, ventilating and air conditioning systems shall comply with the minimum standards of the American Society of Mechanical Engineers, the American Society of Heating, Ventilating, and Air Conditioning Engineers, and the Underwriters' Laboratories, Inc. All gas fired equipment shall comply with the regulations of the American Gas Association.

B. All types of portable heaters are prohibited.

C. All nursing homes shall be heated by hot water, warm air, or steam system with thermostatic controls. The heating system shall be capable of maintaining a temperature of at least 80°F at all times.

D. The corridors of nursing homes shall not be used as a plenum. All return air shall be carried by return air ducts.

E. The nursing home shall be well ventilated by windows, forced air or a combination of both.

F. Each window, if used for ventilation, shall be screened with sixteen (16) mesh wire screening at all times except that screens may be removed and replaced with storm windows during the cold season.

G. All wet rooms such as utility rooms, bathrooms, toilet rooms, bedpan rooms, shower rooms, etc., shall be provided with forced ventilation to change the air at least once every six minutes. Wet rooms shall have one square inch of venting to the outside per one square foot of floor area.

H. All stacks, exhaust systems and other vents for the heating and ventilation systems shall discharge above the roof and shall be located at least ten (10) feet from any window.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2559. Sewage disposal

A. Every nursing home shall be provided with disposal system for body wastes. Water carried waste shall be discharged to public sewerage system if possible. If a public system is not available, an individual sewage disposal

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system shall be constructed which meets the standards contained in the latest edition of Manual of Septic Tank Practice published by the United States Public Health Service. If an individual waste disposal system is used, it shall be operated and maintained in a satisfactory manner.

B. In areas where a storage, collection and land fill operation approved by the NIHAO is available, it may be used to dispose of contaminated dressings and other infectious wastes. Where such approved operation is not available, infectious wastes shall be disposed of in incineration facilities approved by the NIHAO.

History

ACS-219-69, September 16, 1969.

Library References

Environmental Law ⌘371.
Health ⌘276.

Indians ⌘32(4.1).
Westlaw Topic Nos. 149E, 198H, 209.

§ 2560. Water supply

The water supply shall be from a source acceptable to the Health Advisor and shall be adequate to supply the demands of the nursing home.

History

ACS-219-69, September 16, 1969.

Library References

Health ⌘276.
Indians ⌘32(4.1).
Waters and Water Courses ⌘196.

Westlaw Topic Nos. 198H, 209, 405.
C.J.S. Waters §§ 495 to 497.

§ 2561. Elevators and dumbwaiters

A. Elevators and dumbwaiters shall meet the applicable standards as outlined in the following:

1. "American Standard Safety Code for Elevators, Dumbwaiters and Escalators" (A17.1-1960).
2. "National Electrical Code" N.F.P.A. #70.
3. "The National Board of Underwriters".

B. Any nursing home with one or more floors and housing residents above the ground floor level shall have at least one hydraulic or electric motor driven elevator. Nursing homes with a bed capacity of from sixty (60) to two hundred (200) above the first floor shall have at least two elevators.

C. Cabs of elevators shall be constructed of fire resistive material.

D. Car sizes of elevators shall be at least five feet by seven feet six inches inside dimensions and have a capacity of at least three thousand five hundred (3,500) pounds.

E. Doors to elevator cabs shall not be less than three feet eight inches clear opening.

F. Automatic, self-locking devices shall be provided for doors leading to the elevator cab from each floor level. The locking devices shall automatically lock the doors when the elevator leaves the floor.

G. Dumbwaiter cabs shall be at least 24 inches by 24 inches by 36 inches and shall be constructed of steel.

H. Doors to dumbwaiter shafts shall close automatically and shall remain closed at all times except when the dumbwaiter is being loaded or unloaded.

I. Shafts for dumbwaiters and elevators shall be of fire resistive material and no openings other than doors to each floor level shall be permitted.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2562. Refrigeration

A. All refrigerators shall be insulated with waterproof, nonabsorbent, vermin proof insulation.

B. All refrigeration facilities shall be lined with nonabsorbent material which will withstand heavy use and can be easily cleaned and sanitized.

C. Outer doors and walls of walk-in boxes shall have insulation equal to four inches of cork.

D. Portable ice chests shall have insulation in doors and walls equal to two inches of cork.

E. Refrigeration of adequate capacity shall be provided and located in or adjacent to all kitchens and other food preparation areas where perishable food will be stored.

F. Refrigeration for the main kitchen shall consist of at least two separate sections or separate boxes. One shall be used for storage of meats and dairy products and the other shall be used for general storage of foods requiring refrigeration.

G. Toxic or flammable refrigerants shall not be used in refrigerators or compressors that are located in buildings occupied by patients.

H. Compressors and evaporators shall be capable of maintaining temperatures of not more than 45°F at all times.

I. Compressors shall be automatically controlled.

J. Compressors, piping, and evaporators shall be tested for leaks and capacity.

K. Refrigeration equipment shall meet the applicable standards outlined in the "American Standard Safety Code for Mechanical Refrigeration," the Na-

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tional Board of Fire Underwriters and the minimum general standards set forth in the preceding subsections.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2563. Kitchen equipment

A. All kitchen equipment shall be so constructed and installed in such a manner to meet all sanitation standards contained in the "Food Service Sanitation Manual" as recommended by the United States Public Health Service, 1962 Edition.

B. Equipment shall be adequate and arranged to provide a convenient work flow for the receipt of food, proper storage, preparation, cooking, serving, and dishwashing for the over-all food service for patients and staff.

C. Enclosed cabinets and other facilities shall be provided for storage or display of food, drink and utensils and shall be designed to protect them from contamination by insects, rodents, splash, dust and overhead leakage.

D. An approved number of sinks shall be provided for washing pots and pans, vegetable preparation, and the cooks work table. A regular lavatory with soap and paper towels shall be provided for handwashing. Nursing homes with thirty (30) or more beds shall have at least one three-compartment sink for washing and sanitizing pots and pans, a separate two-compartment sink for vegetable preparation and a small sink with running water for the cooks work table.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2564. Laundry

A. If laundry is done commercially for the home, a separate room of adequate size shall be provided for sorting, processing and storing of soiled linens. Clean linen shall not be received in the same sorting and storage room for soiled linens. This space shall not be located where the activities conducted therein will disturb the patients or endanger their health and safety. The room shall be equipped with a floor drain and power vent to change the air at least once each six minutes.

B. If laundry is done in the home, facilities for this purpose shall be separate and located remote from the patient areas and food preparation and

storage areas. The laundry room shall be of sufficient size and design to permit:

- 1. Space for sorting and storing soiled linens which is separate from the clean linen sorting or storage area.
- 2. Storage space for clean linen which is separate from the main laundry room.

C. If laundry is done in the home, commercial type laundry equipment shall be used and consist of the following minimum equipment:

- 1. At least two washers with combined rated capacity of at least 12 pounds of dry laundry per day per resident bed, when operating not more than forty (40) hours per week.
- 2. At least one flat ironer with capacity equal to seventy percent (70%) of the washer capacity when operating forty (40) hours per week.
- 3. At least one extractor with a daily capacity equal to that of the washers. (Combination washer-extractor may be used in lieu of separate extractor.)
- 4. At least one tumbler with rated capacity equal to twenty-five percent (25%) of the washers when operating forty (40) hours per week.

D. Separate carts and equipment shall be used for transporting soiled and clean linens.

E. Table linens shall be laundered separate from bed linens, towels and clothing.

History

ACS-219-69, September 16, 1969.

Library References

Health ⚡276.
Indians ⚡32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2565. Lighting levels

The lighting levels recommended for nursing homes are as follows:

AREA	FOOTCANDLES ¹
Corridors and interior ramps	20
Stairways other than exits	30
Exit stairways and landings	5 on floor
Doorways	10
Administrative and lobby areas	50
Administrative and lobby areas, night	20
Chapel or quiet area	30
Physical therapy	20
Occupational therapy	30
Worktable, course work	100
Worktable, fine work	200
Recreation area	50

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AREA	FOOTCANDLES ¹
Dining area	30
Patient care unit (or room), general	10
Patient care room, reading	30
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk, for charts and records	70
Nurses' medicine cabinet	100
Utility room, general	20
Utility room, work counter	50
Pharmacy area, general	30
Pharmacy, compounding and dispensing area	100
Janitor's closet	15
Toilet and bathing facilities	30
Barber and beautician areas	50

¹ Minimum lighting at any time.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇨276.
Indians ⇨32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2566. Codes and standards

The codes and recommended standards listed shall be used for reference and interpretation and included as a part of the Navajo Nation standards when so indicated in the ordinance or established standards of the Navajo Nation Council.

History

ACS-219-69, September 16, 1969.

§ 2566 App. A. List of Codes and Standards

LIST OF CODES AND STANDARDS

U.S. Department of Commerce
National Bureau of Standards
Superintendent of Documents
Washington, D.C.

- *1. "American Standard Building Code," publication No. M 179.
- 2. "Food Service Sanitation Manual," 1962 edition, PHS publication No. 934.
- 3. "Milk Ordinance and Code," 1953 Recommendations of the Public Health Service, PHS publication No. 229.

4. "Public Health Service Drinking Water Standards," 1962 edition, PHS publication No. 956.
5. "Manual of Septic Tank Practice," 1963 edition, Public Health Service publication No. 526.
6. "Report of Public Health Service Technical Committee on Plumbing Standards," (a proposed revision of the National Plumbing Code ASA A40-81955), 1962 edition, PHS publication No. 1038.

National Fire Protection Association
60 Batterymarch Street
Boston, Massachusetts

1. "Building Exits Code," NFPA No. 101, 1963 edition.
2. "Uniform Building Code of the Pacific Coast Building Official Conference."
3. "Nonflammable Medical Gas Systems," NFPA No. 565, 1962 edition.
- *4. "National Electrical Code," NFPA No. 70, 1962 edition.
5. "Method of Test for Surface Burning Characteristics of Building Materials," NFPA No. 255, 1961 edition. '
6. "Standard Methods of Fire Tests of Building Construction and Materials," NFPA No. 251, 1963 edition.
7. "Standpipe and Hose Systems," NFPA pamphlet No. 14, 1963 edition.
8. "Gas Piping and Gas Appliances in Buildings," NFPA pamphlet No. 54, 1959 edition.
9. "Storage and Handling of Liquefied Petroleum Gases," NFPA pamphlet No. 58, 1963 edition.
10. "Proprietary, Auxiliary, and Local Signaling Systems," NFPA pamphlet No. 72, 1963 edition.
- *11. "Air Conditioning, Warm Air Heating, Air Cooling, and Ventilating Systems," NFPA pamphlet No. 90A, 1963 edition.
12. "Blower and Exhaust Systems," NFPA pamphlet No. 91, 1961 edition.
13. "Incinerators," Pamphlet No. 82, 1960 edition.
14. "Rubbish Handling," Pamphlet No. 82A., 1960.
15. "National Building Code," pamphlet No. 12, 1955 edition.
16. "Containers for Storing and Handling Flammable Liquids," NFPA pamphlet No. 30, 1963 edition.
17. "Portable Fire Extinguishers," NFPA pamphlet No. 10, 1963 edition.
18. "Sprinkler Systems," NFPA pamphlet No. 13, 1963 edition.

AMERICAN SOCIETY OF MECHANICAL ENGINEERS
29 West 39th Street
New York, New York 10018

- *1. "Specifications for Drinking Fountains," ASA Z 4.2-1942 edition.
- *2. "American Standards Code for Elevators, Dumbwaiters, and Escalators," No. A1 7.1, 1960 edition.
3. "American Standard Safety Code for Mechanical Refrigeration."

UNDERWRITERS LABORATORIES, INC.
207 East Ohio Street
Chicago, Illinois

1. "Fire Hazard Classification of Building Materials."
2. "Building Material List."

* Indicates publications that are included as a part of established standards governing nursing home construction on the Navajo Reservation.

Subchapter 5. Fire Safety Standards

§ 2601. Occupancy

A. The number of persons in any room used as sleeping quarters shall not exceed the proportion of one adult for each 80 square feet. All nursing homes shall provide floor space and ceiling heights in patient areas as outlined in subchapter 3 of this chapter.

B. No occupancy not under the control of, and not necessary to the administration of a nursing home, shall be contained in any building occupied by nursing home patients.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2602. Firestopping

Exterior walls of frame construction and interior stud partitions shall be firestopped so as to cut off all concealed draft openings. Horizontal openings shall be firestopped between basement rooms and vertical openings in basement at ceiling level. Firestopping material may consist of noncombustible material or of wood at least two inches thick.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.
Indians ⇌32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2603. Hazardous areas and combustible materials

A. All hazardous areas as defined in 13 N.N.C. § 2501 shall be separated from other areas of the nursing home by construction having a fire resistive rating of at least two (2) hours; except that all areas other than boiler and furnace rooms may be protected by an automatic approved sprinkler system in lieu of such construction.

B. The use of attics or basements for storage of combustible materials is prohibited.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.
Indians ⇌32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2604. Exit facilities

Exit facilities shall be provided in accordance with applicable sections of NFPA "Life Safety Code" #101 and shall include the following:

A. At least two exits, remote from each other, shall be provided for each occupied floor of the building, including the basement. Exits shall be located so there are no dead ends or pockets extending more than thirty (30) feet beyond the exit.

B. Exits from each floor shall be located so the distance of normal travel to reach an exit does not exceed one hundred (100) feet from any part or section of the floor in an unsprinklered building or more than one hundred fifty (150) feet in a sprinklered building.

C. Exit doors shall have a minimum width of three feet eight inches and shall open outward in the direction of exit travel. Screen or storm doors, if used, shall also open outward. Doors to patient rooms shall swing into the room and not into the corridors.

D. Corridors leading to exit doors shall have a minimum width of eight feet.

E. Each occupied room shall have at least one solid core door opening directly to the outside or to a corridor leading directly to an exit stair or exit door which opens directly to the outside.

F. All exit doors, doors to stairways or doors leading to ramps or other exit facilities shall be provided with panic hardware and self closing devices.

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G. Required exits from each floor, above or below the first floor, shall lead directly or through an enclosed corridor or enclosed stairway to the outside. Exits, other than required exits, shall also be enclosed between floors but may lead to a first floor lobby rather than directly to the outside as for required exits.

H. Windows and doors within ten (10) feet of fire escapes shall be provided with wire glass.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2605. Stairways and vertical openings

A. Stairways and ramps serving as required exits shall be at least three feet eight inches wide, with handrails on both sides.

B. A ramp shall be provided when necessary from the first floor or ground floor of the nursing home directly to the outside for the purpose of removal of nonambulatory patients. Ramps shall be provided with handrails, and the surface shall be roughened or of nonslip material. Ramp slope shall be a maximum of one foot rise in 10 feet run.

C. All vertical shafts or other floor openings extending to basement or cellar and between occupied floors shall be enclosed in partitions having a fire resistive rating of not less than two (2) hours; except in sprinklered building such enclosures may be of construction having a fire resistance rating of not less than one-half ($\frac{1}{2}$) hour or may be wired glass in metal framework.

D. Doors to all vertical openings shall be located at each floor level and shall be equipped with self-closing devices and shall be kept closed at all times. All doors shall be consistent with the fire resistive ratings listed for enclosures in subsection (C) above.

E. Stairways shall be designed in such a manner that patients from upper floors are not required to enter onto lower floors when descending. The stairway shall be a continuous shaft extending from the uppermost floor to the outside grade level, and entrance doors to the shaft shall be located at each floor level. Doors to the stairway shall open in the direction of travel from the floor.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2606. Corridors and passageways

A. Required corridors and passageways shall be at least eight feet in width and shall be consistent with the fire resistive ratings as listed in 13 N.N.C. § 2552.

B. Corridors and passageways to be used as a means or a part of a required exitway, shall be unobstructed and shall not lead through any room or space used for a purpose that may obstruct free passage.

C. Corridors and passageways which lead to the outside from any required stairway shall be enclosed and constructed with materials to provide the fire resistive ratings required for stairways.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2607. Doorways

A. Doorways serving as exits or parts of exits shall be at least three feet eight inches wide and hinged to swing in the direction of exit travel.

B. All doors to stairways, vertical openings, passageways or hazardous areas, which are required to be enclosed, shall be Class B, one (1) hour or one and one-half ($\frac{1}{2}$) hour Underwriters' Laboratories labeled fire doors with self-closing devices.

C. Doors to all patient rooms shall be solid wood doors. Use of hollow-core doors or doors with vents or transoms are prohibited.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2608. Division of floor openings

A. All floors of a nursing home which are occupied by patients and exceed three thousand (3,000) square feet in area shall be divided into separate areas by smoke barriers so located as to provide ample space on each side for the total number of beds on the floor. Doors provided for such smoke barriers shall be smoke-resistive and installed so they may normally be kept in an open position but will close automatically or may be released manually to self-closing section.

B. Smoke barriers shall have a fire resistance rating of not less than one-half ($\frac{1}{2}$) hour. Doors may be metal, metal-covered or one and three-quarter

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inch solid core flush type wood doors. Doors shall be hung so they are reasonably smoke tight.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2609. Exit signs

All exits used by patients shall be clearly marked with large exit signs. Exit signs shall be continuously illuminated by artificial light. The line of travel to such exits shall be clearly marked with arrows and signs. Directional type exit signs with arrows pointing in the direction of the nearest exit shall be located at all corridor junctions or other areas where a change of direction is required to reach the nearest exit. All exit signs shall be included on the emergency generator lighting system or shall be illuminated by light from emergency battery lights.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2610. Interior finish and decorative materials

A. Wall and ceiling surfaces of all occupied rooms and of all exitways therefrom shall be of such materials or so treated as not to have flame spread classification of more than seventy-five (75) according to the method for the "Method of Test for Surface Burning Characteristics" of the National Fire Protection Association.

B. All decorative and acoustical material, including curtains or drapes located in corridors, passageways, stairway enclosures, lobbies, or other rooms or spaces occupied by patients or visitors, shall be fire resistive. Interior materials shall be classified in accordance with their average flame spread rating on the basis of tests conducted in accordance with ASTM Standards No. E 84. Materials shall be deemed fire resistive if it will not ignite and allow flame to spread over the surface when exposed to a match flame applied to a piece removed from the material. The Navajo Nation authority shall reserve the right to request the owner or operator of a nursing home to perform this test in the presence of the inspector at the time of routine inspections. All such tests shall be performed in a safe place.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.
Indians ⇌32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2611. Heating, lighting and air conditioning equipment

A. The heating of all buildings shall be restricted to central heating plant. Use of portable heaters of any type is prohibited.

B. All duct work for heating and air conditioning systems shall be provided with automatic fire dampers.

C. All lighting shall be restricted to electricity.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.
Indians ⇌32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2612. Fire extinguishing equipment

A. Fire extinguishers bearing the label of Underwriters' Laboratories, Inc. and meeting standards outlined in NFPA No. 10 shall be provided throughout the entire building or buildings. Fire extinguishers shall be located so a person will not have to travel more than seventy-five (75) feet from any point in the building in order to reach a fire extinguisher.

B. An additional fire extinguisher or extinguishers shall be provided in or located adjacent to each kitchen and storage room. All personnel shall be trained in the proper use of all types of fire extinguishers. Fire extinguishers shall be inspected and recharged at least once a year and immediately after each use with date of checking and recharging recorded on a tag attached to the extinguisher. All fire protection equipment shall be inspected and dated periodically and maintained in readily usable condition.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌276.
Indians ⇌32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2613. Automatic sprinkler system

A. All hazardous areas, as defined in 13 N.N.C. § 2501 shall be protected by an approved, properly installed automatic sprinkler system unless the areas are protected by construction with a fire resistive rating of at least two (2) hours.

B. All sprinkler systems shall be provided with an approved local or central station water flow alarm system.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2614. Alarm systems

A. All buildings, except those protected by an approved automatic sprinkler system, shall be equipped with an approved automatic fire detection signal system. The fire detection system shall conform to the following minimum requirements:

1. All component parts shall be approved by Underwriters' Laboratories, Inc.
2. The system shall be electrically supervised or monitored.
3. The system shall be provided with an auxiliary source of power (automatic battery change-over).
4. All systems shall be installed in strict accordance with the National Fire Protection Association pamphlet No. 72, "Proprietary, Auxiliary, and Local Signaling Systems."
5. A separate circuit shall be provided for a basement.
6. The minimum number of circuits for any facility shall be as follows:
 - a. One-story buildings—one circuit.
 - b. Two-story buildings—two circuits.
 - c. Three-story buildings—one circuit each floor and one circuit for attic.

B. All nursing homes shall be provided with a manually operated remote station fire alarm system with manual "break-stations" located on each floor of the building. The "break-stations" shall be located so no person will be required to travel more than 75 feet from any point on the floor in order to reach the break-station. The manual fire alarm system shall be provided in addition to the automatic sprinkler system when the sprinkler system is required as outlined in 13 N.N.C. § 2613.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2615. Attendants

A. Each building in which patients are housed shall have at least one attendant on duty, awake and dressed therein at all times, and, in addition, one standby attendant within the building and within hearing distance and available for emergency service. These attendants shall be at least twenty-one (21) years of age and capable of performing the required duties of emergency evacuation of patients. No persons other than management or persons under the control of management shall be considered as an attendant. The patient-attendant ratio shall be at least one attendant and one stand-by attendant for each twenty (20) patients or fraction thereof.

B. In homes where fifty percent (50%) or more of the patients are bedfast, the ratio shall be increased to one attendant and one stand-by attendant for each fifteen (15) patients.

C. Personnel employed to fulfill the requirements for attendants and stand-by attendants need not be capable of rendering professional care to the patients, but professional nurses, licensed practical nurses, and other patient care personnel may serve in this capacity to satisfy the requirements for attendants and standby attendants as well as rendering professional care to the patients.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2616. Evacuation plan

Each nursing home shall formulate a written procedure to be followed in case of fire, explosion, or other emergency. All employees shall be familiar with the plan, and routine emergency evacuation drills shall be held at different times of the day in order that all employees, including the night shifts, may participate. The evacuation plan shall include such items as: persons to notify, alarm signals, fire extinguisher locations, evacuation routes, procedures for evacuating helpless patients, and personnel assignments for specific duties and responsibilities.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2617. Smoking

Smoking shall be permitted in nursing homes only where proper facilities are provided. Smoking shall not be permitted in sleeping quarters unless constant supervision is provided. Patients shall not be permitted to smoke in bed at any time. Smoking is prohibited in all rooms, wards and adjacent areas where oxygen is stored.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2618. Oxygen storage

A. Oxygen tanks must be safely stored and labeled when empty. Provision shall be made for racks or fastenings to protect cylinders from accidental damage or dislocation.

B. Oxygen, when stored within the building, shall be enclosed in a separate room or enclosure within a room with a minimum fire resistant rating of at least two (2) hours. The room shall be vented to the outside. No oxygen cylinders shall be stored within a patient's room.

C. No open flame, smoking, or spark-producing device shall be permitted within a room where compressed oxygen is used or stored.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2619. Trash and rubbish disposal

All buildings shall be kept free from accumulation of combustible trash or rubbish. Metal containers for receiving same shall be placed in easily accessible locations. Trash shall be removed from the building daily. Ashes shall be kept in metal containers with metal covers and be removed from the building daily. Buildings shall not be littered with empty boxes, papers, accumulation of old clothes and other combustible material.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Subchapter 7. Furnishing and Equipment**§ 2651. Furnishings; living rooms and bedrooms**

A. Living room for patients' use shall be provided with a sufficient number of reading lamps, tables, chairs or sofas of satisfactory design for elderly and infirm people.

B. Each patient shall be provided with his own bed which shall be at least 36 inches wide, have a headboard, be substantially constructed and in good repair. Roll-away type beds, cots, folding beds or double beds, shall not be used.

C. Each bed shall be provided with a satisfactory type spring in good repair and a clean comfortable mattress-at least five inches thick (four inches thick if of foam rubber construction and four and one-half inches thick if of inner spring type) and standard size for the bed.

D. Mattresses shall be protected by a cover and pad. Moisture proof covers or sheeting are recommended to keep mattresses clean and dry.

E. Each bed shall be provided with at least one clean, comfortable pillow. Additional pillows shall be available to meet the needs of the patients.

F. Each patient shall be provided with a satisfactory type bedside table with a drawer to accommodate personal possessions.

G. Each patient shall be provided with an individual rack for towel and washcloth. This may be attached to the bedside table.

H. Each patient shall also be provided with adequate drawer space for personal belongings and a wardrobe or an enclosed space or closet for hanging his clothing within the patient's room. If a common closet is used for two or more persons, there shall be separation of clothing for each person.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2652. General equipment

A. Walkers, wheelchairs, metal bedside rails, footstools, commodes and commode chairs (preferably metal), foot cradles, trapeze frames and similar equipment shall be provided in sufficient number to satisfactorily meet the needs of the residents in the home.

B. Cubicle curtains or portable bedside screens shall be provided as needed in multiple-bed rooms to insure privacy for patients.

C. All furniture and equipment shall be maintained in a sanitary manner, kept in good repair and shall be so located in the room that the patient may conveniently use it.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2653. Nursing equipment and supplies

A. Adequate and satisfactory equipment and supplies shall be provided to enable the nursing staff to satisfactorily serve the patient.

B. A sufficient number of utensils shall be available to meet the needs of other patients and shall be stored in an area provided for the storage of nursing care equipment. Utensils stored away from the patient's bedside shall be marked for the individual or shall be thoroughly and effectively sterilized after each use.

C. All utensils shall be kept in good condition. Chipped and otherwise damaged utensils shall not be used.

D. Separate sputum receptacles with disposable containers shall be available for use as needed, or paper tissues may be provided to collect secretions from the nose and mouth and shall be deposited in a paper bag and burned. Flip-top metal boxes with disposable parafined containers are recommended.

E. There shall be available such additional equipment and supplies as are necessary to carry out common nursing procedures as required by the type of patients accepted by the nursing home.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2654. Linen

A. There shall be an adequate supply of linen and other bedding according to the number and type of patients accepted by the home.

B. Each bed shall be supplied with two clean sheets large enough to tuck under the mattress, draw sheets as needed, pillow slips, bedspread and sufficient light weight blankets to insure warmth. All linen shall be changed at least twice weekly.

C. Blankets shall be laundered as often as necessary to assure cleanliness and freedom from odors.

D. Individual hand towels, bath towels and washcloths shall be provided for each patient and shall be changed at least twice weekly. Additional clean towels and washcloths shall be provided as needed.

E. Hotwater bottle covers and ice cap covers shall be provided and used whenever the physician orders application of hotwater bottles or ice caps.

F. Bedpan and urinal covers shall be provided.

G. Adequate and convenient storage space shall be provided for all linens, pillows and bedding. Separate storage space should be provided on each floor or in each building.

H. Bed blankets shall be supplied as necessary and be made available to nursing personnel to assure the comfort of the patient.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2655. General care and cleaning of equipment

A. Bedpans, urinals and commodes shall be emptied promptly and thoroughly cleaned after each use.

B. Following the discharge of any patient, all equipment shall be thoroughly cleaned prior to reuse. Bedpans, urinals, emesis basins, washbasins, soap basins and other individual items shall be thoroughly cleaned and sterilized.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Subchapter 9. Food Sanitation Service

§ 2701. Generally

All food handling facilities, personnel and procedures shall comply with recommended standards contained in the "Food Service Sanitation Manual" published by the United States Public Health Service, 1962 edition.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2702. Milk

All fluid milk served directly to the patients in the nursing home shall be grade A pasteurized milk and shall be stored and served in accordance with standards contained in the "Recommended Milk Ordinance and Code" published by the United States Public Health Service.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

Subchapter 11. Administration and Personnel

§ 2751. Administrator, qualifications; duties and responsibilities

A. A responsible and qualified person shall be on duty at all times to maintain a desirable standard of environmental sanitation and provide services which shall satisfactorily meet the needs of the nursing home residents. This person, known as the administrator, shall be capable of directing and supervising persons working in the nursing home and shall be fully authorized and empowered to carry out recommendations of the Navajo Indian Health Area Office as may be necessary to fully comply with the standards established or adopted by the Government Services Committee.

B. The administrator shall not leave the premises without delegating necessary authority to a competent person who is at least twenty-one (21) years of age to carry out the required duties during his absence.

C. The administrator shall be in good physical and mental health and shall have a genuine interest in the welfare of the residents of the home.

D. The administrator shall be of high moral character and shall never have been convicted of a felony.

E. The administrator shall have a thorough knowledge of the standards of the Government Services Committee governing the operation of the nursing home, and he shall instruct all employees in the home as to these requirements and insist that they are carried out to the fullest extent at all times.

F. The administrator shall be responsible for the completion, maintenance, or submission of all records or reports as may be required by the Navajo Nation.

G. The administrator shall notify the Health and Social Services Committee in writing if the nursing home is to cease operation. This notice shall be given at least sixty (60) days prior to the date the home is to cease operation and shall contain detailed information as to the placement of patients who are residents of the home.

H. Each license issued to the home shall specify the maximum number of patients and bed patients that may be cared for in the home. The administrator shall see that no greater number of patients and bed patients shall be kept than is authorized by the license.

I. The administrator shall make provisions for prompt removal of a body when a death occurs.

J. The administrator shall attend in person and shall cause other responsible personnel to attend institutes and training courses in nursing care, nutrition, fire safety, and administration when sponsored by a reliable agency and held at a location within a reasonable distance from the home.

K. The administrator shall be responsible that bills rendered to the family or guardians of the patients, which are for services not covered by the contractual arrangement with the patient, shall be itemized, certified to, and accompanied by original invoices from the vendor.

History

ACS-219-69, September 16, 1969.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Health ⇌ 276.

Indians ⇌ 32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2752. Standing advisory committee

A. At each nursing home, there shall be a standing advisory committee to the administrator. This committee shall consist of a physician, nurse, social worker, physical therapist or whatever specialists are appropriate in individual

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cases. The purpose of this committee shall be to advise the administrator on actions to be taken regarding patients of the nursing home.

B. Upon concurrence of the multi-discipline committee, a decision can be reached that further inpatient stay is no longer necessary or that further hospital or consultant skills are necessary. The patient's attending physician shall be notified of the decision.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2753. Personnel; qualifications; records

A. All persons working in the nursing home, including the administrator, shall annually submit a health card and a report of a physical examination if indicated.

B. Each new employee shall have a health card before employment in the home begins.

C. Each employee shall be in good health and free from colds and other communicable diseases while on duty.

D. In addition to the staff engaged in the direct care and treatment of the patients, there shall be sufficient personnel to provide all other basic services including administration, food service, housekeeping, laundry and home maintenance.

E. No employee shall be less than sixteen (16) years of age.

F. A record of each employee shall be maintained and such records shall be available to authorized representatives of the State Department of Health.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2754. Admission policies

A. The administrator of the nursing home shall be responsible for exercising discretion in the type of patients admitted to the home. He shall not accept patients for whom care cannot be provided in keeping with the patient's mental or physical condition.

B. A physical examination shall be made and a medical diagnosis recorded within forty-eight (48) hours after admission to the nursing home, unless the

patient is accompanied by a record of a recent physical examination. Such record shall include the diagnosis, treatment, medications, diet and extent of physical activity prescribed and shall be signed by the physician.

C. Children under sixteen (16) years of age shall not be admitted to nursing homes caring for adults unless special segregated facilities are provided.

D. Patients with serious, acute illnesses requiring the medical, surgical or nursing care of a general or special hospital shall not be admitted to a nursing home.

E. No home, except one for tuberculosis patients, shall knowingly admit a person with a communicable disease. Provision shall be made for the isolation of cases of communicable disease contracted or diagnosed after admittance to the home either at a hospital or suitable isolation room in the home if satisfactory to the Health and Social Services Committee.

F. Maternity cases shall not be admitted to nursing homes.

G. Tuberculosis nursing homes should be equipped with approved isolation facilities.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2755. Patients; register; inventory of personal possessions; rights and privileges

A. A register shall be kept in a separate book, listing in chronological order the names of patients and the date of admissions and discharges.

B. An inventory in duplicate of the valuable personal possessions with which the patient entered the nursing home shall be prepared.

C. Patients shall receive their mail unopened. Outgoing mail written by patients shall not be censored by the nursing home administrator or by any employee.

D. Regular visiting hours shall be established.

E. Members of the clergy shall be admitted at the request of the patient or guardian.

F. Relatives or guardians shall be allowed to see critically ill patients at any time.

G. Privacy shall be available at all times to patients for visits with family, friends, clergy, social workers and for professional or other business reasons.

H. Every patient shall have the freedom of attending the church of his choice. No patient shall be deprived of the right to have visits from the minister, priest or rabbi of his choice.

I. When a person dies in a nursing home, neither the administrator nor any attendant shall call any mortician or make any arrangements for permanent disposition of the body without first making an effort to contact some relative or guardian of such person or the placing agency so as to give such relative, guardian, or agency the right to make their own arrangements.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Subchapter 13. Physician and Nursing Services

§ 2801. Physicians; medical records and orders

A. There shall be a duly state licensed physician or PHS authorized physician who shall advise on medical administrative problems, review the institution's plan for patient care, and handle emergencies, if the patient's personal physician is unavailable.

B. Each patient shall be under the care of a duly state licensed physician or PHS authorized physician, and shall be seen by a physician as the need indicates. A review of each patient's status will be completed at least every sixty (60) days by the attending physician.

C. There shall be a medical record maintained for each patient, which shall include at least:

1. The medical history;
2. Report of physical examination;
3. Diagnosis;
4. Physician's orders;
5. Progress note (medical and nursing); and
6. Medications and treatments given.

D. All medical orders shall be in writing and signed by a physician. Emergency verbal orders will be cosigned at the physician's next visit.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2802. Director of nursing; duties and responsibilities

A. The nursing home shall have a director of nursing who is a licensed registered professional nurse and who shall provide 24-hour direct registered professional nurse supervision of nursing care to adequately meet the total needs of patients.

B. If the director of nursing is also the administrator; a second registered nurse will be designated as an assistant director of nursing, who shall be responsible for the supervision and evaluation of nursing care.

C. The director of nursing participates in the planning and budgeting for nursing personnel, equipment and facilities.

D. The director of nursing is responsible for the selection, orientation, supervision, evaluation, and development of professional and allied nursing personnel.

E. The director of nursing shall adhere to written personnel policies, develop job descriptions, plan for orientation for new staff, and provide for in-service education.

F. The director of nursing shall be responsible for defining the activities of volunteer workers as related to patient care and in guiding the volunteers in carrying out their activities.

G. The director of nursing shall participate in the screening of prospective patients in terms of kinds of care available in the institution.

H. The director of nursing shall adhere to the written policies relating to the control of prescribed medicines and treatment, defined frequency of medical review and the renewal of orders. These policies shall have the approval of the consulting physician or responsible medical group.

I. The director of nursing shall be responsible for implementing an active program of restorative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence. This program includes the involvement of family members.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2803. Nursing personnel; number, qualifications; hours of duty; statement of responsibilities and duties

A. The facility shall have a sufficient total number of nursing personnel, including sufficient number of RNs and LPNs to meet the physical, physiological, psycho-social and teaching needs of the patient.

B. A registered professional nurse or a licensed practical nurse currently licensed in the State of Arizona shall be on duty and in charge of nursing service at all times depending upon the size of the home as follows:

1. In nursing homes of thirty-nine (39) beds or less: A registered nurse shall be on duty eight (8) hours of each day and no less than a licensed practical nurse shall be on duty on each of the other two shifts.

2. In nursing homes of forty (40) to sixty-four (64) beds: A registered nurse shall be on duty sixteen (16) hours of each day. (One registered nurse for each of two shifts and no less than a licensed practical nurse for the remaining shift.)

3. In nursing homes of sixty-five (65) beds and up: A registered professional nurse shall be on duty and in charge of nursing service at all hours of the day and night. (One registered nurse for each eight-hour shift.)

C. The following minimum ratio of nursing personnel engaged exclusively in nursing duties to patients in nursing homes is to be maintained seven (7) days a week with provisions made for relief personnel whenever a nurse or attendant is off duty for any reason:

1. For the work period commonly termed the morning shift (approximately 7:00 a.m. to 3:00 p.m.), there shall be nursing personnel in the ratio of one per ten (10) patients or fraction thereof and one for each additional ten (10) patients or fraction thereof.

2. For the afternoon shift (approximately 3:00 p.m. to 11:00 p.m.) there shall be nursing personnel in the ratio of one per fifteen (15) patients or fraction thereof and one for each additional 15 patients or fraction thereof.

3. For the night shift (approximately 11:00 p.m. to 7:00 a.m.), there shall be nursing personnel on duty and fully dressed in the ratio of one per twenty-five (25) patients or fraction thereof and one for each additional twenty-five (25) patients or fraction thereof.

D. The provisions of the Arizona Nurse Practice Act¹ shall be applicable to all nursing personnel. Those provisions shall be considered part of these regulations and shall be enforced by the Navajo Nation with the cooperation of NIHAO.

E. Employed nursing personnel and/or attendants or any person having a responsibility for the care of patients shall be at least seventeen (17) years of age (preferably over twenty-one (21) years of age) and be physically and mentally capable.

F. The administrator shall cause to be posted a written statement outlining authority, responsibilities and duties of all personnel in the home. Such statements shall be amended or revised whenever a change in the staff occurs which would render the statement inaccurate.

¹ A.R.S. 32-1601 et seq.

History

ACS-219-69, September 16, 1969.

Library References

Health ⇌ 276.
Indians ⇌ 32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2804. Nursing care

A. A nursing assessment shall be conducted on each new admission and reassessment done on an on-going basis by registered professional nurses.

B. A nursing care plan shall be established and currently maintained with long and short term goals for each patient based on nursing assessment. In the development of the nursing care plan, it is necessary to have a written statement by the physician regarding the nature of the illness, the condition of the patient, and the treatment prescribed and expected outcome of care.

C. A nursing record shall be maintained for each patient. A registered nurse shall be responsible for the accuracy of the reporting and recording of the patients' symptoms, reactions, and progress.

D. A registered professional nurse shall make rounds with the physician and confer with him concerning the patients nursing needs.

E. No restraint shall be used except upon a physician's direct order on the patient's chart, which should include the date, time of order, reason for restraint, means of restraint, and period of time the patient is to be restricted. No restraint of rough material or that which may otherwise cause harm to the patient shall be used.

F. While under restraint, the patient shall be observed at least every hour and a full report of his condition during the restriction period shall be written and signed by the nurse responsible for his care.

G. No patient shall be secluded in any room by locking or fastening a solid door from the outside. A half door is acceptable in case of mentally disturbed patients.

H. Oxygen shall be administered only by licensed personnel pursuant to a physician's written order. The nurse in charge shall be responsible to the attendant physician for the safe administration and handling of oxygen.

I. Nursing care standards can roughly be defined as follows:

1. Custodial:

- a. Patients shall be fed, kept clean and dry.
- b. Patients shall receive ordered medications and treatment.
- c. Patients shall be protected from accidents and injuries.

2. Therapeutic in addition to Subsection (I)(1)(a), (b), and (c) above:

- a. Each patient shall be given proper daily personal attention and care, including skin, nails, hair and oral hygiene.
- b. A regular program of encouraging activity and self-help for each patient should be established. If patients are up and about, every effort should be made to keep them ambulatory.

3. Restorative in addition to Subsections (I)(1)(a), (b) and (c), and (I) (2) (a) and (b) above:

- a. Each patient shall have a planned interesting activity to maintain mental and psychological ability to the highest level possible.

b. Each patient shall be assessed and evaluated by a registered professional nurse for recognition of symptoms and nursing intervention to prevent unnecessary deterioration.

c. Active measures to maintain normal range of motion and to prevent deformities should be carried out.

History

ACS-219-69, September 16, 1969.

Note. Subsection reworded for purposes of clarity.

Subchapter 15. Supervision and Care of Medications

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2851. Storage generally

A. A drug storage area shall be provided at the nursing station. It should be of sufficient size, properly lighted, and easily accessible. It shall be locked when not in use. The key for the lock of this drug storage area or cabinet shall be carried by or be accessible to only licensed nursing personnel.

B. Internal and external medications shall be kept in separate areas in the medicine cabinet or in separate locked cabinets.

C. All poisonous, dangerous and habit-forming drugs, including narcotics, sedatives and amphetamines, shall be maintained apart from the other medical products, and are to be secured by double lock.

D. Biologicals, insulin and other medications requiring cold storage shall be refrigerated and kept in covered containers. Temperature shall be maintained at 40°F to 45°F, unless the label on the biologicals requires a lower storage temperature.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2852. Individual prescriptions

A. Prescriptions belonging to patients shall be given to them when discharged, if so authorized by the attending physician.

B. When the patient is no longer in the nursing home, the remaining drugs (in their original containers) shall be placed in a box separate from the daily

medication of other patients, and the licensed PHS pharmacist shall be notified to pick up these drugs.

C. The contents of all individual prescriptions shall be kept in the original container bearing the original label. No in-patient shall be permitted to retain any medication.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2853. Narcotics and other dangerous drugs

A. To comply with state and federal regulations governing narcotics and other dangerous, poisonous, and habit-forming drugs, there shall be a narcotic record book with complete data recorded on each dose administered. In addition, a recorded audit shall be done at least once daily. Each time a narcotic is given a notation shall be made on the patient's nursing record.

B. All narcotics shall be placed under double lock. This may be accomplished by maintaining a separate locked box, cabinet, or drawer within the locked medication cabinet. If a locked box is used, it should be bolted or permanently attached within the cabinet. The key to the narcotic container shall be carried by the person duly authorized to give medication.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 2854. Administration

A. Licensed nursing personnel shall be responsible for handling and administering drugs and individual prescriptions.

B. A full time licensed PHS pharmacist shall be available on call and for routine visits, which will permit stock supplies of narcotics, sedatives, dangerous, poisonous, or habit-forming drugs, prescription legend drugs, or other medications to be kept on the premises.

C. No medications shall be given without a written order signed by the physician. Emergency telephone orders can be accepted by a registered professional nurse and cosigned by the physician on his next visit.

D. Any pharmaceutical container having soiled or damaged labels should be returned to the pharmacist for relabeling. If label is missing or illegible, the contents should be destroyed immediately.

E. Graduated medicine glasses and medicine droppers should be available for the purpose of accurately measuring liquid medication. After each use the articles shall be washed and disinfected and stored in a suitable place.

F. Hypodermic syringes, needles, medicine droppers and similar equipment shall be sterile when used.

G. First aid supplies shall be readily available to all personnel.

History

ACS-219-69, September 16, 1969.

Subchapter 17. Patient's Records

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2901. General requirements

A. The administrator of each nursing home shall be held responsible for the proper preparation, preservation and adequacy of records of all persons admitted to the home.

B. Individual records for each patient shall be maintained. These records shall be kept up-to-date and complete on each patient in the home. After the death or discharge of the patient, the record shall be placed in an inactive file and kept for a minimum of two (2) years. The active records shall be kept in the home at all times and available to the staff.

C. All records shall be kept in ink or typewritten.

D. All medical records relating to the patient shall be considered confidential, except that they shall be made available to the authorized persons having legal responsibility pertaining to the licensing of nursing homes.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 2902. Patient charts

Each patient's chart kept from the time of admission to the time of discharge or death shall include the following information:

A. Admission record containing identifying information:

1. Name;

2. Religion;
3. Usual residence, including street address, city or town, county or state;
4. Sex;
5. Color or race;
6. Marital status; for example, single, married, widowed or divorced;
7. Birthplace;
8. Date of birth including year, month and day;
9. Usual occupation and kind of business or industry;
10. Social Security Number;
11. Father's name and his birthplace—at least the state or foreign country;
12. Mother's maiden name and her birthplace—at least the state or foreign country;
13. Whether or not the resident ever was a member of the U.S. Armed Forces and if so, the dates of service (if available);
14. The person or persons or agency responsible for the patient;
15. Next of kin;
16. Name and address of the attending physician;
17. Date of admission;
18. Date of discharge, reason for discharge, discharge diagnosis or date and time of death and disposition of body;

B. Medical records:

1. Medical examination record containing information found on the physical examination signed and dated by the physician performing the examination;
2. Record should include whether the patient was ambulatory or non-ambulatory at the time of admission, whether there were bedsores, bruises or marks on the body and a description of the mental condition of the patient;
3. Physician's order record containing the physician's authorization for the required medical and nursing care, administration of drugs, medicines, treatment, diet, extent or restriction of activity, etc. Each entry and order shall be dated and signed (or countersigned) by the physician;

C. Nursing record and notes shall be kept current and shall include such information as outlined in regulations below:

1. All pertinent factors pertaining to the patient's general condition. Charting of observations shall include date and time and shall be done by the person who makes the observation or renders the nursing care;
2. Date, time, kind, dosage and method of administration of all medications shall be recorded daily and signed by the nurse who administered the drug. This may be recorded on the regular nursing notes or on individual medication records;
3. Date and time of all treatments and dressing;
4. Any change in the patient's condition;

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5. Observations on patients may be summarized and recorded;
6. Restriction of activity of any patient including reason for restriction used, the time of starting and ending the restrictions, regular observations of any patient while restricted;
7. Any incident or accident occurring and time of occurrence, while the patient is in the home;
8. Date of each physician's visit;
9. All other significant observations, such as moods, delusions, hallucinations, judgment, orientation and behavior; and
10. Nursing notes shall be signed by the person writing the note. If geriatric check sheet is used, it must also be signed by the nurse in charge.

D. The maintenance of progress notes is recommended and should include all subsequent medical examinations, including findings and recommendations for further care following regular visits to or by the physician.

History

ACS-219-69, September 16, 1969.

Library References

Health ☞276.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Chapter 19. Midwives

Section

3101. Authorization of training program

§ 3101. Authorization of training program

The Director of the Navajo Area Indian Health Service, in cooperation with the University of Utah College of Midwifery, is authorized to establish a program to train and develop nurses to be employed as midwives in the Navajo Nation.

History

ACJY-196-70, July 14, 1970.

Note. Beginning of section reworded for purpose of statutory form.

Library References

Health ☞167.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

Chapter 21. Discharge of Sulfur

Section

- 3151. Permits; exception
- 3152. Discharge reports; fees
- 3153. Rules and regulations
- 3154. Legal proceedings
- 3155. Severability clause

§ 3151. Permits; exception

On or before the effective date of this chapter the Navajo Environmental Protection Commission shall issue sulfur emission permits to all static sources within the Navajo Nation (whether operated by individuals, corporations, partnerships, governments, syndicates, or other forms of organizations) discharging sulfur or its compounds into the atmosphere of the Navajo Nation; provided however, that no permit shall be required or issued to any person, all of whose static sources discharge less than one million (1,000,000) pounds of sulfur into the atmosphere annually.

History

CS-59-77, September 15, 1977.
CJN-45-77, June 8, 1977.

Library References

Environmental Law ⌘265, 280.
Indians ⌘32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 3152. Discharge reports; fees

A. Every permit holder shall report to the Navajo Tax Commission the quantity of sulfur discharged into the atmosphere during each calendar quarter, commencing with the quarter beginning, after the effective date of this chapter. Together, with such report, the permit holder shall remit a sulfur discharge fee according to the following schedule:

CALENDAR QUARTERS	
Beginning On	Fee (per pound)
January 1, 1978	\$.15
January 1, 1979	.30
January 1, 1980	.45
January 1, 1981	.60
January 1, 1982	.75

B. The report and payment to the Navajo Nation required by this section shall be made on or before the 45th day after the end of the quarter for which the report is made.

C. The fee imposed shall not apply to the first 250,000 pounds of sulfur discharged each quarter by a given person. In calculating this exemption, all static sources owned, operated or controlled by a person, in whole or in part, within a 10 mile radius shall be considered as a single static source.

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History

CS-59-77, September 15, 1977.
CJN-45-77, June 8, 1977.

Note. Effective date of chapter. See CS-59-77, September 15, 1977.

Library References

Environmental Law ☞280.
Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 3153. Rules and regulations

The Navajo Environmental Protection Commission and the Navajo Tax Commission are vested with the authority to enforce this permit system by appropriate rules and regulations. The Commissions may divide this authority as they deem fit and mutually agree.

History

CJN-45-77, June 8, 1977.

Library References

Environmental Law ☞280, 291.
Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 3154. Legal proceedings

The Courts of the Navajo Nation are vested with jurisdiction:

A. To hear and determine any challenge to the validity of this chapter, either generally, or as applied to any person; and

B. Over any and all persons subject to this chapter, provided however:

1. No private right of action by any person or group of persons either directly against any person subject to this chapter or indirectly against any Navajo Nation official or body to compel the enforcement of the provisions of this chapter shall be deemed created by this chapter or be within the subject matter jurisdiction of the Courts of the Navajo Nation.

2. No injunction or restraining order shall issue from any Court of the Navajo Nation to enforce the provisions of this chapter.

History

CS-59-77, September 15, 1977.
CJN-45-77, June 8, 1977.

Note. Subsections renumbered for statutory clarity.

Library References

Environmental Law ☞295.
Indians ☞32(4.1).
Westlaw Topic Nos. 149E, 209.

§ 3155. Severability clause

If any provision of this chapter or its application to any person or circumstances is held invalid by a final judgment of a court of competent jurisdiction,

the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History

CJN-45-77, June 8, 1977.

Library References

Indians ☞32(4.1).
Statutes ☞64(2).
Westlaw Topic Nos. 209, 361.

C.J.S. Statutes §§ 87, 89 to 90, 94 to 97, 99,
102 to 104, 107.

Chapter 23. Navajo Nation HIV/AIDS Code

Section

- 3201. Policy
- 3202. Education
- 3203. Confidentiality and testing
- 3204. Coordination with Navajo Nation Division of Health
- 3205. Treatment
- 3206. Amendments

§ 3201. Purpose

A. The Navajo Nation HIV/AIDS Policy Development Work Group, after extensive study of the requirements of the Navajo Nation, has developed a “Navajo Nation HIV/AIDS Policy”. This Act is based on that Policy and that Policy should be consulted to resolve any questions or ambiguities in this Act.

B. It is the policy of the Navajo Nation to ensure that all individuals within the jurisdiction of the Navajo Nation receive education and appropriate counsel with respect to the HIV, a virus that leads to Acquired Immune Deficiency Syndrome (AIDS), and other similar communicable diseases. Further, it is the policy of the Navajo Nation that an individual infected with the AIDS virus should receive compassionate medical treatment and be protected from discrimination and invasion of privacy due to their infection or suspected infection with the HIV/AIDS virus.

C. Navajo Nation programs and service providers shall cooperate to prevent the spread of the HIV/AIDS virus. Activities coordinated under this Act shall emphasize Navajo concepts of harmony, culture, traditional practices and the role of the family, kinship and community.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 3202. Education

A. Communicable diseases generally. All programs, services and businesses within the Navajo Nation shall adopt simple, accessible infection control procedures and protocols for their organizations. These procedures shall include appropriate education on communicable diseases. The Navajo Occupational Safety and Health Administration and the Navajo Division of Health shall assist in the planning, implementation, education, and monitoring of infection and communicable disease control procedures. As appropriate and available, the Navajo Area Indian Health Service shall participate in these activities.

B. Schools. Local school boards and parent advisory groups shall be educated to assist with HIV/AIDS prevention efforts in the schools. Lesson plans and curricula, similar to the “Navajo Beauty Way” shall be developed and implemented to allow for traditional Navajo values in HIV/AIDS education. Adil’idli and other Navajo traditional teachings shall be incorporated wherever relevant. Parents, family members, and community leaders are to be involved in this education process. The Navajo Division of Education and the Navajo Division of Health will assist in developing this education curriculum.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 3203. Confidentiality and testing

A. Testing. All HIV antibody testing shall be voluntary. No person shall be required to undergo an HIV antibody test, against his or her free will, to receive any benefit, employment opportunity, or for any other reason. Except as provided in this Act, and subject to the provisions of the Privacy Act, 5 U.S.C. § 552a, all test results, counseling and treatment of individuals who may be infected with the HIV/AIDS is confidential. Otherwise confidential information may be obtained by a Court Order of the Navajo Nation District Courts, provided appropriate safeguards are taken to ensure individual privacy.

B. Notification of persons “at-risk.” If, based on an investigation, it appears that an uninfected individual, who is unaware, may have been infected with HIV, a public health investigator shall inform that individual. All information relating to the notification shall otherwise be kept in strict confidence.

C. Equal access to services. No person shall be denied services nor offered substandard services because of real or suspected HIV/AIDS infection. Nor shall any program or business within the Navajo Nation refuse services or employment opportunities to anyone based on real or suspected HIV/AIDS infection.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 3204. Coordination with Navajo Nation Division of Health

A. Reporting requirements. Consistent with this Act, all HIV-positive test results and HIV/AIDS cases shall be reported to the Navajo Nation AIDS Office.

B. Maintenance of records. All reports and records of HIV-positive tests and cases of HIV/AIDS shall be confidentially maintained consistent with the Privacy Act, 5 U.S.C. § 552a. No unauthorized persons shall be allowed access to these records. The Navajo Nation AIDS Office shall use these records to monitor the incidence of HIV/AIDS cases and assist HIV-positive patients and their families in receiving appropriate medical care and services.

C. Coordination of services. The Navajo Nation AIDS Office shall assist in the development of a comprehensive and coordinated system of care for HIV positive patients and their families, and identification of alternative resources and treatment programs. Local HIV/AIDS-related resource listings shall be developed and made available to assist patients and non-medical providers in accessing direct care services.

D. The Navajo Nation AIDS Office shall assist in researching traditional Navajo teachings and re-initiating the traditional ways of dealing with HIV/AIDS and other sexually transmitted diseases.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 3205. Treatment

A. Service provider requirements. Treatment of HIV positive persons shall be comprehensive, competent and compassionate. All service providers shall make special efforts to keep clinical services up-to-date with recent developments in HIV/AIDS-related care. Direct services shall include, but not be limited to, HIV antibody testing, counseling, HIV/AIDS education and prevention, current pharmacological treatment for HIV/AIDS infection, mental health, and counseling services for HIV-positive patients and their families. Service providers shall select an existing program or develop an appropriate program that is culturally relevant or Navajo-specific, respectful of the Navajo culture, and reflects current knowledge and clinical guidelines about medical care and treatment is appropriate, respectful, and reflects current knowledge and clinical

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cal guidelines about HIV/AIDS related illnesses. Patients and their families shall have input into these processes.

B. Use of traditional Navajo treatment. Traditional Navajo healing methods may evolve as a primary means of treatment for persons already suffering from HIV/AIDS. As appropriate, the Navajo Division of Health shall include and assist such organizations as the Diné Spiritual and Cultural Society, Inc., in their efforts to develop treatment methodologies.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 3206. Amendments

Upon the recommendation of the Health and Social Services Committee of the Navajo Nation Council, the Navajo Nation Council may amend the Navajo Nation HIV/AIDS Code by majority vote of the members present.

History

CO-100-94, October 21, 1994.

Library References

Health ☞388.
Indians ☞32(4.1).
Statutes ☞129.
Westlaw Topic Nos. 198H, 209, 361.
C.J.S. Statutes §§ 143 to 144, 243, 246, 250.

Chapter 25. Navajo Nation Human Research Code

Section

- 3251. Title
- 3252. Purpose
- 3253. Policy
- 3254. Rules and regulations
- 3255. Definitions
- 3256. Creation of the Navajo Nation Human Research Review Board
- 3257. Composition and term of the Navajo Nation Human Research Review Board
- 3258. Meetings, quorum
- 3259. Purposes of the Navajo Nation Human Research Review Board
- 3260. Powers of the Navajo Nation Human Research Review Board
- 3261. Record retention
- 3262. Research permit required
- 3263. Administrative fees
- 3264. Research application
- 3265. Confidentiality and security
- 3266. Informed consent
- 3267. Progress reports on research
- 3268. Continuing review of research activities

Section

3269. Publication review procedures
 3270. Permit and appeal procedures
 3271. Enforcement

§ 3251. Title

This Code shall be known as the Navajo Nation Human Research Code.

History

CAP-16-02, April 16, 2002.
 CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3252. Purpose

The purpose of this Code shall be to set forth the conditions under which investigators, physicians, researchers and others may perform research activities on living human subjects within the territorial jurisdiction of the Navajo Nation.

History

CAP-16-02, April 16, 2002.
 CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3253. Policy

A. All persons within the territorial jurisdiction of the Navajo Nation are free from unreasonable harmful, intrusive, ill-conceived or otherwise offensive research and investigation procedures.

B. Research conducted is beneficial, community-based, and consistent with Navajo Nation priority and concerns.

C. Research information and data generated by and about Navajo individuals, communities, culture represent inalienable intellectual properties of the Navajo people and over which the Navajo Nation will provide oversight.

History

CAP-16-02, April 16, 2002.
 CO-106-95, October 25, 1995.

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Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3254. Rules and regulations

The Health and Social Services Committee is authorized to promulgate rules and regulations consistent with and necessary to implement this Code.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3255. Definitions

As used in this Code, the following definitions apply:

A. Subjects. As used in this Code, “Subjects” means a living individual about whom a researcher (whether professional or student) conducting research obtains private information or data through intervention or interaction with the individual, involving physical procedures by which data are gathered (for example, venipuncture) and/or manipulations of the subject or the subject’s environment.

B. Navajo Nation Human Research Review Board. This is the Board Created in Section 3256 of this Code

C. Research. As used in this Code, “research” is the use of systematic methods (including but not limited to note taking, interviewing, video and audio taping) to gather and analyze information for the purpose of proving or disproving a hypothesis, concepts or practices, or otherwise adding to knowledge and insight in a particular medical or psychological discipline. Generally, proposed studies are defined as “research” if their goal is to produce generalizable descriptive knowledge through the use of human subjects or volunteers whose protection must be assured in accordance with the ethical principles of respect for persons; the duty to help others or beneficence; and justice or fairness. This may include, at the discretion of the Navajo Nation Human Research Review Board, quality assurance activities, chart reviews and program evaluations. All data and research subject to this Code are the property of the Navajo Nation, although a researcher may be given a permit.

D. Publication. As used in this Code, the term “Publication” includes all proposed professional and program papers and reports concerning Navajo individuals. Also requiring advance approval are papers based on research

conducted within the territorial jurisdiction of the Navajo Nation, prepared for presentation at national or international professional society meetings by researchers. Papers or reports for technical and lay audiences prepared and approved by Indian Health Service or the Navajo Nation for compliance with contract or grant requirements are specifically excluded from this definition.

E. Researcher. As used in this Code, the term “researcher” means any person, organization, business or other entity which conducts research within the territorial jurisdiction of the Navajo Nation.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3256. Creation of the Navajo Nation Human Research Review Board

There is hereby created the Navajo Nation Human Research Review Board, whose purpose is to review all proposals (notwithstanding other IRB approvals) for human research which will occur within the territorial jurisdiction of the Navajo Nation or which otherwise concerns Navajo individuals as an identifiable group, issue permits for those projects which are consistent with the terms and intent of this Code, and, as appropriate, review and approve the results of such studies before publication. However, this Board is to coordinate with the Historic Preservation Department to avoid jurisdiction conflicts. The Navajo Nation Human Research Review Board is administratively assigned to the Navajo Nation Division of Health for support services.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3257. Composition and term of the Navajo Nation Human Research Review Board

A. The Navajo Nation Human Research Review Board shall be composed of 15 individuals, selected as follows: three (3) persons appointed by the Navajo Area Health Board; three (3) persons appointed by the Office of the President of the Navajo Nation; three (3) persons appointed by the Health and Social

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Services Committee of the Navajo Nation Council; three (3) persons appointed by the Navajo Area Indian Health Service Area Director; and three (3) persons appointed by the Education Committee. At least two persons serving on the Navajo Nation Human Research Review Board shall be licensed physicians and at least one of the appointees must be a community representative.

B. The term of an appointment to the Navajo Nation Human Research Review Board shall be three (3) years from appointment.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3258. Meetings, quorum

The Navajo Nation Human Research Review Board shall meet at least quarterly, but as often as necessary. Five members, one of whom must be a licensed physician and one of whom must be a community representative, of the Navajo Nation Human Research Review Board shall constitute a quorum.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3259. Purposes of the Navajo Nation Human Research Review Board

The purposes of the Navajo Nation Human Research Review Board are to assure that research and publication activities:

A. Are consistent with the health and education goals and objectives of the Navajo Nation.

B. Do not detract from, nor interfere with, the provision of human services to the Navajo people.

C. Do not endanger the well-being of individuals or communities.

D. Require informed consent of all affected individuals or their legal representatives.

E. Are culturally relevant to the extent possible and are appropriate clinically, technically, epidemiologically and statistically.

F. Present only reasonable risks to subjects in relation to anticipated benefits, if any, to those subjects, and the importance of knowledge that reasonably may be expected to result.

G. Select subjects equitably. In making this assessment the Navajo Nation Human Research Review Board shall take into account the purposes of the research, the setting in which the research will be conducted, and the population from which subjects will be recruited.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3260. Powers of the Navajo Nation Human Research Review Board

Consistent with the requirements of this Code, the powers of the Navajo Nation Human Research Review Board shall include:

- A. The review and approval or disapproval of research proposals.
- B. The review and approval or presentation materials and manuscripts, including thesis, dissertations and abstracts, prior to publication.
- C. The negotiation of additional and/or revised procedures, methodologies, and approaches to research and publication with researchers.
- D. The Board may request assistance from other persons with specialized knowledge in the review of any application, proposal or manuscript. When research is reviewed involving a category of vulnerable subjects (e.g., prisoners, children, and individuals who are mentally disabled), the Navajo Nation Human Research Review Board shall include in its reviewing body one or more individuals who have a particular concern for the welfare of these subjects.
- E. Subject to the approval of the Health and Social Services Committee, and Education Committee and the requirements of this Code, the Navajo Nation Human Research Review Board shall adopt appropriate rules and procedures regarding: confidentiality of subjects; storage of specimens and other research materials; monitoring of research activities; amendments to any research proposals; financial disclosure regarding the research; volunteer payments and fees; adverse reactions of any volunteers; applications and their contents; fees for permits and other services; and other procedures to implement this Code.
- F. The Board will coordinate with other appropriate boards and committees including but not limited to, other Institutional Review Boards, and the Historic Preservation Department for activities which may also be subject to the Cultural Resources Preservation Act (CMY-19-88).

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3261. Record retention

The Navajo Nation Human Research Review Board shall develop and maintain an up-to-date file on all research projects, past and ongoing, approved and disapproved. Records of research projects will be maintained at least ten (10) years after the Navajo Nation Human Research Review Board receives the proposal or five (5) years after publication of a paper derived from the research activity, whichever is longer. The Navajo Nation Human Research Review Board shall maintain a file of reprints of publications resulting from all research projects conducted within the territorial jurisdiction of the Navajo Nation.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3262. Research permit required

Prior to undertaking any human research within the territorial jurisdiction of the Navajo Nation, a researcher must apply for and receive from the Navajo Nation Human Research Review Board a Research Permit as provided for in Section 3264 or within the Cultural Preservation Act.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3263. Administrative fees

The Navajo Nation Human Research Review Board may assess reasonable costs associated with the review of proposals and other materials; any monies generated are for the exclusive use of the administration of this Code.

History

CAP-16-02, April 16, 2002.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3264. Research application

The Research Application shall be in a form developed by the Navajo Nation Human Research Review Board in accordance with Section 3259, but such application, at a minimum shall include research goals, methodology, and anticipated results. The application shall also include a separate section addressing specific anticipated benefit to the study's subjects, Navajo individuals or groups of tribal members, the Navajo Nation and all other readily identifiable potential beneficiaries. The Research Application must be signed by the Researcher and include a provision that the Researcher agrees to the civil jurisdiction of the Navajo Nation with respect to the research to be undertaken and any publications arising from such research.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3265. Confidentiality and security

There must be adequate assurance, as determined by the Navajo Nation Human Research Review Board, that the data and information generated during the conduct of research is protected from unauthorized access and misuse consistent with informed consent provisions, the Navajo Nation Privacy Act, and other Navajo Nation information technology requirements.

History

CAP-16-02, April 16, 2002.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3266. Informed consent

Before any research may be conducted on any subject, the researcher must obtain the active informed consent of that prospective subject, or their parent, legal custodian or guardian, as appropriate. At a minimum, this informed consent must be in writing, acknowledged by the subject, which informs the subject of the purpose of the research, any potential risks, and alternative treatments or procedures. The Informed Consent may not include any exculpatory language or disclaimer of liabilities.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3267. Progress reports on research

A. Researchers shall report to the Navajo Nation Human Research Review Board the progress of their research as often and in the manner prescribed by the Navajo Nation Human Research Review Board in the research permit.

B. Researchers shall promptly report any injuries or adverse impacts (including violations of an individual's privacy) to human subjects to the Navajo Nation Human Research Review Board.

C. Researchers shall promptly report any unanticipated problems which involve risks to the human research subjects or others to the Navajo Nation Human Research Review Board.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3268. Continuing review of research activities

The Navajo Nation Human Research Review Board shall regularly review all research activities conducted within the territorial jurisdiction of the Navajo Nation. If, during the course of a research activity, the research conditions change, the Navajo Nation Human Research Review Board may require the researcher to amend their application consistent with the changed conditions. If the Navajo Nation Human Research Review Board determines that a research project is no longer viable because of changes in the scope or effect of the research, it may rescind any research permit or otherwise limit the scope of research activities which may be conducted under the permit.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3269. Publication review procedures

A. All individuals proposing publishing covered by this Code are required to submit a manuscript to the Navajo Nation Human Research Review Board for approval, in advance of publication.

B. The manuscript will be reviewed for technical content and validity, organization of content, readability, as well as assurance that they are consistent with the goals, intent and policies of this Code.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3270. Permit appeal procedures

A. Researchers who are denied a research permit may request reconsideration of their application upon a showing of good cause. A request for reconsideration shall be deemed to have shown good cause if it:

1. Presents significant relevant information not previously considered by the Navajo Nation Human Research Review Board;

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2. Demonstrates that significant changes have occurred in the factors or circumstances considered by the Navajo Nation Human Research Review Board in reaching its decision; or

3. Demonstrates that the Navajo Nation Human Research Review Board failed to follow its adopted procedures in reaching its decision.

B. A request for reconsideration must be received within thirty (30) days after the researcher is notified of a decision.

C. If deemed in good cause, reconsideration shall be conducted within thirty (30) days after receipt of the appeal request.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

§ 3271. Enforcement

Whenever it appears that a researcher or other person or entity has violated the provisions of this Code, the Navajo Nation Human Research Review Board on its own initiative may petition the Courts of the Navajo Nation for injunction or other appropriate relief. If the Court, after a hearing, finds that this Code has been violated, it may assess civil penalties of up to five thousand dollars (\$5,000), in addition to any other damages resulting from an unpermitted research activity.

History

CAP-16-02, April 16, 2002.
CO-106-95, October 25, 1995.

Library References

Civil Rights ☞1045.	C.J.S. Civil Rights § 23.
Constitutional Law ☞255(5).	C.J.S. Constitutional Law §§ 1131 to 1138, 1253, 1263 to 1268.
Health ☞905.	C.J.S. Right to Die § 2.
Indians ☞32(4.1).	
Westlaw Topic Nos. 78, 92, 198H, 209.	

Chapter 31. Community Works Program

Section

3301. Purpose
3302. Control of Program
3303. Projects
3304. Work orders; procurement
3305. Employment—Preference

Section

- 3306. Persons who may not work under this chapter
- 3307. Work stoppages
- 3308. Allocation of funds to Chapters
- 3309. Disbursement
- 3310. Compensation
- 3311. Duties and responsibilities
- 3312. Types of projects

§ 3301. Purpose

The purpose of this chapter is to set guidelines for the Administration and expenditures of the Community Works Program funds of the Navajo Nation.

History

- | | |
|---------------------------------|-------------------------------|
| ACJY-83-78, July 18, 1978. | ACJY-198-71, July 1, 1971. |
| ACAP-77-76, April 1, 1976. | ACJY-244-71, July 14, 1971. |
| ACAU-189-75, August 28, 1975. | ACF-30-72, February 10, 1972. |
| ACJY-79-74, July 3, 1974. | ACJA-1-7 1, January 26, 1971. |
| ACAU-114-74, August 15, 1974. | ACJN-151-70, June 16, 1970. |
| ACMA-83-75, March 21, 1975. | ACJN-150-69, June 27, 1969. |
| ACAP-108-75, April 9, 1975. | ACJN-116-68, June 12, 1968. |
| ACAU-317-73, August 8, 1973. | ACJN-134-67, June 22, 1967. |
| ACJA-7-74, January 11, 1974. | ACJY-146-66, July 22, 1966. |
| ACJY-222-72, July 13, 1972. | ACAP-47-65, April 27, 1965. |
| ACAU-302-72, August 25, 1972. | ACJY-120-64, July 23, 1964. |
| ACS-368-72, September 28, 1972. | ACAU-145-62, August 9, 1962. |
| ACD-401-72, December 6, 1972. | ACAU-159-60, August 25, 1960. |

Library References

- | | |
|-------------------|--|
| Indians ☞32(4.1). | Westlaw Topic Nos. 209, 360. |
| States ☞67. | C.J.S. States §§ 121, 136 to 138, 140. |

§ 3302. Control of Program

The Office of Navajo Revenue Sharing will direct the Community Works Program.

History

- ACAP-77-76, April 1, 1976.

Library References

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|-------------------|--|
| Indians ☞32(4.1). | Westlaw Topic Nos. 209, 360. |
| States ☞67. | C.J.S. States §§ 121, 136 to 138, 140. |

§ 3303. Projects

A. Projects will be originated by the people of each Chapter and certified at a duly called Chapter meeting with the help of respective council member and chapter officers in accordance with Community Work's Plan of Operation.

B. The Community Works personnel of the Office of Navajo Revenue Sharing will screen and approve or deny all applications according to the Plan

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of Operation. On technical matters, assistance will be sought from Navajo Nation, PHS and BIA personnel.

History

ACJY-83-78, July 18, 1978.
ACAP-77-76, April 11, 1976.

Library References

Indians ☞32(4.1).
States ☞67.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 136 to 138, 140.

§ 3304. Work orders; procurement

A. Upon approval of specified projects, work order authorization forms and work project information will be given to the council member and/or chapter officers requesting the project.

B. Procurement of necessary materials and supplies will be channeled through the Navajo Nation Purchasing Department. Requests for such materials and supplies will be made on a Purchase Requisition. The Navajo Nation Purchasing Department will call for bids on substantial orders. Materials will be secured through the issuance of a Purchase Order and will be delivered to the Navajo Nation Warehouse. Materials will be released from the Warehouse upon receipt of the proper Warehouse Materials Requisition Form. No purchases are to be made by the foreman without proper processing.

C. Authorization for immediate purchases from local vendors to program jobsites may be performed at the discretion of the Office of Navajo Revenue Sharing, provided funds are available, functioning in direct liaison with the Navajo Nation Purchasing Department and the Office of the Controller. Any purchases made with chapter funds to prevent a complete halt of the project is permissible and the concerned chapter shall be reimbursed with its Community Works funds upon presentation of a proper vendor invoice.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞67, 73, 94, 117, 121.
Westlaw Topic Nos. 209, 360.

C.J.S. States §§ 121, 130 to 138, 140, 157,
203, 220, 223.

§ 3305. Employment—Preference

A. After a project is approved, the chapter organization, with their Council Member, will procure the foreman and workmen required on the project at an officially called chapter meeting. Personnel selection will include one foreman per project. Hiring will be on the basis of local knowledge of need.

B. The chapter will make every possible effort to employ only those persons of the community who are in need of assistance, giving preference to those with the greatest need.

C. Chapter officers, grazing committee and land board members may work as laborer or foreman on a Community Works Project, but only with the permission of chapter membership having voted on the proposition. However, they may not work more than two times out of each appropriation.

D. Due to technicalities involved, a person shall not work under another person's name or social security number.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

§ 3306. Persons who may not work under this chapter

A. Members of the Nation and their immediate families, who are permanently employed by the Navajo Nation, federal government agencies, state agencies, and other agencies, may not work under this chapter.

B. Proper withholding of social security and other taxes required by law will be made by the Financial Services Department on all Community Works Payrolls.

C. A schedule of pay periods will be made out and sent to all Chapter Officers. Timecards submitted to the Financial Services Department on schedule will be processed during the week and checks made ready for delivery on the Friday following pay period worked.

History

ACJY-83-78, July 18, 1978.
ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

§ 3307. Work stoppages

A. If a work project is not being done according to the Plan of Operation, the Council Member, Chapter Officers, and/or Office of Navajo Revenue Sharing representative will stop the work project and call a chapter meeting to correct the mistakes.

B. Projects will be stopped during unfavorable weather at the discretion of Chapter Officers and/or Council Member.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

§ 3308. Allocation of funds to Chapters

The funds shall be allocated by chapters on the basis of unemployed population as determined by the current census figures. It will be the duty of Council Members and chapter organizations, with the assistance of the Tribal Work Experience Program Office, to give the latest census information as to its increase and decrease. A regulation census form supplied by the Office of Navajo Revenue Sharing will be used. Household heads who are permanently employed, and their families, will not be counted in population for allocation of funds.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞128.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 227.

§ 3309. Disbursement

A. Payment of wages, rental of trucks and teams and/or any claim arising out of the Community Works Program will be made through the Office of the Controller at Window Rock, Arizona. Individual timecards; and equipment rental cards will be supplied as part of the information kit at the start of each project and given to the elected foremen of the project.

B. Proper withholding of social security and other taxes required by law will be made by the Office of the Controller on all Community Works Payrolls.

C. A schedule of pay periods will be made out and sent to all Chapter Officers. Timecards brought into the Window Rock Office on schedule will be processed during the week and checks made ready for delivery on the Friday following the pay period worked.

D. Only Council Members, Chapter Officers and Director or Assistant Director of the Office of Navajo Revenue Sharing can sign out payroll checks. Individuals will not be given checks by Community Works Office personnel. In the event of the unavailability of a Council Member to sign Community Works documents, and to prevent inconvenience and hardship to all concerned, the Director or Assistant Director of the Office of Navajo Revenue Sharing may sign the documents; this authorization is valid only in cases of emergencies where the Council Members are unavailable to sign Community Works documents.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞123.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 226.

§ 3310. Compensation

A. Common laborers shall be compensated at the rate of two dollars and thirty cents (\$2.30) per hour; foreman two dollars and forty cents (\$2.40) per hour; and summer student supervisors two dollars and forty cents (\$2.40) per hour. Only in unusual situations where protection of property or safety measures so requires may chapters secure services of skilled workmen who can be paid in excess of two dollars and forty cents (\$2.40) per hour.

B. Equipment rental rates are as follows:

1. Teams and 1/2-ton Pickups—Three dollars (\$3.00) per hour when actually employed. (Not to exceed eight (8) hours per day.)
2. 3/4-ton Pickups and 1-ton Trucks—Three dollars and fifty cents (\$3.50) per hour when actually employed. (Not to exceed eight (8) hours per day.)
3. Tractor (farm) and rental of heavy equipment—Four dollars and fifty cents (\$4.50) per hour when actually employed. (Not to exceed eight (8) hours per day.)

C. Rental of personal equipment owned by members of the Navajo Nation Council is permissible only with the approval of the chapter.

D. Rental of chapter-owned vehicle and heavy equipment on Community Works Project is permissible and payment shall be made to concerned chapter. (Not to exceed eight (8) hours per day.) Payment shall be made with proper vendor's invoice and completed direct payment form from the Office of Navajo Revenue Sharing requesting payment.

E. Payment for all heavy equipment rented by the chapter on an approved project in excess of four dollars and fifty cents (\$4.50) per hour or on contracts will be made upon completion of "Request for Direct Payment" forms with supporting documents from the vendor.

History

ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

§ 3311. Duties and responsibilities

A. Project Foremen:

1. Will be hired only at Chapter meetings;
2. Will rotate every ten (10) days;
3. Will direct laborers on assigned projects;
4. Will keep accurate project records and will report time for laborers on proper timecards;

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5. Will turn timecards properly signed by Council Members into Community Works, Financial Services Department at regular pay periods; and
6. Will be responsible for the safety of laborers under their supervision.

B. Laborers:

1. Will be hired on the basis of need only (in accordance with eligibility rules in 13 N.N.C. §§ 3305, 3306);
2. Will be hired only at chapter meetings; and
3. Will rotate every ten (10) days.

C. The use of intoxicants is expressly forbidden and any workman drinking on Community Works Projects shall be terminated immediately by the foreman, Chapter Officers or Council Member.

D. A person may not work as a foreman or laborer and have a family vehicle rented on a project at the same time.

History

ACJY-83-78, July 18, 1978.
ACAP-77-76, April 1, 1976.

Library References

Indians ☞32(4.1).
States ☞94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

§ 3312. Types of projects

A. Rug weaving and other arts and crafts (Chapter Officers or project foreman may contact Arts and Crafts personnel as to size, design, dye, etc.).

B. Home improvement (payment for labor, purchase of lumber, cinder blocks). Order of preference:

1. Needy.

2. Those unable to construct for themselves and who have their materials available. If a needy family has received assistance from all Welfare Departments with lumber, doors, windows, etc., and the material is delivered and another family not so needy also has their materials ready for construction, the needy family's house should be worked on first. This shall be a one-time project for each qualifying individual family in any one fiscal year.

C. Fence construction (not to be done on individual farm plots).

D. Rehabilitation or small irrigation projects (for which no appropriation is available and which is not in conflict with any existing agreements of the Navajo Nation or Bureau regulations). Purchase of farm tractors or implements (freight cost) and repairs will be permitted.

E. Construction of roads for community use (labor and materials).

F. Construction or improvement of a permanent structure (dipping vat, Chapter house addition, landscaping, corral construction, custodian's quarters, police quarters, preschool building, rodeo ground facilities, warehouse con-

struction, bus shelter, athletic and recreational facilities and multipurpose building).

G. Summer Student Program. Purchase of essential materials for worthwhile projects (cabinet-making, sewing projects and painting).

H. Woodcutting and hauling (labor only).

I. Removal of dirt overburdened from open pit coal mines so that said coal mines may be used by the community and purchase of coal (labor only).

J. Hiring an individual to act as custodian of chapter facilities under salary, duration and terms as the chapter shall determine.

K. Maintenance of Chapter buildings, not to exceed the sum of three thousand dollars (\$3,000) (out of each appropriation) where approved by individual Chapters to deposit such amount into their bank accounts. Chapter Revenue Sharing funds shall not apply.

L. Repairs and maintenance of any Chapter-owned motor vehicles and/or equipment not to exceed two thousand dollars (\$2,000) (out of each appropriation), which funds shall be deposited into a local bank account of the respective chapter. Chapter Revenue Sharing Funds shall not apply.

M. Purchase of seeds and fertilizer.

N. Water hauling for Livestock (labor and equipment rental only).

O. Construct or repair Charco Dam (labor and equipment rental only).

P. Labor and/or materials for construction and repair of shallow wells to provide water for livestock

Q. Labor to assist Grazing Committee in dipping and vaccination of sheep and branding of cattle and horses.

R. Purchase of livestock spray machine, scale, water tank, trough, vaccination and branding supplies and freight cost thereof.

S. Purchase of materials for Tribal Work Experience Program's community project and for programs under CETA.

T. Labor and/or materials for community farms (farm project not to be done on individual farm plots).

U. Maintain community trash dump.

V. Purchase of feed and hay for livestock (labor and equipment rental).

W. Purchase of Chapter equipment, trucks, heavy equipment, appliances and office equipment. There shall be a Plan of Operation for trucks and heavy equipment and insurance coverage provided before the initial purchase is made.

History

ACJY-83-78, July 18, 1978.

Library References

Indians ↻32(4.1).
States ↻94.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 157.

Chapter 33. Assistance to Needy**Section**

- 3501. Definitions
- 3502. Policy
- 3503. Welfare standards generally
- 3504. Application; standards of eligibility
- 3505. Financial assistance
- 3506. Burnout assistance
- 3507. Building material assistance
- 3508. Burial and transportation assistance
- 3509. Health, rehabilitation
- 3510. Appeals

Code of Federal Regulations

Financial assistance and social services programs, see 25 CFR § 20.100 et seq.

§ 3501. Definitions

Where the following terms are used in this chapter, their meaning shall be defined as follows:

A. "Need" shall mean a condition requiring supply or relief; or the existence of an urgent exigency; or the lack of means to provide the basic subsistence of a person or family group.

B. "Income" shall mean a gain or benefit derived from property, labor or from the combination of both measured in money or in kind.

C. "Eligibility" shall mean the applicant is capable of meeting the basic standards of the Navajo Nation Health and Welfare policy.

D. "Resources" shall mean any new or reserve source which is an immediate and a possible source of revenue or support for the person or family group.

E. "Building materials" shall mean lumber and other necessary building materials to erect foundation, walls, roofs and/or renovate a permanent dwelling. This request will materialize with assistance of other existing agency funds.

F. "Emergency illness" shall mean critical illness as diagnosed by an attending physician (Physician meaning doctors with medical certificate or a medicine man).

G. "Health rehabilitation" shall mean a reinstatement of a condition of physical and emotional health to a useful and constructive state.

H. "Agency" shall mean a program dealing with welfare under the federal government, Public Health Service, Bureau of Indian Affairs, State or Navajo Division of Social Services components.

History

ACN-503-73, November 21, 1973.
ACMA-80-69, March 13, 1969.

Library References

Indians ⚡32(4.1).
Social Security and Public Welfare ⚡1.1.
Westlaw Topic Nos. 209, 356A.

§ 3502. Policy

A. It is the policy of the Navajo Nation to provide only emergency assistance to needy Navajo persons to enable them to maintain a reasonable standard of health and well-being, and to accomplish this in a manner which encourages and aids the individual or family toward self-reliance and fuller development for individual capacities.

B. The purpose of Navajo Nation Welfare assistance is to supplement income and other resources which are inadequate to meet emergency or temporary need within the defined standards.

History

ACN-503-73, November 21, 1973.

Library References

Indians ⚡32(4.1).
Social Security and Public Welfare ⚡0.5.
Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare
§§ 2 to 4.

§ 3503. Welfare standards generally

A. The welfare standards for granting assistance shall be established by the Navajo Division of Social Services staff with approval and concurrence by the Navajo Nation Health and Social Services Committee and the Government Services Committee of the Navajo Nation Council.

B. Need shall be determined by an evaluation of each case based on reasonable standards compatible with decency, health and welfare. In order to give fair and impartial treatment of individual cases, basic standards are herein set forth which shall be used as guidelines in determining eligibility.

History

ACN-503-73, November 21, 1973.
Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).

Library References

Indians ⚡32(4.1).
Social Security and Public Welfare ⚡4.

Westlaw Topic Nos. 209, 356A.

13 N.N.C. § 3503

HEALTH AND WELFARE

C.J.S. Social Security and Public Welfare
§§ 6, 10, 17.

§ 3504. Application; standards of eligibility

A. Application for assistance may be made in person, by letter or by referral. Bills submitted for payment by business firms shall not be considered unless there has been prior authorization for their payment.

B. Applicant must be in need for the type of assistance available from the Navajo Nation Division of Social Services.

C. The applicant shall provide all requested information as to his income and/or resources. He shall be responsible for the disclosure of consistent and truthful factual information necessary to establish his eligibility. All necessary supplemental information shall be secured from other sources for evaluation and consideration.

D. To be eligible, an applicant must:

1. Have inadequate income and/or resources;
2. Be a member of the Navajo Nation and have a census number; or if not a member of the Navajo Nation must provide verification by proper documents of a legal marriage with an enrolled Navajo Indian; and
3. Be verified as being incapacitated or disabled to the extent he is unable to do any work to support himself or family.

E. Applications for Navajo Nation assistance should be acted on as soon as possible due to the emergency nature of such assistance. In no event should an application for assistance pend for more than ninety (90) days if applicant has provided all necessary information and forms such as homesite leases in building materials assistance.

History

ACN-503-73, November 21, 1973.

Library References

Indians ⇄32(4.1).

Social Security and Public Welfare ⇄4, 4.16.

Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare

§§ 6, 10, 17.

§ 3505. Financial assistance

A. Navajo Nation welfare assistance of a temporary nature may be provided by issuance of a check or purchase order only to an indigent person who has verified his immediate need and has met the basic standards of eligibility.

B. An unemployed applicant must show reasonable effort to secure employment. Said effort must be shown in writing.

C. An applicant must not receive monthly grants from another agency.

D. The amount authorized shall not exceed fifty dollars (\$50.00). Thereafter, the applicant will be referred to another agency for long term assistance.

E. Supplemental funds for assistance may be negotiated by the Division of Social Services.

History

ACN-503-73, November 21, 1973.

Library References

Indians ⇄32(4.1).

Social Security and Public Welfare ⇄4.11 to
4.16, 9.1.

Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare
§ 11.

§ 3506. Burnout assistance

A. Navajo Nation assistance may be provided not to exceed three hundred dollars (\$300), in cases of hardship caused by fire of natural disasters of dwelling used as residence during the year that contained essential clothing and household items.

B. Applicant shall be a member of the Navajo Nation, have a census number, and have inadequate resources to cover the disaster.

C. The following must be established:

1. Official report or verification to be submitted to the Navajo Nation Division of Social Services within the fifteen (15) days after the burnout; and
2. That the burnout occurred on the Navajo Nation.

History

ACN-503-73, November 21, 1973.

Library References

Indians ⇄32(4.1).

Social Security and Public Welfare ⇄4.11 to
4.16, 9.1.

Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare
§ 11.

§ 3507. Building material assistance

A. Navajo Nation welfare assistance may be granted to eligible persons in the form of building materials not to exceed six hundred dollars (\$600.00) in retail value to improve, build a permanent residence, or to meet standards of health, safety, sanitation, well-being and self-reliance.

B. Applicant shall meet the basic standards of eligibility.

C. Applicant shall apply for housing assistance from other agencies or departments. If this assistance is not sufficient to improve or build applicant's permanent residence, then building material can be supplied by the Navajo Nation Division of Social Services.

D. Homesite lease must be cleared and approved by the local people living in immediate area, chapters, grazing committee, and then the council person. A homesite lease within a proposed community development must be cleared through proper channels or it must be clear that the homesite lease will be approved in the near future.

E. Homesite on allotted land or deeded land must be supported, or documents proving ownership submitted.

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F. Applications for homesite lease on deeded land (Trust Land) must be processed properly with the concurrence of the local chapter and clearance made through the Navajo Nation Office of Land Administration, Window Rock, Arizona.

G. A home visit may be required for evaluation of current home condition when necessary.

H. Upon recommendation and approval by the chapter and verification by other resource agencies, applicant must submit a list of building materials needed to complete project.

I. In unusual circumstances, applications will be accepted for a separate structure.

J. Unusual circumstances shall be considered when due to Navajo Nation cultural religion and beliefs.

K. The Navajo Nation Division of Social Services shall not be responsible for assembling materials.

History

ACN-503-73, November 21, 1973.

Library References

Indians ☞32(4.1).

Social Security and Public Welfare ☞4.11 to 4.16, 9.1.

Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare § 11.

§ 3508. Burial and transportation assistance

A. Minimum burial assistance may be provided in cases of death outside the Navajo Nation, for the purpose of returning the deceased to the Navajo Nation for burial.

B. Applicants who request burial or transportation assistance must meet the basic standards of eligibility.

C. Applicant representing the immediate family must make the request.

D. Applicant requesting burial assistance must have prior authorization from the Navajo Nation Division of Social Services covering the minimum cost for returning body to the Navajo Nation.

E. Burial assistance shall be provided only if the deceased was a member of the Navajo Nation and had a census number.

F. Transportation assistance must have prior authorization from the Navajo Nation Division of Social Services.

G. The Division of Social Services shall have the authority to request and obtain the funds that the Bureau of Indian Affairs and Public Health Service have available for burial assistance. If the Bureau of Indian Affairs and Public Health Services allow the Navajo Nation Division of Social Services to administer their burial funds, the Division of Social Services will give consideration to

such agreement and process the applications for burial assistance under the respective eligibility standards of the BIA and PHS burial contracts.

History

ACN-503-73, November 21, 1973.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454(B)(2).
Intergovernmental Relations Committee powers, see 2 N.N.C. § 824(B)(6).

Library References

Indians ☞32(4.1).	Westlaw Topic Nos. 209, 356A.
Social Security and Public Welfare ☞4.11 to 4.16, 9.1.	C.J.S. Social Security and Public Welfare § 11.

§ 3509. Health, rehabilitation

A. Navajo Nation assistance may be available for items needed for health rehabilitation requirements when no such services or resources are available from other agencies; provided, this assistance shall not include the cost of hospitalization and medical care. Rehabilitation items include eyeglasses, hearing aids, crutches, and such other items that the department may deem it appropriate to acquire.

B. The applicant must have a written medical statement and/or referral recommending any of the items mentioned in subsection (A) of this section.

C. Prior authorization must be secured from the Navajo Nation Division of Social Services for the items listed under subsection (A) of this section. The applicant shall be responsible for all repairs and maintenance.

D. Rehabilitation supplies no longer needed shall be sent to nearest United States Public Health Service Hospital or Navajo Nation Division of Social Services.

History

ACN-503-73, November 21, 1973.

Library References

Indians ☞32(4.1).	Westlaw Topic Nos. 209, 356A.
Social Security and Public Welfare ☞4.11 to 4.16, 9.1.	C.J.S. Social Security and Public Welfare § 11.

§ 3510. Appeals

A. Determination of eligibility of an applicant under this chapter, refusal to let an individual apply for assistance, failure to take action on an application within thirty (30) days, and discriminating conditions and practices in the operation of the program, may be appealed.

B. The Division of Social Services shall inform applicants of their right to appeal.

C. An appeal may be filed in writing by a letter to the Division of Social Services.

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D. The appeal must be filed within thirty (30) days following the decision or action of the Division of Social Services which forms the basis of the grievance, unless extreme conditions prevent the person from filing the appeal within the time allowed. The Division of Social Services shall determine if extreme conditions warrant that an appeal procedure is permissible.

E. The Division of Social Services will review the appeal which is submitted. If the applicant requests a hearing, then the Division of Social Services will designate an impartial agency employee to conduct the hearing. If the information in the client's record is incomplete, then the office shall request that the appropriate Division of Social Services department present a complete review of the case.

F. The hearing shall be held within thirty (30) days of the filing of the appeal with the Division of Social Services and shall be held in a place convenient for the applicant. The applicant shall have at least ten (10) days notice before the hearing and shall be advised that he or a representative can present his case.

G. The hearing officer will conduct the hearing and record the proceedings. The applicant will have the opportunity to present and confront witnesses to produce evidence.

H. The hearing officer will file a report of the hearing with the appropriate Division of Social Services department within seven (7) days after the hearing.

I. The Division of Social Services will review the appeal and the report of the hearing and render a decision.

J. In the event an applicant is not satisfied with the decision of the Division of Social Services he/she shall present a written appeal to the Health and Social Services Committee for review, evaluation, and final decision on the case. The Division of Social Services shall present the report on the hearing, tentative findings, conclusions and all other materials to the Health and Social Services Committee.

K. Copies of the findings and conclusions of the Health and Social Services Committee must be filed with the clients record. Clients shall be furnished a written statement on the decision.

L. The decision of the Health and Social Services Committee shall be binding and final.

History

ACN-503-73, November 21, 1973.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Indians ↻32(4.1).

Social Security and Public Welfare ↻8.1 to 8.20.

Westlaw Topic Nos. 209, 356A.

C.J.S. Social Security and Public Welfare §§ 13 to 16.

Chapter 35. Contributions to Worthy Causes

Section

3701. Policy

§ 3701. Policy

The Navajo Nation gives its support to all worthy causes and the Government Services Committee of the Navajo Nation Council urges the members of the Navajo Nation to support organizations conducting drives for funds through individual contributions and through the organization of community benefit affairs.

History

ACJ-14-59, February 9, 1959.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Library References

Charities ↻1.

Indians ↻32(4.1).

Westlaw Topic Nos. 75, 209.

C.J.S. Charities §§ 2 to 3.

Chapter 37. Navajo Nation Work Experience Program

Section

3901. Authorization

§ 3901. Authorization

A. The Advisory Committee of the Navajo Nation Council hereby approves and adopts the revised Plan of Operation for the Navajo Nation Work Experience Program.

B. Resolution No. ACJN-133-70, which approved the previous Plan of Operation, is hereby rescinded.

C. The Program Director shall submit a complete comprehensive report to the Government Services Committee of the Navajo Nation Council at each six-month period.

History

ACMY-178-72, May 11, 1972.

ACJN-133-70, June 15, 1970.

pursuant CD-68-89, Resolve #10, December 15, 1989.

Note. Words "Government Services" are to be inserted for the words "Advisory Committee"

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Indians ☞32(4.1).
States ☞67, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 130 to 138, 140.

Chapter 51. Navajo Home Health Agency**Section**

- 4301. Establishment
- 4302. Purposes
- 4303. Goal
- 4304. Administration and organization
- 4305. Services
- 4306. Target population
- 4307. Funding
- 4308. Evaluation

History

Note. Former sections 4301–4306, based on Indian Health Board, were rescinded by CYJ–39–76 and relating to the establishment, membership and functions of the Navajo Area CMY–46–80, § 1, effective May 6, 1980.

§ 4301. Establishment

The Navajo Home Health Agency (NHHA) was established by the Advisory Committee of the Navajo Tribal Council upon recommendation from the Health and Human Services Committee.

History

ACO–135–84, October 11, 1984.

Library References

Health ☞363.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 4302. Purposes

The purposes of the Navajo Home Health Agency are:

- A. To provide home health services to eligible patients in the Navajo Nation, including but not limited to, skilled nursing care and home health aide care;
- B. To promote, maintain and restore health;
- C. To prevent illness, disease and disability;
- D. To coordinate, plan and provide comprehensive health care to the sick and disabled in their homes which is culturally relevant and appropriate to their needs; and
- E. To foster independence and self-respect among the recipients of home health care.

History

ACO-135-84, October 11, 1984.

Library References

Health ☞366, 367.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 4303. Goal

The goal of the NHHA is that all people across the Navajo Nation achieve the highest attainable level of health through comprehensive and coordinated home health care services.

History

ACO-135-84, October 11, 1984.

Library References

Health ☞366, 367.
Indians ☞32(4.1).
Westlaw Topic Nos. 198H, 209.

§ 4304. Administration and organization

A. The management of the NHHA is the responsibility of the Board of Directors and the NHHA's administrator.

B. The Board of Directors shall be appointed by the Government Services Committee of the Navajo Nation Council upon recommendation from the Health and Social Services Committee.

C. The Board of Directors shall appoint a Professional Advisory Committee (PAC), consisting of health professional personnel, who will establish and review annually the Agency's policies governing scope of services offered, admission and discharge policies, medical supervision, plans of treatment, emergency care, clinical records, personnel qualifications and program evaluation. The PAC will serve the Parent Agency (Window Rock/Ft. Defiance), as well as the entire NHHA.

D. There shall be a Subunit Professional Advisory Committee (Subunit PAC) located in each service unit which functions as a Subunit of the NHHA. There shall be no more than 7 Subunit Professional Advisory Committees. They shall be located in Crownpoint, Chinle, Gallup, Kayenta, Shiprock, Tuba City and Winslow. At least one representative from each of the Subunit Professional Advisory Committees shall serve as a member of the PAC established by the Board of Directors.

E. The Subunit Professional Advisory Committees shall assist the Home Health Agency located in each respective subunit in establishing and recommending policies and procedures that govern the scope of services offered by the Agency. A representative from each Subunit PAC shall share these recommendations with the PAC established by the Board of Directors.

13 N.N.C. § 4304

HEALTH AND WELFARE

History

ACO-135-84, October 11, 1984.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Library References

Health ☞366, 367.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 4305. Services

A. The NHHA will utilize home health teams to provide the following services to homebound patients on the Navajo Nation:

1. Part-time or intermittent skilled nursing care by Navajo Nation hired registered nurses which has been ordered by a physician; and
2. Auxiliary health services by Navajo Nation hired home health aides.

B. The home health teams will be located in each service unit (where feasible) and will consist of a registered nurse, hereafter called the home health nurse, and two home health aides.

C. Specific home health services described in the NHHA Policy and Procedure Manual will be delivered to those individuals who are in need of the services. The services of the home health nurse will include making the initial evaluation visit to the patient, regularly reevaluating the patient's nursing needs, initiating the plan of treatment and necessary revisions, providing those services which require substantial and specialized nursing skill, initiating appropriate preventive and rehabilitative nursing procedures, preparing clinical and progress notes, coordinating services, informing the physician and other health personnel of changes in the patient's condition and needs, counseling the patient and family in meeting nursing and related needs, participating in in-service programs, and supervising and teaching other nursing and auxiliary personnel.

D. The services of the home health aide will be given under the direction and supervision of the home health nurse. Written instructions for patient care will be prepared by the nurse. Services will include the performance of simple procedures as an extension of therapy services, personal care, ambulation, exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's condition and needs and completing appropriate records.

E. As the need is demonstrated, other services, such as medical social work, physical, occupational and/or speech therapy may be added as the NHHA is expanded. These services may also be provided through contractual arrangements.

F. Services will be available 8:00 a.m. to 5:00 p.m. Services may also be provided on weekends and holidays when the need is justified. No limit will be established for the number of patients to be accepted for service; however, this will be determined by the number of available staff.

History

ACO-135-84, October 11, 1984.

Library References

Health ☞366, 367.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 4306. Target population

A. Home health services will be available to everyone in the community, regardless of race, creed, color, political affiliation or ability to pay. The services must be ordered by a physician and the patient's diagnosis must meet specific requirements required by Title XVIII (Medicare)¹ and Title XIX (Medicaid)² of the Social Security Act.

B. Referrals for service can be made by any of the following and not limited to: physicians, Chapters, family, friends, schools, community health nurses, community health representatives, the patient, and/or other community organizations.

¹ 42 U.S.C. § 1395 et seq.

² 42 U.S.C. § 1396 et seq.

History

ACO-135-84, October 11, 1984.

Library References

Health ☞366, 367.

Indians ☞32(4.1).

Westlaw Topic Nos. 198H, 209.

§ 4307. Funding

A. The overall plan and budget which provides for an annual operating budget and capital expenditure plan will be prepared under the direction of the Board of Directors by the administrative staff of the NHHA. The overall plan and budget will be reviewed and updated at least annually by the Board of Directors.

B. The NHHA is currently funded by grant funds under the Indian Self-Determination Act, P.L. 93-638.¹ The administrative staff, as well as the home health nurses and home health aides, function under this grant.

C. It is anticipated that a large proportion of the NHHA's operating funds in the future will come from third party payments, such as Title XVIII² (Health Insurance for the Aged and Disabled, commonly known as Medicare) or Title XIX³ (Grants to States for Medical Assistance Programs, known as Medicaid) of the Social Security Act. In order to collect the reimbursements from third party payors, the home health services must be in accordance with HCFA's Conditions of Participation and the reimbursement regulations outlined in the Home Health Agency Manual (HIM 11). Once these regulations are met, the NHHA will apply for federal and state certification and licensure, respectively.

13 N.N.C. § 4307

HEALTH AND WELFARE

D. The Medicare law requires home health agencies to work with fiscal intermediaries in performing specified administrative functions including the determination of reasonable costs of services delivered to the beneficiary and the payment of such costs. The fiscal intermediary selected and authorized by the Social Security Administration to work with NHHA is Aetna Life and Casualty Company of Reno, Nevada.

E. Prior to the NHHA application for federal certification and state licensure, the following steps must be completed:

1. The Government Services Committee of the Navajo Nation Council, upon recommendation from the Health and Social Services Committee must establish the NHHA; and
2. The delegated oversight Committee of the Navajo Nation Council and the Budget and Finance Committee of the Navajo Nation Council must approve the establishment of an account number to receive revenue generated from third party payments. This account will be a Revolving Account and NHHA shall annually submit a certified audit report to the Budget and Finance Committee of the Navajo Nation Council.

¹ 25 U.S.C. § 450f et seq.

² 42 U.S.C. § 1395 et seq.

³ 42 U.S.C. § 1396 et seq.

History

ACO-135-84, October 11, 1984.

Note. Words "Government Services" inserted pursuant CD-68-89, Resolve #10, December 15, 1989.

Library References

Indians ⇨32(4.1).

States ⇨121, 127.

Westlaw Topic Nos. 209, 360.

C.J.S. States §§ 203, 223, 228.

§ 4308. Evaluation

At least once a year a group of professional personnel, specifically the Professional Advisory Committee, will evaluate the performance of the NHHA's total operations as written in the policies. The evaluation will assess the extent to which the NHHA's total operations are appropriate, adequate, effective and efficient. The total operations refer not only to those services provided directly to patients, but also to the broader concepts of overall agency administration including, but not limited to, policies, procedures, personnel, fiscal management and patient care.

History

ACO-135-84, October 11, 1984.

Library References

Health ⇨366, 367.

Indians ⇨32(4.1).

Westlaw Topic Nos. 198H, 209.

Chapter 53. [Rescinded]

§§ 4501 to 4527. [Rescinded]

History

ACD-179-82, § 1, December 27, 1982.

Chapter 55. Navajo Nation Safety Committee [Deleted]

History

Note. Former Chapter 55, §§ 4701—4705, “Navajo Nation Safety Committee” (ACMY-65-78, May 11, 1978), was deleted in its entirety by CAP-39-00, April 20, 2000, which also approved the “Navajo Nation Occupational Safety and Health Act” codified in Title 15 of the Navajo Nation Code.

Chapter 57. Navajo Nation Council on Handicapped

Section

- 4801. Purpose
- 4802. Objectives
- 4803. Membership
- 4804. Meetings
- 4805. Officers
- 4806. Election
- 4807. Expenses
- 4808. Rule of order
- 4809. Reports

§ 4801. Purpose

The Navajo Nation Council on Handicapped (NNCOH) will serve as an advocate for handicapped Navajo People and their families. The NNCOH will be composed of handicapped consumers, representatives of public and private service providers and other groups concerned with services to handicapped Navajo People, representatives of the business community, and other interested persons. The NNCOH will be responsible for insuring that Navajo handicapped persons have equal access to employment and to public buildings and programs or services on the Navajo Nation and to otherwise promote the concept that all persons should have an opportunity to realize their potential to the extent of their mental and physical capabilities.

History

CAP-12-79, April 25, 1979.

Library References

Indians ☞32(4.1).
States ☞67, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 130 to 138, 140.

§ 4802. Objectives

A. Advocacy:

1. Identify and express the needs of handicapped Navajo People and their families;
2. Stimulate the development of a full continuum of appropriate support services to all age groups of Navajo handicapped persons in the least restrictive environment. Potential areas of interest include, but are not limited to:
 - a. Prevention of developmental disabilities and other handicapping conditions;
 - b. Early identification of these conditions;
 - c. The quality of health related services;
 - d. The quality of educational services;
 - e. The provision of adequate housing;
 - f. The creation of employment opportunities; and
 - g. Return of institutionalized Navajos to their homes and communities;
3. Monitor the activities of all employers conducting operations on the Navajo Nation to insure compliance with the Navajo Nation Affirmative Action Plan for the Handicapped;
4. Promote activities to recognize exemplary efforts of employers in improving employment opportunities and working conditions for handicapped individuals; and
5. Provide incentives to handicapped persons by presenting an annual award to the "Outstanding Handicapped Employee of the Year."

B. Planning:

1. Encourage the development of planning efforts leading to long-range, comprehensive service programs which will meet the many different needs of these people;
2. Provide technical assistance for the development of these plans;
3. Review these plans for completeness and appropriateness; and
4. Develop priorities for the expansion of service programs to meet the needs of the target population.

C. Evaluation:

1. Evaluate the quality and effectiveness of programs serving handicapped Navajo People and their families;
2. Report the results of these evaluations and make recommendations for program improvement to those entities responsible for the funding of these service programs; and
3. Provide technical assistance and consultation to these service programs with the aim of improving their quality.

D. These advocacy, planning and evaluation efforts will be directed towards the Navajo Nation Council, the Bureau of Indian Affairs, and other federal

agencies, the states of Arizona, New Mexico, and Utah, private service providers, and other groups concerned with the needs of handicapped Navajo People.

History

CAP-12-79, April 25, 1979.

Library References

Indians ☞32(4.1).
States ☞67, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 130 to 138, 140.

§ 4803. Membership

A. The NNCOH shall, at all times, include in its membership, representatives of the principal governmental and non-governmental agencies, private business, and groups concerned with services to handicapped Navajo People. All geographic areas of the Navajo Nation shall be represented on the Council.

B. At least one-third of the membership of NNCOH will consist of either handicapped persons or members of their families.

C. Members are recommended by the community of those involved in human service delivery and are appointed by the President of the Navajo Nation.

D. The number of NNCOH members shall be no less than fifteen (15) and no more than twenty (20).

E. Members, once selected, will serve for three (3) years.

F. Resignation of a NNCOH member must be done by a letter to this effect to the Chairman of NNCOH with a copy to the President of the Navajo Nation.

G. A vacancy created by a member resigning will be filled by appointment at the earliest possible date by the President of the Navajo Nation after review of NNCOH's recommendations.

History

CAP-12-79, April 25, 1979.

Note. Word "President" inserted pursuant
CD-68-89, Resolve #9.

Library References

Indians ☞32(4.1).
States ☞47.

Westlaw Topic Nos. 209, 360.
C.J.S. States § 83.

§ 4804. Meetings

A. The NNCOH will meet at least four times a year and more frequently if necessary to carry out the Council's business. Meeting notices will be sent out to members at least two weeks prior to the regular meetings. Notices shall include a proposed agenda. Members not able to attend a particular meeting are required to send an alternate to the meeting to represent them. Emergency meetings may be called under special circumstances by the chairman or by the Executive Committee. Phone or mailgram notices shall be given for emergency meetings.

13 N.N.C. § 4804

HEALTH AND WELFARE

B. A simple majority of the voting membership shall constitute a quorum.

C. All appointed members shall have the right to vote on all matters related to the functions of the NNCOH. An alternate attending a meeting in the place of a regular member shall be eligible to vote for that member. Decisions are made by a simple majority vote, with the chairman voting only in case of ties.

History

CAP-12-79, April 25, 1979.

Library References

Indians ☞32(4.1).
States ☞73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 130 to 136, 140.

§ 4805. Officers

A. The officers shall consist of a chairman, a vice-chairman, a secretary, and a treasurer.

B. The chairman shall set the agenda for and preside at all meetings of the NNCOH. He shall serve as a liaison between NNCOH and the Navajo Nation Council.

C. The vice-chairman shall exercise all rights and duties of the chairman in his absence.

D. The secretary, with the help of the NNCOH secretarial staff, shall record and keep an accurate account of all the council meetings and the distribution of council minutes.

E. The treasurer, with the help of the NNCOH's financial officer, shall maintain, review, and report on the financial standing of the council.

F. The chairman, vice-chairman, secretary, and treasurer, plus two other members of the council as appointed by the chairman, shall constitute the executive committee.

History

CAP-12-79, April 25, 1979.

Library References

Indians ☞32(4.1).
States ☞68, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 130 to 136, 139 to 140.

§ 4806. Election

A. Election of officers will be held at the first meeting of each calendar year. Officers will serve for a period of one (1) year from the date of the election. Vacancies will be filled by majority vote at a meeting where a quorum is present.

B. A nominating committee will be selected by the chairman prior to the election date. It will recommend one member for each office. Members will not be nominated for office without asking them first. Once the nominating committee reports, candidates may be nominated from the floor.

History

CAP-12-79, April 25, 1979.

Library References

Indians ⇐32(4.1).
States ⇐46.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 61, 80, 84, 102.

§ 4807. Expenses

When funds are available, expenses related to attendance by council members or alternates at meetings will be reimbursed. Members attending in an official capacity from their agency or through administrative leave should not expect reimbursement. Cost of reimbursements for per diem and other expenses shall be set and approved by the NNCOH. This schedule shall not exceed the rates used by the Navajo Nation Council.

History

CAP-12-79, April 25, 1979.

Library References

Indians ⇐32(4.1).
States ⇐62.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 47, 106.

§ 4808. Rule of order

Except where already stated in this chapter, questions of order and parliamentary procedure will be resolved by Robert’s Rules of Order.

History

CAP-12-79, April 25, 1979.

Library References

Indians ⇐32(4.1).
States ⇐73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 130 to 136, 140.

§ 4809. Reports

The Chairman of the NNCOH shall appear before the Health and Social Services Committee of the Navajo Nation Council at least once annually to give a full report on the activities of the council.

History

CAP-12-79, April 25, 1979.

Cross References

Health and Social Services Committee powers, see 2 N.N.C. § 454.

Library References

Indians ⇐32(4.1).
States ⇐73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 130 to 136, 140.

Chapter 59. Alcohol and Drug Abuse Task Force

Section

- 4901. Purpose
- 4902. Membership
- 4903. Powers
- 4904. Meetings

§ 4901. Purposes

The purpose of the Alcohol and Drug Abuse Task Force are:

- A. To consider the extent of alcohol and drug abuse on the Navajo Nation;
- B. To consider alternative strategies for the prevention and/or treatment of alcohol and drug abuse;
- C. To disseminate all information received and gathered by the task force to all Chapters throughout the Navajo Nation; and
- D. To recommend further study by the respective standing committees of the Navajo Nation Council.

History

ACJY-124-83, July 18, 1983.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
States ☞67, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 130 to 138, 140.

§ 4902. Membership

- A. The task force shall consist of 15 members.
- B. At least six members shall be members of the Navajo Nation Council.
- C. The Vice-President of the Navajo Nation shall serve as the Chairman of the Task Force.
- D. At least one of the local school boards operating within the Navajo Nation shall be a member of this task force.

History

ACJY-124-83, July 18, 1983.

Note. Words "Vice-President" inserted pursuant CD-68-89, Resolve #9, December 15, 1989.

Library References

Indians ☞32(4.1).
States ☞45.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 79, 82, 136.

§ 4903. Powers

The Alcohol and Drug Abuse Task Force shall exercise the following powers:

HEALTH AND WELFARE

13 N.N.C. § 4904

A. To acquire and disseminate information from the various Navajo Nation divisions, offices, and commissions regarding alcohol and drug abuse.

B. To acquire and disseminate information on treatment strategies for alcohol and drug abuse.

C. To serve as a clearinghouse for drug and alcohol abuse information and prevention programs for the Navajo Nation.

History

ACJY-124-83, July 18, 1983.

Note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
States ☞67, 73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 121, 130 to 138, 140.

§ 4904. Meetings

A. Meetings shall be held at least once a month.

B. All meetings shall be in Window Rock or as designated by the Chairman of the Task Force.

History

ACJY-124-83, July 18, 1983.

Library References

Indians ☞32(4.1).
States ☞73.

Westlaw Topic Nos. 209, 360.
C.J.S. States §§ 130 to 136, 140.

Title 14

Navajo Nation Motor Vehicle Code

Chapter	Section
1. General Application	100
2. Civil Infractions; Responsibility and Assessment	200
3. Equipment	500
4. Weight and Size Limitations	600
5. Misdemeanor Offenses, Fines, Penalties, Implied Consent	700
6. Parties, Procedures Upon Arrest and Reports in Criminal Cases	800
8. Construction of Highways	1000
10. Zoning Sides of Highways	1200
12. Traffic Codes for Navajo Nation in Arizona, New Mexico, and Utah	1400
15. Drivers Licenses	1700

History

Note. Title 14 section numbers and some subchapters have been redesignated. See CMY-30-88, May 6, 1988, for the original order of the Title 14 section numbers.

Chapter 1. General Application

Section

- 100. Jurisdiction: civil infractions and misdemeanor offenses
- 102. Court-appointed civil traffic hearing officers
- 103. Deposit to and appropriation of general funds
- 104. Civil compromise dismissal
- 105. Definitions

§ 100. Jurisdiction: civil infractions and misdemeanor offenses

The District Courts of the Navajo Nation shall have exclusive original jurisdiction over all civil traffic infractions under this title, committed within their respective jurisdictions by any person eighteen (18) years of age or older; and over all criminal misdemeanor offenses under this title, committed within their respective jurisdictions by Indian persons eighteen (18) years of age or older. Jurisdiction over all provisions under this title over juveniles under eighteen (18) years of age, shall be as provided under the Navajo Nation Children's Code (9 N.N.C. § 1121) and all other applicable laws.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Cross References

9 N.N.C. § 1121.

Library References

Automobiles ☞350.

Indians ☞32(7, 13).

14 N.N.C. § 100

NAVAJO NATION MOTOR VEHICLE CODE

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152,
157.

C.J.S. Motor Vehicles §§ 1320, 1363, 1395 to
1396, 1442, 1507, 1531.

§ 102. Court-appointed civil traffic hearing officers

Subject to available funding, the Chief Justice of the Supreme Court of the Navajo Nation may appoint qualified traffic hearing officers to preside over hearings and dispositions of civil traffic infractions occurring within the respective jurisdictions of the District Courts of the Navajo Nation. Such traffic hearing officers may hear and dispose of civil traffic infractions under the supervision of the District Court judge, and the judgment and disposition by the traffic hearing officers shall constitute the final judgment and order of the District Court, subject to the provisions of § 104 contained herein. All criminal misdemeanor offenses shall be heard and determined only by the judge of the District Court, consistent with the provisions of the Law and Order Code, 17 N.N.C., and all other applicable laws, court rules and regulations of the Navajo Nation.

History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

Cross References

17 N.N.C. § 201 *et seq.*

Library References

Courts ⇌ 195.

Indians ⇌ 32(7).

Westlaw Topic Nos. 106, 209.

C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

§ 103. Deposit to and appropriation of general funds

All fees, assessments, fines, penalties and forfeitures imposed and collected under this title shall be deposited to and appropriated from the general funds of the Navajo Nation, to designated established accounts as directed and approved by resolution of the Navajo Nation Council, toward the funding of Law Enforcement, Public Safety and Navajo Nation Court functions relating to enforcement and implementation of this title, including appointment of traffic hearing officers as provided herein.

History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

Library References

Indians ⇌ 32(4.1).

Westlaw Topic No. 209.

§ 104. Civil compromise dismissal

A. In any pending action based upon a complaint or citation for any civil infraction under this title (except when the applicable statute authorizes the

Court to order restitution in addition to the civil assessment provided) the judge of the District Court may dismiss such pending action, upon motion filed by the defendant together with the sworn stipulation and acknowledgment by all parties claiming injury or damage resulting therefrom, of receipt from defendant of full compensation and satisfaction therefor.

B. This section shall not authorize such dismissal by any traffic hearing officer; nor shall any pending citation or complaint for any misdemeanor offense hereunder be dismissed upon such grounds.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Criminal Law ☞303.30(4).
Indians ☞32(13).

Westlaw Topic Nos. 110, 209.
C.J.S. Indians § 157.

§ 105. Definitions

The definitions contained herein shall apply to all chapters of Title 14 and the laws in this title shall be referred to as the Navajo Nation Motor Vehicle Code, unless the context otherwise requires:

A. "Abandoned vehicle" means a vehicle or motor vehicle left unattended on either private or public property, for an unreasonable length of time, which, after being reported to a law enforcement agency, has been discovered by that agency:

1. Not to have been stolen; and
2. Not capable of the establishment of legal ownership by normal record-checking procedures; and
3. The legal ownership of which is not claimed or asserted by any person.

B. "All terrain vehicle" means every motor vehicle having seat or saddle for the use of a rider designed to travel on three or more wheels in contact with the ground.

C. "Authorized emergency vehicle" means properly marked vehicles of a fire department, police vehicles, and ambulances or other emergency vehicles designated or authorized as such by the Navajo Nation, the State of Arizona, the State of New Mexico, the State of Utah or the United States Government and with authorized emergency equipment in operation.

D. "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than sixteen (16) inches in diameter or having three wheels in contact with the ground any of which is more than sixteen (16) inches in diameter.

E. "Cargo tank" means any tank designed to be permanently attached to any motor vehicle and in which is to be transported any flammable liquid or compressed gas solely for the transportation and delivery of such liquid or gas.

F. "Crosswalk" means:

1. That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the travelable roadway.

2. Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

G. "Cushion tire" means an air-filled tire.

H. "Division" means the Navajo Division of Public Safety.

I. "Drag race" means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

J. "Driver" means every person who drives or is in actual physical control of a motor vehicle, including a motor-driven cycle, upon a highway or any lands under the jurisdiction of the Navajo Nation or who is exercising control over or steering a vehicle being towed by a motor vehicle.

K. "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows and mowing machines and other implements of husbandry.

L. "First offender" means a person who has been convicted once in a trial court under tribal, state or federal law or municipal ordinance of the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which renders the person incapable of driving a motor vehicle. This includes a person who pled guilty to the charge or pled *nolo contendere* to the charge whether or not his or her sentence was suspended or deferred, or a person who was convicted, pled guilty or pled *nolo contendere*, but had such conviction dismissed by virtue of his or her attendance at, and successful completion of, a driver rehabilitation program or a "Driving-While-Intoxicated School".

M. "Freight trailer" means any trailer, semitrailer or pole trailer drawn by a truck which has a gross vehicle weight of more than twenty-six thousand (26,000) pounds. The term does not include house trailers, trailers of less than one (1) ton carrying capacity used to transport animals, or fertilizer trailers of less than three thousand five hundred pound (3,500 lb.) empty weight.

N. "Gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon.

O. "Highway" or "street" means the entire width between the boundary lines of every way within the jurisdiction of the Navajo Nation when any part thereof is open to the use of the public for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

P. "Improved highway" means a highway paved with cement concrete or asphaltic concrete, or having a hard surface and distinct roadway not less than four (4) inches thick, made up of a mixture of rock, sand or gravel, bound together by an artificial binder other than natural soil.

Q. "In bulk" means the transportation of any loose materials in a motor vehicle when such materials are not packed in individual packages or containers.

R. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two (2) highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two (2) roadways thirty (30) or more feet apart, then every crossing of each roadway of such divided intersecting highway shall be regarded as a separate intersection. If the intersection highway also includes two (2) roadways thirty (30) or more feet apart, then every crossing of two roadways of the highway shall be regarded as a separate intersection.

S. "Laned roadway" means a roadway which is divided into two (2) or more clearly marked lanes for vehicular traffic.

T. "Mobile home" means a house trailer other than one (1) held as inventory for sale or resale by a registered dealer, that exceeds either a width of sixteen (16) feet and/or a length of seventy-two (72) feet, when equipped for the road.

U. "Moped" means a two-wheeled (2) or three-wheeled (3) vehicle having fully operative pedals for propelling by human power, an automatic transmission and a motor having a piston displacement of less than fifty (50) cubic centimeters which is capable of propelling the vehicle at a maximum speed of not more than twenty-five (25) miles an hour on level ground.

V. "Motorcycle" means every motor vehicle having a seat or saddle for the use of a rider designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor.

W. "Motor vehicle" means every vehicle which is self-propelled by the use of an internal combustible engine, electricity or motor vehicle fuel.

X. "Negligence" means the failure to use a reasonable degree of care which an ordinary prudent person would exercise under the circumstances, which failure results in injury to persons or damage to the property of another.

Y. "Official traffic-control devices" means all signs, signals markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning or guiding traffic.

Z. "Operator" means a person other than a chauffeur, who drives or is in actual physical control over a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

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AA. "Owner" means a person who holds the legal title of a vehicle or, if a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement.

BB. "Park" if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of, and while actually engaged in loading or unloading.

CC. "Passenger vehicle" means a motor vehicle with motor power designed to carry passengers; this does not include motorcycles, trailers or vehicles constructed on a truck chassis with a gross vehicle weight of more than ten thousand (10,000) pounds.

DD. "Pedestrian" means any person afoot. A person who is not ambulatory and is in a wheelchair is considered a pedestrian.

EE. "Person" means every natural person, firm, co-partnership, association or corporation.

FF. "Police or law enforcement officer" means every officer duly authorized or commissioned by the authority of the Navajo Nation to direct or regulate traffic or to enforce or to make arrests for violations of the Navajo Nation Motor Vehicle Code.

GG. "Public transit" or "Mass transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus, taxi or any vehicle not operated on a scheduled route basis.

HH. "Race" means the use of one or more vehicles to outgain or outdistance another vehicle from passing, to arrive at a given destination ahead of another vehicle, or to test the physical or mental stamina or endurance of drivers over long-distance routes.

II. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. "Right-of-way" when used within the context of the real property upon which transportation facilities and appurtenances to such facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

JJ. "Recreational vehicle" shall include all vehicles primarily used or designed for recreational purposes such as camper trailers, motor homes and all towed vehicles.

KK. "Repeat offender" means a person who, under tribal law, state law, federal law or municipal ordinance, has been convicted, pled *nolo contendere* or pled guilty to the charge of driving a motor vehicle while under the influence of intoxicating liquor, narcotic drug or any other drug which rendered him or her incapable of safely driving a motor vehicle, and who was previously a "first offender" as defined in this section or whose sentence was suspended or deferred, or the deferred sentence was subsequently dismissed.

LL. "Roadway" shall mean that portion of a thoroughfare (route) improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder.

MM. "Safety glazing materials" means glazing materials so constructed, treated or combined with other materials as to reduce substantially in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

NN. "Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

OO. "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

PP. "School bus" means any motor vehicle operating under the jurisdiction of a school district, private school, parochial school, community school, government school, or contract school which is used to transport children, students or teachers to and from school, or to and from any school activity, including any vehicle but not:

1. Operated by a common carrier, or private mass transit system subject to and meeting all federal requirements and not used exclusively for the transportation of pupils; or
2. Operated solely by a governmental-owned public transit authority, if the public transit authority meets all applicable federal requirements and safety requirements of the applicable school district but is not used exclusively for transportation of pupils.

QQ. "Semi-trailer" means any vehicle without mechanical power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

RR. "Shoulder" means the area immediately adjacent to the edge of a paved road.

SS. "Single axle load" means the total load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes forty (40) inches or less apart extending across the full width of the vehicle.

TT. "Solid tire" means a tire filled with matter and not hollow.

UU. "Stop", if required, means complete cessation from movement.

VV. "Stop, stopping or standing", if prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic-control sign or signal.

WW. “Tandem axle load” is the total-load transmitted to the road by all wheels whose centers are included between two (2) parallel transverse vertical planes more than forty (40) inches apart but less than one hundred twenty (120) inches apart, extending across the full width of the vehicle.

XX. “Tank motor vehicle” means any motor vehicle designed or used for the transportation of liquids or gases covered by these regulations in any cargo tank.

YY. “Traffic” means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together while using any highway for purposes of travel.

ZZ. “Traffic-control signal” means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

AAA. “Through highway” means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected, as provided in this chapter.

BBB. “Truck” means any motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, platform or other equipment for such carrying.

CCC. “Truck tractor” means any motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle, and load down.

DDD. “Vehicle” shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame chassis or body of any vehicle or motor vehicle except devices driven by human power or used exclusively upon stationary rails or tracks.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Note. Slightly reworded for purposes of statutory form.

Library References

Automobiles ⇄1.
Indians ⇄32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1 to 14, 1296.

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Subchapter 1. General Application

Section

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- 421. Traffic laws apply to persons riding bicycles
- 422. Riding on bicycles
- 423. Clinging to vehicles
- 424. Riding on roadways and bicycle paths; prohibition of motor vehicle traffic on bike path
- 425. Carrying articles
- 426. Lamps and other equipment on bicycles

Subchapter 1. General Application

§ 200. Enforcement

The Navajo Police, and other police officers authorized by the Navajo Nation, shall be responsible for the enforcement of all regulations, rules and controls as established in this chapter.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄349(11).
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 48A, 209.

§ 201. Valid state driver’s license required

Any person operating a motor vehicle within the jurisdiction of the Navajo Nation must possess a valid state driver’s license.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Note. Section 201 should be read concurrently with 14 N.N.C. § 1701.

Library References

Automobiles ⇄137.
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 256, 258, 262 to 267.

§ 202. Authorized emergency vehicles

A. The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of law, or when responding to, but not upon returning from a fire alarm, is exempt from the requirements in this chapter.

B. The provisions of this section shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all

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persons, nor shall these provisions exempt any party from the consequences of his or her reckless disregard for the safety of others.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞175. Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1). C.J.S. Motor Vehicles §§ 756 to 757.

§ 203. Traffic laws apply to persons riding animals or driving animal-drawn vehicles

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Highways ☞165TO 200K1.
Indians ☞32(4.1).
Westlaw Topic Nos. 200, 209.

§ 204. Provisions of chapter uniform throughout the Navajo Nation

The provisions of this chapter shall be applicable and uniform throughout the territory under the jurisdiction of the Navajo Nation.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞9. Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1). C.J.S. Motor Vehicles §§ 34 to 35, 53.

§ 205. Civil assessment fee

A. It shall be a civil infraction for any person to violate any of the provisions of this chapter.

B. Any person violating any provision of this chapter within the territorial jurisdiction of the Navajo Nation shall be subject to a civil assessment fee of not less than thirty-seven dollars and fifty cents (\$37.50) nor more than five hundred dollars (\$500.00) for any infraction for which a specific assessment fee is not stated.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞359.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1336, 1352, 1380, 1414 to 1419, 1451 to 1452, 1484, 1503, 1510, 1539.
Penalties ☞3.	C.J.S. Penalties § 4.
Westlaw Topic Nos. 48A, 209, 295.	

§ 206. Traffic control devices and signs

A. The appropriate Department of the Navajo Nation, is authorized to place and maintain traffic-control devices and weigh stations upon or within the right-of-way or vicinity of the streets, roadways and bridges of the Navajo Nation.

B. No person shall place or maintain any traffic-control device or sign upon or near any highway, roadway or bridge under the jurisdiction of the Navajo Nation, except upon advance permission granted by the appropriate authority of the Navajo Nation and only when in conformance and compliance with all applicable Tribal and federal laws.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞279.	C.J.S. Motor Vehicles §§ 444, 446 to 447, 451, 455, 458, 489 to 490.
Indians ☞32(4.1).	
Westlaw Topic Nos. 48A, 209.	

Subchapter 3. Accidents

§ 220. Duty upon striking unattended vehicle

The driver of any vehicle which collides with or otherwise causes damage to any vehicle left unattended shall immediately stop and either locate and notify the operator or owner of the vehicle or shall leave in a conspicuous place in or on the vehicle damaged, a written notice giving the name and address of the driver and the owner of the vehicle causing the damage. The driver of the vehicle shall report the accident as required by § 222 hereof.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	

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C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 221. Duty upon striking fixtures upon a highway

The driver of any vehicle involved in an accident resulting only in damage to fixtures or other property legally upon or adjacent to a roadway shall take reasonable steps to locate and notify the owner or person in charge of the property of that fact. The driver shall give his or her name, address and the registration number of the vehicle he or she is driving, and shall upon request exhibit his or her operator's or chauffeur's license and shall make report of the accident as required by § 222 hereof.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨336.
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 222. Written reports of accidents

A. The driver of any vehicle involved in an accident resulting in bodily injury to or death of any person or total property damage to an apparent extent of three hundred dollars (\$300.00) or more shall immediately file a written report of the accident with the Division of Public Safety, as required under this subchapter.

B. The Division of Public Safety may require any driver of a vehicle involved in an accident requiring the completion and filing of a report as provided under this subchapter, to file supplemental reports when the original report is deemed insufficient in the opinion of the Division, and the Division may also require witnesses to accidents to render reports and or statements as deemed appropriate by the Division.

C. Every law enforcement officer who investigates a motor vehicle accident requires a report to be made and filed as provided under this subchapter, either at the time of and at the scene of the accident or thereafter by interviewing passenger(s) or witnesses shall, within seventy-two (72) hours after said accident, complete and submit a written report of the accident. The original copy of the report shall be retained by the Division. The Division shall stamp the date and hour received and may place such notes, date stamps, identifying numbers, marks or other information on such copies as required, provided that it will not alter the original information as reported by the investigating officer. Copies of the report form shall be made available to the parties involved at a charge established by the Division.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 223. Notice to parents or legal guardian of minor involved in motor vehicle accident

Every law enforcement officer who makes the initial investigation of a motor vehicle accident in which a minor was involved, shall inquire and attempt to determine or locate the telephone number and address of the parents or legal guardian of that minor and shall make every reasonable effort to notify or have the parents or legal guardian notified of the accident immediately or as soon as possible, upon securing the scene of the accident and determining that required arrangements have been made for the transportation and/or care of the injured party(ies).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Indians ☞32(4.1).
Infants ☞11.5.
Westlaw Topic Nos. 209, 211.

§ 224. When driver is unable to report

A. When the driver of a vehicle is physically incapable of making an immediate report of an accident as required in § 712 of Chapter 5, and there is another occupant in the vehicle at the time of the accident capable of making a report, that occupant shall make or cause the report to be made.

B. When the driver is physically incapable of making a written report of an accident as required in § 222 hereof, and the driver is not the owner of the vehicle, then the owner of the vehicle involved in the accident shall immediately make a report upon being informed.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 225. Accident report forms

A. The Division of Public Safety, through a designated duly authorized department shall prepare, and upon request, supply to law enforcement officers and other suitable agencies or individuals, forms for accident reports required under this chapter. The written reports to be made by persons involved in accidents and by investigating officers shall include space for sufficiently

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detailed information regarding a traffic accident including disclosure of all causes, weather and road conditions, the location of the accident and identification of an persons, witnesses and vehicles involved, injuries (if any), damage(s) observed, photo(s) and relevant statements, measurements and diagrams depicting the physical scene and all other relevant information.

B. Every accident report required to be made in writing shall be made on the appropriate form approved by the Division and shall contain all of the information required therein.

C. Every accident report shall contain information sufficient to enable the Division to determine whether the requirements for the deposit of security under any of the laws of the Navajo Nation are applicable by reasons of the existence of insurance or other exceptions specified therein.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ↻336. Westlaw Topic Nos. 48A, 209.
Indians ↻32(4.1). C.J.S. Motor Vehicles §§ 1488 to 1504.

§ 226. Accident reports confidential; exceptions

A. All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual reporting. The Division may disclose:

1. The identities of the parties involved in an accident; and
2. The fact that the owner or operator of a motor vehicle involved in the accident is or is not insured and if he or she is insured, the name and address of the insurance carrier.

B. The Division shall furnish upon demand of any person or their lawfully authorized representative who has or claims to have made a report or upon the demand of any court, a certificate showing that a specified accident report has or has not been made to the Division solely to prove compliance or a failure to comply with the requirement that a report be made to the Division.

C. The Division shall furnish a copy of the investigating officer’s accident report to the parties involved and to any court of competent jurisdiction.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Indians ↻32(4.1). C.J.S. Criminal Law §§ 449 to 450.
Records ↻30TO 326K35. C.J.S. Records §§ 74 to 92.
Westlaw Topic Nos. 209, 326.

§ 227. Garages, dealers and wreckers of vehicles to report

The person in charge of any garage, repair shop, dealership or wrecker services for vehicles, to which any motor vehicle is brought showing recent evidence of having been involved in an accident which is required to be reported, as provided by this chapter, or struck by any bullet shall report to the Division within twenty-four (24) hours after such motor vehicle is received. The engine number, registration number and the name and address of the owner or operator of such vehicle shall be reported to the Division. Non-compliance may result in the loss of business license.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞368.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1585 to 1626.

Subchapter 5. Speed Regulations**§ 240. Speed regulation**

- A. No person shall operate a vehicle on a roadway at a speed greater than:
1. Fifteen (15) miles per hour when passing a school or leaving school, and when the school zone is properly posted;
 2. Twenty-five (25) miles per hour in any business or residential district;
 3. The maximum posted speed as provided under § 241 herein; and
 4. Fifty-five (55) miles per hour on highways in open country, or as otherwise posted.

B. No person shall drive a motor vehicle at such speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞168(2).
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 590 to 592.

§ 241. Speed zone

A. The director of any agency having authority to maintain any roadway on the Navajo Nation is hereby empowered to do the following:

1. To determine upon the basis of an engineering survey and traffic investigation that any speed limit established by law is greater or less than is

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reasonable and safe under the conditions found to exist upon any part of such roadway; and

2. To determine and declare a reasonable and safer maximum speed as well as a variable safer limit for such location, which shall be in effect when appropriate signs giving notice thereof are erected.

B. The agency establishing a speed zone under this section shall be responsible for erecting at the beginning of each such zone, both a sign designating a maximum allowable speed within the zone, and at the end thereof a sign bearing either the legend "Resume Speed" or setting forth a new maximum speed limit.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄5(4). C.J.S. Motor Vehicles §§ 47 to 48, 50, 63 to
Indians ⇄32(4.1). 68.
Westlaw Topic Nos. 48A, 209.

§ 242. Special speed limitations

A. No person shall drive any vehicle equipped with solid tires at a speed greater than ten (10) miles per hour.

B. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a roadway at a speed which is greater than the maximum posted speed.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄168(2). C.J.S. Indians § 157.
Indians ⇄32(13). C.J.S. Motor Vehicles §§ 590 to 592.
Westlaw Topic Nos. 48A, 209.

§ 243. Classification of complaint of excessive speed as alleging civil or criminal infractions

A. In every complaint for exceeding the lawful speed limitation established in accordance with the regulations in this chapter, the complaint shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. In addition to those violations which are expressly designated in this chapter as criminal offenses, the Courts may elect to classify any complaint for speeding more than fifteen (15) miles per hour in excess of the posted or otherwise applicable speed limit; or any complaint alleging the violation of any speed regulation which violation causes or contributes to an accident resulting

in any injury to the person or damage to the property of another or others, in excess of three hundred fifty dollars (\$350.00), as alleging a misdemeanor violation or violations.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Action ☞18.	C.J.S. Actions § 68.
Automobiles ☞331, 359.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1336, 1352, 1358, 1380, 1414 to 1419, 1435 to 1453, 1484, 1503, 1510, 1539.
Westlaw Topic Nos. 13, 48A, 209.	

Subchapter 7. Traffic Signs and Signals

§ 260. Obedience to traffic-control devices

The driver of any vehicle shall obey the instructions of any official traffic-control device placed by the authority or official having jurisdiction, unless otherwise directed by a traffic or police officer, subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞335.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1541, 1543, 1548, 1551 to 1552.
Westlaw Topic Nos. 48A, 209.	

§ 261. Traffic control signal legend

A. When traffic is controlled by traffic control signals showing different colored lights, or colored lighted arrows, either one-at-a-time or in combination, only the colors green, red, and yellow shall be used, except for special pedestrian signals carrying a word legend. Such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:
 - a. Vehicular traffic facing a green signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is shown.
 - b. Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other

movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

c. Unless otherwise directed by a pedestrian control signal, as provided in § 262 herein, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

a. Vehicular traffic facing a steady yellow signal is being warned that the related green indication is being terminated or that a red indication will be shown immediately thereafter when vehicular traffic shall not enter the intersection.

b. Pedestrians facing a steady yellow signal, unless otherwise directed by pedestrian control signals as provided in § 262, are thereby advised that there is not enough time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

3. Red indication:

a. Vehicular traffic facing a steady red signal alone shall stop at a clearly marked stop-line before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain at a standstill or stopped until an indication to proceed is shown except as provided in subdivision (b) of this paragraph.

b. The driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk on either side of the intersection or, if there is no crosswalk then at the entrance to the intersection, in obedience to a red signal, may make a right turn, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal. Right turns may be prohibited against a red signal at any intersection when a sign is erected at the intersection prohibiting such turn.

c. Unless otherwise directed by a pedestrian control signal as provided in § 262, pedestrians facing a steady red signal shall not enter the roadway.

B. If an official traffic control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of a sign or marking, the stop shall be made at the signal.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞171(9), 335.

Indians ☞32(4.1, 13).

Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.

C.J.S. Motor Vehicles §§ 710 to 713, 723,
725, 1541, 1543, 1548, 1551 to 1552.

§ 262. Pedestrian control signals; loitering prohibited

A. When pedestrian control signals exhibiting the words “Walk” or “Don’t Walk” are in place, the signals shall indicate as follows:

1. “Walk”. Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of vehicles.

2. “Don’t Walk”. No pedestrians shall start to cross the roadway in the direction of the signal, but any pedestrian who has partially completed his or her crossing on the “walk” signal shall proceed to a sidewalk or safety island while the “don’t walk” signal is showing.

B. A pedestrian shall not loiter or unduly delay crossing the roadway after traffic has stopped to give the right-of-way.

C. Failure to comply with this section may result in the imposition of a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞217.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles § 895.

§ 263. Flashing signals

When an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

A. Flashing red (stop signal). When a red light shows rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit-line when marked, or if none, then before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

B. Flashing yellow (caution signal). When a yellow light shows rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞355.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles § 1545.

§ 264. Display of unauthorized signs, signals or markings

A. No person shall place, maintain or display upon or in view of any highway any unauthorized sign, signal, marking or device which is a copy of or looks similar to an official traffic-control device or railroad sign and signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal. No person shall place upon any traffic sign or signal any commercial advertising or political campaign literature. This section shall not prohibit the erection upon private property adjacent to highways, of signs giving useful directional information and of a type that cannot be mistaken for official signs.

B. Every such prohibited sign, signal, or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the highway, including police officers of the Division, is empowered to remove the same or cause it to be removed without notice.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Highways ⇌ 153.5, 157.
Indians ⇌ 32(13).

Westlaw Topic Nos. 200, 209.
C.J.S. Indians § 157.

§ 265. Interference with official traffic-control devices or railroad signs or signals

A. No person shall without lawful authority alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription shield or insignia thereon, or any part thereof.

B. Restitution. The court, in addition to or in lieu of any assessment imposed, may require any person found in violation of this section, to pay to the Navajo Nation the full cost of replacing such traffic-control device or railroad sign or signal as is damaged or defaced.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Highways ⇌ 153.
Indians ⇌ 32(13).

Westlaw Topic Nos. 200, 209.
C.J.S. Indians § 157.

Subchapter 9. Right-of-Way

§ 280. Vehicle approaching or entering intersections; right-of-way; exception

A. When two vehicles enter or approach an intersection from different streets or roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This paragraph does not apply to vehicles approaching or entering an uncontrolled “T” intersection when the vehicle on the left is on a continuing street or roadway and the vehicle on the right is on the terminating street or roadway. The vehicle on the terminating street or roadway shall yield to the vehicle on the continuing street or roadway.

B. The right-of-way rule in subsection (A) of this section is modified at through-highways, and otherwise as stated in this chapter.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞171(4).	C.J.S. Motor Vehicles §§ 729 to 730, 732, 734
Indians ☞32(4.1).	to 739, 741 to 742, 744 to 746, 748.
Westlaw Topic Nos. 48A, 209.	

§ 281. Vehicle turning left at intersection

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞171(12).	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 751 to 755.

§ 282. Vehicles entering stop or yield intersection

A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in this chapter.

B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a “stop” intersection indicated by a stop sign shall stop. After having stopped, the driver shall “yield” the right-of-way to any vehicle which has entered the intersection from another roadway or which is approaching so closely on the roadway as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.

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C. The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his or her failure to yield right-of-way.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌171. Westlaw Topic Nos. 48A, 209.
Indians ⇌32(4.1). C.J.S. Motor Vehicles § 749.

§ 283. Vehicle entering roadway from private road or driveway

The driver of a vehicle about to enter or cross a roadway from a private road or driveway shall yield the right-of-way to an closely approaching vehicles on the roadway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌167. Westlaw Topic Nos. 48A, 209.
Indians ⇌32(4.1). C.J.S. Motor Vehicles §§ 684 to 692.

Subchapter 11. Driving; Overtaking; Passing

§ 300. Overtaking a vehicle on the left

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules stated in this subchapter.

A. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe speed and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

B. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on signal light at daytime or blinking of head lamp at nighttime, and shall not increase speed of his or her vehicle until completely passed by the overtaking vehicle.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞172.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 629 to 630, 633.

§ 301. When overtaking on the right is permitted

A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.
2. Upon a street or roadway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction.
3. Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions allowing the movement in safety. In no event shall the movement be made by driving off the pavement or main-traveled portion of the roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞172.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 629 to 630, 633.

§ 302. Limitations on overtaking on the left

No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event, the overtaking vehicle must return to the right-hand side of the roadway before coming within two hundred and fifty (250 ft.) feet of any vehicle approaching from the opposite direction.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

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Library References

Automobiles ⇨172.
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 629 to 630, 633.

§ 303. Further limitations on driving to left of center of roadway

A. No vehicle shall at any time be driven to the left side of the center of the roadway under the following conditions:

1. When approaching the crest of a grade or upon a curve in the roadway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When approaching within one hundred (100 ft.) feet of or traversing any intersection or where appropriate signs or markings have been installed to define a no passing zone.

3. When the view is obstructed upon approaching within one hundred (100 ft.) feet of any bridge, viaduct or tunnel.

B. The limitations set forth in subsection (A) of this section shall not apply upon a one-way roadway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨153, 170(2).
Indians ⇨32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 545, 547 to 553, 556
to 567, 613 to 614, 1299.

§ 304. No passing zones

The agency of appropriate jurisdiction is authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway indicate the beginning and end of such zones; and when the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions thereof.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨172(2).
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles § 632.

§ 305. Driving on roadways laned for traffic

When any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this section shall apply:

A. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane, until the driver has first made sure that the movement can be made with safety.

B. Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, or in preparation for a left turn or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is sign-posted to give notice of the allocation.

C. Official signs may be posted directing slow-moving traffic to use a designated lane, or designating those lanes to be used by traffic moving in a particular direction, regardless of the center of the roadway. Drivers of vehicles shall obey the directions of such signs.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ↻335.	C.J.S. Motor Vehicles §§ 1541, 1543, 1548,
Indians ↻32(4.1).	1551 to 1552.
Westlaw Topic Nos. 48A, 209.	

§ 306. Following too closely

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable, having due regard for the speed of the vehicle and the traffic upon and the condition of the roadway.

B. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residential district and when following another motor truck or motor vehicle drawing another vehicle shall, when conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy the space between them without danger.

C. Motor vehicles being driven upon any roadway outside of a business or residential district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow enough space between each vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy the space without danger. The provisions of this subsection shall not apply to funeral processions.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ↻168(1, 2).	C.J.S. Motor Vehicles §§ 580, 582, 585, 588,
Indians ↻32(4.1).	590 to 592, 596 to 599, 720.
Westlaw Topic Nos. 48A, 209.	

§ 307. Driving on divided roadway

When any roadway has been divided into two roadways by leaving an intervening space or by a physical barrier or by clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across or within the dividing space, or barrier except through an opening in the physical barrier or dividing section, or at a crossover or intersection established by public authority.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Note. Slightly reworded for purposes of statutory form.

Library References

Automobiles ☞153, 170(2).
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 545, 547 to 553, 556 to 567, 613 to 614, 1299.

§ 308. Restricted access

No person shall drive a vehicle onto or from any controlled access roadway except at established entrances and exits.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞3, 355.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 1, 1545.

§ 309. Drive on right side of roadway; exceptions

A. Upon all roadways of sufficient width a vehicle shall be driven upon the right-half of the roadway, and where practicable, entirely to the right of the center thereof, except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
2. When the right-half of a roadway is closed to traffic while under construction, repair or when an accident has occurred hindering traffic;
3. Upon a roadway divided into three marked lanes for traffic under the applicable rules; or
4. Upon a roadway designated and sign-posted for one-way traffic.

B. Upon all roadways, any vehicle proceeding at less than the normal speed of traffic shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞153, 170(2).
 Indians ☞32(4.1).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 545, 547 to 553, 556
 to 567, 613 to 614, 1299.

Subchapter 13. Turning, Starting and Signals on Stopping and Turning

§ 320. Required position and method of turning at intersections

The driver of a vehicle intending to turn at an intersection shall do so as follows:

A. The approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

B. When making a left turn from a two-way road onto a two-way road, the driver shall use the lane closest to the centerline. When entering the intersection, the driver, if possible shall drive to the left of the center of the intersection and proceed cautiously to the lane closest to the center lane on the right of the road which the driver is entering.

C. When making a left turn into and/or from a one-way road, the driver shall use the extreme left-hand lane and enter the extreme left-hand lane available in the direction he or she is going upon the road being entered.

D. Upon a roadway with two (2) or more lanes for through-traffic in each direction, where a center turning lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left into the other lane. A vehicle shall not be driven in the center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this section.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞171(12).
 Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
 C.J.S. Motor Vehicles §§ 751 to 755.

§ 321. Turning on curve or crest of grade prohibited

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred (500 ft.) feet.

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History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞171(12).
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 751 to 755.

§ 322. Starting parked vehicle

No person shall move a vehicle which is stopped, standing or parked unless and until the movement can be made with reasonable safety.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞173(2, 8).
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 661 to 666, 695 to 704.

§ 323. Turning movements and required signals

A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway, as required in § 320, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway, unless and until the movement can be made with reasonable safety. No person shall turn any vehicle without giving an appropriate signal in the manner provided by this chapter in the event any other traffic may be affected by the movement.

B. A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred (100 ft.) feet traveled by the vehicle before turning.

C. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided by this chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞151, 169.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 531, 574 to 577, 600 to 602, 604 to 612, 751 to 755.

§ 324. Signal device

A. Any required stop or turn signal shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device except as otherwise provided in subsection (B).

B. Any motor vehicle in use on a highway shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds twenty-four (24) inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds fourteen (14 ft.) feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ↻151.	Westlaw Topic Nos. 48A, 209.
Indians ↻32(4.1).	C.J.S. Motor Vehicles §§ 531, 574 to 577.

§ 325. Method of giving hand and arm signals

All signals required by this chapter to be given by hand and arm shall be given from the left side of the vehicle in the following manner and the signals shall indicate as follows:

- A. Left turn: Hand and arm extended horizontally.
- B. Right turn: Hand and arm extended upward.
- C. Stop or decrease speed: Hand and arm extended downward.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ↻151.	Westlaw Topic Nos. 48A, 209.
Indians ↻32(4.1).	C.J.S. Motor Vehicles §§ 531, 574 to 577.

Subchapter 15. Standing and Parking

§ 340. Stopping, standing or parking outside of business or residential district

A. Upon any roadway outside of a business or residential district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the roadway when it is practicable to stop, park or leave the vehicle off that part of the roadway. In any event, an

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unobstructed width of the roadway opposite a standing vehicle shall be left for the free passage of other vehicles, and a clear view of the stopped vehicles shall be available from a distance of two hundred (200 ft.) feet in each direction upon the roadway.

B. This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a roadway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in such position.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞12. C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to
Indians ☞32(4.1). 58, 60 to 62.
Westlaw Topic Nos. 48A, 209.

§ 341. Officers authorized to remove illegally stopped vehicles

A. When any police officer finds a vehicle standing upon a roadway in violation of the provisions of § 340, the Officer is authorized to move the vehicle, or require the driver or other person in charge of the vehicle to move it to a position off the paved or main-traveled part of the roadway.

B. Any police officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any roadway, bridge, causeway, or in any tunnel, in such position or under such circumstances as to obstruct the normal movement of traffic.

C. Any police officer is authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a roadway:

1. When a report has been made that such vehicle has been stolen or taken without the consent of the owner;
2. When the person or persons in charge of such vehicle are unable to provide for its custody or removal;
3. When a vehicle is “abandoned” for an unreasonable length of time and legal ownership can neither be established by normal record keeping procedures nor is asserted or claimed by any person; or
4. When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested immediately into custody.

D. Any police officer shall conduct a thorough inventory of property found in a vehicle upon the arrest of the person driving or in control of the vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞349(2.1).
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

§ 342. Stopping, standing or parking in specified places

No person shall stop, stand or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

- A. On a sidewalk;
- B. In front of a public or private driveway;
- C. Within an intersection;
- D. Within twenty (20 ft.) of a fire hydrant;
- E. On a crosswalk;
- F. Within thirty feet (30 ft.) of a crosswalk at an intersection;
- G. Within thirty feet (30 ft.) upon the approach to any flashing beacon, stop sign, yield sign or traffic-control sign located along the side of the roadway;
- H. Between a safety zone and the adjacent curb or within thirty feet (30 ft.) of points on the curb immediately opposite the ends of a safety zone, unless local authorities indicate a different length by signs or markings;
- I. Within fifty feet (50 ft.) of the nearest rail or railroad crossing, except while a motor vehicle with automotive power is loading or unloading railroad cars;
- J. Within thirty feet (30 ft.) of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet (75 ft.) of the entrance when properly posted;
- K. Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
- L. On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
- M. Upon any bridge or other elevated structure upon a roadway or within a roadway tunnel;
- N. At any place where official signs prohibit standing or stopping; or
- O. At any parking space designated for disabled persons.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞112.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 146 to 149.

§ 343. Parking privileges for physically disabled

A physically disabled person who displays upon the motor vehicle parked by him or her, or under his or her direction and for his or her use, a distinguishing insignia provided for in this section, or number plates bearing the international wheelchair symbol may park except as provided in §§ 340 and 342 herein and § 506 of Chapter 3, except where such parking would create a dangerous situation or impede the normal flow of traffic. The distinguishing insignia or number plates bearing the international wheelchair symbol shall be displayed on or in the motor vehicle in the manner prescribed by the Division.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞12.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to 58, 60 to 62.

§ 344. Additional parking regulations

A. Except as otherwise provided in this section every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of the vehicle parallel to and within (18) inches of the right-hand curb.

B. The parking of vehicles with the left-hand wheels adjacent to and within eighteen (18) inches of the left-hand curbs of a one-way roadway shall be permitted only within those areas properly posted as authorized parking zones.

C. A vehicle may be angle-parked only within those areas properly posted or marked as allowing angle-parking, except that angle-parking shall not be permitted on any federal-aid or state highway unless the jurisdictional governmental agency has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle-parking without interfering with the free movement of traffic.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞12.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to 58, 60 to 62.

Subchapter 17. Special Stops Required

§ 360. Authority to designate stop and yield intersection

A. The authorities with roadways under their jurisdiction may designate through roadways and post “stop” or “yield” signs at specified entrances thereto or may designate any intersection as a “stop” or “yield” intersection and post like signs at one or more entrances to the intersection.

B. Every driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersection roadway where the driver has a view of approaching traffic on the intersecting roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞160, 279.	C.J.S. Motor Vehicles §§ 444, 446 to 447,
Indians ☞32(4.1).	451, 455, 458, 489 to 490, 771.
Westlaw Topic Nos. 48A, 209.	

§ 361. Emerging from alley or private driveway

The driver of a vehicle within a business or residential district emerging from an alley, driveway or building shall stop the vehicle immediately prior to driving onto a sidewalk or into the sidewalk area extending across any alleyway or private driveway. The driver shall yield the right-of-way to pedestrians as may be necessary to avoid collision and upon entering a road, shall yield the right-of-way to all closely approaching vehicles on the roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞167.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 684 to 692.

§ 362. Duty when approaching horse-drawn vehicles and livestock

Every person operating a motor vehicle upon any public roadway and approaching any horse-drawn wagon, or any horse upon which any person is riding, or livestock being driven upon the highway, shall exercise reasonable precaution to prevent frightening and to safeguard such animals, and to insure the safety of any person riding or driving the same.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨217.
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 818, 826 to 828.

Subchapter 18. Pedestrians' Right and Duties

§ 370. Pedestrians subject to traffic regulations

Pedestrians shall obey traffic control signals at intersections; where no signals are in place pedestrians shall have the right-of-way subject to the restrictions in this chapter.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨217.
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles § 895.

§ 371. Pedestrians right-of-way in crosswalks

A. When traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slow down or stop if necessary, to allow a pedestrian to cross the roadway within a crosswalk when the pedestrian is upon the same half of the roadway as the vehicle, or when the pedestrian is close enough on the other side to be in danger.

B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

C. When any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨160(4), 217.
Indians ⇨32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 782 to 783, 895.

§ 372. Crossing at other than crosswalks

Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨217.	Westlaw Topic Nos. 48A, 209.
Indians ⇨32(4.1).	C.J.S. Motor Vehicles § 895.

§ 373. Pedestrians on roadways

All pedestrians shall exercise due caution and reasonable care when walking adjacent to a roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨218.	Westlaw Topic Nos. 48A, 209.
Indians ⇨32(4.1).	C.J.S. Motor Vehicles §§ 891 to 894.

Subchapter 21. Miscellaneous Provisions

§ 400. Riding on motorcycles

A. No person shall operate a motorcycle or motor-driven cycle upon a public street, road or highway in the Navajo Nation unless he or she has a valid motorcycle license.

B. A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the operator.

C. Any person operating a motorcycle not having a fixed windshield shall wear an eye protective device, which maybe a face-shield attached to a safety helmet, goggles or safety eyeglasses. All eye protective devices or windshields shall be of a type complying with appropriate state regulations or codes.

D. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed one hundred fifty dollars (\$150.00).

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨137, 327.	Westlaw Topic Nos. 48A, 209.
Indians ⇨32(13).	C.J.S. Indians § 157.

14 N.N.C. § 400

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C.J.S. Motor Vehicles §§ 256, 258, 262 to 267, 1433.

§ 401. Mandatory use of protective helmets

A. No person under eighteen (18) years of age shall operate or be a passenger on a motorcycle unless he or she is wearing a safety helmet securely fastened on his or her head in a normal manner as headgear and meeting the standards specified in applicable regulations or codes.

B. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed three hundred-seventy dollars (\$370.00).

History

CAP-40-00, April 20, 2000.
ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌327. C.J.S. Indians § 157.
Indians ⇌32(13). C.J.S. Motor Vehicles § 1433.
Westlaw Topic Nos. 48A, 209.

§ 402. Obstruction to driver’s view

A. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons as to obstruct the view of the driver to the front or sides or rear of the vehicle or as to interfere with the driver’s control over the driving mechanism(s) of the vehicle.

B. No passenger in a vehicle shall ride in such position as to interfere with the driver’s view ahead or to the sides or to the rear or to interfere with his or her control over the driving mechanism(s) of the vehicle.

C. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed one-hundred fifty dollars (\$150.00).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌324. C.J.S. Indians § 157.
Indians ⇌32(13). C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
Westlaw Topic Nos. 48A, 209. to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 403. Coasting prohibited

The driver of any motor vehicle when traveling upon a down-grade shall not coast with the clutch disengaged or with the motor off.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨147.
 Indians ⇨32(13).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
 C.J.S. Motor Vehicles §§ 504 to 505, 508, 547
 to 550, 552.

§ 404. Placing litter, glass or other objects on roadway

A. No person shall litter or deposit upon any roadway any paper, glass bottle, glass, nails, tacks, wire, cans or any other substance upon the roadway.

B. Any person who drops, or permits to be dropped or thrown, upon any roadway a destructive or injurious material shall immediately remove the same or cause it to be removed.

C. Any person removing a wrecked or damaged vehicle from a roadway shall remove any glass or other injurious substance dropped by the wrecked or damaged vehicle upon the roadway.

D. Any person who violates the provisions of this section shall be subject to a civil assessment fee of not more than five hundred dollars (\$500.00).

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Highways ⇨153.5.
 Indians ⇨32(13).

Westlaw Topic Nos. 200, 209.
 C.J.S. Indians § 157.

§ 405. Livestock on highways

A. It is unlawful for any person, during the hour of darkness, to ride a horse or other animal upon the shoulder or upon the traveled portion of any roadway which is normally used by motor vehicles.

B. It is unlawful for any person to permit livestock to wander or graze upon any fenced roadway at any time or to drive livestock along or upon any roadway which is normally used by motor vehicles during the hours of darkness.

C. Owners of livestock ranging in pastures through which unfenced roadways pass, shall not be liable for damages or injuries to persons or property caused by collisions of vehicles with livestock unless the owner of the livestock is guilty of negligence.

D. Any person who violates the provisions of this section shall be subject to a civil assessment fee not to exceed five hundred dollars (\$500.00).

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨178.

Indians ⇨32(13).

14 N.N.C. § 405

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Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 1296 to 1298.

Annotations

1. Liability

“Navajo law imposes a duty on drivers to exercise ‘reasonable precaution’ when approaching horse drawn vehicles and livestock. This Court has recognized a heightened standard of care for drivers in open range areas on the Navajo Nation. This heightened standard of

care, however, does not apply in a closed range area where a fence prevents livestock from trespassing onto an adjacent highway. Under these circumstances, a grazing permittee has a duty to contain her livestock inside the fenced area and off of the highways.” *Castillo, et al. v. Charlie, et al.*, 7 Nav. R. 181, 183–184 (Nav. Sup. Ct. 1995).

Subchapter 23. Operation of Bicycles and Play Vehicles

§ 420. Application of provisions

A. The parent(s) of a child or the guardian(s) of a ward who authorize or knowingly permit the child or ward to violate any of the provisions of this chapter may be found liable and assessed for each such violation.

B. The regulations of this chapter in their application to bicycles shall apply when a bicycle is operated upon any roadway or any path set-aside for the exclusive use of bicycles subject to those exceptions stated in this subchapter.

History

ACJN–131–88, June 29, 1988.
CMY–30–88, May 6, 1988.

Library References

Indians ⇌32(4.1).
Infants ⇌13.

Westlaw Topic Nos. 209, 211.
C.J.S. Infants §§ 5, 92 to 93, 95 to 98.

§ 421. Traffic laws apply to persons riding bicycles

Every person riding a bicycle upon a roadway shall be granted all the rights and shall be subject to all the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this subchapter and except as to those provisions of this chapter which by their nature can have no application.

History

ACJN–131–88, June 29, 1988.
CMY–30–88, May 6, 1988.

Library References

Automobiles ⇌212.
Indians ⇌32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 931 to 932, 1299.

§ 422. Riding on bicycles

A. A person riding a bicycle shall not ride other than upon or astride a permanent attached seat.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

C. Any person riding a bicycle shall have at least one (1) hand on the handle bar.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨212.	Westlaw Topic Nos. 48A, 209.
Indians ⇨32(4.1).	C.J.S. Motor Vehicles §§ 931 to 932, 1299.

§ 423. Clinging to vehicles

No persons riding upon any tricycle, bicycle, coaster, roller skates, skateboards, sleds or toy vehicles shall attach the same or himself or herself to any vehicle operated upon a roadway.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Indians ⇨32(4.1).
 Westlaw Topic No. 209.

§ 424. Riding on roadways and bicycle paths; prohibition of motor vehicle traffic on bike path

A. Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or when passing a vehicle proceeding in the same direction.

B. Persons riding bicycles upon a roadway shall ride single-file, except on paths or parts of roadways set aside for the exclusive use of bicycles.

C. Wherever a path for bicycles has been provided adjacent to a roadway, a bicycle rider shall use the path and shall not use the roadway.

D. Motor vehicles are totally prohibited from operating on bike paths.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨212.	Westlaw Topic Nos. 48A, 209.
Indians ⇨32(4.1).	C.J.S. Motor Vehicles §§ 931 to 932, 1299.

§ 425. Carrying articles

No persons operating a bicycle shall carry any package, bundle or article which prevents the driver from keeping at least one (1) hand upon the handle bars.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞212. Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1). C.J.S. Motor Vehicles §§ 931 to 932, 1299.

§ 426. Lamps and other equipment on bicycles

A. Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least five hundred (500 ft.) feet to the front and with a red reflector on the rear which shall be visible from all distances at least one hundred fifty (150 ft.) feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500 ft.) feet to the rear may be used in addition to the red reflector.

B. Every bicycle shall be equipped with a brake which will enable the operator to make the brake wheels skid on dry, level, clean pavement.

C. Any person who violates a provision of this subchapter shall be subject to a civil assessment fee not to exceed thirty-seven dollars and fifty cents (\$37.50).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞212, 327. C.J.S. Indians § 157.
Indians ☞32(13). C.J.S. Motor Vehicles §§ 931 to 932, 1299,
Westlaw Topic Nos. 48A, 209. 1433.

Chapter 3. Equipment**Section**

- 500. Equipment
- 501. When lighted lamps are required
- 502. Visibility distance and mounted height of lamps
- 503. Headlamps
- 504. Tail lamps
- 505. Lamp or flag on projecting load
- 506. Lamps and reflectors on parked vehicles
- 507. Spot lamps and auxiliary lamps
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- 509. Additional lighting equipment

Section

- 510. Multiple-beam road lighting equipment
- 511. Use of multiple-beam road lighting equipment
- 512. Single-beam road lighting equipment
- 513. Number of driving lamps required or permitted
- 514. Special restrictions on lamps
- 515. Standards for lights on snow removal equipment
- 516. Equipment required on certain vehicles
- 517. Color of clearance lamps, side-market lamps and reflectors
- 518. Lamps and reflectors; truck tractors and road tractors
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- 522. Lamps and reflectors, combination in driveway-tow-away operations
- 523. Mounting of reflectors, clearance lamps and side-marker lamps
- 524. Brakes
- 525. Horns and warning devices
- 526. Mufflers; prevention of noise; emission control devices
- 527. Mirrors
- 528. Windshields must be unobstructed and equipped with wipers; windows must be transparent
- 529. Restrictions as to tire equipment
- 530. Safety glazing materials in motor vehicles
- 531. Emergency warning equipment
- 532. Certain vehicles to carry flares or other warning devices
- 533. Unattended vehicles
- 534. Stopped vehicles not to interfere with other traffic
- 535. Emergency signals; stopped or parked vehicles
- 536. Emergency signals; flame-producing
- 537. Vehicles transporting explosives or other dangerous substances
- 538. Classification of explosives
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- 540. Marking on motor vehicles—Motor vehicles other than tank motor vehicles
- 541. Tank motor vehicles
- 542. Only one marking required
- 543. Formulation of rules and regulations governing transportation of compressed gases and corrosive liquids
- 544. Safety belts required
- 545. Safety belts—Type and manner of installation
- 546. Safety belt requirement in passenger vehicles
- 547. Infant/child passenger restraints

§ 500. Equipment

A. It shall constitute a civil infraction for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in an unsafe condition so as to endanger any person. Any vehicle which does not contain those parts, or is not at all times equipped with such lamps and other equipment, in proper condition and adjustment, as required in this chapter, or which is equipped in any manner that is in violation of this chapter or for any person to do any act forbidden, or fail to perform any act required under this chapter shall constitute a civil infraction.

B. The use of additional parts and accessories on any vehicle shall not be prohibited, unless inconsistent with the provisions of this chapter.

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C. The provisions of this chapter with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as made applicable by this chapter.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄327. C.J.S. Indians § 157.
Indians ⇄32(13). C.J.S. Motor Vehicles § 1433.
Westlaw Topic Nos. 48A, 209.

§ 501. When lighted lamps are required

Every vehicle operating upon a highway within the Navajo Nation at any time from one-half ($\frac{1}{2}$) hour after sunset to one-half ($\frac{1}{2}$) hour before sunrise, and at any other time when there is not sufficient light to render clearly discernible any persons and/or vehicles on the highway at a distance of five hundred (500 ft.) feet ahead, shall display lighted lamps and reflective devices as required by this chapter. Exceptions with respect to parked vehicles as stated in this chapter shall apply.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328. C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇄32(4.1). 1434.
Westlaw Topic Nos. 48A, 209.

§ 502. Visibility distance and mounted height of lamps

A. When a requirement is set forth in this chapter as to the distance from which certain lamps and devices shall render objects visible or within which the lamps or devices shall be visible, such provisions shall apply during the times stated in § 501 in respect to a vehicle when upon a straight, level unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

B. When a requirement is set forth in this chapter as to the mounted height of lamps or devices, it shall mean from the center of the lamp or device to the level ground upon which the vehicle stands when the vehicle is without a load.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328. Indians ⇄32(4.1).

Westlaw Topic Nos. 48A, 209.
 C.J.S. Motor Vehicles §§ 537 to 540, 572,
 1434.

§ 503. Headlamps

A. Every motor vehicle other than a motorcycle or motor-driven cycle shall be equipped with at least two (2) head-lamps with at least one (1) on each side of the front of the motor vehicle, which headlamps shall comply with the requirements and limitations set forth in this chapter.

B. Every motorcycle and every motor-driven cycle shall be equipped with at least one (1) and not more than two (2) headlamps which shall comply with the requirements and limitations set forth in this chapter.

C. Every headlamp, upon every motor vehicle, including every motorcycle and motor-driven cycle, shall be located at a height measured from the center of the headlamp of not more than fifty-four (54) inches nor less than twenty-four (24) inches from level ground.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇄32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 504. Tail lamps

A. Every motor vehicle, trailer, semitrailer and pole trailer and any other vehicle which is being drawn last, shall be equipped with at least one (1) tail lamp mounted on the rear, which, when lighted as required by this chapter, shall emit a red light plainly visible from a distance of five hundred (500 ft.) feet to the rear.

B. Every tail lamp upon every vehicle shall be located at a height of not more than seventy-two (72) inches nor less than twenty (20) inches from the level ground.

C. Any tail lamp together with any separate lamp for illuminating the rear license plate, shall be wired as to be lighted whenever the headlamps or auxiliary driving lamps are lighted, and free of any obstruction.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇄32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 505. Lamp or flag on projecting load

At the time specified in § 501, whenever a load upon any vehicle extends at least four (4) feet or more beyond the bed or body of the vehicle, there shall be displayed at the extreme rear end of the load a red light or lantern plainly visible from a distance of at least five hundred (500 ft.) feet to the sides and rear. The red light or lantern shall be in addition to the red rear light required upon every vehicle. At the time besides those specified in § 501, there shall be displayed at the extreme rear end of the load a red flag or cloth not less than twelve (12) inches square and hung so that the entire area is visible to the driver of a vehicle approaching from the rear.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328. C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1). 1434.
Westlaw Topic Nos. 48A, 209.

§ 506. Lamps and reflectors on parked vehicles

A. When a vehicle is lawfully parked upon a street or roadway during the hours between one-half ($\frac{1}{2}$) hour after sunset and one-half ($\frac{1}{2}$) hour before sunrise, no lights need be displayed upon the parked vehicle.

B. When a vehicle is parked or stopped upon a roadway or nearby, whether attended or unattended during the hours between one-half ($\frac{1}{2}$) hour after sunset and one-half ($\frac{1}{2}$) hour before sunrise, the vehicle so parked or stopped shall be equipped with one or more reflectors on the rear of the vehicle. The foregoing shall apply to a motor-driven cycle.

C. Any lighted headlamps upon a parked vehicle shall be depressed or dimmed.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞173(5), 328. Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1). C.J.S. Motor Vehicles §§ 667 to 672, 1434.

§ 507. Spot lamps and auxiliary lamps

A. A motor vehicle may be equipped with no more than one spot lamp and every lighted spot lamp shall be aimed and used upon approaching another vehicle so that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred (100 ft.) feet ahead of the vehicle.

B. A motor vehicle may be equipped with no more than two (2) fog lamps mounted upon the front at a height not less than twelve (12) inches nor more

than thirty inches above the level surface upon which the vehicle stands and so aimed when the vehicle is not loaded, that none of the high intensity portion of the light to the left of the center of the vehicle shall, at a distance of twenty-five (25) feet ahead, project higher than a level of four (4) inches below the level of the center of the lamp from which it comes.

C. A motor vehicle may be equipped with no more than one auxiliary passing lamp mounted on the front at a height not less than twenty-four (24) inches nor more than forty-two (42) inches above the level surface upon which the vehicle stands, and every auxiliary passing lamp shall meet the requirements and limitations set forth in §§ 500 through 517.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 508. Signal lamps and signal devices

A. A motor vehicle shall be equipped with the following signal lamps or devices:

1. A stop lamp or stop lamps on the rear which shall emit a red or yellow light and which shall light up upon use of the foot brake and which may be incorporated with one or more rear lamps; and
2. A lamp or lamps or mechanical signal device capable of clearly indicating an intention to turn either to the right or to the left and which is visible both from the front and rear.

B. Every stop lamp shall be plainly visible from a distance of one hundred (100 ft.) feet to the rear both during normal sunlight and at nighttime. A signal lamp or lamps indicating the intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred (100 ft.) feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

C. All electro-mechanical signal devices shall be self-illuminated when in use during the times mentioned in § 501.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞151, 329.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	

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C.J.S. Motor Vehicles §§ 531, 574 to 577,
1454.

§ 509. Additional lighting equipment

A. A motor vehicle may be equipped with not more than two (2) side cowl or fender lamps which shall emit an amber or white light without glare.

B. A motor vehicle may be equipped with no less than one (1) running-board courtesy lamp on each side which shall emit a white or amber light without glare.

C. A motor vehicle may be equipped with not more than two (2) back-lamps either separately or in combination with other lamps, except that a back-up lamp shall not be lighted when the motor vehicle is in forward motion.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 537 to 540, 572,
1434.

§ 510. Multiple-beam road lighting equipment

Except as provided in this chapter, the headlamps or the auxiliary driving lamp, or the auxiliary passing lamp, or combination thereof, on motor vehicles shall be so arranged that the driver may select between distributions of different light elevations, subject to the following requirements and limitations.

A. There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred fifty-feet (350 ft.) ahead for all conditions.

B. There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred (100 ft.) feet ahead, and under any condition none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 537 to 540, 572,
1434.

§ 511. Use of multiple-beam road lighting equipment

Whenever a vehicle is being operated on a roadway or an adjacent shoulder during the times specified in § 501, the driver shall use a distribution of light,

or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

A. When a driver of a vehicle approaches an oncoming vehicle within five hundred (500 ft.) feet, the driver shall use a distribution of light or composite beam so aimed that the glaring rays are not projected into the eyes of the oncoming driver; and

B. The lowermost distribution of light or composition beam as specified in § 510(B) shall satisfy the requirements of this subsection.

C. When the driver of a vehicle overtakes another vehicle proceeding in the same direction and within two hundred (200 ft.) feet, such driver shall use a distribution of light or composite beam so aimed that the glaring rays do not project through the rear window of the overtaken vehicle.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇨32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 512. Single-beam road lighting equipment

Headlamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured prior to January 1, 1951, in lieu of multiple-beam road-lighting equipment specified in this chapter if the single distribution of light complies with the following requirements and limitations.

A. The headlamps shall be aimed so that when the vehicle is not loaded, none of the high intensity portion of the light shall, at a distance of twenty-five (25 ft.) feet ahead, higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case, higher than forty-two (42 in.) inches above the level on which the vehicle stands at a distance of seventy-five feet (75 ft.) ahead; and

B. The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two (200 ft.) hundred feet.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇨32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 513. Number of driving lamps required or permitted

A. At all times specified in § 501, at least two (2) lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle or motor-driven cycle, except when the vehicle is parked subject to the regulations governing lights on parked vehicles.

B. When a motor vehicle equipped with headlamps as required by this chapter is also equipped with an auxiliary lamp or a spot lamp or any other lamp on the front, and projects a beam of intensity greater than three hundred (300) candlepower, not more than a total of four (4) of any such lamps on the front of a vehicle shall be lighted at any one time when upon a roadway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 514. Special restrictions on lamps

A. Any lighted lamp or illuminating device upon a motor vehicle other than headlamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred (300) candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five (75 ft.) feet from the vehicle.

B. No person shall drive or move any vehicle or equipment upon any highway with any lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment.

C. Flashing red lights are prohibited except as provided in subsection (D) of this section and except on authorized emergency vehicles including emergency volunteers when responding to an emergency, school buses, snow-removal equipment and highway-marking equipment. Flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating a turn.

D. Tow trucks standing on highways for the purpose of removing disabled vehicles, and while engaged in towing any disabled vehicle, shall display flashing blue lights. This shall not be construed to permit the use of flashing lights by tow trucks in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances, school buses and other authorized vehicles shall display flashing red lights visible from the front of the vehicle.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 515. Standards for lights on snow removal equipment

The lights on snow removal equipment when in operation on the highways within the Navajo Nation shall conform to the standards and specifications set forth in this chapter and those adopted by the American Association of State Highway Officials.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 516. Equipment required on certain vehicles

Every bus or truck less than eighty (80) inches in overall width shall be equipped at a minimum as follows:

- A. On the front: two (2) headlamps; and
- B. On the rear: one (1) red tail lamp; one (1) red stop lamp; two (2) red reflectors, one at each side.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 517. Color of clearance lamps, side-marker lamps and reflectors

Every bus or truck eighty (80) inches or more in overall width shall be equipped as follows:

- A. On the front: two (2) headlamps and two (2) amber clearance lamps, one (1) at each side;
- B. On the rear: one (1) red tail lamp, one (1) red stop lamp, two (2) red clearance lamps, one (1) at each side, and two (2) red reflectors, one (1) at each side;

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C. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except that the light illuminating the license plate shall be white and the light emitted by a back-up lamp shall be white; and

D. On each side: one (1) amber side-marker lamp, located at or near the front; one (1) red side-marker lamp, located at or near the rear; one (1) amber reflector, located at or near the front; and one (1) red reflector, located at or near the rear.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328. C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇄32(4.1). 1434.
Westlaw Topic Nos. 48A, 209.

§ 518. Lamps and reflectors: truck tractors and road tractors

Every truck tractor and road tractor shall be equipped as follows:

A. On the front: two (2) headlamps; two (2) amber clearance lamps, one (1) at each side; and

B. On the rear: one (1) red tail lamp and one (1) red stop lamp.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄149, 328. C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ⇄32(4.1). 1434.
Westlaw Topic Nos. 48A, 209.

§ 519. Lamps and reflectors: large semitrailers, full trailers and house trailers

A. Every semitrailer, full trailer or house trailer eighty (80) inches or more in overall width and in motion shall be equipped as follows:

1. On the front: two (2) amber clearance lamps, one (1) at each side;

2. On the rear: one (1) red tail lamp; one (1) red stop lamp; two (2) red clearance lamps, one (1) at each side, two (2) red reflectors, one (1) at each side; and

3. On each side: one (1) amber side-marker lamp, located at or near the front; one (1) red side-marker lamp, located at or near the rear; one (1) amber reflector, located at or near the front; one (1) red reflector, located at or near the rear.

B. Side-marker lamps may be in combination with clearance lamps and may use the same light source.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 520. Lamps and reflectors: small semitrailers, house trailers and trailers

On the rear of every semitrailer, house trailer or trailer less than eighty (80) inches in overall width there shall be the following equipment as follows: one (1) red tail lamp; two (2) red reflectors, one (1) at each side; one (1) red stop lamp, if the semitrailer, house trailer or trailer obscures the stop lamp on the towing vehicle.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 521. Lamps and reflectors: pole trailers

Every pole trailer shall be equipped as follows:

A. On the rear: one (1) red tail lamp, two (2) red reflectors, one (1) at each side; some indicator of the extreme width of the pole trailer; and

B. On each side, on the rearmost support for the load: one combination marker lamp showing amber to the front and red to the side and rear, mounted to indicate the maximum width of the pole trailer; and red reflector, located at or near the rear; and on pole trailers thirty (30 ft.) feet or more in overall length, an amber marker-lamp on each side near the center.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞149, 328.	C.J.S. Motor Vehicles §§ 537 to 540, 572,
Indians ☞32(4.1).	1434.
Westlaw Topic Nos. 48A, 209.	

§ 522. Lamps and reflectors: combination in driveway-tow-away operations

Combinations of motor vehicles engaged in driveway/towaway operations shall be equipped as follows:

A. On the towing vehicle:

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1. On the front: two (2) headlamps and two (2) amber clearance lamps, one (1) at each side;
2. On each side and near the front: one (1) amber side-marker lamp;
3. On the rear: one (1) red tail lamp; one (1) red or amber stop lamp; and
4. Provided, however, that vehicles of less than eighty (80) inches in width shall be equipped as provided in § 516.

B. On the towed vehicle of a tow-bar combination, the towed vehicle of a single saddle-mount combination and the rearmost towed vehicles of a double saddle-mount combination:

1. On each side, and near the rear: one (1) red side marker lamp; and
2. On the rear: one (1) red tail lamp; two (2) red clearance lamps, one (1) at each side; one (1) red or amber stop lamp; two (2) red reflectors, one at each side.

C. On the first saddle-mount of a double saddle-mount combination: on each side, and near the rear, one (1) amber side-marker lamp; and

D. Combinations of vehicles less than eighty (80) inches in width in drive-way/towaway operations shall carry lamps and reflectors as required in § 516.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞117, 149, 328. C.J.S. Motor Vehicles §§ 113, 537 to 540,
Indians ☞32(4.1). 572, 1434.
Westlaw Topic Nos. 48A, 209.

§ 523. Mounting of reflectors, clearance lamps and side-marker lamps

A. Reflectors required by §§ 516 and 517 shall be mounted upon the motor vehicle at a height of not less than twenty-four (24) inches nor more than sixty (60) inches above the ground on which the motor vehicle stands, except that reflectors shall be mounted as high as practicable on motor vehicles which are so constructed as to make compliance with the twenty-four (24) inch requirement impractical. They shall be so installed as to function adequately and reliably and except for temporary reflectors required for vehicles in drive away/tow-away reflectors shall be permanently and securely mounted so as to provide the maximum stability, and minimum likelihood of damage. Required reflectors otherwise properly mounted may be securely installed on flexible strapping or belting provided that under conditions of normal operation they reflect light in the required directions. Required temporary reflectors, mounted on motor vehicles during the time they are in transit in any driveway/towaway operations, all operation, must be firmly attached.

B. All reflectors on the rear and those nearest to the rear on the side, except those referred to in subsection (C) of this section, shall reflect a red color; all other reflectors, except those referred to in subsection (C) of this section, shall

reflect an amber color. This requirement shall not be construed to prohibit the use of motor vehicles in combination if such motor vehicles are severally equipped with reflectors as required by §§ 516–522.

C. Retro-reflective surfaces, other than required reflectors, may be used, provided:

1. Designs do not resemble traffic control signs, lights or devices, except that straight-edge stripping resembling a barricade pattern may be used;
2. Designs do not tend to distort the length or width of the motor vehicle;
3. Such surfaces shall be at least three (3 in.) inches from any required lamp or reflector unless of the same color as such lamp or reflector;
4. No red color shall be used on the front of any motor vehicle; and
5. No provision of this subsection shall be so construed so as to prohibit the use of retro-reflective registration plates required by any state or local authority.

History

ACJN–131–88, June 29, 1988.
CMY–30–88, May 6, 1988.

Library References

Automobiles ☞149, 328.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 537 to 540, 572,
1434.

§ 524. Brakes

A. The following brake equipment is required:

1. Every motor vehicle, other than a motorcycle or motor-driven cycle, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle. This shall include two (2) separate means of applying the brakes, each of which shall be effective to apply the brakes to at least two (2) wheels. If these two (2) separate means of applying the brakes are connected in any way, they shall be so constructed that a failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two (2) wheels.
2. Every motorcycle and every motor-driven cycle, when operated upon a highway, shall be equipped with at least one (1) brake which may be operated by hand or foot.
3. Every trailer or semitrailer of a gross-weight of three thousand (3000) pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold the vehicle. Brakes shall be so designed as to either be applied by the driver of the towing motor vehicle from its cab or be of a type which will operate automatically when the service brakes of the towing vehicle are applied. The brakes shall be so designed and connected that in case of an accidental break-away of the towed vehicle the brakes shall be automatically applied.

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4. In any combination of motor-drawn vehicles, means shall be provided for applying the rear-most trailer brakes, of any trailer equipped with brakes, in approximate synchronism with brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate. Any alternative means shall be provided of applying braking effort first on the rearmost trailer equipped with brakes. Both of the above means capable of being used alternatively may be employed.

5. The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both services and foot operation.

B. Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service or foot brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances.

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicles or combination of vehicles having brakes on all wheels	30	14
Vehicles or combination of vehicles not having brakes on all wheels.	40	10.7

C. All brakes shall be maintained in good working order and shall be adjusted as to operate as equally as possible.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ¶148, 327. C.J.S. Motor Vehicles §§ 530 to 536, 588,
Indians ¶32(4.1). 1433.
Westlaw Topic Nos. 48A, 209.

§ 525. Horns and warning devices

A. Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred (200 ft.) feet, but no horn or other warning device shall emit an unreasonably loud and harsh sound or a whistle. The driver of a motor vehicle shall, when reasonably necessary to insure safe operation, give audible warning with his or her horn but shall not otherwise use the horn when upon a highway.

B. No vehicle shall be equipped with, nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

C. It is permissible for a vehicle to be equipped with a theft alarm signal device which is so designed that it cannot be used by the driver as an ordinary warning signal.

D. Any authorized emergency vehicle maybe equipped with a siren, whistle or bell, capable of emitting sound audible under normal conditions from a distance of at least five hundred (500 ft.) feet. The siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law. In the latter event, the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of its approach.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞151, 329. C.J.S. Motor Vehicles §§ 531, 574 to 577,
Indians ☞32(4.1). 1454.
Westlaw Topic Nos. 48A, 209.

§ 526. Mufflers; prevention of noise; emission control devices

A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. No person shall use a muffler cut-out, bypass or similar device upon a motor vehicle on a roadway.

B. The muffler, emission-control equipment device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

C. Every registered gasoline-fueled motor vehicle manufactured or assembled, commencing with the 1968 models, shall at all times be equipped and maintained in good working order with the factory-installed devices and equipment or their replacements designed to prevent, reduce or control exhaust emissions or air pollution.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞327. Westlaw Topic Nos. 48A, 149E, 209.
Environmental Law ☞273. C.J.S. Motor Vehicles § 1433.
Indians ☞32(4.1).

§ 527. Mirrors

Every motor vehicle shall be equipped with a mirror located so as to reflect to the driver an unobstructed view of the roadway for a distance of at least two hundred (200 ft.) feet to the rear of such vehicle under all conditions of loading.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

14 N.N.C. § 527

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Library References

Automobiles ☞148, 327.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 530 to 536, 588,
1433.

§ 528. Windshield must be unobstructed and equipped with wipers; windows must be transparent

A. No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon or in the front windshield, windows to the immediate right and left of the driver or in the rearmost window if the latter is used for driving visibility.

B. The windshield on every motor vehicle, except a motorcycle, shall be equipped with a mechanical device for cleaning rain, snow or other moisture from the windshield and shall be so constructed as to be controlled or operated by the driver of the vehicle, and shall be maintained in good working order.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞148, 327.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 530 to 536, 588,
1433.

§ 529. Restrictions as to tire equipment

A. When their use is permitted, every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one-inch (1 in.) thick above the edge of the flange of the entire outside surface.

B. No person shall operate or move on any roadway vehicle, having any metal tire in contact with the roadway, except that for the purposes of this chapter, a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire.

C. No tire on a vehicle moved on a highway within the jurisdiction of the Navajo Nation shall have on its outside surface any block, flange, cleat, spike or any other projection of any material other than rubber which is beyond the tread of the traction surface of the tire. It is permissible to use farm machinery with tires having rubber projections which will not damage the highway. It is permissible to use tire chains of reasonable proportions or snow tires with metal studs designed to increase traction on ice or snow upon any vehicle, when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

D. The Division may issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugations upon the outside surfaces of such moveable tracks, or farm tractors or other farm machinery, the operation of which upon a roadway would otherwise be prohibited by this chapter.

E. No vehicle equipped with solid rubber tires shall be permitted upon any roadway of the Navajo Nation without special permission first being granted by the Division. In no event may any such vehicle be operated at a speed in excess of that specified by law.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨148, 327.	C.J.S. Motor Vehicles §§ 530 to 536, 588,
Indians ⇨32(4.1).	1433.
Westlaw Topic Nos. 48A, 209.	

§ 530. Safety glazing materials in motor vehicles

No motor vehicle sold as new on or after January 1st of the year following approval of this Code by the Navajo Nation Council, shall be operated within the Navajo Nation unless it is equipped with safety glazing material whenever glazing materials used in doors, windows or windshields. The foregoing provision shall apply to all passenger-type motor vehicles, including passenger buses and school buses.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨148, 327.	C.J.S. Motor Vehicles §§ 530 to 536, 588,
Indians ⇨32(4.1).	1433.
Westlaw Topic Nos. 48A, 209.	

§ 531. Emergency warning equipment

A. Requirements for red emergency reflectors. Each red emergency reflector shall conform to the following requirements.

1. Each reflector must be composed of at least one (1) reflecting element or surface; and
2. If the reflecting elements of the reflector are so designed or constructed that the reflecting surfaces would be adversely affected by dust, soot, or other foreign matter or contact with other parts of the reflector or its container, then such reflecting surfaces shall be adequately sealed with the body of the reflector; and
3. Every reflector shall be of such weight and dimensions as to remain stationary and perpendicular when subject to a forty (40) mile per hour wind when a vehicle is placed on any clean, dry, paved road surface. The reflector shall be constructed to withstand reasonable shocks without breakage.

B. Requirements for fuses. Each fuse shall be capable of burning at least fifteen (15) minutes, and shall be equal to the specifications of the Bureau of

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Explosives, 30 Vesey Street, New York, New York, dated December 15, 1944, and be so marked.

C. Red cloth flags shall be not less than twelve (12) inches square, with standards adequate to maintain the flags in an upright position.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞151, 329. C.J.S. Motor Vehicles §§ 531, 574 to 577,
Indians ☞32(4.1). 1454.
Westlaw Topic Nos. 48A, 209.

§ 532. Certain vehicles to carry flares or other warning devices

On every bus, truck tractor, and road-tractor, and every driven vehicle in a driveway/towaway operation, of a width greater than eighty (80) inches, there shall be:

A. Warning devices for stopped vehicles. One of the following combinations of warning devices:

1. Three flares or liquid-burning pot torches and three fuses and two (2) red cloth flags; or
2. Three (3) red electric lanterns, two (2) red cloth flags and three (3) fuses; or
3. Three (3) red emergency reflectors, two (2) red cloth flags, and three (3) fuses; or
4. Flares or pot torches, fuses, oil lanterns, or any signal produced by a flame, shall not be carried on motor vehicles used in the transportation of explosives, flammable liquids, or flammable compressed gases in cargo tanks, or in any motor vehicle using flammable compressed gases as a motor fuel; but in lieu of such flares and fuses, three (3) electrical lanterns or three (3) red emergency reflectors shall be carried; and

5. The protective devices used shall comply with the requirements given in subsections (A)-(C) of this section.

B. Requirements for flares. Flares or pot torches shall be adequate and reliable.

C. Requirements for Red Electric Lanterns. Red electric lanterns shall be adequate, reliable, and equipped with a working battery or batteries within each unit.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞151, 329. Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
 C.J.S. Motor Vehicles §§ 531, 574 to 577,
 1454.

§ 533. Unattended vehicles

A. For purposes of §§ 534–537 the term “motor vehicle” is hereby defined to include every bus, truck, truck-tractor, road-tractor, and every driven vehicle in driveaway/towaway operations, required by § 532 to have emergency equipment.

B. Unattended Vehicles: Precautions. No motor vehicle shall be left unattended until the parking brake has been securely set. All reasonable precautions shall be taken to prevent the movement of any vehicle left unattended.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Automobiles ⇨173(8), 334.	C.J.S. Motor Vehicles §§ 664 to 665, 695 to
Indians ⇨32(4.1).	704, 1550.
Westlaw Topic Nos. 48A, 209.	

§ 534. Stopped vehicles not to interfere with other traffic

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended upon the traveled portion of any highway outside of a business or residential district, when it is practicable to stop, park, or leave such vehicle off the traveled portion of the roadway. In the event that conditions make it impossible to move the motor vehicle from the traveled portion of the highway, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he or she shall take care to provide a clear view of the standing vehicle as far as possible to the front and rear and comply with the other sections of this chapter.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Automobiles ⇨12, 173, 327.	C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to
Indians ⇨32(4.1).	58, 60 to 62, 673 to 674, 1433.
Westlaw Topic Nos. 48A, 209.	

§ 535. Emergency signals; stopped or parked vehicles

Whenever for any cause other than necessary traffic stops, any motor vehicle is stopped upon the traveled portion of any highway, or shoulder, the driver of such vehicle shall immediately operate the emergency flashing lights of his or her vehicle.

14 N.N.C. § 535

NAVAJO NATION MOTOR VEHICLE CODE

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞12, 173(5), 329.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 10, 51 to 52, 54 to 58, 60 to 62, 667 to 672, 1454.

§ 536. Emergency signals; flame-producing

No driver shall attach or permit any person to attach a lighted fuse or other flame-producing emergency signal for protecting any motor vehicle transporting of any flammable liquid or flammable compressed gas as a motor fuel. Red electric lanterns or red emergency reflectors shall instead be used, as follows:

A. The driver shall place three (3) liquid-burning flares or pot torches, or three (3) red electric lanterns, or three (3) red emergency reflectors on the traveled portion of the highway in the following order:

1. One at a distance of approximately one hundred (100) feet from the disabled vehicle in the center of the traffic lane occupied by such vehicle and toward traffic approaching in that lane;
2. One at a distance of approximately one hundred (100) feet in the opposite direction from the disabled vehicle in the center, of the traffic lane occupied by such vehicle; and
3. One at the traffic side of the disabled vehicle, not less than then (10) feet to the front of it. If a red electric lantern or red emergency reflector has been placed on the traffic side of the vehicle in accordance with subsection (A) of this section, it may be used for this purpose.

B. If disablement of any motor vehicle shall occur within five hundred (500) feet of a curve, crest of a hill, or other obstruction to view, the driver shall so place the warning signal in that direction as to afford ample warning to other users of the highway, but in no case less than one hundred (100) feet, nor more than five hundred (500) feet from the disabled vehicle. One warning signal shall also be placed at a distance of approximately one hundred (100) feet in the opposite direction from the disabled vehicle in the center of the traffic lane occupied by such vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞173(5), 329.
Indians ☞32(4.1).
Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles §§ 667 to 672, 1454.

§ 537. Vehicles transporting explosives or other dangerous substances

Any person operating any vehicle transporting explosives or other dangerous substances as cargo upon a roadway shall comply with the provisions of

§§ 538–543. Vehicles transporting explosives or dangerous substances will not be permitted to stop while enroute to a destination unless instructed to do so by an authorized law enforcement office.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Automobiles ⇄11.	Westlaw Topic Nos. 48A, 164, 209.
Explosives ⇄2.	C.J.S. Motor Vehicles § 32.
Indians ⇄32(4.1).	

§ 538. Classification of explosives

A. For the purpose of this Act explosives are divided into the following three classes:

1. Class A. Explosives; detonating or otherwise of maximum hazard.
2. Class B. Less dangerous explosives; flammable hazard.
3. Class C. Relatively safe explosives; minimum hazard.

B. All provisions of the Navajo Nation Fireworks Code are incorporated herein.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Explosives ⇄2.
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 164, 209.

§ 539. Dangerous substances

Dangerous substances include but are not limited to:

A. **Flammable Liquid**—A flammable solid is a solid substance other than one (1) classified as an explosive, which is liable, under conditions incident to transportation, to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing.

B. **Oxidizing Materials**—An oxidizing material is a substance such as chlorate, permanganate, peroxide, or nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

C. **Acids and other Corrosive Liquids**—Corrosive liquids are those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue by chemical action; or in case of leakage, will materially damage or destroy other freight by chemical action; or are liable to cause fire when in contact with organic matter or with certain chemicals.

D. Compressed Gas—A compressed gas is defined as any material with a gauge pressure exceeding forty (40) pounds per square at seventy degrees (70°) Fahrenheit; or any liquid flammable material having a Reid vapor pressure exceeding forty (40) pounds per square inch, absolute, at one hundred degrees (100°) Fahrenheit.

No one shall transport compressed gas (butane propane) in an enclosed vehicle, but should transport it in an open, ventilated transportation device. Transportation of such compressed gas shall comply with other Navajo Nation environmental protection regulations.

E. Poison—

1. Class A. Extremely Dangerous Poison—Poisonous gases or liquids of such nature that a very small amount of the gas, or vapor of the liquid mixed with air, is dangerous to life. Poisonous gases shall be labeled as dangerous.

2. Class B. Less Dangerous Poisons—Poison liquid or solid, including pastes and semi-liquids, are substances of such nature that they are chiefly dangerous by external contact with the body or by being taken internally as in contaminated foods or feeds.

The vapors of some of this class of materials are also offensive and dangerous; these poisons shall be labeled as such.

3. Class C. Tear Gases or Irritating Substances—Tear gases are liquid or solid substances which upon contact with fire, or when exposed to air give off dangerous or intensely irritating fumes, such as brombensylcyanide, chloracetophonone, diphenylaminechlorisane, and diphelychlorasine. These substances shall be labeled as such.

History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌11.

Indians ⇌32(4.1).

Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles § 32.

§ 540. Marking on motor vehicles motor-vehicles other than tank motor vehicles

A. Every motor vehicle other than a tank motor vehicle transporting twenty-five hundred (2,500) pounds or more of any one (1) class of explosives, or other dangerous substances, or transporting an aggregate of five thousand (5,000) pounds or more, of more than one class of such article, in the event the lading does not contain twenty-five hundred (2,500) pounds of any one (1) class, shall be marked as prescribed in the following list:

- A. Explosives, Class A EXPLOSIVES
- B. Explosives, Class B DANGEROUS
- C. Flammable Liquid DANGEROUS
- D. Flammable Solid DANGEROUS
- E. Oxidizing Material DANGEROUS

F. Corrosive Liquid	DANGEROUS
G. Compressed Gas	COMPRESSED GAS
H. Poison Gas, Class A	POISON GAS
I. Tear Gas	DANGEROUS
J. Poisons, Class B	DANGEROUS-POISON GAS

B. The prescribed markings shall be by means of signs or lettering on each side and the rear of the motor vehicle, and the letters shall be at least three (3) inches high on a background of sharply contrasting color.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11.	Westlaw Topic Nos. 48A, 164, 209.
Explosives ☞2.	C.J.S. Motor Vehicles § 32.
Indians ☞32(4.1).	

§ 541. Tank motor vehicles

Every tank motor vehicles used for the transportation of any flammable liquid, regardless of the quantity being transported, or whether loaded or empty, shall be conspicuously and legibly marked on each side and on the rear in letters at least three (3) inches high on a background of sharply contrasting color, optionally as follows:

- A. With a sign or lettering on the motor vehicle with the word “Flammable” and with the common name of the flammable liquid being transported; or
- B. With the name of the carrier or his or her trademark, when and only when such name or mark plainly indicates the flammable nature of the cargo.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles § 32.

§ 542. Only one (1) marking required

Any motor vehicles transporting more than one (1) class of dangerous substances for which signs are required to be displayed pursuant to § 540 shall have a sign which designates the most dangerous substance being transported.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

14 N.N.C. § 542

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Library References

Automobiles ☞11.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles § 32.

§ 543. Formulation of rules and regulations governing transportation of compressed gases and corrosive liquids

A. The Navajo Nation is empowered and directed to formulate, adopt and promulgate rules and regulations containing standards of safety, having uniform force and effect in the transporting of compressed gases and corrosive liquids by tank vehicle upon the public roadways. Those standards applicable to compressed gases and those applicable to corrosive liquids shall be separately formulated and distinguished. The Division is empowered to enforce such rules and regulations.

B. The standards of safety shall be consistent with nationally-recognized industry practice for tank vehicle transportation of compressed gases, corrosive liquids and other dangerous substances.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11.
Indians ☞32(4.1).

Westlaw Topic Nos. 48A, 209.
C.J.S. Motor Vehicles § 32.

§ 544. Safety belts required

It is unlawful for any person to buy, sell, lease, trade or transfer from or to residents of the Navajo Nation a motor vehicle, which is manufactured or assembled commencing with the 1974 models, unless the vehicle is equipped with safety belts installed for use in the front seat(s) of the motor vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Consumer Protection ☞9, 11.
Indians ☞32(13).
Westlaw Topic Nos. 92H, 209.
C.J.S. Credit Reporting Agencies.

C.J.S. Consumer Protection §§ 52 to 55, 64,
66 to 73, 91.
C.J.S. Indians § 157.

§ 545. Safety belts—Types and manner of installation

Safety belt type and installation specifications shall meet the standards as currently established by the Society of Automotive Engineers.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Consumer Protection ☞9, 11.	C.J.S. Credit Reporting Agencies.
Indians ☞32(4.1).	C.J.S. Consumer Protection §§ 52 to 55, 64,
Westlaw Topic Nos. 92H, 209.	66 to 73, 91.

§ 546. Safety belt requirement in passenger vehicles

The use of seat belts in passenger vehicles shall be mandatory as follows:

A. Front seat occupants of all passenger vehicles shall have a safety belt properly fastened about his or her body at all times when the vehicle is in motion.

B. Violators of this section are subject to a civil assessment fee of not less than thirty-seven dollars and fifty cents (\$37.50) and not more than seventy-five dollars (\$75.00).

C. Evidence of a violation of this section shall be admissible for the purposes of mitigation of damages, appointment of damages or comparative fault, or other issues as determined by the court, with respect to any person who is involved in an accident and seeks to recover damages for injuries resulting from the accident.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞327.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles § 1433.
Westlaw Topic Nos. 48A, 209.	

§ 547. Infant/child passenger restraints

Any parent, guardian or custodian of an infant or child four (4) years of age or younger, when transporting the child in a non-commercial motor vehicle operated on any highway of the Navajo Nation, shall properly secure the child in a child passenger restraint system. The restraint system shall meet Federal Motor Vehicle Safety Standard Number 213, which requires the following information:

A. On a permanent label attached to the restraint, the statement, “This child restraint system conforms to all applicable Federal Motor Vehicle Safety Standards” shall be printed; and

B. On a permanent label, attached to the restraint, the manufacturer’s recommendations of the minimum and maximum weight and height of the children who can safely occupy the system shall be printed; and

C. Printed installation instructions with step by step procedures, including diagrams of installing the system in a motor vehicle, positioning the child in the system, and adjusting the system to fit the child.

Violators of this section are subject to a civil assessment fee not more than thirty-seven dollars and fifty cents (\$37.50).

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨327.	C.J.S. Indians § 157.
Indians ⇨32(13).	C.J.S. Infants §§ 5, 92 to 93, 95 to 98.
Infants ⇨13.	C.J.S. Motor Vehicles § 1433.
Westlaw Topic Nos. 48A, 209, 211.	

Chapter 4. Weight and Size Limitations**Section**

- 600. Scope and effect of Article
- 601. Projecting loads on passenger vehicles
- 602. Height and length of vehicles of loads
- 603. Minimum wheelbase
- 604. Special load limits
- 605. Loads on vehicles
- 606. Trailers and towed vehicles
- 607. Load limits on single-axles, wheels and tires
- 608. Gross weight of vehicles and loads
- 609. Permits for excessive size and weight

§ 600. Scope and effect of Article

A. It is a civil infraction for any person to drive or move or permit to be driven or moved on any highway, any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter, or otherwise in violation of this chapter. The maximum size and weight of vehicles specified in this chapter shall be lawful throughout the Navajo Nation.

B. The provisions of this chapter governing size, weight and load shall not apply to fire apparatus, road machinery engaged in highway construction or maintenance, or to implements of husbandry, including farm tractors, temporarily moved upon a highway, or to a vehicle operated under the term of a special permit issued as provided herein.

C. Restitution: The court, in addition to or in lieu of any assessment imposed may require any person found in violation of this section, to pay the full cost of repairing or replacing any property damaged as the result of such violation.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇨15.	C.J.S. Indians § 157.
Indians ⇨32(13).	C.J.S. Motor Vehicles §§ 43 to 44, 829 to 830.
Westlaw Topic Nos. 48A, 209.	

§ 601. Projecting loads on passenger vehicles

No passenger-type vehicle, except a motorcycle, shall be operated on any highway with any load carried on it extending beyond the line of the fenders on the left side of the vehicle nor extending more than six (6) inches beyond the line of the fenders on the right side of the vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞15.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 43 to 44, 829 to 830.
Westlaw Topic Nos. 48A, 209.	

§ 602. Height and length of vehicles of loads

A. No vehicle, including any load on it, shall exceed a height of thirteen (13) feet, six (6) inches.

B. No vehicle, including any load thereon, shall exceed a length of forty (40) feet extreme over-all dimension, inclusive of front and rear bumpers, except when operated in combination with another vehicle as provided in subsection (C) of this section.

C. No combination of vehicles coupled together shall consist of more than two (2) units, except that a truck tractor and semitrailer will be permitted to pull one (1) trailer and, excepted further, that a double or triple saddle-mount of vehicles in transit by driveway/towaway methods will be permitted. However, any saddle-mount combination of vehicles must comply with the rules, regulations and standards of the United States Department of Transportation in regard to safety and no combination of vehicles, including any load thereon, shall exceed an over-all length of sixty-five (65) feet, inclusive of the front and rear bumpers.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles § 32.
Westlaw Topic Nos. 48A, 209.	

§ 603. Minimum wheelbase

A. It is unlawful to operate any motor vehicle with a wheelbase, between any two (2) axles, of less than three (3) feet seven (7) inches, on the highways of the Navajo Nation.

B. For the purpose of this section, wheelbase shall be measured upon a straight line from the center of the vehicle axles.

14 N.N.C. § 603

NAVAJO NATION MOTOR VEHICLE CODE

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Indians ☞32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 604. Special load limits

Subject to the foregoing provisions of the Chapter limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet (3 ft.) beyond the foremost part of the vehicle. The load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet (6 ft.) beyond the rear of the bed or body of such vehicle.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles § 32.

§ 605. Loads on vehicles

A. No vehicles shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of the load from dropping, shifting, leaking, or otherwise escaping from it. However, the load may be dropped or sprinkled for the purpose of securing traction, or cleaning or maintaining the roadway.

B. No person shall operate on any highway any vehicle or combination of vehicles with any load unless the load and any covering on it is securely fastened so as to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞11, 180.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 32, 693 to 694.

§ 606. Trailers and towed vehicles

A. When one vehicle is towing another, the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and the drawbar or other connection shall not extend more than fifteen (15) feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery or other objects of structural nature which cannot readily be dismembered. When a combination of vehicles are engaged in transporting poles, pipe, machinery, or the objects of structural nature which cannot readily be dismembered, the load shall be distributed so as to equalize the weights on the axles of each vehicle.

B. When one (1) vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve (12) inches square.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞174(2). Westlaw Topic Nos. 48A, 209.
Indians ☞32(13). C.J.S. Indians § 157.

§ 607. Load limits on single-axles, wheels and tires

A. The gross weight imposed on the highway by the wheels of any one (1) axle of a vehicle shall not exceed twenty-one thousand six hundred (21,600) pounds, nor shall any one (1) wheel carry a load in excess of eleven thousand (11,000) pounds. Nor shall a tandem axle carry a load in excess of thirty-four thousand three hundred twenty (34,320) pounds.

B. No wheel equipped with pneumatic, solid rubber, or cushion tires shall carry a load in excess of six hundred (600) pounds for each inch of tire width. The width of pneumatic tires shall be taken at the manufacturer's rating. The width of solid rubber and cushion tires shall be measured at the flange of the rim.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞15. C.J.S. Indians § 157.
Indians ☞32(13). C.J.S. Motor Vehicles §§ 43 to 44, 829 to 830.
Westlaw Topic Nos. 48A, 209.

§ 608. Gross weight of vehicles and loads

A. Subject to the weight limits imposed in § 607, the total gross weight with load of a vehicle or combination of vehicles with two (2) or more consecutive axles shall not exceed the gross weight given for the respective distance

14 N.N.C. § 608

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between the first and last axle measured longitudinally to the nearest foot, as set forth in the following table:

Distance in feet between first and last axles of group	Allowed load in pounds on group of axles
4.....	32,000
5.....	32,000
6.....	32,000
7.....	32,900
8.....	33,600
9.....	34,300
10.....	35,000
11.....	35,700
12.....	36,400
13.....	37,100
14.....	43,200
15.....	44,000
16.....	44,800
17.....	45,600
18.....	46,400

B. The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is more than eighteen (18) feet shall not exceed that given for the respective distances in the following table:

Distance in feet	Allowed load in pounds
19.....	47,200
20.....	48,000
21.....	48,800
22.....	49,600
23.....	50,400
24.....	51,200
25.....	55,250
26.....	56,100
27.....	56,950
28.....	57,800
29.....	58,650
30.....	59,500
31.....	60,350
32.....	61,200
33.....	62,050
34.....	62,900
35.....	63,750
36.....	64,600
37.....	65,450
38.....	66,300
39.....	68,000
40.....	70,000
41.....	72,000
42.....	73,280
43.....	73,280
44.....	73,280

45	73,280
46	73,280
47	73,280
48	73,280
49	73,280
50	73,280
51	73,280
52	73,600
53	74,400
54	75,200
55	76,000
56 or over.....	76,800

C. The distance between axle shall be measured to the nearest even foot. When a fraction is exactly one-half (1/2) foot the next larger whole number shall be used.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞15.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 43 to 44, 829 to 830.
Westlaw Topic Nos. 48A, 209.	

§ 609. Permits for excessive size and weight

A. Upon application to the appropriate authority, a special permit maybe issued authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter, or otherwise not in conformity with the provisions of this chapter, upon any highway of the Navajo Nation.

B. Whenever vehicles are being moved upon the highway under a special permit, escort vehicles shall be required in front of and behind the non-conforming vehicle.

C. Upon application to the appropriate authority, a special permit may be issued authorizing logging truckers to operate or move a vehicle or a combination of vehicles of a size or overweight, up to eighty-seven thousand (87,000) pounds in hauling logs, specified in this chapter, or otherwise not in conformity with the provisions of the Chapter, upon any established logging road and highway of the Navajo Nation.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞15.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 43 to 44, 829 to 830.

Chapter 5. Misdemeanor Offenses, Fines, Penalties, Implied Consent

Section

- 700. Obedience to police officers
- 701. Penalty
- 702. Unlawful flight from pursuing law enforcement vehicle
- 703. Homicide by vehicle
- 704. Public officers and employees to obey Chapter; exceptions
- 705. Operation of vehicles on approach of authorized emergency vehicles
- 706. Driver to exercise due care
- 707. Persons under influence of intoxicating liquor or drugs
- 708. Reckless driving
- 709. Racing on highways
- 710. Accidents involving death or personal injuries
- 711. Accidents involving damage to attended vehicle
- 712. Duty to give information and render aid
- 713. Immediate report of accidents
- 714. Implied consent to submit to chemical test
- 715. Refusal to submit to chemical test—Suspension of privilege to drive
- 716. Use of chemical tests in criminal actions or civil actions—Presumptions of intoxication
- 717. Administration of chemical test—Payment of costs—Additional tests
- 718. Blood-alcohol and/or drug tests—Police, judicial or probation officer—Persons qualified to perform tests—Relief from civil and criminal liability
- 719. Blood-alcohol and/or drug tests—Police, judicial or probation officer unauthorized to make arrest or direct test authorized by law
- 720. Records of disposition
- 721. School crossings
- 722. Use of white cane and other ambulation or mobility devices
- 723. Throwing or dropping objects at moving vehicles
- 724. Overtaking and passing school bus

§ 700. Obedience to police officers

No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer or other law enforcement official vested by law with authority to direct, control or regulate traffic.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞335.	C.J.S. Motor Vehicles §§ 1541, 1543, 1548, 1551 to 1552.
Indians ☞32(13).	
Obstructing Justice ☞7.	C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.
Westlaw Topic Nos. 48A, 209, 282.	
C.J.S. Indians § 157.	

§ 701. Penalty

Any offense or conviction of an offense under this chapter shall be classified as a misdemeanor or petty misdemeanor and shall be punishable as stated

herein or if not otherwise provided under the specific section, then in 17 N.N.C. §§ 221–225.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Automobiles ☞359.	C.J.S. Motor Vehicles §§ 1336, 1352, 1380,
Indians ☞32(13).	1414 to 1419, 1451 to 1452, 1484, 1503,
Westlaw Topic Nos. 48A, 209.	1510, 1539.
C.J.S. Indians § 157.	

§ 702. Unlawful flight from pursuing law enforcement vehicle

Any driver of a motor vehicle who willfully flees or attempts to elude a pursuing official law enforcement vehicle is guilty of a misdemeanor punishable by a fine of not more than five hundred (\$500.00) dollars.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Indians ☞32(13).	C.J.S. Obstructing Justice or Governmental
Obstructing Justice ☞7, 21.	Administration §§ 4, 10, 12 to 29, 31 to 32,
Westlaw Topic Nos. 209, 282.	38, 47.
C.J.S. Indians § 157.	

§ 703. Homicide by vehicle

A. Homicide by vehicle is the killing of a human by the unlawful operation of a motor vehicle.

B. Any person who is convicted of homicide by vehicle while violating § 707 or § 708 shall be subject to imprisonment and a fine of the maximum amounts allowed by law.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.

Library References

Automobiles ☞342.1.	C.J.S. Motor Vehicles §§ 1456 to 1458, 1460
Indians ☞32(13).	to 1466, 1468 to 1469, 1471 to 1476, 1478
Westlaw Topic Nos. 48A, 209.	to 1485.
C.J.S. Indians § 157.	

§ 704. Public officers and employees to obey Chapter; exceptions

The provisions of this chapter are applicable to the drivers of vehicles upon the highways and shall apply to the drivers of all vehicles owned or operated by the Navajo Nation or any other political subdivision of the Navajo Nation,

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except as otherwise specifically provided in this chapter as applicable to specified vehicles and to specified circumstances or conditions.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞324.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
Westlaw Topic Nos. 48A, 209.	to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 705. Operation of vehicles on approach of authorized emergency vehicles

A. Upon the immediate approach of an authorized emergency vehicle equipped with at least one (1) lighted lamp exhibiting a red light visible under normal atmospheric conditions from a distance of five hundred feet (500 ft.) to the front of the vehicle, other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is given an audible signal by siren, exhaust whistle, or bell, the driver of every vehicle shall yield the right-of-way and shall immediately drive to a position parallel and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

B. This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the roadway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞335.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1541, 1543, 1548,
Westlaw Topic Nos. 48A, 209.	1551 to 1552.

§ 706. Driver to exercise due care

Notwithstanding the provisions of this subchapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ↻324.

Indians ↻32(13).

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.

C.J.S. Motor Vehicles §§ 1311 to 1313, 1315 to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 707. Persons under influence of intoxicating liquor or drugs

A. It is unlawful for any person who is under the influence of intoxicating liquor or drugs to drive or be in actual physical control of any vehicle within the territorial jurisdiction of the Navajo Nation.

B. It is unlawful for any person who is under the influence of any narcotic drug, or who is under the influence of any other drug or controlled substance to a degree which renders him or her incapable of safely driving a vehicle, to drive or be in actual physical control of any vehicle within the Navajo Nation. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of any state or the Navajo Nation shall not constitute a defense.

C. Any person convicted of violating this section shall be sentenced to serve not less than twenty-four (24) consecutive hours in jail. The court shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than twenty-four (24) consecutive hours in jail. The court shall order the person to pay a fine of not less than three hundred (\$300.00) dollars and may order the person to perform not less than eight (8) nor more than twenty-four (24) hours of community service.

D. The District Courts of the Navajo Nation may require a person convicted of violating the provisions of this section to surrender to the court the operator's or chauffeur's license of such person and shall, in such event, forward the surrendered license or permit to the state office issuing the license or permit together with a certified order of the court suspending or revoking the driving privileges of the convicted person.

E. The court may require the person to attend traffic safety or alcohol abuse classes at the offender's expense or, if in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, the court may require the person to obtain treatment under its supervision; however, in no case shall an offender be excused from spending twenty-four (24) consecutive hours in jail.

F. If a person is convicted of a second (2nd) violation of this section within a period of twenty-four (24) months, the person shall be ordered to serve a term of not less than thirty (30) days in jail. A court shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than ninety (90) days in jail. The court shall also order the person to pay a fine of not less than five hundred (\$500.00) dollars. The dates of the commission of the offense shall be the determining factor in applying this rule. No judge may grant probation to, suspend the imposition or execution of a jail sentence, or fail to require the surrender to him or her of any license, of any person for subsequent conviction. If in the court's opinion the offender has the problem of habitual

abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

G. If a person is convicted of a third (3rd) or subsequent violation of this section within a period of thirty-six (36) months, the person shall be sentenced to serve not less than six (6) months in jail. A judge shall not grant probation, pardon, parole, commutation or suspension of sentence or release on any other basis, except upon the condition that the person serve not less than six (6) months in jail. The dates of the commission of the offense are the determining factor in applying this rule. The judge shall require the surrender to him or her of any operator's or chauffeur's license of the person. A judge shall not suspend the imposition of a prison sentence, or fail to require the surrender to him or her of any license of a person for a third or subsequent conviction. If, in the court's opinion, the person has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

H. Any political subdivision processing or utilizing the services of a person ordered to perform community services pursuant to this section, shall not incur any civil liability to the person ordered to perform community services as a result of these activities, unless the political subdivision, its agent or employee is guilty of gross negligence, or is in willful or wanton disregard for the rights or safety of such person, in a manner so as to endanger or be likely to endanger such person or their property.

I. The court may, upon pronouncement of any jail sentence under this section, provide in the sentence that the defendant be permitted, if he or she is employed and can continue his or her employment, to continue such employment for not more than twelve (12) hours per day nor more than six (6) days per week; the remaining day, days or parts of days shall be spent in jail until the sentence is served. He or she shall be allowed out of jail only long enough to complete his or her actual hours of employment and no longer.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞332, 355(6), 359.	C.J.S. Motor Vehicles §§ 1336, 1352, 1380,
Indians ☞32(13).	1382 to 1394, 1408 to 1411, 1414 to 1419,
Westlaw Topic Nos. 48A, 209.	1451 to 1452, 1484, 1503, 1510, 1539.
C.J.S. Indians § 157.	

§ 708. Reckless driving

A. Any person who drives a vehicle carelessly in willful or wanton disregard of the rights or safety of others, and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving.

B. Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a term of not less than ten (10) days nor more

than ninety (90) days, or by a fine of not less than one-hundred fifty dollars (\$150.00) nor more than three hundred seventy dollars (\$370.00), or both. On a second or subsequent conviction within a period of twenty-four (24) months, punishment shall consist of imprisonment for a term not less than twenty (20) days nor more than six (6) months, or by a fine of not less than two hundred twenty-five dollars (\$225.00) nor more than five hundred dollars (\$500.00), or both, and to attend traffic safety education which includes a Defensive Driving Course II (DDC II).

C. The license or permit to drive of any person found guilty of violating this section may be suspended by the proper authority for a period not to exceed ninety (90) days. The court, upon suspending the license of any such person, shall follow the procedure set forth in § 707(D) of this chapter.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Note. Slightly reworded for purposes of statutory form.

Library References

Automobiles ⇄330.
 Indians ⇄32(13).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
 C.J.S. Motor Vehicles §§ 1354 to 1362.

§ 709. Racing on highways

A. No person shall drive a vehicle on a highway in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of the maximum speed prescribed by law. No person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. Any person found guilty of violating any provision of this section shall be subject to imprisonment for a term not to exceed three (3) months or a fine not to exceed three hundred-seventy five dollars (\$375.00), or both, to and attend a traffic safety education course (DDC II).

C. Upon a second or subsequent conviction committed within a periods of twenty-four (24) months, such person shall be punished by imprisonment for a term of not less than twenty (20) days nor more than six (6) months, or be ordered to pay a fine of not less than two hundred-twenty five dollars (\$225.00) nor more than five hundred dollars (\$500.00) or both.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⇄331.
 Indians ⇄32(13).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
 C.J.S. Motor Vehicles §§ 1358, 1435 to 1453.

§ 710. Accidents involving death or personal injuries

A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop the vehicle and remain at the scene of the accident until he or she has fulfilled all requirements under this title.

B. Any person involved in an accident failing to stop or to remain at the scene of any accident as provided hereunder shall be ordered to pay a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for not less than thirty (30) days nor more than one hundred fifty (150) days, or both. Penalties and assessments under this section may be cumulative and imposed in addition to any appropriate penalty, fine or civil assessment upon conviction or determination of other or related offense or infractions involved.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1488 to 1504.
Westlaw Topic Nos. 48A, 209.	

§ 711. Accidents involving damage to attended vehicle

A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle shall immediately stop his or her vehicle at the scene of the accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of the accident until he or she has fulfilled all requirements under this title.

B. Any person failing to stop or comply with the requirements of this section shall be subject to be a fine not to exceed three hundred seventy-five dollars (\$375.00).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1488 to 1504.
Westlaw Topic Nos. 48A, 209.	

§ 712. Duty to give information and render aid

The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall: (1) call the police, (2) render reasonable assistance to any person injured in the accident by making arrangements for the carrying of the person to the hospital for medical treatment when it is apparent that such treatment is necessary; and (3) give his or her name, address and the registra-

tion number of the vehicle he or she is driving, and shall upon request exhibit his or her operator's or chauffeur's license and proof of insurance coverage to a police officer and to the person struck or the driver or occupant of, or person attending any vehicle damaged as a result of the accident.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1488 to 1504.
Westlaw Topic Nos. 48A, 209.	

§ 713. Immediate report of accidents

The driver of a vehicle involved in an accident resulting in an injury to or death of any person shall immediately, by the quickest means of communication, give notice of the accident to the Navajo Police or to the nearest law enforcement agency.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞336.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1488 to 1504.
Westlaw Topic Nos. 48A, 209.	

§ 714. Implied consent to submit to chemical test

A. Any person who operates a motor vehicle within the Navajo Nation shall be deemed to have given consent to a chemical test or tests of his or her breath and/or blood for the purpose of determining the alcoholic and/or drug content of his or her blood, if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

B. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person has been driving or in actual physical control of a motor vehicle within the Navajo Nation while under the influence of intoxicating liquor or drugs. The Division shall designate the test to be administered.

C. Any person in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (A), and the test or tests designated by law enforcement officers maybe administered.

History

ACJN-131-88, June 29, 1988. CMY-30-88, May 6, 1988.

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Automobiles ⇌418.
Indians ⇌32(13).

Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.

§ 715. Refusal to submit to chemical test—Suspension of privilege to drive

A. Any person who refuses to submit to a chemical test as requested by an officer pursuant to § 714 shall have his or her driving privileges suspended by the court for a period of one (1) year. The court, upon suspending the license of any such person, shall follow the procedures set forth in § 701 of this chapter.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌144.1(1.20).
Indians ⇌32(13).

Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.

§ 716. Use of chemical tests in criminal actions or civil actions—Presumptions of intoxication

A. The results of a chemical test performed pursuant to this chapter may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

B. The amount of alcohol in a person's blood as shown by analysis of the person's blood, breath or other bodily substance shall give rise to the following presumptions:

1. If there was that time five one-hundredths of one percent (0.05%) or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor.

2. If there was at that time in excess of five one-hundredths of one percent (0.05%) but less than eight one-hundredths of one percent (0.08%) by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

3. If there was at the time eight one-hundredths of one percent (0.08%) or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

4. Paragraph 1, 2, or 3 of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of intoxicating liquor.

C. The percent by weight of alcohol shall be based on the grams of alcohol per one hundred (100) cubic centimeters of blood.

History

CF-13-01, February 1, 2001.
 ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞353, 411.	C.J.S. Evidence §§ 216 to 226.
Evidence ☞150.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1346, 1373, 1397 to
Westlaw Topic Nos. 48A, 157, 209.	1411, 1445, 1475, 1497, 1519, 1533.

§ 717. Administration of chemical test—Payment of costs—Additional tests

A. Only the persons authorized by § 718 shall withdraw blood from any person for the purpose of determining its alcoholic or drug content. This limitation does not apply to the taking of samples of breath.

B. The person tested shall be given an opportunity to arrange for a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician, of his or her own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test. If a person exercises his or her right to have a chemical test performed upon him or her by a person of his or her own choosing, then the cost of that test shall be paid by the person exercising his or her rights.

C. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the law enforcement officer shall be made available to him or her as soon as it is available from the person performing the test.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞415, 423.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(13).	C.J.S. Indians § 157.

§ 718. Blood-alcohol and/or drug tests directed by police, judicial or probation officer—Persons qualified to perform tests—Relief from civil and criminal liability

Only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician shall withdraw blood from any person in the performance of a blood-alcohol and/or drug test. No such physician, nurse, technician or technologist who withdraws blood from any person in the performance of a blood-alcohol and/or drug test that has been directed by any police officer, or by any judicial or probation officer, shall

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be held liable in any civil or criminal action for assault, battery, false imprisonment, or any conduct of any police officer, except for negligence, any person assisting in the performance of such a test, or any hospital wherein blood is withdrawn in the performance of such test, be subject to civil or criminal liability for assault, battery, false imprisonment, or any conduct of any police officer, except for negligence.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Note. Slightly reworded for purposes of statutory form.

Library References

Automobiles ⇌423.
Health ⇌768.
Indians ⇌32(13).

Westlaw Topic Nos. 48A, 198H, 209.
C.J.S. Indians § 157.

§ 719. Blood-alcohol and/or drug tests—Police, judicial or probation officer unauthorized to make arrest or direct test authorized by law

Nothing in this chapter is intended to authorized any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol and/or drug test otherwise unauthorized by law.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌349(6), 414.
Indians ⇌32(13).

Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.

§ 720. Records of disposition

All records regarding the disposition of cases in which a person is charged with a violation of § 708 shall be maintained by the court and made accessible to the general public. The court shall include in these records an explanation of its reasons for accepting any plea agreement or dismissing any charge of a violation of § 707.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Indians ⇌32(13).
Records ⇌30.
Westlaw Topic Nos. 209, 326.

C.J.S. Indians § 157.
C.J.S. Records §§ 60, 62 to 63, 65, 93, 95.

§ 721. School crossings

A. Crosswalks may be established over highways near a school or the grounds nearby, and all children crossing the highway shall be required to do

so within the marked crosswalks. The Division, with respect to streets under their jurisdiction, with advice from the local superintendent of schools, shall establish and mark, or cause to be established and marked, these highway crossings.

B. Crosswalks over highways not adjoining school grounds may be established by the appropriate jurisdiction with the advice of the local superintendent of schools, after adequate assurance has been given that proper safety precautions, pursuant to regulations of the appropriate authorities, will be maintained.

C. At all school crossings, except as provided in this section, appropriate signs shall be provided as prescribed by the appropriate jurisdictions, indicating the crossings and regulations for traffic movement within the school zones.

D. School crossings are not required to be specially posted when they are located:

1. At a signalized intersection; or
2. At an intersection where traffic is controlled by a stop sign; or
3. At a point where a pedestrian tunnel or overhead crossing is provided.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞279.	C.J.S. Motor Vehicles §§ 444, 446 to 447,
Indians ☞32(4.1).	451, 455, 458, 489 to 490.
Westlaw Topic Nos. 48A, 209.	

§ 722. Use of white cane and other ambulation or mobility devices

A. The driver of a vehicle approaching a legally blind pedestrian who is carrying a cane predominantly white or metallic in color, or is using a guide-dog or is assisted by a sighted person shall yield the right-of-way and take reasonable precautions to avoid injury to such pedestrian. In addition, the pedestrian shall have the same rights as all other pedestrian whether or not he or she is carrying such cane, using such dog or being assisted by such sighted person.

B. A person who violates any provision of this section shall be subject to a fine not to exceed five hundred dollars (\$500.00).

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞324.	Westlaw Topic Nos. 48A, 209.
Indians ☞32(13).	C.J.S. Indians § 157.

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C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 723. Throwing or dropping objects at moving vehicles

A. It shall constitute an offense for any person to intentionally or negligently throw, shoot, or otherwise propel any object at a motor vehicle which is being operated on a roadway.

B. Any person who violates the provisions of this section shall be subject to a fine of not more than five hundred dollars (\$500.00).

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞324.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 724. Overtaking and passing school bus

A. The driver of a vehicle upon a roadway, upon meeting or overtaking from either direction any school bus which has stopped and has its red flashers in operation on the roadway for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus and shall not proceed until the school bus resumes motion and the red flashing lights are not in operation.

B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight (8) inches in height.

C. Every bus used for the transportation of school children shall be equipped with a signal with the word "Stop" printed on both sides in white letters not less than five (5) inches high on a red background. The signal shall not be less than twenty (20) inches long and shall be manually operated by the operator of the school bus in such manner as to be clearly visible from both the front and rear when extended from the left of the body of the bus. It shall be displayed only when passengers are being received or discharged from the bus.

D. The driver of a vehicle upon a roadway with separated lanes need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled access roadway and the school bus stopped in a loading zone which is a part of or adjacent to the roadway and where pedestrians are not permitted to cross the roadway.

E. Any person who violates the provisions of subsection (A) of this section shall be guilty of an infraction punishable by a civil assessment fee of not more than one hundred fifty dollars (\$150.00). A second conviction within one (1) year thereafter shall be a misdemeanor subject to a fine of not more than three hundred-seventy five dollars (\$375.00). A third or subsequent conviction

within one (1) year after the last conviction shall be a misdemeanor subject to not less than five hundred dollars (\$500.00) or imprisonment for not less than sixty (60) days, nor more than six (6) months, or both.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞335.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1541, 1543, 1548,
Westlaw Topic Nos. 48A, 209.	1551 to 1552.

**Chapter 6. Parties, Procedure Upon Arrest
 and Reports in Criminal Cases**

Section

- 800. Parties to a criminal or misdemeanor offense
- 801. Offenses by person owning or controlling vehicles
- 802. When person arrested must be taken before a judge of the District Court
- 803. When person arrested for misdemeanor to be given notice to appear in Court
- 804. Violation of promise to appear
- 805. Procedure prescribed in this article not exclusive
- 806. Form for traffic citations
- 807. Disposition and records of traffic citations
- 808. Illegal cancellation of traffic citation; audit of citation records
- 809. Certification of traffic citation forms and complaints certification; false certification

§ 800. Parties to a criminal or misdemeanor offense

A person who commits, attempts to commit, conspires to commit or aids or abets in the commission of, any act classified under this title to be a criminal or misdemeanor offense, whether individually or in connection with one or more other persons or as a principal, agent or accessory, is guilty of the offense. A person who falsely, fraudulently, forcibly or wilfully induces, causes, coerces, requires, permits or directs another to violate any provision of this title is likewise guilty of the offense.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞323.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1318, 1440, 1460,
Westlaw Topic Nos. 48A, 209.	1506, 1517.

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§ 801. Offenses by person owning or controlling vehicles

It is unlawful for the owner, or any other person employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of the vehicle upon a highway in any manner contrary to law.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞324.	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1311 to 1313, 1315
Westlaw Topic Nos. 48A, 209.	to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 802. When person arrested must be taken before a judge of the District Court

A person who is arrested for any of the following misdemeanor or criminal charges shall be taken before a District Judge of the Navajo Nation within a reasonable and lawful period of time.

- A. Homicide by vehicle;
- B. Driving while under the influence of intoxicating liquor or drugs;
- C. Failure to stop or to remain at the scene in the event of involvement in an accident causing death, personal injuries or damage to property; or
- D. In any event when the person arrested refuses to give his or her written promise to appear in court as provided in this chapter.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞349(19).	C.J.S. Indians § 157.
Indians ☞32(13).	C.J.S. Motor Vehicles §§ 1328, 1335.
Westlaw Topic Nos. 48A, 209.	

§ 803. When person arrested for misdemeanor to be given notice to appear in Court

A. When a person is arrested for any other misdemeanor of this title, besides those instances specified in § 802 above, the arresting officer shall prepare in quadruplicate written notice to appear in court containing the name and address of the person, the license number of his or her vehicle, if any, and the offense charged.

B. The arrested person in order to secure release as provided in this section, shall give his or her written promise to appear in court as specified in the written notice by signing at least one copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person

promising to appear. The officer shall then release the person arrested from custody.

C. An officer violating any of the provisions of this section is guilty of misconduct and is subject to removal.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⚡349(19).	C.J.S. Indians § 157.
Indians ⚡32(13).	C.J.S. Motor Vehicles §§ 1328, 1335.
Westlaw Topic Nos. 48A, 209.	

§ 804. Violation of promise to appear

A. Any person wilfully violating his or her written promise to appear in court, given as provided in § 803, is guilty of an offense regardless of the disposition of the charge upon which he or she was originally arrested.

B. A written promise to appear in court may be complied with by an appearance by counsel.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Bail ⚡97.	C.J.S. Release and Detention Pending Proceedings § 73.
Indians ⚡32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 49, 209.	
C.J.S. Bail.	

§ 805. Procedure prescribed in this article not exclusive

A. The provisions of §§ 800-804 shall govern all police officers in making arrests without a warrant for violations of the Title, but the procedure prescribed in this subchapter shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

B. For any misdemeanor or criminal offense alleged to have been committed in violation of this title where an officer must have a warrant to arrest, the officer may proceed as in any other offense; that is, either under a warrant of arrest or a summons and notice to appear.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ⚡349(19).	Indians ⚡32(13).
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14 N.N.C. § 805

NAVAJO NATION MOTOR VEHICLE CODE

Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 1328, 1335.

§ 806. Form for traffic citations

A. The Division shall use a uniform traffic ticket and complaint form appropriately designating either civil or misdemeanor traffic citation which shall be issued in books with consecutively numbered citations in quadruplicate and meeting the requirements of this title.

B. The Division shall be responsible for the issuance of the books and shall maintain a record and receipt of every book issued to members of the Division.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.

Library References

Automobiles ☞351.1.	C.J.S. Motor Vehicles §§ 1344, 1365 to 1371,
Indians ☞32(13).	1397 to 1400, 1443, 1473, 1486 to 1487,
Westlaw Topic Nos. 48A, 209.	1496, 1508, 1518, 1526, 1532, 1543 to
C.J.S. Indians § 157.	1544, 1546 to 1547, 1550.

§ 807. Disposition and records of traffic citations

A. Every law enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the Navajo Nation Motor Vehicle Code shall deposit the original or a copy of the traffic citation with the District Courts of the Navajo Nation.

B. Upon the deposit of the original or a copy of the traffic citation with a district court, the original or copy of the traffic citation may be disposed of only by the court. Disposition by the court includes trial, forfeiture of bond or bail, entry of judgment or determination, the deposit of sufficient bond or bail with the court, payment by the offender of any fine or assessment to the court; or imposition of appropriate sentences, penalty or imprisonment.

C. It is unlawful and official misconduct for any law enforcement officer or other officer or public employee to dispose of an original, copy or record of traffic citation in a manner other than as required by this article.

D. The Division shall require the return of a copy of every traffic citation issued by an officer to an alleged violator of any provision of the Navajo Nation Motor Vehicle Code and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

E. The Division shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer, a record of the disposition of the charge by the court in which the original or copy of the traffic citation was deposited.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Indians ☞32(13).	C.J.S. Indians § 157.
Records ☞3.	C.J.S. Records § 4.
Westlaw Topic Nos. 209, 326.	

§ 808. Illegal cancellation of traffic citation; audit of citation records

A. Any person who cancels and dismisses or otherwise nullifies a traffic citation other than pursuant to a lawful court order or as otherwise provided in this article, shall be guilty of a misdemeanor.

B. Every record of traffic citations and their dispositions as required in this title shall be audited annually by the Office of the Auditor General.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Indians ☞32(13).	C.J.S. Indians § 157.
Officers and Public Employees ☞121.	C.J.S. Officers and Public Employees §§ 329 to 334.
Westlaw Topic Nos. 209, 283.	

§ 809. Certification of traffic citation forms and complaints certification; false certification

A. Traffic citation forms or traffic complaints need not be sworn to if they contain a form of certification by the arresting officer in substance as follows:

“I hereby certify that I have reasonable grounds to believe and do believe that the person cited herein committed the offense described herein contrary to law.”

B. A false certification under the provisions of subsection (A) shall constitute a misdemeanor offense.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Library References

Automobiles ☞351.1.	C.J.S. Motor Vehicles §§ 1344, 1365 to 1371, 1397 to 1400, 1443, 1473, 1486 to 1487, 1496, 1508, 1518, 1526, 1532, 1543 to 1544, 1546 to 1547, 1550.
Indians ☞32(13).	
Westlaw Topic Nos. 48A, 209.	
C.J.S. Indians § 157.	

Chapter 8. Construction of Highways

Subchapter 1. Generally

Section

- 1000. Location and character
- 1001. Width of rights-of-way
- 1002. Warning devices at construction sites

Subchapter 3. Rights-of-Way for Routes 1 and 3

- 1020. Survey, construction, and grant of rights-of-way; authority to consent; waiver of compensation
- 1021. Transfer of rights-of-way to state of Arizona; authority to consent
- 1022. Terms or conditions; authority to attach
- 1023. Damages for improvements—Generally
- 1024. Cost of removal
- 1025. Knowledge that area included in right-of-way

History

Note. With the exception of § 1002, all other sections were previously codified at 14 N.N.C. §§ 1, 2, and 61–66.

Subchapter 1. Generally

§ 1000. Location and character

The location and character of the roads to be constructed on Navajo Nation lands shall first be approved by the Transportation and Community Development Committee which shall give due consideration to the needs of the Navajos before approving the construction of any road or roads.

History

ACJN–131–88, June 29, 1988.

CMY–30–88, May 6, 1988.

1922–1951 Res. p. 283, July 10, 1950.

Note. The Advisory Committee is no longer a standing committee of the Navajo Nation Council.

cil. See 2 N.N.C. § 423(E) for the authority of the Transportation and Community Development Committee.

Library References

Highways ⇌ 103.1.

Indians ⇌ 32(4.1).

Westlaw Topic Nos. 200, 209.

§ 1001. Width of rights-of-way

Rights-of-way of one hundred (100) feet or fifty (50) feet on each side of the center line of all presently maintained and constructed roads any roads to be constructed on Navajo Nation lands under the ten (10) year program are granted. In the case of irrigated lands where rights-of-way are now less than

one hundred (100) feet, such rights-of-way may be increased to one hundred (100) feet only with the consent of the users of the land or upon payment for any damage to such users.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.
 1922-1951 Res. p. 283, July 10, 1950.

Library References

Highways ⇌103.1.
 Indians ⇌32(4.1).
 Westlaw Topic Nos. 200, 209.

§ 1002. Warning devices at construction sites

A. Any contractor, person, firm, corporation or political subdivision or other entity performing work on roads, streets or highways, shall place or cause to be placed at every such work or construction site, specified notices, warning and traffic control signs and devices in conformity with the specifications required by the National Highway Safety Code and approved by the Division; and shall maintain at the work site such warning signs, signals, markers and barricades, adequate to warn those using such road, street, or highway until the work is completed or until such time as the governing body authorizes their removal.

B. Any person failing to place or maintain such notices, warnings or traffic control signs and devices as required herein, shall upon conviction thereof, be guilty of a misdemeanor, punishable by a fine of not less than three hundred dollars (\$300.00), nor more than five hundred dollars (\$500.00), or by imprisonment for not more than sixty (60) days, or both.

C. In addition to the penalties provided herein, the Division may order that the conduct of any highway, roadway or street work construction or maintenance not in conformity with the requirements of this section, be secured and suspended, until brought into full compliance and conformity with said requirements; and the Court shall order any party found guilty of violating this section, to pay and to reimburse the Division for all costs reasonably incurred in order to appropriately secure and safely traverse such road work, construction or maintenance site.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.

Note. This section was previously designated as § 800 by CMY-30-88, May 6, 1988.

Library References

Automobiles ⇌290.
 Highways ⇌163(1).
 Indians ⇌32(4.1).

Westlaw Topic Nos. 48A, 200, 209.
 C.J.S. Motor Vehicles §§ 463 to 464, 466, 491.

Subchapter 3. Rights-of-Way for Routes 1 and 3

§ 1020. Survey, construction, and grant of rights-of-way; authority to consent; waiver of compensation

A. The President of the Navajo Nation is authorized to give the consent of the Navajo Nation to the Bureau of Indian Affairs for the survey, construction, and grant of rights-of-way for Routes 1 and 3; said rights-of-way not to exceed three hundred (300) feet wide on Route 1, and not to exceed two hundred (200) feet wide on Route 3 across Navajo Nation land.

B. All claim of the Navajo Nation to compensation for use of its lands for highway purposes within such rights-of-way is waived. This waiver shall not extend to extraordinary actual damages.

History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

Note. This section should be read in light of the amendments made to Title Two of Navajo

Nation Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

Library References

Eminent Domain ⇌79.

Highways ⇌99.

Indians ⇌32(4.1).

Westlaw Topic Nos. 148, 200, 209.

C.J.S. Eminent Domain §§ 182, 200.

§ 1021. Transfer of rights-of-way to state of Arizona; authority to consent

The President of the Navajo Nation may consent on behalf of the Navajo Nation to the transfer of the rights-of-way for Routes 1 and 3 or of any parts of them to the State of Arizona, reserving the right of the Nation to compensation for the use of its lands within rights-of-way if after such transfer such routes or any part of them are made controlled access highways.

History

ACJN-131-88, June 29, 1988.

CMY-30-88, May 6, 1988.

CAP-25-59, April 16, 1959.

Note. This section should be read in light of the amendments made to Title Two of Navajo

Nation Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

Library References

Eminent Domain ⇌79.

Highways ⇌99.

Indians ⇌32(4.1).

Westlaw Topic Nos. 148, 200, 209.

C.J.S. Eminent Domain §§ 182, 200.

§ 1022. Terms or conditions; authority to attach

The President of the Navajo Nation may attach any terms or conditions not inconsistent with 14 N.N.C. §§ 1020 and 1021, to the Navajo Nation Consents regarding rights-of-way that the President is empowered to give.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.
 CAP-25-59, April 16, 1959.

Note. Slightly reworded.

This section should be read in light of the amendments made to Title Two of Navajo Na-

tion Code by CD-68-89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee. See also 2 N.N.C. § 691 *et seq.* for the authority of the Resources Committee.

Library References

Highways ⇄99.
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 200, 209.

§ 1023. Damages for improvements—Generally

A. Whenever in the course of construction of Routes 1 and 3 by the Bureau of Indian Affairs across Navajo Nation land, or any allotment owned by a Navajo or Navajos, it is necessary to remove, destroy, or otherwise damage any improvement belonging to a Navajo who will not donate the same, the Navajo Nation shall pay damages to the rightful claimant thereof out of Navajo Nation funds.

B. As used herein “improvement” means houses, hogans, sunshades, stables, storage sheds and dugouts, and sweathouses; sheep and horse corrals, lamb pens, and fences lawfully maintained; irrigation ditches, dams, charcos, development work on springs, and other water supply developments; any and all structures used for lawful purposes and other things having economic value.

History

ACJN-131-88, June 29, 1988.
 CMY-30-88, May 6, 1988.
 CAP-25-59, April 16, 1959.

Cross References

Compensation for improvements and customary use rights upon adverse disposition of land, see 16 N.N.C. § 1401 *et seq.*

Library References

Highways ⇄114.
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 200, 209.

§ 1024. Cost of removal

Where any improvement owned by a Navajo is readily removable and he or she has an opportunity to remove the same, damages payable on account of such improvement shall be limited to the reasonable cost of removal, if any, even though the claimant thereof may have failed to remove such improvement and it may have been destroyed in the course of construction on the right-of-way.

14 N.N.C. § 1024

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History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CAP-25-59, April 16, 1959.

Library References

Eminent Domain ⇌301. Westlaw Topic Nos. 148, 200, 209.
Highways ⇌114. C.J.S. Eminent Domain § 414.
Indians ⇌32(4.1).

§ 1025. Knowledge that area included in right-of-way

No damages shall be paid to any person for any improvement, when such person at the time of building or acquiring such improvement knew or ought to have known that the area in which it was located was proposed to be included in a right-of-way.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CAP-25-59, April 16, 1959.

Library References

Eminent Domain ⇌301. Westlaw Topic Nos. 148, 200.
Highways ⇌114. C.J.S. Eminent Domain § 414.

Chapter 10. Zoning Sides of Highways

Section

1200. Generally
1201. [Superseded]

§ 1200. Generally

Controlled zones of seven hundred fifty (750) feet on both sides of the right-of-way of any constructed, maintained or new proposed roads are established.

History

ACJN-131-88, June 29, 1988. **Note.** This section was previously codified as
CMY-30-88, May 6, 1988. 14 N.N.C. § 201.
1922-1951 Res. p. 138, March 16, 1950.

Library References

Indians ⇌32(10). C.J.S. Indians § 63.
Zoning and Planning ⇌271. C.J.S. Zoning and Land Planning § 122.
Westlaw Topic Nos. 209, 414.

§ 1201. [Superseded]

History

This section enacted by 1922–1951 Res. p. 138, March 16, 1950, was previously codified as 14 N.N.C. § 202 and was entitled “Authority of Advisory Committee”. The Advisory Committee is no longer a standing committee of the Navajo

Nation Council pursuant to CD–68–89, December 15, 1989. See 2 N.N.C. § 420 *et seq.* for the authority of the Transportation and Community Development Committee.

Chapter 12. Traffic Codes for Navajo Nation in Arizona, New Mexico and Utah

Section

1400. Authority to prepare

§ 1400. Authority to prepare

The President of the Navajo Nation is authorized and empowered to cause to be prepared highway traffic codes for the portions of the Navajo Nation lying respectively within the States of Arizona, New Mexico and Utah, which will be identical with or substantially similar and parallel to the highway laws of the above-mentioned states, to be in effect in those portions of the Navajo Nation lying within such states.

History

ACJN–131–88, June 29, 1988.
 CMY–30–88, May 6, 1988.
 CMY–23–62, May 2, 1962.
 ACAU–170–62, August 24, 1962.

Note. The term “reservation” has been replaced by the term “Navajo Nation”. This section was previously codified at 14 N.N.C. § 701.

Library References

Automobiles ⇄5, 9.
 Indians ⇄32(4.1).
 Westlaw Topic Nos. 48A, 209.

C.J.S. Motor Vehicles §§ 24 to 28, 34 to 35,
 38 to 40, 42 to 44, 46 to 68, 1307.

Chapter 15. Driver’s Licenses

Section

1700. Motor vehicle operator; definition
 1701. Requirement
 1702. Possession of license; display
 1703. Violations; penalties

History

Note. This chapter was previously codified at §§ 901 through 904.

14 N.N.C. § 1700

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§ 1700. Motor vehicle operator; definition

Each individual, to whom 14 N.N.C. § 1701 applies, is a motor vehicle operator within the meaning of that term as defined in the drivers license statutes of the state where he or she resides.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CO-39-51, October 19, 1951.

Library References

Automobiles ☞137. C.J.S. Motor Vehicles §§ 256, 258, 262 to
Indians ☞32(4.1). 267.
Westlaw Topic Nos. 48A, 209.

§ 1701. Requirement

Every Indian operating a motor vehicle on the Navajo Nation shall be the holder of a valid driver's license issued by the state in which such individual resides.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CO-39-51, October 19, 1951.

Library References

Automobiles ☞137. C.J.S. Motor Vehicles §§ 256, 258, 262 to
Indians ☞32(4.1). 267.
Westlaw Topic Nos. 48A, 209.

§ 1702. Possession of license; display

A licensee shall have such license in his or her possession at all times when he or she is operating a motor vehicle, and shall upon demand display the same to any member of the Navajo Police and any special officers or deputies.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CO-39-51, October 19, 1951.

Library References

Automobiles ☞136, 326. C.J.S. Motor Vehicles §§ 22, 257, 259 to 261,
Indians ☞32(4.1). 277 to 279, 1422 to 1432, 1524 to 1527,
Westlaw Topic Nos. 48A, 209. 1541, 1544.

§ 1703. Violations; penalties

Any Indian violating the provisions of 14 N.N.C. §§ 1701 and 1702 shall be subject to prosecution in the Courts of the Navajo Nation and upon conviction shall be fined a sum of not less than one dollar (\$1.00) nor more than twenty

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14 N.N.C. § 1703

five dollars (\$25.00), or by a sentence to hard labor for a period not to exceed fifteen (15) days, or both.

History

ACJN-131-88, June 29, 1988.
CMY-30-88, May 6, 1988.
CO-39-51, October 19, 1951.

Library References

Automobiles ☞326, 359.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.
C.J.S. Indians § 157.

C.J.S. Motor Vehicles §§ 1336, 1352, 1380,
1414 to 1419, 1422 to 1432, 1451 to 1452,
1484, 1503, 1510, 1524 to 1527, 1539,
1541, 1544.

Title 15

Labor

Chapter	Section
1. Office of Labor [Superseded]	1
3. Office of Navajo Labor Relations	201
4. Navajo Nation Labor Commission	301
5. Wages [Repealed]	401
7. Navajo Preference in Employment Act	601
9. Child Labor	801
11. Workers' Compensation	1001
13. Crownpoint Institute of Technology	1201
15. Navajo Nation Occupational Safety and Health Act	1401

Chapter 1. Office of Labor [Superseded]

History

Note. Former Chapter 1, "Office of Labor" (CF-22-75, February 21, 1975), was superseded by the current Navajo Nation Division of Human Resources. For current information see the Division of Human Resources Plan of Operation. Also see Enabling Legislation for the Division of Human Resources in Title 2 of the Navajo Nation Code.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 3. Office of Navajo Labor Relations

Section

201. Establishment
202. Purposes
203. Personnel
204. Duties and responsibilities
205. Authority
206. Avoidance of ex parte communications
207. Place of office
208. Amendments to the plan of operation

§ 201. Establishment

The Office of Navajo Labor Relations ("ONLR") was originally established by CJA-4-72 and underwent a name change in 1976 to the Division of Equal Opportunity and Employment. The original name as the Office of Navajo Labor Relations was reinstated and its Plan of Operation amended by ACJY-134-85. ONLR is a department within the Division of Human Resources ("DHR").

15 N.N.C. § 201

LABOR

History

GSCJY-39-91, July 23, 1991.
ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.
CJA-4-72, § 1, January 19, 1972.

Library References

Labor Relations ⇄27.1.
Westlaw Topic No. 232A.

§ 202. Purposes

The purposes of the ONLR are as follows:

A. To monitor and enforce the Navajo Preference in Employment Act (“NPEA”).

B. To develop and implement the labor policies of the Navajo Nation as established by the Navajo Nation Council.

C. To act as an administrative agency for matters relating to the enforcement of employment preference in hiring, recruitment, promotion, layoff, termination, transfer and other areas of employment.

D. To gather information from employers, employees, labor organizations, and governmental agencies relating to employment, compensation, and working conditions.

E. To recommend and propose policies, rules, regulations, and guidelines, concerning labor and employment to the Human Services Committee and the Navajo Nation Council.

F. To assist and encourage, where appropriate, the settlement of labor disputes within the territorial jurisdiction of the Navajo Nation.

History

GSCJY-39-91, July 23, 1991.
ACJY-159-87, July 21, 1987.
ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

§ 203. Personnel

A. There is hereby established the position of Director of ONLR, and such other positions as may from time to time be budgeted by the Navajo Nation Council or by any other source available and acceptable to the Division of Human Services (“DHR”).

B. The Director of ONLR shall be hired and report to and be responsible to the Executive Director of the DNR, in accordance with the personnel policies and procedures.

C. In consultation with the Executive Director of the DNR all other ONLR personnel will be hired by the Director of ONLR. Hiring and compensation shall be in accordance with the personnel policies and procedures.

History

GSCJY-39-91, July 23, 1991.
ACJY-159-87, July 21, 1987.
ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

§ 204. Duties and Responsibilities

Director of ONLR shall be authorized to recommend additional professional, technical, and clerical positions as needed to carry out the organizational purpose(s). Additional positions shall be acquired in accordance with Navajo Nation Personnel Policy and Procedures and within applicable budget rules.

History

GSCJY-39-91, July 23, 1991.
ACJY-159-87, July 18, 1985.
CJA-4-72, § 1, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

§ 205. Authority

ONLR shall have the powers necessary to properly to carry out the purposes set forth in § 202 of this Plan of Operation. ONLR is hereby authorized and directed:

- A. To ensure that all employers are complying with the NPEA in the employment and training of enrolled members of the Navajo Nation;
- B. To develop appropriate guidelines for the employment of Navajos desiring work with employers;
- C. To monitor and enforce Navajo labor laws, rules, policies and regulations;
- D. To recommend laws, rules, regulations, guidelines and policies as may be necessary to accomplish the purposes of the NPEA;
- E. To require employers to submit such reports and information as deemed necessary to carry out the purposes of the NPEA;
- F. To report annually to the Navajo Nation Council, and quarterly to the Human Services Committee, the extent to which employers are complying with the NPEA;
- G. To assist in coordinating such education and job training programs as necessary to provide qualified Navajo workers for employers;
- H. To ensure appropriate preferential employment and training provisions are included in all agreements entered into by employers;
- I. To establish minimum employment and labor provisions (including employment, registered apprenticeship participation, wages, promotion, termination, grievance procedures, and related employment matters) for inclusion in all agreements entered into by employers;
- J. To investigate and make administrative determinations concerning compliance by employers with the NPEA or labor provisions in contracts, subcontracts, leases, permits or other agreements;

15 N.N.C. § 205

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K. To file formal complaints with the Navajo Nation Labor Commission (the “Commission”), participate as complainant in hearings held by the Commission and make application to the Commission for subpoenas requiring the attendance and testimony of persons or witnesses and production of documents; and

L. To otherwise take all necessary action to accomplish the purposes of the NPEA.

History

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

§ 206. Avoidance of ex parte communications

Except as otherwise permitted or required by law, ONLR and its legal counsel shall take reasonable measures to avoid: (a) disclosure to members, staff and legal counsel of the Commission of specific factual or legal issues concerning alleged violations of the NPEA under investigation by ONLR and not a matter of record before the Commission; and (b) ex parte communications to Commission members, staff or legal counsel concerning a pending proceeding before the Commission without notice to the respondent employer which is a party in such proceeding.

History

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

§ 207. Place of office

ONLR shall have its main office in Window Rock, Navajo Nation (Arizona). ONLR may also establish sub-offices at such other locations as the Director, in consultation with the Executive Director of the Division of Human Services, deems appropriate.

History

GSCJY-39-91, July 23, 1991.

ACJY-159-87, July 21, 1987.

ACJY-134-85, July 18, 1985.

CJA-4-72, § 1, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

§ 208. Amendments to the Plan of Operation

Upon recommendation by the Human Services Committee, this Plan of Operation may be amended from time to time as deemed necessary by the Government Services Committee of the Navajo Nation Council or as may be otherwise authorized by Navajo Nation Law.

History

GSCJY-39-91, July 23, 1991.
ACJY-159-87, July 21, 1987.
ACJY-134-85, July 18, 1985.

CJA-4-72, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

Chapter 4. Navajo Nation Labor Commission

Section

- 301. Establishment
- 302. Purposes
- 303. Organization
- 304. Authority, duties and responsibilities
- 305. Meetings; procedure
- 306. Staff
- 307. Place of office
- 308. Amendment

§ 301. Establishment

A. The Board of Directors of the Office of Navajo Labor Relations (the “Board”) was originally established by CJA-4-72 and underwent a name change in 1976 to the Board of Directors of the Division of Equal Opportunity and Employment. The Board’s original name was reinstated and its Plan of Operation amended by ACJY-134-85.

B. The Board is continued under the name Navajo Nation Labor Commission (the “Commission”) and shall have the powers prescribed in this Plan of Operation, as well as such additional powers as maybe granted to the Commission by law.

History

ACJY-160-87, July 21, 1987.
ACJY-134-85, July 18, 1985. (Previously codified as the “Board of Directors” at 15 N.N.C. § 203).

CJA-4-72, January 19, 1972.

Note. Slightly reworded for purposes of statutory form.

§ 302. Purposes

The purposes of the Commission shall be to:

- A. Act as the administrative hearing body under the Navajo Preference in Employment Act.
- B. Conduct and hold administrative hearings in accordance with applicable Navajo Nation laws concerning Navajo employment preference.
- C. Process and decide all formal complaints filed before it.
- D. Adopt rules and regulations for Commission hearings.

History

ACJY-160-87, July 21, 1987.

§ 303. Organization

The Commission shall consist of five members.

A. Membership. The Commission shall consist of: (a) two (2) members appointed by the Human Services Committee of the Navajo Nation Council with the concurrence of the Government Services Committee of the Navajo Nation Council; and (b) three (3) members appointed by the President of the Navajo Nation with the concurrence of the Government Services Committee.

B. Commission Members Qualifications. The two members appointed by the Human Services Committee and the three members of the Commission appointed by the President of the Navajo Nation shall be familiar with labor practices and requirements of the Navajo Nation. One appointed member shall be a Navajo worker familiar with union practices. The Executive Director of the Division of Human Services, the Directors of any department within the Division of Human Services, employees of the Division of Human Services or its departments shall not be eligible to serve as members of the Commission.

C. Officers. The officers of the Commission shall be elected every four (4) years from among the Commission by a majority vote of the Commission and shall consist of a Chairperson, Vice-Chairperson, and Secretary.

1. Chairperson. The Chairperson of the Commission shall preside at meetings of the Commission, assure orderly meetings in accordance with accepted parliamentary rules, and sign all documents as required for action of the Commission.

2. Vice-Chairperson. The Vice-Chairperson shall serve in the absence of the Chairperson and in the performance of this service shall exercise all the powers and bear all the responsibilities of the Chairperson.

3. Secretary. The Secretary shall fulfill all legal obligations of the Commission, and carry out such duties as may be prescribed. In the absence of the Chairperson and Vice-Chairperson, the Secretary shall preside at all meetings of the Commission.

D. Term of Office. Each member of the Commission shall serve for a term of four (4) years and until his or her successor is appointed.

E. Commission Vacancies:

1. Any Commission member may resign by submitting thirty (30) days prior written notice of their resignation and such resignation shall be accepted by the Commission at the next Commission meeting.

2. Any member of the Commission shall be removed from the Commission if:

a. Such member has been convicted of any crime reflecting upon such member's honesty or ability to fulfill the fiduciary obligations imposed by law upon such member; or

b. Such member violates the disclosure of conflicts of interest requirements set forth below:

(1) No contract or other transaction between any Commission member and any employer, company, person, corporation, association, partnership, joint venture, labor union, governmental organization or entity of any kind in which one or more of the Commission members has an interest directly or indirectly shall be valid for any purpose, unless the entire interest of that person or the Board of Directors of such entity is fully disclosed to the Commission and the proposed contract or transaction is approved by the affirmative vote of at least a majority of the entire Commission who are not so interested. The Commission shall submit any such contract or transaction for further approval at any regular meeting of the Ethics and Rules Committee of the Navajo Nation Council. Any such contract or transaction which is approved by a vote of the majority of the Ethics and Rules Committee of the Navajo Nation Council shall be valid and binding upon the parties.

(2) The Commission shall submit any contract or transaction wherein a Navajo Nation officer or employee may have any interest directly or indirectly in the matter or transaction to any regular meeting of the Ethics and Rules Committee of the Navajo Nation Council for approval. Any such contract or transaction which is approved by a vote of the majority of the Ethics and Rules Committee of the Navajo Nation Council shall be valid and binding upon the parties.

(3) This section shall be subject to any subsequent requirements or regulations adopted pursuant to the Navajo Nation Ethics in Government Law.

3. In the event a Commission member is found to be in violation of § 303(E)(2), such member shall be forthwith removed from his or her position, effective upon written notice of removal by the Chairperson of the Commission. The Commission shall promptly submit the appropriate information and facts concerning the violation and removal to the authority (the President of the Navajo Nation or the Human Services Committee) which appointed such member.

4. In the event a vacancy is created on the Commission by reason of resignation, removal or any other reason, such vacancy shall be filled by the authority which is authorized to appoint members to such vacant seat, in accordance with the procedure prescribed in § 303(A) and (B). Appointment of a replacement member shall be made within thirty (30) days after the date the appointing authority receives written notification of the vacancy.

History

IGRJN-132-96, June 3, 1996.
IGRMA-59-93, March 15, 1993.
ACJY-160-87, July 21, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*
 Government Services Committee of the Navajo Nation Council, 2 N.N.C. § 343(B)(3).

Annotations**1. Due process**

“The Navajo Nation Code explicitly provides for a five-member Commission and a quorum of three. The same three Labor Commission members who initially heard the case reviewed the evidence and decided the case on remand.

Therefore, the case *was* decided by a quorum, and Cameron suffered no deprivation of due process in this regard.” *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10 (Nav. Sup. Ct. August 12, 2003).

§ 304. Authority, duties and responsibilities

The Commission is authorized and directed to:

- A. Submit an annual report of its activities to the Human Services Committee, the Intergovernmental Relations Committee and the Navajo Nation Council;
- B. Formulate overall administrative and operating policies pertaining to the function of the Commission;
- C. Regulate the course of hearings and conduct of participants;
- D. Administer oaths and affirmations;
- E. Rule on motions and other procedural matters;
- F. Grant applications for subpoenas and rule on petitions to revoke subpoenas;
- G. Inquire fully into all issues and obtain a complete record upon which Commission decisions can be rendered;
- H. Receive, rule on, exclude, and limit evidence, lines of questioning, or testimony which are irrelevant, immaterial, or unduly repetitious;
- I. Examine witnesses for the purpose of clarification of the facts and issues;
- J. Direct the submission of briefs and set the time for the filing thereof;
- K. Issue findings of fact, conclusions of law and order, and impose appropriate damages, sanctions, fines and other relief for non-compliance;
- L. Set the amount of bond and such appropriate conditions thereto as the Commission may deem necessary;
- M. Prepare and submit an annual budget; and
- N. Exercise such other authority as may be conferred by law.

History

ACJY-160-87, July 21, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*
 Intergovernmental Relations Committee of the Navajo Nation Council, 2 N.N.C. § 824(B)(1).

Annotations**1. Review**

“Moreover, the Navajo Nation Code authorizes and directs the Labor Commission to “[r]eceive, rule on, exclude, and limit evidence, lines of questioning, or testimony which are irrelevant, immaterial, or unduly repetitious.” 15

N.N.C. § 304 (H). Holding another hearing would have been unduly repetitions because Cameron did not claim to have any new evidence to present.” *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10-11 (Nav. Sup. Ct. August 12, 2003).

§ 305. Meetings; procedure

A. Meetings shall be called by the Chairperson of the Commission for business transactions or as required by pending cases filed before the Commission. Three (3) members of the Commission shall constitute a quorum for the transaction of business.

B. The Commission may hold meetings with the Human Services Committee of the Navajo Nation Council for informational and coordinating purposes as it deems appropriate.

C. The Commission shall adopt rules for the conduct of its meetings and keep a record of all its proceedings and transactions. All formal substantive action shall be taken by written resolution duly certified by the presiding officer, or memorialized by written memorandum setting forth the action taken.

D. Members of the Commission may receive compensation and shall be reimbursed for expenses (per diem and mileage at the Navajo Nation rate) incurred in connection with the performance of their duties. All Commission expenses shall be paid from the budget of the Commission.

History

ACJY-160-87, July 21, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*

Annotations**1. Construction and application**

“The Navajo Nation Code explicitly provides for a five-member Commission and a quorum of three. The same three Labor Commission members who initially heard the case reviewed the evidence and decided the case on remand.

Therefore, the case was decided by a quorum, and Cameron suffered no deprivation of due process in this regard.” *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 10 (Nav. Sup. Ct. August 12, 2003).

§ 306. Staff

The Commission may employ independent legal counsel and staff as it deems necessary or appropriate to carry out the duties and responsibilities herein set forth. The duties of the staff shall include all administrative responsibilities of the Commission including recording and transcription of hearings.

15 N.N.C. § 306

LABOR

History

ACJY-160-87, July 21, 1987.

Note. Slightly reworded for purposes of statutory form.

§ 307. Place of office

The Commission shall have its office and staff located in Window Rock, Navajo Nation, (Arizona).

History

ACJY-160-87, July 21, 1987.

§ 308. Amendment

This Plan of Operation may be amended from time to time by the Intergovernmental Relations Committee of the Navajo Nation Council. Prior to any such amendment, the Human Services Committee shall review and recommend any change or proposed amendment to this Plan of Operation.

History

ACJY-160-87, July 21, 1987.

Note. Slightly reworded for purposes of statutory form.

Cross References

Human Services Committee of the Navajo Nation Council, 2 N.N.C. § 601 *et seq.*
Intergovernmental Relations Committee of the Navajo Nation Council, 2 N.N.C. § 824(B)(1).

Chapter 5. Wages [Repealed]

History

ACJY-126-60, July 20, 1960.

ACJN-74-60, June 13, 1960.

Note. Previous Chapter 5, "Wages", §§ 401-401, repealed by CD-79-82, December 16, 1982.

Chapter 7. Navajo Preference in Employment

Section

- 601. Title
- 602. Purpose
- 603. Definitions
- 604. Navajo employment preference
- 605. Reports
- 606. Union and employment agency activities; rights of Navajo workers
- 607. Navajo prevailing wage
- 608. Health and safety of Navajo workers
- 609. Contract compliance
- 610. Monitoring and enforcement
- 611. Hearings
- 612. Remedies and sanctions

Section

- 613. Appeal and stay of execution
- 614. Non-Navajo spouses
- 615. Polygraph test
- 616. Rules and regulations
- 617. Prior inconsistent law repealed
- 618. Effective date and amendment of the Act
- 619. Severability of the Act

History

Former Chapter 7. Former Chapter 7 was repealed in its entirety by CO-73-90, October 25, 1990. ACJN-131-88, June 29, 1988. CMY-30-88, May 6, 1988.

§ 601. Title

This Act shall be cited as the Navajo Preference in Employment Act.

History

CO-78-90, October 25, 1990. CAU-63-85, § 1, August 1, 1985. **Note.** Slightly reworded for purposes of statutory form.

Annotations**1. Construction and application**

“We hold that the cited provisions of the 1985 Navajo Preference in Employment Act are valid exercises of the treaty powers, inherent powers, and police power of the Navajo Nation. The Navajo Nation has the right to enact legislation to regulate labor and employment, including provisions to protect the civil rights of workers.” *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 249 (Nav. Sup. Ct. 1990).

2. Validity

“On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

“... [W]e hold that the application of the Navajo Preference in Employment Act to the Judicial Branch does not violate the principle of separation of powers and judicial independence under the Navajo Nation Judicial Reform Act of 1985 and the Title II Amendments of 1989.” *Tuba City Judicial District of the Navajo Nation v. Sloan*, No. SC-CV-57-97, slip op. at 11 (Nav. Sup. Ct. September 7, 2001).

3. Jurisdiction

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

§ 602. Purpose

- A. The purposes of the Navajo Preference in Employment Act are:
 - 1. To provide employment opportunities for the Navajo work force;
 - 2. To provide training for the Navajo People;
 - 3. To promote the economic development of the Navajo Nation;

4. To lessen the Navajo Nation's dependence upon off-Reservation sources of employment, income, goods and services;
5. To foster the economic self-sufficiency of Navajo families;
6. To protect the health, safety, and welfare of Navajo workers; and
7. To foster cooperative efforts with employers to assure expanded employment opportunities for the Navajo work force.

B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied to accomplish the purposes set forth above.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Annotations

1. Validity

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

2. Purpose

"We take judicial notice of the fact that Navajo Nation unemployment rates are very high. The Navajo Nation Council enacted the NPEA to ensure the economic growth of the Nation and the economic well being of the Navajo workforce." *Manygoats v. Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 8 (Nav. Sup. Ct. August 12, 2003).

"Among the purposes of NPEA is the protection of the health, safety, and welfare of Navajo

workers." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 262 (Nav. Sup. Ct. 1990).

3. Construction and application

"We hold that the prohibition on hiring and retaining relatives by marriage was a violation of the Act . . ." *Arizona Public Service Co. v. Office of Navajo Labor Relations*, 6 Nav. R. 246, 263 (Nav. Sup. Ct. 1990).

4. Construction with United States law

"Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

"Upon reconsideration we hold that Dr. Stago's NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim." *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

§ 603. Definitions

A. The term "Commission" shall mean the Navajo Nation Labor Commission.

B. The term "employment" shall include, but is not limited to, the recruitment, hiring, promotion, transfer, training, upgrading, reduction-in-force, retention, and recall of employees.

C. The term "employer" shall include all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities, who engage the services of any person for compensation, whether as employee, agent, or servant.

D. The term “Navajo” means any enrolled member of the Navajo Nation.

E. The term “ONLR” means the Office of Navajo Labor Relations.

F. The term “probable cause” shall mean a reasonable ground for belief in the existence of facts warranting the proceedings complained of.

G. The term “territorial jurisdiction” means the territorial jurisdiction of the Navajo Nation as defined in 7 N.N.C. § 254.

H. The term “counsel” or “legal counsel” shall mean: (a) a person who is an active member in good standing of the Navajo Nation Bar Association and duly authorized to practice law in the courts of the Navajo Nation; and (b) for the sole purpose of co-counseling in association with a person described in clause (a), an attorney duly authorized, currently licensed and in good standing to practice law in any state of the United States who has, pursuant to written request demonstrating the foregoing qualifications and good cause, obtained written approval of the Commission to appear and participate as co-counsel in a particular Commission proceeding.

I. The term “necessary qualifications” shall mean those job-related qualifications which are essential to the performance of the basic responsibilities designated for each employment position including any essential qualifications concerning education, training and job-related experience, but excluding any qualifications relating to ability or aptitude to perform responsibilities in other employment positions. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

J. The term “qualifications” shall include the ability to speak and/or understand the Navajo language and familiarity with Navajo culture, customs and traditions.

K. The term “person” shall include individuals; labor organizations; tribal, federal, state and local governments, their agencies, subdivisions, instrumentalities and enterprises; and private and public, profit and non-profit, entities of all kinds having recognized legal capacity or authority to act, whether organized as corporations, partnerships, associations, committees, or in any other form.

L. The term “employee” means an individual employed by an employer.

M. The term “employment agency” means a person regularly undertaking, with or without compensation, to procure employees for an employer or to obtain for employees opportunities to work for an employer.

N. The term “labor organization” or “union” means an organization in which employees participate or by which employees are represented and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms and conditions of employment, including a national or international labor organization and any subordinate conference, general committee, joint or system board, or joint council.

O. The term “petitioner” means a person who files a complaint seeking to initiate a Commission proceeding under the Act.

P. The term “respondent” means the person against whom a complaint is filed by a petitioner.

Q. The term “Act” means the Navajo Preference in Employment Act.

History

CO-73-90, October 25, 1990.

CAU-63-85, § 1, August 1, 1985.

Annotations

1. Construction and application

“Under this test, we find clear intent to override NHA’s general exemption from enforcement of a monetary judgment in the NPEA. In that act the Council defines the term ‘employer’ to include ‘all persons, firms, associations, corporations, and the Navajo Nation and all of its agencies and instrumentalities who engage the services of a person for compensation, whether as an employee, agent or servant.’” *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

“On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act.” *Office of Navajo Labor Relations v. Cen-*

tral Consolidated School District No. 22, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

2. Employer

“NHA is clearly included within the NPEA definition of employer.” *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

§ 604. Navajo employment preference

A. All employers doing business within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation shall:

1. Give preference in employment to Navajos. Preference in employment shall include specific Navajo affirmative action plans and timetables for all phases of employment to achieve the Navajo Nation goal of employing Navajos in all job classifications including supervisory and management positions.

2. Within ninety (90) days after the later of: (a) the effective date of this § 604(A)(2); or (b) the date on which an employer commences business within the territorial jurisdiction of the Navajo Nation, the employer shall file with ONLR a written Navajo affirmative action plan which complies with this section and other provisions of the Act. In any case where a labor organization represents employees of the employer, the plan shall be jointly filed by the employer and labor organization. Any such associated labor organiza-

tion shall have obligations under this section equivalent to those of the employer as to employees represented by such organization. Failure to file such a plan within the prescribed time limit, submission of a plan which does not comply with the requirements of the Act, or failing to implement or comply with the terms of a conforming plan shall constitute a violation of the Act. In the event of a required joint plan by an employer and associated labor organization, only the noncomplying party shall be deemed in violation of the Act, as long as the other party has demonstrated a willingness and commitment to comply with the Act.

3. Subject to the availability of adequate resources, ONLR shall provide reasonable guidance and assistance to employers and associated labor organizations in connection with the development and implementation of a Navajo affirmative action plan. Upon request, ONLR shall either approve or disapprove any plan, in whole or in part. In the event of approval thereof by ONLR, no charge shall be filed hereunder with respect to alleged unlawful provisions or omissions in the plan, except upon thirty (30) days prior written notice to the employer and any associated labor organization to enable voluntary correction of any stated deficiencies in such plan. No charge shall be filed against an employer and any associated labor organization for submitting a non-conforming plan, except upon thirty (30) days prior notice by ONLR identifying deficiencies in the plan which require correction.

B. Specific requirements for Navajo preference:

1. All employers shall include and specify a Navajo employment preference policy statement in all job announcements and advertisements and employer policies covered by this Act.

2. All employers shall post in a conspicuous place on its premises for its employees and applicants a Navajo preference policy notice prepared by ONLR.

3. Any seniority system of an employer shall be subject to this Act and all other labor laws of the Navajo Nation. Such a seniority system shall not operate to defeat nor prevent the application of the Act, provided, however, that nothing in this Act shall be interpreted as invalidating an otherwise lawful and bona fide seniority system which is used as a selection or retention criterion with respect to any employment opportunity where the pool of applicants or candidates is exclusively composed of Navajos or of non-Navajos.

4. The Navajo Nation when contracting with the federal or state governments or one of its entities shall include provisions for Navajo preference in all phases of employment as provided herein. When contracting with any federal agency, the term Indian preference may be substituted for Navajo preference for federal purposes, provided that any such voluntary substitution shall not be construed as an implicit or express waiver of any provision of the Act nor a concession by the Navajo Nation that this Act is not fully applicable to the federal contract as a matter of law.

5. All employers shall utilize Navajo Nation employment sources and job services for employee recruitment and referrals, provided, however, that

employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

6. All employers shall advertise and announce all job vacancies in at least one newspaper and radio station serving the Navajo Nation, provided, however, that employers do not have the foregoing obligations in the event a Navajo is selected for the employment opportunity who is a current employee of the employer.

7. All employers shall use non-discriminatory job qualifications and selection criteria in employment.

8. All employers shall not penalize, discipline, discharge nor take any adverse action against any Navajo employee without just cause. A written notification to the employee citing such cause for any of the above actions is required in all cases.

Provided, that this subsection shall not apply to Division Directors, or to other employees and officials of the Navajo Nation who serve, pursuant to a specific provision of the Navajo Nation Code, at the pleasure of the Navajo Nation Council, the standing committees of the Navajo Nation Council, the President of the Navajo Nation, the Speaker of the Navajo Nation Council, the Chief Justice of the Navajo Nation, or those persons employed pursuant to 2 N.N.C. §§ 281(C) and 1009.

9. All employers shall maintain a safe and clean working environment and provide employment conditions which are free of prejudice, intimidation and harassment.

10. Training shall be an integral part of the specific affirmative action plans or activities for Navajo preference in employment.

11. An employer-sponsored cross-cultural program shall be an essential part of the affirmative action plans required under the Act. Such program shall primarily focus on the education of non-Navajo employees, including management and supervisory personnel, regarding the cultural and religious traditions or beliefs of Navajos and their relationship to the development of employment policies which accommodate such traditions and beliefs. The cross-cultural program shall be developed and implemented through a process which involves the substantial and continuing participation of an employer's Navajo employees, or representative Navajo employees.

12. No fringe benefit plan addressing medical or other benefits, sick leave program or any other personnel policy of an employer, including policies jointly maintained by an employer and associated labor organization, shall discriminate against Navajos in terms or coverage as a result of Navajo cultural or religious traditions or beliefs. To the maximum extent feasible, all of the foregoing policies shall accommodate and recognize in coverage such Navajo traditions and beliefs.

C. Irrespective of the qualifications of any non-Navajo applicant or candidate, any Navajo applicant or candidate who demonstrates the necessary qualifications for an employment position:

1. Shall be selected by the employer in the case of hiring, promotion, transfer, upgrading, recall and other employment opportunities with respect to such position; and

2. Shall be retained by the employer in the case of a reduction-in-force affecting such class of positions until all non-Navajos employed in that class of positions are laid-off, provided that any Navajo who is laid-off in compliance with this provision shall have the right to displace a non-Navajo in any other employment position for which the Navajo demonstrates the necessary qualifications.

3. Among a pool of applicants or candidates who are solely Navajo and meet the necessary qualifications, the Navajo with the best qualifications shall be selected or retained, as the case may be.

D. All employers shall establish written necessary qualifications for each employment position in their work force, a copy of which shall be provided to applicants or candidates at the time they express an interest in such position.

History

CN-104-98, November 25, 1998.

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

Annotations

1. Construction and application

“On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

“The NPEA separately required (and still requires) that there be a specific provision mandating Navajo preference in leases with state entities.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 6 (Nav. Sup. Ct. June 23, 2004).

“The Council clearly intended to apply the NPEA to Navajo corporations when they have contracts with the Nation, regardless of the status of the land where the contract is performed. 15 N.N.C. § 604(A) extends the NPEA separately to (1) activities within the territorial jurisdiction of the Navajo Nation, and to (2) activities performed under contracts with the Navajo Nation. We hold that the Navajo Nation’s NPEA subject matter jurisdiction extends

to the activities of Navajo corporations under contracts with the Nation, whether or not the contract is to be performed within the territorial jurisdiction of the Nation.” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 7 (Nav. Sup. Ct. February 11, 2004).

2. Scope of act

“Petitioner makes much of the language in the NPEA that defines the territorial reach of the act. However, the act prohibits termination without just cause by all employers doing business ‘within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or engaged in any contract with the Navajo Nation.’” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

“However, we focus on the language following the word ‘or,’ which provides an alternative for jurisdiction by applying the NPEA to employers ‘engaged in any contract with the Navajo Nation.’ This language disposes of this case.” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

“Petitioner makes much of the language in the NPEA that defines the territorial reach of the act. However, the act prohibits termination without just cause by all employers doing business ‘within the territorial jurisdiction [or near the boundaries] of the Navajo Nation, or en-

15 N.N.C. § 604

Note 2

gaged in any contract with the Navajo Nation.” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op. at 4 (Nav. Sup. Ct. February 11, 2004).

3. Covered employees

“The NPEA governs all employers in the Navajo Nation, including those under federal contracts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup. Ct. August 29, 2002).

4. Jurisdiction

“We hold that the Navajo Nation’s NPEA subject matter jurisdiction extends to the activities of Navajo corporations under contracts with the Nation, whether or not the contract is to be performed within the territorial jurisdiction of the Nation.” *Cabinets Southwest, Inc. v. Navajo Nation Labor Commission*, No. SC-CV-46-03, slip op at 7 (Nav. Sup. Ct. February 11, 2004).

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

§ 605. Reports

All employers doing business or engaged in any project or enterprise within the territorial jurisdiction of the Navajo Nation or pursuant to a contract with the Navajo Nation shall submit employment information and reports as required to ONLR. Such reports, in a form acceptable to ONLR, shall include all information necessary and appropriate to determine compliance with the provisions of this Act. All reports shall be filed with ONLR not later than ten (10) business days after the end of each calendar quarter, provided that ONLR shall have the right to require filing of reports on a weekly or monthly schedule with respect to part-time or full-time temporary employment.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

§ 606. Union and employment agency activities; rights of Navajo workers

A. Subject to lawful provisions of applicable collective bargaining agreements, the basic rights of Navajo workers to organize, bargain collectively,

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5. Sufficiency of evidence

“Cameron’s original notification was written on torn scrap paper and stated only that Manygoats was fired for ‘violating company policies.’ Given that Cameron (1) had no formal personnel policies and procedures in place, (2) did not properly document Manygoats’ alleged offenses at the time they occurred, and (3) never told Manygoats until after she was fired that she was in violation of company policies, the Labor Commission was reasonable in concluding that Cameron did not show that it had just cause to terminate Manygoats’ employment.” *Manygoats v Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 12-13 (Nav. Sup. Ct. August 12, 2003).

6. Notice

“Cameron’s original notification did not meet the NPEA’s requirement that written notification must in all cases cite the cause or specific reasons for the adverse action taken by an employer against an employee. 15 N.N.C. § 604(B)(8). One of the main purposes of the written notification provision is to “inform an individual of the basis for adverse action.” . . . This ensures that employees are given the opportunity to decide whether to take appropriate legal action if they feel they have been wronged. In this case, the notice Manygoats received contained no facts that would support her termination. She had to file a complaint with the ONLR to find out why she had been terminated.” *Manygoats v Atkinson Trading Company, Inc.*, No. SC-CV-62-00, slip op. at 13 (Nav. Sup. Ct. August 12, 2003).

strike, and peaceably picket to secure their legal rights shall not be abridged in any way by any person. The right to strike and picket does not apply to employees of the Navajo Nation, its agencies, or enterprises.

B. It shall be unlawful for any labor organization, employer or employment agency to take any action, including action by contract, which directly or indirectly causes or attempts to cause the adoption or use of any employment practice, policy or decision which violates the Act.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

§ 607. Navajo prevailing wage

A. Definitions. For purposes of this section, the following terms shall have the meanings indicated:

1. The term “prevailing wage” shall mean the wage paid to a majority (more than fifty percent (50%)) of the employees in the classification on similar construction projects in the area during a period not to exceed twenty-four (24) months prior to the effective date of the prevailing wage rate set hereunder; provided that in the event the same wage is not paid to a majority of the employees in the classification, “prevailing wage” shall mean the average of the wages paid, weighted by the total number of employees in the classification.

2. The term “prevailing wage rate” shall mean the rate established by ONLR pursuant to this section.

3. The term “wage” shall mean the total of:

a. The basic hourly rate; and

b. The amount of: (a) contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan or program for the benefit of employees; and (b) costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to employees pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the employees affected. The types of fringe benefits contemplated hereunder include medical or hospital health care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeships or other similar programs; or other bona fide fringe benefits.

4. The term “area” in determining the prevailing wage means the geographic area within the territorial jurisdiction of the Navajo Nation; provided that in the event of insufficient similar construction projects in the area during the period in question, “area” shall include the geographic boundaries of such contiguous municipal, county or state governments as

ONLR may determine necessary to secure sufficient wage information on similar construction projects.

5. The term “classifications” means all job positions in which persons are employed, exclusive of classifications with assigned duties which are primarily administrative, executive or clerical, and subject to satisfaction of the conditions prescribed in §§ 607(E)(7) and (8), exclusive of “apprentice” and “trainee” classifications as those terms are defined herein.

6. “Apprentice” means: (a) a person employed and individually registered in a *bona fide* apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with an Apprenticeship Agency administered by a state or Indian Tribe and recognized by the Bureau; or (b) a person in the first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state or Tribal Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

7. “Trainee” means a person: (a) registered and receiving on the job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration; or (b) employed and/or receiving on-the-job training under a public employment or work experience program which is approved and funded by the Navajo Nation.

8. The term “construction” shall mean all activity performed under a contract which relates to: (a) the building, development, rehabilitation, repair, alteration or installation of structures and improvements of all types, including without limitation buildings, bridges, dams, plants, highways, sewers, water mains, powerlines and other structures; (b) drilling, blasting, excavating, clearing and landscaping, painting and decorating; (c) transporting materials and supplies to or from the site of any of the activities referred to in (a) or (b) by employees of the contractor or subcontractor; and (d) manufacturing or finishing materials, articles, supplies or equipment at the construction site of any of the foregoing activities by employees of the contractor or subcontractor.

9. The term “contract” shall mean the prime construction contract and all subcontracts of any tier thereunder entered into by parties engaged in commercial, business or governmental activities (whether or not such activities are conducted for profit).

B. Establishment of wage rates.

1. For all construction reasonably anticipated to occur in the area on a regular basis, ONLR shall establish a general prevailing wage rate for each classification within specified types of construction. ONLR shall define classifications and types of construction in accordance with guidelines generally recognized in the construction industry. In all cases where construction

is contemplated for which prevailing wage rates have not been set, the contract letting entry shall submit to ONLR a written request for a project prevailing wage scale. Such request shall be submitted not less than sixty (60) days prior to the scheduled date for bid solicitation and shall include detailed information on the anticipated construction classifications, nature of the project and completion plans. ONLR shall use its best efforts to provide a project prevailing wage scale for each classification involved in the project construction within sixty (60) days after receipt of a request therefor.

2. In setting prevailing wage rates, ONLR shall conduct such surveys and collect such data as it deems necessary and sufficient to arrive at a wage determination. Wage data may be collected from contractors, contractors' associations, labor organizations, public officials and other sources which reflect wage rates paid in classifications on types of construction in the area, including the names and addresses of contractors and subcontractors; the locations, approximate costs, dates and types of construction; the number of workers employed in each classification on the project; and the wage rates paid such workers. Wage rate data for the area may be provided, and considered in making wage determinations, in various forms including signed statements, collective bargaining agreements and prevailing wage rates established by federal authorities for federally-assisted construction projects.

3. Any classification of workers not listed in a prevailing wage rate and which is to be used under a construction contract shall be classified in conformance with the prevailing wage determination issued and applicable to the project; provided that an additional classification and prevailing wage rate therefor will be established in the event each of the following criteria are satisfied:

- a. The work performed by the proposed classification is not performed by a classification within the existing prevailing wage scale;
- b. The proposed classification is utilized in the area by the construction industry; and
- c. The wages set for the proposed classification bear a reasonable relationship to the wage rates contained in the existing scale for other classifications.

4. Subject to the prior written approval thereof by the Director of ONLR, a general prevailing wage rate shall be effective on the date notice of such rate is published in a newspaper in general circulation in the Navajo Nation. The notice shall contain the following information:

- (1) The fact a prevailing wage rate has been set and approved in writing by the Director of ONLR;
- (2) The type of construction for which the rate was established;
- (3) The effective date, described as the date of publication of the notice or other specified date;
- (4) The address and telephone number of ONLR; and
- (5) A statement that ONLR will provide a copy of the full wage determination on request, and respond to any reasonable questions regarding such determination or its application.

a. General prevailing wage rates shall continue in effect until such time as any modifications are adopted.

b. A prevailing wage rate for a particular project shall be effective on the date of issuance to the requesting party of a written wage determination approved by the Director of ONLR. The wage determination shall continue in effect for the duration of the project; provided that any such determination may be modified by ONLR in the event the period of time from the effective date of the determination to the date bids are solicited exceeds one hundred eighty (180) days and the estimated date of completion of the project is more than one (1) year after the effective date of the determination.

c. Project and general wage determinations may be modified from time to time, in whole or in part, to adjust rates in conformity with current conditions, subject to the special conditions applicable to project determinations. Such modifications become effective upon the same terms and conditions which are applicable to original determinations.

d. Fringe benefits. The fringe benefit amount of wages reflected in a prevailing wage rate shall be paid in cash to the employee, and shall not be deducted from such employee's wages, unless each of the following conditions is satisfied:

(1) The deduction is not contrary to applicable law;

(2) A voluntary and informed written consent authorizing the deduction is obtained from the employee in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining or continuing employment;

(3) No profit or other benefit is obtained as a result of deduction, directly or indirectly, by the contractor, subcontractor or any person affiliated with them in the form of a commission, dividend or other consideration; and

(4) The deduction serves the convenience and interests of the employee.

C. No contract-letting entity, contractor or subcontractor shall proceed with a construction contract subject to this section in the absence of a contractual requirement for payment of prevailing wages pursuant to a specified wage determination issued by ONLR. Violation of this obligation shall render the contract-letting entity, and the employer contractor or subcontractor, jointly and severally liable for the difference between wages actually paid and the prevailing wage rate, together with interest thereon (or if no prevailing wage rates have been set, such wage rate as may be issued by ONLR during the course, or after the completion, of the construction project).

1. Failure by any employer, contractor or subcontractor to pay prevailing wages shall render such employer liable for the difference between the amount of wages actually paid and the prevailing rate, together with interest thereon.

2. Any deduction of fringe benefits by an employer contractor or subcontractor in violation of § 607(C) shall render such employer liable for the amount of such deduction, together with interest thereon.

3. Upon written request of ONLR, a contract-letting entity or contractor, as the case may be, shall withhold from any monies payable on account of work performed by an employer contractor or subcontractor under a construction contract such sums as may be determined by ONLR as necessary to satisfy any liabilities of such contractor or subcontractor for unpaid prevailing wages or wrongful deduction of fringe benefits.

4. If following a hearing under § 611 a contract-letting entity (other than the Navajo Nation), contractor or subcontractor is found to have willfully violated this section the Commission may enter a debarment order disqualifying such party from receiving any contract, or subcontract thereunder, with the Navajo Nation for a period not to exceed three (3) years.

5. The liabilities described in this § 607(C) shall not foreclose the Commission from awarding such other relief or imposing such other civil penalties as may be appropriate following a hearing conducted under § 611.

D. Exemptions. This section shall not apply to:

1. A contract associated with a construction activity which relates to the provision of architect, engineer, legal or consultant services, or, except as provided under § 607(A)(8)(d), the manufacturing or furnishing of materials or performance of services and maintenance work by persons not employed by a prime contractor or any of its subcontractors.

2. A construction contract relating to a project having a total cost of two thousand dollars (\$2,000) or less.

3. A construction contract which is let by a natural person who is an owner or person legally authorized to let such contract, for such person's personal, family or household purposes.

4. A construction contract to the extent the work thereunder is performed by employees of the owner, or employees of the person or entity legally authorized to let the prime contract.

5. A construction contract for a project receiving federal financial assistance to the extent the prevailing wage is set by federal authorities pursuant to the Davis-Bacon Act, 40 U.S.C., § 276a *et seq.*,¹ (as amended), or other federal law applicable to such project.

6. A construction contract to the extent such contract requires payment of wages pursuant to a wage scale established under a collective bargaining agreement between any contractor or subcontractor and a labor organization.

7. With the exception of the provisions of § 607(C), an apprentice, provided that the apprentice is paid not less than: (a) the basic hourly rate prescribed in the registered program for the apprentice's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the registered program or, if not specified, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. An ap-

prentice who is not enrolled in a registered program (within the meaning of § 607(A)(6)), shall be paid wages in an amount of not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

8. With the exception of the provisions of § 607(C), a trainee provided that the trainee is paid not less than: (a) the basic hourly rate prescribed in the approved program for the trainee's level of progress, expressed as a percentage of the applicable journeyman rate specified in the prevailing wage rate; and (b) the fringe benefit amount prescribed in the approved program or, if not specified and as to federally approved programs only, the fringe benefit amount set in the prevailing wage rate for the applicable journeyman classification. A trainee who is not enrolled in an approved program (within the meaning of § 607(A)(7)), shall be paid wages in an amount not less than the level prescribed for the applicable journeyman classification specified in the prevailing wage rate.

¹ Repealed by Pub.L. 107-217, § 6(b), Aug. 21, 2002, 116 Stat. 1308. See, now, 40 U.S.C. § 3141 et seq.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

§ 608. Health and safety of Navajo workers

Employers shall, with respect to business conducted within the territorial jurisdiction of the Navajo Nation, adopt and implement work practices which conform to occupational safety and health standards imposed by law.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Cross References

Navajo Nation OSHA, 15 N.N.C. § 1401 et seq.

§ 609. Contract compliance

A. All transaction documents, including without limitation, leases, subleases, contracts, subcontracts, permits, and collective bargaining agreements between employers and labor organizations (herein collectively "transaction documents"), which are entered into by or issued to any employer and which are to be performed within the territorial jurisdiction of the Navajo Nation shall contain a provision pursuant to which the employer and any other contracting party affirmatively agree to strictly abide by all requirements of this Act. With respect to any transaction document which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law and the requirements of the Act shall constitute affirmative contractual obligations of the contracting parties. In addition to the sanctions prescribed by the Act, violation of the Act shall also provide grounds for the

Navajo Nation to invoke such remedies for breach as may be available under the transaction document or applicable law. To the extent of any inconsistency or conflict between a transaction document and the Act, the provision of the transaction document in question shall be legally invalid and unenforceable and the Act shall prevail and govern the subject of the inconsistency or conflict.

B. Every bid solicitation, request for proposals and associated notices and advertisements which relate to prospective contracts to be performed within the territorial jurisdiction of the Navajo Nation shall expressly provide that the contract shall be performed in strict compliance with this Act. With respect to any such solicitation, request, notice or advertisement which does not contain the foregoing provision, the terms and provisions of this Act are incorporated therein as a matter of law.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Annotations

1. Construction and application

“On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act.” *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

“The NPEA, then and now, requires a separate provision providing that the contracting party agrees to Navajo preference.” *Office of Navajo Labor Relations v. Central Consolidated*

School District No. 22, No. SC-CV-37-00, slip op. at 6 (Nav. Sup. Ct. June 23, 2004).

2. Jurisdiction

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

§ 610. Monitoring and enforcement

A. Responsible Agency. Compliance with the Act shall be monitored and enforced by ONLR.

B. Charges.

1. Charging Party. Any Navajo may file a charge (“Individual Charge”) claiming a violation of his or her rights under the Act. ONLR, on its own initiative, may file a charge (“ONLR Charge”) claiming a violation of rights under the Act held by identified Navajos or a class of Navajos, including a claim that respondent is engaging in a pattern of conduct or practice in violation of rights guaranteed by the Act. An individual Charge and ONLR Charge are collectively referred to herein as a “Charge”.

2. Form and Content. A Charge shall be in writing, signed by the charging party (which shall be the Director of ONLR in the case of an ONLR Charge), and contain the following information:

- a. The name, address any telephone number of the charging party;
 - b. The name and address or business location of the respondent against whom the Charge is made.
 - c. A clear and concise statement of the facts constituting the alleged violation of the Act, including the dates of each violation and other pertinent events and the names of individuals who committed, participated in or witnessed the acts complaint of;
 - d. With respect to a Charge alleging a pattern or practice in violation of the Act, the period of time during which such pattern or practice has existed and whether it continues on the date of the Charge;
 - e. The specific harm sustained by the charging party in the case of an Individual Charge or the specific harm sustained by specified Navajos or a class of Navajos with respect to an ONLR Charge; and
 - f. A statement disclosing whether proceedings involving the alleged violation have been initiated before any court or administrative agency or within any grievance process maintained by the respondent, including the date of commencement, the court, agency or process and the status of the proceeding.
 - g. ONLR shall provide assistance to persons who wish to file Individual Charges. Notwithstanding the foregoing provisions, a Charge shall be deemed sufficient if it contains a reasonably precise identification of the charging party and respondent, and the action, pattern or practice which are alleged to violate the Act.
3. Place of Filing. Individual Charges may be filed in any ONLR office. An ONLR Charge shall be filed in ONLR's administrative office in Window Rock.
4. Date of Filing. Receipt of each Individual Charge shall be acknowledged by the dated signature of an ONLR employee which shall be deemed the date on which the Individual Charge is filed. The date on which an ONLR Charge is signed by the ONLR Director shall be deemed the date of filing for such Charge.
5. Amendment. A Charge may be amended by filing, in the office where the Charge was first submitted, a written instrument which sets forth the amendment and any portions of the original Charge revised thereby. To the extent the information reflected in the amendment arose out of the subject matter of the original Charge, the amendment shall relate back and be deemed filed as of the filing date of such Charge. Any portion of the amendment which does not qualify for relation back treatment shall constitute a new Charge.
6. Time Limitation. A Charge shall be filed within one (1) year after accrual of the claim which constitutes the alleged violation of the Act. The date of accrual of a claim shall be the earlier of:
- a. The date on which the charging party had actual knowledge of the claim; or
 - b. Taking into account the circumstances of the charging party, the date on which the charging party should reasonably have been expected

to know of the existence of the claim; provided, however, that a Charge relating to a continuing, or pattern or practice, violation of the Act shall be filed within one (1) year after the later of:

(1) The date of termination of such violation, pattern or practice; or

(2) The date of accrual of the claim to which the Charge relates. Failure to file a Charge within the time limitations prescribed herein shall bar proceedings on the related claim before the Commission or in any Court of the Navajo Nation; provided, however, that nothing herein shall be interpreted as foreclosing proceedings before any Navajo Court or administrative body (other than the Commission) on any claim which also arises under applicable common, statutory or other law independent of this Act.

7. Notice to Respondent. Within twenty (20) days after a Charge is filed, ONLR shall serve a copy thereof on respondent; provided, however, that if in ONLR's judgment service of a copy of the Charge would impede its enforcement functions under the Act. ONLR may in lieu of a copy serve on respondent a notice of the Charge which contains the date, place and summary of relevant facts relating to the alleged violation, together with the identity of the charging party unless withheld for the reason stated above. Service of any amendment to the Charge shall be accomplished within twenty (20) days after the amendment is filed. Failure of ONLR to serve a copy of a Charge or notice thereof within the prescribed time period shall not be a ground for dismissal of the Charge or any subsequent proceedings thereon.

8. Withdrawal of Charge.

a. ONLR may, in its discretion, withdraw any ONLR Charge upon written notice thereof to respondent and each person identified in the Charge whose rights under the Act were alleged to have been violated. Any person receiving notice of withdrawal or any other person who asserts a violation of his or her rights as a result of the violation alleged in the withdrawn ONLR Charge may file an Individual Charge which, if filed within ninety (90) days after the issuance date of ONLR's withdrawal notice, shall relate back to the filing date of the ONLR Charge.

b. Any charging party may, in his or her discretion, withdraw an Individual charge by filing a written notice of withdrawal with the ONLR Office where the Charge was submitted, with a copy thereof filed with the ONLR administrative office in Window Rock. ONLR shall, within twenty (20) days after receiving the notice, transmit a copy to the respondent. Within ninety (90) days after receipt of the withdrawal notice, ONLR may file an ONLR Charge relating in whole or part to the violations alleged in the withdrawn Individual Charge. Any filing of an ONLR Charge within the prescribed time period shall relate back to the filing date of the withdrawn Charge.

9. Overlapping Charges. Nothing herein shall be construed as prohibiting the filing of any combination of Individual Charges and an ONLR Charge which, in whole or part, contain common allegations of violations of the Act.

10. Informants. Irrespective of whether a person is otherwise eligible to file an Individual Charge, any such person or an organization may in lieu of filing a Charge submit to ONLR written or verbal information concerning alleged violations of the Act and may further request ONLR to file an ONLR Charge thereon. In addition to other limitations on disclosure provided in § 610(M) and in the absence of the written consent of the informant, neither the identity of the informant nor any information provided by such informant shall be disclosed to the respondent, agents or legal counsel for the respondent, or the public, either voluntarily by ONLR or pursuant to any discovery or other request for, or order relating to, such information during the course of any judicial or non-judicial proceeding, including a proceeding before the Commission or any subsequent appeal or challenge to a Commission or appellate decision; provided, however, that in the event the informant is called as a witness by ONLR at a Commission proceeding involving the information provided by the informant:

a. The informant's name may be disclosed, but his or her status as an informant shall remain privileged and confidential and shall not be disclosable through witness examination or otherwise; and

b. With the exception of the witness status as an informer, information provided by the informant is disclosable in accordance with the procedures outlined under § 610(M).

C. Investigation of Charges.

1. ONLR shall conduct such investigation of a Charge as it deems necessary to determine whether there is probable cause to believe the act has been violated.

2. Subpoenas.

a. The Director of ONLR shall have the authority to sign and issue a subpoena compelling the disclosure by any person evidence relevant to a Charge, including a subpoena ordering, under oath as maybe appropriate:

(1) The attendance and testimony of witnesses;

(2) Responses to written interrogatories;

(3) The production of evidence, including without limitation books, records, correspondence or other documents (or lists or summaries thereof) in the subpoenaed person's possession, custody or control of which are lawfully obtainable by such person; and

(4) Access to evidence for the purposes of examination and copying. Neither an individual charging party nor a respondent shall have a right to demand issuance of a subpoena prior to the initiation of any proceedings on the Charge before the Commission, in which event subpoenas are issuable only pursuant to the procedures governing such proceedings.

b. Service of the subpoena shall be effected by one of the methods prescribed in § 610(O). A subpoena directed to a natural person shall be served either on the person at his or her residence or office address or, in the case of personal delivery, at such residence or office either on the

person subpoenaed or on anyone at least eighteen (18) years of age (and in the case of office service, a person who is also an employee of such office). Service of a subpoena directed to any other person shall be addressed or delivered to either the statutory agent (if any) of such person or any employee occupying a managerial or supervisory position at any office of the person maintained within or outside the territorial jurisdiction of the Navajo Nation. Personal service may be performed by a natural person at least eighteen (18) years of age, including an employee of ONLR.

c. The subpoena shall set a date, time and place for the attendance of a witness, or production of or access to evidence, as the case may be, provided that the date for compliance shall be not less than thirty (30) days after the date on which service of the subpoena was effected.

d. Any person served with a subpoena intending not to fully comply therewith shall, within five (5) business days after service, serve on the Director of ONLR a petition requesting the modification or revocation of the subpoena and identifying with particularity each portion of the subpoena which is challenged and the reasons therefor. To the extent any portion of the subpoena is not challenged, the unchallenged parts shall be complied with in accordance with the terms of the subpoena as issued. The ONLR Director shall issue and serve on petitioner a decision and reasons therefor within eight (8) business days following receipt of the petition, and any failure to serve a decision within such period shall be deemed a denial of the petition. In the event the Director's decision reaffirms any part of the subpoena challenged in the petition, the Director may extend the date for compliance with such portion for a period not to exceed ten (10) business days. Any petitioner dissatisfied with the decision of the ONLR Director shall either:

(1) Comply with the subpoena (with any modifications thereof reflected in the Director's decision); or

(2) Within five (5) business days following receipt of the Director's decision or the date such decision was due, file a petition with the Commission (with a copy concurrently served on the ONLR Director) seeking modification or revocation of the subpoena and stating with particularity therein each portion of the subpoena challenged and the reasons therefor. A copy of the ONLR Director's decision, if any, shall be attached to the petition.

e. In the event a person fails to comply with a served subpoena, ONLR may petition the Commission for enforcement of the subpoena. For purposes of awarding any relief to petitioner, the Commission may issue any order appropriate and authorized in a case where it is established that a Commission order has been violated. A copy of the petition shall be concurrently served on the non-complying person.

f. Beginning on the first day of non-compliance with a subpoena served on a respondent, or any employee or agent of respondent, until the date of full compliance therewith, there shall be a tolling of all periods of limitation set forth in this section.

D. Dismissal of Charges.

1. Individual Charges. ONLR shall dismiss an Individual Charge upon reaching any one or more of the following determinations:

a. The Individual Charge, on its face or following an ONLR investigation, fails to demonstrate that probable cause exists to believe a violation of the Act has occurred;

b. The Individual Charge was not filed within the time limits prescribed by § 610(B)(6);

c. The charging party has failed to reasonably cooperate in the investigation of, or attempts to settle, the Individual Charge;

d. The charging party has refused, within thirty (30) days of receipt, to accept a settlement offer agreed to by respondent and approval by ONLR, which accords substantially full relief for the harm sustained by such party; or

e. The Charge has been settled pursuant to § 610(G).

2. ONLR Charges. ONLR shall dismiss an ONLR Charge upon determining that:

a. No probable cause exists to believe a violation of the Act has occurred;

b. The Charge was not filed within the time limits prescribed by § 610(B)(6); or

c. The Charge has been settled pursuant to § 610(G).

3. Partial Dismissal. In the event a portion of a Charge is dismissable on one or more of the foregoing grounds, only such portion of the Charge shall be dismissed and the remainder retained by ONLR for final disposition.

4. Notice. Written notice of dismissal, stating the grounds therefor, shall be served on respondent and the individual charging party in the case of an Individual Charge or, in the case of an ONLR Charge, on the respondent and any person known to ONLR who claims to be aggrieved by the violations alleged in such Charge. Such notice shall be accompanied by a right to sue authorization pursuant to § 610(H).

E. Probable Cause Determination. Following its investigation of a Charge and in the absence of a settlement or dismissal required under § 610(D), ONLR shall issue written notice of its determination that probable cause exists to believe a violation of the Act has occurred or is occurring. Such notice shall identify each violation of the Act for which probable cause has been found, and copies thereof shall be promptly sent to the respondent, the charging party in the case of an Individual Charge, and, in the case of an ONLR Charge, each person identified by ONLR whose rights are believed to have been violated. Any probable cause determination shall be based on, and limited to, the evidence obtained by ONLR and shall not be deemed a judgment by ONLR on the merits of allegations not addressed in the determination.

F. Conciliation. If, following its investigation of a Charge, ONLR determines there is probable cause to believe the Act has been or is being violated, ONLR shall make a good faith effort to secure compliance and appropriate

relief by informal means through conference, conciliation and persuasion. In the event there is a failure to resolve the matter informally as to any allegations in an Individual Charge for which probable cause has been determined, ONLR shall either issue the notice prescribed in § 610(H) or initiate a Commission proceeding under § 610(I) concerning unresolved allegations. A successful resolution of any such allegation shall be committed to writing in the form required under § 610(G). Nothing herein shall be construed as prohibiting ONLR from initiating or participating in efforts to informally resolve a Charge prior to issuance of a probable cause determination.

G. Settlement.

1. Settlement agreements shall be committed to writing and executed by respondent, the individual charging party if any and, in the case of any Charge, by the Director of ONLR. Refusal of an individual charging party to execute a settlement agreement subjects the Individual Charge to dismissal under the conditions set forth in § 610(D)(1)(d). Settlement agreements may also be signed by those aggrieved persons identified as having a claim with respect to an ONLR Charge.

2. Settlement agreements hereunder shall be enforceable among the parties thereto in accordance with the terms of the agreement. Any member of a class of persons affected by the settlement who is not a signatory to the agreement shall have the right to initiate proceedings before the Commission pursuant to the procedure in § 610(H)(2)(a)(3).

3. Each settlement agreement shall provide for the dismissal of the Charge to the extent the violations alleged therein are resolved under the agreement.

4. Any breach of a settlement agreement by respondent shall present grounds for filing a Charge under this section. A charging party asserting a claim for breach may either seek:

a. Enforcement of that portion of the settlement agreement alleged to have been breached; or

b. In the case of a material breach as to any or all terms, partial or total rescission of the agreement, as the case may be, and such other further relief as may have been available in the absence of settlement. A Charge asserting a breach of a settlement agreement with respect to any original allegation in the Charge covered by such agreement shall, for purposes of all time limitations in this section, be deemed to arise on the accrual date of the breach.

H. Individual Right to Sue.

1. Individual Charges.

a. Prior to the expiration of one hundred eighty (180) days following the date an Individual Charge was filed, ONLR, by notice to the individual charging party, shall authorize such individual to initiate a proceeding before the Commission in accordance with the procedures prescribed in § 610(J), if:

(1) The Individual Charge has been dismissed by ONLR pursuant to § 610(D)(1);

(2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on behalf of the individual charging party; or

(3) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within one hundred eighty (180) days after the date on which the Individual Charge was filed.

b. After the expiration of one hundred eighty (180) days following the date an Individual Charge was filed, the individual charging party shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination, or commenced or concluded conciliation efforts.

2. ONLR Charges.

a. Prior to the expiration of one hundred eighty (180) days following the date an ONLR Charge was filed, ONLR, by notice to any person known to it who claims to be aggrieved by the allegations presented in such Charge, shall authorize such person to initiate a proceeding before the Commission in accordance with the procedures prescribed in § 610(J), if:

(1) The ONLR Charge has been dismissed by ONLR pursuant to § 610(D)(2);

(2) ONLR has issued a probable cause determination under § 610(E), there has been a failure of conciliation contemplated by § 610(F), and ONLR has determined not to initiate a Commission proceeding on the Charge;

(3) ONLR has entered into a settlement agreement under § 610(G) to which such aggrieved person is not a party; or

(4) Notwithstanding the absence of a probable cause determination or conclusion of conciliation efforts, ONLR certifies it will be unable to complete one or both of these steps within one hundred eighty (180) days after the date on which the ONLR Charge was filed.

b. After the expiration of one hundred eighty (180) days following the date an ONLR Charge was filed and prior to the date on which ONLR commences a Commission proceeding, any person claiming to be aggrieved by the allegations presented in such Charge shall have the right to initiate a proceeding before the Commission irrespective of whether ONLR has issued a notice of right to sue, made a probable cause determination or commenced or concluded conciliation efforts.

3. Content of Notice. A notice of right to sue shall include the following information:

- a. Authorization to the individual charging party or aggrieved person to initiate a proceeding before the Commission pursuant to and within the time limits prescribed by § 610(J);
- b. A summary of the procedures applicable to the institution of such proceeding, or a copy of the Act containing such procedures;
- c. A copy of the Charge; and
- d. A copy of any written determination of ONLR with respect to such Charge.

4. ONLR Assistance. Authorization to commence Commission proceedings hereunder shall not prevent ONLR from assisting any individual charging party or aggrieved person in connection with Commission proceedings or other efforts to remedy the alleged violations of the Act.

I. ONLR Right to Sue.

1. Individual Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an Individual Charge with respect to which ONLR has issued a probable cause determination under § 610(E) and there has been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that the individual charging party has a concurrent right to sue hereunder which has not been exercised. ONLR's right to sue shall continue until such time as the individual charging party commences a Commission proceeding and, in that case, shall be revived in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Initiation of Commission proceedings by ONLR shall terminate the right to sue of an individual charging party, subject to revival of such right in the event the proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).

2. ONLR Charges. ONLR shall have the right to initiate proceedings before the Commission based on the allegations of an ONLR Charge with respect to which ONLR has issued a probable determination under § 610(E) and there has been a failure of conciliation contemplated by § 610(F). ONLR shall have such right notwithstanding that a person claiming to be aggrieved as a result of the allegations in the ONLR Charge has a concurrent right to sue hereunder which has not been exercised. In the event an aggrieved person first initiates a Commission proceeding in an authorized manner, ONLR's right to sue shall only expire as to such person and shall revive in the event the aggrieved person's proceeding is dismissed or concluded for reasons unrelated to the merits. Nothing herein shall be construed as foreclosing ONLR from exercising its right to intervene in a Commission proceeding under § 610(L).

J. Initiation of Commission Proceedings. Proceedings before the Commission shall be initiated upon the filing of a written complaint by a petitioner with the Commission.

- 1. Complaints shall satisfy each of the following conditions:

- a. The petitioner is authorized to file the Complaint under the terms and conditions prescribed by this section;
- b. The underlying Charge was filed within the time limits prescribed in § 610(B)(6); and
- c. The complaint was filed within three hundred sixty (360) days following the date on which the underlying Charge was filed.

2. Upon motion of respondent and a showing that any one or more of the foregoing conditions has not been satisfied, the Commission shall dismiss the complaint; provided, however, that no complaint shall be dismissed under (b) above as to any allegation of a pattern of conduct or practice in violation of the Act to the extent such pattern or practice continued to persist during the time limits prescribed in § 610(B)(6); and provided further that, in the absence of dismissal or conclusion of Commission proceedings on the merits, nothing herein shall be construed as prohibiting the refiling of a Charge alleging the same or comparable pattern or practice violations of the Act which continued to persist during the time limits prescribed in § 610(B)(6) for refiling such Charge.

K. Preliminary Relief. Prior to the initiation of Commission proceedings on a Charge and notwithstanding the failure to satisfy any precondition to such proceedings, either ONLR, an individual charging party or aggrieved person may, upon notice to respondent, petition the Commission for appropriate temporary or preliminary relief in the form of an injunction or other equitable remedy on the ground that prompt action is necessary to carry out the purposes of the Act, including the preservation and protection of rights thereunder. Nothing herein shall be construed as foreclosing a petition which seeks comparable relief subsequent to the commencement of Commission proceedings.

L. Intervention in Commission Proceedings. Within three (3) business days after the date on which any complaint, or petition pursuant to § 610(K), is filed with the Commission, other than a complaint or petition filed by ONLR, the Commission shall cause copies thereof to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene in the Commission proceeding initiated by such complaint or petition upon the timely application by motion accompanied by a pleading setting forth the claims for which intervention is sought.

M. Confidentiality.

1. Conciliation. In the absence of written consent of the persons concerned, statements or offers of settlement made, documents provided or conduct by participants in conciliation efforts under § 610(F) shall not be admissible in any Commission or other proceeding relating to the Charge which is the subject of conciliation, to prove liability for or invalidity of the Charge or the amount or nature of relief therefor; provided, however, that nothing herein shall be construed as requiring the exclusion of such evidence merely because it was presented in the court of conciliation if:

- a. The evidence is otherwise discoverable; or
- b. The evidence is offered for another purpose, including without limitation, proving bias or prejudice of a witness, negating a contention

of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

2. Charge, Records and Information.

a. Prior to the institution of Commission proceedings thereon, and in the absence of the written consent of the persons concerned, ONLR shall not disclose as a matter of public information any Charge, response thereto, any statements or other information obtained in the course of its investigation of the Charge, except that nothing herein shall prevent earlier disclosure of such information by ONLR in its discretion:

(1) To charging parties or their attorneys, respondents or their attorneys, witnesses or other interested persons where the disclosure is deemed by ONLR to be necessary for securing a resolution of the Charge, including appropriate relief therefor; or

(2) To employees or representatives of the Navajo Nation or employees or representatives of federal, state or local authorities have a governmental interest in the subject matter of the Charge; or

(3) To persons for the purpose of publishing data derived from such information in a form which does not reveal the identity of charging parties, aggrieved persons, respondents or persons supplying the information.

b. Except as otherwise provided herein, any person to whom a permissible disclosure is made hereunder shall be bound to maintain the confidentiality of such information from further disclosure and shall use the information solely for the purpose for which it was disclosed.

2. Privileged Information. Neither ONLR, charging parties, aggrieved persons, respondents, witnesses or persons supplying information in connection with a Charge shall be compelled, either before or after commencement of Commission proceedings, to disclose any information which represents the opinions or conclusions formed by ONLR during the course of its investigation of a Charge, or any information which is protected by the attorney-client privilege, the informer's privilege referred to in § 610(B)(10), or any other absolute or limited privilege recognized under the laws of the Navajo Nation. To the extent justice requires, the Commission may, balancing the rights of parties and affected persons, prohibit or limit the disclosure of any other information for good cause shown, including a showing that disclosure would impede enforcement of the Act, jeopardize rights guaranteed thereunder, or cause annoyance, embarrassment, oppression or undue burden or expense to parties or affected persons.

N. Non-retaliation. It shall be unlawful for any employer, labor organization, joint labor-management committee involved in apprenticeship or other matters relating to employment, employment agency or other person to, directly or indirectly, take or attempt to induce another person to take, any action adversely affecting:

1. The terms and conditions of any person's employment or opportunities associated with such employment;
2. An applicant's opportunity for employment;

3. The membership of an employee or applicant for employment in a labor organization; or

4. Any other right, benefit, privilege or opportunity unrelated to employment, because such person has opposed an employment practice subject to this Act or has made a charge, testified, or assisted or participated in any manner in an investigation, proceeding or hearing under the Act.

O. Service of Documents. Service of any notice, determination or other document required to be transmitted under this section shall be accomplished by personal delivery or certified mail, return receipt requested.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

Annotations

1. Jurisdiction

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

2. Ministerial acts

“The receipt of an employment charge form and its subsequent filing are nothing more than ministerial acts, which the law does not restrict to compliance officers. [. . .] Presumably, any ONLR employee may receive and file an employment charge form.” *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 365 (Nav. Sup. Ct. 1998).

3. Filing a charge

“The filing of an amended complaint with the Commission does not require the petitioner to return to the ONLR with an amended charge, therefore, 15 N.N.C. § 610(B)(5) does not apply to the amended complaint.” *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 411 (Nav. Sup. Ct. 1999).

“We agree with the Commission that telephone calls do not qualify as an attempt to file a charge with the ONLR.” *Kirk, et al. v. Office of Navajo Labor Relations*, 7 Nav. R. 363, 364 (Nav. Sup. Ct. 1998).

4. Limitations, generally

“We do not believe the timing requirements are jurisdictional for purposes of a writ of prohibition. Petitioner relies on a statement in *Harvey v. Kayenta Unified School District* that Section 610(J)(1)(c) ‘appears to be a hybrid of a jurisdictional statute and a limitation statute.’ 7 Nav.R. 374, 375 (Nav. Sup. Ct. 1999). However, further in the *Harvey* opinion we indicated that equitable tolling may apply, suggesting that Section 610(J)(1)(c) operates as a statute of limitations and not a jurisdictional condition. *Id.* At 375-76. Though our opinion in *Harvey* was not clear, we clarify today that the NPEA timing requirements are not jurisdictional, in that they may be waived by failure of the respondent to plead them as a defense, and may be altered by other considerations such as equitable tolling. We reject any suggestion in *Harvey* to the contrary.” *Peabody Western Coal Company, Kayenta Mine v. Navajo Nation Labor Commission*, No. SC-CV-33-04, slip op. at 2-3 (Nav. Sup. Ct. May 24, 2004).

“The NPEA requires the complaint to be filed within three hundred sixty (360) days of the charge.” *Peabody Western Coal Company, Kayenta Mine v. Navajo Nation Labor Commission*, No. SC-CV-33-04, slip op. at 1-2 (Nav. Sup. Ct. May 24, 2004).

“The statute appears to be a hybrid of a jurisdictional statute and a limitations statute. [. . .] . . . [C]onsiderations of fairness and substantial justice require that parties have . . . opportunity to assert equitable tolling before the Commission.” *Harvey v. Kayenta Unified School District*, 7 Nav. R. 374, 375 (Nav. Sup. Ct. 1999).

5. Consent to application

“On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 et seq., conflicts with

the New Mexico Human Rights Act, § 28-1-1, et seq. MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application

of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

§ 611. Hearings

A. The Commission shall schedule a hearing within sixty (60) days of the filing of a written complaint by a petitioner with the Commission. The hearing shall be held at a location designated by the Commission.

1. Notice. The Commission shall issue a notice of hearing. The time and place of the hearing shall be clearly described in the notice. The notice shall also set forth in clear and simple terms the nature of the alleged violations and shall state that: (a) the violations may be contested at a hearing before the Commission; and (b) any party may appear by counsel and cross-examine adverse witnesses.

2. Upon application by a party to the Commission or on the Commission's own motion, the Commission may issue subpoenas compelling the disclosure by any person evidence relevant to the Complaint, including a subpoena ordering, under oath as may be appropriate:

- a. The attendance and testimony of witnesses;
- b. Responses to written interrogations;
- c. The production of evidence; and
- d. Access to evidence for the purpose of examination and copying.

3. The Commission is authorized to administer oaths and compel attendance of any person at a hearing and to compel production of any documents.

4. In the event a party does not make an appearance on the day set for hearing or fails to comply with the rules of procedure set forth by the Commission for the conduct of hearings, the Commission is authorized to enter a default determination against the non-appearing and/or non-complying party.

B. Burden of proof. In any compliance review, complaint proceeding, investigation, or hearing, the burden of proof shall be upon the respondent to show compliance with the provisions of this Act by a preponderance of the evidence.

C. Hearing. The Commission shall conduct the hearing in a fair and orderly manner and extend to all parties the right to be heard.

1. The Commission shall not be bound by any formal rules of evidence.

2. The respondent shall have the opportunity to answer the complaint and the parties shall have the right to legal counsel, to present witnesses, and to cross-examine adverse witnesses.

3. The Commission shall issue its decision by a majority vote of a quorum present which shall be signed by the Chairperson of the Commission.

4. Copies of the decision shall be sent to all parties of record in the proceeding by certified mail, return receipt.
5. Records of the proceeding shall be recorded. Any party may request a transcript of the proceeding at their own expense.
6. The decision of the Commission shall be final with a right of appeal only on questions of law to the Navajo Nation Supreme Court.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Note. Slightly reworded for purposes of statutory form.

Annotations

1. Jurisdiction

“Like FECA, the NPEA is a more narrowly drawn statute. We find that NPEA claims should function in a manner analogous to FECA claims. However, while FECA provides access to the federal courts, the NPEA provides access to tribal courts.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 11 (Nav. Sup. Ct. August 29, 2002).

“Upon reconsideration we hold that Dr. Stago’s NPEA claim falls outside the Federal Tort Claims Act (FTCA) and that the NNLC [Navajo Nation Labor Commission] has jurisdiction over her claim.” *Stago v. Wide Ruins Community School Inc.*, No. SC-CV-63-99, slip op. at 1 (Nav. Sup.Ct. August 29, 2002).

§ 612. Remedies and sanctions

A. If, following notice and hearing, the Commission finds that respondent has violated the Act, the Commission shall:

1. Issue one or more remedial orders, including without limitation, directed hiring, reinstatement, displacement of non-Navajo employees, back-pay, front-pay, injunctive relief, mandated corrective action to cure the violation within a reasonable period of time, and/or, upon a finding of intentional violation, imposition of civil fines; provided that liability for back-pay or other forms of compensatory damages shall not accrue from a date more than two (2) years prior to the date of filing of the Charge which is the basis for the complaint.
2. In the case of an individual suit initiated pursuant to § 610(H), award costs and attorneys’ fees if the respondent’s position was not substantially justified.
3. Refer matters involving respondent contracts, agreements, leases and permits to the Navajo Nation Attorney General for appropriate action.

B. In the absence of a showing of good cause therefor, if any party to a proceeding under this Act fails to comply with a subpoena or order issued by the Commission, the Commission may impose such actions as are just, including without limitation any one or more of the following:

1. In the case of non-compliance with a subpoena of documents or witnesses:
 - a. An order that the matters for which the subpoena was issued or any other designated facts shall be deemed established for the purposes of the proceeding and in accordance with the claim of the party obtaining the order;

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

c. An order striking pleading or parts thereof, or staying further proceedings until the subpoena is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

2. In the case of non-compliance by a party or non-party with a Commission subpoena of documents or witnesses or with any other order of the Commission:

a. An order holding the disobedient person in contempt of the Commission and imposing appropriate sanctions therefor, including a civil fine; or

b. An order directing the disobedient person to pay the reasonable costs and/or attorneys fees caused by the non-compliance.

C. The person or party in whose favor a Commission's decision providing for remedial action is entered shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce the remedial action; provided that the Commission itself shall have the right to seek legal and/or equitable relief in the District Courts of the Navajo Nation to enforce civil fines or sanctions imposed by the Commission against a person or party. In both instances the Attorney General of the Navajo Nation shall have an unconditional right to intervene on behalf of the Navajo Nation. Any attempted enforcement of a Commission order or decision directing payment of money by the Navajo Nation or any of its governmental entities shall, with respect to the extent of any liability be governed by the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, as amended.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Note. Slightly reworded for purposes of statutory form.

Annotations

1. Remedies

"... [W]hile Loley has submitted his sum certain damages, a damages hearing is always necessary for the Navajo Nation to defend its treasury." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 412 (Nav. Sup. Ct. 1999).

"Under the NPEA, if the respondent violates the act, the Commission 'shall issue one or more remedial orders, including without limitation ... back pay.'" *Tso v. Navajo Housing Authority*, No. SC-CV-10-02, slip op. at 6 (Nav. Sup. Ct. August 26, 2004).

2. Review

"On appeal, Central Consolidated additionally argued that the Navajo Preference in Employment Act, 15 N.N.C. § 601 *et seq.*, conflicts with

the New Mexico Human Rights Act, § 28-1-1, *et seq.* MNSA 1978, and was not enforceable according to the Lease. This Court issued a memorandum decision affirming the Navajo Nation Labor Commission. We held that Central Consolidated consented to the application of the NPEA and that the NPEA was not in conflict with the New Mexico Human Rights Act." *Office of Navajo Labor Relations v. Central Consolidated School District No. 22*, No. SC-CV-37-00, slip op. at 2-3 (Nav. Sup. Ct. June 23, 2004).

"We find that there is ample support in the record for the Labor Commission's determination that Cameron's position was not substantially justified. Cameron's legal argument were at best misguided, and its evidence ranged from thin to lacking credibility. Therefore we affirm

15 N.N.C. § 612

Note 2

the Labor Commission's decision to award Manygoats attorneys' fees and costs." *Manygoats v Atkinson Trading Company, Inc.*, No. SC-CV-62-00 slip op. at 14 (Nav. Sup. Ct. August 12, 2003).

3. Navajo Nation as defendant

"Once the sovereign protection of relating to answering complaints has been afforded, the NDET, or any other Navajo Nation governmental body, is held to the same standard as a private litigant. We affirm the Commission's entry of default." *Loley v. Department of Em-*

ployment and Training, 7 Nav. R. 406, 410 (Nav. Sup. Ct. 1999).

"While a Navajo Nation government agency need not file an answer to a complaint under 1 N.N.C. § 555(B), it is not free to extend that privilege to ignore the valid orders of the [Labor] Commission (or a court for that matter). Once the Navajo Nation has been afforded its sovereign protection, it will be held to the same standards and responsibilities of any litigant." *Loley v. Department of Employment and Training*, 7 Nav. R. 406, 409 (Nav. Sup. Ct. 1999).

LABOR

§ 613. Appeal and stay of execution

A. Any party may appeal a decision of the Commission to the Navajo Nation Supreme Court by lodging a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure and within ten (10) days after receipt of the Commission's decision.

B. In the absence of a stipulation by the parties approved by the Commission, a stay of execution of the decision from which the appeal is taken shall only be granted upon written application of the appellant to the Commission and an opportunity for response by appellee. The application for a stay shall be filed within the period prescribed for appeal in subsection (A) hereof. No stay shall be issued unless the appellant presents a clear and convincing showing that each of the following requirements have been satisfied:

1. Appellant is likely to prevail on the merits of the appeal;
2. Appellant will be irreparably harmed in the absence of a stay;
3. Appellee and interested persons will not be substantially harmed by a stay;
4. The public interest will be served by a stay; and
5. An appeal bond or other security, in the amount and upon the terms prescribed by subsection (C) below, has been filed with and approved by the Commission; provided that no appeal bond shall be required of ONLR, the Navajo Nation or any governmental agency or enterprise of the Navajo Nation.

C. The appeal bond shall be issued by a duly authorized and responsible surety which shall obligate itself to pay to appellee, or any other person in whose favor an award is made by the Commission decision, the amounts specified or described in the bond upon conclusion of the appeal and failure of appellant, following written demand by appellee, to satisfy the foregoing obligations.

1. The amount or nature of liability assumed by the surety shall be specified in the bond and shall include:
 - a. The total amount of all monetary awards made in the Commission decision, together with such interest thereon as may be prescribed in the Commission's decision;

b. Costs of appeal and attorneys' fees incurred by appellee in defending the appeal and which may be awarded to appellee by the Navajo Nation Supreme Court;

c. Damages sustained by appellee or other recipients of a Commission award for delay in satisfaction of the Commission decision caused by the appeal; and

d. Such other amount or liability reasonably required to be secured to protect the interests of the appellee or other award recipients.

2. The bond shall provide that the surety submits to the jurisdiction of the Commission and the Courts of the Navajo Nation, and irrevocably appoints the Commission as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion of the appellee filed with the Commission, with copies thereof served on the surety and appellant.

3. In lieu of posting an appeal bond, appellant may, with the approval of the Commission, post a cash bond and undertaking in the amount and upon the terms which are required above with respect to an appeal bond.

4. No appeal bond or cash bond and undertaking, nor the liabilities of the surety or appellant thereunder, shall be exonerated or released until all amounts and liabilities prescribed therein have been fully paid and satisfied.

D. Within three (3) business days following the filing with the Navajo Nation Supreme Court of any appeal from a Commission proceeding, the Clerk of such Court shall, in all cases other than those in which ONLR is not either the appellant or appellee, cause copies of the notice of appeal and all other documents filed in connection therewith to be sent to the ONLR Director and the Attorney General of the Navajo Nation. ONLR shall have an unconditional right to intervene and participate as amicus in the appeal proceedings upon timely application therefor by motion lodged with the Navajo Nation Supreme Court. ONLR's right of participation shall be coextensive with that of the parties to the appeal, including the right to file opening, answering and reply briefs, and the right to present oral argument to the Court.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Annotations

1. Exhaustion of remedies

Exhaustion requirement was met by consideration of dispute between Navajo Nation and electric utility over application of Navajo Preference in Employment Act (NPEA) to employment practices at power plant on leased tribal trust

land and Navajo Nation Supreme Court's determination of tribal jurisdiction was thus properly the subject of federal review. *Arizona Public Service Co. v. Aspaas*, 77 F.3d 1128 (9th Cir.(Ariz.) 1995).

§ 614. Non-Navajo spouses

A. When a non-Navajo is legally married to a Navajo, he or she shall be entitled to preference in employment under the Act. Proof of marriage by a valid marriage certificate shall be required. In addition, such non-Navajo

spouse shall be required to have resided within the territorial jurisdiction of the Navajo Nation for a continuous one (1) year period immediately preceding the application for Navajo preference consideration.

B. Upon meeting the above requirements, such consideration shall be limited to preference in employment where the spouse would normally be in a pool of non-Navajo workers. In this instance, Navajo preference would place the non-Navajo spouse in the applicant pool of Navajos for consideration. However, preference priority shall still be given to all Navajo applicants who meet the necessary job qualifications within that pool.

C. Non-Navajo spouses having a right to secondary preference under this section shall also have and enjoy all other employment rights granted to Navajos under the Act, it being understood that Navajos retain a priority right with respect to provisions of the Act concerning preferential treatment in employment opportunities.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

§ 615. Polygraph test

A. No person shall request or require any employee or prospective employee to submit to, or take a polygraph examination as a condition of obtaining employment or of continuing employment or discharge or discipline in any manner an employee for failing, refusing, or declining to submit to or take a polygraph examination.

B. For purposes of this section, "polygraph" means any mechanical or electrical instrument or device of any type used or allegedly used to examine, test, or question individuals for the purpose of determining truthfulness. This provision shall not apply to federal or state government employees.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Note. The words "lie detector" were changed to "polygraph".

§ 616. Rules and regulations

The Human Services Committee of the Navajo Nation Council is authorized to promulgate rules and regulations necessary for the enforcement and implementation of the provisions of this Act. The Commission is hereby delegated the authority to adopt and implement, on its own initiative and without any approval, rules of procedure and practice governing the conduct of proceedings under § 611 of the Act, provided that such rules are consistent with the provisions of the Act.

History

CO-73-90, October 25, 1990.
CAU-63-85, August 1, 1985.

Note. Slightly reworded for purposes of statutory form.

§ 617. Prior inconsistent law repealed

All prior Navajo Nation laws, rules, regulations, and provisions of the Navajo Nation Code previously adopted which are inconsistent with this Act are hereby repealed.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

§ 618. Effective date and amendment of the Act

A. The effective date of this Act shall be sixty (60) days after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.

B. Any amendment or repeal of the Act shall only be effective upon approval by the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or to the detriment of a particular person.

C. Any amendment to the Act, unless the amendment expressly states otherwise, shall be effective sixty (60) days after the passage thereof by the Navajo Nation Council.

D. The time limits prescribed in § 610 relating to filing a Charge and subsequent proceedings thereon were added by amendment adopted by the Navajo Nation Council subsequent to the effective date of the original Act. Notwithstanding an actual accrual date for any alleged violation of the Act which is prior to the effective date of the amendment which added the time limits in § 610 hereof, such alleged violation shall be deemed to accrue on the effective date of the foregoing amendment for purposes of all time limits set forth in § 610.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

§ 619. Severability of the Act

If any provision of this Act or the application thereof to any person, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications thereof.

History

CO-73-90, October 25, 1990.

CAU-63-85, August 1, 1985.

Chapter 9. Child Labor

Section

801. Adherence to child-labor laws of states
802. Authority to promulgate additional regulations

§ 801. Adherence to child labor laws of states

The Navajo Nation shall adhere as nearly as may be possible to the applicable child labor laws of the states of Arizona, New Mexico and Utah on work projects within those portions of the Navajo Nation lying within each respective state.

History

CA-53-58, § 1, August 29, 1958.

Note. Slightly reworded for purposes of statutory form.

§ 802. Authority to promulgate additional regulations

The President of the Navajo Nation is authorized to promulgate such additional protective regulations with respect to child labor on the Navajo Nation as he or she deems necessary and proper to protect the best interests of the Navajo Nation.

History

CA-53-58, § 2, August 29, 1958.

Cross References

The Human Services Committee of the Navajo Nation Council has the authority to promulgate regulations for the enforcement and implementation of the labor laws and policies of the Navajo Nation. See 2 N.N.C. § 604(B)(1).

Chapter 11. Workers' Compensation

Section

1001. Establishment of Workers' Compensation Act
1002. Definitions; exclusion of coverage; coverage and premium determinations
1003. Acknowledgment of Act
1004. Workers' Compensation fund—Purpose; administration
1005. Rates
1006. Custodian; duties
1007. Payment of benefits
1008. Workers' Compensation Program—Powers and duties
1009. Promulgation of rules
1010. Administration conference/hearing process
1011. Final appeal to the Navajo Nation Supreme Court
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Section

- 1017. Disclosure of preexisting condition
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- 1039. Artificial members
- 1040. Replacement of artificial members
- 1041. Hernia; operations
- 1042. Disfigurement benefits
- 1043. Vocational rehabilitation services
- 1044. Eyewear
- 1045. Clothing
- 1046. Travel for treatment
- 1047. Indemnity benefits exempt from creditors and writs
- 1048. Permanent partial disability; permanent total disability

History

Note. All reference to "Workmen's Compensation" in this chapter have been changed to "Workers' Compensation". Previous references in this section to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

§ 1001. Establishment of Workers' Compensation Act

A. There shall be a program for workers' compensation for all employees of the Navajo Nation, including all Enterprise and Chapter employees, Council Delegates, Chapter officials, and others as set out in 15 N.N.C. § 1002(A)(13). This program shall be known as the Navajo Nation Workers' Compensation Program.

B. This Act shall apply to all worker's compensation claims arising from an accident which occurred after the effective date of this Act and all occupational disease disablement claims arising from a last injurious exposure which occurred after the effective date of this Act.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 101, August 22, 1978.

§ 1002. Definitions; exclusion of coverage; coverage and premium determinations

A. Definitions. In this Act, unless the context otherwise requires:

1. "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; a sudden, unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it, provided, however, that no incident shall be considered an accident that does not involve a sudden and discernable physical trauma or event.

2. "Act of God" means an act occasioned exclusively by forces of nature without the interference of human agency.

3. "Administrative cost" means operational expenses associated with claims process through the Navajo Nation Workers' Compensation Program.

4. "Adoption" shall include cases where persons are treated as adopted as well as those of legal adoption.

5. "Artificial member" means a fabricated substitute replacing a diseased or missing part of the body, to include eye(s) and/or other teeth.

6. "Average weekly wage" means the earnings of the claimant in the employment in which he or she was working at the time of the injury during the period ninety-one (91) days immediately preceding the date of the injury, divided by 13 weeks.

7. "Award" means the findings or decision of the Workers' Compensation Program of the amount of compensation due a claimant.

8. "Child" includes dependent natural children, step-children, adopted children and acknowledged children born out of wedlock, but does not include married children unless they are dependents.

9. "Claimant" means the injured covered worker or dependents of same in the event of death of the covered worker.

10. "Compensation" means indemnity benefits, payments for medical expense, mileage and other expenses associated with medical treatment, and death benefits.

11. "Controlled substance" means any drug so designated or defined by Navajo Nation and other applicable laws where availability or possession of such substance is restricted or prohibited.

12. "Course and scope of employment" shall mean the time, place and circumstances under which the accident occurred. An injury must arise out of and be in the course and scope of employment in order that a claim be compensable.

13. "Covered person," "covered employee," and "covered worker" means:

- a. Every person in the service of the Navajo Nation, elected, appointed or hired, and carried on the payroll of the Navajo Nation, including all Enterprise and Chapter employees, Council Delegates, and Chapter officials;

b. Members of duly constituted committees, boards and commissions recognized by the Navajo Nation may be deemed to be covered persons and entitled to the benefits provided by the Act, provided:

(1) Such committee, board or commission member is injured or killed in the course and scope of committee's, board or commission's duties and is acting at the direction of the committee, board or commission; and

(2) Premium has been paid for compensation benefits for the committee, board or commission member; and

(3) The committee, board or commission has submitted documentation to the Workers' Compensation Program defining the nature and type of committee, board or commission work and the members entitled to such benefits.

c. Volunteer workers for the Navajo Nation, a tribal enterprise or a Chapter may be deemed to be covered persons and entitled to the benefits provided by this Act, provided:

(1) Such volunteer is injured or killed in the course and scope of employment and is working under the direction and control of an employer; and

(2) Premium has been paid for compensation benefits for the volunteer; and

(3) The supervising employer has submitted documentation to the Workers' Compensation Program defining the nature and type of volunteer work and workers to be entitled to such benefits.

d. Consultants, independent contractors and all other persons not directly employed by the Navajo Nation, its Enterprises or Chapters are excluded from the coverage of the Workers' Compensation Act.

e. The determination of whether or not an individual is a "covered worker" and determination of the premium to be assessed shall be made by the Workers' Compensation Program. Premium assessment shall be governed by Rules adopted by the Workers' Compensation Program with the approval of the Navajo Nation Insurance Commission.

14. "Death" is any fatality caused by an injury that occurred in the course and scope of employment.

15. "Dependents" are the following persons, and they only shall be deemed dependents under the provisions of this Act:

a. The widow/widower, if living with the deceased at the time of his or her death, or legally entitled to be supported by him or her as a dependent;

b. A child under twenty-one (21) years of age, unmarried and dependent upon the deceased; or a child incapable of self-support and dependent upon the deceased;

c. A parent or grandparent, if actually dependent upon the deceased;

d. A grandchild, brother or sister, only if under twenty-one (21) years of age, unmarried and dependent upon the deceased, or incapable of self-support and dependent upon the deceased;

e. A person is considered to be a dependent upon a showing of proof that a relation of dependency existed at the time of death.

16. "Disability" means the temporary or permanent inability to work.

17. "Employer" means an employer of one or more covered workers.

18. "Health care provider" means a person licensed to practice medicine by any state within the United States, or foreign country if the injury occurs outside of the United States, including a pharmacy dispensing prescribed medication, a hospital or other accredited medical facility, licensed or certified chiropractors and other recognized, properly licensed or certified medically related practitioners recognized by the Navajo Nation including traditional healing practitioners approved pursuant to the Workers' Compensation Program's Rules.

19. "Impairment" means an anatomical or functional abnormality existing after the date of maximum medical improvement as determined by a medically or scientifically demonstrable finding and based upon the most recent edition of the American Medical Association's guide to the evaluation of permanent impairment or comparable publications of the American Medical Association.

20. "Indemnity benefits" means payments awarded pursuant to 15 N.N.C. § 1033 or 15 N.N.C. § 1048.

21. "Injury" or "injuries" means disability resulting from an accident or occupational disease.

22. "Maximum medical improvement" means the date after which further recovery from or lasting improvement to an injury can no longer be reasonably anticipated based upon reasonable medical probability as determined by a health care provider selected by the Workers' Compensation Program.

23. "Minor employee" shall mean a minor working at an age and at an occupation legally permitted. Such minor shall be deemed at the age of majority for the purpose of this Act.

24. "Occupation" means any vocation for which the claimant is or becomes reasonably fitted to by education, training, or experience.

25. "Occupational disease" means a bodily disease which results directly from the employment or the conditions under which work was performed, which is shown to a reasonable degree of medical certainty to be as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the hazard to which the worker would not have been equally exposed to outside of the employment. The disease need not have been foreseen or expected but after its contraction must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

26. "Parent or grandparent" means the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the deceased employee.

27. "Permanent partial disability" means a condition whereby a claimant, by reason of injury arising out of and in the course and scope of employment, suffers a permanent impairment.

28. "Permanent total disability" means complete incapacity to engage in an occupation as a result of an occupational injury. Independent of any other provision, the entire and irrecoverable loss of sight of both eyes, or the loss by actual severance through and above the wrist or ankle joint of both hands or feet, shall be considered permanent total disability even if the employee shall engage in an occupation.

29. "Preexisting condition" means anatomical or functional abnormality, whether physical or mental.

30. "Settlement" means the execution of a release of all claims and an agreement concerning compensation.

31. "Temporary total disability" means the inability of the claimant, by reason of an injury arising out of and in the course and scope of his or her employment, to perform his or her duties prior to the date of his or her maximum medical improvement.

32. "Week" means seven (7) calendar days.

B. The Workers' Compensation Program may promulgate additional definitions by rule pursuant to 15 N.N.C. § 1009.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 113, August 22, 1978.

Note. Slightly reworded for purposes of statutory form. Previous subsection (13) or (M)

pertaining to the use of masculine pronouns throughout this chapter has been deleted. Previous references in this section to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

Annotations

1. Exclusive jurisdiction

"... [W]hen a Navajo Nation employee is injured accidentally during the course and scope of his or her employment, and files a workers' compensation claim, the jurisdiction of the Workers' Compensation Program becomes

exclusive. 15 N.N.C. § 1013. Workers fall within this exclusive jurisdiction when their injuries 'arise out of and [are] in the course and scope of employment.'" *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

§ 1003. Acknowledgment of Act

A. All covered workers shall be conclusively presumed to have elected to workers' compensation in accordance with the terms, conditions and provisions of this Act, including acknowledgment that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and no other workers' compensation law is applicable to injuries or death sustained by the covered workers.

B. The employer, including personnel offices of the Navajo Nation, the processing units for the employment and training programs, or the manage-

ment of the Enterprises and Chapters shall be responsible for explaining the provisions of the Act to their workers and shall post in a conspicuous location a notice as follows:

NOTICE TO WORKERS

All covered workers are hereby notified that the Navajo Nation is a sovereign Nation for the purposes of workers' compensation, governed by the laws set forth by the Navajo Nation Council and that no other workers' compensation law is applicable to injuries or death sustained by a covered worker. If you do not fully understand the terms, conditions, and provisions of the Workers' Compensation Act, contact your supervisor or the Workers' Compensation Program office for further details.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 102, August 22, 1978.

Note. Slightly reworded for purposes of statutory form. Previous reference in this section

to the "Comprehensive Employment and Training Act" ("CETA") have been deleted.

Annotations

1. Presumption of election of coverage

"Navajo Nation government employees are 'presumed to have elected to take workers' compensation' coverage when hired. 15 N.N.C. § 1003(A) (1995). Thus, when a Navajo Nation employee is injured accidentally during the course and scope of his or her employment, and files a workers' compensation claim, the juris-

dition of the Workers' Compensation Program becomes exclusive. 15 N.N.C. § 1013. Workers fall within this exclusive jurisdiction when their injuries 'arise out of and [are] in the course and scope of employment.'" *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

§ 1004. Workers' Compensation fund—Purpose; administration

A. There shall be a fund maintained for the sole purpose of payment for workers' compensation and administrative costs provided herein.

B. The fund shall be part of the Workers' Compensation Program Account maintained on the records of the Navajo Nation Financial Services Department, Window Rock, Arizona.

C. Funding shall be obtained by assessment of a percentage of that amount recovered for employee benefits, in conjunction with the Financial Services Department, and/or by assessment of charges to the Navajo Nation, its Enterprises and Chapters based on a specified rate adjusted annually at the beginning of each Navajo Nation fiscal year based on the loss experience of the previous fiscal year. Collection shall be made by the Financial Services Department in conjunction with assessments approved by the Navajo Nation Insurance Commission pursuant to 2 N.N.C. § 931 *et seq.*

D. Failure of an employer to pay the assessed amount within sixty (60) days from the date of billing shall subject that employer to monthly interest payments determined by the Financial Services Department.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 104, August 22, 1978.

§ 1005. Rates

A. The rates charged shall be determined by the Insurance Commission and adjusted in accordance with the loss experience of each employer on an annual basis. Adjusted rates shall become effective at the beginning of the succeeding fiscal year following the announced adjustments.

B. The Insurance Commission, in setting rates, shall provide for reserves adequate to meet anticipated and unexpected losses, and other necessary reserves and surplus. The amount of surplus and reserves shall not be less than the sum of current incurred loss reserves, an actuarially reasonable reserve for incurred but not yet reported claims and an actuarially reasonable reserve for claims anticipated during the next eighteen (18) months, and shall not be used for any other purpose. Any unnecessary reserves and surplus shall be returned to each participating employer on a pro rata basis.

C. The Insurance Commission may, in its discretion, apply tentative assessment to new employers subject to modification in accordance with their loss experience.

D. Any employer who misrepresents to the Insurance Commission the amount of payroll upon which the premium to be paid to the Workers' Compensation fund is based shall be liable to a penalty of ten times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be assessed by the Insurance Commission and payment shall be made within thirty (30) days thereafter to the Financial Services Department and placed into the Workers' Compensation fund.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 105, August 22, 1978.

§ 1006. Custodian; duties

A. The Financial Services Department shall be custodian of the Workers' Compensation fund; and shall record authorized disbursements processed and paid by the Workers' Compensation Program Account.

B. Internal control procedures will be established by the Financial Services Department.

C. The fund shall be subject to an annual audit.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 106, August 22, 1978.

Cross References

The Budget and Finance Committee of the Navajo Nation Council is authorized to require reports from and to monitor the financial performance of all offices, divisions, departments, enterprises, authorities, committees, boards, commissions or entities having oversight or control over fiscal matters or financial obligations to the Navajo Nation. See 2 N.N.C. § 374(B)(8).

§ 1007. Payment of benefits

The Workers' Compensation Program shall administer this Act in accordance with the terms and conditions as described herein, and shall process properly approved payments of compensation as provided for in this Act.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 107, August 22, 1978.

§ 1008. Workers' Compensation Program—Powers and duties

A. The Workers' Compensation Program shall be empowered to request medical reports, records and notes, police reports, autopsy reports and special investigations, engage the services of adjusters and consultants, and perform other activities as may be needed to process any claim for compensation or to further the intent of this Act. Payments for expenses associated with these activities shall be made at the direction of the Workers' Compensation Program.

B. Complete and accurate administrative records and claim files shall be maintained on all activities relating to the Workers' Compensation Program. All closed files shall be preserved for six (6) years.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 108, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1009. Promulgation of rules

A. The Workers' Compensation Program, subject to approval by the Insurance Commission and Government Services and Budget and Finance Committees of the Navajo Nation Council, shall promulgate Rules necessary to implement the provision of this Act.

B. The Program Director shall hold such hearings as may be necessary to gather information relating to the purposes of the Navajo Nation Workers' Compensation Act, compel attendance at such hearings, and shall refer violations of this Act or the Program's Rules to the Navajo Nation Department of Justice for enforcement action.

C. It is unlawful to violate the provisions of the Workers' Compensation Act or any of the Rules adopted to implement it. Violations shall be punishable by fines, or injunctive relief or any other remedy provided for in the Rules or other remedies authorized by the laws of the Navajo Nation.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 109, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.**§ 1010. Administration conference/hearing process**

A covered person, aggrieved by any final written decision of the Workers' Compensation Program, may request an administrative conference and hearing as applicable, regarding his or her claim subject to the provisions of the section. The covered person's right to be heard is contingent upon compliance with all requirements, including filing deadlines of the Workers' Compensation Program's Administrative Conference/Hearing Process.

A. Administrative Conference

1. A covered person disputing a decision rendered by the Program must, within thirty (30) calendar days after the issuance of the Program's written decision, request, in writing, that an administrative conference be scheduled among the covered person, the Workers' Compensation Program Director and the Insurance Services Department Director. The request for a conference shall be sent to the Workers' Compensation Program Director.

2. The covered person's signed request for an administrative conference must include:

- a. The name and mailing address of the covered person;
- b. A brief summary of the relevant facts;
- c. A brief statement of the disputed issues; and
- d. A brief statement of the relief sought.

3. Within ten (10) working days of receiving a request for an administrative conference, the Program and the covered person will attempt, in good faith, to schedule a mutually satisfactory time and place for the conference.

4. The conference is designed to give the covered person and the Program an opportunity to identify the disputed issues and attempt to reach a mutually satisfactory agreement. In light of the intent and purpose of the conference, no legal representation, of the covered person, the Program, or the Insurance Services Department will be allowed at the conference.

5. If the covered person and the Program reach a mutually satisfactory agreement, the Program will present a written document outlining the terms of the agreement to the covered person for signature. Any agreement reached by the parties shall constitute an administrative resolution of the covered person's claim.

6. If the covered person and the Program fail to reach a mutually satisfactory agreement, the Program will present a written document summarizing the administrative conference to the covered person. Upon receipt of the document, the covered person may file a request for a hearing with the Navajo Nation Office of Hearings and Appeals. No other means of review of the Program's decision shall be permitted.

7. Failure of the covered person to file a written request for a hearing with the Office of Hearings and Appeals, within thirty (30) calendar days of receipt of the summary of the administrative conference, shall result in

forfeiture of his or her right to a hearing before the Navajo Nation Office of Hearings and Appeals.

B. Hearing Request

1. Before any hearing may be scheduled by the Office of Hearings and Appeals, the covered person must satisfy the following conditions:

a. The covered person and the Program must have failed to reach a mutually satisfactory agreement at the conference; and

b. The covered person must have filed a written request for hearing with the Office of Hearings and Appeals within thirty (30) calendar days as provided for in § 1010(A)(6).

2. The written request for hearing must include:

a. The name and mailing address of the covered person;

b. A brief summary of the relevant facts;

c. A brief summary of the disputed issues; and

d. A brief statement of the relief sought.

3. The Office of Hearings and Appeals, within ten (10) working days of receiving the request for a hearing, shall schedule a time and place for the hearing and shall inform the covered person, or his or her legal representative and the Program, of the time and place of the hearing. The notice of hearing shall be sent first class mail.

4. The covered person may be represented by any individual licensed to practice law in the Courts of the Navajo Nation.

5. A full and complete record, by way of a recording device or a stenographer, shall be kept of all proceedings held before the Office of Hearings and Appeals.

6. The Hearing Officer shall render a written decision within thirty (30) calendar days after the close of the hearing and shall send a written copy of the decision to the covered person and the Program, by first class mail.

7. Any decision rendered by the Office of Hearings and Appeals, shall be subject to review only by the Supreme Court of the Navajo Nation as set forth in 15 N.N.C. § 1011.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 110, August 22, 1978.

§ 1011. Final appeal to the Navajo Nation Supreme Court

The decision of the Hearing Officer shall be final, with a right of appeal only to the Supreme Court of the Navajo Nation.

A. Upon receipt of a written decision from the Office of Hearings and Appeals, either the Program or the covered person may appeal the decision to the Supreme Court of the Navajo Nation.

B. The party challenging the Hearing Officer's decision shall file a written notice of appeal, in the form prescribed by the Navajo Rules of Civil Appellate Procedure, within thirty (30) calendar days after the Office of Hearings and Appeals issues its written decision to the parties.

C. The Navajo Rules of Civil Appellate Procedure shall govern the appeal process.

D. Any appeal filed with the Supreme Court of the Navajo Nation shall be decided on the appellate record, and the Supreme Court shall limit its review to questions of law.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 111, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1012. Annual report

A. Prior to the end of each Navajo Nation fiscal year the Workers' Compensation Program shall make a report to the Insurance Commission and Government Services and Budget and Finance Committees of the Navajo Nation Council for the preceding fiscal year. The report shall include:

1. A statement of the number of claims filed and awards made;
2. A general statement of the causes of reported accidents or occupational disease;
3. A detailed statement of disbursements from the Workers' Compensation Program fund account; and
4. Other matters which the Program deems proper to call to the attention of the Insurance Commission, including recommendations.

B. The Workers' Compensation Program shall provide each employer a quarterly "Experience Report" providing information as to workers injured, amounts paid for compensation, and an annual explanation of the rate-setting formula.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 112, August 22, 1978.

§ 1013. Compensation as exclusive remedy

The right to receive workers' compensation pursuant to the provisions of this Act for injuries or death sustained by a claimant shall be the exclusive remedy against the employers.

History

CJA-18-00, January 28, 2000.
CO-83-97, October 22, 1997.
ACAU-94-78, § 114, August 22, 1978.

Annotations

1. Construction and application

"A claimant who initially invokes the jurisdiction of the Program should be required to exhaust all remedies before that forum." *George*

v. Tsosie and the Navajo Nation, No. SC-CV-30-98, slip op. at 5 (Nav. Sup. Ct. March 15, 2001).

§ 1014. False statement or representation

If, in order to obtain any compensation under the provisions of this Act, any claimant who knowingly makes a false statement or representation, such claimant shall forfeit all rights to such compensation upon proof that the offense was committed, and may be referred to the appropriate prosecutorial or law enforcement agency.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 116, August 22, 1978.

§ 1015. Medical information

A. Information obtained by the attending physician, surgeon, hospital or other medical facility or personnel while in attendance of the injured worker shall not be a privileged communication if such information is determined by the Workers' Compensation Program to be necessary for a proper understanding and evaluation of the claim.

B. The Workers' Compensation Program shall have the right to request a full and complete report from the physician, surgeon, hospital or other medical facility or personnel at times and in the form and details as deemed necessary and shall have a right to present specific questions required to evaluate the claim.

C. The covered worker acknowledges the right of the Workers' Compensation Program to obtain such information by the covered worker's election of the Workers' Compensation Act

D. The Workers' Compensation Program shall maintain all information obtained pursuant to this Section as confidential information, except as to the claimant.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 117, August 22, 1978.

§ 1016. Report of accident

A. When an accident occurs, the injured worker shall immediately, or as soon as possible thereafter, report the accident and the injury resulting therefrom to his or her immediate supervisor, who in turn shall report it to the employer.

B. All accidents resulting in injury or death must be reported upon an approved Workers' Compensation Injury Report form to the Workers' Compensation Program within five (5) working days of notice of the occurrence to the employer. In no event will an employer retaliate against an employee for reporting an accident or giving notice of such an occurrence.

C. The Navajo Nation Safety/Loss Control Program shall cooperate with employer-based safety programs in the identification of accident trends, recommendation of sound safety practices, and enhancement of safety education.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 118, August 22, 1978.

Cross References

Notice to employees, see ACAU-94-78, Exhibit "A", August 22, 1978.

§ 1017. Disclosure of preexisting condition

A. All covered workers shall disclose to the employer any preexisting condition at the time of hire and before commencing employment.

B. Any claim for aggravation of a preexisting condition which was not disclosed may be denied by the Workers' Compensation Program under this Act if that person had knowledge of the preexisting condition and intentionally failed to disclose the preexisting condition.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 103, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1018. Right to compensation and medical treatment benefits

A. Every claimant coming within the provisions of this Act who is killed or injured while in the course and scope of his or her employment, wherever the injury or death occurred, unless the injury or death was purposely self-inflicted or otherwise limited or excluded by the terms and conditions of this Act, shall be entitled to receive, and shall be paid compensation as provided in this Act.

B. The Workers' Compensation Program shall pay for treatment by a health care provider reasonably required at the time of the injury, and during the period of disability attributable thereto, provided that such treatment is medically necessary and reasonable and is not covered by any other valid and collectible insurance or other benefit program to which the claimant is otherwise entitled.

C. In no event shall the Workers' Compensation Program be liable for expenses or reimbursement for medical, surgical, hospital or related services to which the injured worker may be entitled to receive from or through the United States Public Health Service or any federally funded or sponsored Indian Health Service programs including referrals; nor in any event shall the Workers' Compensation Program be considered or understood to be an "alternative source" for payment of the expense of such services.

History

CO-83-97, October 22, 1997.
 CF-2-82, February 3, 1982.
 ACAU-94-78, § 119, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1019. Time limit for filing of claims

A. No claims for injury or death shall be allowed unless filed with the Workers' Compensation Program within one (1) year from the date of occurrence.

15 N.N.C. § 1019

LABOR

B. Claims for occupational disease shall be made within one (1) year from date of diagnosis by a physician accepted by the Workers' Compensation Program; but in no event, longer than three (3) years from the date a covered worker terminates his or her employment.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 143, August 22, 1978.

§ 1020. Burden of proof

The burden of proof, except as set forth in 15 N.N.C. § 1021, shall rest upon the covered claimant to prove:

A. That the injury complained of or death was a result of an accident or occupational disease; and

B. That it arose in the course and scope of his or her employment.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 120, August 22, 1978.

Annotations

1. Construction and application

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

§ 1021. Presumptions

When a covered worker is found dead by accident under circumstances indicating that the accident took place within time and place limits of employment and no clear and convincing evidence is present to exclude coverage as provided herein, it shall be presumed that death arose out of employment and compensation shall be paid.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 121, August 22, 1978.

Annotations

1. Off-duty injuries

RE: Worker's Comp., "Arising out of and in the course of employment" " . . . [E]mployment [of an off-duty Ranger] does not arise out

of the emergency." *Tso, et al. v. The Workmen's Compensation Employee Benefit Review Board of the Navajo Nation*, 5 Nav. R. 89, 92 (Nav. Sup. Ct. 1986).

§ 1022. Acting under employer's directions

Any covered person who is injured or killed while following the directions of his or her employer shall be considered to have been in the course and scope of his or her employment in furtherance of the employer's interest and shall be entitled to compensation.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 122, August 22, 1978.

§ 1023. Going to and returning from work

An accident occurring to a covered worker while on the way to or from work is not within the course and scope of his or her employment if such traveling is in connection with his or her work from the time his or her travel starts or ends either at his or her place of work or his or her home. An accident will not be considered to be in the course and scope of employment if the worker deviates from a reasonably direct route of travel, not in the interest of the employer, or during other activities within the travel, not necessitated by the employment activity and not in the interest of the employer.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 124, August 22, 1978.

Annotations**1. Construction and application**

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

§ 1024. Aggravation of preexisting condition

A. If a covered worker is suffering from a preexisting condition at the time an accident occurs and the preexisting condition is aggravated thereby, the worker is eligible for compensation, subject to the provisions of 15 N.N.C. § 1017.

B. For the purpose of settlement for permanent partial or permanent total disability, the amount of the award for that disability as set forth in 15 N.N.C. § 1048 may be reduced or denied in its entirety by the Workers' Compensation Program in consideration of the following:

1. A prior settlement from any source for the same preexisting condition;
2. The difference between the degree of disability of the covered worker before the accident or occupational disease and the workers' present degree of disability.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 123, August 22, 1978.

§ 1025. Occupational disease

An occupational disease, as defined in 15 N.N.C. § 1002(A)(25), shall be eligible for compensation only if there is a direct causal connection between the conditions under which the work is performed and the occupational disease,

and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 125, August 22, 1978.

§ 1026. Unsanitary or injurious practices or refusal of a claimant to submit to treatment

A. No compensation shall be payable for the death of a covered worker if his or her death is caused by an unreasonable refusal to submit to any reasonable surgical treatment or medical aid.

B. The Workers' Compensation Program may reduce or suspend the compensation of a claimant who persists in unsanitary or injurious practices tending to imperil or retard his or her recovery, or who refuses to submit to medical or surgical treatment reasonably necessary to promote his or her recovery.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 126, August 22, 1978.

§ 1027. Substance abuse related injury or death

No compensation of any kind shall be paid for any injury or death substantially related, as defined in 15 N.N.C. § 1028, to the intentional use or abuse, by the covered worker, of alcohol, controlled substances or chemicals.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 144, August 22, 1978.

§ 1028. Determination of substance abuse

The use or abuse of alcohol, controlled substances or chemicals shall be deemed substantially related to an injury or death if:

A. Objective testing of the breath, blood, urine of the covered worker demonstrates the use or abuse of alcohol, controlled substances or chemicals and any competent evidence establishes that it is more probable than not that the use or abuse of alcohol, controlled substances or chemicals contributed to the occurrence of the accident that caused the injury or death to the covered worker; or

B. Subjective observations of the covered worker, by co-workers, supervisors, medical or emergency personnel or other witnesses, the statements, behavior or actions of the covered worker or other direct or circumstantial evidence establishes by clear and convincing evidence that the covered worker's use or abuse of alcohol, controlled substances or chemicals contributed to

the occurrence of the accident that caused the injury or death to the covered worker; or

C. Such use or abuse of alcohol, controlled substances or chemicals, by the covered worker resulted in a criminal conviction by any lawful jurisdiction.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 149, August 22, 1978.

§ 1029. Injury or death by act of God or natural causes

A. Injury or death deemed an “Act of God” which arises within the course and scope of employment shall be considered compensable.

B. Injury or death which results from natural causes, i.e., heart attack, stroke, or other natural body function failures, not incidental to the circumstances or conditions of employment, is not compensable.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 148, August 22, 1978.

§ 1030. Periodic medical examination of claimant; effect of refusal or obstruction of examination or treatment

A. A claimant entitled to compensation shall submit himself or herself for medical examination selected and paid for by the Workers’ Compensation Program from time to time at a place reasonably convenient for the worker, if and when requested by the Workers’ Compensation Program.

B. The request for the medical examination shall fix a time and place having regard to the convenience of the claimant, his or her physical condition and ability to attend. The claimant may have a physician present at the examination if procured and paid for by the claimant.

C. If the claimant refuses to submit to the medical examination or obstructs the examination, his or her right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. Any physician who conducts or is present at the medical examination may be requested by the Workers’ Compensation Program to testify as to the result thereof; and the reasonable cost of this appearance shall be at the expense of the Workers’ Compensation Program.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 127, August 22, 1978.

§ 1031. Liability of third person to claimant; subrogation powers

A. If a claimant entitled to compensation under this Act is injured or killed by the negligence or wrong doing of another, such claimant may pursue his or

her remedy against such other person while receiving compensation under this Act.

B. The Navajo Nation shall have the right of subrogation for the amount of compensation and administrative costs paid or incurred under this Act.

C. If the claimant entitled to compensation under this Act does not pursue a remedy against such other person by instituting an action within one (1) year after the cause of action accrues, the claim against such other person may be brought by the Navajo Nation. Such a claim shall be controlled by the Navajo Nation and shall be limited to the compensation and administrative costs paid or incurred.

D. If a claimant proceeds against such other person, compensation shall be paid as provided in this Act and the Navajo Nation shall have a lien on the amount actually collectable from such other person to the extent of such compensation and administrative costs paid or incurred.

E. Compromise of any claim by the claimant at an amount less than the compensation paid shall be made only with written approval of the Workers' Compensation Program.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 128, August 22, 1978.

Annotations

1. Construction and application

"Therefore we hold that an injured employee is not barred from seeking *nalyeeh* from a third-party tortfeasor merely because he or she received workers' compensation from his or her employer. *Nalyeeh* is not satisfied merely by receipt of workers' compensation from the employer when a third party has some responsibility for the accident." *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01 slip op. at 9 (Nav. Sup. Ct. November 24, 2003).

"In *Largo* we recognized the right of a tribal employee to seek *nalyeeh* from a third-party under certain procedural requirements set out in 15 N.N.C. § 1032 [now 15 N.N.C. § 1031]. . . . Therefore, an injured party could seek *nalyeeh* from a third-party, and receipt of workers' compensation would not be a bar." *Benally v. Mobil Oil Corporation, nka ExxonMobil Corporation*, No. SC-CV-05-01 slip op. at 9 (Nav. Sup. Ct. November 24, 2003).

"Section 1032(D) [now section 1031(C)] was amended in 1997. Navajo Nation Council Res. No. CO-83-97 (October 22, 1997). The amendments do not affect the ruling in this case because the injury here happened in 1996. The only substantive change made to section 1032(B) [now section 1031(C)] is that the statute now expressly states that a claim is in the 'con-

trol' of the Navajo Nation once it has been assigned the claim. . . . [T]he Navajo Nation maintains control of the claim, but even such control would not limit or terminate an injured worker's interest in the claim." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 11-12 (Nav. Sup. Ct. April 11, 2001).

"The stated policy is in accord with Navajo common law principles. . . . 'If a Navajo was injured by the act of another, the victim could demand *nalyeeh*, which is a form of compensation or reparation.' . . . This means the injured person has a personal right to seek *nalyeeh* for physical injuries contracted." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 5 (Nav. Sup. Ct. April 11, 2001).

"While section 1032(B) [now section 1031(C)] does not expressly permit the Navajo Nation to reassign a claim to the injured worker, we believe that sound public policy demands that personal injury suits be brought by the injured parties themselves." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 5 (Nav. Sup. Ct. April 11, 2001).

"The Navajo Nation Workers' Compensation Program provides a procedure for the fair and orderly resolution of injury claims. A worker

may bring an action in court against a third-party for a covered injury without compromising receipt of workers' compensation benefits. 15 N.N.C. § 1032(A) (1978)." Note: Section 1032(A) is now Section 1031(C). *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 2-3 (Nav. Sup. Ct. April 11, 2001).

See generally, *George v. Tsosie and the Navajo Nation*, No. SC-CV-30-98, (Nav. Sup. Ct. March 15, 2001).

2. Limitations

"Section 1032(B) [now section 1031(C)] is an assignment statute. Its function is to assign an individual's claim to the Navajo Nation, while [7 N.N.C. section 602(a)(1)] controls the time period for bringing a personal injury action. Thus, section 1032(B) [now section 1031(C)] is not a statute of limitations and our courts cannot use it to bar an injured worker's suit." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 4 (Nav. Sup. Ct. April 11, 2001).

3. Assignment, generally

"We hold that an injured worker may initiate a lawsuit against a third-party tortfeasor after the claim has been assigned, as long as the worker files the lawsuit and joins the Navajo Nation, as the real party in interest, before the statute of limitations expire. Such a procedure is allowed by Rule 17(a), Navajo Rules of Civil Procedure. . . ." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 10 (Nav. Sup. Ct. April 11, 2001).

"While section 1032(B) [now section 1031(C)] does not expressly state that the Navajo Nation may reassign a claim to an injured worker, we find that Navajo Nation public policy and Navajo common principles require reassignment of a claim Accordingly, we hold that section 1032(B) permits the Navajo Nation to reassign a claim to an injured worker." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 6 (Nav. Sup. Ct. April 11, 2001).

"After one (1) year, section 1032(B) [now section 1031(C)] assigns the worker's right to sue to the Navajo Nation, but the tortfeasor's liability to the injured party is not extinguished by the statutory assignment. Thus, the Navajo Nation can sue the tortfeasor, recover damages, deduct its lien, and release the remainder to the injured worker." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 4 (Nav. Sup. Ct. April 11, 2001).

4. Remedies

"We realize that section 1032(B) [now section 1031(C)] does not expressly state what happens to the worker's interest in recovery beyond the amount of benefits paid, such as claims for pain and suffering and emotional distress. We again tap into the Navajo common law principle of *nalyeeh* to conclude that the injured worker keeps an interest in such claims for the duration of the statute of limitations." *Largo v. Eaton Corporation and Cutler-Hammer, Inc.*, No. SC-CV-09-99, slip op. at 9 (Nav. Sup. Ct. April 11, 2001).

§ 1032. Waiting period

Indemnity benefits shall be paid under the provisions of this Act only for an injury which results in the claimant's disability for more than seven (7) consecutive days. If the period of the claimant's disability lasts for more than twenty-eight (28) consecutive days from the date of his or her injury, indemnity benefits shall be paid from the date of disability. A claimant may not recover indemnity benefits for the period that he or she is compensated by paid leave. No employer shall allow a claimant to collect more than one hundred percent (100%) of his or her regular earnings. Paid leave time taken shall apply against the waiting period for indemnity payments.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 129, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1033. Temporary total disability

A. Temporary total disability shall be paid at sixty-six and two-thirds percent (66 2/3%) of the "average weekly wage" to a maximum of four hundred dollars (\$400.00) per week.

15 N.N.C. § 1033

LABOR

B. Persons defined in 15 N.N.C. § 1002(A)(13), without other regular employment covered by this Act, shall be deemed to be compensated at the prevailing Navajo Nation minimum wage, subject to the formula established in 15 N.N.C. § 1002(A)(6).

C. When considering the average weekly wage, as defined in 15 N.N.C. § 1002(A)(6), where for exceptional reasons the method would be unfair, either to the claimant or the employer, such other method of computing average weekly wage may be resorted to as will most nearly approximate the amount which the claimant would be earning were it not for the disability.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 146, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1034. Condition permanent, stationary and rateable; termination of benefits

When a claimant's injury reaches maximum medical improvement as defined in 15 N.N.C. § 1002(A)(22):

A. The claimant's injury shall be considered permanent, stationary and rateable;

B. The claimant shall be notified in writing that his or her injury is permanent, stationary and rateable and that all benefits, if being claimed at that time, shall cease thirty (30) days from date of notice;

C. The claimant shall be advised of the amount payable to him or her in accordance with the terms, conditions, provisions and Benefits for Total Loss of Use of this Act;

D. The Workers' Compensation Program shall tender the payment to the claimant at the end of the 30-day termination period.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 145, August 22, 1978.

§ 1035. Notice by claimant of absence from locality

Any claimant leaving the locality in which he or she is receiving medical treatment without written approval from the Workers' Compensation Program may forfeit his or her right to compensation during such time.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 138, August 22, 1978.

§ 1036. Death benefits

If an injury or occupational disease sustained by a covered worker proximately results in his or her death within two (2) years following his or her injury or diagnosis of occupational disease, compensation shall be paid to the persons entitled thereto, as follows:

A. If there are eligible dependents at the time of the covered worker's death, payment shall consist of first, a lump sum, or at the claimant's election a structured settlement, as set forth in 15 N.N.C. § 1048(A)(5) and the direct payment of funeral expenses not to exceed five thousand dollars (\$5,000); or

B. If there are no eligible dependents, compensation shall be limited to direct payment of funeral expenses, not to exceed five thousand dollars (\$5,000), and the compensation benefits due up to the time of his or her death, payable to the estate of the deceased.

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 130, August 22, 1978.

Note. Slightly reworded for purposes of statutory form.

§ 1037. Line of dependency; payment of benefits

A. The line of dependency for payment of death benefits shall be in the order set out below, provided each qualifies as a dependent under the terms and conditions as defined in 15 N.N.C. § 1002(A)(15).

1. First to the surviving widow or widower, if there are no children. If dependent children exist at time of covered worker's death, payment is to widow or widower, subject to the provisions of 15 N.N.C. § 1038;

2. If no surviving widow or widower, to a dependent child, one hundred percent (100%) of death benefit; or if more than one dependent child, to be equally distributed among such dependent children;

3. To a parent or parents, if no surviving widow or widower or eligible children, if dependent upon the deceased covered worker, one hundred percent (100%) of death benefit if only one parent; to be divided equally between both parents if both are dependent upon the deceased covered worker; or

4. If there are no eligible dependent widow or widower, children or parents, the death benefit shall be equally distributed among all other eligible dependents.

B. If a minor covered worker has no other dependents, his or her parent(s), guardian(s), or adoptive parent(s) are entitled to death benefits as defined in 15 N.N.C. § 1036(A).

History

CO-83-97, October 22, 1997.

ACAU-94-78, § 131, August 22, 1978.

§ 1038. Apportionment of compensation

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children; and the Workers' Compensation Program may, at the time of award, apportion the compensation between them in such a way as it deems best for the interest of all dependents.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 132, August 22, 1978.

§ 1039. Artificial members

In all cases where the injury is such as to permit the use of artificial members, including teeth and eyes, the Workers' Compensation Program shall pay all reasonable expenses connected with the artificial member.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 133, August 22, 1978.

§ 1040. Replacement of artificial members

The Workers' Compensation Program shall, during the life of a claimant replace or repair any artificial member or members, including dentures and artificial eyes, that were originally provided to the claimant by the Workers' Compensation Program. Replacement or repair shall not be made if the claimant fails to use reasonable care in the maintenance of his or her artificial member(s) or knowingly abuses his or her artificial member(s).

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 147, August 22, 1978.

§ 1041. Hernia; operations

A. A claimant, in order to be entitled to compensation for a hernia, must prove:

1. That the hernia is of recent origin;
2. That this appearance was accompanied by pain;
3. That this was immediately preceded by some accidental strain suffered in the course and scope of employment; and
4. That it did not exist prior to the date of the alleged injury.

B. If the claimant, after establishing his or her right to compensation for a hernia, as provided above, elects to be operated upon, the operating fee and reasonable hospital expenses shall be paid by the Workers' Compensation Program. If the claimant elects not to be operated upon and the hernia becomes strangulated, the results of the strangulation shall not be subject to compensation.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 134, August 22, 1978.

§ 1042. Disfigurement benefits

An additional sum not to exceed two thousand five hundred (\$2,500), may be paid to a claimant for serious permanent disfigurement resulting from an

injury. The application of the claimant will be reviewed by the Workers' Compensation Program and an award made as the Workers' Compensation Program deems just. Disfigurement benefits shall not be paid in the event of the claimant's death.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 135, August 22, 1978.

§ 1043. Vocational rehabilitation services

In addition to the compensation provided, a claimant who is unable to return to his or her former job because of his or her injury may receive reasonable vocational rehabilitation services, including, counseling and training as the Workers' Compensation Program deems necessary to restore him or her to suitable employment. Such additional benefits shall not exceed five thousand dollars (\$5,000) and direct payments to service providers shall be made wherever possible.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 136, August 22, 1978.

§ 1044. Eyewear

The Workers' Compensation Program shall pay for frames and/or lenses of a like kind and quality which were damaged as a result of an accident which results in a compensable injury to the claimant during the course and scope of his or her employment, but shall not pay for eye examinations unless there is a potential injury to the claimant's eye(s) from the accident.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 140, August 22, 1978.

§ 1045. Clothing

A claimant who incurs damages to an article of clothing worn during an accident which results in a compensable injury shall be paid for replacement clothing of a like kind and quality.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 141, August 22, 1978.

§ 1046. Travel for treatment

A. A claimant shall be compensated for travel, meals and lodging to receive authorized treatment at a rate consistent with the travel allowance authorized by the established Navajo Nation travel policies in effect at the time of the travel.

B. Actual mileage shall be paid based on mileage shown on mileage charts and maps recognized by rules adopted by the Program, plus reasonable local mileage, not to exceed 20 miles per trip, upon presentation of a signed statement by the claimant showing date or dates and points traveled.

C. Meals and lodging shall be paid or reimbursed for claimant only, unless his or her condition warrants a relative or other person to assist; payment or reimbursement for this additional person shall be at the discretion of the Workers' Compensation Program.

D. Land or air ambulance charges for claimant shall be recognized and payable under this Act only if approved by the Workers' Compensation Program.

E. All claims for payment or reimbursement must be supported by documentation consistent with the Navajo Nation travel policies.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 142, August 22, 1978.

§ 1047. Indemnity benefits exempt from creditors and writs

A. Except for amounts due, pursuant to a Navajo Nation court order for child support, indemnity benefits shall be exempt from claims of creditors and from any writs of attachment, garnishment or execution.

B. Indemnity benefits shall be paid only to a claimant or his or her personal representative or such person(s) as the Workers' Compensation Program may, under the terms of this Act, appoint to receive or collect the same, or an individual designated by a Navajo Nation court for collection of child support.

C. Indemnity benefits shall be diverted for payment of child support only to a maximum of fifty percent (50%) of the claimant's weekly indemnity benefit, or twenty-five percent (25%) of the claimant's weekly indemnity benefit if the claimant is legally required to support minor dependents other than those for whom child support is sought.

History

CO-83-97, October 22, 1997.
ACAU-94-78, § 137, August 22, 1978.

§ 1048. Permanent partial disability; permanent total disability

A. Scheduled Benefits

1. A schedule of benefits is hereby established.
2. A total loss of use of a member exists whenever, by reason of injury, such member no longer possesses any substantial utility as a member of the body.
3. Permanent partial disability benefits are measured by multiplying the gross average weekly wage times the number of weeks reflected in the Benefits for Total Loss of Use.

- 4. Benefits for Total Loss of Use:
 - a. ARM
 - (1) Dextrous
 - (a) At or near shoulder 180 weeks
 - (b) At elbow 150 weeks
 - (c) Between elbow and wrist 141 weeks
 - (2) Nondextrous
 - (a) At or near shoulder 159 weeks
 - (b) At elbow 141 weeks
 - (c) Between elbow and wrist 132 weeks
 - b. HAND
 - (1) Dextrous 111 weeks
 - (2) Nondextrous 99 weeks
 - c. THUMB
 - (1) Total 51 weeks
 - (2) At proximal joint 30 weeks
 - (3) At distal joint 21 weeks
 - d. FIRST FINGER
 - (1) Including metacarpal 24 weeks
 - (2) At proximal joint 18 weeks
 - (3) At second joint 15 weeks
 - (4) At distal joint 12 weeks
 - e. SECOND FINGER
 - (1) Including metacarpal 21 weeks
 - (2) At proximal joint 15 weeks
 - (3) At second joint 12 weeks
 - (4) At distal joint 9 weeks
 - f. THIRD FINGER
 - (1) Including metacarpal 15 weeks
 - (2) At proximal joint 12 weeks
 - (3) At second joint 9 weeks
 - (4) At distal joint 9 weeks
 - g. FOURTH FINGER
 - (1) Including metacarpal 15 weeks
 - (2) At proximal joint 12 weeks
 - (3) At second joint 9 weeks
 - (4) At distal joint 9 weeks
 - h. ALL FINGERS-pertaining to one hand, except thumb . 57 weeks
 - i. LEG
 - (1) At or near hip joint 180 weeks
 - (2) At or above knee 141 weeks
 - (3) Between knee and ankle 120 weeks
 - j. FOOT
 - (1) At ankle 99 weeks

- k. GREAT TOE
 - (1) Including metatarsal 36 weeks
 - (2) At proximal joint 15 weeks
 - (3) At second joint 9 weeks
- l. ONE TOE
 - (1) Including metatarsal 12 weeks
 - (2) At proximal joint 9 weeks
 - (3) At second joint 9 weeks
- m. ALL TOES, same foot 36 weeks
- n. EYE-ONE
 - (1) Total Blindness 111 weeks
- o. EYE-BOTH
 - See permanent total disability
- p. EAR
 - (1) Total deafness, one ear 36 weeks
 - (2) Total deafness, both ears 135 weeks
- q. PERMANENT TOTAL DISABILITY 375 weeks
- 5. LOSS OF LIFE 375 weeks

B. Permanent Partial Disability

1. For other nonscheduled permanent impairments, a calculation of percentage of permanent partial disability is made.

2. If an injury has left a claimant with a nonscheduled permanent bodily impairment, indemnity benefits for a specified number of weeks is payable, without regard to presence or absence of wage loss in the future, and such benefits shall not be paid as a lump sum.

3. Permanent partial disability benefits for an injury to a scheduled member, are calculated by multiplying the gross average weekly wage times the number of weeks provided for in the Benefits for Total Loss of Use times the percentage of permanent impairment.

4. Permanent partial disability benefits for injury to the body as a whole are calculated by multiplying the gross average weekly wage times the number of weeks provided in the Benefits for Total Loss of Use times the percentage of permanent impairment.

C. Permanent Total Disability. An award of permanent total disability shall be in lieu of all lesser indemnity benefits that may be applicable to the injury that created the condition of permanent total disability.

History

CO-83-97, October 22, 1997.
 ACAU-94-78, § 150, August 22, 1978.

Chapter 13. Crownpoint Institute of Technology

Section

- 1201. Establishment; name; place; duration
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- 1209. Amendments

§ 1201. Establishment; name; place; duration

A. There is established by the Navajo Nation Council of the Navajo Nation, a corporation to be known as Crownpoint Institute of Technology.

B. The principal place of business of the Corporation shall be at Crownpoint, New Mexico, but it may establish such other places of business, consistent with these Articles, as the Board may determine.

C. The duration of the Corporation shall be perpetual.

History

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

Note. Slightly reworded for purposes of statutory form.

Crownpoint Institute of Technology, Inc., was formerly known as "Navajo Skill Center."

§ 1202. Status

A. This Corporation is organized as a non-profit, nonmembership corporation, wholly owned by the Navajo Nation, and organized exclusively for educational, charitable and governmental purposes.

B. The Corporation is a non-profit vocational technical educational institution of the Navajo Nation government, and is to be considered part of the "Navajo Nation" for purposes of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*

History

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

Note. Slightly reworded for purposes of statutory form.

§ 1203. Purposes and powers

A. The Corporation is organized for the primary purpose of providing programs of post-secondary vocational education and college academic programs to qualified persons, in appropriate fields, including on-the-job training, and to conduct other socially beneficial programs to promote health care, adult education, and social welfare, and any other activities intended to alleviate poverty or lessen the burdens of government, and to do all things appropriate to

the furtherance of these purposes, including the construction and operation of buildings and other physical facilities for the carrying out of its programs.

B. The Corporation is further organized for the purposes of securing funds from public and private sources for support and maintenance of its educational programs, and all related purposes, and developing and implementing programs and all related purposes, and developing and implementing programs and activities not inconsistent with its status as an educational institution of the Navajo Nation, its purposes as stated in these Articles, or with the allowable activities of organizations qualified as charitable or educational within the meaning of § 501(c)(3) or any successor section of the Internal Revenue Code,¹ that generate income to the Corporation in the course of providing vocational education and training to students.

C. In furtherance of these purposes, and consistent with these Articles and other applicable law, the Corporation shall have the power to receive and administer funds, take and hold by bequest, devise, gift, grant, purchase or otherwise, either solely or jointly with another, any property, real, personal or otherwise or any interest therein, without limitation as to amount or value; to sell, convey or otherwise dispose of such property, and to invest, reinvest or deal with the principal and income thereof in such manner as, in the judgment of the Board, will best promote and serve the interests of the Corporation; to enter into contracts and to incur debts and liabilities up to the amount of the Corporation's assets; to sue and be sued, subject to and in conformity with the provisions of the Navajo Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.*, and provided that the Corporation shall have no power to waive the sovereign immunity of the Navajo Nation; and to do any and all other acts or things, within or without the Navajo Nation, appropriate or convenient to achieve the purposes for which it is organized or for any other lawful purposes not inconsistent therewith, and not in contravention of any applicable law.

D. No substantial part of the activities of the Corporation shall consist of disseminating any political propaganda or attempting to influence legislation, nor shall the Corporation participate or intervene in any political campaign on behalf of any candidate for public office.

E. No part of the income of the Corporation shall inure to the benefit of any director or officer of the Corporation, or of any private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred in the course of such services, and to make payments and distributions in furtherance of its purposes and above-described.

F. Notwithstanding any other provision hereof, the Corporation shall have no power to engage in any activity prohibited to organizations described in § 501(c)(3) of the Internal Revenue Code¹ or its successor, except that so long as the Corporation is determined to be a political subdivision of the Navajo Nation within the meaning of 26 U.S.C. § 7871, it shall have the power to do any acts or things permitted of such political subdivisions.

¹ 26 U.S.C. § 501(c)(3).

History

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

Note. Slightly reworded for purposes of statutory form.**§ 1204. Board of Directors**

A. The general affairs of the Corporation shall be managed and its policies established by a Board of Directors composed of five (5) members. Board members should have some prior experience in or familiarity with the fields of education, business, industry, government or labor.

B. Persons shall be nominated to fill vacancies on the Board by the President of the Navajo Nation and the names submitted to the Government Services Committee of the Navajo Nation Council, which must confirm the nominees by majority vote.

C. Board members shall serve terms of three (3) years each, and terms shall be staggered so that approximately one-third of the seats on the Board become vacant each year. A Board member shall continue to serve after the formal expiration of the term until a successor has been confirmed by the Government Services Committee.

D. Should a Board member resign before the expiration of his or her term, the President of the Navajo Nation shall nominate a successor to complete the term, subject to confirmation by the Government Services Committee.

E. No action of the Board shall be of any validity unless taken at a duly called meeting of the Board at which a quorum is present, or unless subsequently ratified by a majority vote at such a meeting. No individual Board member shall have the authority to act for or bind the Board unless the Board has expressly authorized such action in advance.

F. At its first regular meeting following the confirmation of new members each year, the Board shall elect officers consisting of a chairperson, a vice-chairperson, and a secretary. The chairperson shall call and conduct meetings, and prepare the agenda in consultation with the president of the Corporation, and shall execute all official documents on behalf of the Board as the Board directs. The vice-chairperson shall act in the place of the chairperson in the event of the latter's absence or disability. The secretary shall maintain the records of the Board. The Board may from time to time delegate additional duties to its officers. Officers of the Board shall serve until their successors are elected.

History

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.

Note. Slightly reworded for purposes of statutory form.**§ 1205. Powers and duties of the Board of Directors**

In its management of the Corporation, the Board shall have the following powers and duties:

15 N.N.C. § 1205

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A. To report no less than once a year to the Education Committee of the Navajo Nation Council on the operation of the Corporation and at such other times as the Committee determines on matters of concern to the Committee;

B. To review and approve the annual budget of the Corporation and all requests and proposals for funding, whether by contract, grant or otherwise;

C. To establish, and review and revise from time to time as appropriate, the program priorities of the Corporation and to ensure that budget and funding proposals are consistent therewith; and are covered by adequate insurance at all times;

D. To review and approve training curricula and program plans, in accordance with established program priorities of the Corporation;

E. To ensure that the Corporation takes all necessary steps to maintain full accreditation of its instructional programs by recognized accreditation agencies;

F. To issue appropriate certificates and diplomas to students who satisfactorily complete their training programs and/or studies, of the Corporation and to confer appropriate certificates and degrees. Such certificates shall be executed by the chairperson of the Board;

G. To review and approve all administrative and instructional policies and procedures, and all publications issued to employers or students setting forth such policies and procedures, and to ensure that such publications, and the policies and procedures contained therein, are periodically reviewed and updated;

H. To review and approve monthly reports from the various administrative branches of the Corporation, including financial reports, and generally to ensure that administrative matters are being handled efficiently and professionally;

I. To establish and periodically review Corporation policies pertaining to student tuition and fees, and changes, (if any) to be more to outside organizations for use of Corporation facilities;

J. To ensure that the Corporation remains in compliance with all applicable federal and Navajo Nation laws and regulations, including but not limited to health and safety standards;

K. To establish and periodically review standards and qualifications for admission of students to educational and training programs operated by the Corporation;

L. To ensure that approved Corporation policies and procedures are being enforced appropriately by the administrative staff, and, in accordance with those policies and procedures, to sit as the ultimate reviewing body with respect to employee grievances;

M. Subject to the availability of funds, to ensure that the Corporation's facilities are kept in good and usable condition, are properly maintained and secured, and are covered by adequate insurance at all times;

N. To ensure that all training and other activities conducted by the Corporation pursuant to a grant or contract with another public or private agency are carried out in full compliance with the terms of the grant or contract documents and with any applicable laws or regulations;

O. To select and hire the President of the Corporation, and such other executive officers as the Board may determine, and fix their salaries, and to oversee their activities and, where necessary, take appropriate disciplinary measures against such officers, up to and including removal;

P. To establish and periodically review an appropriate salary and job classification schedule for employees of the Corporation;

Q. To review and approve all contracts for personal services to be entered into by the Corporation, and for purchases or sales of equipment in excess of one hundred thousand dollars (\$100,000), provided, that the Board may require that procurement contracts for lesser amounts be submitted to it for approval in particular circumstances;

R. To review and approve transactions to be entered into by the Corporation affecting any interest in real property;

S. To accept (or reject) any gift, grant, bequest or devise to or on behalf of the Corporation;

T. To establish and review periodically, and to ensure compliance with policies governing financial accounting for the Corporation, and to provide for a full and independent audit of the Corporation's finances at least annually;

U. To defend litigation initiated against the Corporation or against any director, officer or employee thereof for an act committed in the course of his or her official duties; and

V. As appropriate, and in accordance with specific guidelines, to delegate the execution of any of the foregoing duties and powers to the President or other appropriate administrative officers of the Corporation, or to consultants engaged for that purpose; provided that the Board shall remain ultimately responsible for all matters set forth in this article.

History

CJY-68-95, July 21, 1995.
ACMY-100-88, May 10, 1988.
ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.
Note. Slightly reworded for purposes of statutory form.

Cross References

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 484(B)(4).

§ 1206. Officers

A. The day-to-day administration of the affairs of the Corporation shall be vested in a President, who shall be hired by the Board. The President shall be responsible for all aspects of the Corporation's operation, including administrative, personnel, fiscal, plant operation and maintenance, training, monitoring, funding, planning, development, student services, security, counseling, and

15 N.N.C. § 1206

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other such activities, and shall have such other duties as the Board may delegate from time to time. The President shall plan and attend all meetings of the Board, develop the agenda therefor in conjunction with the Board chairperson, and shall report to the Board on all matters of Corporation business requiring the Board's attention. The President shall see to the execution and implementation of all actions and policies of the Board, and with the Board chairperson shall represent the Corporation in dealings with funding agencies and other public and private entities. The President shall also exercise all powers of the Corporation not specifically delegated to the Board by these Articles, and such other powers as the Board may delegate to him or her.

B. The Corporation may have such other officers as the Board shall determine.

History

CJY-68-95, July 21, 1995.
ACMY-100-88, May 10, 1988.
ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.
Note. Slightly reworded for purposes of statutory form.

§ 1207. Board meetings

A. The Board shall meet monthly, at a place and time to be determined at the previous meeting. Special meetings of the Board shall be called at the request of the Chairperson, or on the written request of at least two (2) members of the Board, delivered to the Board's secretary. Unless otherwise determined by the Board, such meetings shall be open to interested persons, provided, that all official action of the Board shall be taken in open meetings. Each Board member shall receive written notice of any meeting of the Board.

B. No official business shall be conducted at any meeting of the Board at which a quorum is not present. A quorum shall consist of three (3) members.

C. The Board shall determine its own rules for the conduct of business. Votes may be taken by voice vote or show of hands, but on the request of any member a roll call vote shall be taken on any official action.

D. The Board shall ensure that minutes of all meetings are taken and are kept on file at the offices of the Corporation.

History

CJY-68-95, July 21, 1995.
ACMY-100-88, May 10, 1988.
ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.
Note. Slightly reworded for purposes of statutory form.

§ 1208. Dissolution

In the event the Corporation is dissolved, all of its property and other assets shall revert to the Navajo Nation government, and shall be used for charitable, educational, or other governmental purposes of the Navajo Nation.

History

CJY-68-95, July 21, 1995.

ACMY-100-88, May 10, 1988.

LABOR

15 N.N.C. § 1209

ACJA-7-87, January 2, 1987.
ACN-147-81, November 18, 1981.

Note. Slightly reworded for purposes of statutory form.

§ 1209. Amendments

These Articles may be amended by a two-thirds vote of the Board, at the meeting following the meeting at which the amendment is proposed, subject to the concurrence of the Education and Government Services Committees of the Navajo Nation Council.

History

CJY-68-95, July 21, 1995.
ACMY-100-88, May 10, 1988.
ACJA-7-87, January 2, 1987.

ACN-147-81, November 18, 1981.
Note. Slightly reworded for purposes of statutory form.

Cross References

Education Committee of the Navajo Nation Council, see 2 N.N.C. § 484(B)(4).
Government Services Committee of the Navajo Nation Council, see 2 N.N.C. § 343. See CD-68-89, Resolved Clause 10.

Chapter 15. Navajo Nation Occupational Safety and Health Act

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History

Former Title 13, Chapter 55 was repealed in its entirety by CAP-39-00, April 20, 2000

Subchapter 1. General provisions

§ 1401. Title

This Act shall be cited as the Navajo Nation Occupational Safety and Health Act of 2000.

History

CAP-39-00, April 20, 2000.

§ 1402. Purpose

A. The Navajo Nation hereby asserts its inherent sovereign authority of self-government to promulgate, prescribe and enforce this Occupational Safety and Health Act and regulations to assure every working person safe and healthy working conditions by providing for:

- 1. The establishment of Occupational Safety and Health regulations applicable to all workplaces within the territorial jurisdiction of the Navajo

15 N.N.C. § 1402

LABOR

Nation including, but not limited to the Navajo Nation Government, its Enterprises, Entities, Agencies, Chapters, and any Contractors with the Navajo Nation.

2. Effective enforcement of the Occupational Safety and Health standards, rules and regulations.

3. Education and training programs for employers and employees to address their responsibilities under the Navajo Nation Occupational Safety and Health Act, and advise and assist about the effective means of preventing occupational injuries and illnesses.

4. The development and maintenance of appropriate job-related accident and illness reporting procedures that will ensure compliance with the objectives of the Occupational Safety and Health Act.

B. The administration and enforcement of the Navajo Safety and Health Act shall use appropriate measures to foster sensitivity and respect for Navajo Indian cultural beliefs and practices in achieving harmony and fulfilling the challenge of providing safe and healthy working conditions for Navajo employees.

History

CAP-39-00, April 20, 2000.

§ 1403. Applicability

The Navajo Nation Occupational Safety and Health Act shall apply to all workplaces within the territorial jurisdiction of the Navajo Nation in accordance with purposes set forth in § 1402.

History

CAP-39-00, April 20, 2000.

Subchapter 2. Definitions

§ 1411. Definitions

Except as specifically defined herein, the terms used in this Act shall be given the same meaning as the identical terms set forth in P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq.*, and other federal regulations promulgated pursuant to such Act.

A. “Act” means the Navajo Nation Occupational Safety and Health Act of 2000.

B. “Agency” means the Navajo Occupational Safety and Health Administration (NOSHA).

C. “Committee” means any Occupational Safety and Health Advisory Committee established under the Navajo Nation Occupational Safety and Health Administration.

LABOR

15 N.N.C. § 1411

D. "Court" means the system of the Navajo Nation (District and Supreme Court).

E. "Director" means the director of the Navajo Occupational Safety and Health Administration.

F. "Employee" means any individual who is employed by an employer, but does not include a domestic employee engaged in household domestic labor.

G. "Employer" means any individual or organization, including the Navajo Nation and all its political subdivisions, which has in its employ six (6) or more individuals performing services for it, but does not include employers of household domestic labor.

H. "Hazards" means any toxic materials or harmful physical agents at a level in excess of those prescribed by the Federal Occupational Safety and Health Standards, or any applicable national consensus standard, or any level hereby prescribed by NOSHA.

I. "Hearing officer" means the Administrative/Judicial Officer assigned by the Navajo Nation Office of Hearings and Appeals to hear, review and decide administrative matters and disputes which arise under the Act.

J. "Interested party" means an employer or employee that is affected by any standard, regulation, or order issued under this Act.

K. "Label" means any written, printed or graphic material displayed on or affixed to containers of chemicals or other products which identifies the chemicals or other products.

L. "Navajo" means any enrolled member of the Navajo Nation as defined by 1 N.N.C. Chapter 7, § 701, *et seq.*

M. "Nation" means the Navajo Nation as defined by 1 N.N.C. Chapter 5, § 501.

N. "Person" means any individual partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

O. "Safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices means. methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

P. "Petitioner" means a person who files a petition seeking to initiate a hearing proceeding under the Act.

Q. "Territorial jurisdiction" means the territory within which the Navajo Nation has authority to interpret and apply its laws, as defined in 7 N.N.C. Chapter 3, § 254.

R. "Workplace" means a location or site wherein work, either temporary or permanent is being conducted in connection with an industry, trade or business.

History

CAP-39-00, April 20, 2000

Note. The citations in Subsections 1411(L), (M) and (Q) were corrected to properly correspond to the 1995 edition of the Navajo Nation Code in the following manner: § 1411(L)—“1

N.N.C. Chapter 7, Section 501 *et seq.*” corrected to “Section 701 *et seq.*”; § 1411(M)—“1 N.N.C. Chapter 5, Section 301” corrected to “Section 501”; and § 1411(Q)—“7 N.N.C. Chapter 3, Section 54” corrected to “Section 254”.

Subchapter 3. Notice of enactment

§ 1421. Adoption of standards by reference

A. The Agency hereby adopts the federal occupational safety and health standards as currently promulgated or hereafter amended (including, but not limited to, those for general, construction, agricultural, and maritime industries) as its interim standards for occupational safety and health purposes, including the standards for training of employers and employees. Those substantive standards to address working conditions will be given to extent practicable, the adoption and/or interpretation of any such regulations will be in harmony with traditional Navajo cultural beliefs and practices.

B. The Agency shall promulgate regulations that are and will continue to be at least as stringent as standards promulgated pursuant to the federal occupational safety and health of employees. In adopting, amending or repealing its regulations, the Agency shall provide an opportunity for representatives of employers and employees affected by the regulations to be heard and shall weigh all relevant facts and circumstances presented at the public hearing, including but not limited to:

1. Character and degree of injury to or interference with the safety and health of employees proposed to be abated or prevented by the regulations.
2. Technical practicability and economic reasonableness of the regulation and the existence of alternatives to the prevention or abatement of detriment to the safety and health of employees proposed by the regulation; and
3. The public interest, including, but not limited to, the social and economic effects of work-related accidents, injuries and illnesses.

History

CAP-39-00, April 20, 2000.

§ 1422. Development of standards and regulations

A. Safety and health standards, rules and regulations shall be formulated in the following manner:

1. The Agency shall either propose adoption of national consensus standards or federal standards or draft such regulations, as it considers necessary after conducting sufficient investigations and consulting with the appropriate committee and other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the Human Services Committee of the Navajo Nation Council for its approval. Upon approval of the proposed standards or regulations, or both, the standards or regulations will take effect as provided in the regulation or standards. In the event, the Human Services Committee fails to take any action on the proposed standards or regulations within ninety (90) days of submittal, the proposed standards or regulations shall automatically become effective at the expiration of that time.

B. The Agency shall not propose standards and regulations for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.

C. Any standards or regulations promulgated under this Section shall prescribe the use of labels or other appropriate forms of warning necessary to ensure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate, such standards or regulations shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate any such standards or regulations shall prescribe the type of frequency of medical examination or other test which shall be made available, by the employer at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or regulations promulgated pursuant to this Section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such standard is for the period of his working life.

D. In case of conflict between standards and regulations, the regulation shall take precedence.

E. Any person who may be adversely affected by a standard or regulation issued under this Act may, at any time prior to the expiration of sixty (60) calendar days after such standard or regulation is promulgated, file a complaint challenging the validity of such standard or regulation with the Agency Hearing Officer for an administrative review of such standard or regulation. The filing of such a complaint shall not, unless otherwise ordered by the Hearing Officer, operate as a stay of the standard or regulation. The determination of the Hearing Officer shall be conclusive if supported by substantial evidence in the record considered as a whole.

History

CAP-39-00, April 20, 2000.

Subchapter 4. Administration

§ 1431. Designation of agency

Navajo Occupational Safety and Health Administration (NOSHA) is hereby designated as the regulatory agency to administer the Navajo Nation Occupational Safety and Health Act, and authorized to take all actions necessary to secure to the Navajo Nation the benefits of federal Occupational Safety and Health Administration consultation services and federal legislation related to the Occupational Safety and Health Act of 1970.¹

¹ 29 U.S.C. § 651 et seq.

History

CAP-39-00, April 20, 2000.

§ 1432. Duties and responsibilities of the Agency

A. Navajo Occupational Safety and Health Administration (NOSHA) is hereby established within the Division of Human Resources and delegated to administer the Navajo Nation Occupational Safety and Health Act of 2000.

B. The Director is authorized to exercise all authority necessary to implement this Act, in a manner consistent with applicable law. Specifically, the Director, or his designee, shall:

1. Recommend to the Human Services Committee all standards, regulations or changes to the Act, pursuant to § 1422.

2. Enforce all standards or regulations, after promulgation by the Human Services Committee, pursuant to the procedures and requirements of the Act.

3. Implement Navajo Nation Occupational Safety and Health Administration programs and execute associated duties and responsibilities that shall include, but not be limited to, the following:

a. Develop an occupational safety and health education and training program to acquaint employers and employees with the Act, and the most modern and effective techniques of accident prevention and occupational health control.

b. Institute legal proceedings to compel compliance with the Act.

c. Plan, organize, and conduct occupational safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employers and establish working relationships with other safety and health groups as may be necessary.

d. Accept, receive and administer grants and other funds or gifts from public or private agencies, including the federal government.

4. Develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics. The Agency shall compile statistics on work injuries and illnesses, which shall include all disabling, serious or significant injuries and minor injuries which require more than first aid treatment.

- 5. Coordinate the responsibilities and functions of other government agencies and political subdivisions of the Nation with regard to occupational safety and health in order to develop a comprehensive Navajo Nation program.
- 6. Perform any and all duties not inconsistent with the purposes of this Act.

History

CAP-39-00, April 20, 2000.

§ 1433. Advisory Committee

A. The Agency may create an Occupational Safety and Health Advisory Committee to assist the Agency in developing the proposed standards and regulations. Such Advisory Committee shall be appointed by the Agency Director and shall be comprised of persons with knowledge and expertise concerning the particular aspect of occupational safety and health for which they are appointed to assist the Agency. Such persons shall fairly represent a variety of regulated industries, including agriculture whenever applicable, and include persons with general knowledge of occupational safety and health issues.

B. The Director shall be an ex officio member of the Advisory Committee.

C. Persons appointed to serve on a committee(s) shall not be entitled to compensation for their services.

D. Service on any particular committee will continue until such time as the standards and regulations being developed by that committee have been submitted to the Agency Director. Thereafter, the Agency Director for consultation purposes, will disband the committee, subject to recall.

History

CAP-39-00, April 20, 2000.

§ 1434. Administrative Hearing Officer

A. The Office of Hearings and Appeals shall hear cases arising from the Act.

B. Every official act of the Hearing Officer shall be recorded and such records shall be open to the public. The Hearing Officer is empowered to make such rules as are necessary for the orderly transaction of administrative proceedings.

C. NIOSH shall provide the administrative support and personnel to the Hearing Officer as necessary for the efficient administration of the activities. All personnel assigned to the Hearing Officer shall be under the supervision of the Director.

History

CAP-39-00, April 20, 2000.

Subchapter 5. Responsibilities

§ 1441. Employer and employee

A. Employer.

1. Every employer shall furnish to each employee a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm.

2. Every employer shall comply with the safety and health standards and the regulations and orders issued pursuant to this Act.

3. Until such safety and health standards and/or regulations and/or orders are issued pursuant to this Act, every employer shall comply with all relevant regulations issued pursuant to P.L. 91-596, the Occupational Safety and Health Act of 1970, 29 U.S.C. § 654 *et seq.* After any such safety and health standards and/or regulations and/or orders are issued pursuant to this Act (15 N.N.C. § 1401 *et seq.*), to the extent they are inconsistent with the federal regulations, the Navajo regulation will prevail.

4. Every employer shall, through posting of notices at the place or places where notices to employees are normally posted, or other appropriate means, keep employees informed of the obligations under the Occupational Safety and Health Act, including provisions of applicable regulations.

B. Employee. Each employee shall comply with the provisions of the occupational safety and health standards and any regulations and orders promulgated which are applicable to employee actions and conduct in the course of employment.

History

CAP-39-00, April 20, 2000.

Subchapter 6. Inspection

§ 1451. Right of entry and inspection of place of employment

A. In order to carry out the purpose of the Act, the Director or his authorized representative, upon presentation of credentials shall be permitted to inspect places of employment, question employees, and investigate conditions, practices or matters in connection with issues of employee safety and/or health. Such inspections must take place at reasonable times, as determined by the Director or his authorized representative, for the purpose of determining whether any person has violated any provisions of the Act, or any rule or regulation issued thereunder. No employer or other person shall refuse to admit the Director or his authorized representative to any such place or refuse to permit any such inspection if the proper credentials are presented and the inspection is made at a reasonable time.

B. Any person, including any employee may file a written complaint with the Agency concerning any alleged violation of a regulation or any hazardous

condition. A copy of the complaint shall be provided to the employer at the time of the inspection. However, upon the request of the complainant, the complainant's name shall not appear on the copy. The Agency shall investigate the complaint and notify the complainant and employer in writing of the result of the investigation and any action to be taken. If no action is contemplated, the Agency shall notify the complainant and include an informal review of any decisions not to take compliance action at the request of the complainant. The person who investigated the complaint shall not make the review.

C. In order to aid inspections, the employer or his representative and a representative of the employees shall be given an opportunity to accompany the Agency inspector during the physical inspection of the workplace. If there are no authorized employee representatives, the Agency inspector shall consult with a reasonable number of employees.

D. Prior to and during any inspection of a workplace, any persons employed in such workplace may notify the Agency or the Agency inspector in writing of any violation of the Act, which they have reason to believe exists in such workplace. The Agency shall establish procedures for informal review of the decision made by the inspector and if no citation is issued with respect to the alleged violation, the Agency shall furnish the employee requesting such review a written statement of the reason for the Agency's final disposition of the case.

E. If an inspection reveals that employees are exposed to toxic materials or harmful physical agents at levels in excess of those prescribed by regulations of the Act, the Agency shall provide the employees with access to the results of the inspection. The employer shall promptly notify those employees who are exposed to the agents or materials in excess of the applicable regulations and inform them of the corrective action being taken, or that review has been requested in accordance with Part E of § 1471.

F. It is unlawful for any person to give advance notice of any inspection to be conducted under the Act without the written approval of the Director.

G. The Director, in addition to initiating an investigation under Part B of this Section, may file in the District Court where the inspection was refused a complaint against an employer who violates Part A of this section and request an injunction against continued refusal to permit an inspection, or a writ of assistance or enforcement order to implement the requested action.

History

CAP-39-00, April 20, 2000

Note. Subsection (C) slightly reworded for clarity.

Subchapter 7. Citation

§ 1461. Citation

A. If the Director, in performing an inspection or investigation, determines that there is reasonable belief that a violation exists, he shall with reasonable

promptness issue a citation to the employer. Each citation shall be in writing and shall contain the following:

1. A particular description of the nature of the violation, including, a reference to the particular provision of the standard or regulation alleged to have been violated.
2. A reasonable time for the abatement of the violation.
3. A notice that the employer may request a hearing pursuant to § 1491 if he is aggrieved by the citation.

B. A certified mail delivery receipt or a signed verification of delivery in person shall be prima facie evidence of receipt of a citation.

History

CAP-39-00, April 20, 2000.

Subchapter 8. Enforcement

§ 1471. Enforcement procedures

A. If the Director, following an inspection or investigation, issues a citation pursuant to § 1461 of the Act, he shall, within reasonable time, notify the employer by certified mail of any penalty proposed to be assessed pursuant to § 1481 of the Act. Each citation issued, or a copy thereof, shall be promptly and prominently posted by the employer, as prescribed in regulations issued by the Agency, at or near the place where the violation occurred. No citation may be issued under this section after six (6) months following occurrences of any violation.

1.¹ The Agency may issue an advisory notice setting forth de minimis violations of standards or regulations which shall carry no penalty, unless the employer willfully and repeatedly violated such standard or regulation, in which case the Agency may refer the matter to the Hearing Officer for appropriate action pursuant to § 1481 of the Act.

B. If the Agency issues a citation under Part A of this Section, it shall, within a reasonable time after issuance of said citation, notify the employer by certified mail of the penalty, if any, proposed to be assessed and that the employer has fifteen (15) working days within which to notify the Agency in writing that he wishes to contest the citation or proposed penalty. If, within fifteen (15) working days from the receipt of this citation, notification of intent to contest is not given by an employer as provided in Part E of this section within such time, the citation and the assessment of penalty, if any, as proposed, shall be deemed the final order of the Agency and not subject to review by the Hearing Officer or Court.

C. If the Agency has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the abatement period permitted (which period shall not begin to run until the entry of a final order by the Hearing Officer in the case of any review proceedings under this Section

initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Agency shall notify the employer by certified mail of such failure to correct and of the penalty proposed to be assessed by reason of such failure, and that the employer has fifteen (15) working days within which to notify the Agency that it intends to contest the proposed assessment of penalty, the notification and assessment shall be deemed a final order of the Agency, and not subject to review by the Hearing Officer or Court.

D. Any employer that corrects violations for which a citation was issued within the period permitted shall so notify the Director in writing.

E. When an employer notifies the Agency in writing that it intends to contest the citation issued to it under Part A or notification is issued under Part B or C of this Section, and any employee of any employer so cited files a notice with the Agency alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the petitioner may request a hearing before the Hearing Officer within fifteen (15) days after the informal administrative review. The Hearing Officer shall afford an opportunity for a hearing within thirty (30) days after receipt of such petition. In any such hearing, the employer shall be the respondent. The burden of proof shall be on the Agency (or the petitioner) to prove by substantial evidence non-compliance on the part of the employer. The Hearing Officer shall thereafter issue an order, based on findings of fact, affirming, modifying or vacating the Agency's citation proposed penalty or directing other relief. Such order shall become final fifteen (15) days after its issuance.

F. At any time prior to the expiration of an abatement period, an employer may notify the Agency in writing that it is unable to take the corrective action required within the period of abatement. The Agency shall provide prompt opportunity for informal administrative review. If the matter is not successfully resolved at the informal administrative review, the employer may request a hearing before the Hearing Officer. The Hearing Officer shall afford prompt opportunity for a hearing after receipt of such petition. The only grounds for modifying an abatement period under this subsection are a showing by the employer of a good faith effort to comply with the abatement requirement of a citation, and that abatement has not been completed because of factors beyond the employer's control.

G. Affected employees shall be provided an opportunity to participate as parties at informal Agency administrative reviews and hearings under this Section.

H. Any person adversely affected by an order of Hearing Officer issued under this section may, after exhausting his administrative remedies, obtain a review.

¹ So in original; no subsec. (A)(2) was enacted.

History

CAP-39-00, April 20, 2000.

§ 1472. Emergency procedures

A. The Director shall have authority to restrict any conditions or practices in any place of employment that could create an imminent risk of death or serious physical harm. Any order issued under this Section may require such steps as may be necessary to avoid, correct or remove such danger or to maintain the capacity of a continuous operation up to the time that normal operations can be resumed, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and, orderly manner.

B. When the Director determines that an emergency exists, he shall immediately inform the employee and employers of the hazards and take steps to obtain immediate abatement of the hazards by the employer.

C. The Director may file a petition in the District Court for a temporary restraining order or preliminary injunction pending the outcome of an enforcement proceeding pursuant to the Act.

History

CAP-39-00, April 20, 2000.

§ 1473. Confidentiality of trade secrets

All information reported to or otherwise obtained by Hearing Officer or Agency in connection with any inspection or investigation under this Act which contains or which might reveal a trade secret shall be considered confidential for purposes set forth in this Act, except that such information may be disclosed to representatives of the Navajo Nation regulatory agency administering this Act or when relevant in any proceeding under this Act. The Director or Hearing Officer shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

History

CAP-39-00, April 20, 2000.

Subchapter 9. Penalties

§ 1481. Penalties

A. Any employer who willfully or repeatedly violates any provisions of the Act or any regulation or order promulgated pursuant thereto may be assessed a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

B. Any employer who has received a citation for a serious violation of any provision of the Act or any regulation or order promulgated pursuant thereto shall be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each such violation.

C. Any employer who has received a citation for a violation for any provision of the Act or any regulation or order promulgated pursuant thereto which is determined not to be of a serious nature, may be assessed a civil penalty of up to five hundred dollars (\$500.00) for each such violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall be suspended in the case of a review proceeding before the Hearing Officer initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each day during which such failure or violation continues.

E. Any employer who violates any of the posting requirements, as prescribed by the Act, shall be assessed a civil penalty not to exceed five hundred dollars (\$500.00) for each violation.

F. Any employer who willfully violates any provision of the Act or any regulation or order promulgated pursuant thereto which results in death to any employee by violation shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six (6) months or both; except that if the conviction is for a violation committed after a first conviction of such employer, punishment shall be by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than one (1) year, or both.

G. Any person who gives advance notice of any inspection to be conducted under this Act, without authority of the Director shall, upon conviction be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six (6) months, or both.

H. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Act shall, upon conviction, be punished by a fine of not more than five thousand dollars (\$5,000) for each such violation or by imprisonment for not more than six (6) months, or both.

I. A person who reveals a trade secret in violation of § 1473 may, upon conviction be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than six (6) months, or both.

J. The Hearing Officer shall have authority to assess all civil penalties provided in this Section, giving due consideration to the appropriateness of the penalty with respect to the number of employees employed by the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations. If the Agency prevails, the Hearing Officer shall award reasonable attorney fees incurred pursuant to this Section. Otherwise, no award of attorney's fees shall be made.

K. Civil penalties imposed under this Section shall be paid into the Agency general fund account and expended in accordance with the general fund account and pursuant to an approved budget.

History

CAP-39-00, April 20, 2000.

Subchapter 10. Appeals

§ 1491. Appeal procedures

A. Any interested party adversely affected by the standards, regulations or orders issued under this Act may appeal in accordance with the following procedures:

1. A request for a hearing shall be made in writing, signed by the interested party and include his address, a statement that a hearing is desired, and be mailed to the Hearing Officer. The request shall state with particularity the violation, abatement period or penalty which is protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

2. The Hearing Officer shall schedule a hearing as expeditiously as possible, but in no event more than thirty (30) days after an interested party requests a hearing.

3. At least five (5) calendar days prior to any hearing, notice of the time and place of such hearing shall be given to all interested parties by mail at their last known address. The hearing shall be held in the district where the violation occurred or such other place as selected by the Hearing Officer.

4. The burden of proof shall be on the Agency. The standard of proof will be by substantial evidence.

5. A record shall be kept of all proceedings at the hearing but need not be transcribed unless a party requests a review of the decision of the Hearing Officer. The hearing record shall be transcribed at the expense of the party requesting review. The Hearing Officer shall certify the record to be true and accurate.

6. The decision of the Hearing Officer shall be filed with the Agency and a copy thereof mailed to the parties.

a. All decisions of the Hearing Officer shall be in writing.

b. A decision of the Hearing Officer is binding upon the Director and the Agency with respect to the parties involved in the particular case. The Director shall have the right to seek judicial review of the Hearing Officer's decision, regardless of whether he appeared or participated in the hearing itself.

B. Any interested party adversely affected by the Hearing Officer's decision may, after exhausting his administrative remedies as set forth in § 1491(A), obtain a review thereof in the Supreme Court of the Navajo Nation by filing in such court, timely and required documents consistent with its rules praying that the order be modified or set aside. The findings of the Hearing Officer with respect to questions of fact, if supported by substantial evidence, shall be conclusive. Upon appeal, the Court may set aside an action or ruling of the Hearing Officer only if found to be:

1. Arbitrary, capricious or an abuse of discretion;
2. Not supported by substantial evidence; or
3. Beyond the scope of legal authority.

History

CAP-39-00, April 20, 2000.

§ 1492. Variances

A. Temporary Variances.

1. Any employer may apply to the Hearing Officer for a temporary variance from a standard or regulation or any provision thereof promulgated under § 1421 and/or § 1422 of this Act.

2. Such temporary variance shall be granted only if the employer files an application which meets the requirements of Part A, Paragraph 3 of this Section and establishes all of the following:

a. Employer is unable to comply with a standard or regulation by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or regulation or because necessary construction or alteration of facilities cannot be completed by the effective date.

b. Employer is taking all available steps to safeguard his employees against the hazards covered by the standard or regulation.

c. Employer has an effective plan of coming into compliance with the standard or regulation as quickly as practicable.

3. Any temporary variance issued under this section shall prescribe the practices, means, methods, operations and processes which the employer must adopt and use while the order is in effect and state in detail his plan for coming into compliance with the standard or regulation. Such a temporary variance may be granted only after notice to employees and an opportunity for a hearing before the Hearing Officer. A hearing must be requested within twenty (20) days of such notice to employees. The Hearing Officer may issue one temporary variance to be effective until a decision is made on the basis of the hearing. No temporary variance may be in effect for longer than the period needed by the employer to achieve compliance with the standards and regulations, or ninety (90) days, whichever is shorter, except that such a variance may be renewed one time so long as the requirements of the Section are met and an application for renewal is filed at least thirty (30) days prior to the expiration date of the underlying variance. No temporary variance, including any renewals thereof, may remain in effect for longer than one hundred eighty (180) days.

4. An application for a temporary variance under this Section shall contain all of the following:

a. The standard or regulation or portion thereof from which the employer seeks a variance.

b. A statement by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented,

that he is unable to comply with the standard or regulation or portion thereof and a detailed statement of the reasons therefor.

c. A statement of the steps the employer has taken and will take, with specific dates, to protect employees against the hazard covered by the standard or regulation.

d. A statement of when the employer expects to comply with the standard or regulation and what steps have been taken and what steps will be taken, with dates specified, to come into compliance with the standard or regulation.

e. A certification that the employer has informed his employees of the application by giving a copy thereof to the employees, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The notice to employees shall also inform of their right to petition the Hearing Officer for a hearing.

5. The Director is authorized to grant an experimental variance from any standards or regulation or portion thereof whenever he determines that such variance is necessary to permit an employer, to participate in an experiment approved by the Director and designed to demonstrate or validate new and improved techniques to safeguard the safety or health of the workers. An employer applying for an experimental variance must comply with the requirements of Part A, Paragraphs 4 (a), (c) and (e) of this Section.

B. Permanent variances.

1. Any affected employer may apply to the Director for a permanent variance from a standard or regulation promulgated under § 1421 and/or § 1422 of this Act. The affected employers shall give notice to its employees of each such application and an opportunity to participate in a hearing. The Director shall issue such variance if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthy as those which would prevail if the employer complied with the standard or regulation from which the variance is being sought. The variance so issued shall prescribe the conditions the employer must maintain, the practices, means, methods, operations and processes that he must adopt and utilize, to the extent they differ from the standard or regulation in question. Such a rule or order may be modified or revoked upon application by an employer, employees or by the Hearing Officer on his own motion, in the manner prescribed for its issuance under this Section, at any time after six (6) months from its issuance.

2. A petition for a permanent variance must be filed with the Director in the manner prescribed by Part A, Paragraphs 4 (a), (c) and (e) of this Section.

C. The Agency shall keep an appropriately indexed record of all variances granted under this Section. The record shall be open for public inspection.

History

CAP-39-00, April 20, 2000.

Subchapter 11. Recordkeeping

§ 1501. Employer recordkeeping

A. Every employer shall make, keep and preserve records and submit reports of occupational injuries and illnesses as prescribed by the Agency.

B. The Agency shall publish annually a detailed summary of the statistical data received from employers. The Agency shall make a copy of such summary available on request to any person having any interest in the report. In the preparation, publication or release of the statistical summary, the Agency summary shall not be released, revealed or otherwise disclosed to any person other than the department of the Navajo Nation designated as responsible for labor statistics, without prior permission of the employer, unless pursuant to an administrative hearing or an order of the Navajo Nation Courts.

History

CAP-39-00, April 20, 2000.

Subchapter 12. Consultation

§ 1511. Consultation services

A. For the purpose of carrying out the provisions of the Act, the Agency shall coordinate, to the greatest extent practicable, the occupational safety and health activities of all Navajo Nation and local agencies. It shall consult and cooperate with other agencies of the state, federal government, and interstate agencies, and with affected public and private organizations.

B. The Agency shall develop a consulting program, which will include visits to the workplace of employers to provide consultation and advice to such employers. Such visits:

1. May be conducted only upon request by an employer for consultation and advice on the interpretation or applicability of standards, possible alternative ways of complying with applicable standards or other matters related to accident prevention, occupational health or obligations pursuant to this Act.

2. Shall be limited to matters specified in the request.

15 N.N.C. § 1511

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C. If, after evaluating such request, the Director determines an alternative means of providing consultation is more appropriate and equally effective, he may provide such alternative assistance in lieu of consultation at the workplace.

D. The Director shall make recommendations regarding solutions to matters within the scope of the workplace consultation.

E. No visit pursuant to this Section is regarded as an inspection or investigation pursuant to § 1451. No citation shall be issued nor shall any civil penalty be proposed relative to the subject of the consultation upon such visit, except that nothing in this section shall affect in any manner any provision of this Act, purpose of which is to eliminate dangerous violations.

History

CAP-39-00, April 20, 2000.

Subchapter 13. Limitation of the Act

§ 1521. Exclusion of applicability of the Act

A. Nothing in this Act shall be construed to supersede or in any manner limit the Navajo Nation Mining Safety Code, 18 N.N.C. Chapter 5, § 401 *et seq.*, or the Navajo Nation Worker's Compensation Code, 15 N.N.C. Chapter 11, § 1001 *et seq.*, or any other common law or statutory rights, duties or liabilities of employers and employees under any law with respect to injuries, occupational disease, or death of employees arising out of, or in the course of employment.

B. The Navajo Nation Occupational Safety and Health Act and regulations promulgated under it do not apply to activities of any federal agency.

History

CAP-39-00, April 20, 2000.

Subchapter 14. Political subdivision

§ 1531. Political subdivision jurisdiction

A. Consistent with the Local Governance Act (Resolution No. CAP-34-98), any political Chapter of the Navajo Nation which at any time desires to assume responsibility for development or enforcement of occupational safety and health issues with respect to which the Nation's standards or regulations has been promulgated under § 1421 and/or § 1422 shall submit to the Director a plan for the development or enforcement of such standards and regulations.

B. The Director may approve any plan submitted under Part B of this Section, if such plan satisfies the intent of the Act, does not conflict with the requirements of the Occupational Safety and Health Act of 1970,¹ and otherwise, within the Director's discretion is found to be acceptable.

C. The Director shall periodically review any development or enforcement program approved under Part C of this Section, and shall reassume all

responsibility for the development and enforcement of such occupational safety and health standards and regulations if, in the opinion of the Director, it is determined that the program of any such political subdivision does not satisfy the intent of the Act.

¹ 29 U.S.C. § 651 et seq.

History

CAP-39-00, April 20, 2000.

Subchapter 15. Discrimination

§ 1541. Discrimination

A. No employer shall discharge or in any manner discriminate or retaliate against any employee because said employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to the Act, or has testified or is about to testify in any such proceeding, or because of the exercise by said employee on behalf of himself or others of any right afforded by the Act.

B. Any employee who believes that he has been discharged or otherwise discriminated or retaliated against by the employer or his representatives in violation of this Section may, within thirty (30) days after such alleged violation occurs, file a complaint with the Director, in writing and acknowledged by said employee, alleging such discrimination or retaliation. Upon receipt of the complaint, the Director shall initiate such investigation as it deems appropriate. Within sixty (60) days of the receipt of a complaint filed under this Section, the Director shall notify the complaining party of his determination. If, upon such investigation, the Director determines that the provisions of this Section have been violated, he shall file a petition with the Hearing Office against such employer or his representative to enjoin the violation of Part A of this Section and for other appropriate relief to make the employee whole, including rehiring or reinstatement of the employee to his former position with back pay interest and reinstatement of all benefits and consequential damages.

History

CAP-39-00, April 20, 2000

Subchapter 16. Civil liability

§ 1551. Civil liability

Notwithstanding any contrary provisions of the Act, neither the Navajo Nation nor its authorized representatives shall be subject to civil liability for any acts or omissions which occur in the course of any inspection or investigation if the Navajo Nation or its representative is acting in a reasonable manner, considering the activity in which it is engaged.

History

CAP-39-00, April 20, 2000.

Subchapter 17. Appropriations

§ 1561. Use of civil penalty fund

Funds derived from civil penalties under § 1481 of this Act shall be available to the Agency solely for the administration and enforcement of the Act. Such funds shall be deposited into a duly established general fund account and used in accordance with the general fund account plan of operation pursuant to an approved budget. Any funds contained in said general fund account at the end of the fiscal year shall revert to the general fund but shall remain available for appropriation as provided in this Section. The Executive Director, Division of Human Resources, must first authorize any expenditure from the general fund account.

History

CAP-39-00, April 20, 2000.

Subchapter 18. Other provisions

§ 1571. Legal representation

A. The Office of the Attorney General of the Navajo Nation may represent the Agency on any civil litigation brought under the Act.

B. In any criminal proceeding initiated under this Act, the Office of the Prosecutor, Attorney General of the Navajo Nation may represent and prosecute in the name of the Navajo Nation.

History

CAP-39-00, April 20, 2000.

§ 1572. All prior inconsistent law is repealed

A. All prior Navajo Nation safety laws, rules, regulations, and provisions of the Navajo Nation Safety Code previously adopted which are inconsistent with this Act, unless otherwise specifically excluded under § 1521 of the Act, are hereby repealed.

B. This Act supersedes the safety and health responsibilities previously given to the Navajo Occupational Safety and Health Administration and provides broad new duties and responsibilities in an attempt to meet the requirements of the federal Occupational Safety and Health Act of 1970.¹

¹ 29 U.S.C. § 651 et seq.

History

CAP-39-00, April 20, 2000.

§ 1573. Severability of the Act

If any provision of this Act or the application thereof to any person, employer, association, entity or circumstances is held invalid, such invalidity shall not affect the remaining provisions or applications of the Act.

History

CAP-39-00, April 20, 2000.

§ 1574. Effective date and amendment of the Act

A. The effective date of this Act shall be March 1, 2000 after the passage of the Act by the Navajo Nation Council and shall remain in effect until amended or repealed by the Navajo Nation Council.

B. Any amendment or repeal of the Act shall only be effective upon approval of the Navajo Nation Council, and shall not be valid if it has the effect of amending, modifying, limiting, expanding or waiving the Act for the benefit or the detriment of a particular individual.

C. Any amendment to the Act, unless expressly stated otherwise, shall become effective sixty (60) days after the passage thereof by the Navajo Nation Council.

D. The Human Services Committee of the Navajo Nation Council will make amendments to the Navajo Nation Council from time-to-time or deemed appropriate and applicable with Navajo Nation laws.

History

CAP-39-00, April 20, 2000.

Title 17

Law and Order

Chapter	Section
1. Enforcement of the Criminal Code	101
2. General Provisions	201
3. Offenses	301
5. Procedures	1801
7. Facilities	2201
9. [Deleted]	
11. Fire Prevention	2701

Chapter 1. Enforcement of the Criminal Code

Section
101. Responsibility
102. Authority to enter into cooperative agreements with federal and state agencies
103. Authority to enter into cooperative agreements for incarceration of Navajo prisoners in Navajo correctional facilities

United States Code

Indian law enforcement reform, see 25 U.S.C. § 2801 et seq.

Code of Federal Regulations

Indian country law enforcement, see 25 CFR § 12.1 et seq.

§ 101. Responsibility

The Navajo Nation assumes responsibility for the enforcement of the Criminal Code, including such amendments thereof and such additions thereto as may hereafter be enacted.

Library References

Criminal Law ☞3.	C.J.S. Affray § 14.
Indians ☞32(13).	C.J.S. Criminal Law § 19.
Westlaw Topic Nos. 110, 209.	C.J.S. Indians § 157.

§ 102. Authority to enter into cooperative agreements with federal and state agencies

The President of the Navajo Nation is authorized to enter into cooperative arrangements and agreements with federal and state law enforcement agencies with the recommendation and approval of the Public Safety Committee, the Judiciary Committee and the Intergovernmental Relations Committee for purposes of mutual assistance and definition of responsibilities.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

§ 103. Authority to enter into cooperative agreements for incarceration of Navajo prisoners in Navajo correctional facilities

The President of the Navajo Nation, with the advice and consent of the Judiciary, Public Safety and Intergovernmental Relations Committees of the Navajo Nation Council, is authorized to enter into agreements with federal, state, military and local authorities for the incarceration of Navajo prisoners in correctional facilities within the Navajo Nation.

Library References

Indians ↻32(4.1).
Westlaw Topic No. 209.

Chapter 2. General Provisions

Subchapter 1. General

Section

- 201. Title and effective date
- 202. Purpose
- 203. Territorial applicability
- 204. Classes of violations
- 205. Time limitations
- 206. Proof
- 207. Double jeopardy
- 208. Witness immunity; prosecutor investigations; District Court proceedings
- 209. General definitions
- 210. Definitions—Culpable mental states

Subchapter 2. Liability

- 210. Basis of criminal liability
- 211. Culpability
- 212. Ignorance or mistake
- 213. Intoxication
- 214. Entrapment
- 215. Affirmative defenses
- 216. Accomplice liability

Subchapter 3. Sentencing

- 220. Criteria
- 221. Sentencing considerations
- 222. Fines
- 223. Imprisonment

- 224. Probation
- 225. Multiple sentences
- 226. De Minimus Infractions

Subchapter 1. General

§ 201. Title and effective date

A. This title shall be known as the “Navajo Nation Criminal Code”, and may be cited as 17 N.N.C. § 101 et seq.

B. The provisions of this title shall become effective upon consideration and passage by the Navajo Nation Council and upon certification thereof. Prosecutions for offenses committed prior to the effective date shall be governed, prosecuted, and punished under the laws existing at the time such offenses were committed.

C. If any section or application of any section of the Navajo Nation Criminal Code is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

Library References

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|-----------------------------------|-------------------------------|
| Criminal Law ☞13.2. | C.J.S. Criminal Law §§ 2, 25. |
| Indians ☞32(13). | C.J.S. Indians § 157. |
| Statutes ☞64(6). | C.J.S. Statutes § 93. |
| Westlaw Topic Nos. 110, 209, 361. | |

§ 202. Purpose

It is declared that the general purposes of this Code are:

A. To proscribe conduct that unjustifiably and inexcusably threatens or inflicts substantial harm to individual or public interests;

B. To give all persons entering into the territorial jurisdiction of the Navajo Nation Courts a fair warning of proscribed conduct and of the sentences authorized upon conviction;

C. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;

D. To protect the public interest of the Navajo Nation by defining the act or omission which constitutes each offense, and to apply the provisions of this title equally and unfavorably to all persons within the territorial jurisdiction of the Courts of the Navajo Nation.

Library References

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|---------------------|------------------------------|
| Criminal Law ☞12.5. | Westlaw Topic Nos. 110, 209. |
| Indians ☞32(13). | C.J.S. Indians § 157. |

Annotations**1. Construction of laws**

“The statute means that the courts must construe the plain language of the statute, and resolve any doubt as to the meaning of a penal statute in favor of the defendant.” *Navajo Nation v. Platero*, 6 Nav. R. 422, 429 (Nav. Sup. Ct. 1991), concurrence of Chief Justice Tso.

2. Court’s authority

“ . . . [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1)

(1985 Cumm. Supp.) which gives the district courts original jurisdiction over ‘all violations of laws of the Navajo Nation’; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the ‘Navajo Indian Country’; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

§ 203. Territorial applicability

The Navajo Nation Courts shall have jurisdiction over any person who commits an offense by his or her own conduct if the conduct constituting any element of the offense or a result of such conduct occurs within the territorial jurisdiction of the Navajo Nation Courts as defined in 7 N.N.C. § 254, or such other dependent Indian communities as may hereafter be determined to be under the jurisdiction of the Navajo Nation and the Courts of the Navajo Nation. The Navajo Nation Courts shall also have jurisdiction over any member of the Navajo Nation wherever the conduct which constitutes the offense occurs.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ¶97, 98.

Indians ¶32(13).

Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 161 to 162, 167 to 169.

C.J.S. Indians § 157.

Annotations**1. Court’s authority**

“ . . . [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over ‘all violations of laws of the Navajo Nation’; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the

purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the ‘Navajo Indian Country’; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

§ 204. Civil prosecutions of non-Indians

A. Any non-Indian alleged to have committed any offense enumerated in this Title may be civilly prosecuted by the Office of the Prosecutor. In no event shall such a civil prosecution permit incarceration of a non-Indian or permit the imposition of a criminal fine against a non-Indian.

B. Procedure. Civil prosecutions under this section shall be conducted in accordance with the Navajo Rules of Criminal Procedure, and the non-Indian

civil defendant shall be afforded all the heightened protections available to a criminal defendant under those rules including, but not limited to, the more stringent burden of proof beyond a reasonable doubt.

C. Nothing in this section shall be deemed to preclude exercise of criminal jurisdiction over any person who, by reason of assuming tribal relations with the Navajo people or being an “in law” or hadane or relative as defined by Navajo common law, custom, or tradition, submits himself or herself to the criminal jurisdiction of the Navajo Nation.

D. Civil Penalties. Upon a finding that a non-Indian has committed any of the offenses enumerated in this Title, the Court may impose any of the following civil penalties in any combination deemed appropriate by the Court:

1. A civil fine (fines listed for offenses under Title 17 may serve as a guideline for the calculation of a civil fine, but the criminal fines are not binding upon the calculation of a civil fine);
2. Any civil forfeiture made appropriate by the penalty sections of Title 17;
3. Restitution, or nályééh, consistent with the traditional principles of nályééh;
4. Exclusion from all lands subject to the territorial jurisdiction of the Navajo Nation courts.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 205. Time limitations

A. A prosecution for embezzlement of Navajo Nation monies or falsification of Navajo Nation records or vouchers may be commenced at any time within five (5) years after discovery of the offense.

B. Except as otherwise provided in this section, prosecution for other offenses must be commenced within three (3) years from the date of the act or conduct which constitutes the offense.

C. If the offense has as a material element of fraud, forgery or an offense against the Navajo Nation government, prosecution may be commenced after discovery of the offense by an aggrieved party or by a person under a legal duty to represent an aggrieved party and who was not a party to the offense.

D. A prosecution is commenced either when a complaint is filed or when an arrest warrant or other similar process is issued.

17 N.N.C. § 205

LAW AND ORDER

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞147, 154, 157. C.J.S. Criminal Law § 202.
Indians ☞32(13). C.J.S. Indians § 157.
Westlaw Topic Nos. 110, 209.

§ 206. Proof

No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. The innocence of the defendant is presumed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞308, 561. C.J.S. Criminal Law §§ 697, 1108.
Indians ☞38(5). C.J.S. Indians § 165.
Westlaw Topic Nos. 110, 209.

Annotations

1. Sufficiency of evidence

“We will not sustain a conviction based solely upon an extrajudicial admission. The possibility is great that an alleged admission may be fabricated to establish the defendant’s guilt. We doubt that an admission, in of itself, is sufficient to satisfy the law that in every criminal case, the Navajo Nation must prove every element of the offense beyond a reasonable doubt.” *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).

2. Burden of proof

“In civil actions, the required degree of proof is generally a preponderance of evidence. The

required burden of proof in criminal cases is much higher because liberty interests are at stake. In criminal cases, the prosecution must prove each element of an offense beyond a reasonable doubt.” *Apachito v. Navajo Nation*, No. SC-CV-34-02, slip op. at 3 (Nav. Sup. Ct. August 13, 2003).

“Prosecution must prove each element of an offense, including intent, beyond a reasonable doubt.” *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

§ 207. Double jeopardy

No person shall be put twice in jeopardy for the same crime. The defense of double jeopardy may not be waived and may be used by the accused at any stage of a criminal prosecution either before or after judgment. When a complaint charges different offenses and an appeal is granted to the defendant, he or she may not again be tried for an offense greater than the one for which he or she was originally convicted.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Double Jeopardy ⇨161, 201.
 Indians ⇨32(13).
 Westlaw Topic Nos. 135H, 209.

C.J.S. Criminal Law §§ 212, 214, 234, 241,
 251.
 C.J.S. Indians § 157.

§ 208. Witness immunity; prosecutor investigations; District Court proceedings

A. Investigation Proceedings. When a prosecutor has probable cause to believe that an offense has occurred, he or she may require any witness who he or she believes has knowledge of material information to give a sworn statement regarding such offense. If such a witness has been asked to give a sworn statement to produce a record, document or other object in connection with such investigative proceedings, the district court may, upon the written application of the prosecuting attorney, issue a written order granting use immunity and requiring the person to testify or to produce the record document or other object notwithstanding his or her privilege against self incrimination. In any application for such an order, the prosecuting attorney shall state under oath that probable cause exists and that he or she believes such order is in the public interest based on the following factors:

1. The importance of the investigation or prosecution to effective enforcement of the criminal law;
2. The value of the person's testimony or information to the investigation or prosecution;
3. The likelihood of prompt and full compliance with a compulsion order and the effectiveness of available sanctions if there is no such compliance;
4. The person's relative culpability in connection with the offense or offenses being investigated or prosecuted and their history with respect to criminal activity;
5. The possibility of successfully prosecuting prior to compelling them to testify or produce information; and
6. The likelihood of adverse collateral consequences to the person if he or she testifies or provide information under a compulsion order.

B. The District Courts of the Navajo Nation may grant the application and issue a written order if it finds:

1. The testimony or record, document or other object may be necessary to the public interest; and
2. The person has refused, or is likely to refuse, to testify or produce the record, document or other object on the basis of his or her privilege against self-incrimination.

C. Court Proceedings. If a person has been or maybe called to testify or produce a record, document or other objects in an official proceeding conducted under the authority of a district court, the district court may, upon the written application of the prosecutor issue an order granting use immunity to that person and requiring the person to testify or produce the record, document

or other object notwithstanding his or her privilege against self-incrimination, if it finds:

1. The testimony or the record, document or other object may be necessary to the public interest; and
2. The person has refused, or is likely to refuse, to testify or to produce the record, document or other object on the basis of his or her privilege against self-incrimination.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞42.	C.J.S. Criminal Law §§ 78 to 86.
Indians ☞38.	C.J.S. Indians § 163.
Witnesses ☞304.	C.J.S. Witnesses § 555.
Westlaw Topic Nos. 110, 209, 410.	

§ 209. General definitions

In this Code, unless a different meaning plainly is required:

- A. “Act” or “action” means a bodily movement whether voluntary or involuntary;
- B. “Carrying a deadly weapon” means being armed with a deadly weapon by having it on the person or in close proximity thereto so that the weapon is readily accessible for use;
- C. “Conduct” means an action or omission and its accompanying state of mind, or, where relevant, a series of acts or omissions;
- D. “Control” or “to exercise control” means to act so as to exclude others from using their property except on the defendant’s own terms;
- E. “Dangerous instrument” means anything that under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury;
- F. “Deadly weapon” means anything designed for lethal use or any instrument used in a lethal manner; the term includes a firearm;
- G. “Deceit” means either:
 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,
 4. A promise made without any intention of performing it;
- H. “Deface” means any unnecessary act of deforming or blighting any surface or place, whether by mechanical means such as a hatchet, knife or

spray paint, or by other means, so as to detract substantially from its visual attractiveness or utility;

I. “Deprive” means to withhold the property interest of another either permanently or for so long a time period that the major portion of its economic value is lost, or to withhold it with the intent to restore it only upon payment of reward or other compensation, or to transfer or dispose of it so that it is unlikely to be recovered;

J. “Explosive” means any dynamite, nitroglycerine or other similar device or material;

K. “Facilitate” means to engage in conduct which knowingly provides another with the means or opportunity for the commission of an offense;

L. “Firearm” means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, except that it does not include an antique firearm or a firearm in permanently inoperable condition which is kept as a curio or museum piece or for educational purposes;

M. “Litter” means any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, trash, debris or any foreign substance of whatever kind of description, including junked or abandoned vehicles, whether or not any of these items are of value;

N. “Material misrepresentation” means pretense, promise, representation or statement of fact which is fraudulent and which, when used or communicated, is instrumental in causing the wrongful control or transfer of property or services; the pretense maybe verbal or it maybe a physical act;

O. “Nályééh” means the traditional, Navajo common law process for open discussions of an offense and the Navajo values which apply to that offense, the mediation and assignment of liability under this process, and the use of reconciliation, restorative justice and reparation in place of fines and jailing;

P. “Omission” means a failure to perform an act as to which a duty of performance is imposed by law;

Q. “Peace officer” means any person who is a law enforcement officer vested by law with a duty to maintain public order or make arrests, whether that duty extends to all offenses or is limited to specific classes of offenses or offenders;

R. “Person”, “he”, “she”, and “actor” includes any natural person, and where relevant, a corporation, partnership or an unincorporated association, a government or a government authority;

S. “Possess” means to have physical possession or otherwise to exercise dominion or control over property;

T. “Property” means anything of value, tangible or intangible, public or private, real or personal, including documents evidencing value or ownership;

U. “Serious physical injury” means physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement,

protracted impairment of health or protracted loss or impairment of the function of any bodily organ;

V. “Services” include labor, professional service, transportation, telephone, gas or electrical services, accommodation in hotels, restaurants, leased premises or elsewhere, admission to exhibitions and use of vehicles or other movable property;

W. “Statute” or “law” includes any resolution of the Navajo Nation Council and any local law or ordinance of a political subdivision of the Navajo Nation;

X. “Tamper” means any act of interference;

Y. “Navajo Nation official” means any person who is an officer or employee of the Navajo Nation government, including a peace officer, whether elected, appointed or otherwise employed and any person participating as advisor, consultant or otherwise in performing a Navajo Nation governmental function; the term does not include jurors or witnesses;

Z. “Unlawful” means contrary to law or, where the context so requires, not permitted by law; it does not mean immoral;

AA. “Utility” means any enterprise, public or private, which provides gas, electric, steam water or communications services, as well as any common carrier on land, sea or air.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

Annotations

1. Person, generally

17 N.N.C. § 209(R) [Previously 17 N.N.C. § 208(17), CN-71-77, amended by CJA-08-00] “We hold, that where a criminal defendant has assumed tribal relations with the Navajo Nation, such defendant will be considered an “In-

dian” and thus a “person” for purposes of 17 N.T.C. § 208(17). In matters of public safety and responsibility for personal conduct, a defendant’s personal relations within the Navajo Nation is material.” *Navajo Nation v. Hunter*, 7 Nav. R. 194, 198 (Nav. Sup. Ct. 1996).

§ 210. Definitions—Culpable mental states

The following definitions apply with respect to an offense set forth in this title:

A. “Intentional”, “intentionally”. A person’s state of mind is intentional with respect to:

1. His or her conduct if it is his or her conscious objective or desire to engage in the conduct;
2. A result of his or her conduct if it is his or her conscious objective or desire to cause the result.

B. “Knowing”, “knowingly”. A person’s state of mind is knowing with respect to:

1. His or her conduct if he or she is aware of the nature of his or her conduct;
2. An existing circumstance if he or she is aware or believes that the circumstance exists;
3. A result of his or her conduct if he or she is aware or believes that his or her conduct is substantially certain to cause the result.

C. “Reckless”, “recklessly”. A person’s state of mind is reckless with respect to:

1. An existing circumstance if he or she is aware of a risk that the circumstance creates but disregards the risk;
2. A result of the his or her conduct if he or she is aware of a risk that the result will occur but disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

D. “Negligent”, “negligently”. A person’s state of mind is negligent with respect to:

1. An existing circumstance if the person ought to be aware of a risk that the circumstance exists;
2. A result of his or her conduct if the person ought to be aware of a risk that the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ⇌20, 23.

Indians ⇌32(13).

Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 31 to 33, 35 to 39.

C.J.S. Indians § 157.

C.J.S. Negligence §§ 913 to 914.

Subchapter 2. Liability

§ 211. Basis of criminal liability

The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

17 N.N.C. § 211

LAW AND ORDER

Library References

Criminal Law ☞26.
Indians ☞32(13).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 44 to 45, 1110.
C.J.S. Indians § 157.

§ 212. Culpability

A person shall not be guilty of an offense unless he or she acted intentionally, knowingly, recklessly, or negligently as the law may require with respect to each material element of the offense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞20, 23.
Indians ☞32(13).
Westlaw Topic No. 110, 209.

C.J.S. Indians § 157.
C.J.S. Criminal Law §§ 31 to 33, 35 to 39.
C.J.S. Negligence §§ 913 to 914.

§ 213. Ignorance or mistake

Ignorance or mistake as to a matter of fact or law is a defense if:

- A. The ignorance or mistake negates the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or
- B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞32, 33.
Indians ☞32(13).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 56, 93 to 94.
C.J.S. Indians § 157.

§ 214. Intoxication

A. Intoxication of the actor is not a defense unless it negatives an element of the offense.

B. When recklessness is an element of the offense, if the actor, due to self induced intoxication, is unaware of a risk of which he or she would have been aware had he or she not been intoxicated, such unawareness is immaterial.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞53, 55.

Homicide ☞821.

LAW AND ORDER

17 N.N.C. § 216

Indians ⇆32(13).
Westlaw Topic Nos. 110, 203, 209.

C.J.S. Criminal Law §§ 110, 112 to 113.
C.J.S. Indians § 157.

§ 215. Entrapment

A. A person prosecuted for an offense shall be acquitted if he or she proves by a preponderance of evidence that his or her conduct occurred in response to an entrapment.

B. A public law enforcement official or a person acting in cooperation with such an official perpetuates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he or she induces or encourages another person to engage in conduct constituting such offense by either:

1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are previously disposed to commit it.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ⇆37.
Indians ⇆32(13).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law § 58.
C.J.S. Indians § 157.

§ 216. Affirmative defenses

A. Duress. It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he or she was coerced to do so by the use of, or a threat to use, unlawful force against his or her person or the person of another, which a person of reasonable firmness in his or her situation would have been unable to resist and the actor did not recklessly or negligently place himself or herself in a situation in which it was probable he or she would be subjected to duress.

B. Justification. Conduct which the actor believes to be necessary to avoid a harm or evil to himself or herself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his or her conduct.

C. Public duty. Conduct is justified and an affirmative defense when it is required or authorized by law.

D. Protection of self, property, or other person. The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor believes that such force is immediately necessary for the purpose of protecting himself or herself or a third person against the use of unlawful force

by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

E. Mental disease. A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ⇨67 to 69.

Criminal Law ⇨38, 48.

Homicide ⇨757, 758, 763, 766 to 809, 817.

Indians ⇨32(13).

Westlaw Topic Nos. 37, 110, 203, 209.

C.J.S. Assault and Battery §§ 87 to 95.

C.J.S. Criminal Law §§ 49 to 53.

C.J.S. Indians § 157.

§ 217. Accomplice liability

A person may be charged with and convicted of an offense as an accomplice if he or she intentionally or knowingly solicits, counsels, commands, facilitates, aids, agrees to aid or attempts to aid in its commission, although he or she did not directly commit the crime and although the principal who directly committed such offense has not been prosecuted or convicted, or has been convicted of a different offense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ⇨59.

Indians ⇨32(13).

Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 127, 998.

C.J.S. Indians § 157.

Annotations

1. Accomplice actions

“If any person within the Navajo Nation does any act to facilitate (“To make easier or less difficult”) or aid (“To support, help, assist or strengthen”) the delivery of any beverage which causes alcoholic intoxication, there is criminal

liability. [. . .] It certainly includes the act of providing a place to engage in bootlegging, knowing the activity is being carried on by another.” *Stanley v. Navajo Nation*, 6 Nav. R. 284, 286 (Nav. Sup. Ct. 1990).

Subchapter 2. Sentencing

§ 220. Criteria

A. No person convicted of an offense pursuant to this Title shall be sentenced otherwise than in accordance with this subchapter. A sentence of incarceration is always considered an extraordinary measure under any offense

enumerated in this Title and should be imposed only as a last alternative where a defendant is found to have caused serious injury to a victim or victims, or other serious circumstances warrant a jail sentence. All jail sentences must be supported by a written statement, by the Court, of reasons for imposition of a jail sentence.

B. The court may suspend the imposition of sentence of a person who has been convicted of a crime, may order him or her to be committed in lieu of sentence to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, or may sentence him or her as follows:

1. To pay a fine;
2. To be placed on probation;
3. To imprisonment for a definite period within the term authorized;
4. To fine and probation or fine and imprisonment;
5. To community service.
6. To pay restitution or nályééh.

C. The court may, pursuant to its legal authority, decree a forfeiture of property, suspend or cancel a license, require full or partial restitution, remove a non-elected public servant or Navajo Nation government employee from office, or impose any other civil penalty, and such order or judgment may be included in the sentence.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fines ↻1.5.	Westlaw Topic Nos. 174, 180, 209, 350H.
Forfeitures ↻1.	C.J.S. Criminal Law §§ 1459, 1461, 1556 to 1557, 1560 to 1562, 1771 to 1786.
Indians ↻38(7).	C.J.S. Indians § 163.
Sentencing and Punishment ↻1838, 1977, 1978, 2049, 2100.	C.J.S. RICO (Racketeer Influenced and Corrupt Organizations) § 30.

Annotations

1. Construction and application

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in the Code.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“ . . . [T]he authority of the Navajo courts to order the forfeiture of an automobile used for the illegal delivery of liquor derives from many sources. These sources are: 7 N.T.C. § 253(1) (1985 Cumm. Supp.) which gives the district courts original jurisdiction over ‘all violations of laws of the Navajo Nation’; 17 N.T.C. § 202(3) and (4) (1985 Cumm. Supp.) which state the purposes of the Navajo Criminal Code; 17 N.T.C. § 203 (1985 Cumm. Supp.) which gives the Navajo Nation courts jurisdiction over any person who commits an offense within the ‘Navajo Indian Country’; and 17 N.T.C. § 220(c) which gives the Navajo courts general sentencing power pursuant to its legal authority to decide criminal matters.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 21 (Nav. Sup. Ct. 1988).

17 N.N.C. § 220

Note 2

LAW AND ORDER

2. Construction with other laws

“The Tribal Council enacted 17 N.T.C. § 220(c) with knowledge of the express forfeiture penalties in other sections of the Code; thus, the Court must interpret Section 220(c) as giving the Navajo courts power to order a forfeiture of an automobile used in the illegal delivery of liquor.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 22 (Nav. Sup. Ct. 1988).

3. Due process

“Therefore, we hold that a civil forfeiture proceeding must provide due process as set forth in the Navajo Nation Bill of Rights, 1 N.T.C. § 3; the Indian Civil Rights Act, 25 U.S.C. § 1302(8), and Navajo common law.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

“We hold only that the forfeiture of an automobile demands notice and a hearing. Navajo court proceedings must comply with the Navajo Nation Bill of Rights and the Indian Civil Rights Act, and as such, we must ensure compliance with procedural and substantive due process before someone is deprived of their private property.” *Begay v. Navajo Nation*, 6 Nav. R. 20, 24 (Nav. Sup. Ct. 1988).

4. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 221. Sentencing considerations

A. Before imposing sentence the court shall take into consideration the offender’s prior record, family circumstances, employment status, and any other circumstances which will aid in imposing a just and fair sentence.

B. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s) or the Navajo Nation.

C. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

D. The trial court may consider the imposition of peace or security bond upon the defendant, including the pledges of family or clan sureties.

E. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

F. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

G. The courts of the Navajo Nation shall establish a fund, to be collected from assessments against persons convicted of any offense under this Title and under Title 14 in addition to any fine to cover the cost of liability insurance for the community service program.

H. Notwithstanding any other provision of this section or section 220, the trial court may impose any reasonable condition of sentence which strives to rehabilitate the defendant or serves the reasonable needs of the victims of crime and of society and is not inconsistent with the sentencing terms established for the offense or offenses which the defendant is determined to have committed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞1223.	Westlaw Topic Nos. 110, 209, 350H.
Indians ☞38(7).	C.J.S. Criminal Law §§ 1459, 1461.
Sentencing and Punishment ☞93, 111, 2049, 2180.	C.J.S. Indians § 163.

Annotations**1. Construction and application**

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court’s discretion is necessarily limited to the

specific sentence or sentencing range stated in the Code.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

2. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 222. Fines

A. A person who has been convicted of an offense may be sentenced to pay a fine as designated for that offense.

B. Whether to impose a fine in a particular case, up to the authorized maximum and the method of payment, shall remain within the sound discretion of the court.

C. The court shall be explicitly authorized to permit installment payments of any imposed fine on conditions tailored to the means of the particular offender.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fines ☞1.5, 19.	Westlaw Topic Nos. 174, 209.
Indians ☞38(7).	C.J.S. Indians § 163.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations**1. Construction and application**

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in

17 N.N.C. § 222

Note 1

the Code.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

2. Review

“We therefore hold that a district court must include findings of fact and conclusions of law

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in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 223. Imprisonment

A person who has been convicted may be sentenced for a definite term not greater than one (1) year (three hundred sixty-five (365) days) per offense.

Library References

Indians ⇨38(7).

Sentencing and Punishment ⇨30, 1014.

Westlaw Topic Nos. 209, 350H.

C.J.S. Criminal Law §§ 1459 to 1460, 1463, 1465, 1472.

C.J.S. Indians § 163.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations

1. Construction and application

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in the Code.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“According to Subchapter 2, every jail sentence imposed must be both definite and limited to one (1) year or less jail time. Any sentence beyond that provision is unlawful and violates the Navajo Nation Bill of Rights.” *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

2. Violations

“The sentence violates 17 N.N.C. § 223 (2000) in two ways. First, it does not have a definite term. A ‘definite’ jail sentence must provide a specific number of days or months. Second, Petitioner’s sentence violates the one (1) year limit on jail sentences because the Petitioner could be and was held for over a year. We hold that to detain a convicted defendant indefinitely not only violates the sentencing provisions of Title 17 but is also prohibited by the Navajo Nation Bill of Rights as cruel and unusual punishment.” *Martin v. Antone*, No. SC-CV-48-02, slip op. at 2-3 (Nav. Sup. Ct. August 13, 2003).

3. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 224. Probation

The court shall have the discretion in any case except where prohibited by statute to suspend all or part of an offender’s sentence and release the defendant on probation. The offender shall sign a probationary pledge, the conditions and limitations of which shall be set forth by the court.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞38(7).
Sentencing and Punishment ☞1802, 1960.
Westlaw Topic Nos. 209, 350H.

C.J.S. Criminal Law §§ 1552, 1556.
C.J.S. Indians § 163.

United States Code

Indian Civil Rights Act, see 25 U.S.C. § 1302.

Annotations**1. Construction and application**

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC–CR–01–03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220–225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in the Code.” *Thompson v. Greyeyes*, No. SC–CV–29–04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“17 N.T.C. § 224 gives the courts discretion to suspend a sentence and release the defendant on probation, but it does not allow an original sentence of probation. It is essential that a lawful and clearly-defined sentence be imposed on a defendant in the defendant’s presence in open court.” *Johnson v. The Navajo Nation*, 5 Nav. R. 152, 153 (Nav. Sup. Ct. 1987).

2. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC–CR–01–03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

§ 225. Multiple sentences

When multiple sentences of imprisonment are imposed on a defendant for more than one crime, such multiple sentences shall run concurrently or consecutively as the court determines at the time of the sentence.

History

CJA–08–00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞38(7).
Sentencing and Punishment ☞545.
Westlaw Topic Nos. 209, 350H.

C.J.S. Criminal Law §§ 1522 to 1523.
C.J.S. Indians § 163.

Annotations**1. Construction and application**

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC–CR–01–03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220–225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in

the Code.” *Thompson v. Greyeyes*, No. SC–CV–29–04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

2. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a crimi-

17 N.N.C. § 225

Note 2

nal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

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§ 226. De Minimis Infractions

A. The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant’s conduct:

1. Was within a customary license or tolerance, neither expressly negated by the persons whose interest was infringed nor inconsistent with the purpose of the law defining the offense; or
2. Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
3. Presents such other extenuation that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

B. The court shall not dismiss a prosecution under this section without filing a written statement of its reasons.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ⇔303.30(3), 303.35(1).
Indians ⇔32(13), 38.

Westlaw Topic Nos. 110, 209.
C.J.S. Indians §§ 157, 163.

Annotations

1. Construction and application

“For each individual element of the crime, the court shall include the facts, the evidence used to find such facts, and the legal conclusions supporting the verdict.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

“District courts have been given broad discretion to draft criminal sentences that may best rehabilitate defendants and which serve the reasonable needs of the victims and the community. See 17 N.N.C. §§ 220-225. However, the court’s discretion is necessarily limited to the specific sentence or sentencing range stated in the Code.” *Thompson v. Greyeyes*, No. SC-

CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“The words of the statute clearly show that the Council intended to give courts discretionary authority to impose either a concurrent or a consecutive sentence for different offenses.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 447 (Nav. Sup. Ct. 1991).

2. Review

“We therefore hold that a district court must include findings of fact and conclusions of law in a judgment and mittimus issued after a criminal trial. As these were not included in this case, the District Court erred.” *Navajo Nation v. Badonie*, No. SC-CR-01-03, slip op. at 2 (Nav. Sup. Ct. July 15, 2004).

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Subchapter 1. Inchoate Offenses

§ 301. Solicitation

A. Offense. A person commits solicitation if, with intent that another person engage in conduct constituting an offense, he or she commands, entreats, induces, or otherwise endeavors to persuade such person to engage in such conduct.

B. Affirmative defense. It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, the defendant made a reasonable effort to prevent the conduct or result which is the object of the solicitation.

C. Defense precluded. It is not a defense to a prosecution under this section that the person solicited could not be convicted of the offense because he or she lacked the state of mind required for the commission of the offense, because the person solicited was incompetent or irresponsible, or because he or she was otherwise not subject to prosecution.

D. Sentence.

1. Any person found guilty of solicitation of any offense under Subchapter 2 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of solicitation.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

17 N.N.C. § 301

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3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ⇄45.

Indians ⇄32(13).

Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 115, 124 to 126.

C.J.S. Indians § 157.

§ 302. Conspiracy

A. Offense. A person commits conspiracy if, with the intent to promote or facilitate the commission of an offense, he or she agrees with one or more persons that at least one of them will engage in conduct constituting the offense, and one of the parties commits an overt act in furtherance of the agreement.

B. Affirmative defense. It is an affirmative defense to a prosecution under this section that the defendant, under circumstances manifesting a complete and voluntary renunciation of his or her criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which was the objective of the conspiracy.

C. Defense precluded. It is not a defense to prosecution under this section that one or more of the persons with whom the defendant is alleged to have conspired has not been prosecuted or convicted, has been convicted of a different offense, or is immune from or otherwise not subject to prosecution.

D. Duration of conspiracy. Conspiracy is a continuing course of conduct which ends when the offense or offenses which are its object have been committed or when the agreement that they be committed is abandoned by the defendant.

E. Abandonment of conspiracy. A defendant may abandon a conspiratorial agreement and terminate his or her relationship with the conspiracy only if he or she clearly ceases to agree that the conspiratorial objective be committed,

takes no further part in the conspiracy, and communicates his or her desire to abandon the conspiracy to other members of the conspiracy.

F. Sentence.

1. Any person found guilty of conspiracy to commit an offense under Subchapter 2 or Subchapter 7 of Chapter 3 of this Title may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both, but in no case shall the penalty imposed be greater than the penalty imposed for the crime which was the object of the conspiracy.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Conspiracy ☞24, 24.15, 27, 38, 40.4.
Indians ☞32(13).
Westlaw Topic Nos. 91, 209.

C.J.S. Conspiracy §§ 96, 104 to 108, 113 to 126, 129 to 133, 204.
C.J.S. Indians § 157.

Annotations

1. Evidence

“Circumstantial evidence may be used to prove conspiracy.” *Navajo Nation v. Mac-*

Donald, Sr., 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

Subchapter 2. Offenses Against Persons

§ 303. Criminal homicide

A. A person commits criminal homicide if he or she intentionally, knowingly, recklessly, or with criminal negligence, causes the death of another human being, including an unborn child. There shall be no cause of action for

17 N.N.C. § 303

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criminal homicide against a mother or a physician for the death of an unborn child caused by an abortion where the abortion was permitted by law and any required consent was lawfully given.

B. Sentence. Any person found guilty of criminal homicide may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both. This sentence shall apply to any conviction for vehicular homicide under 14 N.N.C. § 703.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Homicide ⇨500, 503, 1565.
Indians ⇨32(13).

Westlaw Topic Nos. 203, 209.
C.J.S. Indians § 157.

§ 304. Kidnapping

A. A person commits kidnapping when he or she intentionally or knowingly and without authority of law and against the will of the victim:

1. Detains or restrains another for any substantial period; or
2. Detains or restrains another in circumstances exposing him or her to risk of serious bodily injury; or
3. Holds another in involuntary servitude; or
4. Detains or restrains a minor without consent of his or her parent or guardian.

B. Sentence. Any person found guilty of kidnapping may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Kidnapping ⇨1, 6.
Westlaw Topic Nos. 209, 232.

C.J.S. Indians § 157.
C.J.S. Kidnapping §§ 1 to 2, 7.

§ 305. Aggravated Kidnapping

A. A person commits aggravated kidnapping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and any manner, seizes, confines, detains, or transports the victim with intent:

1. To hold for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; or

2. To facilitate the commission, attempted commission, or flight after commission or attempted commission of an offense; or
3. To inflict bodily injury on or to terrorize the victim or another; or
4. To interfere with the performance of any governmental or political function; or
5. To commit a sexual offense as described in Subchapter 15 of Chapter 3 of this Title.

B. A detention or moving is deemed to be result of force, threat, or deceit if the victim is mentally incompetent or younger than sixteen (16) years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

C. Sentence. Any person found guilty of aggravated kidnapping may be sentenced to imprisonment for a term not exceed three hundred sixty-five (365) days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Kidnapping ⇄1.
Westlaw Topic Nos. 209, 232.

C.J.S. Indians § 157.
C.J.S. Kidnapping §§ 1 to 2.

§ 306. Child kidnapping

A. A person commits child kidnapping when the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and in any manner, seizes, confines, detains, or transports a child under the age of fourteen (14) with the intent to keep or conceal the child from his or her parent, guardian, or other person having lawful custody or control of the child.

B. A seizure, confinement, detention, or transportation is deemed to be against the will of the victim if the victim is younger than fourteen (14) years of age at the time of the offense, and the seizure, confinement, detention, or transportation, is without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis.

C. Sentence. Any person found guilty of child kidnapping may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Kidnapping ☞1.
Westlaw Topic Nos. 209, 232.

C.J.S. Indians § 157.
C.J.S. Kidnapping §§ 1 to 2.

§ 307. Arson

A. A person is guilty of arson if under circumstances not amounting to aggravated arson, he or she, by means of fire or explosives, unlawfully and intentionally damages:

1. Any property with intention of defrauding an insurer; or
2. The property of another.

B. Sentence. Any person found guilty of arson may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arson ☞2, 3, 45.
Indians ☞32(13).
Westlaw Topic Nos. 36, 209.

C.J.S. Arson §§ 2 to 9, 57.
C.J.S. Indians § 157.

§ 308. Aggravated arson

A. A person is guilty of aggravated arson if by means of fire or explosives he or she intentionally and unlawfully damages:

1. A habitable structure; or
2. Any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

B. Sentence. Any person found guilty of aggravated arson may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arson ☞5, 12, 45.
Indians ☞32(13).
Westlaw Topic Nos. 36, 209.

C.J.S. Arson §§ 4 to 5, 12 to 14, 19, 57.
C.J.S. Indians § 157.

§ 309. Reckless burning

A. A person is guilty of reckless burning if he or she:

1. Recklessly starts a fire or causes an explosion which endangers human life; or
2. Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm; or
3. Damages the property of another by reckless use of fire or causing an explosion.

B. Sentence.

1. Any person found guilty of reckless burning may be sentenced to imprisonment for a term not to exceed ninety (90) days, or ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fires ☞1.

Indians ☞32(13).

Westlaw Topic Nos. 175, 209.

C.J.S. Indians § 157.

§ 310. Threatening

A. Offense. A person commits threatening if he or she threatens by word or conduct to cause physical injury to the person of another or causes serious damage to the property of another:

1. With the intent to terrorize, or in reckless disregard of the risk of terrorizing, another person; or
2. With intent to cause, or in reckless disregard of the risk of causing, serious public inconvenience, including but not limited to evacuation of a public building or transportation facility.

B. Sentence.

1. Any person found guilty of threatening may be sentenced to imprisonment for a term not to exceed ninety (90) days, or be ordered to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Extortion and Threats ☞25.1, 33.
Indians ☞32(13).
Westlaw Topic Nos. 165, 209.

C.J.S. Indians § 157.
C.J.S. Threats and Unlawful Communications
§§ 2 to 20, 26 to 28.

§ 311. Unlawful imprisonment

A. Offense. A person commits unlawful imprisonment if without lawful authority he or she intentionally removes, detains, restrains, or confines the person of another without his or her consent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

False Imprisonment ⇨43, 44.
Indians ⇨32(13).

Westlaw Topic Nos. 168, 209.
C.J.S. Indians § 157.

§ 312. Interference with custody

A. Offense. A person commits interference with custody if he or she intentionally or knowingly takes or entices any child under the age of sixteen (16) from the custody of its parent, guardian or other lawful custodian, or any legally committed person from lawful custody, when he or she has no privilege to do so.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Kidnapping ⇨1.
Westlaw Topic Nos. 209, 232.

C.J.S. Indians § 157.
C.J.S. Kidnapping §§ 1 to 2.

§ 313. Contributing to the delinquency of a minor

A. Offense. A person commits contributing to the delinquency of a minor if he or she knowingly assists, aids, encourages or advises a minor to commit an offense as defined by the laws of the Navajo Nation, or federal or state law.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
 Infants ☞13.
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 157.
 C.J.S. Infants §§ 5, 92 to 93, 95 to 98.

§ 314. Assault

A. Offense. A person commits assault if he or she:

1. Attempts to commit a battery upon the person of another; or

2. By any unlawful act, threat or menacing conduct causes an other person to reasonably believe that he or she is in danger of receiving an immediate battery.

B. Sentence. Any person found guilty of assault may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ☞48, 100.	C.J.S. Assault and Battery §§ 2 to 3, 62, 64 to 66, 81, 130.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 37, 209.	

§ 315. Aggravated assault

A. Offense. A person commits aggravated assault if he or she:

1. Unlawfully assaults or strikes at another with a deadly weapon; or
2. Commits assault by threatening or menacing another while wearing a mask, hood, robe or other covering upon the face or head, or while disguised in any manner, so as to conceal identity.

B. Sentence. Any person found guilty of aggravated assault may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ☞54, 56, 100.	C.J.S. Assault and Battery §§ 72 to 74, 77 to 81, 130.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 37, 209.	

§ 316. Battery

A. Offense. A person commits battery if he or she unlawfully and intentionally strikes or applies force to the person of another.

B. Sentence. Any person found guilty of battery may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ☞48, 100.	C.J.S. Assault and Battery §§ 2 to 3, 62, 64 to 66, 81, 130.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 37, 209.	

§ 317. Aggravated battery

A. Offense. A person commits aggravated battery if he or she:

1. Unlawfully applies force to the person of another, or strikes the person with a deadly weapon; or
2. Intentionally or knowingly causes serious physical injury to the person of another.

B. Sentence. Any person found guilty of aggravated battery may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ⇨54, 100.

Indians ⇨32(13).

Westlaw Topic Nos. 37, 209.

C.J.S. Assault and Battery §§ 72 to 74, 80 to 81, 130.

C.J.S. Indians § 157.

Annotations

1. Burden of proof

“The Navajo Nation has the duty to show, by proof beyond a reasonable doubt, that the defendant unlawfully applied force to the person of Wilson Murphy, or that the defendant inten-

tionally or knowingly caused serious physical injury to the person of Wilson Murphy.” *Navajo Nation v. Murphy*, 6 Nav. R. 10, 15 (Nav. Sup. Ct. 1988).

Subchapter 3. Weapons and Explosives

§ 320. Unlawful carrying of a deadly weapon

A. Offense. A person commits unlawful carrying of a deadly weapon if he or she carries a loaded firearm or any other type of deadly weapon.

B. Exceptions. Subsection (A) of this section shall not apply to any of the following:

1. To peace officers in the lawful discharge of their duties;
2. To persons in a private motor vehicle or other means of conveyance, for lawful protection of the person’s or another’s person or property, while traveling and such weapon is located in a closed trunk, luggage, or glove compartment of a motor vehicle;
3. To a person in his or her residence, or on real property belonging to such person as owner, lessee, tenant, or licensee;
4. To a person or persons carrying or discharging a firearm as an integral part of any traditional Navajo religious practice, ceremony, or service;
5. To persons engaged in the hunting of game or predatory animals.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Weapons ☞5.1 to 13, 17(8).

Westlaw Topic Nos. 209, 406.

C.J.S. Indians § 157.

C.J.S. Weapons §§ 9 to 27, 29 to 30, 36.

§ 321. Unlawful use of a weapon

A. Offense. A person commits unlawful use of a weapon if he or she:

1. Without lawful authority discharges a firearm in the proximity of a building, or into any building or vehicle so as to knowingly endanger a person or property;

2. Carries a firearm while under the influence of an intoxicant or narcotic; or

3. Handles or uses a firearm or other deadly weapon so as to knowingly or recklessly endanger the safety of another or that person's property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Weapons ☞4, 15, 17(8).
Westlaw Topic Nos. 209, 406.

C.J.S. Indians § 157.
C.J.S. Weapons §§ 9 to 10, 36, 43 to 48.

§ 322. Unlawful sale, possession or transportation of explosives

A. Offense. A person commits unlawful sale, possession or transportation of explosives if he or she:

1. Knowingly sells or possesses any explosive, or causes such explosive to be transported, without having plainly marked in large letters in a conspicuous place on the box or package containing such explosive, the name and explosive character thereof and the date of manufacture;
2. Knowingly makes, buys, transports, or transfers any explosive either with intent to use such explosive to commit a crime or knowing that another intends to use it to commit a crime.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Explosives ☞4.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 323. Dangerous use of explosives

A. Offense. A person commits dangerous use of explosives if he or she maliciously explodes, attempts to explode or places any explosive with the intent to injure, intimidate or terrify another, or to damage another's property.

B. Sentence.

1. Any person found guilty of dangerous use of explosives may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Explosives ☞4, 5.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 324. Negligent use of explosives

A. Offense. A person commits negligent use of explosives if he or she negligently explodes, attempts to explode or places any explosive in such a manner as to result in injury to another or to the property of another, or by such action increases the probability of such injury.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Explosives ☞4.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 325. Forfeiture of weapons and explosives

Upon the conviction of any person for the violation of any law of the Navajo Nation in which a deadly weapon, dangerous instrument or explosive was used, displayed or unlawfully possessed by such person, the court shall order the article forfeited to the Navajo Nation and destroyed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Forfeitures ☞3.
Weapons ☞16.

Westlaw Topic Nos. 180, 406.
C.J.S. Weapons § 51.

Subchapter 4. Theft and Related Offenses

§ 330. Theft

A. Offense. A person commits theft if, without lawful authority, he or she intentionally or knowingly:

1. Controls property of another with the intent to deprive him or her of such property permanently;
2. Converts to an unauthorized use services or property of another entrusted to the defendant for a limited, authorized use;
3. Obtains property of another by means of any material misrepresentation with intent to deprive him or her thereof;
4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner and appropriates such property to his or her own or another's use without reasonable efforts to notify the true owner.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

False Pretenses ⇌1.

Indians ⇌32(13).

Larceny ⇌1 to 16.

Westlaw Topic Nos. 170, 209, 234.

C.J.S. Indians § 157.

C.J.S. Larceny § 1(1, 2, 3, 4, 5), 2, 3(1, 2, 3, 4, 5, 6, 7), 4 to 7, 9, 13 to 50, 82.

§ 331. Theft of services

A. Offense. A person commits an offense pursuant to this section if, without lawful authority, he or she obtains services which such person knows are available only for compensation with the intent of avoiding payment for such services.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of

17 N.N.C. § 331

LAW AND ORDER

Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Larceny ☞1, 3.

Westlaw Topic Nos. 209, 234.

C.J.S. Indians § 157.

C.J.S. Larceny § 1(1, 2), 9, 25 to 29.

§ 332. Unauthorized use of automobiles or other vehicles

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, without the consent of the owner. The repossession of any such vehicle in violation of the provisions of 7 N.N.C. § 607 *et seq.* shall constitute a violation of this section.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Automobiles ☞339.

Indians ☞32(13).

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.

C.J.S. Motor Vehicles §§ 1511 to 1523.

§ 333. Receiving stolen property

A. Offense. A person commits an offense pursuant to this section if he or she purchases, receives, conceals, or aids in the concealing of any property of

another knowing or having reason to know that such property was obtained by theft, extortion, fraud, or other means declared to be unlawful under the provisions of this title.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).

Receiving Stolen Goods ⇨1 to 4.

Westlaw Topic Nos. 209, 324.

C.J.S. Indians § 157.

C.J.S. Receiving or Transferring Stolen Goods and Related Offenses §§ 2 to 12, 15 to 16.

§ 334. Shoplifting

A. Offense. A person commits shoplifting if he or she obtains the goods of another while in a mercantile establishment in which merchandise is displayed for sale by:

1. Willfully taking possession of any merchandise with the intention of converting it without paying for it;

2. Willfully concealing any merchandise with the intention of converting it without paying for it;

3. Willfully altering any label, price, tag or marking any merchandise with the intention of depriving the merchant of all or some part of the value of it;

4. Willfully transferring any merchandise from the container in or on which it is displayed to any other container with the intention of depriving the merchant of all or some part of the value of it.

B. Detention to effect recovery. A merchant, or his or her agent or employee, upon probable cause, may detain on the premises in a reasonable

manner and for a reasonable time any person suspected of shoplifting as defined in subsection (A) of this section for questioning or summoning a law enforcement officer. In no event shall such detention exceed one (1) hour. Such detention shall not subject the merchant or his or her agent or employee to criminal or civil liability.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞64.

False Imprisonment ☞2 to 13.

Indians ☞32(13).

Larceny ☞21.

Westlaw Topic Nos. 35, 168, 209, 234.

C.J.S. Arrest §§ 12 to 15.

C.J.S. Indians § 157.

C.J.S. Larceny §§ 10, 12, 51.

§ 335. Fraud

A. Offense. A person commits fraud if he or she unlawfully obtains the property of another by willful misrepresentation, deceit, false interpreting, or the use of false weights and measures, with the intent of depriving such other person of the property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

False Pretenses ☞1 to 15.
Fraud ☞68.
Indians ☞32(13).

Westlaw Topic Nos. 170, 184, 209.
C.J.S. Indians § 157.

§ 336. Theft by extortion

A. Offense. A person commits theft by extortion if he or she intentionally or knowingly obtains or seeks to obtain property by means of a threat to do in the future any of the following:

1. Cause physical injury to any other person; or
2. Cause damage to property, or
3. Accuse anyone of a crime or bring criminal charges against anyone;

or

4. Expose a secret or an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule, or to impair his or her credit or business; or
5. Take or withhold action as public servant or cause a public servant to take or withhold action.

B. Sentence.

1. Any person found guilty of theft by extortion pursuant to sections 336(A)(1) or (5) may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Extortion and Threats ☞25.1, 33.
Indians ☞32(13).
Westlaw Topic Nos. 165, 209.

C.J.S. Indians § 157.
C.J.S. Threats and Unlawful Communications
§§ 2 to 20, 26 to 28.

Subchapter 5. Forgery and Related Offenses

§ 340. Forgery

A. Offense. A person commits forgery if, with intent to defraud, he or she:

1. Falsely makes, completes or alters a written instrument; or
2. Offers or presents, whether accepted or not, a forged instrument.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Forgery ☞1 to 16.
Indians ☞32(13).

Westlaw Topic Nos. 181, 209.
C.J.S. Indians § 157.

§ 341. Criminal simulation

A. Offense. A person commits criminal simulation if, with intent to defraud, he or she makes, alters, or presents or offers, whether accepted or not, any object so that it appears to have an antiquity, rarity, source, authorship or value that it does not in fact possess.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fraud ☞68.
Indians ☞32(13).

Westlaw Topic Nos. 184, 209.
C.J.S. Indians § 157.

§ 342. Obtaining a signature by deception

A. Offense. A person commits obtaining a signature by deception if, with intent to defraud, he or she obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regard-

ing that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fraud ☞68.

Indians ☞32(13).

Westlaw Topic Nos. 184, 209.

C.J.S. Indians § 157.

§ 343. Criminal impersonation

A. Offense. A person commits criminal impersonation if he or she:

1. Assumes a false identity with the intent to defraud another; or
2. Pretends to be a representative of some person or organization with the intent to defraud.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

False Pretenses ☞7.
Indians ☞32(13).

Westlaw Topic Nos. 170, 209.
C.J.S. Indians § 157.

Subchapter 6. Trespass and Burglary

§ 350. Criminal trespass

A. Offense. A person commits criminal trespass if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof:

1. Enters upon, remains or traverses upon private, allocated or allotted lands or other property not his or her own;
2. Allows his or her livestock or livestock under his or her control to occupy or graze upon the lands of another, where notice of trespass is given by actual communication, posting, fencing, or other means calculated to give notice.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Trespass ☞76 to 79.
Westlaw Topic No. 209, 386.

C.J.S. Indians § 157.
C.J.S. Trespass §§ 172, 174 to 177, 179, 182, 191.

§ 351. Criminal entry

A. Offense. A person commits criminal entry if he or she intentionally and knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof:

17 N.N.C. § 351

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1. Enters upon any lands or buildings whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with or obstructing any lawful business or occupation therein;

2. Refuses or fails to leave land, real property or structures of any kind belonging to or lawfully occupied by another, and not open to the general public, upon being requested to leave by a police officer, or the owner, user, or the person in lawful possession thereof;

3. Refuses or fails to leave a public building or a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a police officer, a regularly employed guard, watchman or custodian of the public agency owning or maintaining the building or property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Malicious Mischief ☞1.

Trespass ☞76 to 79.

Westlaw Topic Nos. 209, 248, 386.

C.J.S. Indians § 157.

C.J.S. Malicious or Criminal Mischief or Damage to Property §§ 2 to 5.

C.J.S. Trespass §§ 172, 174 to 177, 179, 182, 191.

§ 352. Trespass with force or violence

A. Offense. A person commits trespass with force or violence if he or she uses force or violence in entering upon or detaining lands, real property or structures of any kind belonging to, or lawfully occupied by another, except in cases and the manner allowed by law.

B. Sentence.

1. Any person found guilty of trespass with force or violence may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Trespass ☞76 to 82, 91.
Westlaw Topic Nos. 209, 386.

C.J.S. Indians § 157.
C.J.S. Trespass §§ 172 to 177, 179 to 184,
191, 196.

§ 353. Burglary

A. Offense. A person commits burglary if he or she enters or remains unlawfully in a residential or non-residential structure, or motor vehicle, with the intent of committing an offense therein.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Burglary ⇄ 2 to 4.

Indians ⇄ 32(13).

Westlaw Topic Nos. 67, 209.

C.J.S. Burglary §§ 2 to 5, 7, 19, 27 to 28, 30 to 37, 39 to 42.

C.J.S. Indians § 157.

Subchapter 7. Bribery and Related Offenses

§ 360. Bribery in official and political matters

A. Offense. A person commits an offense pursuant to this section if:

1. He or she offers, confers, or agrees to confer any benefit upon a Navajo Nation official, Navajo Nation judge or employee with the intention of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his or her capacity as a Navajo Nation official, Navajo Nation judge or employee.

2. While a Navajo Nation official, Navajo Nation judge or employee, he or she solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, judgment, exercise of discretion or other action as a Navajo Nation official, Navajo Nation judge or employee may thereby be influenced.

B. Sentence.

1. Any person found guilty of bribery in official and political matters may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bribery ☞1, 16.
Indians ☞32(13).
Westlaw Topic Nos. 63, 209.

C.J.S. Bribery §§ 2 to 3, 5 to 8, 10 to 11, 30.
C.J.S. Indians § 157.

Annotations

1. Construction and application

“ . . . [T]he Council intended that a public official should be punished for each separate act of soliciting a bribe, entering into an arrangement or agreement for a bribe and/or actually accepting the bribe.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446-447 (Nav. Sup. Ct. 1991).

“ . . . [T]he Council intended the law to punish solicitation, acceptance and agreement sepa-

rately, and to authorize separate or multiple punishments for each.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 446 (Nav. Sup. Ct. 1991).

2. Evidence

“The prosecution may use circumstantial evidence to prove any or all of the elements.” *Navajo Nation v. MacDonald, Sr.*, 6 Nav. R. 432, 443 (Nav. Sup. Ct. 1991).

§ 361. Improper influence in official and political matters

A. Offense. A person commits an offense pursuant to this section if he or she threatens harm to any person, Navajo Nation official, Navajo Nation judge or employee with the intent of influencing such person’s vote, opinion, judgment, or exercise of discretion.

B. Sentence.

1. Any person found guilty of improper influence in official and political matters may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Extortion and Threats ☞25.1, 33.

Indians ☞32(13).

Westlaw Topic Nos. 165, 209.

C.J.S. Indians § 157.

C.J.S. Threats and Unlawful Communications

§§ 2 to 20, 26 to 28.

§ 362. Paying or receiving Navajo Nation Government funds for services not rendered

A. Offense. A person commits an offense pursuant to this section if he or she knowingly makes or receives payment or causes payment to be made from Navajo Nation government funds when such payment purports to be for wages, salary or remuneration for personal services which have not in fact been rendered.

B. Authorized expenditures. Nothing in this section shall be construed to prevent the payment of Navajo Nation government funds where such payments are intended to cover lawful remuneration to Navajo Nation officers or Navajo Nation employees for vacation periods or absences from employment because of sickness, or for other lawful authorized purposes.

C. Sentence.

1. Any person found guilty of paying or receiving Navajo Nation funds for services not rendered may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fraud ☞68.10.
Indians ☞32(13).

Westlaw Topic Nos. 184, 209.
C.J.S. Indians § 157.

§ 363. Making or permitting false Navajo Nation voucher

A. Offense. A person commits an offense pursuant to this section if he or she knowingly, intentionally or willfully makes, or causes to be made, or permits to be made a material misrepresentation or forged signature upon any Navajo Nation voucher, expense reimbursement form, or invoice supporting a Navajo Nation voucher, with the intent that the voucher, expense reimbursement form, or invoice be relied upon for the unauthorized expenditure of Navajo Nation funds.

B. Sentence.

1. Any person found guilty of making or permitting false Navajo Nation voucher may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fraud ☞68.10.
Indians ☞32(13).

Westlaw Topic Nos. 184, 209.
C.J.S. Indians § 157.

§ 364. Abuse of office

A. Offense. A person commits abuse of office if he or she acts or purports to act in an official capacity, or takes advantage of such actual or purported capacity, knowing such conduct is unlawful, and:

1. Subjects another to arrest, detention, search or seizure, mistreatment, or dispossession;
2. Infringes upon the personal or property right of another; or
3. Denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity.

B. Sentence.

1. Any person found guilty of abuse of office may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Civil Rights ⇌1808.

Indians ⇌32(13).

Officers and Public Employees ⇌121.

Westlaw Topic Nos. 78, 209, 283.

C.J.S. Civil Rights § 222.

C.J.S. Indians § 157.

C.J.S. Officers and Public Employees §§ 329 to 334.

§ 365. Forfeiture of Navajo Nation employment or office

Notwithstanding the provisions regarding sentencing of Chapter Two, Subchapter 2 of this Title, a Navajo Nation employee or non-elected public servant convicted of violating any section of this subchapter shall permanently forfeit his or her employment or office.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(6).

C.J.S. Indians § 51.

Officers and Public Employees ☞31, 122.
Westlaw Topic Nos. 209, 283.

C.J.S. Officers and Public Employees §§ 28 to 30, 335 to 338.

Subchapter 8. Obstruction of Navajo Nation Administration

§ 370. Obstruction of justice

A. A person is guilty of an offense if, with intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he:

1. Knowing an offense has been committed, conceals it from a judge of the Navajo courts;
2. Harbors or conceals the offender;
3. Provides the offender a weapon, transportation, disguise, or other means for avoiding discovery or apprehension;
4. Warns the offender of impending discovery or apprehension;
5. Conceals, destroys, or alters any physical evidence that might aid in the discovery, apprehension, or conviction of the person;
6. Obstructs by force, intimidation, or deception anyone from performing an act that might aid in the discovery, apprehension, prosecution, or conviction of the person; or
7. Having knowledge that a law enforcement officer has been authorized or has applied for authorization to intercept a wire, electronic, or oral communication, gives notice or attempts to give notice of the possible interception to any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of

17 N.N.C. § 370

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Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Compounding Offenses ⇌3.5.	C.J.S. Compounding Offenses § 5.
Criminal Law ⇌75 to 82.	C.J.S. Criminal Law §§ 140 to 148.
Indians ⇌32(13).	C.J.S. Indians § 157.
Obstructing Justice ⇌1 to 7.	C.J.S. Obstructing Justice or Governmental Administration §§ 1, 3 to 38.
Westlaw Topic Nos. 88, 110, 209, 282.	

§ 371. Refusing to aid an officer

A. Offense. A person commits an offense pursuant to this section if he or she, upon a reasonable command by a peace officer, intentionally or knowingly refuses or fails to aid such officer in:

1. Effectuating or securing an arrest;
2. Preventing the commission by another of an offense as defined in this Title.

B. A person who complies with this section by aiding a peace officer shall not be held liable to any person for civil damages resulting therefrom, provided he or she acted reasonably under the circumstances known to him or her at the time.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞69.	C.J.S. Arrest § 50.
Indians ☞32(13).	C.J.S. Indians § 157.
Obstructing Justice ☞7.	C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.
Westlaw Topic Nos. 35, 209, 282.	

§ 372. Rescue from lawful custody

A. Offense. A person commits an offense pursuant to this section if he or she intentionally and without lawful authority rescues or attempts to rescue any person in lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).	C.J.S. Escape §§ 28 to 31, 33.
Rescue ☞1.	C.J.S. Indians § 157.
Westlaw Topic Nos. 209, 337.	

§ 373. Escape from lawful custody

A. Offense. A person commits an offense pursuant to this section if he or she escapes or attempts to escape from lawful custody or confinement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regard-

ing that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Escape ↻1.

C.J.S. Escape §§ 2 to 3, 5 to 10, 12, 27, 44.

Indians ↻32(13).

C.J.S. Indians § 157.

Westlaw Topic Nos. 151, 209.

§ 374. Tampering with a public record

A. Offense. A person commits tampering with a public record if he or she intentionally or knowingly and without proper authority:

1. Makes or completes a written instrument which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy thereof;

2. Presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed or altered or that a false entry has been made therein, with intent that it be taken as genuine;

3. Records, registers or files or offers for recordation, registration or filing in a governmental office or agency a written statement which has been falsely made, completed or altered or in which a false entry has been made or which contains a false statement or false information;

4. Destroys, mutilates, conceals, removes or otherwise impairs the availability of any public record;

5. Refuses to deliver a public record in his or her possession upon proper request of a Navajo Nation official entitled to receive such record for examination or other purposes.

B. Public record, for purposes of this section, means all official books, papers, written instruments or records created, issued, received or kept by any governmental office, department, division, branch or section or required by law to be kept by others for the information of any governmental office.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).

Records ⇄22.

Westlaw Topic Nos. 209, 326.

C.J.S. Indians § 157.

C.J.S. Records §§ 32, 57 to 59.

§ 375. Malicious criminal prosecution

A. Offense. A person commits an offense pursuant to this section if he or she maliciously causes or attempts to cause a criminal charge to be preferred or prosecuted against an innocent person, knowing such person to be innocent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Malicious Prosecution ☞78.

Westlaw Topic Nos. 209, 249.

C.J.S. Indians § 157.

C.J.S. Malicious Prosecution or Wrongful Litigation § 7.

§ 376. Unsworn falsification

A. Offense. A person commits unsworn falsification by knowingly:

1. Falsifying, concealing or covering up by any trick, scheme or device a material fact or making any false, fictitious or fraudulent statements or representations or making or using any false writing or document knowing the same to contain any false, fictitious or fraudulent statement in connection with any matter within the jurisdiction of any Navajo Nation department or agency.

2. Making any false statement or providing any false documents to any prosecutor, special prosecutor or their investigator or agents, or any law enforcement officer, when the person believes the statement or document to be false.

3. Making any statement which he or she believes to be false in regard to a material issue to any Navajo Nation employee in connection with an application for any benefit, privilege, contract, agreement, or license.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

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|-----------------------------------|---|
| Fraud ☞68.10. | C.J.S. Indians § 157. |
| Indians ☞32(13). | C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38. |
| Obstructing Justice ☞7. | |
| Westlaw Topic Nos. 184, 209, 282. | |

§ 377. Unauthorized Practice of Law

A. Offense. The unauthorized practice of law is committed when, without being an active member in good standing of the Navajo Nation Bar Association, a person:

1. Provides legal representation before the Courts of the Navajo Nation, any quasi-judicial, administrative, or legislative body to another person; or
2. Provides legal services within the Navajo Nation or to another person within the Navajo Nation, including but not limited to, the rendering of legal advice to another person, the drafting or completion of legal pleadings for another person, or the legal interpretation of documents for another person.

B. Exception. The acts set forth in subsection (A) shall not be considered the unauthorized practice of law when legal representation is provided to another person in accord with Navajo Nation Court rules allowing association of lawyers unlicensed in the Navajo Nation with a member of the Navajo Nation Bar Association.

C. Sentence

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

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| Attorney and Client ☞11. | Indians ☞32(13), 38(7). |
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Westlaw Topic Nos. 45, 209.
 C.J.S. Attorney and Client § 30.
 C.J.S. Indians §§ 157, 163.

Subchapter 9. Criminal Damage to Property

§ 380. Criminal damage

A. Offense. A person commits criminal damage if he or she intentionally or recklessly:

1. Defaces or damages tangible property of another person;
2. Tampers with tangible property of another person so as to substantially impair its function or value;
3. Tampers with the tangible property of a utility;
4. Defaces or damages tangible property of the Navajo Nation, of a political campaign or any public property.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇌32(13).
 Malicious Mischief ⇌1.
 Westlaw Topic Nos. 209, 248.

C.J.S. Indians § 157.
 C.J.S. Malicious or Criminal Mischief or
 Damage to Property §§ 2 to 5.

Annotations

1. Factors for restitution

“Before restitution can be awarded under the criminal code, and specifically subsection

380(C), the court must be satisfied with these minimal factors: 1) Is the restitution appropriate in the case; 2) Who is the injured party; 3)

What is the extent of the loss or injury; 4) What kind of restitution is appropriate; and 5) If money is to be paid, what amount would satisfy the actual damages requirement.” *Navajo Nation v. Blake*, 7 Nav. R. 233, 236 (Nav. Sup. Ct. 1996).

§ 381. Littering

A. Offense. A person commits an offense pursuant to this section if he or she throws, places, drops, or disposes of any litter, destructive or injurious material upon lands within the territorial jurisdiction of the Navajo Nation which is not a lawful waste disposal site or receptacle for the disposal of litter.

B. Sentence. Any person found guilty of littering may be sentenced to serve not less than four (4) hours nor more than twenty (20) hours picking up and clearing litter from the highways, roads, or public places of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞746.
Indians ☞32(13).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 157.

§ 382. [Repealed]

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 383. Desecration of religious or traditional artifacts

A. Any person, group of persons, organization, association or church, who desecrates or unlawfully destroys any religious artifact or traditional relic belonging to another person, group of persons, organization, association or church, or aids, abets or facilitates such desecration or unlawful destruction shall be deemed guilty of an offense, and upon conviction thereof, may be sentenced to imprisonment for a period not in excess of three hundred sixty-five (365) days for a natural person, or shall be fined an amount not to exceed five thousand dollars (\$5,000), or both.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

B. Each act of desecration or unlawful destruction shall constitute a separate offense.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞90, 97, 741.
Indians ☞32(13).

Westlaw Topic Nos. 149E, 209.
C.J.S. Indians § 157.

Subchapter 10. Controlled Substances

§ 390. Definitions

The following definitions apply in this subchapter:

A. “Coca leaves” includes cocaine and any compound, manufacture, salt, derivative, mixture or preparation of coca leaves, except derivatives of coca leaves which do not contain cocaine, ecgonine or substances from which cocaine or ecgonine may be synthesized or made.

B. “Marijuana” means those Cannabis plants that contain an amount equal to or more than one and four-tenths percent (1.4%) tetrahydrocannabinol.

C. “Opium” includes morphine, codeine and heroin, and any compound, manufacture, salt, derivative, mixture or preparation of opium, but does not include apomorphine or any of its salts.

History

CJY-54-00, July 20, 2000. Subsection (B) amended. CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Controlled Substances ☞9.
Indians ☞32(13).

Westlaw Topic Nos. 96H, 209.
C.J.S. Indians § 157.

§ 391. Possession of marijuana

A. Offense. The Navajo Nation has a zero tolerance policy relative to the possession of marijuana. A person commits an offense pursuant to this section if he or she possesses any amount of marijuana and such marijuana is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of violating this section and in possession of any amount of marijuana shall be sentenced to imprisonment for a term not

to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJY-53-00, July 20, 2000. Subsections (A) and (B) amended. CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Controlled Substances ☞25 to 30, 100(2).
Indians ☞32(13).

Westlaw Topic Nos. 96H, 209.
C.J.S. Indians § 157.

§ 392. Production or delivery of marijuana

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly produces, delivers, or possesses marijuana with intent to deliver such marijuana to another.

B. “Deliver” or “delivery” means the actual or constructive transfer of possession of marijuana to another with or without consideration, whether or not there is an agency relationship.

C. Sentence. Any person found guilty of producing, selling or delivering marijuana may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

Library References

Controlled Substances ☞22, 33 to 35, 100(2).
Indians ☞32(13).

Westlaw Topic Nos. 96H, 209.
C.J.S. Indians § 157.

§ 393. Delivery of marijuana to minors

A. Offense. A person commits an offense pursuant to this section if he or she is at least eighteen (18) years of age, and violates 17 N.N.C. § 391 by delivering marijuana to a person under eighteen (18) years of age.

B. “Deliver” or “delivery” means the actual or constructive transfer of possession of marijuana, with or without consideration, whether or not there is any agency relationship.

C. Sentence. Any person found guilty of delivering marijuana to minors may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days and to pay a fine not to exceed five thousand dollars (\$5,000).

Library References

Controlled Substances ☞34, 100(2).
Indians ☞32(13).

Westlaw Topic Nos. 96H, 209.
C.J.S. Indians § 157.

§ 394. Possession or sale of controlled substances

A. Offense. A person commits an offense pursuant to this section if he or she possesses, manufactures, transports, sells, uses, trades or delivers:

1. Opium or coca leaves, or any compound, manufacture, salt, derivative, mixture or preparation thereof, unless specifically excepted;

2. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers:

- a. Lysergic acid diethylamide;
- b. Mescaline;
- c. Psilocybin;
- d. Psilocyn;
- e. Hashish;
- f. Peyote.

3. Any material, compound, mixture or preparation which contains an amount equal to or more than one and four-tenths percent (1.4%) quantity of tetrahydrocannabinol (T.H.C.).

B. Defense. It is a defense to a prosecution under this section that the controlled substance or narcotic was obtained directly from or pursuant to a valid prescription or order issued by a practitioner acting in the course of his or her professional practice.

C. Peyote. It shall not be unlawful for any members of the Native American Church to transport, buy, sell, possess or use peyote in any form in connection with recognized religious practices, sacraments or services of the Native American Church.

D. Sentence.

1. Any person found guilty of possession or sale of controlled substances may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

E. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to a narcotic, may be ordered to receive rehabilitative treatment pursuant to 17 N.N.C. § 220.

History

CJY-54-00, July 20, 2000. Subsection (A) CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Controlled Substances ☞20 to 35, 49, 51. Westlaw Topic Nos. 96H, 209.
Indians ☞32(13). C.J.S. Indians § 157.

§ 395. Forfeiture and destruction of controlled substances

A. Upon the conviction of any person based upon violation of this subchapter, the court shall order the marijuana, controlled substance or narcotic forfeited to the Navajo Nation and destroyed or otherwise disposed of.

B. A record of the place where such controlled substance or narcotic was seized, the kinds and quantities of the substance or narcotic so destroyed, and the time, place and manner of destruction shall be kept, and a return under oath reporting such destruction shall be made to the court by the officer who destroys such controlled substance or narcotic.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Controlled Substances ☞165. Westlaw Topic No. 96H, 209.
Indians ☞32(13). C.J.S. Indians § 157.

Subchapter 11. Obscenity

§ 400. Definitions

The following definitions apply in this subchapter:

A. “Displays publicly” means the exposing, placing, posting, exhibiting or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot, or vehicle.

B. “Furnishes” means to sell, give, rent, loan or otherwise provide.

C. “Minor” means a person under eighteen (18) years of age.

D. “Sadomasochistic abuse” means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

E. “Sexual conduct” means human masturbation, sexual intercourse, or any direct or indirect touching of the genitals, pubic area or anus of the human male or female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).

Obscenity ⇄1.1 to 1.4, 7.

Westlaw Topic Nos. 209, 281.

C.J.S. Indians § 157.

C.J.S. Obscenity §§ 1 to 8, 12 to 15.

§ 401. Furnishing sexual materials to minors

A. Offense. A person commits furnishing sexual materials to minors if, knowing or having good reason to know the character of the material furnished, he or she intentionally or knowingly furnishes to a minor:

1. Any picture, photograph, drawing, sculpture, motion picture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sadomasochistic abuse or sexual conduct; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced, or any sound recording which contains matter of the nature described in Subsection (A)(1) of this section, or explicit verbal descriptions or narrative accounts of sexual conduct or sadomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this section shall be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).

Obscenity ⇨7.

Westlaw Topic Nos. 209, 281.

C.J.S. Indians § 157.

C.J.S. Obscenity §§ 12 to 15.

§ 402. Displaying sexual materials to minors

A. Offense. A person commits displaying sexual materials to minors if, being the owner, operator or manager of a business or acting in managerial capacity thereof, he or she intentionally, knowingly or recklessly permits a minor who is not accompanied by his or her parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

1. Any picture, photograph, drawing, sculpture, film, electronic or other visual representation or image of a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse; or

2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium, however reproduced, that reveals a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse.

B. Sentence.

1. Any person found guilty of violating this section shall be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Obscenity ☞7.

Westlaw Topic Nos. 209, 281.

C.J.S. Indians § 157.

C.J.S. Obscenity §§ 12 to 15.

§ 403. Defenses to prosecution

It shall be a defense to any prosecution under 17 N.N.C. §§ 401 and 402:

A. That the materials were being used for purely educational, scientific, charitable, or religious purposes by a religious association, library, museum, public school, private school or institution of learning or scientific research; or

B. That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Obscenity ☞8.

Westlaw Topic Nos. 209, 281.

C.J.S. Indians § 157.

§ 404. Destruction of obscene material upon conviction

Upon the conviction of any person for a violation of this subchapter, the materials which were the subject of the conviction may be destroyed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).	C.J.S. Indians § 157.
Obscenity ☞22.	C.J.S. Obscenity § 28.
Westlaw Topic Nos. 209, 281.	

Subchapter 12. Intoxicating Liquors

§ 410. Possession of liquor

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.

B. Sentence.

1. Any person found guilty of possession of liquor may for a first offense be ordered to pay a fine not to exceed fifty dollars (\$50.00).

2. Upon subsequent conviction of possession of liquor within a period of one hundred eighty days (180) days of any previous conviction based upon violation of this section, he or she may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

C. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment pursuant to section 220 of this Title.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Chemical Dependents ☞12.	C.J.S. Chemical Dependents § 12.
Indians ☞32(13).	C.J.S. Indians § 157.
Intoxicating Liquors ☞139, 242.	C.J.S. Intoxicating Liquors §§ 266, 358 to 362.
Westlaw Topic Nos. 76A, 209, 223.	

§ 411. Manufacture or delivery of liquor

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver, any beer, ale, wine, whiskey, or any other beverage which produces alcoholic intoxication.

B. “Deliver” or “delivery” means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without consideration, whether or not there is an agency relationship.

C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of ten percent (10%) or greater, or the possession of 24 or more

bottles or cans of beverages with an alcohol content of less than ten percent (10%) shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.

D. Sentence.

1. Any person found guilty of violating this section may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

E. Tort liability. Any person who directly gives, sells, or otherwise provides liquor or any alcoholic beverage to any other person shall be strictly liable for any personal injuries, property damage, means of support to any third person (or to the spouse, child or parent of that third person), or to a person who may bring an action for wrongful death where:

1. The person who obtained the liquor or alcoholic beverage consumed the same;

2. The consumption of the liquor or alcoholic beverage was a proximate cause of the injury, death or property damage.

For the purposes of this subsection, if it is found that the person who obtained the liquor or alcoholic beverage causes injuries or property damage as a result of the consumption of the liquor or alcoholic beverage within a reasonable period of time following his or her first obtaining the liquor or alcoholic beverage, it shall create a rebuttable presumption that the person consumed the liquor or alcoholic beverage provided to him or her by the person who gave, sold or otherwise provided the liquor or alcoholic beverage.

If a person having rights or liabilities under this subsection dies, the rights or liabilities provided by this subsection survive to or against that person's estate.

An action based upon a cause of action under this subsection shall be commenced within five (5) years after the date of injury or property damage.

Nothing in this subsection precludes any cause of action or additional recovery against the person causing the injury.

F. Civil forfeiture. Any personal or real property of any person found liable for an offense under this section, whether criminally or civilly, is subject to forfeiture to the Navajo Nation if the following conditions are met:

1. A person is found to have committed an offense under this section;
2. There is proof, by at least a preponderance of the evidence, that the property was used in connection with the manufacture, delivery, possession, or transfer of any liquor or alcoholic beverage;
3. The person liable for an offense under this section has received notice of the proposed forfeiture and provided an opportunity to be heard on that issue.

For the purposes of this subsection, notice of a proposed forfeiture shall be deemed adequate if the forfeiture is alleged in a complaint for an offense under this section and the property to be forfeited is described with particularity.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Intoxicating Liquors ☞137, 146, 224, 242, 246, 282 to 283291.

Westlaw Topic Nos. 209, 223.

C.J.S. Indians § 157.

C.J.S. Intoxicating Liquors §§ 242 to 243, 248, 264 to 265, 335 to 338, 358 to 362, 367 to 371, 428 to 431, 449.

§ 412. Exceptions

A. It shall not be unlawful for any person to sell, manufacture, deliver or transport intoxicating liquor if such liquor is intended for scientific, sacramental, medicinal or mechanical purposes.

B. For the purposes of this subchapter, “Navajo Indian Country” does not include rights-of-way when intoxicating liquor is being transported through Navajo Indian Country in unbroken packages or in containers with unbroken federal tax stamps.

C. It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor in that part of the Navajo Nation covered by the Antelope Point Resort and Marina Business Site Lease provided that the transportation, sale, delivery and consumption of alcoholic beverages is in conformity with applicable state regulatory liquor law, specifically excluding any state regulatory liquor laws which would require the Navajo Nation and/or its Lessee to be licensed by the State of Arizona, or to be in any way subject to the administrative, executive, judicial or legislative jurisdiction of the State or Arizona, and that all sales of alcoholic beverages be at prices no less than the prices charged for similar products in adjoining areas of the State of Arizona. The Economic Development Committee of the Navajo Nation Council is hereby authorized to approve such rules and regulations as

are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the area of the Antelope Point Business Site Lease.

History

CJY-62-01, July 20, 2001. Subsection (C) CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Intoxicating Liquors ☞176.
Westlaw Topic Nos. 209, 223.

C.J.S. Indians § 157.
C.J.S. Intoxicating Liquors § 288.

Subchapter 13. Gambling

§ 420. Definitions

The following definitions are applicable in this subchapter:

A. “Gambling” means taking or risking something of value upon the outcome of a contest of chance or a future contingent event, not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome. Gambling does not include playing of an electromechanical pinball machine. Gambling does not include any authorized bingo, raffles, or lotteries conducted by religious, charitable, or non-profit organizations for the purpose of raising funds.

B. “Unlawful gambling” means any gambling activity not specifically authorized by law. Unlawful gambling does not include lotteries when engaged and conducted under license by the Navajo Nation for purposes of fostering economic initiatives of the Navajo Nation government.

C. “Gambling device” means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any unlawful gambling activity, whether such activity consists of gambling between persons or gambling by persons involving the playing of a machine. “Gambling device” does not mean within this definition electromechanical pinball machines specially designed, constructed, set-up and kept to be played for amusement. Nonetheless, a pinball machine shall be a gambling device if a person gives or promises to give money, tokens, merchandise, premiums or property of any kind for scores, combinations or free games obtained in playing such pinball machine in which such person has an interest as owner, operator, keeper or otherwise.

D. These terms shall not include any traditional forms of Navajo gambling, including but not limited to shoe games, horse racing, foot racing, Navajo ten and five card games, rodeo calcutta, stick games, chicken pull and pow wows.

History

CJA-08-00, January 27, 2000. Generally CJY-51-95, July 19, 1995, Section generally amended the Navajo Nation Criminal Code. amended.

Library References

Gaming ☞62 to 81.	C.J.S. Commerce § 139.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 188, 209.	C.J.S. Trading Stamps and Coupons §§ 4 to 5.

§ 421. Promotion of unlawful gambling

A. Offense. A person commits promotion of unlawful gambling if he or she derives or intends to derive an economic benefit other than personal winnings from gambling and:

1. Induces or aids another to engage in gambling; or
2. Knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the ToHaajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, To Haajiilee Chapter, Nahata Dzil Chapter, Leupp Chapter and Hegback Chapter, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

C. Sentence. Any person found guilty of violating this section shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

History

CJY-40-04, July 23, 2004, Subsection (B) amended.	CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.
CJY-55-00, July 20, 2000, Subsection (B) amended.	

Library References

Gaming ☞58, 62.	C.J.S. Commerce § 139.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 188, 209.	

§ 422. Possession of an unlawful gambling device

A. Offense. A person commits possession of an unlawful gambling device if, with knowledge of the character thereof, he or she manufactures, sells, transports, places or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a slot machine or any other gambling device knowing it is to be used in promoting unlawful gambling.

B. Exceptions. It shall not be unlawful for any person to engage in the activities constituting this offense within the ToHaajiilee Chapter of the Navajo Nation and a Navajo Nation certified chapter that approves gaming within the chapter such as Shiprock Chapter, Manuelito Chapter, Hogback Chapter and, if done pursuant to a gaming compact entered into between the Navajo Nation and the applicable states.

17 N.N.C. § 422

LAW AND ORDER

C. Sentence. Any person found guilty of possession of a gambling device shall forfeit to the Navajo Nation any and all proceeds and devices obtained through the activities constituting this offense.

History

CJY-40-04, July 23, 2004, Subsection (B) amended. CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

CJY-55-00, July 20, 2000, Subsection (B) amended.

Library References

Gaming ⇨58, 74.
Indians ⇨32(13).

Westlaw Topic Nos. 188, 209.
C.J.S. Indians § 157.

§ 423. Forfeiture of gambling device

Any unlawful gambling device or slot machine which is manufactured, transferred, possessed or used in violation of section 422 of this Title shall be forfeited and destroyed when so ordered by a court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Gaming ⇨58, 59.
Westlaw Topic No. 188.

Subchapter 14. Prostitution

§ 430. Definitions

The following definitions are applicable in this subchapter:

A. "Sexual conduct" means sexual contact, sexual intercourse and oral sexual contact.

B. "Sexual contact" means any direct or indirect fondling or manipulating of any part of the genitals, anus, or female breast.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Prostitution ⇨1.
Westlaw Topic Nos. 209, 316.

C.J.S. Indians § 157.
C.J.S. Prostitution and Related Offenses §§ 2 to 4, 8 to 13, 17, 21 to 24.

§ 431. Prostitution

A. Offense. A person commits an offense pursuant to this section if he or she engages in or agrees or offers to engage in sexual conduct with another person under a fee arrangement.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Prostitution ☞1.
Westlaw Topic Nos. 209, 316.

C.J.S. Indians § 157.
C.J.S. Prostitution and Related Offenses §§ 2 to 4, 8 to 13, 17, 21 to 24.

§ 432. Promotion of prostitution

A. Offense. A person commits promotion or prostitution if he or she knowingly finances, compels, manages, supervises or controls either alone or in association with others, prostitution activity.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⚡32(13).
Prostitution ⚡1.
Westlaw Topic Nos. 209, 316.

C.J.S. Indians § 157.
C.J.S. Prostitution and Related Offenses §§ 2 to 4, 8 to 13, 17, 21 to 24.

Subchapter 15. Sexual Offenses

§ 440. Definitions

A. “Sexual contact” means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.

B. “Spouse” means a person who is recognized as the husband or wife of another person pursuant to Title 9 of this Code.

C. “Without consent” means:

1. The victim is reasonably coerced by the immediate use or threatened use of force against a person or property; or

2. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or

3. The victim is intentionally deceived as to the nature of the act; or

4. The victim is intentionally deceived to erroneously believe that the person is the victim’s spouse.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assault and Battery ⚡59.
Indians ⚡32(13).
Westlaw Topic Nos. 37, 209.

C.J.S. Assault and Battery § 74.
C.J.S. Indians § 157.

§ 441. Adultery

A. Offense. A person commits adultery if he or she intentionally or knowingly:

1. If married, engages in sexual intercourse with one other than his or her spouse; or
2. If unmarried, engages in sexual intercourse with a married person.

B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife not committing the offense.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Adultery ⇌ 1 to 4.
 Indians ⇌ 32(13).
 Westlaw Topic Nos. 19, 209.

C.J.S. Adultery §§ 2 to 11.
 C.J.S. Indians § 157.

§ 442. Public sexual indecency

A. Offense. A person commits an offense pursuant to this section if he or she:

1. Exposes his or her genitals to public view under circumstances which he or she should know is likely to offend or alarm others;
2. In a public place, engages in an act of sexual contact; or
3. In a public place, engages in an act of sexual intercourse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Obscenity ☞3, 6.

Westlaw Topic Nos. 209, 281.

C.J.S. Indians § 157.

C.J.S. Obscenity §§ 1 to 10, 12, 16.

§ 443. Sexual assault

A. Offense. A person commits sexual assault if he or she intentionally or knowingly engages in sexual intercourse or sexual contact with any person without consent of that person.

B. Sentence. Any person found guilty of sexual assault may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

C. Defense. It is a defense to a prosecution under this section that the victim's lack of consent is based on incapacity to consent because he or she was sixteen (16) or seventeen (17) years of age.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Rape ☞1, 64.

Westlaw Topic Nos. 209, 321.

C.J.S. Indians § 157.

C.J.S. Rape §§ 1 to 3, 15, 107 to 109.

§ 443A. Aggravated sexual assault

A. Offense. A person commits aggravated sexual assault if he or she intentionally or knowingly in the course of committing sexual assault or attempted sexual assault:

1. Causes bodily injury to the victim;

2. Uses or threatens the victim by use of a deadly weapon;
3. Compels, or attempts to compel, the victim to submit to sexual assault by threat of kidnapping, death, or serious bodily injury to be inflicted imminently upon any person.

B. Sentence. A person found guilty of aggravated sexual assault may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Rape ☞6, 11, 64.
Westlaw Topic Nos. 209, 321.

C.J.S. Indians § 157.
C.J.S. Rape §§ 19, 107 to 109.

§ 444. Seduction

A. Offense. A person commits seduction if he or she has sexual intercourse or sexual contact with another person, not his or her spouse, if the other person is less than sixteen (16) years old.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Seduction ☞29.

Westlaw Topic Nos. 209, 350.
C.J.S. Indians § 157.

Subchapter 16. Offenses Against the Family

§ 450. Definition

The following definition is applicable to this subchapter:

“Sexual conduct” means sexual contact as that term is defined in section 440(A) of this Title, or sexual intercourse.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 451. Bigamy

A. Offense. A person commits bigamy if he or she intentionally or knowingly marries or purports to marry another person at a time when either is lawfully married.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bigamy ⇨1.
Indians ⇨32(13).
Westlaw Topic Nos. 55, 209.

C.J.S. Bigamy §§ 2 to 6, 8.
C.J.S. Indians § 157.

§ 452. Incest

A. Offense. A person commits incest if he or she knowingly engages in sexual conduct with another who is related to such person by whole or half-blood, as an ancestor or descendant, a brother or sister, or an uncle, niece, aunt, nephew or first cousin.

B. Sentence.

1. Any person found guilty of incest may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Incest ☞ 1 to 7, 16.

Indians ☞ 32(13).

Westlaw Topic Nos. 207, 209.

C.J.S. Incest §§ 2 to 6, 10.

C.J.S. Indians § 157.

§ 453. Sexual conduct with a foster child or stepchild

A. Offense. A person commits sexual conduct with a foster child or stepchild if he or she intentionally or knowingly engages in unprivileged sexual conduct with his or her foster child or step-child who is under eighteen (18) years of age.

B. Sentence.

1. Any person found guilty of violating this section shall be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Infants ☞10, 13.

Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 157.

C.J.S. Infants §§ 5, 92 to 93, 95 to 98, 116.

§ 454. Abandonment of a child

A. Offense. A person commits abandonment of a child if, as a parent, guardian or other person having custody of a child, he or she intentionally or knowingly abandons a child under eighteen (18) years of age.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Child Support ☞650 to 654.
Indians ☞32(13).
Westlaw Topic Nos. 76E, 209.

C.J.S. Indians § 157.
C.J.S. Parent and Child §§ 174, 208, 237, 359 to 366, 377.

§ 455. Nonsupport

A. Offense. A person commits an offense pursuant to this section if he or she intentionally and persistently fails to provide food, shelter, clothing, medical attention, financial support or other necessary care which he or she can provide and is legally obliged to provide to a spouse, child or other dependent.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Payment of actual damages. In addition to or in lieu of the sentence described above, the court at its discretion may require the defendant to pay actual damages, plus reasonable interest and costs of collection, for the benefit of the spouse, child or other dependent.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Cross References

Navajo Nation Child Support Enforcement Act, see 9 N.N.C. § 1701 et seq.

Library References

Child Support ☞650 to 654.
Indians ☞32(13).
Westlaw Topic Nos. 76E, 209.

C.J.S. Indians § 157.
C.J.S. Parent and Child §§ 174, 208, 237, 359 to 366, 377.

§ 456. Endangering the welfare of a minor

A. Offense. A parent, guardian or any other person commits endangering the welfare of a minor if he or she intentionally or knowingly contributes, encourages or causes a person under eighteen (18) years of age:

1. To be subjected to the infliction of physical or mental injury including failing to maintain reasonable care and treatment thereof; or
2. To be habitually truant from school or a runaway from a parent or guardian or otherwise incorrigible; or
3. To live in a home, which by reason of neglect, cruelty or depravity is an unfit place.

B. Construction to be given this section. This section shall be liberally construed in favor of the Navajo Nation for the protection of the minor from neglect or omission of parental duty toward the child, and also to protect children of the Navajo Nation from the effects of the improper conduct, acts or bad example of any person which may be calculated to cause, encourage or contribute to the adverse welfare of minors, although such person is in no way related to the minor.

C. Any person having cause to believe that a minor has received physical injury as a result of unusual or unreasonable physical abuse or neglect should report or cause reports to be made in accordance with the provisions of this section.

D. An oral report should be made as soon as possible by telephone or otherwise and may be followed by a report in writing to the local Navajo Nation Police unit. Such report should contain the name and address of the minor, if known by the person making the report, and any other information the person making the report believes might be helpful in establishing the cause of the injuries and the identity of the perpetrator.

E. Any person or institution making report in good faith pursuant to this section shall have immunity from any liability, civil or criminal, that might be otherwise incurred or imposed. Any person or institution making a report in good faith pursuant to this section shall have the same immunity with respect to participation in any proceeding resulting from such report.

F. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
 Infants ☞13.
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 157.
 C.J.S. Infants §§ 5, 92 to 93, 95 to 98.

Subchapter 17. Animals; Livestock

§ 460. Cruelty to animals

A. Offense. A person commits cruelty to animals if he or she intentionally or knowingly tortures or cruelly mistreats any animal.

B. Sentence.

1. Any person found guilty of cruelty to animals may be sentenced to imprisonment for a term not to exceed thirty (30) days, or be ordered to pay a fine not to exceed one hundred dollars (\$100.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Animals ☞40.	C.J.S. Animals §§ 99 to 107.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 28, 209.	

§ 461. Misbranding

A. Offense. A person commits misbranding if he or she brands or marks an animal with a brand other than the recorded brand of the owner, or alters or obliterates any brand or mark on any animal not his or her own, with intent to convert the animal to his or her or some third person's use without the consent of the owner.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Animals ☞11 to 13.	C.J.S. Animals §§ 23 to 30.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 28, 209.	

§ 462. Refusing to brand livestock

A. Offense. A person commits an offense pursuant to this section if he or she willfully refuses to brand or mark his or her livestock, where such branding or marking is required in the interest of ownership identification.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Animals ☞5.

C.J.S. Animals § 15.

Indians ☞32(13).

C.J.S. Indians § 157.

Westlaw Topic Nos. 28, 209.

§ 463. Grazing violation

A. Offense. A person commits an offense pursuant to this section if he or she:

1. Allows his or her stock to graze on Navajo Nation land without a grazing permit;

2. Introduces or causes to be introduced, any livestock onto unallotted lands of the Reservation without a permit;

3. Willfully grazes livestock in excess of the permitted number on a Navajo Nation range, or refuses to graze his or her livestock in accordance with range-management plans which have implemented deferred grazing, or have reserved specific areas for seasonal use.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. The court, in addition to or in lieu of the sentence imposed pursuant to subsection (B) of this section, may require the offender to pay damages equal to the value of the forage consumed, and salaries and expenses of Navajo Nation employees for the time incurred in making investigation and reports. In lieu of cash, a fine, if levied, may be collected in livestock.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Animals ☞57, 102.

Indians ☞32(13).

Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 169, 271 to 272, 320 to 321, 324 to 332.

C.J.S. Indians § 157.

§ 464. False reports of ownership

A. Offense. A person commits an offense pursuant to this section if he or she willfully makes a false report as to the total number of stock owned, or refuses to make a true report of stock ownership.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Westlaw Topic No. 209.

C.J.S. Indians § 157.

§ 465. Interference with authorized roundups

A. Offense. A person commits an offense pursuant to this section if he or she interferes with or obstructs an authorized roundup which has for its purpose the removal of unowned horses or other livestock, or is for the purpose of determining ownership or is designed to protect Navajo Nation land from destruction or injury.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 466. Refusal to dispose of cull or infectious animals

A. Offense. A person commits an offense pursuant to this section if he or she willfully refuses to dispose of animals found to be cull or infectious by authorized agents of the Navajo Nation or of the United States Government.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Forfeiture. Any animal found to be cull or infectious may be forfeited to the Navajo Nation and destroyed upon order of a court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Animals ⇄34.
Indians ⇄32(13).
Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 91 to 96.
C.J.S. Indians § 157.

Subchapter 18. Interference with Judicial Proceedings

§ 470. Definitions

The following definitions are applicable in this subchapter:

A. “Benefit” means any present or future gain or advantage to a beneficiary or to a third person pursuant to the desire or consent of the beneficiary .

B. “Juror” means any person who is a member of any impaneled jury and includes any person who has been drawn or summoned to attend as a prospective juror.

C. “Official proceeding” means a proceeding heard before any standing committee of the Navajo Nation Council, judicial proceeding or before an official authorized to hear evidence under oath.

D. “Testimony” includes oral or written statements, documents or any other material that may be offered by a witness in an official proceeding.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 471. Influencing a witness

A. Offense. A person commits influencing a witness if he or she threatens a witness, or offers, confers or agrees to confer any benefit upon a witness in any official proceeding, or a person he or she believes may be called as a witness, with intent to:

1. Influence the testimony of that person; or
2. Induce that person to avoid legal process summoning him or her to testify; or
3. Induce that person to absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bribery ☞1.

Indians ☞32(13).

Obstructing Justice ☞4, 6.

Westlaw Topic Nos. 63, 209, 282.

C.J.S. Bribery §§ 2 to 3, 5 to 8, 10 to 11.

C.J.S. Indians § 157.

C.J.S. Obstructing Justice or Governmental Administration §§ 3 to 8, 30, 33 to 37.

§ 472. Receiving a bribe by a witness

A. Offense. A witness in an official proceeding, or a person who believes he or she may be called as a witness, commits receiving a bribe by a witness if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that:

1. His or her testimony will thereby be influenced; or
2. He or she will attempt to avoid legal process summoning him or her to testify; or

3. He or she will absent himself or herself from any official proceeding to which he or she has been legally summoned.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bribery ☞1.

Indians ☞32(13).

Westlaw Topic Nos. 63, 209.

C.J.S. Bribery §§ 2 to 3, 5 to 8, 10 to 11.

C.J.S. Indians § 157.

§ 473. Influencing a juror

A. Offense. A person commits an offense pursuant to this section if he or she threatens a juror or offers, confers or agrees to confer a benefit upon a juror with the intent to influence the juror's vote, opinion, decision or other action as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bribery ☞1.	C.J.S. Bribery §§ 2 to 3, 5 to 8, 10 to 11.
Indians ☞32(13).	C.J.S. Indians § 157.
Obstructing Justice ☞6.	C.J.S. Obstructing Justice or Governmental Administration §§ 3 to 8, 37.
Westlaw Topic Nos. 63, 209, 282.	

§ 474. Receiving a bribe by a juror

A. Offense. A juror commits an offense pursuant to this section if he or she intentionally or knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his or her vote, opinion, decision or other action as a juror may thereby be influenced.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bribery ☞1.	C.J.S. Bribery §§ 2 to 3, 5 to 8, 10 to 11.
Indians ☞32(13).	C.J.S. Indians § 157.
Westlaw Topic Nos. 63, 209.	

§ 475. Jury tampering

A. Offense. A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision or other action in a case, he or she, directly or indirectly, communicates with a juror other than as part of the normal proceedings of the case.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Obstructing Justice ☞6.

Westlaw Topic Nos. 209, 282.

C.J.S. Indians § 157.

C.J.S. Obstructing Justice or Governmental Administration §§ 3 to 8, 37.

§ 476. Tampering with physical evidence

A. Offense. A person commits tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or which such person knows is about to be instituted, he or she:

1. Destroys, mutilates, alters, conceals or removes physical evidence with the intent to impair its verity or availability; or

2. Knowingly makes, produces or offers any false physical evidence; or

3. Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).

Obstructing Justice ☞5, 6.

Westlaw Topic Nos. 209, 282.

C.J.S. Indians § 157.

C.J.S. Obstructing Justice or Governmental Administration §§ 3 to 8, 30 to 38.

§ 477. Interfering with judicial proceedings

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority after being advised by the court to cease; or

2. Disobeys or resists the lawful order, process or other mandate of a court; or

3. Refuses to be sworn as a witness in any court proceeding; or

4. Refuses to serve as a juror; or

5. Fails inexcusably to attend a trial at which he or she has been chosen to serve as a juror.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Obstructing Justice ☞6.
Westlaw Topic Nos. 209, 282.

C.J.S. Indians § 157.
C.J.S. Obstructing Justice or Governmental Administration §§ 3 to 8, 37.

Annotations

1. Sentences

“Under DAPA the district court only has jurisdiction to enforce a protection order through prosecution for interfering with judicial proceedings under 17 N.N.C. § 477. See 9 N.N.C. §§ 1651(A)(1); 1663(A). As the respondent is charged under 17 N.N.C. § 477, the district court must follow the Criminal Code’s sentencing provisions for that offense, even in DAPA situations. Nothing in DAPA allows the district court the additional authority to reach beyond the sentencing restrictions in Section 477 merely because the offense arose out of the violation of a protection order.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 7 (Nav. Sup. Ct. May 24, 2004).

“The plain language of the revised section concerning the offense of interfering with judicial proceedings only allows the district court to order *nályééh*, a peace or security bond, and/or sentence of labor or community service. 17 N.N.C. § 477(B) (as amended by Resolution No.

CJA-08-00).” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5 (Nav. Sup. Ct. May 24, 2004).

“The issue in this case is whether incarceration for the offense of interfering with judicial proceedings is legal. We agree with petitioner that a jail sentence under 17 N.N.C. § 477 is illegal.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 4 (Nav. Sup. Ct. May 24, 2004).

2. Review

“The district court’s jail sentence was clearly outside of its discretionary boundaries, and amounts to legislating from the bench. That is impermissible. The district court therefore lacked the authority to incarcerate Petitioner under either docket number for interfering with judicial proceedings.” *Thompson v. Greyeyes*, No. SC-CV-29-04, slip op. at 5, 6 (Nav. Sup. Ct. May 24, 2004).

§ 478. Simulating legal process

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly sends or delivers to another any document purporting to be an order or other document that simulates civil or criminal process, including process which is otherwise proper but which is not authorized by the laws of the Navajo Nation.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or *nályééh* shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine *nályééh* and make a sentencing recommendation regard-

ing that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Extortion and Threats ☞25.1.
Indians ☞32(13).
Westlaw Topic Nos. 165, 209.

C.J.S. Indians § 157.
C.J.S. Threats and Unlawful Communications
§§ 2 to 20.

§ 479. Perjury

A. Perjury.

1. Offense. Perjury consists of making a false statement under oath or affirmation, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding, knowing such statement to be untrue.

2. Offense. Whoever procures another to commit any perjury is guilty of subornation of perjury.

B. Sentence. Any person found guilty of violating this section may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Perjury ☞1, 41.
Westlaw Topic Nos. 209, 297.

C.J.S. Indians § 157.
C.J.S. Perjury §§ 2 to 3, 5 to 8, 21, 52, 61.

Subchapter 19. Offenses Against the Public Order

§ 480. Definitions

The following definitions are applicable in this subchapter:

A. “Public” means affecting or likely to affect a substantial group of persons.

B. “Public place” means a place to which the public or a substantial group of persons has access and includes but is not limited to highways, schools, parks, places of business, playgrounds and hallways, lobbies and other portion of motels or hotels not constituting rooms or apartments designed for actual residence. A public place shall include the immediate area, both inside and outside a structure, wherein traditional Navajo religious practices, ceremonies, or services are being held; provided, however, that this section shall not be construed to authorize the attendance at or participation in such practice, ceremony, or service by any person not otherwise authorized to do so.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 481. Unlawful assembly

A. Offense. A person commits unlawful assembly if being present at any assembly of five or more other persons that either has or develops the purpose to engage in conduct constituting a riot as defined in 17 N.N.C. § 482, he or she knowingly remains there and refuses to obey an official order to disperse.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
 Unlawful Assembly ☞1.
 Westlaw Topic Nos. 209, 396.

C.J.S. Indians § 157.
 C.J.S. Unlawful Assembly §§ 2 to 5, 9 to 13.

§ 482. Riot

A. Offense. A person commits riot if, with five or more other persons acting together, he or she intentionally, knowingly or recklessly uses force or violence or threatens to use force or violence, if accompanied by immediate power of execution, which disturbs the public peace.

B. Sentence.

1. Any person found guilty of rioting may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
 Riot ☞1, 8.
 Westlaw Topic Nos. 209, 341.

C.J.S. Indians § 157.
 C.J.S. Riot.
 C.J.S. Insurrection §§ 2 to 10, 24.

§ 483. Disorderly conduct

A. Offense. A person commits disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or with knowledge of doing so, or recklessly creating a risk thereof, he or she:

1. Engages in fighting, or provokes a fight in a Public or Private place;
 or

2. In a public place uses abusive or offensive language or gestures to any person present in a manner likely to provoke immediate physical retaliation by such person; or

3. Makes any protracted commotion, utterance or display with the intent of preventing the transaction of the business of a lawful meeting, gathering or procession; or

4. Makes unreasonable noise in a public place.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Disorderly Conduct ☞1.

Indians ☞32(13).

Westlaw Topic Nos. 129, 209.

C.J.S. Disorderly Conduct §§ 2 to 5.

C.J.S. Indians § 157.

§ 484. Obstructing a highway or other public thoroughfare

A. Offense. A person commits obstructing a highway or other public thoroughfare when, having no legal privilege to do so, he or she, alone or with other persons, intentionally, knowingly or recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regard-

ing that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Highways ☞163.
Indians ☞32(13).

Westlaw Topic Nos. 200, 209.
C.J.S. Indians § 157.

§ 485. False reporting

A. Offense. A person commits false reporting if he or she initiates or circulates a report of a bombing, fire, offense or other emergency knowing that the report is false or baseless and intending or knowing:

1. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or
2. That it will place a person in fear of imminent serious bodily injury; or
3. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Obstructing Justice ⇨7.
Westlaw Topic Nos. 209, 282.
C.J.S. Indians § 157.

C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.

§ 486. Criminal nuisance

A. Offense. A person commits criminal nuisance if:

1. By conduct either unlawful in itself or unreasonable under all the circumstances, he or she knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or
2. He or she knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(13).
Nuisance ⇨59.
Westlaw Topic Nos. 209, 279.

C.J.S. Indians § 157.
C.J.S. Nuisances §§ 4, 20.

§ 487. Abuse of a human corpse

A. Offense. A person commits an offense pursuant to this section if without legal privilege he or she intentionally or knowingly physically abuses either by damaging or dismembering or by committing sexual penetration or intercourse

upon, disinters, removes or carries away, or performs an autopsy not authorized pursuant to 17 N.N.C. § 1853 upon, a human corpse.

B. Sentence. Any person found guilty of abusing a human corpse may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Dead Bodies ☞7, 8.

Indians ☞32(13).

Westlaw Topic Nos. 116, 209.

C.J.S. Dead Bodies §§ 27 to 29.

C.J.S. Indians § 157.

§ 488. Public intoxication

A. Offense. A person commits an offense pursuant to this section if he or she appears in a public place under the influence of alcohol, marijuana, or controlled substances which use of or possession of is prohibited under 17 N.N.C. § 394, not therapeutically administered, to the degree that he or she is unable to care for his or her own safety.

B. Safety detention. Any person arrested for public intoxication may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than twenty-four (24) hours after arrest.

C. Sentence.

1. Any person found guilty of public intoxication may be ordered to attend rehabilitative therapy or perform a term of community service not to exceed five (5) days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Chemical Dependents ☞4.1.
Indians ☞32(13).

Westlaw Topic Nos. 76A, 209.
C.J.S. Indians § 157.

§ 489. Inhalation of toxic vapors

A. Offense. A person commits an offense pursuant to this section if he or she inhales the vapors or fumes of paint, gas, glue, or any other toxic product for the purpose of becoming intoxicated.

B. Safety detention. A person arrested for inhalation of toxic vapors may be held in a detention facility of the Navajo Nation Department of Public Safety for not more than twenty-four (24) hours after arrest.

C. Sentence.

1. Any person found guilty of inhalation of toxic vapors may be ordered to attend rehabilitative therapy, or perform a term of community service not to exceed five (5) days, or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Chemical Dependents ☞23.1.
Controlled Substances ☞38.
Indians ☞32(13).

Westlaw Topic Nos. 76A, 96H, 209.
C.J.S. Indians § 157.

Subchapter 20. Robbery

§ 490. Definitions

The following definitions apply in this subchapter:

- A. “Force” is any physical aggression directed against a person as a means of gaining control of property.
- B. “Threat” means a verbal or physical menace of imminent physical harm to a person.
- C. “Dangerous instrument” is defined in 17 N.N.C. § 209 (E).
- D. “Deadly weapon” is defined in 17 N.N.C. § 209 (F).
- E. “Property” is defined in 17 N.N.C. § 209 (T).
- F. “In the course of committing” means all the defendant’s acts beginning with the initiation and extending through the flight from a robbery.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 491. Robbery

A. Offense. A person commits robbery if in the course of committing theft, he or she threatens or uses immediate force against any person with intent either to coerce surrender of property or to forestall resistance to his or her taking or retaining of property.

B. Sentence.

1. Any person found guilty of robbery may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

17 N.N.C. § 491

LAW AND ORDER

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Robbery ☞1, 30.
Westlaw Topic Nos. 209, 342.

C.J.S. Indians § 157.
C.J.S. Robbery §§ 2, 4, 12, 73 to 77, 89 to 91.

§ 492. Armed robbery

A. Offense. A person commits armed robbery if in the course of committing robbery as defined in 17 N.N.C. § 491, he or she or an accomplice:

1. Is armed with a deadly weapon; or
2. Uses or threatens to use a deadly weapon or dangerous instrument.

B. Sentence. Any person found guilty of armed robbery may be sentenced to imprisonment for a term not to exceed three hundred sixty-five (365) days and to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Robbery ☞11, 30.
Westlaw Topic Nos. 209, 342.

C.J.S. Indians § 157.
C.J.S. Robbery §§ 24 to 28, 73 to 77, 79, 82, 89 to 90.

Subchapter 21. Fish and Wildlife Violations

§ 500. Definitions

The following definitions are applicable to this subchapter:

A. "Taking" means the hunting, capturing, killing in any manner or the attempt to hunt, capture or kill in any manner, any game animal and quadruped, game bird and fowl, or game fish herein defined.

B. "Game fish". The following are game fish:

1. All of the family Salmonidae (trout);
2. All of the family Esocidae (pike);
3. All of the family Ictaluridae (catfish);
4. All introduced species of the family Serranidae (sea bass and white bass);
5. All of the family Centrarchidae (sunfish, crappie and bass);

6. All of the family Percidae (walleye, pike and perch);
7. All introduced species of the family Pomadasyidae (sargo); and
8. All introduced species of the family Sciaenidae (corvina, barirdiella and redfish).

C. "Game bird". The following are game birds:

1. All of the family Anatidae (waterfowl);
2. All of the family Tetraonidae (grouse and ptarmigans);
3. All of the family Phasianidae (quail, partridges and pheasants);
4. All of the family Meleagridae (wild turkeys) except for the domestic strains of turkeys;
5. All of the family Scolopacidae (shorebirds, snipe, sandpipers and curlews); and
6. All of the family Columbidae (wild pigeons and doves), except for the domestic strains of pigeons.

D. "Game animals". The following mammals are game animals:

1. All of the family Tayassuidae (javelina);
2. All of the family Antilocapridae (American pronghorn);
3. All of the family Cervidae (elk and deer);
4. All of the family Ursidae (bear);
5. All of the species concolor (cougar) of the genus *Felis* and family Felidae; and
6. All of the genus *Ovis* (bighorn sheep) except for the domestic species of sheep.

E. "Songbirds". The following species and varieties of birds are songbirds: Any songbird, or birds whose principal food consists of insects, comprising all the species and varieties of birds, represented by the several families of bluebirds, including the western and mountain bluebirds; also bobolinks, catbirds, chickadees, cuckoos, which includes the chaparral bird or roadrunner (*geococcyx novo mexicanus*), flickers, flycatchers, grosbeaks, hummingbirds, kinglets, martins, meadowlarks, nighthawks, or bull bats, nuthatches, orioles, robins, shrikes, swallows, swifts, tanagers, titmice, thrushes, vireos, warblers, waxwings, whippoorwills, woodpeckers, wrens, and all other perching birds which feed entirely or chiefly on insects.

F. "Fur-bearing animals". The following mammals are fur-bearing animals:

1. All of the genus *Lynx rufus* (bobcats and lynx);
2. All of the genus *Castor* (beavers);
3. All of the family Procyonidae (raccoons);
4. All of the genus *Vulpes* (red fox, gray fox, swift fox);
5. All of the species *Ondatra zibethica* (muskrat);
6. All of the genus *Mustela* (weasels);
7. All of the genus *Mephitis* (skunks);
8. All of the species *Taxidea taxus* (badgers)
9. All of the family Didelphidae (opossums).

G. “Small game animals”. The following mammals are small game animals:

1. All of the genus *Sciurus* (squirrels)
2. All of the genus *Eutamias* (chipmunks);
3. All of the genus *Lepus* and *Sylvilagus* (rabbits).

H. “Endangered species” means any species of fish or wildlife whose prospects of survival or recruitment within the Navajo Nation are in jeopardy or are likely within the foreseeable future to become so, due to any of the following factors:

1. The present or threatened destruction, modification or curtailment of its habitat;
2. Overutilization for scientific, commercial or sporting purposes;
3. The effect of disease or predation;
4. Other natural or man-made factors affecting its prospects of survival or recruitment within the Navajo Nation; or
5. Any combination of the foregoing factors. The term may also include any species or subspecies of fish or wildlife appearing on the United States list of endangered native and foreign fish and wildlife as set forth in section 4 of the Endangered Species Act of 1973¹ as endangered or threatened species provided that the Resources Committee of the Navajo Nation Council adopts such lists in whole or in part.

¹ 16 U.S.C. § 1534.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ⇨527 to 529.
Fish ⇨2.
Game ⇨2.

Indians ⇨32.8, 32.10(8).
Westlaw Topic Nos. 149E, 176, 187, 209.
C.J.S. Indians §§ 122, 167.

§ 501. Unlawful taking of fish or game

A. Offense. A person commits unlawful taking of fish or game if he or she takes any game fish, game bird or game animal, and:

1. Such taking occurs in a location not permitted by law or regulations;
or
2. The person taking such game fish, game bird or game animal is without a permit or with an improper permit; or
3. Such taking occurs during a time of day not permitted by law or regulation; or
4. Such taking occurs in a manner not permitted by law or regulations;
or
5. Such taking is in excess of the permitted number; or
6. Such taking occurs out of season.

B. Sentence. Any person found guilty of unlawful taking of fish or game may be sentenced as follows:

1. For the unlawful taking of game fish, a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).
2. For the unlawful taking of game birds, a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).
3. For the unlawful taking of game animals, a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

Library References

Environmental Law ☞749.
Fish ☞13.
Game ☞7.

Indians ☞32.8, 32.10(8).
Westlaw Topic Nos. 149E, 176, 187, 209.
C.J.S. Indians §§ 122, 167.

§ 502. Unlawful possession of fish or game

A. Offense. A person commits an offense pursuant to this section if without lawful authority he or she possesses, trades or barter, offers for sale, sells, offers to purchase or purchases within the territorial jurisdiction of the Navajo Nation and the Navajo Nation Courts, all or any part of any game animal, game bird or game fish taken within said jurisdiction.

B. Sentence. Any person found guilty of unlawful possession of fish or game may be sentenced as follows:

1. For the unlawful possession of game fish a person may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).
2. For the unlawful possession of game birds a person may be ordered to pay a fine not to exceed two thousand dollars (\$2,000).
3. For the unlawful possession of game animals a person may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fish ☞13.
Game ☞7.
Indians ☞32.8, 32.10(8).

Westlaw Topic Nos. 176, 187, 209.
C.J.S. Indians §§ 122, 167.

§ 503. Unlawful taking of songbirds

A. Offense. A person commits an offense pursuant to this section if without lawful authority he or she takes any songbird, or bird whose principal food consists of insects.

B. Sentence. Any person found guilty of unlawful taking of songbirds be sentenced to imprisonment for a term not to exceed thirty (30) days, or may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for

the taking and possession of songbirds. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞749.
Indians ☞32.8.
Westlaw Topic Nos. 149E, 209.

§ 504. Unlawful taking or possession of fur-bearing animals

A. Offense. A person commits an offense pursuant to this section if without lawful authority he or she takes any fur-bearing animals.

B. Sentence. Any person found guilty of unlawful taking or possession of fur-bearing animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any fur-bearing animal protected by this section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞531, 749. Indians ☞32.8.
Game ☞7. Westlaw Topic Nos. 149E, 187, 209.

§ 505. Unlawful taking or possession of Bald or Golden Eagles

A. Offense. A person commits an offense pursuant to this section if without lawful authority he or she takes or possesses any Bald or Golden Eagles.

B. Sentence. Any person found guilty of unlawful taking or possession of Bald or Golden Eagles may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ⇨749, 762.
 Indians ⇨32.8.
 Westlaw Topic Nos. 149E, 209.

§ 506. Unlawful taking and possession of hawks, vultures and owls

A. A person commits an offense pursuant to this section if without lawful authority he or she takes or possesses any bird of the order falconiformes, comprising all of the species and varieties of birds represented by the several families of vultures and hawks, and all of the order strigiformes, comprising all of the species and varieties of owls.

B. Sentence. Any person found guilty of unlawful taking or possession of hawks, vultures, or owls may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation shall assist any person in securing permits from the Secretary of the Interior for the taking and possession of any bird protected by this section. Applications shall be processed without charge to any person for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ⇨531, 749, 762.
 Indians ⇨32.8.
 Westlaw Topic Nos. 149E, 209.

§ 507. Endangered species

A. On the basis of investigations concerning wildlife, and other available scientific and commercial data, and after consultation with wildlife agencies in surrounding states, appropriate federal agencies, and other interested persons and organizations, not later than one (1) year after the effective date of this criminal code, the Resources Committee of the Navajo Nation Council shall by regulation develop a list of those species and subspecies of wildlife indigenous to the Navajo Nation which are determined to be endangered within the Navajo Nation giving their common and scientific names by species and subspecies.

B. The Director of the Fish and Wildlife Department shall conduct a review of the Navajo Nation list of endangered species biennially, commencing within two (2) years of the effective date of this criminal code, and may present to the Resources Committee of the Navajo Nation Council recommendations for appropriate additions to or deletions from the list.

C. Except as otherwise provided in this criminal code, it is unlawful for any person to take, possess, transport, export, process, sell or offer for sale or ship any species or subspecies of wildlife appearing on any of the following lists:

17 N.N.C. § 507

LAW AND ORDER

1. The list of wildlife indigenous to the Navajo Nation determined to be endangered within the Navajo Nation as set forth by regulations of the Resources Committee of the Navajo Nation Council.

2. The United States lists of endangered native and foreign fish and wildlife, as set forth in section 4 of the Endangered Species Act of 1973¹ as endangered or threatened species, but only to the extent that such lists are adopted for this purpose by regulations of the Resources Committee of the Navajo Nation Council.

D. Any species or subspecies of wildlife appearing on any of the foregoing lists, transported into the Navajo Nation from a state of the United States and destined for a point beyond the Navajo Nation may be transported across the Navajo Nation without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of a state of the United States or otherwise in accordance with the laws of a state of the United States.

E. Sentence. Any person found guilty of unlawful taking of endangered species may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).

¹ 16 U.S.C. § 1534.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞512, 527 to 534, 749, Westlaw Topic Nos. 149E, 209.
762.
Indians ☞32.8.

§ 508. Unlawful taking and possession of small game animals

A. Offense. A person commits an offense pursuant to this section if without lawful authority he or she takes any small game animals.

B. Sentence. Any person found guilty of unlawful taking or possession of small game animals may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

C. The Director of the Fish and Wildlife Department of the Navajo Nation may issue permits to allow any person to take or possess any small game animal protected by this section. Permits shall be granted upon application and without charge for the following purposes:

1. Indian religious and ceremonial purposes;
2. Scientific purposes in accordance with the rules and regulations of the Resources Committee of the Navajo Nation Council.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Game ☞5, 7, 9.
 Indians ☞32.8.
 Westlaw Topic Nos. 187, 209.

§ 509. Destruction of posted signs or structures

A. Offense. A person commits an offense pursuant to this section if he or she destroys, attempts to destroy, or defaces any sign or marker posted or any structure designed for the purpose of regulating and managing any animal, fish or fowl protected by this title.

B. Sentence. Any person found guilty of destruction of posted signs or structures may be ordered to pay a fine not to exceed one hundred dollars (\$100.00).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32.8, 32.10(8).	C.J.S. Indians §§ 122, 167.
Malicious Mischief ☞1.	C.J.S. Malicious or Criminal Mischief or
Westlaw Topic Nos. 209, 248.	Damage to Property §§ 2 to 5.

§ 510. Enforcement of fish and wildlife laws

A. The Director of the Fish and Wildlife Department, each Wildlife Enforcement Officer, each Navajo Nation Ranger and each member of the Navajo Division of Law Enforcement commissioned shall enforce the provisions of this Title and shall:

1. Seize any game or fish held in violation of this chapter;
2. With or without warrant, arrest any person whom he or she knows to be guilty of a violation of this chapter; and
3. Open, enter and examine all camps, wagons, cars, tents, packs, boxes, barrels and packages where he or she has reason to believe any game or fish taken or held in violation of this chapter is to be found, and seize it.

B. Any warrant for the arrest of a person shall be issued upon sworn complaint, the same as in other criminal cases, and any search warrant shall issue upon a written showing of probable cause supported by oath or affirmation, describing the places to be searched or the papers or things to be seized.

C. Wildlife Enforcement Officers may, under the direction of the Fish and Wildlife Department of the Navajo Nation and the Director establish from time to time, as needed for the proper functioning of the Fish and Wildlife Department, checking stations at points along established roads.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞63.2.
 Environmental Law ☞546.
 Fish ☞16.
 Game ☞10.

Indians ☞32.8, 32.10(8).
 Westlaw Topic Nos. 35, 149E, 176, 187, 209.
 C.J.S. Arrest § 17.
 C.J.S. Indians §§ 122, 167.

§ 511. Forfeiture

Any person found guilty of an offense pursuant to this subchapter shall forfeit any fish or game as may be found in his or her possession to the court for the use of any Indian institution.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ☞546.
 Fish ☞16.
 Game ☞10.

Indians ☞32.8, 32.10(8).
 Westlaw Topic Nos. 149E, 176, 187, 209.
 C.J.S. Indians §§ 122, 167.

§ 512. Authority to establish fees and regulations

The Resources Committee of the Navajo Nation Council shall have the authority to establish fees and regulations for hunting and fishing activities.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fish ☞8.
 Game ☞3.5.
 Indians ☞32.8, 32.10(8).

Westlaw Topic Nos. 176, 187, 209.
 C.J.S. Indians §§ 122, 167.

Subchapter 22. Forests and Woodlands Violations**§ 520. Definitions**

The following definitions are applicable to this subchapter:

A. "Harvest" means to cut, take, damage, remove, or transport any living or dead tree or product thereof, or any attempt to commit such act;

B. "Valid permit" means a tree cutting, forest products use or transportation permit issued and signed by an authorized Forest Officer, on which there is no evidence of tampering, mutilation or other such acts that may change the permit.

C. "Authorized contract" or "authorized agreement" means an existing contract or agreement which meets the following conditions:

1. Procedures for obtaining contracts and agreements as defined by the Code of Federal Regulations, Title 25, Part 163: General Forest Regulations have been followed and approved;

2. The contract or agreement has been reviewed and approved by the Resources Committee of the Navajo Nation Council.

D. “Timber harvest standards” means a body of guidelines, recommended by the Navajo Forest Manager and approved by the Resources Committee of the Navajo Nation Council, which governs the harvest of forest products under contracts and agreements;

E. “Forest road” means a road wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

F. “Forest trail” means a trail wholly or partly within or adjacent to and serving a part of the Navajo forests or woodlands;

G. “Forest officer” means an employee of the Navajo Forestry Department or Bureau of Indian Affairs Branch of Forestry;

H. “Navajo forest” includes all lands covered with ponderosa pine, Douglas fir, aspen, corkbark fir, Colorado blue spruce, or Engelmann spruce in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings within these lands are also considered within the forest;

I. “Navajo woodland” includes all lands covered with oak, piñon, and/or juniper in some combination which together comprises a crown closure of greater than seven percent (7%). Meadows and openings surrounded by these lands are also considered within the woodland;

J. “Person” means any natural person, corporation, company, partnership, trust, firm, or association of persons;

K. “Unauthorized livestock” means any cattle, sheep, goat, hog, or equine which is not authorized by permit to be upon the land on which the livestock is located; provided, that non-commercial pack and saddle stock used by recreationists, travelers, and other forest and woodland users for occasional trips are exempt.

L. “Forest product” means any tree or shrub, in whole or in part, dead or alive, including but not limited to the stem, branches, and leaves, which was produced on the Navajo forests or woodlands.

Library References

Indians ⇨32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 521. Resisting or obstructing a forest officer

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly obstructs, impairs, hinders or resists any forest officer or Navajo Nation Ranger engaged in the lawful exercise of his or her official duties.

B. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Obstructing Justice ☞7.
Westlaw Topic Nos. 209, 282.
C.J.S. Indians § 157.

C.J.S. Obstructing Justice or Governmental Administration §§ 4, 10, 12 to 29, 31 to 32, 38.

§ 522. Damage to geologic and man-made improvements on Navajo forests or woodlands

A. Offense. A person commits an offense pursuant to this section if he or she intentionally, recklessly, or negligently:

1. Mutilates, defaces, removes, disturbs, injures or destroys any geologic feature or formation.

2. Destroys, injures, defaces, or removes any sign, marker, post, container, table, fireplace, or other property placed in Navajo forests or woodlands for management purposes.

B. Sentence. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation for the actual damages or restoration costs of the injured property.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Environmental Law ⇌741, 762.
 Indians ⇌32(13).
 Malicious Mischief ⇌1.
 Westlaw Topic Nos. 149E, 209, 248.

C.J.S. Indians § 157.
 C.J.S. Malicious or Criminal Mischief or
 Damage to Property §§ 2 to 5.

§ 523. Fire violations

A. Offense. A person commits an offense pursuant to this section if he or she intentionally, recklessly or negligently:

1. Throws or places any burning, glowing or ignited substance within Navajo forests or woodlands which may start a fire;
2. Causes timber, trees, brush, slash or grass to burn, except as authorized by permit issued by BIA Forestry or their delegated agency;
3. Leaves a fire within Navajo forests or woodlands without completely extinguishing it;
4. Allows a fire to get out of control within Navajo forests or woodlands;
5. Within Navajo forests or woodlands, builds a campfire in a dangerous place, or during windy weather without confining it;
6. Operates equipment within the Navajo forest without approved fire safety and spark arresting devices.

B. Sentence.

1. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).
2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of suppression of the fire and/or the fair market value of the timber and improvements destroyed or damaged as a result of the fire.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Fires ☞1 to 3.
Indians ☞32(13).

Westlaw Topic Nos. 175, 209.
C.J.S. Indians § 157.

§ 524. Grazing livestock on withdrawn forest lands

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly:

1. Places or allows livestock to enter upon Navajo forests or woodlands properly withdrawn for scientific research and/or experimental uses;
2. Places or allows livestock to enter upon Navajo forests or woodlands properly withdrawn to rehabilitate a watershed or to regenerate a forest.

B. Sentence.

1. A person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed five thousand dollars (\$5,000).
2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Restitution. The court, in addition or in lieu of the sentence, may require the offender to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Woods and Forests ☞8 to 12.
Westlaw Topic Nos. 209, 411.

C.J.S. Indians § 157.
C.J.S. Woods and Forests §§ 1, 6 to 8, 11 to 13.

§ 525. Unauthorized harvesting of timber or forest product

A. Offense. A person commits an offense pursuant to this section if, after approval of regulations, he or she intentionally or knowingly:

1. Cuts, kills, destroys, chops, boxes, injures or otherwise damages, or harvests any timber, tree or other forest product, except as authorized pursuant to valid permit, approved contract, or Tribal regulation;
2. Harvests any tree pursuant to a valid permit or approved contract before a forest officer has marked it or has otherwise designated it for harvest;
3. Removes any timber or other forest product cut pursuant to a valid permit or approved contract, except to a location designated for scaling, or removes any timber or forest product from a location designated for scaling before it has been scaled, measured, counted, or otherwise inventoried by a forest officer;
4. Stamps, marks with paint, or otherwise identifies any tree or other forest product in a manner similar to that employed by a forest officer to mark or designate a tree or forest product for harvest or removal;
5. Fails to comply with permit requirements or timber harvest standards;
6. Sells or trades any forest product without a valid permit authorizing the commercial sale of the product.

B. Sentence.

1. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).
2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the penalty, may require the offender to pay the Navajo Nation the fair market value of the damaged property and/or restoration costs.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞17, 32(13).	C.J.S. Indians §§ 110 to 113, 157.
Logs and Logging ☞37.	C.J.S. Malicious or Criminal Mischief or
Malicious Mischief ☞1.	Damage to Property §§ 2 to 5.
Westlaw Topic Nos. 209, 245, 248.	

§ 526. Unauthorized occupancy and use of Navajo forest lands

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly:

1. Constructs or maintains any road, trail, structure, fence, enclosure, or other improvement upon Navajo forests or woodlands without proper authorization;
2. Abandons a motor vehicle, animal or personal property within Navajo forests or woodlands.

B. Sentence.

1. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).
2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Removal costs. The court, in addition to or in lieu of the sentence, may order the offender to remove the unauthorized improvements or to pay the Navajo Nation the full costs of removal.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞19, 32(13).
Woods and Forests ☞10.

Westlaw Topic Nos. 209, 411.
C.J.S. Indians §§ 81, 157.

§ 527. Unauthorized use of motor vehicles

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly:

1. Fails to stop a motor vehicle when directed to do so by a forest officer;
2. Blocks, restricts, or otherwise interferes with the use of a road or trail within Navajo forests or woodlands;
3. Operates any motor vehicle off of established roads in a manner which damages or unreasonably disturbs Navajo forests or woodlands or any Navajo vegetative resource.

B. Sentence.

1. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed one thousand dollars (\$1,000).

2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).

3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.

4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

C. Restitution. The court, in addition to or in lieu of the sentence, may require the offender to pay the Navajo Nation the full cost of restoration of the damaged resource.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Automobiles ☞324.
Indians ☞32(13).
Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 157.
C.J.S. Motor Vehicles §§ 1311 to 1313, 1315 to 1317, 1455, 1526 to 1527, 1543 to 1544.

§ 528. Special closures or use restrictions

A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly violates any order issued by the Navajo Division of Resources temporarily closing or restricting the use of Navajo forests or woodlands for the following reasons:

1. Smoking of cigarettes, pipes, cigars, or any other material in areas designated by the order;
2. Use of firearms and/or fireworks in the designated areas;
3. Use of chainsaws, tractors, trucks, and other equipment during designated hours and/or in designated areas;
4. Building, maintaining, attending, or using a fire, in the designated areas;
5. Utilizing or otherwise going upon Navajo forests or woodlands closed by order.

B. Sentence. Any person found guilty of violating the provisions of this section may be ordered to pay a fine not to exceed two thousand five hundred dollars (\$2,500).

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).	C.J.S. Indians § 157.
Trespass ☞76 to 81.	C.J.S. Trespass §§ 172, 174 to 177, 179, 182 to 184, 191.
Woods and Forests ☞10.	
Westlaw Topic Nos. 209, 386, 411.	

§ 529. Enforcement of Navajo forests and woodlands laws and regulations

The Navajo Nation Forest Manager, each commissioned forest officer, each Navajo Nation Ranger and each commissioned officer of the Navajo Division of Public Safety are authorized and directed to enforce the provisions of this subchapter.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).	C.J.S. Indians § 157.
Woods and Forests ☞7.	C.J.S. Woods and Forests §§ 9 to 11, 14 to 15.
Westlaw Topic Nos. 209, 411.	

Subchapter 23. Curfew Violations**§ 530. Definitions**

The following definitions apply in this subchapter:

A. "Abroad" shall mean when a child is in any place in or out-of-doors other than his/her usual place of abode. However, no child shall be considered "abroad" in any of the following circumstances:

1. When accompanied by a parent or guardian; or
2. When returning home without delay or loitering from a community, school or other activity attended with permission or his/her parent or guardian; or
3. During an emergency.

B. "Child" shall mean any person who has not reached his/her 18th birthday.

C. "Curfew hours" shall mean for a child who has not reached his/her 18th birthday, between the hours or 10:00 p.m.—6:00 a.m. Sunday through Thursday, and 12:00 a.m.—6:00 a.m. Friday and Saturday.

D. "Emergency" shall mean an unforeseen circumstance or a combination of circumstances or the resulting state thereof that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life, or damage to or loss of property.

E. "Establishment" shall mean any place or business to which the public is invited, including but not limited to, any place of amusement, entertainment or traditional ceremony.

F. "Guardian" shall mean a person who is:

1. Assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child; or
2. At least eighteen (18) years of age and authorized by a parent to have the care and custody of a child.

G. "Operator" shall mean any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

H. "Parent" shall mean a person who is a natural or adoptive parent but does not include any person whose parental rights have been terminated.

I. "Public place" shall mean any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

J. "Remain" shall mean to:

1. Linger or stay; or
2. Fail to leave the premises when requested to do so by a police officer or the owner, operator, or other persons in control of the premises.

K. "Serious bodily injury" shall mean bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.
CO-97-95, October 20, 1995.

Library References

Indians ⇄32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 531. Curfew

A. A parent or guardian of a child commits an offense whenever:

1. The child is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by section 530 of this subchapter; or

2. The parent or guardian fails or refuses to take such child into custody after such demand is made upon him/her by a law enforcement officer who has taken custody of said child for committing an offense pursuant to section 531 of this subchapter.

B. A child, who has not reached his/her 18th birthday, commits an offense if he/she is found or remains abroad in any public place or on the premises of any establishment within the territorial jurisdiction of the Navajo Nation during curfew hours as defined by section 530(C) of this subchapter.

C. The owner, operator or any employee of an establishment commits an offense whenever a child is found or remains abroad upon the premises of the establishment during curfew hours as defined by section 530(C) of this subchapter.

D. Sentence.

1. Any Indian, other than a child who is found guilty of committing an offense under this subchapter may be sentenced to imprisonment for a term not to exceed one hundred eighty (180) days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00), or both.

2. Any Indian child who commits an offense under section 531(B) or (C) of this subchapter shall be deemed to have committed a delinquent act and may be deemed a delinquent child pursuant to 9 N.N.C. § 1001 *et seq.*

3. Any non-Indian child or non-Indian parent of guardian of a child who commits an offense under section 531 or this subchapter may be excluded from the territorial jurisdiction of the Navajo Nation pursuant to 17 N.N.C. § 1901 *et seq.*, or be ordered to pay a civil penalty not to exceed five hundred dollars (\$500.00), or both.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.
CO-97-95, October 20, 2000.

Library References

Indians ☞32(13).
 Infants ☞13, 20, 153.
 Westlaw Topic Nos. 209, 211.

C.J.S. Indians § 157.
 C.J.S. Infants §§ 5, 33 to 35, 41 to 42, 64, 67,
 92 to 93, 95 to 98, 100 to 107.

§ 532. Damages to or destruction of property by child; parents and guardian liable; costs and attorney's fees; provisions for damages and restitution

A. Notwithstanding the provisions of 9 N.N.C. § 1120(A), any person may recover damages, pursuant to applicable laws, in a civil action in a court or tribunal of competent jurisdiction, from the parent or guardian or a child upon proof by clear and convincing evidence that the child maliciously or willfully injured a person(s) or damaged or destroyed property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this section is limited to actual damages proved in the action, court costs, and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.

C. Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Navajo Nation Children's Code.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.
 CO-97-95, October 20, 1995.

Library References

Indians ☞32(13).
 Parent and Child ☞13.5.
 Westlaw Topic Nos. 209, 285.

C.J.S. Indians § 157.
 C.J.S. Parent and Child §§ 191, 309 to 315.

Chapter 5. Procedures

Subchapter 1. General Provisions

Section

- 1801. Complaints generally
- 1802. Complaints of traffic violations
- 1803. Warrants to apprehend
- 1804. Arrests
- 1805. Detention; commitments
- 1806. [Repealed]
- 1807. Bail
- 1808. Bail agreement
- 1809. Cash bail bonds
- 1810. Forfeiture; application of deposit to fines; refund
- 1811. Disposition of unclaimed or forfeited bail
- 1812. Conditions of bond; refusal to release
- 1813. Conditions of date of appearance

Section

- 1814. Notice of date of appearance
- 1815. Admission of persons to bail
- 1816. Release on recognizance; warrant on failure to appear for trial
- 1817. [Repealed]
- 1818. Probation
- 1819. Parole

Subchapter 3. Coroners; Investigation of Deaths

- 1851. Appointment of coroners; compensation
- 1852. Investigation of deaths-Generally
- 1853. Autopsies and exhumations
- 1854. Report
- 1855. Disposition of property found on body
- 1856. Duty of person discovering body

Subchapter 5. Exclusion of Persons from Navajo Nation Land

- 1901. Exclusionary process
- 1902. Court jurisdiction

Subchapter 7. Extradition

- 1951. Indian committing crime outside Indian Country—Apprehension on Reservation
- 1952. Hearing; release
- 1953. Office of the Prosecutor

**Subchapter 8. Uniform Act to Secure the Attendance
of Witnesses from Without a State in Criminal
Proceedings**

- 1970. Definitions
- 1971. Summoning witness in the Navajo Nation to testify in another state
- 1972. Witness from another state summoned to testify in the Navajo Nation
- 1973. Exemption from arrest and service of process
- 1974. Uniformity of interpretation

Subchapter 9. Search and Seizure

- 2001. Unlawful search or seizure; trespass
- 2002. Warrants—Issuance; complaint
- 2003. Contents
- 2004. Service

Subchapter 1. General Provisions

§ 1801. Complaints generally

No complaint filed in any Court of the Navajo Nation shall be valid unless it shall bear the signature of a prosecutor employed by the Navajo Office of the Prosecutor.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞211(2).

Indians ☞38.

Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law § 329.

C.J.S. Indians § 163.

Annotations**1. Special prosecutor**

“The special prosecutor may execute a criminal complaint, despite the provisions of 17 N.N.C. § 1801, regarding who may sign a complaint.” *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1, 5 (Nav. Sup. Ct. 1992).

§ 1802. Complaints of traffic violations

A. In cases involving traffic violations, the arresting officer shall issue to the defendant a traffic ticket (uniform traffic citation) and such ticket shall serve as a valid complaint in the courts of the Navajo Nation, upon being properly filed. No other complaint need be filed in such case.

B. A traffic ticket signed by the arresting officer acting in his or her official capacity, and properly filed, is a valid complaint. The signature on a traffic ticket of the arresting officer need not be witnessed, notwithstanding the provision of 17 N.N.C. § 1801 that all complaints be witnessed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Automobiles ☞351.1.

Indians ☞38.

Westlaw Topic Nos. 48A, 209.

C.J.S. Indians § 163.

C.J.S. Motor Vehicles §§ 1344, 1365 to 1371, 1397 to 1400, 1443, 1473, 1486 to 1487, 1496, 1508, 1518, 1526, 1532, 1543 to 1544, 1546 to 1547, 1550.

§ 1803. Warrants to apprehend

Every judge of a Court of the Navajo Nation shall have the authority to issue warrants to apprehend, such warrants to issue at the discretion of the court only after a written complaint shall have been filed, bearing the signature of the prosecutor. Service of such warrants shall be made by a duly qualified officer of the Navajo Nation Department of Public Safety. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified judge of the Court of the Navajo Nation.

17 N.N.C. § 1803

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History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ☞217.
Indians ☞38.
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 335, 337.
C.J.S. Indians § 163.

§ 1804. Arrests

No member of the Navajo police shall arrest any person for any offense defined by Chapter 3 of this title or by federal law, except when such offense shall occur in the presence of the arresting officer, or he or she shall have probable cause that the person arrested has committed an offense or the officer shall have a warrant commanding him or her to apprehend such person.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞63.3, 63.4.
Indians ☞38.
Westlaw Topic Nos. 35, 209.

C.J.S. Arrest §§ 18 to 20, 37.
C.J.S. Indians § 163.

§ 1805. Detention; commitments

No person shall be detained, jailed or imprisoned under any law of the Navajo Nation for a longer period than thirty-six (36) hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of the Navajo Nation; provided, however, that an person arrested on a Friday, Saturday, Sunday, or a day before a holiday, who, having been given an opportunity within thirty-six (36) hours after arrest to be released on bail does not provide bail, may be held in custody pending commitment for a reasonable additional period not to exceed eight (8) hours following the opening of court on the next day it is in session. There shall be issued for each person held for trial, a temporary commitment and, for each person held after sentence, a final commitment on the prescribed forms.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞70.
Indians ☞38.
Westlaw Topic Nos. 35, 209.

C.J.S. Arrest §§ 61 to 64.
C.J.S. Indians § 163.

§ 1806. [Repealed]**History**

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 1807. Bail

A. Every person arrested for an alleged offense against the Navajo Nation shall, within a period not to exceed eighteen (18) hours from the time of commitment, be given an opportunity to be released on bail.

B. Bail may be by bail agreement, as defined herein, by cash bond, as provided herein, or by recognizance, as provided in 17 N.N.C. § 1816.

Library References

Bail ⇌42.

Indians ⇌38.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings §§ 6, 9 to 11, 13 to 15, 17, 19, 24 to 29, 31 to 32.

C.J.S. Indians § 163.

§ 1808. Bail agreement

One or two reliable members of the Navajo Nation may execute an agreement in compliance with a form approved by the Chief Justice of the Navajo Nation Supreme Court as provided for this purpose. The agreement shall prescribe civil penalties, in an amount which shall not exceed the sum of five thousand dollars (\$5,000) per signatory, which shall become immediately due and owing to the Navajo Nation upon the accused's unexcused failure to appear at the time for hearing or trial. The bail agreement shall be executed before and endorsed by a judge or clerk of District Court of the Navajo Nation, or if the court is not in session, before and endorsed by a Navajo police officer authorized to admit to bail by the Director of the Department of Law Enforcement. Bail agreements executed by an authorized officer shall be promptly filed with the Clerk of the District Court of the Navajo Nation of the Judicial District where the complaint against the bailed person is filed.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bail ⇌54.

Indians ⇌38.

Westlaw Topic Nos. 49, 209.

C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings §§ 93, 106.

C.J.S. Indians § 163.

§ 1809. Cash bail bonds

A. Each of the judges of the District Court of the Navajo Nation are authorized to establish, in each case, the sum to be required as cash bail bond, provided that in no case shall the bond required exceed the maximum fine

specified by applicable law for the offense for which the accused has been charged. A majority of the judges of the District Court of the Navajo Nation, with the concurrence of the Chief Justice of the Supreme Court, are authorized to establish, promulgate, and amend a schedule stating the amount of the cash bond required for the various offenses. Officers of the Navajo Nation Police Department authorized by the Director of the Department of Law Enforcement to admit persons to bail shall, at times when they are so authorized, admit any person to bail who deposits with the officer the amount of cash required on the schedule as a bond for the offense with which the person is charged.

B. Any police officers clerk of the court, or judge who admits any person to bail upon their payment of the amount of the cash bail deposit required, shall immediately thereupon complete a serially numbered cash bail receipt and shall distribute one copy thereof to the person admitted to bail, and shall retain one copy thereof himself or herself. One copy shall be distributed to the court, or to the Police Department, if a court clerk or a judge admits a person to bail. One copy shall also be distributed to the Controller of the Navajo Nation. Copies of the receipt to be distributed to the court and to the Controller, and the cash deposit shall be delivered either immediately to the clerk of the court or if the bail deposit be accepted by a police officer, immediately on the first following day the court is in session. Voided receipts shall be likewise distributed.

C. The clerk of the court shall transfer all money received as a bail bond deposit, with the Controller's copy of the receipts, to the Controller of the Navajo Nation, at least weekly. The Controller shall hold all such monies in a special account.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bail ☞50, 73.
Indians ☞38.
Westlaw Topic Nos. 49, 209.
C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings §§ 66, 68, 88 to 92.
C.J.S. Indians § 163.

§ 1810. Forfeiture; application of deposit to fines; refund

The cash deposit for bail of any accused who fails to meet any conditions of bail shall be forfeited, unless a judge of the District Court, for good cause shown, orders otherwise. Cash bail deposits of any person who pleads guilty, or is found guilty upon trial, shall be applied toward payment of any fine imposed, and any deposit in excess thereof shall be refunded. If the accused is found not guilty, or the case is dismissed, or the bail deposit has not been fully applied to any fine imposed, the court, by the clerk, shall issue a warrant to the Controller, stating the amount of the refund due, which the Controller shall pay upon presentation. The court clerk shall transmit a copy of said warrant to the Controller's Office. The warrant shall be void one (1) year after the date of issuance, if not presented.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bail ☞75.1 to 75.3, 96.
Indians ☞38.
Westlaw Topic Nos. 49, 209.
C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings §§ 140 to 156, 158 to 159, 189 to 190.
C.J.S. Indians § 163.

§ 1811. Disposition of unclaimed or forfeited bail

No forfeiture of bail may be set aside at any time later than fifteen (15) days, including Sundays and holidays, following the date of such forfeiture. The clerk of the court shall, upon the expiration of such time, transmit notice of such forfeiture to the Controller. The Controller shall redeposit all monies deposited as bail which are forfeited or unclaimed within a year of the date of issuance of a warrant for refund to the credit of the General Fund. All or part of cash bail deposits applied toward any fine levied shall be redeposited in accounts wherein fine monies are deposited.

Library References

Bail ☞79, 96.
Indians ☞38.
Westlaw Topic Nos. 49, 209.
C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings §§ 167, 189 to 190.
C.J.S. Indians § 163.

§ 1812. Conditions of bond; refusal to release

A. The judges and Navajo police officers authorized to admit persons to bail are authorized to refuse to admit persons to bail, in any one of these following circumstances:

1. When the judge or officer has reason to believe that the person is unable to care for his or her personal safety or will be a danger to the public.
2. When the judge or officer has reason to believe that the person will pose a danger to any other person or to the community.
3. When the judge or officer has reason to believe that the person will leave the lands subject to the jurisdiction of the Navajo Nation and fail to appear.
4. When the person charged has allegedly done or committed acts as part of the same design or transaction upon which the alleged offense against the Navajo Nation is charged which would in the officer's or the judge's belief constitute a felonious offense, which shall be for the purposes of this section, an offense under 18 U.S.C. § 1153.

B. No judge or officer shall be held liable for refusal to admit to bail pursuant to this section, except upon a finding by the court that there existed no basis for refusal to admit to bail, and upon proof that the refusal to admit to bail was the result of wilful malice.

C. Any officer who refuses to admit a person to bail shall immediately bring such person before a judge of the District Court of the Navajo Nation at the first opportunity to do so. The officer shall thereupon show cause why he or she refused to admit the person to bail. The judge thereupon may order the person held without bail, or admitted to bail. Any such order shall be appealable to the Supreme Court of the Navajo Nation and the Supreme Court shall give any such appeal absolute priority.

Library References

Bail ⇌42, 49.	C.J.S. Release and Detention Pending Proceedings §§ 6, 9 to 11, 13 to 15, 17, 19, 24 to 29, 31 to 32, 54 to 55.
Indians ⇌38.	C.J.S. Indians § 163.
Westlaw Topic Nos. 49, 209.	
C.J.S. Bail.	

§ 1813. Conditions of date of appearance

The judges of the District Court of the Navajo Nation are hereby authorized to impose conditions of a date of appearance and such other conditions upon bail as are necessary or proper.

Library References

Bail ⇌42.5.	C.J.S. Release and Detention Pending Proceedings §§ 12, 16.
Indians ⇌38.	C.J.S. Indians § 163.
Westlaw Topic Nos. 49, 209.	
C.J.S. Bail.	

Annotations

1. Conditions

“The discretion given to the district court judge under Section 1813 authorizes the imposition of condition on release that bear a reasonable relationship to insuring defendant’s appearance. [...] The Court fails to see any nexus between the district court’s requirement, that Petitioner be relieved of his duties as Chief Justice, as a condition of release from custody, and how this condition in any way insures Petitioner’s appearance at a subsequent

hearing.” *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

2. Review

“Generally, the fact that a criminal defendant is employed is a factor justifying release on personal recognizance, and thus, it was an abuse of discretion to require a criminal defendant to leave his employment as a condition of release, as the Respondent has done in Petitioner’s case.” *Chief Justice McCabe v. Hon. Walters*, 5 Nav. R. 43, 48 (Nav. Ct. App. 1985).

§ 1814. Notice of date of appearance

Officers admitting persons to bail shall inform them in writing that, if they fail to receive notice of a date of appearance within fifteen (15) days, they should inquire of the court or the police as to their hearing date. The judges of the District Courts of the Navajo Nation are authorized to forfeit the bail of any person failing to meet the conditions thereof, and to cause warrants to issue for the return of such person. No person shall, in any single case, be admitted to bail after such person has failed to meet prior bail conditions in the same case.

Library References

Assumpsit, Action of ⇌49(5).	Westlaw Topic Nos. 42, 209.
Indians ⇌38.	C.J.S. Assumpsit, Action of §§ 3, 6, 8.

C.J.S. Indians § 163.

§ 1815. Admission of persons to bail

The Director of the Department of Law Enforcement is authorized and directed to authorize officers to admit persons to bail, during those times when the District Court of the Navajo Nation is not in session. The Director of the Department of Law Enforcement is further directed to assure that an officer authorized to admit persons to bail be on duty at each jail facility during said times.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Assumpsit, Action of ⇨46.
Indians ⇨38.
Westlaw Topic Nos. 42, 209.

C.J.S. Assumpsit, Action of §§ 3, 6, 8.
C.J.S. Indians § 163.

§ 1816. Release on recognizance; warrant on failure to appear for trial

Any judge or clerk of the Court of the Navajo Nation, or any Navajo police officer duly authorized to admit to bail, may, in his or her discretion, release any person arrested for an offense on such person's own recognizance. If any Indian so released does not appear for trial at the time and place specified, the judge may issue a warrant to apprehend such person, and thereafter such person shall not be released prior to trial except by written order signed by a judge of the Court of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Bail ⇨40.
Indians ⇨38.
Westlaw Topic Nos. 49, 209.
C.J.S. Bail.

C.J.S. Release and Detention Pending Proceedings § 8.
C.J.S. Indians § 163.

§ 1817. [Repealed]

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

§ 1818. Probation

A. The Court of the Navajo Nation may in its discretion suspend any sentence imposed and allow the offender his or her freedom on probation upon his or her signing a pledge of good conduct during the period of the sentence upon the form provided therefor.

17 N.N.C. § 1818

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B. Any person who shall violate his or her probation pledge shall be required to serve the original sentence.

C. The Courts of the Navajo Nation may establish a program to merge the functions of probation and peace making to promote the rehabilitation of offenders and serve the interest of victims and the program may charge participants reasonable fee or assessment for serious services and expend such funds for probation and peace making functions.

D. Individuals who are convicted of any offense may be sentenced to a term of probation not to exceed two (2) years and individuals convicted of multiple offenses may be sentenced to a term of probation not to exceed five (5) years.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Costs ☞292.	Westlaw Topic Nos. 102, 209, 350H.
Indians ☞38(7).	C.J.S. Criminal Law §§ 1552, 1568, 1740, 1743.
Sentencing and Punishment ☞1802, 1942, 2034.	C.J.S. Indians § 163.

§ 1819. Parole

A. Any person committed by a Court of the Navajo Nation who shall have without misconduct served one-half the sentence imposed by such court may be eligible to parole. Parole shall be granted only by a judge of the Court of the Navajo Nation where the prisoner was convicted after hearing of the issue and upon the signing of the form provided therefor. The Court shall file findings of fact and conclusions of law stating its reasons for granting or denying parole.

B. Any person who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞38(7).	C.J.S. Indians § 163.
Pardon and Parole ☞50, 61, 73.	C.J.S. Pardon and Parole §§ 56, 88.
Westlaw Topic Nos. 209, 284.	

Subchapter 3. Coroners; Investigation of Deaths

§ 1851. Appointment of coroners; compensation

The President of the Navajo Nation is authorized to appoint at least one coroner within each police district, and to hold office at the President's pleasure. Coroners shall be paid at a rate established by the Navajo Nation

Council and may be reimbursed for actual and necessary expenses, upon presenting proper vouchers to the Controller of the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Coroners ☞3, 7.
Indians ☞32(4.1).
Westlaw Topic Nos. 100, 209.

C.J.S. Coroners and Medical Examiners §§ 3, 5, 27 to 28.

§ 1852. Investigation of deaths—Generally

Whenever a coroner is informed that a person on Navajo Nation land has been killed, or has suddenly died under such circumstances as afford reasonable ground to suspect that the death was occasioned by the criminal act or gross negligence of another, the coroner shall go to the place where the body is located and inquire into the cause of death. Unless the coroner is a physician, he or she shall endeavor to have a physician accompany him or her to the place where the body is located.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Coroners ☞10.
Indians ☞32(4.1).
Westlaw Topic Nos. 100, 209.

C.J.S. Coroners and Medical Examiners §§ 10 to 12.

§ 1853. Autopsies and exhumations

A. When the coroner determines that the cause of death cannot be determined without an autopsy, the coroner or district prosecutor may petition the district court of the Navajo Nation to order an autopsy be held. If such an autopsy shall require exhumation of the body, such information shall be included in the petition. Hearings on such petitions shall be held on an expedited schedule upon a showing of exigent circumstances derived from medical necessity or the needs of a criminal investigation.

B. The immediate family of the decedent shall be served with a copy of the petition and shall be allowed to file objections, if their identity and whereabouts can be ascertained and their participation is consistent with the requirements of medical necessity or the needs of a criminal investigation. The petitioner must show what reasonable, good faith efforts have been made to locate and serve the decedent's immediate family.

C. The district court may order an autopsy if it finds that:

1. The cause of death cannot be determined without an autopsy;
2. Such determination is critical to a criminal investigation or required by medical necessity;

3. No less invasive means is available for the investigation.

D. After the district court has ordered an autopsy, the coroner may request the United States Public Health Service perform the autopsy, or may engage a private physician or other licensed health care provider to perform such service.

E. If the ordered autopsy requires exhumation of a body, the coroner shall cause the body to be exhumed for examination and reburial after autopsy. The coroner may call upon the Navajo police for assistance in exhumation and reburial.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Dead Bodies ☞1, 5.
Indians ☞32(4.1).
Westlaw Topic Nos. 116, 209.

C.J.S. Dead Bodies §§ 1 to 3, 7 to 11, 22 to 26.

§ 1854. Report

A. After inspecting the body and conferring with a physician, if the coroner is not himself or herself a physician, the coroner shall make a written report, in quadruplicate, stating the following facts:

1. The name and census number of the dead person.
2. When and where he or she died, and the circumstances of his or her death.
3. What caused the death.
4. Who caused the death, if caused by the act, whether criminal or not, of another person, or by gross negligence.
5. An inventory of the property other than clothing of ordinary value found on the dead person.
6. If the coroner is not a physician, the name and address the physician he or she consulted.

B. The coroner shall submit all copies of his or her report to the Police Captain of the Navajo police district in which the death occurred. The Captain shall retain one copy and forward the remaining three copies to the Chief of the Navajo police.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Coroners ☞14.
Indians ☞32(4.1).

Westlaw Topic Nos. 100, 209.
C.J.S. Coroners and Medical Examiners § 16.

§ 1855. Disposition of property found on body

It shall be the duty of the coroner to take possession of all property except clothing of ordinary value found on the person of anyone whose death he or she is required to investigate, and to turn property over to the District Police Captain with his or her report containing the inventory thereof. The District Police Captain shall deliver such property to the Court of the Navajo Nation after it has served any purpose it may have as evidence in a criminal prosecution arising out of the death, and the Court shall dispose of the same as part of the estate of the deceased or in such other manner as justice may require.

Library References

Coroners ↻20.
Indians ↻32(4.1).

Westlaw Topic Nos. 100, 209.
C.J.S. Coroners and Medical Examiners § 23.

§ 1856. Duty of person discovering body

It shall be the duty of every Navajo police officer upon learning that a person has apparently been killed on Navajo Nation land, or has apparently died on such land because of the criminal act or gross negligence of another, to notify a Navajo coroner of such fact immediately. It shall be the duty of any person other than a police officer making a discovery of a body to notify a Navajo police officer or coroner without delay.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Criminal Law ↻1224(1), 1225.
Indians ↻32(4.1).
Westlaw Topic Nos. 110, 209.

C.J.S. Criminal Law §§ 1724 to 1725, 1728, 1732.

Subchapter 5. Exclusion of Persons from Navajo Nation Land**§ 1901. Exclusionary process**

A. The President of the Navajo Nation, or in his or her absence the Vice-President of the Navajo Nation, is empowered to close any or all of the Navajo Nation to nonmembers whenever the presence of such nonmembers would constitute a danger to life or property. The exclusion order may permit certain named individuals (or classes of individuals) to remain and may provide for a procedure whereby individuals or classes of individuals may seek entry or reentry to closed areas. No such closure may continue for more than thirty (30) days without concurrence by the Government Services Committee of the Navajo Nation Council.

B. A nonmember of the Navajo Nation may be excluded from the Navajo Nation after hearing and the entry of an exclusion order, or, in cases involving danger to the public health or safety, pending such a hearing, on order of a

District Court Judge of the Navajo Nation. Such interim exclusion of the nonmember from the Navajo Nation shall only be ordered in cases involving the public health and safety and for a period no longer than necessary for an exclusion hearing to be held.

C. An Order of Exclusion may be entered:

1. When the nonmember is accused of conduct, including traffic offenses, within the Navajo Nation which would be punishable under the laws of the Navajo Nation or the United States if committed by a member of the Navajo Nation, and such nonmember either admits such conduct in the exclusion proceeding, or is found by a preponderance of the evidence in the exclusion proceeding to have committed the act in question; or

2. When the nonmember either admits in an exclusion proceeding or is found by a preponderance of the evidence presented in an exclusion proceeding to have engaged in any of the following acts:

a. Unauthorized prospecting, mining, collecting or gathering of or for oil, gas, coal, uranium and other minerals, water, petrified wood, antiquities or artifacts; or

b. Entry into any Navajo home without the consent of the occupants; or

c. Interference with or unauthorized photographing of any Navajo traditional ceremony or other religious ceremony; or

d. Unauthorized trading or peddling; or

e. Recruiting Navajo labor without permission of the Office of Navajo Labor Relations; or

f. Unauthorized entering of an area of the Navajo Nation closed to nonmembers; or

g. Removal from the Navajo Nation of any member of the Navajo Nation under the age of 18, or under guardianship, except by Order of the Courts of the Navajo Nation or in conjunction with a nonsectarian program administered by the Navajo Nation or the Bureau of Indian Affairs; or

h. Unauthorized timber cutting or plant gathering; or

i. Unauthorized surveying; or

j. Damaging property of any resident of the Navajo Nation or using such property without permission.

k. Violation of any section of the Navajo Nation code providing for exclusion as a remedy for such violation.

D. An exclusion order entered by a Court of the Navajo Nation shall either be for a definite period, or may, under appropriate circumstances, be permanent. A person excluded may petition the Court for modification of an exclusion order at any time.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(4.1, 8).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 29, 59, 157.

§ 1902. Court jurisdiction

A. The Courts of the Navajo Nation are vested with civil jurisdiction over all persons with respect to exclusion of nonmembers of the Navajo Nation from the Navajo Nation.

B. The Chief Justice of the Navajo Nation with the advice and consent of the Judiciary Committee of the Navajo Nation Council, is empowered to adopt such rules as are deemed appropriate for exclusion proceedings.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(7).
 Westlaw Topic No. 209.
 C.J.S. Indians §§ 60 to 62, 139 to 143, 152.

Subchapter 7. Extradition

§ 1951. Persons committing crime outside Indian Country—Apprehension on Reservation

Whenever the President of the Navajo Nation is informed and believes that a person has committed a crime outside of Indian Country and is present in Navajo “Indian Country” and using it as an asylum from prosecution by the state, the President of the Navajo Nation may order any Navajo police officer to apprehend such person and deliver him or her to proper state authorities at the Reservation boundary.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ☞58.	C.J.S. Arrest §§ 2, 4, 10.
Indians ☞38.	C.J.S. Indians § 163.
Westlaw Topic Nos. 35, 209.	

§ 1952. Hearing; release

If any person being arrested as provided in 17 N.N.C. § 1951 so demands, he or she shall be taken by the arresting police officer to the nearest Court of the Navajo Nation, where the judge shall hold a hearing, and if it appears that there is no probable cause to believe the Indian guilty of the crime with which

17 N.N.C. § 1952

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he or she is charged off the Reservation, or if it appears that the Indian probably will not receive a fair trial in the state court, the judge shall order the Indian released from custody.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Arrest ↔70. C.J.S. Arrest §§ 61 to 64.
Indians ↔38. C.J.S. Indians § 163.
Westlaw Topic Nos. 35, 209.

§ 1953. Office of the Prosecutor

The Office of the Prosecutor of the Navajo Nation shall represent the interests of the Navajo Nation at the hearing authorized under section 1952 of this Title.

Library References

Indians ↔38.
Westlaw Topic No. 209.
C.J.S. Indians § 163.

Subchapter 8. Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

§ 1970. Definitions

In this article, unless the context otherwise requires:

A. “Witness” includes a person whose testimony is desired in any proceeding or investigation by a grand jury or prosecutor or in a criminal action, prosecution or proceeding.

B. “State” includes any territory of the United States and the District of Columbia, or the Navajo Nation.

C. “Summons” includes a subpoena, order or other notice requiring the appearance of a witness.

Library References

Indians ↔38.
Westlaw Topic No. 209.
C.J.S. Indians § 163.

§ 1971. Summoning witness in the Navajo Nation to testify in another state

A. If a judge of a court of record in any state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the Navajo Nation is a material witness in such prosecution, or grand

jury investigation, and that his or her presence will be required for specified number of days, upon presentation of such certificate to any judge of a court of record in the district in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for a hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, will give to him or her protection from arrest and the service of civil and criminal process, he or she shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his or her attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him or her for the hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of a witness who disobeys a summons issued from a District Court of the Navajo Nation.

Library References

Indians ☞38.
Witnesses ☞6, 20.
Westlaw Topic Nos. 209, 410.

C.J.S. Indians § 163.
C.J.S. Witnesses §§ 14 to 19, 69.

§ 1972. Witness from another state summoned to testify in the Navajo Nation

A. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or prosecutors investigations commenced or about to commence, in this jurisdiction, is a material witness in a prosecution pending in a district court of the Navajo Nation, or in prosecutorial investigation which as com-

menced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. This certificate shall be presented to a judge or a court of record in the county in which the witness is found.

B. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the Navajo Nation to assure his or her attendance in the Navajo Nation, such judge may direct that the witness be forthwith brought before him or her; and the judge being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof, may order that the witness be forthwith taken into custody and delivered to an officer of the Navajo Nation, which order shall be sufficient authority to the officer to take the witness into custody and hold him or her unless and until he or she may be released by bail, recognizance or order of the judge issuing the certificate.

C. If the witness is summoned to attend and testify in the Navajo Nation he or she shall be tendered the sum of ten cents a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and five dollars (\$5.00) for each day that he or she is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the Navajo Nation a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming into the Navajo Nation, fails without good cause to attend and testify as directed in the summons, he or she shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the Navajo Nation.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞38.

Witnesses ☞6, 20.

Westlaw Topic Nos. 209, 410.

C.J.S. Indians § 163.

C.J.S. Witnesses §§ 14 to 19, 69.

§ 1973. Exemption from arrest and service of process

A. If a person comes into the Navajo Nation in obedience to a summons directing him or her to attend and testify in the Navajo Nation he or she shall not while in the Navajo Nation pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

B. If a person passes through the Navajo Nation while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he or she shall not while so passing through the Navajo Nation be subject to arrest or the service of process, civil or criminal, in

connection with matters which arose before his or her entrance into the Navajo Nation under the summons.

Library References

Arrest ☞60.	C.J.S. Arrest § 6.
Indians ☞38.	C.J.S. Indians § 163.
Process ☞117.	C.J.S. Process § 29.
Westlaw Topic Nos. 35, 209, 313.	

§ 1974. Uniformity of interpretation

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Library References

Indians ☞38.
Westlaw Topic No. 209.
C.J.S. Indians § 163.

Subchapter 9. Search and Seizure

§ 2001. Unlawful search or seizure; trespass

No police officer shall search or seize any property without a warrant unless he or she shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under Chapter 3 of this Title. Unlawful search or seizure will be deemed trespass and punished in accordance with 17 N.N.C. §§ 350 or 351.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞38.	C.J.S. Indians § 163.
Searches and Seizures ☞36.1.	C.J.S. Searches and Seizures §§ 10 to 11, 48,
Westlaw Topic Nos. 209, 349.	50, 57, 61, 102.

§ 2002. Warrants, Issuance; complaint

Every judge of the Court of the Navajo Nation shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of such court. However, no warrant of search and seizure shall issue except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some offense against the Navajo Nation.

Library References

Indians ☞38.	Westlaw Topic Nos. 209, 349.
Searches and Seizures ☞103.1, 105, 117.	C.J.S. Indians § 163.

17 N.N.C. § 2002

LAW AND ORDER

C.J.S. Searches and Seizures §§ 131, 135,
137, 145, 149 to 150, 152 to 154, 159, 164,
167, 236, 244.

§ 2003. Contents

No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched, describes the articles or property to be seized and bears the signature of a duly qualified judge of the Court of the Navajo Nation.

Library References

Indians ⇨38.	C.J.S. Indians § 163.
Searches and Seizures ⇨123.	C.J.S. Searches and Seizures §§ 129 to 130, 173, 187.
Westlaw Topic Nos. 209, 349.	

§ 2004. Service

Service of warrants of search and seizure shall be made only by officers of the Navajo Nation police.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨38.	C.J.S. Indians § 163.
Searches and Seizures ⇨141.	C.J.S. Searches and Seizures §§ 190 to 191, 193 to 194, 205, 211, 213 to 214, 216.
Westlaw Topic Nos. 209, 349.	

Chapter 7. Facilities

Section

2201. Plans and construction; authority
2202. Construction sites; approval

§ 2201. Plans and construction; authority

The President of the Navajo Nation, with approval of the Public Safety Committee is authorized to approve plans for and cause to be constructed law and order facilities, giving employment preference to Navajo workers in all positions for which they qualified.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 2202. Construction sites; approval

The Public Safety Committee of the Navajo Nation Council, shall approve all construction sites as authorized by 17 N.N.C. § 2201. In so doing, it shall give due consideration to each community's needs, as to where these facilities will best serve the needs of the majority of the people in the area, and, wherever possible, it shall incorporate such facilities with other Navajo Nation-owned improvements in the vicinity.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ⇄32(4.1).
Westlaw Topic No. 209.

Chapter 9. [Deleted]**Chapter 11. Fire Prevention****Subchapter 1. General****Section**

- 2701. Closing of areas
- 2702. Campfires and smoking prohibited
- 2703. Posting of closed areas
- 2704. Removal of unauthorized persons from closed areas
- 2705. Penalties

Subchapter 2. Navajo Nation Fireworks Code

- 2730. Title and establishment
- 2731. Purpose
- 2732. Definitions
- 2733. Manufacture, possession, sale or use of fireworks
- 2734. Illegal and prohibited fireworks
- 2735. Exemption, permit, and bond
- 2736. Enforcement authority
- 2737. Violations of Code

Subchapter 1. Generals**§ 2701. Closing of areas**

A. Upon the advice of the Navajo Forestry Department, the President of the Navajo Nation may order any area of Navajo Nation land closed to entry by the general public because of the danger of fire.

B. Such order shall not prohibit persons who regularly reside within the closed area from going to and from their homes and continuing such of their ordinary activities as do not constitute an unreasonable fire hazard.

C. Such order shall not prohibit officers and employees of the United States or of the Navajo Nation from entering such closed areas in the performance of their official duties.

D. Such order shall not prohibit lessees, licensees, or permittees of the Navajo Nation and their officers and agents from entering such closed areas for the purpose of going to or from their leased, licensed or permitted premises.

E. Such order shall not prohibit grantees of rights-of-way from entering such closed areas for the purpose of necessary maintenance of their right-of-way; but such order may prohibit or restrict the use of any road right of way by the general public.

Library References

Indians ⇨32(4.1, 8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 2702. Campfires and smoking prohibited

Campfires shall be absolutely prohibited within any area closed to entry by the general public by order of the President. Smoking shall be prohibited in such areas, except inside substantial buildings.

Library References

Indians ⇨32(4.1).
Westlaw Topic No. 209.

§ 2703. Posting of closed areas

Whenever an area is closed to entry by the general public by order of the President of the Navajo Nation, signs so stating, and stating that campfires and smoking are prohibited in such area, shall be posted in a conspicuous place on each road and trail entering the closed area. The validity of any order issued by the President of the Navajo Nation closing an area of Navajo Nation land from entry by the general public, however, shall not be affected if such signs are not posted.

Library References

Indians ⇨32(4.1, 8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 2704. Removal of unauthorized persons from closed areas

A. It shall be the duty of any Navajo police officer or any employee of the Forestry Department to warn any unauthorized person found in a closed area to leave the closed area at once; and if such person does not comply with such warning without delay, to report such fact to the Chief of Police or any captain of the Navajo Police.

B. If such person is an Indian, the Chief of Police or captain shall apply to the District Court of the Navajo Nation for a warrant to apprehend such person. If such person is not an Indian, the Chief or captain shall apply to the President of the Navajo Nation for an order for the physical removal of such person pursuant to the provisions of 17 N.N.C. § 1901.

C. Where the activities of such person as reported to the captain or Chief appear to such officer to constitute an unusually grave fire hazard so that irreparable damage to the property of the Navajo Nation will probably occur as a result of the delay, necessary to obtain a warrant to apprehend or order for physical removal, the Chief or captain may arrest or remove such person without a warrant or order.

D. Where any non-Indian is removed without an order from the President of the Navajo Nation, the officer effecting such removal shall report it as soon as possible to the Chief of Police, who shall report such removal to the President of the Navajo Nation for such further action, under the provisions of 17 N.N.C. § 1901, as the President of the Navajo Nation may deem advisable.

Library References

Indians ☞32(4.1, 8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 157.

§ 2705. Penalties

A. Any person who shall violate 17 N.N.C. § 2702, or having been warned to leave a closed area pursuant to 17 N.N.C. § 2704 shall willfully fail or refuse so to leave, shall be deemed guilty of an offense and, upon conviction thereof, may be sentenced to labor for not more than sixty (60) days or to a fine of not more than three hundred dollars (\$300.00), or both.

B. Any non-member who shall violate this chapter may be excluded from Navajo Nation land pursuant to the provisions of 17 N.N.C. § 1901 *et seq.*

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Indians ☞32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

Subchapter 2. Navajo Nation Fireworks Code

§ 2730. Title and establishment

This enactment shall establish and shall be known as the Navajo Nation Fireworks Code.

Library References

Indians ☞32(13).
Westlaw Topic No. 209.
C.J.S. Indians § 157.

§ 2731. Purpose

Insofar as it is practicable, it is the intent and purpose of this Act to regulate the manufacture, possession, sale and use of fireworks within the exterior boundaries of the Navajo Nation. With this enactment, it is hereby declared by the Navajo Nation that possession, manufacture, sale and use of fireworks is against the public health, safety, and welfare of the people of the Navajo Nation, when performed outside of these regulations.

History

CJA-08-00, January 27, 2000. Generally amended the Navajo Nation Criminal Code.

Library References

Explosives ☞3. Westlaw Topic Nos. 164, 209.
Indians ☞32(13). C.J.S. Indians § 157.

§ 2732. Definitions

A. “Fireworks” mean any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridge toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedos, sky-rockets, Roman candles, Daygo bombs, sparklers or other devices of like construction and any devices containing an explosive substance, except that the term “fireworks” shall not include any auto flares, paper caps containing not in excess of an average of twenty-five hundredths of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, if constructed so that the hand cannot come into direct contact with the cap when in place of explosive.

B. “Person” means individual, firm, corporation, employee, or agent.

Library References

Explosives ☞3. Westlaw Topic Nos. 164, 209.
Indians ☞32(13). C.J.S. Indians § 157.

§ 2733. Manufacture, possession, sale or use of fireworks

It shall be unlawful within the exterior boundaries of the Navajo Nation for any person to manufacture, attempt to manufacture, possess, store, offer or expose for sale, sell, use or explode any fireworks, except as provided for in section 2735, of this Code, and other applicable Navajo Nation and federal laws.

Library References

Explosives ☞3.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 2734. Illegal and prohibited fireworks

Manufacture, possession, sale and use of the following types of fireworks are strictly prohibited and in violation of this Code:

- A. Cherry Bomb. Red in color—1" in diameter.
- B. Silver Salute. Silver in color—2" in length.
- C. M-80. Red in color—approximately 1" length.

Library References

Explosives ☞3.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 2735. Exemptions, permit and bond

- A. Exemptions. Nothing in this Code shall be construed to prohibit:
 1. Public Exhibition shows. A permit shall be required for all such supervised public displays of fireworks by a jurisdiction, fair association, amusement or other organization, or by any artisans in the pursuit of their trade. Every such use or display shall be handled by a competent operator approved by the Navajo Nation Fire Chief, and shall be of such character and location, not to be hazardous to any property or person.
 2. Manufacture. Nothing in this Code shall be construed to prohibit a resident manufacturer, jobber, dealer to manufacture, sell (at wholesale only), any fireworks, provided such fireworks are intended for direct shipment out of the Navajo Nation; for supervised displays on the Navajo Nation, or any other uses permitted in subsection (A)(3) below.
 3. Other legitimate uses of fireworks as specifically provided for in accordance with this Code and other applicable federal regulations, such uses including but not limited to wildlife management, agricultural, athletic or sport, blasting or other legitimate industrial purposes on the Navajo Nation. All such use must be properly permitted by the Navajo Nation Fire Department.

- B. Permits. Application for a Fireworks Permit shall be made to the Navajo Nation Fire Department offices at least five (5) working days prior to the proposed date of display or use. For manufacture, or wholesale, applicant shall furnish a valid copy of a Business Permit issued by the Business Regulatory Department, prior to said Fireworks Permit application being accepted by the Fire Chief. After such privilege is granted, it shall be valid only for forty-eight (48) hours prior to, and forty-eight (48) hours following the date of display.

- C. Bond. Upon application, the Permittee shall furnish proof of a bond or certificate of insurance in an amount deemed adequate by the Navajo Nation Fire Department to satisfy claims for all personal or property damages arising

out of any act or omission on the part of such person in connection with the activities permitted.

D. Unfired Fireworks. All such fireworks which are unfired upon expiration of the valid Fireworks Permit, shall be disposed of in a method which is safe for the type of fireworks remaining, under the supervision of the Navajo Nation Fire Department.

Library References

Explosives ☞3.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 2736. Enforcement authority

A. The Navajo Nation Fire Chief shall have the power to carry out the intent and purposes of this Code; and further, the Navajo Nation Fire Department, commissioned Peace Officers of the Navajo Nation shall be charged with the enforcement of all of the provisions of this Code.

B. Seizures. The Navajo Nation Fire Department, or any of the aforementioned commissioned Police and Peace Officers, shall seize, remove, or cause to be removed at the expense of the owner, all stocks of fireworks or combustible offered or exposed for sale, stored or possessed in violation of this Code.

Library References

Explosives ☞1 to 3.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 2737. Violations of Code

Any person who is determined to be in violation of the provisions of this Code or the provisions of any ordinance complying with this Code, shall be sentenced as follows:

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nályééh shall be paid to the victim(s).
2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nályééh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.
3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.
4. Upon the imposition of a bond or security pledges, the District Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.
5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the Chapter in which the defendant resides.

LAW AND ORDER

17 N.N.C. § 2737

Library References

Explosives ↻5.
Indians ↻32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

Title 18

Mines and Minerals

Chapter	Section
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Chapter 1. General Provisions

Section

1. Authority to adopt, amend or repeal regulations
2. Closing of mines not in accordance with regulations
3. Review of mining material by Navajo Nation Office of the Attorney General

§ 1. Authority to adopt, amend or repeal regulations

The Resources Committee is authorized to adopt regulations governing all mining operations on Navajo Nation lands, and from time to time amend, alter, modify or repeal such regulations, or any portions thereof, as in its discretion would be in the best interests of the Navajo Nation and the individual members thereof.

History

CM-3-51, 1922-1951, Res. p. 338, March 22, 1951.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B).

Library References

Indians ⇄ 16.10, 32(4.1).
 Mines and Minerals ⇄ 92.2.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 334, 336.

§ 2. Closing of mines not operated in accordance with regulations

All mines on the Navajo Nation shall be closed unless operated in accordance with mining law and regulations.

18 N.N.C. § 2

MINES AND MINERALS

History

Executive Committee, Res. 192201951, Res.
p. 297, July 22, 1938.

Cross References

Navajo Abandoned Mine Lands Reclamation Code, see 18 N.N.C. § 1601.
Mine Safety, see, 18 N.N.C. § 401 et seq.

Library References

Indians ☞16.10.	C.J.S. Indians §§ 107 to 108.
Labor Relations ☞13, 29.	C.J.S. Kidnapping § 24.
Mines and Minerals ☞92.81.	C.J.S. Mines and Minerals § 340.
Westlaw Topic Nos. 209, 232A, 260.	

§ 3. Review of mining material by Navajo Nation Office of the Attorney General

The Minerals Department may request the Navajo Nation Office of the Attorney General to review any mining material which, in its opinion, is necessary. In submitting mining material for review, the Minerals Department shall specify on what points it desires recommendations. The Office of the Attorney General shall submit its findings to the Minerals Department for appropriate disposition.

History

ACO-75-57, § VIII, October 8, 1957.

Note. The Office of Energy Resources was renamed to Minerals Department pursuant to ACAP-75-88.

Library References

Indians ☞16.10, 32(4.1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

Chapter 2. Navajo Negotiating Team

Section

- 101. Establishment; purpose
- 102. Powers
- 103. Meetings; procedures
- 104. Conflict of interest
- 105. Membership; qualifications; selection; Chairperson; term of office
- 106. Negotiating Meetings

§ 101. Establishment, purpose

A. The Navajo Negotiating Team (“Team”) is established as an entity of the Navajo Nation.

B. It is the purpose of the Navajo Negotiating Team to:

- 1. Make recommendations with respect to mineral leases or other energy agreements which will maximize economic returns to the Navajo Nation, consistent with other relevant Navajo law or policy.

2. Make recommendations for the prudent development of Navajo resources which are consistent with the legal, economic, environmental, cultural, social, labor and resource policies of the Navajo Nation.

3. Represent the Navajo Nation in negotiations with respect to mineral leases, other energy development agreements and energy right-of-ways.

4. Ensure that all proposed mineral leases and energy, related agreements and amendments or modifications thereto, are reviewed by the affected Navajo Nation Divisions and Departments and are carefully considered and analyzed in a deliberate unbiased manner by the Negotiating Team relying on all of the expertise available to the Navajo Nation, and that no lease or agreement is submitted to the Navajo Nation President, Resources Committee or the Navajo Nation Council without complete analysis and a recommendation by the Negotiating Team.

History

ACJN-98-83, June 23, 1983.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

Library References

Indians ⇄ 16.10(2).

C.J.S. Indians § 109.

Mines and Minerals ⇄ 56.

C.J.S. Mines and Minerals §§ 194 to 195, 233.

Westlaw Topic Nos. 209, 260.

§ 102. Powers

A. General. The Team shall have all powers necessary and proper to carry out the purposes set forth in 18 N.N.C. § 101(B).

B. Enumerated powers. The Team is authorized and directed:

1. To propose, negotiate and renegotiate mineral leases or other energy agreements on behalf of the Navajo Nation subject to final approval of the President of the Navajo Nation, and the Navajo Nation Council; such agreements shall include, but not be limited to coal, oil, gas and uranium and shall also include negotiations involving energy-related right-of-ways such as electric power lines other than consumer service lines, gas and oil pipelines, and railways.

2. To review all proposed mineral leases and other energy related agreements prior to their consideration by other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and to utilize the assistance and resources of other Navajo Nation entities and coordinate the Navajo Nation review process, including review of Chapter and local citizen concerns regarding any proposed lease or energy-related agreement, for such proposals prior to their submission to the President of the Navajo Nation, the Resources Committee or the Navajo Nation Council.

3. To make reports and recommendations regarding all mineral leases and other energy-related agreements to the President of the Navajo Nation. Such recommendations and reports shall be reviewed by the President of the

18 N.N.C. § 102

MINES AND MINERALS

Navajo Nation and the President shall then refer the matter to the Navajo Nation Council, the Resources Committee of the Navajo Nation Council or the Negotiating Team as the President of the Navajo Nation may deem appropriate under the circumstances.

4. To accept and expend such funds as may be appropriated by the Navajo Nation Council and its standing committees which are necessary to carry out the purposes and functions of the Negotiating Team.

History

ACJN-98-83, Exhibit B § III, June 23, 1983.

Revision note. Slightly reworded for purposes of statutory consistency.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

Library References

Indians ⇌ 16.10(2).

Mines and Minerals ⇌ 56.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.

C.J.S. Mines and Minerals §§ 194 to 195, 233.

§ 103. Meetings; procedures

A. Meetings shall be held on the call of the Chairperson of the Team or, in his or her absence, on the call of the Vice-Chairperson. A quorum shall consist of six (6) members.

B. Until such time as the Resources Committee or the Navajo Nation Council shall prescribe otherwise, the Team is empowered to develop its own procedures for the conduct of its meetings and other actions necessary to accomplish its purposes.

History

ACJN-98-83, June 23, 1983.

Revision note. Slightly reworded for purposes of statutory form.

§ 104. Conflict of interest.

All present and future laws of the Navajo Nation with respect to conflicts of interest shall apply to the Navajo Negotiating Team.

History

ACJN-9-93, June 23, 1983.

Library References

Indians ⇌ 16.10(2), 32(6).

Westlaw Topic No. 209.

C.J.S. Indians §§ 51, 109.

§ 105. Membership; qualifications; selection; Chairperson; term of office

A. The Team shall consist of ten members including a Team Chairperson and Vice-Chairperson, to be appointed by the President of the Navajo Nation with the approval of the Government Services Committee of the Navajo Nation Council, as follows:

1. Five (5) members of the Team shall be selected from each of the five agencies comprising the Navajo Nation. Team members so selected shall be familiar with natural resources development matters within their respective agencies.

2. Two (2) members of the Team shall be selected from among the membership of the Resources and Economic Development Committees of the Navajo Nation Council.

3. Three (3) members of the Team shall be selected from among Navajo Nation employees who are experienced in natural resources development, economics or the law.

B. All Team members shall serve at the pleasure of the Government Services Committee and the President of the Navajo Nation.

History

ACJN-9-93, June 23, 1983.

Cross References

Government Services Committee power, see 2 N.N.C. § 342 (B)(3) and (4).

Library References

Indians ⇄ 16.10(2), 32(6).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51, 109.

§ 106. Negotiating meetings

A. In order to promote the efficient discharge of the duties imposed on the Team, the Chairperson of the Team may, from time to time, assign or designate not less than three Team members to investigate, negotiate, review and make recommendations to the full Team with regard to any matter pending before the Team.

B. All such assignments or designations by the Chairperson of the Team shall include at least one attorney and the Team member from the Agency most affected by the matter under negotiation from among the Team members so assigned or designated with regard to any matter pending before the Team.

History

ACJN-9-93, June 23, 1983.

Library References

Indians ⇄ 16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

Chapter 3. Plan of Operation for Minerals Department [Repealed]

§§ 201 to 205. [Repealed]

History

Plan of Operation for Minerals Department was repealed and deleted from the Code pursuant to CAP-14-94, April 20, 1994. previously codified at 18 N.N.C. §§ 201-205

Chapter 4. Navajo Energy Development Authority (NEDA)

Section

- 301. Establishment
- 302. Purposes
- 303. Powers
- 304. Exemption of assets and property of Navajo Nation; sovereign immunity

§ 301. Establishment

The Navajo Nation Council charters and establishes the Navajo Energy Development Authority (NEDA), for such purposes and with such powers as are set forth in § 303 of this Chapter or as may hereinafter be established for NEDA by the Navajo Nation Council.

History

CMY-39-80, May 1, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Cross References

Powers, see 2 N.N.C. § 102(B) and (G).

Library References

Indians ⇌ 16.10, 32.

Mines and Minerals ⇌ 86.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 49, 51, 107 to 108.

C.J.S. Mines and Minerals § 334.

§ 302. Purposes

The purposes for which NEDA is established are as follows:

A. To provide an organization owned by the Navajo Nation which can develop and manage energy resources and operate as a profit-making organization of the Navajo Nation pursuant to future agreements between NEDA and the Navajo Nation.

B. To see to it that energy development within the Navajo Nation is consistent with existing and future Navajo Nation environmental, labor, and resources utilization policies.

C. To optimize financial returns to the Navajo Nation from the development of depletable resources, so that the financial returns may be used by the Navajo Nation (through the Navajo Nation Council) for the development of Navajo renewable resources, productive enterprises, and other long-term needs and goals of the Navajo People and the Navajo Nation.

History

CMY-39-80, May 1, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇌ 16.10, 32.

Mines and Minerals ⇌ 86.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 49, 51, 107 to 108.

C.J.S. Mines and Minerals § 334.

§ 303. Powers

The general powers which NEDA shall have are:

A. To enter into agreements with the Navajo Nation for the development of resources of the Navajo Nation.

B. To borrow money and pledge or otherwise encumber its assets to secure the fulfillment of its obligations.

C. To employ such staff as may be necessary to carry out its operations.

D. To enter into contracts and agreements.

E. To make application to federal, state and local governments for participation in such government programs as may benefit implementation of NEDA activities.

F. To establish offices for the transaction of business.

G. To sue and be sued in the Courts of the Navajo Nation in the name of the Authority.

H. To be governed by a Board of Directors.

I. To have such powers as may be necessary and proper to further the purposes for which NEDA is established, as such purposes may be modified from time to time by the Resources Committee of the Navajo Nation Council.

History

CMY-39-80, May 1, 1980.

Note. Pursuant to CD-68-98, December 15, 1989, and CN-72-92, November 4, 1992, the Resources Committee has oversight authority under this section instead of the Government

Services Committee of the Navajo Nation Council. See 2 N.N.C. § 695(B)(13).

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇌ 16.10, 24, 32.

Mines and Minerals ⇌ 92.2.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 12, 31, 49, 51, 107 to 108.

C.J.S. Mines and Minerals §§ 334, 336.

§ 304. Exemption of assets and property of Navajo Nation; sovereign immunity

Notwithstanding other provisions of this chapter, NEDA shall have no authority to encumber trust or fee land owned or held by the Navajo Nation to satisfy its liabilities out of the assets or property of the Navajo Nation, nor to waive the sovereign immunity of the Navajo Nation.

History

CMY-39-80, May 1, 1980.

Library References

Indians Ⓔ9, 32(1).
Westlaw Topic No. 209.
C.J.S. Indians §§ 49 to 51, 67.

Chapter 5. Mine Safety

Section

- 401. Inspection of mines and mining operations
- 402. Warning of unsafe condition or practice
- 403. Summary closing-order and notices
- 404. Failure to suspend mining operations
- 405. Hearing
- 406. Penalty for members of the Navajo Nation working in a closed mine or mining operation
- 407. Standards for determining what constitutes an unsafe condition and the training standards for workers
- 408. Report of accident, injury, illness and investigation of serious and fatal accidents
- 409. Assessment of penalty for noncompliance
- 410. Appeals
- 411. Union representative(s) of workers may accompany the Mining Engineer

§ 401. Inspection of mines and mining operations

A. The Navajo Nation Mining Engineer or such other person as the engineer shall designate, shall be the agent of the Navajo Nation for the purpose of inspecting all surface and underground mines and mining operations within the jurisdiction of the Navajo Nation. The Mining Engineer shall have the right at any time to enter and to inspect any such mine or mining operations.

B. The term “mining operation” shall include, but is not limited to, processing plants, sand and gravel operations, and operations of companies transporting minerals mined within the jurisdiction of the Navajo Nation or minerals owned in whole or in part by the Navajo Nation, but shall exclude oil and gas operations.

C. For purposes of this Code, the Navajo Nation Mining Engineer shall mean the Navajo Nation Mining Engineer employed with the Minerals Department of the Navajo Nation, or his or her designate.

History

CF-20-91, February 13, 1991.
CO-81-85, October 31, 1985.

ACD-49-55, § 1, Res. p. 130, December 5,
1955.

Library References

Indians ☞16.10.
Labor Relations ☞13, 32.
Mines and Minerals ☞93.
Westlaw Topic Nos. 209, 232A, 260.

C.J.S. Indians §§ 107 to 108.
C.J.S. Kidnapping § 24.
C.J.S. Labor Relations § 16.
C.J.S. Mines and Minerals § 382.

§ 402. Warning of unsafe conditions or practice

A. The Mining Engineer shall call the attention of the persons in charge of the mining activity, or the safety officials, or if they are not available, the attention of the workers affected, to any unsafe condition or practice, or to any inadequate mine safety and health training of the worker(s), which he or she observes.

B. The Mining Engineer shall warn that the unsafe condition or practice or the inadequate training of the worker(s) must be remedied without delay, and he or she shall issue citations to the mine or mining operations for noncompliance with applicable Navajo Nation mine safety and health laws, rules and regulations. Citations shall be posted on bulletin boards of the mine/mining operations.

History

CF-20-91, February 13, 1991.
CO-81-85, October 31, 1985.

ACD-49-55, § 2, Res. p. 130, December 2,
1955.

Library References

Indians ☞16.10.
Labor Relations ☞13.
Westlaw Topic Nos. 209, 232A.

C.J.S. Indians §§ 107 to 108.
C.J.S. Kidnapping § 24.

§ 403. Summary closing-order and notices

A. In the event the Mining Engineer believes the unsafe condition or practice creates an extreme and/or immediate menace to life, limb or health, he or she may order the immediate partial or complete closure of the mine or mining operation. His or her order shall be delivered orally to the person in charge of the mining activity, and a notice of the closure order shall be issued at the same time. In such case, all operations in the area covered by the closing order shall be suspended immediately, and all personnel except those necessary or actually working to remedy the unsafe condition shall be excluded from the area.

B. The mining Engineer shall, within one (1) working day thereafter, send a notice of the closing order by registered or certified mail to the owner of the lease, permit or assignment embracing such mine or mining operation.

C. The area subject to the closing shall remain closed until the Mining Engineer or the Director of the Navajo Nation Minerals Department or the

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Resources Committee of the Navajo Nation Council lifts the closing order. Such order shall be lifted when the operator of the mine or mining operation proves to the satisfaction of the Engineer or the Committee that the unsafe condition or practice has been corrected.

D. The Mining Engineer, if necessary shall be assisted by the Division of Public Safety and/or the Resource Enforcement Agency of the Navajo Nation to enforce 18 N.N.C. §§ 401–422 of the Navajo Nation Code. Such assistance shall be provided immediately upon request by the Mining Engineer.

History

CF–20–91, February 13, 1991. **Note.** § 403 was formerly codified at § 404.
CO–81–85, October 31, 1985.
ACD–49–55, § 2, Res. p. 130, December 2, 1955.

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Labor Relations ⇄13, 29. C.J.S. Kidnapping § 24.
Westlaw Topic Nos. 209, 232A.

§ 404. Failure to suspend mining operations

Any owner or operator of a mine or mining operation operating a mine or mining operation in violation of a closing order shall have the status of a trespasser on the mine or mining operation.

History

CF–20–91, February 13, 1991. **Note.** § 404 was formerly codified at § 405.
CO–81–85, October 31, 1985.
ACD–49–55, § 3, 1955, § 3, Res. p. 130, December 2, 1955.

Library References

Indians ⇄16.10. Westlaw Topic Nos. 209, 232A.
Labor Relations ⇄29. C.J.S. Indians §§ 107 to 108.

§ 405. Hearing

A. Any operator of a mine or mining operation whose mine or mining operation has been closed in part or in whole by the order of the Mining Engineer may within thirty (30) days of the date of mailing of the closing order, in the event such closing order has not been withdrawn, request a hearing before the Director of the Minerals Department at which time he or she shall be given the opportunity to show that the unsafe condition, upon which the closing order was based, has been remedied or never existed. The Director may continue the closing order if he or she determines that the unsafe condition still exists. If the Director of the Minerals Department does not lift the closing order, the operator shall be given further opportunity to present his or her case before the Resources Committee of the Navajo Nation Council within a reasonable time of the decision of the Director of the Minerals Department.

B. As a result of such hearing the Resources Committee may lift the closing order, may continue it for not more than ninety (90) days pending correction of the unsafe condition or may take such other action as may appear just.

History

CF-20-91, February 13, 1991.
CO-81-85, October 31, 1985.
ACD-49-55, § 3, Res. p. 130, December 2, 1955.

Note. § 405 was formerly codified at § 406.

Library References

Indians ☞16.10.
Labor Relations ☞31.

Westlaw Topic Nos. 209, 232A.
C.J.S. Indians §§ 107 to 108.

§ 406. Penalty for members of the Navajo Nation working in a closed mine or mining operation

Any member of the Navajo Nation who shall work in an area of a mine or mining operation, while there is an outstanding order of the Mining Engineer requiring that area of the mine or mining operation to be closed, except for the purpose of correcting the unsafe condition which occasioned the closing order, may be charged with a separate criminal offenses for each day of such violation of the closing order, and upon conviction thereof shall be sentenced to a fine not to exceed two hundred fifty dollars (\$250.00) for each such offense.

History

CF-20-91, February 13, 1991.
CO-81-85, October 31, 1985.
ACD-49-55, § 3, Res. p. 130, December 2, 1955.

Note. § 406 was formerly codified at § 407.

Library References

Indians ☞16.10, 32(13), 38(7).
Labor Relations ☞29.

Westlaw Topic Nos. 209, 232A.
C.J.S. Indians §§ 107 to 108, 157, 163.

§ 407. Standards for determining what constitutes an unsafe condition and the training standards for workers

The Navajo Nation adopts as its interim standards for mine safety and health, including the standards for the training of workers, those substantive standards contained in the regulations promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 *et seq.*, as they may be amended, and other applicable federal laws, rules and regulations. More stringent and more specific health and safety standards may be adopted in the future with the approval of the Navajo Nation Council.

History

CF-20-91, February 13, 1991.
CO-81-85, October 31, 1985.
ACD-49-55, § 3, Res. p. 130, December 2, 1955.

Note. § 407 was formerly codified at § 408.

Library References

Indians ☞16.10, 32(3).

Labor Relations ☞13, 28.

Westlaw Topic Nos. 209, 232A.

C.J.S. Indians §§ 54, 59, 107 to 108.

C.J.S. Kidnapping § 24.

C.J.S. Labor Relations § 16.

§ 408. Report of accident, injury, illness and investigation of serious and fatal accidents

Any accident, injury or illness occurring in the mine or mining operation shall be reported to the Mining Engineer on Mine Safety and Health Administration (MSHA) forms 7000-1 and 7000-2 on a quarterly basis within fifteen (15) days following the quarter for which the report(s) is (are) due. If the 7000-1 and 7000-2 forms are revised by MSHA the report(s) shall be submitted on the revised forms. When a fatal accident occurs in or about a mine or mining operation, the operator of the mine or mining operation shall immediately notify the Mining Engineer, who shall inspect the premises to determine whether the accident was caused wholly or in part by unsafe conditions or practices in or about the mine or mining operation. The operator shall not disturb the site of the accident until the inspection is completed by the Mining Engineer. The Mining Engineer shall make a report of any fatal accident and submit it directly to the President of the Navajo Nation and the Resources Committee of the Navajo Nation Council.

History

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

CS-76-57, §§ 2, 3, 7, September 10, 1957.

Note. § 408 was formerly codified at § 409.**Library References**

Indians ☞16.10.

Labor Relations ☞13.

Westlaw Topic Nos. 209, 232A.

C.J.S. Indians §§ 107 to 108.

C.J.S. Kidnapping § 24.

§ 409. Assessment of penalty for noncompliance

The Mining Engineer is authorized to assess civil penalties and administrative costs against the owner or operator of any mine or mining operation for non-compliance with Navajo Nation laws, rules and regulations. The regulations for the assessments of penalties provided in Schedule "A".

History

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

Note. § 409 was formerly codified at § 410.**Revision note.** The "Regulations for Assessment of Civil Penalties" is attached to CF-20-91 as Schedule "A".**Library References**

Indians ☞16.10.

Labor Relations ☞29.

Westlaw Topic Nos. 209, 232A.

C.J.S. Indians §§ 107 to 108.

§ 410. Appeals

A. The owner or operator of any mine or mining operation shall have the opportunity to request a hearing before the Director of the Mineral Department

on citation(s) issued by the Mining Engineer. Such requests shall be made in writing to the Director within thirty (30) days of the date of issuance of the citation(s). As a result of the hearing, the Director may let the citation(s) stand, may modify it, or may void it. The assessment of a penalty will be made after the decision of the Director. Any contested assessment must be deposited in an escrow account established by the Nation. This section shall not relieve the owner or operator of a mine or mining operation of his or her obligation to abate the violation within the time specified by the Mining Engineer. The decision of the Director could be appealed to the Resources Committee within thirty (30) days.

B. Any operator or owner of a mine or mining operation shall further have an opportunity to appeal any such assessment by the Mining Engineer or action taken by the Director or the Resources Committee of the Navajo Nation Council, pursuant to the Navajo Nation Mine Safety Code, to the Navajo District Court, Window Rock District, within thirty (30) days of such assessment or action. Any such action shall be brought against the Mining Engineer in his or her official capacity, and shall be solely for the purpose of determining the validity of the assessment or action. Such proceedings, and appellate review, if any, shall be conducted pursuant to the rules of civil procedure of the appropriate courts of the Navajo Nation. The decision of the Navajo Nation Courts shall be the final decision and the escrowed amount shall be released at that time.

History

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

Note. § 410 was formerly codified at § 411.

Library References

Indians ☞16.10.

Westlaw Topic Nos. 209, 232A.

Labor Relations ☞31.

C.J.S. Indians §§ 107 to 108.

§ 411. Union representative(s) of workers may accompany the Mining Engineer

The Mining Engineer shall inform the employee union representative(s) when he or she arrives at a mine operation for inspection. A union representative shall have the right to join the Mining Engineer during the inspection of the mine or mining operation. If the Union representative is employed by the owner or operator, he or she shall receive his or her normal compensation for the time spent on the inspection.

History

CF-20-91, February 13, 1991.

CO-81-85, October 31, 1985.

Note. § 411 was formerly codified at § 412.

Library References

Indians ☞16.10.

Labor Relations ☞32.

Westlaw Topic Nos. 209, 232A.
C.J.S. Indians §§ 107 to 108.
C.J.S. Labor Relations § 16.

Chapter 7. Permits and Leases

Subchapter 1. Generally

Section

- 601. Authority to execute
- 602. Acreage limitation
- 603. [Rescinded]
- 604. [Rescinded]
- 605. Standards and procedures for transfer of mining interests in Navajo lands

Subchapter 3. Prospecting Permits

- 651. Procedure for processing—Generally
- 652. Renewal
- 653. Issuance to applicants; specifications of District
- 654. Rights of permittees; mining permit or lease

Subchapter 5. Drilling and Exploration Permits

- 701. Procedure for processing
- 702. Application—Persons entitled to apply
- 703. Description of land
- 704. Period of permit; application for mining permit or lease; exclusion of others
- 705. Records and information to be furnished on expiration

Subchapter 7. Mining Permits and Assignments of Mining Permits

- 751. Procedure for processing mining permits—Generally
- 752. Members of Navajo Nation
- 753. Renewal
- 754–755. [Repealed]
- 756. Authorization; bond for non-Indian contracts
- 757. Mining development

Subchapter 9. Mining leases

- 801. Procedure for processing
- 802. Negotiation; acreage limitation
- 803. Term

Subchapter 11. Royalties

- 851. Schedule of payments
- 852. Uranium royalty schedule
- 853. Payments; statement
- 854. Overriding royalties

History

Change of name. The Minerals Department the Office of Minerals Development and the referred to in this Chapter, is the predecessor to Mining Department.

Subchapter 1. Generally

§ 601. Authority to execute

The President of the Navajo Nation, pursuant to the provisions of 2 N.N.C. § 222, is authorized and empowered to execute on behalf of the Navajo Nation any and all mining leases or permits granted by the Navajo Nation.

History

CO-61-58, § 1, October 9, 1958.

Revision note. See CD-68-98 amending 2 N.N.C. §§ 222 and 223.

Library References

Indians ⇌16.10.

Mines and Minerals ⇌58, 87.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 197, 199, 235, 334, 373 to 374.

§ 602. Acreage limitation

The acreage limitation for mining permits and leases for any one person, firm, or corporation shall be limited to 960 acres, except that such limitation shall not apply to ore processors who have a plant in actual operation upon the Navajo Nation or who have such a plant in actual construction.

History

ACJ-55-53, § 1 Res. p. 118, July 31, 1953.

ACA-26-51, § 3, 1922-1951, Res. p. 301, April 27, 1951.

ACS-80-51, § 3, 1922-1951, Res. p. 306, September 19, 1951, 1951 Res. p. 118.

Library References

Indians ⇌16.10.

Mines and Minerals ⇌87.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 603. [Rescinded]**History**

Section 603 rescinded by CD-40-83, § 1, December 16, 1983.

§ 604. [Rescinded]**History**

Section 604 rescinded by CD-40-83, § 3, December 16, 1983.

§ 605. Standards and procedures for transfer of mining interests in Navajo lands

A. Any transfer of a Navajo Nation mining interest or all rights arising under leases, permits, other agreements including farm-out and operating agreements heretofore approved by the Navajo Nation, or any interest in the aforementioned, including but not limited to any joint venture, operating, production-sharing, service, managerial, lease or other agreement, or any amendment, supplement or other modification of such agreement providing for the exploration for or extraction, processing or other development of oil and gas, uranium, coal, geothermal, or other energy or non-energy mineral resources in which the Navajo Nation owns a beneficial or restricted interests which (a) contains a Navajo Nation consent requirement; (b) was created pursuant to Bureau of Indian Affairs Sale Numbers, 104, 105, and 107; (c) was created after the date hereof; or (d) was created at any time regardless of whether it meets the requirements of clauses (a) and (b) above or either of them, may be done either by assignment, reassignment or by entering into a working agreement or in any other manner, only if the following requirements are fully complied with:

1. The assignor and assignee shall complete and file a Navajo Nation Assignment of Mining Interest form with the Minerals Department. Forms and updated instructions shall be available from the Minerals Department of the Navajo Nation.

2. The full and complete terms of the transfer, including a complete disclosure of the consideration therefore, shall be put in writing and filed with the Minerals Department, the Navajo Nation, accompanied by an affidavit duly subscribed and sworn or affirmed before an officer authorized to administer oaths by the parties in interest or their authorized representatives who have full knowledge of the facts involved, declaring that the information filed is full and complete and that the parties have no other or additional agreement and have not and will not pay, give, or promise any consideration in addition to that disclosed.

3. After full disclosure of the terms as required in Subsection (A)(1), if it is determined by the Minerals Department of the Navajo Nation that the assignment resulted from a merger of the assignor company or the changing of its name or from the merger of a wholly-owned subsidiary into its parent company (or vice versa), then the economic evaluation and review of the assignment(s) may at the discretion of the Minerals Department, be dispensed with as a prerequisite to Navajo Nation approval of the assignments.

4. The assignor and assignee will be responsible for fulfilling all Department of the Interior's requirements for the assignment of a mining interest.

5. A non-refundable filing fee of two hundred dollars (\$200.00) per assignment shall be deposited with the Navajo Nation. The filing fee may be periodically adjusted by the Minerals Department.

6. No overriding royalty may be created by any transfer authorized hereby without the written consent of the Minerals Department of the Navajo Nation nor shall such overriding royalty be approved if it is determined by the Minerals Department that it will have such an adverse economic impact that it may prevent full recovery of the mineral reserves.

B. The assignment of mineral interests authorized hereby shall not be approved if the Minerals Department determines that it is not in the best economic interest of the Navajo Nation.

C. The Navajo Nation shall have the option of acquiring the mineral interests authorized for transfer hereby within one hundred twenty (120) days after the submission of completed assignment application for the same consideration and on the same terms and conditions as are offered to any other proposed assignee.

D. The Designation of an Operator under the Code of Federal Regulations or otherwise shall not constitute an assignment of the lessees' operating rights. Nor shall any such Designation of Operator be valid unless the lessee gives notice in writing to the Navajo Nation ten (10) days in advance of such designation.

History

CMY-38-85, May 7, 1985.
CD-40-83, December 16, 1983.

Cross References

Taxation generally, see 24 N.N.C. § 101, *et seq.*

Library References

Indians ⇨ 16.10.	C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇨ 64, 74.	C.J.S. Mines and Minerals §§ 228 to 231, 308.
Westlaw Topic Nos. 209, 260.	

Subchapter 3. Prospecting Permits

§ 651. Procedure for processing—Generally

A. Prospecting permits shall originate with the Minerals Department under the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits shall be forwarded to the Navajo Land Department with the Division of Natural Resources.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Regional Director, Bureau of Indian Affairs.

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D. Upon approval by the Bureau of Indian Affairs, Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

History

ACO-75-57, § 1, October 8, 1957.

ACJ-6-55, § 1, Res. p. 79, January 7, 1955.

Note. § 651 under this Subchapter is slightly reworded for statutory consistency.

Note. The Office of Land Administration has been replaced by the Navajo Land Department.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ⇌16.10.

Mines and Minerals ⇌87.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 652. Renewal

A. Notices to mining companies that their prospecting permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any prospecting permits not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all prospecting permits requested to be renewed.

D. Upon obtaining clearance from the Navajo Land Department, renewal of a prospecting permit shall be forwarded to the Bureau of Indian Affairs Regional Director for approval.

E. Upon approval by the Bureau of Indian Affairs Regional Director, renewal of the prospecting permit shall be returned to the Navajo Land Department for final disposition.

History

ACO-75-57, § VI, October 8, 1957.

Revision note. Slightly reworded for statutory consistency.

Note. The Office of Land Administration has been replaced by the Navajo Land Department.

Library References

Indians ⇌16.10.

Mines and Minerals ⇌87.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 653. Issuance to applicants; specification of District

Mineral prospecting permits shall be issued to applicants, Navajo and non-Navajo, by the President of the Navajo Nation and the Regional Director upon written request therefor. Applicants must specify the District or Districts of the Navajo Nation in which prospecting permit shall be issued.

History

ACD-80-53, Res. p. 123, December 18, 1953. **Revision note.** Slightly reworded for statutory consistency.
 ACF-4-52, § 1, Res. p. 43, February 12, 1952.
 ACS-80-51, § 1, 1922-1951, Res. p. 304, September 19, 1951.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ⇌16.10. C.J.S. Indians §§ 107 to 108.
 Mines and Minerals ⇌87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
 Westlaw Topic Nos. 209, 260.

§ 654. Rights of permittees; mining permit or lease

A. Any Navajo discoverer having a prospecting permit may apply to the Resources Committee for a mining permit or mining lease.

B. Any non-Navajo discoverer having a prospecting permit may negotiate for a mining lease with the Resources Committee.

History

ACD-80-53, Res. p. 123, December 18, 1953. ACA-26-51, § 1, 1922-1951, Res. p. 301, April 27, 1951.
 ACF-4-52, § 1, Res. p. 43, February 12, 1952.
 ACS-80-51, § 1, 1922-1951, Res. p. 304, September 19, 1951.

Library References

Indians ⇌16.10. C.J.S. Indians §§ 107 to 108.
 Mines and Minerals ⇌87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
 Westlaw Topic Nos. 209, 260.

Subchapter 5. Drilling and Exploration Permits**§ 701. Procedure for processing**

A. Drilling and exploration permits shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the permits shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval from the Office of the President, the permits shall be forwarded to Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the permits shall be forwarded to the Area Director.

D. Upon the Approval by the Regional Director, the permits shall be returned to the Navajo Land Department for final disposition.

18 N.N.C. § 701

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History

ACO-75-57, § II, October 8, 1957. **Revision note.** Slightly reworded for statutory consistency.
ACJ-6-55, § 1, 1955, 1955 Res. p. 79, January 7, 1955.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2) and (6).

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 702. Application—Persons entitled to apply

Any person, firm, or corporation holding a valid prospecting permit may apply to the Resources Committee through the Navajo Nation Mining Engineer for a drilling and exploration permit upon any lands for which they hold a prospecting permit.

History

ACD-80-53, § 1(B), Res. p. 123, December 18, 1953.

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 703. Description of land

The application for a drilling and exploration permit shall describe the land which it is to cover in a manner satisfactory to the Navajo Nation Mining Engineer and the Resources Committee.

History

ACD-80-53, § 1(B), Res. p. 123, December 18, 1953.

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 704. Period of permit; application for mining permit or lease; exclusion of others

A. A drilling and exploration permit shall be issued for a period not to exceed one hundred twenty (120) days, and shall provide that the permittee may apply during such period for a mining permit or lease as provided in the mining regulations.

B. During the period of the drilling and exploration permit no other person, firm, or corporation may prospect or explore in the area covered by the permit,

or obtain any rights in said area, or apply for and receive any mining permit or lease on any land in the area.

History

ACD-80-53, § 1(B), Res. p. 123, December 18, 1953.

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 705. Records and information to be furnished on expiration

The permittee shall furnish to the Navajo Nation complete drill records and all information obtained from exploration upon expiration of the drilling and exploration permit.

History

ACD-80-53, § 1(B), Res. p. 123, December 18, 1953.

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

**Subchapter 7. Mining Permits and
Assignments of Mining Permits**

§ 751. Procedure for processing mining permits—Generally

A. Mining permits shall originate with the Minerals Department. Upon obtaining approval from this Office, and if there is no dispute over issuance of the permit, the mining permit shall be submitted to the President of the Navajo Nation for consideration and approval.

B. In any case where there is a dispute or question raised as to issuance of the mining permit, such permit shall be submitted to the Resources Committee for consideration and decision before submission to the President of the Navajo Nation for approval.

C. Upon obtaining approval of the President of the Navajo Nation, the mining permit shall be forwarded to the Navajo Land Department.

D. Upon obtaining clearance from the Navajo Land Department, the mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, the mining permit shall be returned to the Navajo Land Department for final disposition.

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History

ACMY-80-64, May 7, 1964.
ACO-75-57, October 8, 1957.
ACJ-6-55, Res. p. 79, January 7, 1955.

Revision note. Slightly reworded for statutory consistency.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ☞16.10.
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 752. Member of Navajo Nation

The President of the Navajo Nation is delegated authority to approve mining permits issued by the Nation to its members in accordance with procedure outlined in 18 N.N.C. § 751.

History

ACMY-80-64, May 7, 1964.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ☞16.10, 32(8).
Westlaw Topic No. 209.
C.J.S. Indians §§ 29, 59, 107 to 108, 157.

§ 753. Renewal

A. Notices to permittees that their mining permits should be renewed shall be made by the Navajo Land Department.

B. The Navajo Land Department shall proceed to have any mining permit not renewed appropriately cancelled.

C. The Navajo Land Department shall originate all mining permits requested to be renewed.

D. Upon receiving clearance from the Navajo Land Department, a renewal of a mining permit shall be forwarded to the Regional Director.

E. Upon approval by the Regional Director, a renewal of the mining permit shall be returned to the Navajo Land Department for final disposition.

History

ACO-75-57, October 8, 1957.
ACJ-6-55, § 2, Res. p. 79, January 7, 1955.

Library References

Indians ☞16.10.

Mines and Minerals ☞87.

Westlaw Topic Nos. 209, 260.
 C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 754–755. [Repealed]

History

CD–40–83, December 16, 1983.
 Revision

Note. See 18 N.N.C. § 605 relating to procedure for transfer of mining interests in the Navajo Nation.

§ 756. Authorization; bond for non-Indian contracts

A. Mining permits, assignments, operating agreements, and subcontracts are authorized, subject to the approval of the Resources Committee and the Secretary of the Interior or his or her authorized representative. All such arrangements shall be reduced to writing and shall not be effective until approved. Navajo Nation mining permits shall be issued only to Navajo members.

B. All non-Indian contract shall require a surety bond to insure performance of all terms of the contract, and the amount of the bond shall conform to Mining Regulations.

History

ACA–29–53, Res. p. 169, April 9, 1953.
 ACF–4–52, § 2, 1922–1951, Res. p. 43, February 12, 1952.
 ACS–80–51, § 2, 1922–1951, Res. p. 304, September 19, 1951.

Tribal Council Res. 1922–1951, December 8, 1948, granted certain rights and privileges to Navajos who made discoveries of minerals on Tribal lands.

Library References

Indians ⇄16.10.
 Mines and Minerals ⇄87.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 757. Mining development

Where mining permits are operated exclusively by Navajo there shall be expended by the permittee the equivalent of five dollars (\$5.00) per acre per year in actual mining development. Such development shall consist of road building, prospecting or drilling, and mining operations. Where assignments or other agreements are made to non-Indians the development requirements shall be forty dollars (\$40.00) per acre per year. Certified reports shall be submitted to the Resources Committee regarding development expenditures within ten (10) days after the yearly anniversary date of the contract. Where permits or leases are assigned or interests are otherwise acquired by non-Indians, an advance annual rental of one dollar (\$1.00) per acre is required and no credit shall be allowed therefor any future production royalties.

History

ACS-80-51, § 2, 1922-1951, Res. p. 304, September 19, 1951. ACA-26-51, 1922-1951, Res. p. 301, April 27, 1951.

Library References

Indians ☞16.10.
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

Subchapter 9. Mining Leases

§ 801. Procedure for processing

A. Mining leases, including the conversion of an assignment of a mining permit to a lease, shall originate with the Minerals Department within the Division of Natural Resources. Upon obtaining approval from the office, the leases shall be forwarded to the Office of the President of the Navajo Nation.

B. Upon obtaining approval of the Office of the President, the leases shall be forwarded to the Navajo Land Department.

C. Upon obtaining clearance from the Navajo Land Department, the leases shall be forwarded to the Regional Director for approval.

D. Upon approval by the Regional Director, the leases shall be returned to the Navajo Land Department for final disposition.

History

ACO-75-57, October 8, 1957. See, also, note substituted for the "Office of Energy Resources" under 18 N.N.C. § 651. pursuant to ACAP-75-88. Slightly reworded

Revision note. "Department of Minerals for statutory consistency. within the Division of Natural Resources" was

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ☞16.10(2). C.J.S. Indians § 109.
Mines and Minerals ☞56. C.J.S. Mines and Minerals §§ 194 to 195, 233.
Westlaw Topic Nos. 209, 260.

§ 802. Negotiation; acreage limitation

Mining leases, other than oil and gas for tracts of not less than 40 acres nor more than 160 acres, shall be negotiated through the Resources Committee of the Navajo Nation Council and the Regional Director, subject to the approval of the Secretary of the Interior or his or her authorized representative; provided, however, that the Resources Committee and Regional Director may waive the foregoing acreage limitation for justifiable cause, and may also decide to put any mineral lands up for competitive bid with leases to be granted to the highest bidder.

History

ACI-69-53, 1953 Res. p. 121, October 8, 1953. **Note.** ACN-40-55, 1955 Res. p. 9, November 29, 1955. ACJ-26-55, 1955 Res. p. 73, July 19, 1955.
 ACM-35-53 § 2, Res. p. 118, May 12, 1953.
 ACS-80-51, § 5 1922-1951, Res. p. 307, September 19, 1951.
 ACA-26-51 § 5, 1922-1951, Res. p. 302, April 27, 1961, contained same provision as ACS-80-51, § 5.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(2).

Library References

Indians ⇄16.10(2). C.J.S. Indians § 109.
 Mines and Minerals ⇄56. C.J.S. Mines and Minerals §§ 194 to 195, 233.
 Westlaw Topic Nos. 209, 260.

§ 803. Term

Mining leases may be issued for a specified term not to exceed ten (10) years from the date of approval by the Secretary of the Interior, or his or her authorized representative, and as much longer as the substances specified in the leases are produced in paying quantities; provided, however, that leases covering uranium and vanadium shall be for a specified term of two (2) years and so long thereafter as such minerals shall be produced in paying quantities; and said leases shall also provide that exploration or development work shall commence and continue in good faith within six (6) months from date of approval.

History

ACO-69-53, 1953 Res. p. 121, February 19, 1954. ACM-35-53 § 2, 1953 Res. p. 118, May 12, 1953.

Library References

Indians ⇄16.10(2). C.J.S. Indians § 109.
 Mines and Minerals ⇄63. C.J.S. Mines and Minerals § 208.
 Westlaw Topic Nos. 209, 260.

Subchapter 11. Royalties

§ 851. Schedule of payments

A. The royalties payable to the Navajo Nation on all uranium mining permits, assignments and permits shall be as follows:

PERCENTAGE ROYALTY SCHEDULE MINE VALUE PER DRY TON	ROYALTY PERCENTAGE OF MINE VALUE PER DRY TON
\$ 0.01 to \$7.50	2½
7.50 to 14.00	5
14.00 to 20.01	11

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20.01 to 30.01	12
30.01 to 40.01	13
40.01 to 50.01	14
50.01 to 60.01	15
60.01 to 70.01	16
70.01 to 80.01	17
80.01 to 90.01	18
90.01 to 100.01	19
100.01 or more	20

1. "Mine Value Per Dry Ton", wherever used herein is hereby defined as the dollar value per dry ton of crude ores at the mine as paid for by the Atomic Energy Commission or other government authorized agency before allowance for transportation and development; however, if the government at any time hereafter does not establish and pay for said ore on a fixed or scheduled dollar value per dry ton of crude ores at the mine, or said ores contain salable minerals, some, or all, of which are disposed of to a custom treatment plant or smelter for treatment, and sale, then mine value per dry ton shall be the gross value per dry ton of said crude ore as paid for by the Atomic Energy Commission or other government authorized agency mill or other buyer, less any allowances or reimbursements for the following specific items: (1) transportation of ores, (2) allowances for exploration for, or development of ores, which specific amounts shall in such event be deducted from the gross sales price received from the metal content of said ores by the seller before percentage royalty is calculated and paid.

2. If no allowance or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ores by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid.

3. Such payment shall be made on or before the 15th day of the month next following receipt by lessee of payment for said ores, together with a statement of the mine value of said ores and the amount of royalty due each lot shipped and sold.

B. When crude ore from the mine is upgraded in an upgraded plant before shipment to the mill the royalty payable to the Navajo Nation and the permittee shall be as follows:

PERCENTAGE ROYALTY SCHEDULE ON UPGRADED ORE

GRADE OF CRUDE ORE PERCENTAGES		ROYALTY ON UPGRADED PRODUCT	
In % U ₃ O ₈	Tribe		Permittee
0.00 to 0.15	2½		1
0.15 to 0.20	5		1
0.20 to 0.29	11		2
0.29 to 0.43	12		2
0.43 to 0.57	13		3
0.57 to 0.71	14		3
0.71 to 0.85	15		4
0.85 to 1.00	16		4

1. The above royalty percentages shall apply to the gross sales price received from the metal content of the upgraded product by the seller from the mill after deducting any allowances or reimbursements for transportation or development. If no allowances or reimbursement is received by the seller for transportation of ores then six cents per ton mile up to and including 100 miles shall be deducted from the gross sales price received from the metal content of said ore by the seller as transportation cost from the mine to the mill before royalty percentage is calculated and paid. And a further deduction of one dollar and fifty cents (\$1.50) per ton of crude ore upgraded, as upgrading cost, may be deducted before royalty is calculated and paid.

2. Such payments shall be made on or before the 15th day of the month next following receipt by lessee of payment for said ore, together with a statement of the value of the upgraded product and the amount of royalty due on each lot shipped and sold.

C. When minerals or other products are recovered which are not included in determining mine value per dry ton or included in percentage royalty schedule on upgraded ore as defined in this section, there shall be paid to the Navajo Nation for such minerals or other products, a royalty of ten percent (10%) of the gross value of such products.

History

ACO-144-61, October 16, 1961.	ACM-5-52 Res. p. 44, March 11, 1952.
ACJN-73-60, June 8, 1960.	ACS-80-51, 1922-1951, Res. p. 302, September 19, 1951.
ACJ-36-57, June 12, 1957.	ACA-26-51, Res. p. 302, April 27, 1951.
ACS-37-55, 1955 Res. p. 85, September 27, 1955.	

Library References

Indians ☞16.10.	C.J.S. Indians §§ 107 to 108.
Mines and Minerals ☞70.	C.J.S. Mines and Minerals §§ 218, 223 to 224.
Westlaw Topic Nos. 209, 260.	

§ 852. Uranium royalty schedule

Lessee shall pay or cause to be paid to the Area Director, Navajo Area, Window Rock, Arizona, for the use and benefit of the Lessor, a royalty, calculated on a monthly weighted average on the basis of dry short tons of ore mined and delivered to a treatment plant.

A. For Uranium-Lessee shall pay to the Lessor a percentage royalty of the value per dry ton based on royalty rates of twelve percent (12%) for or valued at one cent (1¢) per ton and increasing to twenty-five percent (25%) for ore valued at one hundred dollars (\$100.00) or more per ton. The royalty rate shall be determined to the nearest one-hundredth of a percent (0.00%) in accordance with the following formula:

$$\text{Percentage Royalty Rate} = 12\% + 0.13\% ((\text{Value per dry ton})/\$1.00)$$

B. "Value per ton" wherever used in this paragraph is hereby defined as the dollar value per dry ton (2,000 pounds) of crude ore, as determined by application to the uranium content of such ore of the following "Value Sched-

ule for Uranium Ore”, multiplied by a fraction whose numerator is the weighted average price per pound of U_3O_8 in uranium concentrate received by the Lessee, or the seller of Lessee’s concentrate received by the Lessee, or the seller of Lessee’s concentrate, at the mill processing ores derived from the leased lands, during the month for which royalty is being computed and whose denominator is seven dollars and twenty-five cents (\$7.25), except that if no sales have been made during the month for which royalty is being computed, then the numerator shall be the weighted average price per pound of U_3O_8 received by the Lessee or the seller of Lessee’s concentrate during the preceding six (6) months.

VALUE SCHEDULE FOR URANIUM ORES

U_3O_8 Assay of Ore	Value Per Pound of U_3O_8 Contained in Ore
0.10 percent or less	\$1.50
0.11	1.70
0.12	1.90
0.13	2.10
0.14	2.30
0.15	2.50
0.16	2.70
0.17	2.90
0.18	3.10
0.19	3.30
0.20 and more	3.50

plus a grade premium of seventy-five cents (75¢) per pound for each pound of U_3O_8 in excess of four pounds per ton of ore and an additional premium of twenty-five cents (25¢) per pound for each pound in excess of 10 pounds U_3O_8 per ton of ore. Fractional parts of a pound to be valued on a pro-rata basis to the nearest cent.

C. Whenever vanadium and other minerals associated with uranium are recovered and sold by Lessee, Lessee shall pay to Lessor a royalty of ten percent (10%) of the gross proceeds derived from such sale; and where the Lessee retains possession of the associated mineral products a separate royalty value will be negotiated.

D. Lessee agrees to pay to the Lessor a royalty of ten percent (10%) of the value of uranium recovered from mine waters (whether natural or introduced), from leaching ores in place on the leased lands or by leaching such materials after they have been mined or extracted from the leased lands, or by leaching the waste material resulting from the treatment of ores from the leased lands. The value of uranium, as used herein, shall be the weighted average price per pound for U_3O_8 in uranium concentrate received by the Lessee, or the seller of Lessee’s concentrate, at the processing plant producing such concentrate, during the month for which royalty is being computed, except that if no sales have been made during the month for which royalty is being computed, then the value of uranium shall be the weighted average price per pound of U_3O_8 received by the Lessee or the seller of Lessee’s concentrate during the preceding six (6) months.

History

ACF-12-70, February 10, 1970.

Note. See ACMA-19-68, ACN-222-67, ACS-75-60, ACS-37-55, ACM-5-52, and ACA-26-51 relating to setting of rates.

Library References

Indians ⇌ 16.10(2).
Mines and Minerals ⇌ 70.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.
C.J.S. Mines and Minerals §§ 218, 223 to 224.

§ 853. Payments; statement

A. Payments of royalties shall be made on or before the 15th day of the month next following receipt by the lessee of payment for ore, together with a statement of the mine value of ores and the amount of royalty due on each lot shipped and sold.

B. Remittances for royalties shall be made payable to the Treasurer of the United States and mailed to Window Rock, Arizona, for deposit to the Navajo Nation general funds.

History

ACO-144-61, § 1, October 16, 1961.
ACJN-73-60, June 8, 1960.

Library References

Indians ⇌ 16.10(2).
Mines and Minerals ⇌ 70.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.
C.J.S. Mines and Minerals §§ 218, 223 to 224.

§ 854. Overriding royalties

A. Subject to approval provided for in the mining permit assignments, operating agreements, and subcontracts may, in addition to other considerations, provide for the retention by and payment to the assignor in an assignment or the grantor in a subcontract or operating agreement, a royalty on all ore produced and sold from the premises (commonly known as an overriding royalty) not to exceed the following percentage based on the mine value per dry ton of ore as defined in 18 N.N.C. § 851:

1. On ore having a mine value per dry ton of thirteen dollars and ninety-nine cents (\$13.99) or less, one percent (1%) of the mine value per dry ton.
2. On ore having a mine value per dry ton of more than thirteen dollars and ninety-nine cents (\$13.99), and not more than thirty dollars (\$30.00), two percent (2%) of mine value per dry ton.
3. On ore having a mine value per dry ton of more than thirty dollars (\$30.00), and not more than sixty dollars (\$60.00), three percent (3%) of the mine value per dry ton.
4. On ore having a mine value per dry ton of more than sixty dollars (\$60.00), and not more than eighty dollars (\$80.00), four percent (4%) of the mine value per dry ton.

5. On ore having a mine value per dry ton of more than eighty dollars (\$80.00), five percent (5%) of the mine value per dry ton.

B. If two or more parties are the assignors or grantors, the royalty may be divided on such basis as such assignors, or grantors may agree upon.

C. The Navajo Nation Council may at anytime after five (5) years from the date of the first sale of uranium ore produced from property (as evidenced by records of the processing mill or other buyer) reduce the percentage of royalty retained by the assignor or grantor or entirely eliminate the same if the Resources Committee shall determine that such royalty payments so retained are so burdensome as to make the future operation of the mines on said lease impracticable or unprofitable, it being the intent that the Resources Committee shall at such time take such action as will serve the best interest of the Navajo Nation in assuring the continuous operation of the uranium mining industry on the Navajo Nation.

History

ACJN-73-60, June 8, 1960. ACS-80-51, 1922-1951, Res. p. 305, September 19, 1951.
ACS-37-55, 1955 Res. p. 85, September 27, 1955.

Cross References

Building materials, prohibition of overriding royalty on account of production under extraction permit, see 18 N.N.C. § 1008.
Transfer of assignment of mining permit or lease, prohibition of creation of overriding royalty by, see 18 N.N.C. § 605.
Resources Committee, powers, see 2 N.N.C. § 695(B)(3).

Library References

Indians ⇄ 16.10(2). C.J.S. Indians § 109.
Mines and Minerals ⇄ 70. C.J.S. Mines and Minerals §§ 218, 223 to 224.
Westlaw Topic Nos. 209, 260.

Chapter 9. Building Materials

Section

- 1001. Issuance of extraction permits; delegation of authority
- 1002. Extraction without permit; trespass
- 1003. Eligibility for permit; Indian traders
- 1004. Term of permit; limitation
- 1005. Transfer of permit
- 1006. Employment preference; prevailing wage rates
- 1007. Royalty rate; waiver
- 1008. Overriding royalty prohibited
- 1009. Rules and regulations; establishment and modification

§ 1001. Issuance of extraction permits; delegation of authority

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, and upon the recommendation of a majority of the Council delegates from the Land Management District

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involved, may issue permits for the extraction of sand, gravel, topsoil, building stone, or any combination of such materials, from Navajo Nation lands; provided, however, that the recommendation of Council delegates shall not be required in cases of permits for the extraction of not more than 500 tons of material, where the total royalty is paid in advance; and provided, further, that the President may delegate this authority to issue extraction permits in accordance with rules adopted pursuant to 18 N.N.C. § 1009.

History

CAN-89-56, 1956 Res. p. 248, November 20, 1956. ACN-87-57, § 3, November 20, 1957.
ACM-55-56, § 1, 1956 Res. p. 246, March 22, 1956. ACN-82-57, November 7, 1957.

Cross References

Resources Committee, powers, see 2 N.N.C. § 695 (B)(2).

Library References

Indians ⇄16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇄87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 1002. Extraction without permit; trespass

It shall be a trespass for any person, except a Navajo for his or her own use and not for resale, to extract any material from Navajo Nation lands without holding a valid permit issued as provided in 18 N.N.C. § 1001.

History

ACM-55-56, § 2, 1956 Res. p. 246, March 22, 1956.

Library References

Indians ⇄16.10, 19. C.J.S. Indians §§ 81, 107 to 108.
Mines and Minerals ⇄51. C.J.S. Mines and Minerals §§ 145, 147.
Westlaw Topic Nos. 209, 260.

§ 1003. Eligibility for permit; Indian traders

All persons engaged in the business of selling general merchandise, whether licensed as Indian traders or not, shall be ineligible to hold permits for extraction of any material referred to in 18 N.N.C. § 1001; provided, however, that the Resources Committee may waive this prohibition in any individual case.

History

ACM-55-56, § 5, 1956 Res. p. 246, March 22, 1956.

Library References

Indians ⇄16.10. Westlaw Topic Nos. 209, 260.
Mines and Minerals ⇄87.

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C.J.S. Indians §§ 107 to 108.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 1004. Term of permit; limitation

All permits for the extraction of any material referred to in 18 N.N.C. § 1001 shall be issued for such term as the President of the Navajo Nation shall determine, which shall in no event exceed five (5) years.

History

ACM-55-56, 1956 Res. p. 246, March 22, 1956.

Library References

Indians ☞16.10.	C.J.S. Indians §§ 107 to 108.
Mines and Minerals ☞87.	C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.	

§ 1005. Transfer of permit

No permit for the extraction of any material referred to in 18 N.N.C. § 1001 shall be transferred either by subleasing, assignment, or the entering into of working agreements, or in any other manner, without the consent of the President of the Navajo Nation and the Secretary of the Interior or his or her authorized representative.

History

ACM-55-56, § 7, 1956 Res. p. 246, March 22, 1956.

Library References

Indians ☞16.10.	C.J.S. Indians §§ 107 to 108.
Mines and Minerals ☞87.	C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.	

§ 1006. Employment preference; prevailing wage rates

All extraction permits shall require the permittee to employ Navajo Indians in all positions for which they are available in connection with operations under such permits, to pay such persons not less often than weekly, in cash, at not less than prevailing wage rates, and to include similar provisions in all subcontracts.

History

ACM-55-56, § 4, 1956 Res. P. 246, March 22, 1956

Library References

Indians ☞16.10.
Westlaw Topic No. 209.
C.J.S. Indians §§ 107 to 108.

§ 1007. Royalty rate; waiver

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall fix a reasonable royalty rate on all materials extracted pursuant to any permit, except that a royalty may be waived on any materials extracted for use in public projects on Navajo Nation land, or extracted in small quantities by a Navajo permittee.

History

ACM-55-56, § 9, Res. p. 246, March 22, 1956.

Library References

Indians ⇄16.10.

Mines and Minerals ⇄70.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 218, 223 to 224.

§ 1008. Overriding royalty prohibited

A. No overriding royalty on account of production under an extraction permit shall be created as an incident of a transfer of an extraction permit or otherwise, and the payment of any overriding royalty on account of production under any such permit shall constitute cause for cancellation and forfeiture of such permit.

B. “Overriding royalty” for the purpose of this section is defined as any payment of any kind whatever, other than payment of a tax or the Navajo Nation royalty, measured by a percentage of the production or of the gross or net value thereof. Payment of a percentage of the net profit of a mining venture shall not be included in the definition of overriding royalty.

History

ACM-55-56, § 7, 1956 Res. p. 246, March 22, 1956.

Cross References

Overriding royalties generally, see 18 N.N.C. § 854.

Transfer of permit, see 18 N.N.C. § 1005.

Library References

Indians ⇄16.10.

Mines and Minerals ⇄70.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 218, 223 to 224.

§ 1009. Rules and regulations; establishment and modification

The President of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative, shall have authority to establish and modify from time to time rules and regulations to implement or supplement this chapter.

History

ACM-55-56, § 8, 1956 Res. p. 246, March 22, 1956.

Cross References

Resources Committee, powers, see 2 N.N.C. § 695(A) and (B)(2).

Library References

Indians ⇨16.10, 32(4).
Westlaw Topic No. 209.
C.J.S. Indians §§ 51 to 52, 107 to 108, 115.

Chapter 11. Coal**Section**

- 1201. Coal mining permits; requirement
- 1202. Form of coal mining permit—Generally
- 1203. Authority to change
- 1204. Coal royalties and other provisions; enforcement
- 1205. Responsibility of Head of Mining Department

§ 1201. Coal mining permits; requirement

All coal mining operations within the Navajo Nation shall be done under properly issued coal mining permits.

History

ACJ-70-58, § 1, July 7, 1958.

Library References

Indians ⇨16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇨87. C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.

§ 1202. Form of coal mining permit—Generally**History**

ACD-163-59, December 2, 1959. forms are available from the Minerals Department, Division of Natural Resources.
Note. See also CM-3-51, ACJ-70-58, and ACD-163-59.

Revision note. Proposed Coal Mining Permit form has been deleted from the Code. Such

§ 1203. Authority to change

The President of the Navajo Nation is delegated authority to make changes as experience proves necessary in the coal mining permit form.

History

ACD-163-59, § 3, December 2, 1959.

MINES AND MINERALS

18 N.N.C. § 1205

Library References

Indians ☞16.10.
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 1204. Coal royalties and other provisions; enforcement

The payment of coal royalties due, as well as all other provisions affecting coal operations within the Navajo Nation, shall be enforced by the proper agency of the Bureau of Indian Affairs.

History

ACJ-70-58, § 2, July 7, 1958.
Prior law. Executive Committee, Res. 1922-1951, July 22, 1937, provided for the pay-
ment by Indians of a royalty on coal mined or produced when sold.

Library References

Indians ☞16.10.
Mines and Minerals ☞70.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
C.J.S. Mines and Minerals §§ 218, 223 to 224.

§ 1205. Responsibility of Head of Mining Department

The Director of the Minerals Department within the Division of Natural Resources shall be charged with the responsibility for:

- A. The preparation by the permittee of the reports required by the coal mining permit;
- B. Securing the payment by the permittee of the royalties required; and
- C. Such assistance and advice as is necessary to enable the permittee to operate the mine with approved methods and practices and with safety both to persons and to property.

History

ACD-163-59, § 2 December 2, 1959.
Revision note. The "Minerals Department under the Division of Natural Resources" was substituted for the "Office of Energy Resources" pursuant to ACAP-75-88.

Cross References

Functions of Mining Department generally, see 2 N.N.C. § 3001.

Library References

Indians ☞16.10.
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

Chapter 12. Plan of Operation for Navajo Coal Mining Commission [Repealed]

§§ 1301 to 1306. [Repealed]

Plan of Operation for Navajo Coal Mining Commission previously codified at 18 N.N.C. § 1301–1306 was repealed and deleted from the Navajo Nation Code pursuant to CAP–14–94, April 20, 1994.

History

Navajo Coal Mining Commission.
ACJA–35–87, January 12 1987.

Chapter 13. Oil and Gas

Subchapter 1. General Provisions

Section

- 1401. Regulations; authority
- 1402. Conservation; authority
- 1403. Secondary recovery and pressure maintenance operations in oil fields; policy
- 1404. Minutes; confidential

Subchapter 3. Special Agreements

- 1451. Special leases, joint operating, drilling or other agreements
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Subchapter 5. Leases

- 1501. Advertisement of sale; authority of Secretary of Interior
- 1502. Consideration of bids
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- 1505. Making leases on acceptance of highest bids
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Subchapter 7. Losses and Damages Due to Oil and Gas Activities

- 1551. Livestock
- 1552. Hogan or other structures
- 1553. Assignment of claims
- 1554. Restoration of land and improvements by company

1555. Negotiated settlements with Navajos

Cross References

See Title 16 of this Code generally for previously codified laws concerning trespass and forcible entry and detainer.

Annotations

1. Construction

Lease by Navajo Nation of "all oil and gas deposits" included helium gas discovered on such leasehold. *Navajo Nation of Indians v. United States* 364 F.2d 320 (1966).

2. Taxation

Where Arizona statute provided that royalties were non-allowable costs incurred in the mining or production of ore, royalties paid to Navajo Nation were not deductible from value of ore mined before computing tax. *Industrial Uranium Co. v. State Tax Commissioner* 387 P.2d 10 13, 95 Ariz. 130 (1963).

3. Damages

Where United States failed to inform the Navajo Nation, prior to assignment of 1942 oil and gas lease directly to Government, that lessee desired to surrender lease, the Navajo Nation was entitled to recover from the Government damages incurred as a result of such failure. *Navajo Tribe of Indians v. United States* (1966) 364 F.2d 320.

The Navajo Nation was entitled to appropriate adjustment of consideration paid to it for 1945 agreement permitting Government to increase its control over helium bearing gas, because of erroneous calculation of manufacturing allowance, with respect to unit value of helium-bearing as included in oil and gas lease executed by the Navajo Nation. *Industrial Uranium Co. v. State Tax Commissioner* 387 P.2d 10 13, 95 Ariz. 130 (1963).

4. Presumptions

Where Navajo Nation could not prove what would have happened if the Nation had been consulted prior to assignment of 1942 oil and gas lease directly to Government is attributable to failure of Government to keep Nation informed, the doubts should be resolved in favor of the Navajo Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

5. Forfeiture

The general rule regarding forfeiture of oil and gas leases is that the sanction of forfeiture will not be imposed unless clearly required by the terms of the lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of lessees' right to produce gas in event of their

failure to pay shut-in rental, sanction of forfeiture could not be imposed upon lessees failure to pay. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

6. Interest

The Navajo Nation was entitled to interest on amount of damages recoverable from the United States as a result of failure to inform Nation, prior to assignment of 1942 lease directly to Government, that its lessee desired to surrender lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

7. Just compensation

The proposition that just compensation does not include enhancement in value resulting from purpose for which Government is taking property did not apply in suit by the Navajo Nation seeking additional compensation for oil and gas rights acquired by United States in an area within the Navajo Nation, where there was not any real prospect of finding a private party who would wish to incur the expense of producing the helium bearing gas included in the oil and gas lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

The commissioner was justified in refusing to accept the fair market values submitted by Navajo Nation as a means of computing royalty interest of Nation under the 1945 agreement, considering the nature of the gas and the various factors relevant to the matter of valuation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

8. Transfer agreement

Where oil and gas leases transferred to the Navajo Nation rights in certain formations because United States had compensated them for their interests and in order to make possible the receipt by the Government of a new lease of such formations. The Navajo Nation was merely a necessary conduit in the transfer from the lessees to United States, and thus ownership of helium underlying 1923 leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

9. Review

Navajo Nation seeking additional compensation for oil and gas rights acquired by United

18 N.N.C. §§ 1301 to 1306

Note 9

States within Indian Reservation failed to establish that the failure of Geological Survey to seek a larger royalty constituted a breach of any obligation to the Navajo Nation, and use of one-eighth royalty was proper. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

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Discount factor used by. Bureau of Mines in determining the total potential royalty payable on estimated reserve of helium bearing gas included in oil and gas leases executed by Navajo Nation was appropriate. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (1966).

Subchapter 1. General Provisions

§ 1401. Regulations; authority

A. The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to approve and adopt regulations for the production of oil and gas on the Navajo Nation, and amendments thereto, on a Navajo Nation wide basis; or to adopt at their discretion as the regulations of the Navajo Nation Council, the rules and regulations of any state or states having territorial boundaries which lie within the Navajo Nation, together with any amendments or revisions in such regulations as maybe presented from time to time for consideration of the Resources Committee.

B. The Resources Committee may coordinate the activities and regulations of the Navajo Nation with those of the regulatory bodies of the states and federal government to the end that there may be joint and harmonious development of the resources on Navajo Nation lands as well as on state and federal lands.

History

CD-74-58, § 1(a), December 12, 1958.
CJ-44-58, July 16, 1958.
CA-68-57, August 8, 1957.

Cross References

Resources Committee powers, see 2 N.N.C. § 695 (B)(3).

Library References

Indians ⇨16.10. C.J.S. Indians §§ 107 to 108.
Mines and Minerals ⇨92.2. C.J.S. Mines and Minerals §§ 334, 336.
Westlaw Topic Nos. 209, 260.

§ 1402. Conservation; authority

A. The President of the Navajo Nation is authorized and directed to do any and all things necessary or desirable to reduce and eliminate the wasting and burning of natural gases or other natural resources on Navajo Nation lands.

B. The President of the Navajo Nation is further authorized to seek and formally request the Department of the Interior to shut-in and halt production of oil, gas, or other natural resources from Navajo Nation lands wherever such production is accompanied by waste and loss of any oil, gas, or other natural resource or by-products thereof, and to collaborate with the Secretary of the

Interior in taking any and all actions deemed by the President of the Navajo Nation to be necessary, advisable, or incidental to accomplishing the purposes of this section.

History

CO-56-58, October 6, 1958.

Library References

Indians ☞9.

Mines and Minerals ☞92.14.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 67.

C.J.S. Mines and Minerals § 336.

§ 1403. Secondary recovery and pressure maintenance operations in oil fields; policy

A. The Resources Committee of the Navajo Nation Council declares its approval and support of secondary recovery and pressure maintenance operations in the Navajo Nation's oil fields; provided, however, that patterns of unitization for the areas affected, and other necessary safeguards, satisfactory to the Resources Committee, are established and adhered to by the interested operators.

B. As a general policy, and subject to modification as individual circumstances dictate, where water is to be used in such operations, the Resources Committee favors reinjection of water produced with the oil first, then any other available brackish, non-potable water, as determined under standards of the United States Geological Survey. In all cases where water which is usable for human, stock, or irrigation purposes is to be used, negotiations shall be had with the interested parties to develop a reasonable charge for such water use.

History

ACO-160-59, October 23, 1959.

Note. See also CF-44-58 and CD-74-58, regarding oil and gas development on Navajo lands.

Cross References

Navajo Nation Water Code, see 22 N.N.C. § 1001 *et seq.*

Library References

Indians ☞16.10.

Mines and Minerals ☞92.79.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.

C.J.S. Mines and Minerals §§ 349, 357 to 359, 361, 384 to 386.

§ 1404. Minutes; confidential

The minutes of the Resources Committee when considering matters pertaining to the oil and gas business on the Navajo Nation shall be maintained as strictly confidential in the files of the Navajo Nation for reference by the Navajo Nation officers, Oil and Gas Consultant, and the Office of the Attorney General, and such others as may be duly authorized to examine the minutes by permission of the Resources Committee.

History

ACM-25-58, March 5, 1958.

Subchapter 3. Special Agreements**§ 1451. Special leases, joint operating, drilling or other agreements**

A. The Navajo Nation Council is authorized, and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Navajo Nation so require, to negotiate and conclude on behalf of the Navajo Nation with any responsible person or persons, special leases, joint operating, drilling, or other agreements on such terms and conditions as the Committee shall deem advisable for the drilling and development of oil and gas lands whenever: (1) drainage of Navajo Nation lands is, in the Resources Committee's opinion, either taking place or will be threatened in respect to any tract or area, to such an extent that the protection of Navajo Nation oil and gas resources can be most effectively accomplished through negotiating such agreement or agreements; (2) in the opinion of the Resources Committee, such leases, agreement or agreements would result in stimulating or facilitating higher bidding on surrounding lands to be offered for public bidding, whether the bidding be on the basis of bonuses or on the basis of the amount of royalties to be paid to the Navajo Nation; (3) wherever there are conflicts of title respecting ownership of Utah school land sections or other areas, and the development of such areas is thereby retarded, or their values are being, or will be, in the Resources Committee's opinion, depressed by reason of drainage or title conflicts.

B. The Navajo Nation Council may enter into any such leases or agreements upon whatever terms and conditions the Resources Committee deems advisable to permit the development of such lands, prevent waste, increase the Nation's participation in production or revenues therefrom, and otherwise protect the best interests of the Navajo Nation.

History

CD-74-58, § I (b), December 12, 1958.
 CN-65-56, 1956 Res. p. 251, November 2, 1956.
 CO-29-55, October 5, 1955.
 Geological studies for oil and gas. CO-29-55, Ex. Vol. 1955, p. 329, October 5, 1955, authorized designated geologists to make further geological studies for oil and gas with a view to development by the Navajo Tribe.

Joint Committee and code of ethics. CN-65-56, 1956 Res. p. 251, November 2, 1956, authorized participation of Navajo Tribe in a joint committee on oil, gas, and mining matters to include representatives of oil, gas, and mining operators, Bureau of Indian Affairs, and United States Geological Survey, and subscription Chairperson of Navajo Nation Council to a joint code of ethics.

Cross References

Oil and gas leases generally, see 18 N.N.C. § 1501 *et seq.*

Library References

Indians ⇌ 16.10.

Mines and Minerals ⇌ 56.

Westlaw Topic Nos. 209, 260.
 C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 194 to 195, 233.

Annotations

1. Supervision of United States

The United States was responsible for supervision of the affairs of the Navajo Nation, including, in particular, supervision of oil and gas leases on Tribal property. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl.1966).

2. Duty of Department of the Interior

Since the Department of the Interior had an obligation to safeguard the property of the Navajos when they were dealing with third parties, an even greater duty existed when the Department itself entered into transactions relating to oil and gas leases with the Navajos. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

3. Construction and operation of leases

Lease by Navajo Nation of all "oil and gas deposits" under described acreage included helium gas discovered on such leasehold. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where 1923 oil and gas lease by Navajo Nation did not expressly provide for nullification of the lessee's right to produce gas for nonpayment of shut-in rental, no such sanction should be placed on lessees. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where oil and gas lessees transferred to lessor Navajo Nation their rights in designated formations because United States compensated them for their interests and in order to make possible

the receipt by government of new lease of such formations, the Navajo Nation was merely a necessary conduit in the transfer from lessees to the United States, and hence ownership of helium underlying leasehold was not acquired by the Navajo Nation under transfer agreements. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

4. Right to recover damages against United States

The Navajo Nation, as lessor of 1942 oil and gas lease, was entitled to recover damages from United States incurred as result of failure to inform the Navajo Nation, prior to assignment of such lease directly to the United States, that lessee desired to surrender lease. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where inability of Navajo Nation, as lessor of 1942 oil and gas lease, to prove what would have happened if the Navajo Nation had been consulted prior to assignment of lease directly to the government was attributable to failure of government to keep the Navajo Nation informed, doubts would be resolved in favor of Nation. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

Where Navajo Nation was entitled to recover damages against United States, it was also entitled to interest on amount recoverable. *Navajo Tribe of Indians v. United States* 364 F.2d 320 (Ct.Cl. 1966).

§ 1452. Agreements for taking delivery of oil and gas in kind

The Navajo Nation Council is authorized and empowered, with the approval of the Secretary of the Interior, when in its opinion the best interests of the Nation so require, to negotiate and conclude an agreement or agreements for taking delivery of oil or gas in kind, as leases from the Navajo Nation permit, and to dispose of the same on terms deemed by the Resources Committee to serve the best interests of the Nation.

History

CD-74-58, § 1(C), December 12, 1958.
 Tribal Council Res. 1922-1951, Res. p. 318,
 November 24, 1936.

Cross References

Resources Committee powers, see 2 N.N.C. § 695 (B) (3).

Library References

Indians ☞16.10.
 Mines and Minerals ☞79.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 289 to 290, 296,
 298 to 299, 303.

§ 1453. Communitization and other, production agreements

The President of the Navajo Nation, upon the approval of the Navajo Nation Council, by and with the approval of the Secretary of the Interior, may enter into communitization and other production agreements which are designed to provide for the economical and efficient development of oil and gas resources.

History

CJ-44-58, § 9, July 16, 1958.

Cross References

Resources Committee powers, see 2 N.N.C. § 695(B)(3).

Library References

Indians ☞16.10.
 Mines and Minerals ☞78.1(7), 92.79.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 107 to 108.
 C.J.S. Mines and Minerals §§ 264 to 265, 349,
 357 to 359, 361, 384 to 386.

§ 1454. Unitization agreements

A. All proposed agreements for the unitization of oil and gas leases covering Navajo Nation lands shall be referred to the Navajo Nation Council for its consideration and approval.

B. Any unitization agreement for the development and operation of oil and gas leases on Navajo Nation lands which has been approved by the Resources Committee of the Navajo Nation Council shall be executed by the President or Vice-President of the Navajo Nation for and on behalf of the Navajo Nation and the Navajo Nation Council, and the President and Vice-President are authorized to execute such instruments after the agreements have been approved by the Resources Committee of the Navajo Nation Council.

History

CJ-8-52, 1952 Res. p. 52, January 21, 1952.

Cross References

Resources Committee powers, see 2 N.N.C. § 695 (B)(3).

Library References

Indians ☞16.10(2).
 Mines and Minerals ☞78.1(7), 92.79.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.
 C.J.S. Mines and Minerals §§ 264 to 265, 349,
 357 to 359, 361, 384 to 386.

Subchapter 5. Leases

Cross References

Oil and gas prospecting permits, see 16 N.N.C. § 652.

§ 1501. Advertisement of sale; authority of Secretary of Interior

The Secretary of the Interior, or his or her duly authorized representative, is authorized to advertise the sale of leases for oil and gas mining purposes of Navajo Nation lands pursuant to applicable Department of Interior regulations, upon the request of, or with the consent and approval of, the Navajo Nation Council.

History

CJ-44-58, § 1, July 16, 1958.

Library References

Indians ⇄ 16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

§ 1502. Consideration of bids

The President of the Navajo Nation is authorized, upon receiving recommendation of the U.S. Bureau of Land Management through the Bureau of Indian Affairs, and the Navajo Nation Minerals Department, and within three weeks after the opening of any and all bids for oil and gas leases on Navajo Nation lands, to accept or reject bids on behalf of the Navajo Nation.

History

CJN-43-71, § 1, June 1, 1971.

Note. The U.S. Geological Survey is no longer involved in oil and gas operations in Indian lands. The U.S. Bureau of Land Management is the minerals lease management agency on Indian lands.

CJ-44-58, § 2, July 16, 1958.

CS-71-57, September 18, 1957.

Tribal Council, Res. 1922-1951, Res. p. 315, July 7, 1923, authorized and requested Secretary of the Interior to advertise certain tracts of land for oil and gas mining leases. This resolution was revoked by Tribal Council, Res. 1922-1951, Res: p. 317, October 31, 1933.

Library References

Indians ⇄ 16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

§ 1503. Recommendations confidential

Any and all recommendations conveyed to the President of the Navajo Nation by the Oil and Gas Consultant or Office of the Attorney General in respect to the acceptance and rejection of bids for oil and gas leases shall be maintained strictly as confidential documents, and shall be considered by the Navajo Nation Council in executive session only, excluding therefrom members of the public and government employees except as specifically otherwise ordered by the President of the Navajo Nation or the Navajo Nation Council.

History

CJN-43-71, June 1, 1971.
ACM-25-58, § I, March 5, 1958.

Library References

Indians ☞16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

§ 1504. Rejection of bids; negotiation of lease

The President of the Navajo Nation, by declining to accept bids on any tract offered, may withdraw the consent of the Navajo Nation to leasing the particular lands involved, or may, by and with the approval of the Secretary of the Interior negotiate lease on terms and conditions deemed by them to be in the best interests of the Navajo Nation.

History

CJN-43-71, June 1, 1971.
CJ-44-58, § 3, July 16, 1958.

Library References

Indians ☞16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

§ 1505. Making leases on acceptance of highest bids

Leases for oil and gas mining purposes may be made pursuant to applicable Department of the Interior regulations on any tracts on which the Navajo Nation Council has accepted the highest bids, on behalf of the Navajo Nation, with the approval of the Secretary of the Interior or his or her authorized representative.

History

CJ-44-58, § 4, July 16, 1958. Tribal Council, Res. 1922-1951, Res. pp. 315
CJ-24-54, § 1, Res. p. 108, June 9, 1954. and 317, July 7, 1923.

Library References

Indians ☞16.10(2).
Westlaw Topic No. 209.
C.J.S. Indians § 109.

§ 1506. Required provisions of lease

Each lease of Navajo Nation land for oil and gas mining purposes shall contain provisions to the following effect:

A. Navajo grazing rights to the surface of any lands so leased shall be protected, and Navajo rights respecting the use of water shall be unimpaired.

B. Navajos shall be employed in such mining, drilling, exploration, and development operations to the fullest extent that their qualifications and the

law permit, and every reasonable effort shall be made to train Navajos in the skills and abilities required in such operations to the end that they may become qualified for such employment.

History

CJ-44-58, § 5, July 16, 1958.

Library References

Indians ⇄16.10(2).
 Mines and Minerals ⇄58.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.
 C.J.S. Mines and Minerals §§ 197, 199, 235.

§ 1507. Execution of lease

Oil and gas mining leases may be executed on behalf of the Navajo Nation by the President or Vice-President.

History

CJ-44-58, § 6, July 16, 1958.
 CJ-24-54, § 2, Res. p. 108, June 9, 1954.

Tribal Council, Res. 1922-1951, Res. p. 315,
 July 7, 1923.

Cross References

Contracts generally, see 2 N.N.C. § 222.

Library References

Indians ⇄16.10(2).
 Mines and Minerals ⇄58.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians § 109.
 C.J.S. Mines and Minerals §§ 197, 199, 235.

**Subchapter 7. Losses and Damages
 Due to Oil and Gas Activities**

History

Change of name. The Navajo Office of Land Administration, referred to in this subchapter, is the successor to the Land Investigations Depart-

ment. Subsequently the Office of Land Administration has been replaced by the Navajo Land Department.

§ 1551. Livestock

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value whatever livestock has been lost by Navajos due to operations by companies in oil and gas development activities upon receiving from the Division of Natural Resources a detailed written report of the incident, or upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

18 N.N.C. § 1551

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History

CF-19-58, February 18, 1958.

Revision note. The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

Library References

Indians ⇄16.10, 23, 25.
Mines and Minerals ⇄119.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 32, 107 to 108.
C.J.S. Mines and Minerals §§ 426, 441.
C.J.S. United States §§ 181 to 183.

§ 1552. Hogan or other structures

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to restore in kind or at its determined value any hogan or other structure including fences damaged due to operations by companies in oil and gas development activities, upon receiving from the Division of Natural Resources a detailed written report of the incident, and upon satisfying himself or herself that such loss or damage in the amount claimed actually occurred.

History

CF-19-58, February 18, 1958.

Revision note. The Division of Natural Resources was substituted for the "Navajo Nation Oil and Gas Supervisor" pursuant to CD-68-89.

Library References

Indians ⇄16.10, 23, 25.
Mines and Minerals ⇄121.
Westlaw Topic Nos. 209, 260.
C.J.S. Indians §§ 30, 32, 107 to 108.

C.J.S. Mines and Minerals §§ 424, 427, 439, 442 to 443, 445 to 446.
C.J.S. United States §§ 181 to 183.

§ 1553. Assignment of claims

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to take an assignment of any and all claims sustained by Navajos as a result of oil and gas development, where the Navajo Nation has restored or paid the individual the determined value of the livestock or improvements of other losses or damages sustained by him or her, to the end that the Navajo Nation may make a demand for reimbursement from the offending company for the actual amount of the claim plus any expense that may be incurred in investigating and collecting the claim. The absence of necessary proof in determining what company is the offender shall not prevent of the Navajo Land Department from giving relief to Navajos sustaining the loss or damage as authorized in 18 N.N.C. §§ 1551 and 1552.

History

CF-19-58, February 18, 1958.

Library References

Indians ⇄16.10, 25.
Mines and Minerals ⇄125.

Westlaw Topic Nos. 209, 260.
C.J.S. Indians §§ 32, 107 to 108.

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18 N.N.C. § 1555

C.J.S. Mines and Minerals §§ 427 to 432, 436
to 442, 444 to 446.
C.J.S. United States §§ 181 to 183.

§ 1554. Restoration of land and improvements by company

The President of the Navajo Nation, with the assistance of the Navajo Land Department, is authorized, empowered, and directed to require any company working in the development of oil and gas to fill in any hole or excavation, fence any dangerous area, or do whatever is necessary to restore within reason the land or improvements of the residents of the area and if the required work is not performed by the offending company after being given proper written notice, to perform the work at the expense of the Navajo Nation with notice to the offending company and the Bureau of Indian Affairs that this is being done on behalf and at the expense of such company.

History

CF-19-58, February 18, 1958.

Library References

Indians ⇄16.10, 25.	C.J.S. Mines and Minerals §§ 424, 427, 439,
Mines and Minerals ⇄121.	442 to 443, 445 to 446.
Westlaw Topic Nos. 209, 260.	C.J.S. United States §§ 181 to 183.
C.J.S. Indians §§ 32, 107 to 108.	

§ 1555. Negotiated settlements with Navajos

A. The Director of the Natural Resources Division and the Director of the Navajo Land Department of the Navajo Nation are authorized and directed to negotiate settlements with Navajos residing in the Greater Aneth area, who have been damaged by oil producing activities, provided the basis of settlement shall assume reduction of net annual income from land use of not more than six percent (6%) and that such damages will continue and span not more than twenty-five (25) years.

B. The settlements so negotiated shall be first submitted to and approved by the Resources Committee of the Navajo Nation Council. Upon such approval the amounts agreed upon shall be paid to the person entitled thereto and his or her release of the Nation shall be taken.

History

CS-51-61, §§ 1 and 3, September 1, 1961.

Library References

Indians ⇄16.10, 25.	C.J.S. Mines and Minerals §§ 424, 427, 439,
Mines and Minerals ⇄121.	442 to 443, 445 to 446.
Westlaw Topic Nos. 209, 260.	C.J.S. United States §§ 181 to 183.
C.J.S. Indians §§ 32, 107 to 108.	

**Chapter 15. Navajo Abandoned Mine
Lands Reclamation Act**

Subchapter 1. Statement of Findings and Policy

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Subchapter 8. [Reserved]

Subchapter 1. Statement of findings and Policy

§ 1601. Establishment

The Navajo Nation, through the Navajo Nation Council, hereby enacts the Navajo Abandoned Mine Lands Reclamation Code, to provide for the regulation of surface mining operations, for the acquisition and reclamation of abandoned mines, and for other purposes.

History

CAP-42-94, April 21, 1994.

CN-57-87, November 18, 1987.

Note. Slightly reworded for statutory form.

Recodified from 4 N.N.C. § 501.

Library References

Indians ☞10, 16.10.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,
77 to 80, 107 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343
to 348, 383.

§ 1602. Findings

The Navajo Nation Council finds and declares that:

A. Surface mining operations have resulted and may result in disturbances of surface areas that burden and adversely affect the Navajo Nation in both its proprietary and sovereign capacities, and burden and adversely affect the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, cultural, and forestry purposes by causing erosion and landslides, by polluting the water, by destroying vegetation and wildlife habitats, by impairing natural beauty, by damaging the property of citizens and residents of the Navajo Nation, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources.

B. The Federal Office of Surface Mining Reclamation and Enforcement has encouraged, by the terms of its cooperative agreement with the Navajo Nation, the Navajo Nation to develop a Navajo Regulatory Program, including the development and passage of this Navajo Abandoned Mine Lands Reclamation Code. With the support, encouragement, and assistance of the Federal Office of Surface Mining Reclamation and Enforcement, the Navajo Nation has gained significant experience, knowledge, and technical capability for the reclamation of abandoned mine lands within the Navajo Nation.

C. There are a substantial number of acres of land throughout the Navajo Nation disturbed by surface and underground mining operations where little or no reclamation was conducted, and such lack of reclamation has imposed and may impose social (including health) and economic costs on residents in nearby and adjoining areas as well as continuing to impair environmental quality.

D. The health effects of uranium and other mines abandoned are of critical importance to the Navajo Nation, and studies conducted in the Shiprock area

demonstrate the lingering effects of these mining activities in birth defects and cancer. Reclamation of these sites is desperately needed.

F. The Navajo Nation is committed to exercising its sovereignty over all lands within the Navajo Nation to the fullest extent. Such sovereign rights include the ability to permit, regulate, and enforce environmental and other standards for surface mining, and the Navajo Nation has developed significant expertise in this regard, as recently recognized by the Federal Office of Surface Mining Reclamation and Enforcement. The Navajo Nation is committed to the exercise of this authority. Therefore, it is in the best interest of the Navajo Nation to enact, at this time, a reclamation code concerning the abandoned mine lands.

History

CN-57-87, November 18, 1987.
CAP-42-94, April 26, 1994.
Recodified from 18 N.N.C. § 1601.

Cross References

Contracts generally, see 2 N.N.C. § 222.

Library References

Indians ☞10, 16.10.	C.J.S. Mines and Minerals §§ 334 to 339, 343
Mines and Minerals ☞92.5 to 92.21.	to 348, 383.
Westlaw Topic Nos. 209, 260.	
C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,	
77 to 80, 107 to 108.	

§ 1603. Purposes

Pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”),¹ it is the purpose of this Code to:

A. Provide for the reclamation of mined areas left without adequate reclamation prior to August 3, 1977 and which continue, in their unreclaimed condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public; and

B. Provide for the use of Navajo abandoned mine land (“AML”) money to reclaim mined areas in a manner consistent with the labor policies of the Navajo Nation and with the desire to encourage the formation and development of Navajo business enterprises.

¹ 30 U.S.C. § 1231 et seq.

History

CAP-42-94, April 26, 1994.
CN-57-87, November 18, 1987.
Recodified from 18 N.N.C. § 1602.

Subchapter 2. Abandoned Mine Lands
Reclamation Department

§ 1611. Establishment of Department; duties

A. There is established in the Division of Natural Resources an Abandoned Mine Lands Reclamation Department (hereinafter referred to as the “Department”).

B. The Department shall have a Director who shall report to the Executive Director of the Division of Natural Resources. The Director of the Department shall have the responsibilities provided under subsection (C) of this section. Employees of the Department shall be recruited consistent with Navajo labor laws, on the basis of their professional competence and capacity to administer the provisions of this Act. The Department may enlist the cooperation of the employees of federal agencies, where authorized by applicable federal law, and of other agencies of the Navajo Nation, where authorized by applicable tribal authority, to administer the provisions of this Act.

C. The Division of Natural Resources, acting through the AML Program, shall:

1. Publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this Act and as are approved by the Resources Committee of the Navajo Nation Council;
2. Develop and implement a program for reclamation of abandoned mine lands as provided in Title IV of this Code;
3. Consult and cooperate with federal agencies and other Navajo Nation agencies to provide for the efficient and effective administration of this Act and to minimize unnecessary duplication of effort;
4. Collect data, conduct experiments, and do appropriate research regarding surface mining, and reclamation, and other appropriate areas of study;
5. Perform such other duties as may be provided by law and related to the purpose of this Act.

D. The Department shall be and is clothed with sovereign immunity from suit enjoyed by the Navajo Nation. In no event shall the Department be held liable for monetary damages, and no employee of the Department including the Director shall have the authority to waive, either explicitly or by implication, the immunity from unconsented to suit recognized and established hereby. Nothing in this Act waives the sovereign immunity of the Navajo Nation with respect to actions seeking monetary relief of any kind.

History

CAP-42-94, April 26, 1994; § 1613 “Emergency Powers” rescinded.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.10, 32(1, 4.1).
 Mines and Minerals ☞92.16.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 49 to 51, 67, 69 to 70,
 74 to 75, 77 to 80, 107 to 108.

Subchapter 3. [Reserved]

Subchapter 4. Abandoned Mine Reclamation

§ 1631. Navajo Abandoned Mine Reclamation Fund and purposes

A. There is created on the books of the Controller's Office of the Navajo Nation a trust fund to be known as the Navajo Abandoned Mine Reclamation Fund (hereinafter referred to as the "Fund") which shall be administered by the Director in accordance with Navajo law. For purposes of this Subchapter 4, the term "Director" shall mean the Director of the Navajo Abandoned Mine Lands Reclamation Department, a position established in § 1611 of this Act.

B. The fund shall consist of amounts deposited in the fund, from time to time, derived from:

1. Reclamation fees levied under § 402 of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1232, on Navajo Indian lands, and returned or transferred to the Navajo Nation pursuant to SMCRA¹ by the Secretary of the Interior;
2. Any user charge imposed by the Navajo Nation on or for land reclaimed pursuant to this Title, after expenditures for maintenance have been deducted.
3. Donations by persons, corporations, associations, and foundations for the purposes of this Title;
4. Recovered monies as provided for in this Title;
5. Interest credited to the fund under Subsection (e) of § 401 of SMCRA;² and
6. All other reclamation fees lawfully imposed by the Navajo Nation.

C. Monies in the fund may be used for the following purposes:

1. Reclamation and restoration of land and water resources adversely affected by past mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned processing areas, and abandoned refuse disposal areas; sealing and filling abandoned deep mine entries and voids, planting of land adversely affected by past surface mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by mine drainage including restoration of stream beds, and construction and operation of water treatment plant; prevent abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of mine subsidence;
2. Acquisition and filling of voids and sealing of tunnels, shafts, and entryway under § 1639.

3. Acquisition of land as provided for in this Title and in the manner prescribed by Navajo law.
4. Monitoring, enforcement, and collection of fees provided for in this Title
5. Studies by the Department to such extent or in such amounts as are provided in appropriation Acts with public and private organizations conducted in accordance with § 3501 of the Omnibus Budget Reconciliation Act of 1986,³ conducted for the purposes of this Title;
6. Restoration, reclamation, abatement, control, or prevention of adverse effects of mining which constitutes an emergency as provided for in this Title;
7. Administrative expenses of the Navajo Nation to accomplish the purpose of this Title;
8. For use under § 1641; and
9. All other necessary expenses to accomplish the purpose of this Title.

¹ 30 U.S.C. § 1201 et seq.

² 30 U.S.C. § 1232(e).

³ 30 U.S.C. § 1231 nt.

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.5, 16.10, 32.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 49, 51, 67, 69 to 70, 74 to 75, 77 to 80, 101 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343 to 348, 383.

§ 1632. Reclamation fees

The Director shall do all things necessary and proper to facilitate the transfer to the fund of reclamation fees collected pursuant to § 402 of SMCRA¹ from operations on lands within the Navajo Nation by the Secretary of the Interior, and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation and to ensure, after consultation with the Minerals Department of the Navajo Division of Natural Resources and any other appropriate agency or person, that the amounts tendered by the operators to the Secretary and by the Secretary to the Navajo Nation are correct and proper.

¹ 30 U.S.C. § 1232.

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Note. Slightly reworded for clarity.

Library References

Indians ☞16.10, 32.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 49, 51, 107 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343 to 348, 383.

§ 1633. Objectives of fund

A. Priorities. Expenditures of monies from the fund of lands and water eligible pursuant to § 1634 except as provided for under § 1641 for the purposes of this title shall reflect the following priorities in the order stated:

1. The protection of public, health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;
2. The protection of public health, safety, and general welfare from adverse effects of coal mining practices;
3. The restoration of land and water resources and the environment previously degraded by adverse effects of mining practices including measures of the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;
4. The protection, repair, replacement, construction, or enhancement of public facilities such as utilities roads, recreation, and conservation facilities adversely affected by mining practices;
5. The development of land owned in fee by the Navajo Nation or held in trust by the United States for the Navajo Nation adversely affected by mining practices including land acquired as provided in this title for recreation and historic purposes, conservation, and reclamation purposes and open space benefits; and
6. Any other purpose consistent with SMCRA ¹ and applicable Navajo law.

B. Inventory. For purposes of assisting in the planning and evaluation of reclamation projects pursuant to § 1635, and assisting in making the certification referred to in § 1641 (A), the Director shall maintain an inventory of eligible lands and waters pursuant to § 1634 which meet the priorities stated in paragraphs (1) and (2) of subsection (A).

¹ 30 U.S.C. § 1201 et seq.

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞16.5, 16.10, 32, 32.5.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 49, 51, 101 to 108, 122 to 123.

C.J.S. Mines and Minerals §§ 334 to 339, 343 to 348, 383.

§ 1634. Eligible lands and water

A. Lands and water eligible for reclamation or drainage abatement expenditures under this title are those which were mined for coal and other minerals or which were affected by such mining, waste banks, coal processing, or other coal mining processes, except as provided for under § 1641 and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under applicable law. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

B. Lands and waters also eligible for reclamation on the Navajo Nation are those which were damaged and abandoned after August 3, 1977 by coal mining processes if the Director finds in writing that:

1. They were mined for coal or affected by coal mining processes; and
2. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and September 28, 1984 and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or
3. The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and
4. The site qualifies as a priority one or two site pursuant to § 1633(a)(1) and (2) of SMCRA. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

C. For other provisions relating to lands and waters eligible for such expenditures, see § 1639.

History

CJY-63-95, July, 21, 1995.

CD-113-94, December 14, 1994.

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.5, 16.10.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,
77 to 80, 101 to 108.C.J.S. Mines and Minerals §§ 334 to 339, 343
to 348, 383.**§ 1635. Navajo Nation Reclamation Program**

A. The Director shall be responsible for the preparation and submission of the Navajo Abandoned Mine Reclamation Program and annual projects to carry

out the purposes of this title pursuant to this Act, SMCRA,¹ and any cooperative agreements which maybe entered into for this purpose by the Navajo Nation and the Federal Office of Surface Mining Reclamation and Enforcement.

B. The Director shall be responsible for ensuring that the Navajo Abandoned Mine Reclamation Program is in compliance with the Navajo Nation laws, this Act, SMCRA,¹ and any cooperative agreements under Subsection (A).

C. The Navajo Abandoned Mine Reclamation Plan shall identify the areas to be reclaimed, the purpose for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title. For any submissions requiring the approval of the Secretary of the Interior, this Act shall constitute the legal authority for the performing of the tasks contemplated by § 405(e) of SMCRA.²

D. On an annual basis, the Director shall notify the Secretary of the United States Department of the Interior of specific reclamation projects to be undertaken and may submit to the Secretary an application for the support of the Navajo Nation Reclamation Program and implementation of specific reclamation projects, should such application be required for the Secretary to transfer reclamation funds collected pursuant to § 402(a) of SMCRA³ from operators of coal mining operations on lands within the Navajo Nation subject to SMCRA.¹ Such annual notification and/or applications shall include such information as may be requested by the Secretary.

E. The Director shall include as costs for each proposed project under this section actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

F. The Director shall report from time to time on the status of the Navajo Reclamation Fund; the use of monies in the fund; the projects completed, in progress, or planned; and the need for construction of specific public facilities in communities impacted by coal development.

G. The Director shall also be responsible for submitting such annual and other reports as may be required by the Secretary of the Interior pursuant to § 405(j) of SMCRA.⁴

¹ 30 U.S.C. § 1201 et seq.

² 30 U.S.C. § 1235(e).

³ 30 U.S.C. § 1232(a).

⁴ 30 U.S.C. § 1235(j).

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.10.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,
77 to 80, 107 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343
to 348, 383.

§ 1636. [Reserved]

§ 1637. Acquisition and reclamation of lands within the Navajo Nation adversely affected by past coal mining practices

A. If the Director makes a finding of fact that:

1. Land or water resources have been adversely affected by past mining practices; and

2. The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices are not known, or readily available; or

4. The owners will not give permission for the Navajo Nation, its political subdivisions, agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past mining practices; then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the Navajo Nation in which the land lies, the Director shall have the right to enter upon the property adversely affected by past mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The monies expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim, in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry, provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

B. The Director, his or her agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

C. The Director may recommend the acquisition of land to the Navajo Land Department, which, upon the approval of the appropriate Committee(s) of the Navajo Nation Council, shall acquire any land, by purchase, donation, or condemnation, which is adversely affected by past mining practices where the

Director determines that acquisition of such land is necessary to successful reclamation and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; and

2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices; or

3. Acquisition of refuse disposal sites and all coal refuse thereon will serve the purpose of this title or that public ownership is desirable to meet emergency situations and prevent recurrence of the adverse effects of past mining practices. For the purpose of this Subsection (C), the phrase "acquisition of land" includes acquisition of grazing rights on lands held in trust by the United States for the Navajo Nation.

D. Title to all acquired lands pursuant to this Section shall be in the name of the United States in trust for Navajo Nation or in the name of the Navajo Nation, should the United States fail or refuse to accept title to such land in trust for the Navajo Nation. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past mining practices, as established by a competent appraisal.

E. The director shall from time to time recommend to the Navajo Land Department that specific lands be acquired for public purposes by the Navajo Nation pursuant to this title and/or pursuant to § 407 of SMCRA.¹ The director shall, in making such recommendations, identify valid public purposes to be served by the acquisition of such lands, and do all things necessary and proper to secure grants from the Secretary of the Interior pursuant to § 405(h) of SMCRA.²

F. The director shall, from time to time, recommend to the Navajo Land Department that specific lands acquired pursuant to § 407(c) of SMCRA³ be used for industrial, commercial, residential, or recreational development by the Navajo Nation. The director shall, in making such recommendations, identify the type of development or use of such lands and shall ensure that such development is consistent with the land use plans, if any, of the appropriate chapter and of the Navajo Nation.

G. Should the Director's recommendation under Subsections (C) or (F) be accepted or conditionally accepted by the Navajo Land Department and the appropriate Committee (s) of the Navajo Nation Council, or should other lands be acquired by the director under this Section and/or under § 407 of SMCRA,¹ the Director shall notify the public thereof and, after such appropriate public notice, in the appropriate chapter in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and chapters the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration,

reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

H. In addition to the authority to acquire land under Subsection (D) of this Section, the director is authorized to use money in the fund to acquire land by purchase, donation, or condemnation, and to reclaim and transfer, with the approval of the appropriate oversight committee of the Navajo Nation Council and in accordance with Navajo law, acquire land to any chapter, or to any person, firm, association, or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as a result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of mining practices which constitute an emergency as provided in § 1640 or persons dislocated as the result of natural disasters or catastrophic failure from any cause. Such activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration; provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under this title maybe used to pay the actual construction costs of housing. The director may carry out the purposes of this Subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any chapter, or any department, agency, or instrumentality of the Navajo Nation, or any public body or non-profit organization designated by the Navajo Nation Council.

¹ 30 U.S.C. § 1237.

² 30 U.S.C. § 1235(h).

³ 30 U.S.C. § 1237(c).

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.5, 16.10.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,
77 to 80, 101 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343
to 348, 383.

§ 1638. Liens

A. Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past mining practices on privately owned land, the director, pursuant to the Navajo Abandoned Mine Reclamation Program, shall itemize the monies so expended and may file a statement thereof in the office of the Clerk of the District Court of the Navajo Nation within

whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The director may also file such statements in the office of the county in which the land lies which office records judgments against land. Such statement shall be accompanied by a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past mining practices if the monies so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. No lien shall be filed against the property prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

B. The landowner may proceed as provided by Navajo law to petition on the appropriate District Court of the Navajo Nation within sixty (60) days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by Navajo law.

C. The lien provided in this Section shall be entered in the office of the Clerk of the District Court of the Navajo Nation within whose jurisdiction the land lies, in a book separately maintained by such Clerk for the recording of judgments against land. The lien may also be entered in the office of the county in which the land lies which office records judgments against land. Such statements shall constitute a lien upon the said land as of the date of the expenditure of the monies and shall have priority as a lien second only to the lien of real estate taxes lawfully imposed upon said land by the Navajo Nation.

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞9, 32.

Mines and Minerals ☞92.16.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 49, 51, 67.

§ 1639. Filling voids and sealing tunnels

A. The Navajo Nation Council declares that voids, and open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation, constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operation may degrade the environment. The Director, where requested by a duly promulgated resolution of the chapter with jurisdiction over the lands which include such voids and tunnels, is

authorized pursuant to this Act and/or pursuant to § 409 of SMCRA¹ to fill such voids; seal such abandoned tunnels, shafts, and entryways or take other appropriate remedial action; and reclaim surface impacts of underground or surface mines which the Director determines could endanger life and property, constitute a hazard to the public health and safety, or degrade the environment.

B. Pursuant to Navajo Nation laws, the Director is authorized to request funds from the Secretary of the Interior pursuant to § 409(c) of SMCRA² to carry out non-coal reclamation projects if such projects relate to the protection of the public health or safety.

C. In those instances where mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the waste from such operations by filling voids and sealing tunnels may be eligible for funding providing that the disposal of these wastes meets the purpose of this section.

D. The director and the resources Committee, and in compliance with Navajo law, may with monies from the fund acquire by purchase or easement, or by donation or by other such interest in land as he or she determines necessary to carry out the provisions of this Section.

¹ 30 U.S.C. § 1239.

² 30 U.S.C. § 1239(c).

History

CAP-42-94, April 26, 1994.

CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.10.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 67, 69 to 70, 74 to 75,

77 to 80, 107 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343 to 348, 383.

§ 1640. [Reserved]

§ 1641. Certification

A. Certification of completion of coal reclamation. Pursuant to Navajo Nation laws, the Director may certify to the Secretary that all of the priorities stated in § 1633(A) for eligible lands and waters pursuant to § 404 of SMCRA¹ have been achieved.

B. Eligible lands, water, and facilities. If the Secretary has concurred in the Navajo Nation certification under Subsection (A), for purposes of determining the eligibility of lands and waters for annual grants under § 402(g)(1) of SMCRA,² § 1634 shall not apply, and eligible land, waters, and facilities shall be those:

1. Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977; and

2. For which there is no continuing reclamation responsibility under state, Navajo Nation, or other federal laws.

C. Priorities. expenditures of monies for lands, waters, facilities referred to in Subsection (B) shall reflect the objectives stated in § 1633 wherein the term “coal” shall be replaced with “mineral” pursuant to Subsection (B).

D. Specific sites and areas not eligible. Sites and areas designated for remedial action pursuant to the Uranium Mill Tailing Radiation Control Act of 1978 (42 U.S.C. 7901 and following) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 and following) shall not be eligible for expenditures from the Fund under this Section.

E. Utilities and other facilities. Reclamation projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices, and the construction of public facilities in communities impacted by coal and other mineral mining and processing practices, shall be deemed part of the objectives set forth, and undertaken as they relate to, the priorities stated in Subsection (C).

F. Notwithstanding Subsection (E), where the Secretary has concurred in the certification referenced in subsection (A) and where the Director determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry where impacted by coal or minerals development and the Secretary concurs in such need, then pursuant to Navajo Nation laws, may use annual grants made available under § 402(g)(1) of SMCRA² to carry out such activities or construction.

G. Application of other provisions. The provisions of §§ 407³ and 408⁴ shall apply to Subsections (A)-(E) of this section, except that for the purposes of this section the references to coal in §§ 1637 and 1638 shall not apply.

¹ 30 U.S.C. § 1234.

² 30 U.S.C. § 1232(g)(1).

³ 30 U.S.C. § 1237.

⁴ 30 U.S.C. § 1238.

History

CAP-42-94, April 26, 1994.

Library References

Indians ☞10, 16.5, 16.10, 32.

Mines and Minerals ☞92.5 to 92.21.

Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 49, 51, 67, 69 to 70, 74 to 75, 77 to 80, 101 to 108.

C.J.S. Mines and Minerals §§ 334 to 339, 343 to 348, 383.

§ 1642. Fund report

Not later than January 1, 1989, and annually thereafter, the Director shall report to the Resources Committee on operations under the fund together with his or her recommendations as to future uses of the fund.

History

CAP-42-94, April 26, 1994.
CN-57-87, November 18, 1987.

§ 1643. Miscellaneous powers

A. The Director shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title, consistent with Navajo law.

B. The Director, with the approval of the Intergovernmental Relations Committee, upon the advice of the Resources Committee, of the Navajo Nation Council shall have the power and authority to engage in cooperative projects under this title with any agency of the United States of America or any state.

C. The Director may request of the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this title.

D. The Director shall have the power and authority, consistent with Navajo law, to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water, provided that the above provisions of this Subsection shall not be deemed in any way to repeal or supersede any portion of the Navajo Water Code enacted on August 2, 1984, and the Federal Water Pollution Control Act (33 U.S.C. § 1151, *et seq.*, as amended), and no control or treatment under this subsection shall in any way be less than that required under applicable law. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

E. The Director, upon the approval of the appropriate oversight committee of the Navajo Nation Council, may transfer funds to other appropriate Navajo Nation agencies in order to carry out the reclamation activities authorized by this title.

History

CAP-42-94, April 26, 1994.
CN-57-87, November 18, 1987.

Library References

Indians ☞10, 16.5, 16.10, 32.
Mines and Minerals ☞92.16.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 30, 49, 51, 67, 69 to 70, 74
to 75, 77 to 80, 101 to 108.

§ 1644. Interagency cooperation

All departments, boards, commissions, and agencies of the Navajo Nation shall cooperate to the fullest extent with the director to implement and

18 N.N.C. § 1644

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administer the provisions of this title where such cooperation does not conflict with existing Navajo Nation and/or applicable federal laws.

History

CAP-42-94, April 26, 1994.
CN-57-87, November 18, 1987.

Library References

Indians ⇐32.
Westlaw Topic No. 209.
C.J.S. Indians §§ 49, 51.

- Subchapter 5. [Reserved]
- Subchapter 6. [Reserved]
- Subchapter 7. [Reserved]
- Subchapter 8. [Reserved]

Title 19

Parks and Monuments

Chapter		Section
1.	Generally	1
2.	[Reserved]	
3.	Parks Commission	301
4.	[Repealed]	
5.	Camping	501
6.	[Reserved]	
7.	Operation of Marble Canyon Navajo Nation Park	601
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9.	Navajo Youth Camp	801
10.	Navajo Nation Museum	901
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Chapter 1. Generally

Section

1. Areas of scenic beauty and scientific interest; reservation
2. Authority to establish parks, monuments and recreation areas
3. Regulations
4. Park Rangers; commissions

Library References

Environmental Law ⇨32.
Westlaw Topic No. 149E.

§ 1. Areas of scenic beauty and scientific interest; reservation

All areas of scenic beauty and scientific interest which require preservation shall be reserved as Navajo parks, monuments, or ruins, to be managed by the Navajo Nation with the cooperation of other agencies.

History

Tribal Council Res. 1922–1951 Res. p. 156, July 12, 1934.

Revision note. Slightly reworded for purposes of clarity.

Relinquishment of rights by National Park Service. Tribal Council Res. 1922–1951 Res. p. 156, provided that the Council petition the Secretary of the Interior and the Commissioner of Indian Affairs to take immediate steps to have the National Park Service relinquish any rights that they may have acquired to Navajo areas.

Canyon de Chelly National Monument. Tribal Council Res. 1922–1951 Res. p. 40, July 8, 1930, approved a bill authorizing the President of the United States to establish the Canyon de Chelly National Park Monument within the Navajo Indian Reservation.

ACO–82–51, 1922–1951 Res. p. 41, October 2, 1951, raised objections to the granting of concessions within the area by the National Park Service and suggested that an understanding should be worked out relative to the use and control of the Tribal lands within the area.

Library References

Indians ⇨9.
States ⇨88.

United States ⇨57.

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Westlaw Topic Nos. 209, 360, 393.
C.J.S. Indians § 67.

C.J.S. States § 147.
C.J.S. United States § 99.

§ 2. Authority to establish parks, monuments and recreation areas

The Resources Committee is authorized to set aside and withdraw areas of Navajo land for use as parks, monuments and recreation sites, upon recommendation of the Parks Commission and the Parks and Recreation Department, after proper clearance from the Navajo Land Department and the local chapter area.

History

Marble Canyon Navajo Tribal Park. ACAU-149-66, August 1, 1966, established the "Grand Canyon Navajo Tribal Park" and authorized the Parks Commission to make rules and regulations for the park. ACAP-189-73, April 17, 1973, changed the name of the park to the "Marble Canyon Navajo Tribal Park." See Chapter 7 of this title.

CAU-48-64, § 10, August 28, 1964.

Revision note. Slightly reworded for purposes of clarity.

Kinlichee Tribal Park. ACMY-57-64, May 4, 1964, established the Kinlichee Tribal Park.

Tse Bonito Tribal Park. ACJ-143-63, October 1, 1963, established the Tse Bonito Tribal Park.

Window Rock Tribal Park. ACO-144-63, October 1, 1963, established the Window Rock Tribal Park.

Little Colorado River Navajo Tribal Park. ACMA-36-62, March 27, 1962, established the Little Colorado River Navajo Tribal Park and

authorized the Parks Commission to make rules and regulations for such Park.

Lake Powell Navajo Tribal Park. ACMA-35-62, March 27, 1962, established the Lake Powell Navajo Tribal Park and authorized the Parks Commission to make rules and regulations for such Park.

Tsegi Canyon. ACD-238-60, December 15, 1960, authorized the setting aside for future development as a Tribal park the entire Tsegi Canyon located in Navajo County, approximately 11 miles south of Kayenta, Arizona, and in addition, an area on each side of the rim of Tsegi Canyon, one-quarter mile in width. ACD-238-60, § 1, further provided that the area thus set aside was to include all of the area in Tsegi Canyon not previously set aside for Navajo National Monument being approximately 15 miles in length.

Monument Valley Tribal Park. ACJ-80-58, July 11, 1958, authorized the establishment of the Monument Valley Tribal Park, to be administered by the Parks Commission.

Cross References

CN-72-92, November 4, 1992, wherein the Resources Committee of the Navajo Nation Council is established as an entity whose purpose is to ensure utilization of all resources of the Navajo Nation. The word "resources" is defined to include "parks."

Purposes and powers of the Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691 *et seq.*

Library References

Environmental Law ⇨32.
Indians ⇨9.
States ⇨88.
United States ⇨57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 3. Regulations

The Resources Committee of the Navajo Nation Council has the authority to adopt rules and regulations for the operation of parks and recreation areas upon the recommendation of the Parks and Recreation Department and the Navajo Nation Parks Commission.

History

CAU-48-64, § 6, August 28, 1964.

Cross References

See 2 N.N.C. § 695(A), wherein the Resources Committee of the Navajo Nation Council has the authority “to promulgate rules and regulations to carry out its powers.” See also, 2 N.N.C. § 692(A) which defines the word “resources” to include “parks.”

Library References

Environmental Law ☞45.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞32(4.1).	C.J.S. States § 120.
States ☞65.	C.J.S. United States §§ 58 to 60.
United States ☞40.	

§ 4. Park Rangers; commissions

A. Each Navajo Nation Park Ranger shall be commissioned by the President of the Navajo Nation to enforce the regulations or statutes established by the Parks Commissions, the Resources Committee, or the Navajo Nation Council for the purpose of controlling activities and protecting Navajo Nation property within the Navajo Nation parks and recreation areas.

B. Each Navajo Nation Park Ranger is further authorized to enforce the provisions of the Antiquities Preservation Law, the Hunting and Fishing Laws of the Navajo Nation, and when acting in conjunction with the Navajo Nation Department of Law Enforcement, the law and order provisions of the Navajo Nation Code.

History

CN-66-76, November 9, 1976. CAU-48-64, **Revision note.** Slightly reworded for purposes of clarity.

Library References

Environmental Law ☞45.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞32(6).	C.J.S. Indians § 51.
States ☞65.	C.J.S. States § 120.
United States ☞40.	C.J.S. United States §§ 58 to 60.

Chapter 2. [Reserved]

Chapter 3. Parks Commission

Section

- 201. Composition; appointment
- 202. Chairperson; selection
- 203. Removal of members
- 204. Policy guidance

§ 201. Composition; appointment

A. The Navajo Nation Parks Commission shall consist of five (5) members, each member to be appointed to a term of four (4) years, provided that the first

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appointments shall be made for one (1) member for four (4) years; one (1) member for three (3) years; one (1) member for two (2) years; and two (2) members for one (1) year; and thereafter each appointment shall be for four (4) years.

B. The members of the Commission shall be appointed by the President of the Navajo Nation subject to the approval of the Government Services Committee of the Navajo Nation Council.

History

CAU-48-64, August 28, 1964.

Preamble. For preamble to CAU-48-64, see § 2 of this title.

Library References

Environmental Law ⇌45.

Indians ⇌32(6).

States ⇌45 to 51.

United States ⇌29 to 36.

Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 51.

C.J.S. States §§ 61, 79 to 80, 82 to 85, 87, 91 to 92, 102 to 103, 123, 136.

C.J.S. United States §§ 23, 49 to 53, 56 to 57, 162 to 163.

§ 202. Chairperson; selection

The members of the Parks Commission shall select, each year, a chairperson of the Commission.

History

CAU-48-64, August 28, 1964.

Library References

Environmental Law ⇌45.

Indians ⇌32(6).

States ⇌46.

United States ⇌35.

Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 51.

C.J.S. States §§ 61, 80, 84, 102.

C.J.S. United States §§ 23, 53, 56 to 57.

§ 203. Removal of members

Each member of the Parks Commission may be removed upon a majority vote of the Government Services Committee of the Navajo Nation Council.

History

CAU-48-64, August 28, 1964.

Library References

Environmental Law ⇌45.

Indians ⇌32(6).

States ⇌52.

United States ⇌35.

Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 51.

C.J.S. States §§ 93 to 94, 96, 98 to 102.

C.J.S. United States §§ 23, 53, 56 to 57.

§ 204. Policy guidance

It is the intention of the Navajo Nation Council that the Parks Commission should provide guidance on policy matters affecting the Parks and Recreation

Department. The Commission shall also advise the Navajo Nation Council and Resources Committee of problems affecting the Parks and Recreation Department and make recommendations to all concerned with the recreational program of the Navajo Nation of any necessary improvements or changes.

History

CAU-48-64, August 28, 1964.

Revision note. Slightly reworded for purposes of clarity.

Cross References

Purposes and powers of the Resources Committee of the Navajo Nation Council, see 2 N.N.C. § 691 *et seq.*

Library References

Environmental Law ⇌45.
 Indians ⇌32(6).
 States ⇌71.
 United States ⇌41.

Westlaw Topic Nos. 149E, 209, 360, 393.
 C.J.S. Indians § 51.
 C.J.S. States § 123.
 C.J.S. United States § 54.

Chapter 4. [Repealed]

History

CAP-41-94, April 20, 1994.

Chapter 5. Camping

Section

- 401. Definitions
- 402. Restriction of camping to recreational areas
- 403. Special permission to conduct camping activities outside recreational areas
- 404. Permits
- 405. Daily fees
- 406. Enforcement
- 407. Overriding orders
- 408. Activities prohibited
- 409. Revenues
- App. A Designated Camping Areas
- App. B Navajo Nation Parks
- App. C Laws and Regulations Applicable to Camping Activities

§ 401. Definitions

In this Chapter:

A. "Camping" shall be deemed to include any activity involving the use of Navajo land for purposes of establishing temporary living quarters for accommodations through the use of any motor vehicle, tent, trailer, other vehicle or shelter device, or for the purpose of overnight stay.

B. A "recreational area" shall include all areas designated as camping or recreational areas by the Resources Committee of the Navajo Nation Council

and shall also include Navajo Nation parks. No areas or parks, other than those designated in Appendices (A) and (B) of this Chapter, have been designated as recreation areas. Recreation areas are classified as Class (a) areas, Class (b) areas, and Class (c) areas, as set forth in 19 N.N.C. § 405, and daily fees are charged for Class (a) and (b) areas.

C. A “regular camping permit” is a permit duly issued by the Director, or his or her authorized representative, in the form of a window sticker or such other form as may be prescribed by the Director and is required before any recreational area may be used for camping purposes. Daily fees for designated areas are in addition to fees for the camping permit.

D. A “special camping permit” is a permit duly issued by the Director, or his or her authorized representative, in the form of a window sticker or such other form as may be prescribed by the said Director, authorizing the use of Navajo lands other than recreational areas for camping purposes.

E. The word “person” shall include any non-Navajo person except those persons authorized or required to conduct camping activities on Navajo lands by reason of their official capacity with the Navajo Nation or the federal government, and shall include all groups of persons traveling in the same private non-commercial vehicle or any group of persons not exceeding eight (8) who are in close association with each other and not traveling by private non-commercial vehicle.

F. The term “Navajo lands” shall mean all lands subject to the jurisdiction of the Navajo Nation, and includes all areas commonly described as Land Management Districts 15, 16, and 19 and the Cutter Dam area.

G. The word “Director” shall mean the Director of the Parks and Recreation Department of the Navajo Nation.

H. “Private non-commercial vehicle” shall include any passenger car, station wagon, pickup, camper truck, motorcycle, or other motor vehicle which is conventionally used for private recreation purposes by a family.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 402. Restriction of camping to recreational areas

A. Unless a “special camping permit” is obtained, no camping activities shall be allowed by any person on Navajo lands except within the recreational areas designated in Appendices (A) and (B) of this Chapter, and no person shall engage in camping activities within said recreational areas unless he or she has in his or her possession or affixed to the windshield of his or her private non-commercial vehicle, a valid camping permit.

B. No camping shall be allowed in Class (a) and (b) recreation areas, as set out in 19 N.N.C. § 405, unless daily fees provided herein are paid to an authorized enforcement officer.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ⇌43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ⇌9.	C.J.S. Indians § 67.
States ⇌88.	C.J.S. States § 147.
United States ⇌57.	C.J.S. United States § 99.

§ 403. Special permission to conduct camping activities outside recreational areas

A. No camping activities shall be allowed by any person on Navajo lands situated outside designated recreational areas unless such person shall have in his or her possession or affixed to the windshield of his or her vehicle, a valid “special camping permit.” Application for “special camping permits” shall be made to the Department Director, or his or her authorized representative, and such permits may be issued upon such terms and conditions as said Department Director may prescribe.

B. All persons purchasing a Navajo hunting permit must also purchase a special camping permit before hunting on lands subject to the jurisdiction of the Navajo Nation.

C. Camping activities conducted on a commercial basis, or in relation to commercial tourist services, are prohibited on Navajo Nation lands unless the person, firm, association, or corporation conducting such activities shall first obtain a special camping permit. Only special camping permits shall be deemed valid authorization for conducting such camping activities. All camping regulations shall apply equally to such camping activities in the same manner as they apply to private, non-commercial camping.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ⇌43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ⇌9.	C.J.S. Indians § 67.
States ⇌88.	C.J.S. States § 147.
United States ⇌57.	C.J.S. United States § 99.

§ 404. Permits

A. The “regular camping permit” shall admit the purchaser, members of his or her immediate family, and all other persons accompanying the purchaser or members of his or her immediate family in one private non-commercial vehicle to recreational areas designated in Appendices (A) and (B) of this Chapter. The

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“special camping permit” shall admit persons named thereon, to lands described thereon, as limited by any terms imposed by the Director.

B. Every camping permit shall be validated by signature of its owner on the face of the permit at the time of its receipt. All permits shall be non-transferable.

C. All “regular” and “special camping permits” may be sold by the Director, and by any of his or her authorized representatives at such place or places as may be designated by said Director. Appendix (C) of this Chapter contains a list of individuals and organizations presently authorized to sell such permits and designates the places where such permits may be sold.

D. The Parks and Recreation Department of the Navajo Nation shall be responsible for printing and distribution of all camping permits, and shall collect and account for the same, and for all fees derived from the sale thereof.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ⇌43.
Indians ⇌9.
States ⇌88.
United States ⇌57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 405. Daily fees

A. Certain areas designated as camping or recreation areas are subject to exceptionally heavy use, and have facilities constructed and maintained by the Navajo Nation for use by campers. These areas are designated Class (a) and Class (b) areas, as set out in this Section, and daily fees will be charged in these areas. Use of the area for picnics will also be subject to the daily fees prescribed. These fees are intended to defray the cost of daily maintenance and to promote availability of the areas for use by all who wish to make use thereof. Class (a) areas are those areas designated as such in Appendices (A) and (B) of this Chapter, and generally have facilities equivalent to franchised campgrounds. Class (b) areas are those designated as such in Appendices (A) and (B) of this Chapter and generally include such facilities as tables, campfire grills, and waste disposal cans. Class (c) areas are those designated as such in Appendices (A) and (B) of this Chapter, and include recreation areas with no facilities.

B. No person shall be permitted to occupy Class (a) or Class (b) areas without payment upon request to an authorized enforcement officer of the Navajo Nation of the appropriate fee approved by the Resources Committee of the Navajo Nation Council.

C. Area designations shall be determined by the Director, Parks and Recreation Department, and shall be subject to change.

D. Fees shall be paid to an authorized enforcement officer, who shall collect such fees at the camping area on a daily basis.

History

CN-72-92, November 4, 1992
 CAU-45-73, August 29, 1973.

Library References

Environmental Law ☞43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞9.	C.J.S. Indians § 67.
States ☞88.	C.J.S. States § 147.
United States ☞57.	C.J.S. United States § 99.

§ 406. Enforcement

A. Any person conducting camping activities on Navajo lands in violation of this Chapter shall be advised of the necessity of purchase of a permit, and shall forthwith purchase any necessary permit, and pay any applicable daily fees, or immediately cease any and all activities constituting a violation of this Chapter.

B. This Chapter shall be enforced by the Navajo Rangers or Park Rangers and by any other duly authorized persons.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ☞43, 46.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞9.	C.J.S. Indians § 67.
States ☞88.	C.J.S. States § 147.
United States ☞57.	C.J.S. United States § 99.

§ 407. Overriding orders

Any “regular permit” or “special camping permit” issued by or under authority of the Director shall not entitle any person to engage in any camping activities prohibited by order of the President or Vice-President of the Navajo Nation or of any other Navajo Nation official acting under proper authority. Such orders are occasionally issued by the President of the Navajo Nation or other appropriate official for the protection of Navajo Nation forests from fire or other hazards.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ☞43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞9.	C.J.S. Indians § 67.
States ☞88.	C.J.S. States § 147.
United States ☞57.	C.J.S. United States § 99.

§ 408. Activities prohibited

All persons engaged in camping activities shall comply with all applicable Navajo Nation and federal laws and regulations. Any person in violation of any

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such laws or regulations shall be deemed to have forfeited his or her camping privileges and his or her camping permit shall be null and void, and must be surrendered to any person authorized to enforce these regulations upon demand.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ⇌43, 46.
Indians ⇌9.
States ⇌88.
United States ⇌57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 409. Revenues

Revenues generated from the imposition of camping fees shall be used to maintain and improve existing camping facilities and to provide new facilities where possible.

History

CAU-45-73, August 29, 1973.

Library References

Environmental Law ⇌43.
Indians ⇌32(4.1).
States ⇌119.
United States ⇌82.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 204 to 212, 215, 218, 221.
C.J.S. United States § 155.

App. A. Designated Camping Areas

Appendix A

Designated Camping Areas

<i>Name</i>	<i>Location</i>	<i>Route</i>	<i>State</i>
1. Summit Campground	8 mi. W. Window Rock Both Sides of Highway	264	AZ
2. Kinlichee Park	2 1/2 mi. N. Cross Canyon Trading Post	264	AZ
3. Monument Valley	1/2 mi. N. Visitors Centers	Valley Road	AZ
4. Bowman Park	10.2 mi. S. Hunters Point Trading Point	12	AZ
5. Ganado Lake	2.6 mi. N. Round Top Trad- ing Post	27	AZ
6. Pasture Canyon Reservoir	2.3 mi. N. Tuba City 1/2 mi. off HWY 160 on N. Side	Country	AZ
7. Captain Tom Reservoir	4.6 mi. N. Newcomb-2 mi. off HWY	491	NM
8. Asaayi Lake	11 mi. E. Navajo, NM	Mexican Spring Road	NM

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<i>Name</i>	<i>Location</i>	<i>Route</i>	<i>State</i>
9. Red Lake	.6 mi. N. Navajo, NM, by HWY West Side	12	NM
10. Wheatfields Lake	22.4 mi. N. Navajo, NM, Both Sides HWY	12	AZ
11. Tsaile Lake—South Shore	53 mi. N. Window Rock—W. Side Of HWY 12	12	AZ
Tsaile Lake—North Shore	55 mi. N. Window Rock-W. Side Of HWY 12	12	AZ
12. Round Rock Lake	4 mi. SW Jct. 12 & 64	12	AZ
13. Many Farms Lake	1.2 mi. E. Many Farms Trading Post	Country	AZ
14. Antelope Lake	16 mi. S. Summit Camp-ground	Country	AZ
15. Chuska Lake	1.3 mi. E. Tohatchi and Boarding School Jct.	Country	NM

App. B. Navajo Nation Parks

Appendix B

Navajo Nation Parks

<i>Name</i>	<i>Res. No.</i>	<i>Acres</i>	<i>Use</i>
1. Monument Valley Tribal Park	ACJ-80-58	85.14	Camping
2. Tsegi Canyon	ACD-238-60	Included in Lake Powell Tribal Park	Camping
3. Lake Powell	ACMA-35-62	2,218,112.80	Camping
4. Little Colorado River	ACMA-36-62	360,992.23	Camping
5. Tse Bonito Tribal Park	ACO-143-63	36.14	Camping
6. Window Rock Tribal Park	ACO-144-63	85.14	No Camping
7. Kinlichee Tribal Park	ACMY-57-64	640.00	Camping
8. Bowl Canyon Recreation Area (Asaayi)	ACJN-89-65	645,579.00	Camping
9. Grand Canyon	ACAU-149-66	303,667.20	Camping

App. C. Laws and Regulations Applicable to Camping Activities

Appendix C

Laws and Regulations Applicable to Camping Activities

- A. Federal Criminal Offenses
1. Hunting within the Navajo Nation without a camping permit. 18 U.S.C. § 1165
 2. Leaving a fire unattended or unextinguished. 18 U.S.C. § 1856
 3. Cutting or injuring a tree. 18 U.S.C. § 1853
 4. Willfully and without authority setting fire to timber, underbrush, grass or other inflammable material. 18 U.S.C. § 1855
 5. Introducing, selling, or dispensing liquors, wine, or beer including forfeiture of vehicle used for introduction. 18 U.S.C. §§ 1154, 1156, 3113, 3488 and 3618

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6. Taking fish, or game animals, or pelts, contrary 18 U.S.C. § 1165 to the terms of the Navajo Nation law.
7. Disturbing or taking any object of prehistoric 16 U.S.C. § 432 origin; Antiquities Act.

B. Violations of Navajo Nation Law

1. Unlawful disposal of refuse.
2. Violation of traffic regulations, breach of the peace, public drunkenness, unauthorized activity causing damage to Navajo Nation property, or commission of a crime as defined by state or federal law.
3. Remaining in areas posted for fire danger.
4. Lighting campfires or smoking in posted fire danger areas.
5. Violating Navajo Nation fishing regulations

C. Violations of Permit Regulations

Commission of any of the following acts shall be deemed grounds for revocation by an authorized enforcement officer of any camping permit, or daily fee permit, as provided in these regulations:

1. Failure to remove or properly dispose of all garbage, waste materials, and rubbish.
2. Dumping or draining refuse or waste from a trailer or other vehicle.
3. Pollution contamination of waters, including cleaning fish in lake waters.
4. Indulging in boisterous, abusive, threatening or indecent conduct.
5. Destroying or removing any plants.
6. Posting handbills, notices, circulars or advertising devices.
7. Discharging firearms, firecrackers, rockets, or any type of fireworks.
8. Operating or using any noise-producing device at such times as to disturb other persons.
9. Building a fire outside of a stove, grill, fireplace, fire-ring, or similar control device, when in a Class (a) or (b) camping area.
10. Failure to clean camping debris and rubbish and to remove all camping equipment when leaving a site.
11. Pitching tents, parking trailers, or locating other camping equipment except in places in Class (a) and (b) areas provided for such uses.
12. Leaving campsite and camping equipment unattended for twelve (12) hours without written permission of the enforcement officer.
13. Not maintaining dogs or other animals under physical restrictive control at all times.
14. When camping under a special permit, failure to break camp and leave at the request of individual Navajo land users whose lands are being occupied.
15. Tearing down or willfully defacing a notice posted by any Navajo Nation department or by the Bureau of Indian Affairs.

16. Destroying, injuring, or disturbing property of the Navajo Nation used in administration of camping areas, and used as a facility of any sort for camping areas.

17. Leaving any building provided for public use at a recreational facility without placing it in as sanitary condition as when entered.

18. Operating a motor vehicle in any recreation area in a manner that creates an impediment or hazard to the safety, comfort, or convenience of others, and operating any two wheeled motorized vehicle in any recreation area on lands not openly and apparently used as roads, or parking sites for vehicles.

Chapter 6. [Reserved]

Chapter 7. Operation of Marble Canyon Navajo Nation Park

Section

- 601. Definitions
- 602. Restriction of camping to recreational areas
- 603. Special permission to conduct camping activities outside recreational areas
- 604. Permits
- 605. Daily fees
- 606. Enforcement
- 607. Overriding orders
- 608. Activities prohibited
- 609. Revenues
- 610. Definitions
- 611. Restriction of camping to recreational areas
- 612. Special permission to conduct camping activities outside recreational areas
- 613. Permits
- 614. Daily fees
- 615. Enforcement
- 616. Overriding orders
- 617. Activities prohibited
- 618. Revenues

§ 601. Park name; establishment of regulations

The name of the Grand Canyon Navajo Tribal Park is changed to the Marble Canyon Navajo Nation Park, and this Chapter is established for the operation of Marble Canyon Navajo Nation Park. The Parks and Recreation is authorized to make such further rules and regulations, with the approval of the Resources Committee of the Navajo Nation Council, as will further the purposes of this Chapter for the operation of Marble Canyon Navajo Nation Park.

History

CN-72-92, November 4, 1992.

ACAP-189-73, April 17, 1973.

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Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 602. Basic policy considerations

A. Marble Canyon Navajo Nation Park is established to preserve an area of great scenic beauty and one of cultural and social significance to the Navajo People. This basic consideration dictates that all present and traditional Navajo religious, cultural, economic and social uses of the area shall continue without interference or regulation, and this Chapter is applicable only insofar as it does not interfere with these traditional uses of the area by the Navajo people.

B. All visitors to the park shall respect the privacy and property of Navajo residents within the park boundaries

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 603. Commercial development and activities

A. Commercial development and activities except as herein designated in this Chapter, shall be strictly prohibited within the park boundaries.

B. Food and drink or other types of concessions within the park boundaries shall be permitted only after proper investigation by the Parks and Recreation Department and after obtaining other necessary permits or leases. Such concessions will be approved only if they do not interfere with, or distract from, the natural beauty of the area.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 604. Vehicular traffic

Vehicular traffic will be allowed only on properly designated roads or highways established within the park, except that official or emergency vehicles shall be allowed to operate anywhere within the park to the extent such

operations are necessary to the administration and regulation of the park, or for the safety of persons within the park.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ⇌43.
 Indians ⇌9.
 States ⇌88.
 United States ⇌57.

Westlaw Topic Nos. 149E, 209, 360, 393.
 C.J.S. Indians § 67.
 C.J.S. States § 147.
 C.J.S. United States § 99.

§ 605. Camping

A. Camping and the use of trailers or other camper units will be permitted only at designated locations. The Director of the Parks and Recreation Department, however, may issue special permits to persons desiring to camp in the backcountry or other isolated areas within the park, or the Director may designate portions of the park where such permits will not be required. These locations will be indicated on a map available for public inspection in the park offices.

B. The Director of the Parks and Recreation Department may establish limitations on the length of time persons may camp within the park (either in a single period or in combined separate periods). Such limitations shall be posted at campgrounds, ranger stations or other appropriate locations.

C. Installation of permanent camping facilities by park visitors is prohibited.

D. Digging or leveling of the ground at any campsite is prohibited except by permission of the Director of the Parks and Recreation Department.

E. Camping equipment must be completely removed and the campsite utilized must be cleaned before departure.

F. Camping within 25 feet of any water hydrant, main highway, or well-defined water course is prohibited.

G. Quiet shall be maintained in all campgrounds between the hours of 10 p.m. and 6 a.m.

H. Gathering of wood for fuel in campgrounds or picnic areas will be limited to dead material on the ground, except where such gathering is prohibited by the Director of the Parks and Recreation Department by the posting of appropriate signs. Cutting of standing timbers or shrubs is strictly prohibited.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ⇌43.

Indians ⇌9.

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States ⇌88.
United States ⇌57.
Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 606. Closing of areas

The Director of the Parks and Recreation Department may establish a schedule of visiting hours for all or portions of the park, and if necessary, close or restrict public use of all or certain portions of the park for protection of the area or for the safety and welfare of persons or property, by posting appropriate signs. All visitors must observe and abide by any officially posted signs designating closed areas or visiting hours.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ⇌43.
Indians ⇌9.
States ⇌88.
United States ⇌57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 607. Disorderly conduct

A. Disorderly conduct is prohibited.

B. A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he or she shall:

1. Engage in fighting, or in threatening, violent or tumultuous behavior;
or
2. Make unreasonable noise or offensively coarse utterance, gesture, or display, or address abusive language to any person present; or
3. Create a hazardous or physically offensive condition by any act which serves no legitimate purpose.

History

ACAP-189-73, April 17, 1973.

Library References

Disorderly Conduct ⇌1.
Indians ⇌32(13).
Westlaw Topic Nos. 129, 209.

C.J.S. Disorderly Conduct §§ 2 to 5.
C.J.S. Indians § 157.

§ 608. Explosives

A. The possession or use of explosives is prohibited except upon written permission of the Director of the Parks and Recreation Department. Any authorized possession or use of explosive shall conform with all applicable federal and Navajo Nation laws.

B. The possession or use of fireworks and firecrackers is prohibited, except upon written permission of the Director of the Parks and Recreation Department.

History

ACAP-189-73, April 17, 1973.

Library References

Explosives ☞1 to 3.
Indians ☞32(13).

Westlaw Topic Nos. 164, 209.
C.J.S. Indians § 157.

§ 609. Firearms, traps and other weapons

A. The use of traps, seines, hand thrown spears, nets (except landing nets), firearms (including air or gas-powered pistols and rifles), blow guns, bows and arrows or crossbows, or any other implements which are capable of trapping or destroying animal life is prohibited. The possession of such objects or mechanisms is prohibited unless unloaded and adequately cased, dismantled, or otherwise packed in such a way as to prevent their use while in the park.

B. When authorized by the Director of the Parks and Recreation Department licensed guides in charge of pack trains or saddlehorse parties may carry firearms for emergency use as stipulated in a written permit.

C. Authorized federal and Navajo Nation law enforcement officers are authorized to carry firearms in the performance of their official duties within the park.

History

ACAP-189-73, April 17, 1973.

Library References

Indians ☞32(13).
Weapons ☞5 to 16.
Westlaw Topic Nos. 209, 406.

C.J.S. Indians § 157.
C.J.S. Weapons §§ 9 to 27, 29 to 30, 37 to 48,
51.

§ 610. Fires

A. Kindling of fires is permitted only:

1. In designated camping and picnicking grounds and when confined in the fireplace or grill provided by the park for use of visitors, or in other locations as indicated by the Director of the Parks and Recreation Department. Areas so designated shall be marked on a map which shall be available for public inspection in the park office;

2. In locations in the backcountry, wilderness and remote sections of the park when a written permit has been secured from the Director of the Division of Natural Resources; or

3. In stoves or lanterns using gasoline, propane, butane gas or similar fuels.

B. Other Precautions:

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1. Fires must be kindled in such manner that no tree, shrub, grass, or other inflammable or combustible matter will be set on fire, or caused to be set on fire;
2. When no longer needed, the fire shall be completely extinguished. Leaving a fire unattended is prohibited;
3. Throwing or dropping a lighted cigarette, cigar, pipe heel, match, or other burning material is prohibited;
4. The Director of the Parks and Recreation Department, at his or her discretion, may when necessary prohibit smoking on any parks lands, including roads and trails, by posting appropriate signs.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 611. Intoxication; drug incapacitation

Entering or remaining in the park when manifestly under the influence of alcohol, narcotics or other drugs to a degree that may endanger oneself or other persons or property or unreasonably annoy persons in the vicinity is prohibited.

History

ACAP-189-73, April 17, 1973.

Library References

Controlled Substances ☞38.
Indians ☞32(13).

Westlaw Topic Nos. 96H, 209.
C.J.S. Indians § 157.

§ 612. Picnicking

Picnicking, except in officially designated locations, is prohibited. The Director of the Parks and Recreation Department may establish limitations on the length of time any person or group may use any picnicking facility. Appropriate signs designating picnicking locations and limitations will be posted.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 613. Preservation of public property, natural features, curiosities and resources

A. The collection, possession, destruction, injury, defacement, removal or disturbance of any building, sign, equipment, monument, statue, marker, ruin or other antiquity, or other structure, or of any animal or plant matter, including direct products thereof, is prohibited. This prohibition includes, but is not limited to, petrified wood, flowers, cone or other fruit, egg, nest, or nesting site, any soil, rock, mineral formation, phenomenon or crystallization, artifact, relic, historic or prehistoric feature, except as otherwise provided in this section or in special regulations for the park.

B. Gathering or possession for personal consumption or use of such fruits and berries as the Director of the Parks and Recreation Department may designate is permitted. All such fruits and berries shall be picked by hand only; gathering or collecting of these for the purpose of sale, except by Navajos, is prohibited.

C. The use of any mineral or metal-detecting device capable of detecting underground or underwater locations of geological, archeological or historical objects or material is prohibited. The provisions of this section shall not apply to fathometers, radar and electronic equipment used primarily for the navigation and safe operation of boats and aircraft.

D. Damaging or molesting Navajo crops or livestock is prohibited.

E. Taking canes, umbrellas, sticks, or similar objects into caves or caverns is prohibited, except by permission of the Director of the Parks and Recreation Department.

F. Tossing, throwing, or rolling stones or other materials inside caves or caverns, into valleys or canyons, or down hills and mountains, is prohibited.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 614. Saddle and pack animals

A. Horses and other saddle or pack animals are permitted only on established trails or bridle paths, except in areas where cross-country is permitted by the Director of the Parks and Recreation Department.

B. Horses or other saddle or pack animals will not be permitted on the main-traveled or maintained portions of roadways, except where such travel is necessary for ingress or egress from trails or privately owned property or is incidental to authorized travel.

C. In the interest of public safety and welfare, the Director of the Parks and Recreation Department, by special regulations, may require that saddle-horse

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parties and pack trains be in the charge of a guide, licensed under Navajo Nation laws, who meets the qualifications established by the Director of the Parks and Recreation Department.

D. Riding or hitching horses or other saddle or pack animals in campgrounds, picnic areas, or within the immediate vicinity of trail shelters, eating or sleeping establishments or other areas of public gatherings, except where trails and facilities are designated or provided for such use, is prohibited.

E. Riders shall slow their horses to a walk or slow trot when passing persons on foot or on bicycles.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
Indians ☞9.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 67.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 615. Sanitation

A. All garbage, papers, cans, bottles, waste materials and rubbish of any kind must be disposed of only at places designated for this purpose, or removed by the visitor from the park area. All combustible materials shall be deposited in incinerators constructed for this purpose, or removed from the area.

B. Draining or dumping refuse or waste from any trailer or other vehicle except in places or receptacles provided therefor is prohibited.

C. Cleaning food, or washing clothing or articles of household use at campground hydrants is prohibited.

D. Polluting or contaminating in any manner any watershed, water supplies or water used for drinking purposes is prohibited.

E. Depositing any body waste in or on any portion of any comfort station or other public structure except into fixtures provided for that purpose is prohibited. Placing any bottle, can, cloth, rag, metal, wood, or stone substances in any of the plumbing fixtures in such station or structure is prohibited. All comfort stations shall be used in a clean, sanitary, and orderly manner.

F. Urinating or defecating at places other than those provided therefor is prohibited, except in the backcountry, wilderness or other remote areas.

G. Using park refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought into the park from private property is prohibited.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ⇨43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ⇨9.	C.J.S. Indians § 67.
States ⇨88.	C.J.S. States § 147.
United States ⇨57.	C.J.S. United States § 99.

§ 616. Scientific specimens

A. Unless specifically permitted by special regulations, the collection of plants, rocks or minerals (non-fossilized), animal life, or other natural objects is permitted only in accordance with written permits obtained in advance from the Director of the Parks and Recreation Department.

B. Permits shall not be issued to individuals or associations to collect specimens for personal use, and shall be issued only to persons officially representing reputable scientific or educational institutions to procure specimens for research, group study or museum display.

C. Permits will be issued only on condition that specimens taken ultimately will become part of a permanent public museum or herbarium collection, or will in some suitable way be made available permanently to the public.

D. No permits may be granted for the collection of specimens the removal of which would disturb the remaining natural features or mar their appearance.

E. Permits to secure rare natural objects will be granted by the Director only upon proof of special need for scientific use and of the fact that such objects cannot be secured elsewhere.

F. Permits to survey, collect, excavate or test trench on any archeological or historical ruin, or to collect fossilized specimens, are issued by the National Park Service, which has been delegated this authority by the Secretary of the Interior (Federal Register, Vol, 37, No. 106, Thursday, June 1, 1972). Such permits are issued in accordance with the Antiquities Act of June 8, 1906 (34 Stat. L. 225), and 17 N.N.C. § 1801 *et seq.*, enacting an Antiquities Preservation Law, and only after written consent by the Navajo Nation has been given. Such permits are issued only to reputable scientific institutions and not to individuals.

History

ACAP-189-73, April 17, 1973.

Cross References

See The Navajo Nation Historic Preservation and Archaeology Departments Plans of Operation within the Division of National Resources. See also, 19 N.N.C., § 1001, *et seq.*, the Navajo Nation Cultural Resources Protection Act.

Library References

Environmental Law ⇨43.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ⇨9.	C.J.S. Indians § 67.
States ⇨88.	C.J.S. States § 147.
United States ⇨57.	C.J.S. United States § 99.

§ 617. Travel on trails

A. Bicycles, motorcycles and other motor vehicles are prohibited on trails, except that bicycles only are permitted on trails designated for their use by posted signs.

B. Pedestrians on trails shall remain quiet when saddle or pack animals are passing.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞43.
 Indians ☞9.
 States ☞88.
 United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
 C.J.S. Indians § 67.
 C.J.S. States § 147.
 C.J.S. United States § 99.

§ 618. Wildlife; hunting

A. Hunting, killing, wounding, frightening or capturing, or attempting to kill, wound, frighten or capture, any wildlife species, is prohibited, except when it is necessary to prevent dangerous animals from inflicting personal injury or destroying human lives.

B. Except as otherwise provided herein, feeding, touching, teasing, molesting or intentionally disturbing any wildlife or nesting species, or related activities or phenomena thereof, is prohibited.

History

ACAP-189-73, April 17, 1973.

Library References

Environmental Law ☞523.
 Indians ☞9, 32.5.
 States ☞88.
 United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
 C.J.S. Indians §§ 67, 122 to 123.
 C.J.S. States § 147.
 C.J.S. United States § 99.

Chapter 8. [Reserved]

Chapter 9. Navajo Youth Camp

Section

- 801. Establishment; purpose
- 802. Personnel
- 803. Authority, duties and responsibilities

§ 801. Establishment; purpose

A. The Navajo Youth Camp is established within the Department of Parks and Recreation.

B. The Navajo Youth Camp provides a complete camp facility for youth organizations where programs in conservation, nature lore, recreation and

scouting are available to all youths. The camp also serves as a meeting place for individuals, groups, and agencies from the Navajo Nation and other areas.

History

ACN-247-76, November 4, 1976.

Library References

Environmental Law ⇌45.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ⇌32(4.1).	C.J.S. States §§ 79, 82, 136.
States ⇌45.	C.J.S. United States § 49.
United States ⇌30.	

§ 802. Personnel

There is established a position of Unit Manager, Navajo Youth Camp and such other positions as may from time to time be budgeted by the Navajo Nation Council. All personnel will be hired and compensated through the Navajo Nation Personnel Policies and Procedures.

History

ACN-247-76, November 4, 1976.

Library References

Environmental Law ⇌45.	C.J.S. Indians § 51.
Indians ⇌32(6).	C.J.S. States §§ 61, 81 to 83, 86, 93 to 98,
States ⇌53, 56.	101, 104 to 108, 136.
United States ⇌36 to 39.	C.J.S. United States §§ 24, 56 to 57, 65.
Westlaw Topic Nos. 149E, 209, 360, 393.	

§ 803. Authority, duties and responsibilities

The Manager, Navajo Youth Camp is hereby authorized and directed to:

1. Report and be responsible to the Director, Department of Parks and Recreation.
2. Formulate and recommend overall administrative and operating standards and regulations pertaining to the camp and take such action as necessary for accomplishment.
3. Supervise all assigned personnel and delegate authority as necessary.
4. Develop a schedule of fees and charges for services and rental of the camp facilities. This schedule of fees and charges shall be submitted annually with the Camp Budget and may not be altered without the approval of the Resources Committee of the Navajo Nation Council.
5. Collect all income from the operation of the camp and deposit it with the cashier. The cashier shall report all such income to the Controller to be credited to an income account in the name of the Navajo Youth Camp to be used only in the operation of the camp. All unexpended funds shall revert to the General Fund at the close of the fiscal year.
6. Develop an operating budget annually to be included in the budget for the Department of Parks and Recreation.

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7. Develop an overall Master Plan for the Navajo Youth Camp which is consistent with the management of the Asaayi watershed.

8. Work with youth organizations in developing programs and scheduling use of the camp.

9. Work with the local communities and land users to bring about good relations and cooperation.

10. Cooperate and coordinate with Tribal and other natural resource organizations in planning, improvement, and development of the camp.

History

ACN-247-76, November 4, 1976.

Library References

Environmental Law ☞45.

Indians ☞32(6).

States ☞65 to 71.

United States ☞40 to 41.

Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 51.

C.J.S. States §§ 120 to 121, 123 to 124, 130 to 140.

C.J.S. United States §§ 54, 58 to 60.

Chapter 10. Navajo Nation Museum

Section

901. Establishment

902. Purpose

903. Personnel

904. Authority, duties and responsibilities

905. Organization

906. Amendments

History

ACAP-63-88, April 15, 1988.

Revision note. The Navajo Nation Museum is now under the authority of the Navajo Historic Preservation Department.

§ 901. Establishment

The Navajo Nation Museum is established within the Division of Natural Resources.

History

ACAP-63-88, April 15, 1988.

Library References

Environmental Law ☞61.

Indians ☞32(4.1).

States ☞82 to 88.

United States ☞53 to 57.

Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. States §§ 141 to 148, 165, 202.

C.J.S. United States §§ 83 to 99, 102.

§ 902. Purpose

A. To collect and preserve and manage cultural and historical materials relating to the Navajo People and to the pre-Navajo cultures of the Four

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Corners region and natural history specimens relating to the geology, paleontology and environment of Navajo land.

B. To provide various informational and educational programs and services to the visiting public and Navajo People utilizing the above collections.

C. To disseminate information about the Navajo People, their culture and their history.

History

ACAP-63-88, April 15, 1988.

Library References

Environmental Law ☞61.
Indians ☞32(4.1).
States ☞82 to 88.
United States ☞53 to 57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 141 to 148, 165, 202.
C.J.S. United States §§ 83 to 99, 102.

§ 903. Personnel

A. There is established the position of Museum Curator and such other positions that may be budgeted by the Navajo Nation Council.

B. All personnel shall be hired and compensated pursuant to the guidelines of the Navajo Nation Personnel Policies and Procedures manual.

History

ACAP-63-88, April 15, 1988.

Library References

Environmental Law ☞91.
Indians ☞32(6).
States ☞46, 53, 56.
United States ☞35 to 39.
Westlaw Topic Nos. 149E, 209, 360, 393.

C.J.S. Indians § 51.
C.J.S. States §§ 61, 80 to 84, 86, 93 to 98, 101 to 102, 104 to 108, 136.
C.J.S. United States §§ 23 to 24, 53, 56 to 57, 65.

§ 904. Authority, duties and responsibilities

The Museum Curator is hereby authorized and directed to:

A. Report and be responsible to the Executive Director, Division of Natural Resources, or any person designated on his or her behalf;

B. Formulate and implement overall administrative policies and procedures necessary for the efficient management of the Navajo Nation Museum and to take such action as deemed necessary for the accomplishment of objectives; and

C. Supervise the staff of the Navajo Nation Museum.

History

ACAP-63-88, April 15, 1988.

Library References

Environmental Law ☞91.

Indians ☞32(6).

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States ⇨65 to 71.
United States ⇨40 to 41.
Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 51.

C.J.S. States §§ 120 to 121, 123 to 124, 130 to 140.
C.J.S. United States §§ 54, 58 to 60.

§ 905. Organization

The Navajo Nation Museum shall consist of such sections as are necessary for the accomplishment of its objectives, or as assigned by the Executive Director, Division of Natural Resources.

Library References

Environmental Law ⇨91.
Indians ⇨32(4.1).
States ⇨45, 82 to 84.
United States ⇨53.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 79, 82, 136, 141 to 144, 148, 165, 202.
C.J.S. United States §§ 83, 88 to 95.

§ 906. Amendments

The Plan of Operation for the Navajo Nation Museum may be amended from time to time by the recommendation of the Museum Curator, Navajo Nation Museum with the concurrence of the Executive Director, Division of Natural Resources and the approval of the Resources Committee and the Government Services Committee of the Navajo Nation Council.

History

ACAP-63-88, April 15, 1988.

Library References

Environmental Law ⇨91.
Indians ⇨32(4.1).
States ⇨45, 82 to 84.
United States ⇨53.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 79, 82, 136, 141 to 144, 148, 165, 202.
C.J.S. United States §§ 83, 88 to 95.

Chapter 11. Navajo Nation Cultural Resources Protection Act

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History

CMY-19-88, May 3, 1988.

1988 Amendment. CMY-19-88 repealed former Chapter 11 “The Cultural Resources Management Program,” §§ 1001-1004, which was enacted by ACAP-86-77, April 27, 1977. The 1988 amendment replaced it with the “Navajo Nation Cultural Resources Protection Act”.

Note. CAP-41-94, April 20, 1994, also repealed the former Chapter 11, the “Cultural Resources Management Program”, 19 N.N.C. §§ 1001-1004. CAP-41-94 did not effect the Navajo Nation Cultural Resources Protection Act, 19 N.N.C. § 1001 *et seq.*

§ 1001. Findings

A. This Act may be cited as the “Navajo Nation Cultural Resources Protection Act”.

B. The Navajo Nation Council finds and declares that:

1. The spirit and direction of the Navajo Nation are founded upon and reflected in its cultural heritage;
2. The cultural heritage of the Navajo Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the Navajo People;
3. Cultural properties of the Navajo Nation are being lost or substantially altered, often inadvertently, with increasing frequency;
4. The preservation of this irreplaceable cultural heritage is in the interest of the Navajo Nation and its people so that its vital legacy of cultural, educational, aesthetic, inspirational, economic and energy benefits will be maintained and enriched for future generations of Navajos;
5. In the face of ever increasing energy development, economic development, sanitation and public health developments, the present Tribal governmental and non-Tribal governmental programs to preserve the Navajo Nation’s cultural resources are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of the Navajo Nation;
6. Increased knowledge of our cultural resources, the establishment of better means of identifying and administering them, and fostering their preservation will improve the planning of federal, Tribal, state and other projects and will assist economic growth and development and expeditious project implementation; and
7. Although the major role in cultural resource preservation has been borne by the federal and state governments, and both must continue to play a role, it is nevertheless essential that the Navajo Nation expand and accelerate its cultural resource preservation programs and activities.

19 N.N.C. § 1001

PARKS AND MONUMENTS

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞61.
Indians ☞32(4.1).
States ☞75, 88.
United States ☞43, 57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 134 to 136, 147.
C.J.S. United States §§ 76 to 77, 99.

§ 1002. Policy

It shall be the policy of the Navajo Nation, in cooperation with the states, federal government, other Indian Tribes, and private organizations and individuals to:

A. Use appropriate measures to foster conditions under which our modern society and our cultural resources can coexist in productive harmony and fulfill the social, economic and other requirements of present and future generations;

B. Provide leadership in the preservation of cultural resources of the Navajo Nation;

C. Administer Navajo Nation-owned, administered or controlled cultural resources in a spirit of stewardship and for the inspiration of present and future generations;

D. Contribute to the preservation of non-Navajo Nation-owned cultural resources and give maximum encouragement to organizations and individuals undertaking preservation by private means; and

E. Encourage the public and private preservation and utilization of usable elements of the Navajo Nation's stock of historic buildings and structures.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞61.
Indians ☞32(4.1).
States ☞75, 88.
United States ☞43, 57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 134 to 136, 147.
C.J.S. United States §§ 76 to 77, 99.

§ 1003. Definitions

As used throughout this Act, the term:

A. "Archaeology Department" means the Navajo Nation Archaeology Department.

B. "Building" means any structure made by man primarily to provide shelter.

C. "Cultural property" means any cultural resource deemed to be important enough to warrant listing in the Navajo Register.

D. "Cultural resource" means any product of human activity, or any object or place given significance by human action or belief.

E. “Department” means the Navajo Nation Historic Preservation Department.

F. “District” means any discrete area comprising buildings, objects, sites or structures that forms a recognizable, unified whole.

G. “Indian” or “Indian person” means any enrolled member of an Indian Tribe recognized by the Secretary of the Interior.

H. “Lands in which the Navajo People have a historical interest” means all lands historically or traditionally used by the Navajo People.

I. “Navajo Lands” means those lands held in Trust for the benefit of the Navajo Nation and those lands which the Navajo Nation holds in fee simple or in which it has a legal interest.

J. “Navajo Landmarks” means those cultural properties that are of significance to the entire Navajo Nation.

K. “Navajo Register” means the Navajo Nation Register of Cultural Properties.

L. “Object” means a product of human activity or an item given significance or meaning by human activity or belief.

M. “Place” refers to an identifiable location at which an event occurred or a location given significance by human action or belief.

N. “Preservation Officer” means the Navajo Nation Historic Preservation Officer, who is the Director of the Navajo Nation Historic Preservation Department.

O. “Site” means the location of the physical remains of human activity.

P. “Sponsor” means the agency official or the official in a private capacity who has decision-making authority over a particular undertaking.

Q. “Structure” means construction resulting from human activity, the primary purpose of which is other than to provide shelter.

R. “Tribal Archaeologist” means the Navajo Nation Archaeologist, who is the director of the Archaeology Department.

S. “Undertaking” means any project, activity or program that can result in changes in the character or use of cultural properties, if any such cultural properties are located in the area of potential effects. The project, activity or program must be under the direct or indirect jurisdiction of a Sponsor. Undertakings include new and continuing projects, activities or programs not previously considered under the authority of this Act.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ¶61.
Indians ¶32(4.1).
States ¶75, 88.

United States ¶43, 57.
Westlaw Topic Nos. 149E, 209, 360, 393.

19 N.N.C. § 1003

PARKS AND MONUMENTS

C.J.S. States §§ 134 to 136, 147.
C.J.S. United States §§ 76 to 77, 99.

§ 1004. Historic Preservation Department

The Navajo Nation Historic Preservation Department (hereafter referred to as the “Department”) within the Division of Natural Resources shall be the Navajo Nation’s agency responsible for the protection, preservation and management planning for the Navajo Nation’s cultural resources. The Department shall be directed by the Navajo Nation Historic Preservation Officer (hereafter referred to as the “Preservation Officer”) who shall advise the President of the Navajo Nation, the Navajo Nation Council, the divisions, departments, programs, agencies, authorities, enterprises and any other instrumentalities of the Navajo Nation, the federal, state and local governments, private organizations and individuals on matters pertaining to cultural resource preservation to achieve the goals of this Act on Navajo lands, and on lands in which the Navajo people have a historical interest. The Department shall conduct such other activities authorized in accordance with the Department’s approved Plan of Operation.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞91.
Indians ☞32(4.1).
States ☞45.
United States ☞30.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 79, 82, 136.
C.J.S. United States § 49.

§ 1005. Archaeology Department

The Navajo Nation Archaeology Department (hereafter referred to as the “Archaeology Department”) within the Division of Natural Resources shall be the Navajo Nation’s agency for providing cultural resources services to project sponsors. The Archaeology Department shall be directed by the Navajo Tribal Archaeologist (hereafter referred to as the “Tribal Archaeologist”), who shall be responsible for organizing and providing cultural resource services to sponsors, including instrumentalities of the Navajo Nation, Navajo people, other agencies and industry in need of cultural resources services both on and off the Navajo Reservation. The Tribal Archaeologist shall also organize and implement, in consultation with the Preservation Officer, a program of archaeological and anthropological research designed to enhance and benefit the Navajo Nation’s cultural resources. The Archaeology Department shall conduct such other activities authorized in accordance with its approved Plan of Operation.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞91.
Indians ☞32(4.1).

States ☞45.
United States ☞30.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 79, 82, 136.
C.J.S. United States § 49.

§ 1006. Navajo Nation Museum

The Navajo Nation Museum shall be the repository for all cultural resources collected on Navajo lands. The Navajo Nation Museum shall conduct such other activities authorized in accordance with its approved Plan of Operation.

History

CMY-19-88, May 3, 1988.
See also ACAP-63-88, approving the Navajo Nation Museum's Plan of Operation.

Library References

Environmental Law ☞61.	Westlaw Topic Nos. 149E, 209, 360, 393.
Indians ☞32(4.1).	C.J.S. States §§ 141 to 148, 165, 202.
States ☞82 to 88.	C.J.S. United States §§ 83 to 99, 102.
United States ☞53 to 57.	

§ 1011. Navajo Nation register of cultural properties and cultural landmarks

A. The Preservation Officer shall create, expand, maintain and administer a Navajo Nation Register of Cultural Properties (hereafter referred to as the "Navajo Register") comprising buildings, districts, objects, places, sites and structures significant in Navajo Nation history, architecture, archaeology, engineering and culture.

B. The Preservation Officer shall create, expand, maintain and administer a program for designation of Navajo Nation Cultural Landmarks (hereafter referred to as "Navajo Landmarks"), which shall include those cultural properties of significance to the entire Navajo Nation.

C. Cultural properties on Navajo lands shall be deemed to be included in the Navajo Register if, as of the date of enactment of the Navajo Nation Cultural Resources Protection Act, they are:

1. Historic properties listed in the National Register of Historic Places;
2. Historic properties designated National Historic Landmarks;
3. Natural areas designated National Natural Landmarks;
4. Cultural properties included in the National Park System at Navajo National Monument, Canyon de Chelly National Monument, and Chaco Canyon National Historical Park; and
5. Archaeological sites designated as "Chaco Protection Sites" pursuant to P.L. 96-550.

D. The Preservation Officer shall establish a program to locate, inventory, and evaluate cultural resources on Navajo lands and to list all such resources as may be eligible in the Navajo Register and to designate such properties as may qualify as Navajo Landmarks.

19 N.N.C. § 1011

PARKS AND MONUMENTS

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞91.
Indians ☞32(4.1).
States ☞65 to 71.
United States ☞40 to 41.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 120 to 121, 123 to 124, 130 to 140.
C.J.S. United States §§ 54, 58 to 60.

United State Code

Chaco Culture National Historic Park, see 16 U.S.C.A. § 410ii et seq.

§ 1021. Protection of cultural properties

In order to ensure the protection of the cultural properties of the Navajo Nation, the sponsor of any undertaking must obtain the approval of the Preservation Officer prior to implementation or authorization of any undertaking by the sponsor.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞73 to 91.
Indians ☞32(4.1).
States ☞75, 88.
United States ☞43, 57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States §§ 134 to 136, 147.
C.J.S. United States §§ 76 to 77, 99.

§ 1031. Prohibited activities

No cultural property may be visited or investigated on Navajo lands, except those cultural properties designated as open to the public within the boundaries of a Navajo Nation Park or a National Park or Monument; nor may any person alter, damage, excavate, deface, destroy or remove, any cultural properties on Navajo lands. No person may sell, purchase, exchange or transport cultural resources from Navajo lands. No person may engage in ethnographic research on Navajo lands, except that such activities may be conducted under the authority of and in accordance with the stipulations of a valid Navajo Nation Cultural Resources Permit issued by the Preservation Officer under the authority of § 1032.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞73 to 90, 741.
Indians ☞32(13).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. Indians § 157.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1032. Permits

A. There shall be three classes of permits.

1. *Class A* permits shall be issued for activities involving casual visitation and inspection of cultural properties.

2. *Class B* shall be issued for cultural resource inventory activities involving no collection or disturbance of cultural resources.

3. *Class C* shall be issued for cultural resource investigations involving alteration, collection, excavation, removal or any disturbance of cultural resources or for ethnographic research.

B. Permits shall be issued only on a case-by-case basis, except that an organization qualifying for a Class 1 or 3 under Navajo preference pursuant to the Navajo Nation Code may be granted blanket Class B permits. The Preservation Officer may waive this requirement whenever he or she finds that issuance of a blanket Class B permit is in the best interests of the Navajo Nation and its people.

C. Permits shall not be issued for periods to exceed twelve (12) months, except when necessary to cover the duration of a single project.

History

CMY-19-88, May 3, 1988.

See 5 N.N.C. § 201 *et seq.* Navajo Nation Business Opportunity Act.

Revision Note. Slightly reworded for purpose of clarity.

Library References

Environmental Law ☞73 to 91.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1033. Exceptions

A. The prohibition against visitation of cultural resources does not apply to enrolled members of the Navajo Nation or to Navajo Nation employees engaged in official activities.

B. The prohibitions against alteration, collection, disturbance, excavation or removal of cultural resources or collection of ethnographic data do not apply to:

1. Navajo traditional practitioners engaging in activities directly relating to the practice of traditional Navajo religion; or

2. To Navajo Nation employees engaged in official business, relating to cultural resources management activities approved in accordance with Department rules and procedures.

History

CMY-19-88, May 3, 1988.

19 N.N.C. § 1033

PARKS AND MONUMENTS

Library References

Environmental Law ☞73 to 90, 741.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1034. Permit requirements

Any person proposing to visit or inspect cultural resources, undertake cultural resources inventory, alter, collect, excavate or remove cultural resources or engage in ethnographic research, who is not excepted pursuant to § 1033 of this Act, shall apply to the Preservation Officer for a Navajo Nation Cultural Resources Permit for the proposed activity. The Preservation Officer may issue a permit to any qualified individual, subject to appropriate terms and conditions.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞73 to 91.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1035. Suspension of permits

A. The Preservation Officer may suspend a permit without cause upon determining that continuation of activities under a permit would not be in the best interests of the Navajo Nation or its people. Such a suspension is made without liability to the Navajo Nation, its agents or employees. Such a suspension shall not prejudice the ability of the permit holder to hold or obtain other permits.

B. The Preservation Officer may suspend a permit for cause upon determining that any term or condition of a permit is not being met by a permit holder.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞73 to 91.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1036. Revocation of permits

A. The Preservation Officer may revoke a permit without cause upon determining that continuation of a permit is not in the interests of the Navajo Nation or its People. Such a revocation is made without liability to the Navajo Nation, its agents and employees. Such revocations shall not prejudice the ability of the permit holder to hold or obtain other permits.

PARKS AND MONUMENTS

19 N.N.C. § 1038

B. The Preservation Officer may revoke a permit for cause upon finding that:

1. Any of the terms or conditions of a permit have been willfully violated;
2. A permit-holder has engaged in activities prohibited by this Act; and
3. A permit-holder has engaged in activities that resulted in the prior suspension of a permit.

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞73 to 91.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1037. Criminal penalties

Any Indian person violating the provisions of § 1031 of this Act shall be subject to the following criminal penalties.

A. Any Indian person who:

- (1) Engages in cultural resources inventory activities except under the authority of a Class B permit, or
- (2) Who alters, collects, damages, destroys, excavates or removes cultural resources except under the authority of a Class C permit or under the exception provided by § 1033 of this Act, shall upon conviction, be guilty of a misdemeanor and subject to punishment of up to one (1) year in jail and a fine of up to one thousand dollars (\$1000).

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞98, 741, 762.
Indians ☞32(13).
Penalties ☞1.
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 295, 360, 393.
C.J.S. Indians § 157.
C.J.S. Penalties §§ 2 to 4.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1038. Civil assessments

Individuals violating the prohibitions in § 1031 or § 1037 of this Act shall be subject to civil assessments. Civil assessments shall be imposed by the Resources Committee of the Navajo Nation Council (hereafter referred to as the "Resources Committee"), in accordance with procedures adopted by the Resources Committee expressly for this purpose. The Resources Committee shall adopt such procedures within ninety (90) days of the adoption of this Act.

A. Violation of the provisions of § 1031 or § 1037 of this Act by any person who does business on the Navajo Nation shall be grounds for withdrawal of the

privilege of doing business within the Navajo Nation. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated § 1031 or § 1037 shall lose the privilege of doing business within the Navajo Nation.

B. Any non-Indian who visits or inspects cultural resources on Navajo lands without a valid Class A permit shall be committing trespass. Such individuals determined to be in trespass after a hearing before the Resources Committee of the Navajo Nation Council, shall be assessed a civil forfeiture of not more than one hundred dollars (\$100.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. For the purposes of this part, each visit to or inspection of a cultural resource on Navajo lands shall be considered a separate offense. The Resources Committee may, at its discretion, recommend to the Navajo Nation Council that any person found to be in trespass be excluded from the Navajo Nation.

C. Any non-Indian who engages in cultural resources inventory activities on Navajo lands, except under the authority of a valid Class B permit shall be committing trespass. Any individual determined to be in trespass after a hearing before the Resources Committee, shall be assessed a civil forfeiture of not more than one thousand dollars (\$1000) for each offense. For the purposes of this part, each inventory on Navajo lands shall be considered a separate offense. The Resources Committee shall consider whether or not to recommend to the Navajo Nation Council that any individual found to have violated this prohibition be excluded from the Navajo Nation.

D. Any individual within Navajo lands who alters, collects, damages, defaces, destroys, excavates, removes or sells cultural resources or who collects ethnographic data without a valid Class C permit, or as permitted under the exceptions detailed in § 1033, or who engages in activities in violation of the terms and conditions of a valid permit shall be liable, after a hearing before the Resources Committee, to the Navajo Nation for civil damages as determined by the Resources Committee as follows:

1. Assessment of Actual Damages. The Resources Committee shall impose the civil assessments based upon actual damages in accordance with "Standards for Assessing Damages to Cultural Properties" that the Resources Committee shall adopt expressly for this purpose. The "Standards for Assessing Damages to Cultural Resources" shall include, but need not necessarily limit consideration to:

- a. Full costs of restoration of the cultural resource;
- b. Enforcement and administrative costs associated with the civil action;
- c. Costs of disposition of cultural resources, including as appropriate, costs of curation in perpetuity;
- d. Costs associated with documentation, testing and evaluation of the cultural resource in order to assess the characteristics of the cultural resource and plan for its restoration; and
- e. Costs of any additional mitigation measures the Resources Committee deems appropriate to implement.

2. Assessment of Treble Damages. In addition to the actual damages, the Resources Committee may, at its discretion, assess damages of up to three (3) times the amount of the actual damages.

3. Seizure of Equipment and Cultural Resources. The citing officer shall seize all cultural resources in the possession of any individual cited under § 1031 of this Act, together with any other property used for or related to the violation in the possession of the individual cited, as the officer may deem necessary to obtain payment of any civil assessment.

4. Forfeiture of Cultural Resources and Property. After hearing before the Resources Committee:

a. Any cultural resources obtained in violation of this Act shall be forfeited to the Navajo Nation;

b. Any other property seized in accordance with § 1038(D)(3), shall be released to the owner upon timely payment of any related civil assessments; and

c. Any seized property shall be forfeited to the Navajo Nation if the assessment has not been paid within fifteen (15) days of the hearing at which the civil assessment was levied or pursuant to this Act, whichever is later. Any such forfeiture shall be limited to the amount of the civil assessment. Any property remaining after forfeiture of property up to the value of the assessment shall be returned to the owner.

E. Civil assessments imposed under this part shall be reserved solely for the purposes of restoring damaged cultural resources and for meeting the purposes of this Act and shall be deposited in the Historic Preservation Revolving Account for disbursement in accordance with Navajo Nation budgetary procedures.

F. Any individual assessed by the Resources Committee pursuant to § 1038 of this Act shall have the right to appeal the decision of the Resources Committee to the Navajo Nation District Court as follows:

1. Any appeal must be filed in writing with the Navajo Nation District Court within thirty (30) days of notification of the action of the Resources Committee;

2. The review by the Navajo Nation District Court shall be limited to:

a. Ensuring that the appellant received due process of law; and

b. Ensuring that any rights the individual may have under the Navajo Bill of Rights and the Indian Civil Rights Act (25 U.S.C. § 1301–1341) were observed; and

3. Consideration by the Navajo Nation District Court shall be limited to review of the administrative record created before the Resources Committee during the hearing before it.

History

CMY-19-88, May 3, 1988.

Cross References

See generally, Navajo Nation Civil Trespass Act, 21 N.N.C. § 2201 *et seq.*

Library References

Environmental Law ☞98.	Westlaw Topic Nos. 149E, 209, 295, 360, 393.
Indians ☞32(13).	C.J.S. Indians § 157.
Penalties ☞1.	C.J.S. Penalties §§ 2 to 4.
States ☞88.	C.J.S. States § 147.
United States ☞57.	C.J.S. United States § 99.

§ 1041. Appeals

A. Any administrative action taken by the Preservation Officer pursuant to this Act which is a final action made on behalf of the Navajo Nation, may be appealed by any party directly and adversely affected by such action. Notice of appeal must be filed within thirty (30) days of notification of the Preservation Officer's action.

B. Within ninety (90) days of the adoption of this Act, the Preservation Officer shall establish regulations governing appeals of administrative decisions reached under the authority of this Act. The regulations shall specify the procedures governing appeals, identify who may appeal, detail notification requirements, establish time limits for action on the part of all parties, enumerate documentation requirements, and include any other elements necessary to carry out the purposes of this section.

C. Any appellant adversely affected by the outcome of an appeal under regulations promulgated pursuant to § 1041(B) of this Act shall be entitled to review of the action in Navajo Nation District Court as follows:

1. Notice of an appeal under the provisions of this part must be filed with the Navajo Nation District Court within thirty (30) days of receipt of notice of a final action by the Division of Natural Resources;
2. Judicial review by the Navajo Nation District Court shall be limited to:
 - a. Ensuring that the appellant received due process of law; and
 - b. Ensuring that all rights of the appellant under the Navajo Bill of Rights and the Indian Civil Rights Act (25 U.S.C. 1301-1341) were observed.
3. Judicial review by the Navajo Nation District Court shall be limited to review of the administrative record created during the administrative appeals process.

History

CMY-19-88, May 3, 1988.

Library References

Administrative Law and Procedure ☞701, 721 to 741.	Westlaw Topic Nos. 15A, 149E, 209. C.J.S. Indians §§ 60 to 62, 139 to 143, 152.
Environmental Law ☞639.	C.J.S. Public Administrative Law And Proce- dure §§ 198, 202 to 204, 206, 208 to 213.
Indians ☞32(4.1, 7).	

§ 1051. Regulations, procedures, standards and guidelines

The Preservation Officer shall develop, promulgate, publish and implement such regulations, procedures, standards and guidelines necessary to implement the requirements of or to achieve the purpose of this Act.

PARKS AND MONUMENTS

19 N.N.C. § 1061

History

CMY-19-88, May 3, 1988.

Library References

Environmental Law ☞91.
Indians ☞32(4.1).
States ☞88.
United States ☞57.

Westlaw Topic Nos. 149E, 209, 360, 393.
C.J.S. States § 147.
C.J.S. United States § 99.

§ 1061. Severability

If any provision of this Act or the application thereof to any person, court or circumstances is held invalid by a Navajo Nation or federal court, the invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application and to this end, the provisions of this Act are severable.

History

CMY-19-88, May 3, 1988.

Library References

Indians ☞32(4.1).
Statutes ☞64.

Westlaw Topic Nos. 209, 361.
C.J.S. Statutes § 83.

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Chapter 1. Barbers and Barbershops

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- 203. Determination
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- 205. Emergency action
- 206. Orders
- 207. Perjury
- 208. Penalties—Generally
- 209. Nonmembers of the Navajo Nation
- 210. Payment of fines

Subchapter 1. Generally

§ 1. Definitions

For the purposes of this chapter and unless otherwise required by the context:

- A. “Board” shall mean the Advisory Board of Barber Examiners.
- B. “Certificate” shall mean a certificate of registration entitling the person to whom issued to practice, or a barber school or barbershop to be operated.
- C. “Barbershop” shall mean any place, shop or establishment wherein the practice of barbering is engaged in or carried on as a business, trade, or profession.
- D. “Barber school” or “barber college” shall mean any place, shop, or establishment where the practices, fundamentals, theories or practical applications of barbering are taught for pay, whether direct or indirect.
- E. “Barbering” shall mean any one or any combination of the following practices done upon the upper part of the human body for cosmetic purposes; and not for the treatment of diseases or physical or mental ailments; and when done for payment either directly or indirectly, or without payment for the general public; upon a male or female: (1) shaving or trimming of the beard or cutting the hair; (2) giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances; (3) singeing; (4) shampooing or dyeing the hair; (5) applying tonics; (6) applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

F. “Communicable disease” shall mean an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a healthy person from an affected person, animal or arthropod or through the agency of an intermediate host, vector or the inanimate environment.

G. “Health advisor” shall mean the United States Public Health Service, Window Rock Area Medical Officer in Charge or his or her designated representative.

History

CJY-78-68, July 11, 1968.

Library References

Licenses ☞11(1).
Westlaw Topic No. 238.

C.J.S. Architects § 2.
C.J.S. Licenses § 34.

§ 2. Persons exempt

The following persons are exempt from the provisions of this chapter while in the discharge of their professional duties:

- A. Persons licensed to practice medicine and surgery.
- B. Licensed physicians and surgeons and commissioned medical or surgical officers of the United States Public Health Service.
- C. Registered nurses.
- D. Undertakers and morticians.
- E. Establishments, and persons licensed under the Cosmetology Statute (Chapter 3 of this title).
- F. Barber schools operated and conducted by any institution of learning as a part of their regular curriculum. Provided, however, that hours of study completed in such institutional school shall be counted toward the hours of study required by this chapter.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞19(3).
Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.
C.J.S. Architects § 11.
C.J.S. Indians §§ 130 to 132, 134.

Subchapter 3. Board of Barber Examiners

§ 41. Membership of Board

There shall be appointed by the President of the Navajo Nation a board of five (5) members which shall be known as the Barber Examiners. The members of the board shall be selected for their interest in developing a

20 N.N.C. § 41

PROFESSIONS AND OCCUPATIONS

barbering profession of high standards and efficiency within the Navajo Nation. The Board shall have the following representation:

A. One (1) member shall be chosen from the staff of the United States Public Health Service.

B. One (1) member shall be a member of the Navajo Nation who is a registered barber.

C. The other three (3) members shall be members of the Navajo Nation who may be, but need not be registered barbers.

History

CJY-78-68, July 11, 1968. Amended by
CJN-43-71.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 42. Term of office

Two members of the board shall be appointed for a term of one (1) year, two members shall be appointed for a term of two (2) years, and one member shall be appointed for a term of three (3) years. As each member’s term expires, and thereafter, members shall be appointed for terms of three (3) years.

History

CJY-78-68, July 11, 1968. Amended by
CJN-43-71.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 43. Election of officers; meetings

The board shall organize by electing a president, vice-president, and secretary from among its members. The board shall meet semi-annually on the second Monday of February and the second Monday of August, and at such other times as are necessary in order to efficiently enforce this chapter.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 44. Quorum

A majority of the board shall constitute a quorum and may perform and exercise all the duties and powers devolving upon it.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 45. Record of proceedings

The secretary of the board shall keep a record of its proceedings, a register of persons registered as barbers and apprentices, showing the name, place of business and residence of each and the date and the number of the certificate of each, and a record of all licenses or certificates issued, refused, renewed, suspended or revoked. Its records shall be open to public inspection at all reasonable times. The board shall annually, on or before the first day of July, make a report to the Government Services Committee of the Navajo Nation Council of all its official acts during the preceding year.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 46. Removal

The President of the Navajo Nation shall have the power to remove any member of the board for incompetency, gross immorality, disability, for any abuse of his or her official power or for any other sufficient cause.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 47. Vacancies

Any vacancies that shall occur shall be filled by an appointment within ninety (90) days after the occurrence of the vacancy. Members appointed to fill

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vacancies caused by death, resignation or removal, shall serve only for the unexpired term of their predecessors.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 48. Powers and duties

A. A member of the board, or its agents or assistants, shall have the authority to enter upon and inspect a barbershop or barber school at any time during business hours. The board may make reasonable rules and regulations for the administration of the provisions of this chapter. A copy of the rules, regulations and sanitary requirements adopted by the board shall be furnished by the board to the owner or manager of each barbershop, barber school or barber college and such copy shall be posted in a conspicuous place in each barbershop, barber school or barber college.

B. The board shall act as mediator or arbitrator in any controversy or issue relating to barbering which arises between or among barbers, either as individuals or as organized groups.

C. The board shall have the full power to conduct hearings pursuant to this chapter and all future regulations of the board; to issue subpoenas and demand attendance at hearings, and to levy fines and to issue orders and judgments requiring the payment of fines or the compliance with this chapter and regulations of the board, and the doing of any and all acts pursuant to this chapter and regulations of the Board deemed necessary to conduct a hearing or investigation.

History

CJY-78-68, July 11, 1968.

Cross References

Display of certificates, see 20 N.N.C. § 88.
Notice and hearings, persons accused of violations, see 20 N.N.C. § 201.
Penalties and payment of fines, see 20 N.N.C. § 208 *et seq.*

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 49. Findings; appeal

The decision of the board shall be final and binding. Provided, however, that the decision of the board may be appealed to the Navajo Nation court system

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20 N.N.C. § 81

pursuant to the Navajo Rules of Civil Procedure as enacted by the Judicial Branch of the Navajo Nation. Appeals to the Navajo Nation court system shall be in the form of *de novo* proceedings.

History

CJY-78-68, July 11, 1968.

Cross References

Courts and procedure, see Title 7 of the Navajo Nation Code.

Library References

Indians ☞32(9).

Licenses ☞22.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 9.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses § 43.

§ 50. Board of barber examiners' fund

A. All monies received by the Board under this chapter shall be paid to the secretary, who shall give a receipt therefor.

B. At the end of each month the secretary shall report to the Navajo Nation Controller the total amount received under this chapter from all sources and shall deposit the amount with the Navajo Nation Controller, who shall place it in a special fund known as the Navajo board of barber examiners' fund.

C. Ninety percent (90%) of all monies deposited in the Fund shall constitute a separate fund for the maintenance of the board and for the enforcement of this chapter, and the remainder shall be credited to the general fund of the Navajo Nation.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).

Licenses ☞33.

Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses § 71.

Subchapter 5. Barber Qualifications

§ 81. License requirements

On and after the effective date of this chapter, it shall be unlawful:

A. To practice barbering on the Navajo Nation without a certificate of registration as a registered barber issued pursuant to the provisions of this chapter by the board of barber examiners.

B. To act or attempt to act as a barber apprentice without a current certificate of registration as a registered apprentice issued by the Board of Examiners.

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C. For any person, association of persons, or corporation to operate a barbershop, barber school or barber college, unless it is at all times operated under the personal supervision and management of a registered barber.

D. For any person, association of persons, or corporation to employ or engage as an associate any person to engage in the practice of barbering as herein defined unless such person shall display a currently valid certificate of registration as a registered apprentice or as a licensed barber.

E. For any person, association of persons, or corporation to operate a barbershop on the Navajo Nation without having obtained an annual establishment license, which license shall at all times be posted in a conspicuous place in the shop. The license shall not be transferable and shall be valid only for the place and location stated in the license.

F. For any person, firm or corporation to open or establish a barbershop on the Navajo Nation without first having had the shop inspected and approved by the health advisor.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 82. Qualifications

Any person shall be qualified to receive a certificate of registration or practice as a registered barber:

- A. Who is a citizen of the United States of America;
- B. Who is qualified under the provisions of Subchapter 3 of this chapter;
- C. Who is at least eighteen (18) years of age;
- D. Who is of good moral character and temperate habits;
- E. Who has practiced as a registered apprentice for a period of eighteen (18) months under the immediate personal supervision of a registered barber; and
- F. Who has satisfactorily passed an examination conducted by the board to determine his or her fitness to practice barbering.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 83. Registered barbers transferring to the Navajo Nation

Any person who is at least eighteen (18) years of age and of good moral character and temperate habits and who is a citizen of the United States of America and has a license or certificate of registration as a practicing barber from a state or country which has substantially the same or higher requirements for registering barbers than are required by this chapter or who can prove by sworn affidavit that he or she has practiced as a barber for a period of at least five (5) years prior to making application on the Navajo Nation shall, upon filing an application and payment of the required fee, be granted permission to take an examination to determine his or her fitness to receive a certificate of registration to practice barbering. Should he or she fail to pass the examination he or she may file a new application accompanied by the required fee and take another examination if he or she desires. In no event will he or she be permitted to practice barbering until such time as he or she has passed the satisfactory examination and has received the certificate of registration as a registered barber.

History

CJY-78-68, July 11, 1968.

Cross References

Fees, see 20 N.N.C. § 91.

Library References

Indians ⇄32(9).

Licenses ⇄20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 84. Apprentice qualifications

A. Any person shall be qualified to receive a certificate of registration as a registered apprentice:

1. Who is a citizen of the United States of America;
2. Who is at least sixteen and a half (16½) years of age and who is of good moral character and temperate habits; and
3. Who has satisfactorily passed an examination conducted by the Board to determine his or her fitness to practice as a registered apprentice.

B. No registered apprentice may independently practice barbering, but may, as an apprentice, do any and all of the acts constituting the practice of barbering under the immediate supervision of a registered barber. Only one such apprentice shall be employed in any shop; provided, however, that two apprentices may be employed in a shop of six or more registered barbers.

C. Any apprentice registered under the provisions of this chapter, who fails to satisfactorily pass an examination conducted by the board must continue to practice as an apprentice for an additional six (6) months before he or she is entitled to take the examination again for a registered barber and should he or she fail to pass the second examination he or she shall cease to practice

20 N.N.C. § 84

PROFESSIONS AND OCCUPATIONS

barbering on the Navajo Nation until such time as he or she has satisfactorily passed an examination conducted by the board.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).

Licenses ☞20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 85. Registered apprentices transferring to the Navajo Nation

A. Any apprentice who is at least sixteen (16½) years of age and of good moral character and temperate habits and who is a citizen of the United States of America, and has a valid and unrevoked certificate of registration as an apprentice in a state or country which has substantially the same requirements for registering apprentices as provided by this chapter, shall, upon payment of the required fee be granted permission to take an examination to determine his or her fitness to receive a certificate of registration as an apprentice.

B. Should he or she pass the required examination, a certificate of registration as a registered apprentice shall be issued to him or her and the time spent under such previous apprenticeship program shall be credited upon the period of apprenticeship required by this chapter as a qualification to take the examination to determine his or her fitness to receive a certificate of registration as a registered barber.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).

Licenses ☞20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 86. Application

Any person who desires to practice barbering, or to practice as an apprentice barber shall file with the secretary of the board of barber examiners a written application under oath on a form prescribed by the board, together with two 5"x 3" signed photographs of the applicant, and satisfactory proof that applicant is of good moral character, and also furnish the board with a certificate from a licensed physician showing that applicant is free from any contagious and infectious or communicable disease, together with results of laboratory tests for syphilis and tuberculosis, which certificate shall not be dated more than ten (10) days prior to the date of application for registration.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
 Licenses ☞20, 22.
 Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7, 9.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 39 to 41, 43.

§ 87. Examinations

A. The board shall conduct examinations for applicants for certificates of registration to practice as a registered apprentice or registered barber at least two times each year at several locations around the Navajo Nation fixed and published in advance by the board.

B. Such examinations shall include a practical demonstration by each applicant as well as a written and oral test of the applicants' knowledge of the subjects required to be taught at schools of barbering. The practical examination shall count for sixty percent (60%), and the written and oral examinations for forty percent (40%).

C. A certificate to practice shall be issued to each applicant who shall satisfactorily pass an examination with an average grade of not less than seventy-five percent (75%), and shall possess the other qualifications required by law.

History

CJY-78-68, July 11, 1968.

Cross References

Qualifications to receive certificate of registration, see 20 N.N.C. § 82.

Library References

Indians ☞32(9).
 Licenses ☞20.
 Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 39 to 41.

§ 88. Display of certificates

Every holder of a certificate of registration shall display it in a conspicuous place at or near his or her work chair. Sanitation rules and ordinances shall be displayed in a conspicuous place within the barbershop.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
 Licenses ☞25.
 Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 41, 45 to 46.

§ 89. Renewal of certificates

Every registered barber, every registered apprentice, and every owner of a barbershop, barber school or barber college, shall annually, on or before the

first day of July of each year, renew his or her certificate of registration, establishment license or permit and pay the required fee. Upon applying for a renewal certificate every registered barber or apprentice shall furnish the Board with a medical certificate as in § 86 of this subchapter. Every certificate of registration, establishment license, or permit which has not been renewed as herein required in any year, shall expire on the first day of August in that year. A registered barber or registered apprentice whose certificate of registration has expired may have his or her certificate restored upon payment of the required fee. Any registered barber or apprentice who has been absent from the practice of barbering for a period of over three (3) years must retake and satisfactorily pass the examination for barber or apprentice, respectively, before issuance of a new certificate of registration.

History

CJY-78-68, July 11, 1968.

Cross References

Fees for renewal certificates or permits, see 20 N.N.C. § 91.

Library References

Indians ⇨32(9).

Licenses ⇨22, 36.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 9.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 43, 45 to 48.

§ 90. Revocation of certificates

The board shall either refuse to issue a renewal or shall suspend or revoke any certificate of registration for any one or combination of the following causes:

A. Conviction of a felony shown by certified copy of the record of the court of conviction, or conviction of a misdemeanor shown by certified copy of the record of the court of conviction, which in the opinion of the board shows an unfitness to practice barbering.

B. Malpractice or incompetency.

C. Continuing to practice barbering while knowingly afflicted with an infection or communicable disease.

D. Advertising by means of knowingly false or deceptive statement(s).

E. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

F. Immoral or unprofessional conduct.

G. Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations.

H. Willful failure to display certificate of registration or copy of the sanitation rules as provided in § 88 of this Subchapter.

I. Violation of any of the sanitary regulations promulgated by the board of barber examiners and the health advisor for the regulation of barbershops, barber schools and barber colleges.

J. Owning, operating, or managing a barber school or a portion thereof in which the practice of barbering is carried on, unless at each entrance to such school is displayed a sign in letters not less than eight inches in height indicating to the public that the school, place, or establishment is a barber school and the work therein is done by students exclusively.

K. Owning, managing, or operating a barbershop unless there is displayed clearly visible at the main entrance thereto a sign indicating that it is a barbershop.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 10.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63.

§ 91. Fees

The board of barber examiners shall charge and collect the following fees in advance:

A. For examination of an applicant to practice as a barber: Fifteen dollars (\$15.00).

B. For issuance of a certificate to practice as a barber: Ten dollars (\$10.00).

C. For renewal of a certificate to practice as a barber: Five dollars (\$5.00).

D. For restoration of an expired certificate to practice as a barber: Ten dollars (\$10.00).

E. For the examination of an applicant to practice as an apprentice barber: Ten dollars (\$10.00).

F. For issuance of a certificate as an apprentice barber: Five dollars (\$5.00).

G. For renewal of a certificate as an apprentice barber: Five dollars (\$5.00).

H. For restoration of an expired certificate to practice as an apprentice barber: Ten dollars (\$10.00).

I. For annual establishment fee to be paid by each shop owner: Five dollars (\$5.00).

J. Each application to open or establish a barbershop on the Navajo Nation shall be accompanied with a fee of one hundred dollars (\$100.00) to cover expenses of inspection which shall be retained by the Board and deposited as other fees.

20 N.N.C. § 91

PROFESSIONS AND OCCUPATIONS

K. A duplicate license certificate or permit will be issued upon the filing of a statement covering the loss of a license, verified by the oath of the applicant, and submitting the signed photograph of applicant, and the payment of a fee of one dollar (\$1.00) for the issuance of a duplicate. Each duplicate shall have the word "Duplicate" stamped across the face thereof, and will be the same number as the lost original.

History

CJY-78-68, July 11, 1968.

Cross References

Board of Bar Examiners' Fund, see 20 N.N.C. § 50.

Library References

Indians ⇌32(9).

Licenses ⇌27.

Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 64 to 65.

Subchapter 7. Licensing of Barbershops

§ 131. Licensing requirements

No barbershop shall be licensed and approved by the board unless:

A. It is located in separate quarters, or if located in less than the whole of a single building, the quarters occupied are separated from the remainder of the building by solid walls reaching from floor to ceiling, but a barbershop and a beauty shop may be located in the same room or quarters;

B. It has running hot and cold water therein;

C. It conforms to and complies with the rules and regulations promulgated by the board; and

D. There is displayed at the main entrance thereto a sign clearly indicating that it is a barbershop.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌11(1), 20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 2, 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 34, 39 to 41.

Subchapter 9. Regulation of Barber Schools

§ 161. Barber schools—Admission requirements

No barber school shall be licensed and approved by the Board to operate as such unless it requires as a prerequisite to admission that the applicant:

- A. Be more than sixteen (16½) years of age;
- B. Be of good moral character and temperate habits;
- C. Furnish a diploma showing graduation from an eighth grade grammar school or have an equivalent education, as determined by the Board; and
- D. Be free from any infectious, contagious, or communicable disease.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).

Licenses ⇄20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 162. Application requirements

No school or college of barbering shall enroll or admit any student unless the student shall file, in duplicate, a newly verified application. The form and content of the application shall be prescribed by the board, and such forms shall be supplied by the Board to applicants, schools, or colleges upon request. One copy of the application shall be retained by the school or college enrolling or admitting the student and the other copy shall be filed by the school or college with the board. No school or college of barbering shall enroll or admit any student in a postgraduate course when the postgraduate course is for the purpose of qualifying persons to pass the examination conducted by the board, unless the student shall file, in duplicate, an application duly verified. The application shall be obtained by such student or school or college from the board and the application shall show that the applicant has either: (1) graduated from a school or college of barbering approved by the Board; (2) holds a valid, unexpired and uncanceled certificate of registration as a registered apprentice; or (3) can prove by sworn affidavits that he or she has practiced as a barber in a state of the United States for a period of at least two (2) years immediately prior to making such application. One copy of such application shall be retained by the college or school when admitting or enrolling said student and the other shall be filed by such school or college with said board. Nothing in this section shall contain or be construed as limiting or modifying the provisions of § 82 of this chapter.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).

Licenses ⇄25.

Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 41, 45 to 46.

§ 163. Graduation requirements

- A. The school shall require as a prerequisite to graduation a course of instruction of not less than one thousand (1000) hours to be completed within

20 N.N.C. § 163

PROFESSIONS AND OCCUPATIONS

six (6) months and not more than eight (8) hours in any one (1) working day. Such course of instruction shall include the following subjects:

1. Scientific fundamentals of barbering, hygiene, histology of the hair, skin and nails; structure of the head, face and neck, and elementary chemistry relating to sterilization and antiseptics; and
2. Massaging and manipulating the muscles of the scalp, neck or skin of the neck; haircutting; shaving and arranging; coloring, bleaching and tinting the hair.

B. Not less than two (2) hours out of each eight (8) hour day shall be devoted to subjects in subsection (A)(1) and the remainder shall be devoted to subjects in subsection (A)(2).

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄25.
Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 41, 45 to 46.

§ 164. Permit to operate barber school

It shall be unlawful for any person, firm or corporation to operate a barber school or barber college without first obtaining a permit from the Board of Barber Examiners, fully complying with the provisions of this chapter.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄11(1), 40.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 2 to 3, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 34, 82 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 165. Fees

A permit to operate a barber school or barber college, shall be purchased at an annual fee of twenty dollars (\$20.00) for each chair installed in such school upon which work or service may be performed upon a patron of the school, but such annual fee shall not be less than two hundred dollars (\$200.00).

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇄32(9).
Licenses ⇄27.
Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 64 to 65.

Subchapter 11. Violation of Provisions

§ 201. Notice

The Board, upon being advised of any violations of this chapter or of any regulations enacted by the Board, shall give notice to the person or persons accused of the violation or violations. The notice shall:

- A. Be in writing and shall state the violation or violations;
- B. Be included in a statement for its issuance;
- C. State a date and time for a hearing on the matter; and
- D. Be served upon the owner or his or her agent of a barbershop, barber school or barber college and/or upon the individual barber apprentice who is in violation. The notice or order shall be deemed to have been properly served when a copy of the notice or order is sent by registered mail to the last known address of the person in violation of this chapter or regulations of the Board.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(9).
 Licenses ⇌38, 40, 41.
 Westlaw Topic Nos. 209, 238.
 C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
 C.J.S. Trading Stamps and Coupons § 6.

§ 202. Hearing

Any person affected by any notice or regulation which is issued in implementation or enforcement of these regulations, may request and will be granted a hearing on the matter before the board provided that such person shall file with the board a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days of issuance of the notice or regulation. Upon receipt of such petition, the Board shall set a time and place for such hearing and, will give the petitioner written notice. At the hearing, petitioners will be given an opportunity to be heard and show why such notice or regulation should be modified or withdrawn. The hearing will be commenced no later than ten (10) days after the day on which the petition was filed, provided that upon application of the petitioner the Board may postpone the date of the hearing for a reasonable time beyond such 10-day period.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(9).
 Licenses ⇌38, 40, 41.
 Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.
 C.J.S. Architects §§ 3, 10, 15.
 C.J.S. Indians §§ 130 to 132, 134.

20 N.N.C. § 202

PROFESSIONS AND OCCUPATIONS

C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 203. Determination

After the hearing the board may sustain, modify or withdraw the notice or regulation pending the finding as to the compliance or noncompliance with these regulations. If the board shall sustain or modify such notice, it shall be deemed to be in order. Any notice or regulation served pursuant to this chapter shall become an order if a written petition for a hearing shall not have been filed with the board within ten (10) days after such notice or regulation was passed.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇨32(9).	C.J.S. Architects §§ 3, 10, 15.
Licenses ⇨38, 40, 41.	C.J.S. Indians §§ 130 to 132, 134.
Westlaw Topic Nos. 209, 238.	C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Agriculture § 4.5.	C.J.S. Trading Stamps and Coupons § 6.

§ 204. Record of proceedings

The proceedings at such hearings, including the finding(s) and decision(s) of the Board, shall be reduced to writing and entered as a matter of public record with the board. Such records shall include every notice or order issued in connection with the matter.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇨32(9).	C.J.S. Architects §§ 3, 10, 15.
Licenses ⇨38, 40, 41.	C.J.S. Indians §§ 130 to 132, 134.
Westlaw Topic Nos. 209, 238.	C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Agriculture § 4.5.	C.J.S. Trading Stamps and Coupons § 6.

§ 205. Emergency action

The board may, when an emergency exists requiring immediate action to protect public health, take such action as is deemed necessary to meet the emergency notwithstanding any other provision of this chapter. The order shall be effective immediately.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇨32(9).	C.J.S. Agriculture § 4.5.
Licenses ⇨38, 40, 41.	C.J.S. Architects §§ 3, 10, 15.
Westlaw Topic Nos. 209, 238.	

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
 C.J.S. Trading Stamps and Coupons § 6.

§ 206. Orders

Orders issued under the emergency powers of the board shall remain in force and effect until revoked by the board or until a hearing has been held before the Board.

History

CJY-78-68, July 11, 1968.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇌32(9).
 Licenses ⇌38, 40, 41.
 Westlaw Topic Nos. 209, 238.
 C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
 C.J.S. Trading Stamps and Coupons § 6.

§ 207. Perjury

A. The wilful making of any false statement of a material matter under any oath or affidavit which is required by provisions of this chapter is perjury and punishable as such.

B. Perjury shall be punishable by a fine of not less than twenty-five dollars (\$25.00) and no more than two hundred dollars (\$200.00), or by imprisonment in the Navajo Nation jail not less than twenty (20) days or more than six (6) months or both.

History

CJY-78-68, July 11, 1968.

Library References

Indians ⇌32(13).
 Perjury ⇌1.
 Westlaw Topic Nos. 209, 297.

C.J.S. Indians § 157.
 C.J.S. Perjury §§ 2 to 3, 5 to 8, 21.

§ 208. Penalties—Generally

Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), or by imprisonment in the Navajo Nation jail not less than ten (10) days or more than ninety (90) days, or both, in the discretion of the court trying the case:

A. The violation of any of the provisions of this chapter.

B. Obtaining or attempting to obtain a certificate of registration for money other than the required fee or for any other thing of value or by fraudulent misrepresentation.

20 N.N.C. § 208

PROFESSIONS AND OCCUPATIONS

C. Practicing or attempting to practice by fraudulent misrepresentation.

D. The use of any room or place for barbering which is also used for business purposes (except the sale of hair tonics, lotions, creams, toilet articles, cigars, tobacco, confectionery, laundry and such commodities as are used and sold in barbershops), unless said room or place is separated from the portion used for business purposes by solid walls reaching from floor to ceiling.

E. The use for barbering of a room or quarters also used for residential purposes, unless said quarters have an outside entrance and are separated from the remainder of the building by solid walls reaching from floor to ceiling.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(13).
Licenses ☞40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 15.
C.J.S. Indians § 157.
C.J.S. Licenses §§ 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 209. Nonmembers of Navajo Nation

Nonmembers of the Navajo Nation who fail to comply with this chapter or the regulations of the board, issued pursuant to this chapter, may be excluded from Navajo Nation land. Nonmembers of the Navajo Nation excluded pursuant to this regulation¹ shall be excluded under the procedures as established in Title 17 of the Navajo Nation Code.

¹ See original language of CJY-78-68.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 210. Payment of fines

Fines levied by the board shall be paid directly into the Navajo Nation General Fund and shall not be retained for the benefit of the board.

History

CJY-78-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞41.
Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 78 to 81.

Chapter 3. Practice of Cosmetology

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Section

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- 402. Persons exempt

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Subchapter 1. Generally

§ 401. Definitions

For the purposes of this chapter and unless otherwise required by the context:

- A. “Board” shall mean the Advisory Board of Cosmetology Examiners.
- B. “Certificate” shall mean a certificate of registration entitling the person named therein to practice or operate a cosmetology school or cosmetology shop.
- C. “Communicable disease” shall mean an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a healthy person from an affected person, animal or arthropod or through the agency of an intermediate host, vector or the inanimate environment.
- D. “Cosmetology” shall mean any one or any combination of the following practices done upon the upper part of the human body for cosmetic purposes; and not for the treatment of diseases or physical or mental ailments; and when done for payment either directly or indirectly; or without payment for the general public; upon a female: (1) massaging, cleansing, stimulating, manipulating, exercising, beautifying, or applying oils, creams, antiseptics, clays, lotions, or other preparations, either by hand or by mechanical or electrical appliances; (2) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing, bleaching, dyeing, tinting, coloring, or similarly treating the hair of a person; (3) cutting, clipping, or trimming the hair; (4) arching eyebrows; (5) removing superfluous hair from the face, neck, shoulders, or arms by the use of depilatories; (6) cleansing, dressing, or polishing the nails of a person, referred to in this chapter as manicuring.
- E. “Cosmetology school” shall mean any place, shop, or establishment where the practices, fundamentals, theories or practical applications of cosmetology are taught for pay, whether direct or indirect.
- F. “Cosmetology shop” shall mean any place, shop or establishment wherein the practice of cosmetology is engaged in or carried on as a business, trade, or profession.

G. "Health Advisor" shall mean the United States Public Health Service, Window Rock Area Medical Officer in Charge or his or her designated representative.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).

Licenses ☞11(1).

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 2.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses § 34.

§ 402. Persons exempt

The following persons are exempt from the provisions of this chapter while in the discharge of their professional duties:

- A. Persons licensed to practice medicine and surgery.
- B. Licensed physicians and surgeons and commissioned medical or surgical officers of the United States Public Health Service.
- C. Registered nurses.
- D. Undertakers and morticians.
- E. Establishments and persons licensed under the Barbering Statute.
- F. Cosmetology schools operated and conducted by any institution of learning as a part of their regular curriculum. Provided, however, that hours of study completed in such institutional school shall be counted toward the hours of study required by this chapter.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).

Licenses ☞19(3).

Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.

C.J.S. Architects § 11.

C.J.S. Indians §§ 130 to 132, 134.

Subchapter 3. Board of Cosmetology Examiners

§ 451. Membership of Board

There shall be appointed by the President of the Navajo Nation a board of three members, which shall be known as the Board of Cosmetology Examiners. The members of the Board shall be selected for their interest in developing on the Navajo Nation a cosmetology profession of high standards and efficiency. The board shall have the following representation:

- A. One (1) member shall be chosen from the staff of the United States Public Health Service.

20 N.N.C. § 451

PROFESSIONS AND OCCUPATIONS

B. One (1) member shall be a registered cosmetologist from the Navajo Nation.

C. The third member shall be chosen from among the Navajo Nation, but need not be a registered cosmetologist.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 452. Term of office

One (1) member of the board shall be appointed for the term of one (1) year, the second member shall be appointed for a term of two (2) years, and the third (3rd) member shall be appointed for a term of three (3) years. As each member's term expires, and thereafter, members shall be appointed for terms of three (3) years. The board shall be non-partisan.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 453. Election of officers; meetings

The board shall organize by electing a president, vice-president, and secretary from among its members. The board shall meet semi-annually on the second Monday of February and the second Monday of August, and at such other times as are necessary in order to efficiently enforce this chapter.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 454. Quorum

A majority of the board shall constitute a quorum and may perform and exercise all the duties and powers devolving upon it.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 455. Record of proceedings

The secretary of the board shall keep a record of its proceedings, a register of persons registered as cosmetologists and instructors, showing the name, place of business and residence of each and the date and the number of the certificate of each, and a record of all licenses or certificates issued, refused, renewed, suspended or revoked. Its records shall be open to public inspection at all reasonable times. The board shall annually, on or before the first day of July, make a report to the Government Services Committee of the Navajo Nation Council of all its official acts during the preceding year.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 456. Removal

The President of the Navajo Nation shall have the power to remove any member of the board for incompetency, gross immorality, disability, for any abuse of his or her official power or for any other sufficient cause.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 457. Vacancies

Any vacancies that shall occur shall be filled by an appointment within ninety (90) days after the occurrence of the vacancy. Members appointed to fill vacancies caused by death, resignation or removal shall serve only for the unexpired term of their predecessors.

20 N.N.C. § 457

PROFESSIONS AND OCCUPATIONS

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 458. Powers and duties

A. A member of the board, or its agents or assistant, shall have the authority to enter upon and inspect a cosmetology shop or cosmetology school at any time during business hours. The board may make reasonable rules and regulations for the administration of the provisions of this chapter. A copy of the rules, regulations and sanitary requirements adopted by the board shall be furnished by the board to the owner or manager of each cosmetology shop or cosmetology school and such copy shall be posted in a conspicuous place in each cosmetology shop, or cosmetology school.

B. The board shall act as mediator or arbitrator in any controversy or issue relating to cosmetology which arises between or among cosmetologists, either as individuals or as organized groups.

C. The board shall have the full power to conduct hearings pursuant to this chapter and all future regulations of the board; to subpoena the attendance of witnesses and production of relevant books and papers; and to levy fines and to issue orders and judgments requiring the payment of fines or the compliance with this chapter and regulations of the board, and the doing of any and all acts pursuant to this chapter and regulations of the board deemed necessary to conduct a hearing or investigation.

History

CJY-79-68, July 11, 1968.

Cross References

Display of certificates, see 20 N.N.C. § 506.
Notice and hearings, persons accused of violations, see 20 N.N.C. §§ 651, 652.
Penalties and payment of fines, see 20 N.N.C. § 658 *et seq.*

Library References

Indians ☞32(9).
Licenses ☞21.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 4.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 37 to 38.

§ 459. Findings; appeal

The decision of the board shall be final and binding. Provided, however, that the decision of the board may be appealed to the Navajo Nation court system pursuant to the Navajo Nation Rules of Civil Procedure as they are enacted by the Judicial Branch of the Navajo Nation. Appeals to the Navajo Nation court system shall be *de novo* proceedings.

History

CJY-79-68, July 11, 1968.

Cross References

Courts and procedure, see Title 7 of the Navajo Nation Code.

Library References

Indians ⇨32(9).

Licenses ⇨22.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 9.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses § 43.

§ 460. Board of Cosmetologist Examiners' Fund

A. All monies received by the board under this chapter shall be paid to the secretary, who shall give a receipt therefor.

B. At the end of each month the secretary shall report to the Navajo Nation Controller the total amount received under this chapter from all sources and shall deposit the amount with the Navajo Nation Controller, who shall place it in a special fund known as the Navajo Board of Cosmetologist Examiners' Fund.

C. Ninety percent (90%) of all monies deposited in the fund shall constitute a separate fund for the maintenance of the board and for the enforcement of this chapter, and the remainder shall be credited to the general fund of the Navajo Nation.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇨32(9).

Licenses ⇨33.

Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses § 71.

Subchapter 5. Cosmetologist Qualifications

§ 501. License requirements

On and after the effective date of this chapter, it shall be unlawful to:

A. Practice cosmetology on the Navajo Nation without a certificate of registration as a registered cosmetologist issued pursuant to the provisions of this chapter by the Board of Cosmetology Examiners.

B. For any person, association of persons, or corporation to operate a cosmetology shop or cosmetology school, unless it is at all times operated under the personal supervision and management of a registered cosmetologist.

C. For any person, association of persons, or corporation to employ or engage as an associate any person to engage in the practice of cosmetology as herein defined unless such person shall display a currently valid certificate of registration as a registered cosmetologist.

20 N.N.C. § 501

PROFESSIONS AND OCCUPATIONS

D. For any person, association of persons, or corporation to operate a cosmetology shop on the Navajo Nation without having obtained an annual establishment license, which license shall at all times be posted in a conspicuous place in the shop. The license shall not be transferable and shall be valid only for the place and location stated in the license.

E. For any person, firm or corporation to open or establish a cosmetology shop on the Navajo Nation without first having had the shop inspected and approved by the health advisor.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞11(1), 40.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 2 to 3, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 34, 82 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 502. Qualifications

A. Any person shall be qualified to receive a certificate of registration and practice as a registered cosmetologist:

1. Who is a citizen of the United States of America;
 2. Who is qualified under the provisions of Subchapter 5 of this chapter;
 3. Who is at least eighteen (18) years of age;
 4. Who is of good moral character and temperate habits;
 5. Who is the possessor of at least a tenth grade secondary education;
- and
6. Who has satisfactorily passed an examination conducted by the Board to determine his or her fitness to practice cosmetology.

B. Any person who, under the provisions of this chapter, fails to satisfactorily pass an examination conducted by the board must continue to study for an additional six (6) months before he or she is again entitled to take the examination for a registered cosmetologist and should he or she fail to pass the second examination, he or she shall not practice cosmetology on the Navajo Nation.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞20.
Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 39 to 41.

§ 503. Registered cosmetologist transferring to the Navajo Nation

Any person who is at least eighteen (18) years of age and of good moral character and temperate habits and who is a citizen of the United States of

America and has a license or certificate of registration as a practicing cosmetologist from a state or country which has substantially the same or higher requirements for registering cosmetologists than are required by this chapter or who can prove by sworn affidavits that he or she has practiced as a cosmetologist for a period of at least five (5) years prior to making application on the Navajo Nation shall, upon filing an application and payment of the required fee, be granted permission to take an examination to determine his or her fitness to receive a certificate of registration to practice cosmetology. Should he or she fail to pass the examination he or she may file a new application accompanied by the, required fee and take another examination if he or she desires. In no event will he or she be permitted to practice cosmetology until such time as he or she has satisfactorily passed the examination and has received the certificate of registration as a registered cosmetologist.

History

CJY-79-68, July 11, 1968.

Cross References

Fees, see 20 N.N.C. § 509.

Library References

Indians ⇄32(9).

Licenses ⇄20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 504. Application

Any person who desires to practice cosmetology shall file with the secretary of the Board of Cosmetology Examiners a written application under oath on a form prescribed by the board, together with two 5"x 3" signed photographs of the applicant, and satisfactory proof that applicant is of good moral character, and also furnish the Board with a certificate from a licensed physician showing that applicant is free from any contagious and infectious or communicable disease, together with results of laboratory tests for syphilis and tuberculosis, which certificate shall not be dated more than ten (10) days prior to the date of application for registration.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇄32(9).

Licenses ⇄20, 22.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7, 9.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41, 43.

§ 505. Examination

A. The board shall conduct examinations of applicants for certificates of registration to practice as a registered instructor, or registered cosmetologist at least two times each year at several locations around the Navajo Nation fixed and published in advance by the board.

20 N.N.C. § 505

PROFESSIONS AND OCCUPATIONS

B. Such examinations shall include a practical demonstration by each applicant as well as a written and oral test of the applicant’s knowledge of the subjects required to be taught at schools of cosmetology. The practical examination shall count for sixty (60) percent, and the written and oral examinations for forty (40) percent.

C. A certificate to practice shall be issued to each applicant who shall satisfactorily pass an examination with an average grade of not less than seventy-five (75) percent, and shall possess the other qualifications required by law.

History

CJY-79-68, July 11, 1968.

Cross References

Qualifications to receive certificate of registration, see 20 N.N.C. § 502.

Library References

Indians ⇄32(9).

Licenses ⇄20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 506. Display of certificates

Every holder of a certificate of registration shall display it in a conspicuous place at or near his or her work chair. Sanitation rules and ordinances shall be displayed in a conspicuous place within the cosmetology shop.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇄32(9).

Licenses ⇄25.

Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 41, 45 to 46.

§ 507. Renewal of certificates

Every registered cosmetologist, every registered instructor, and every owner of a cosmetology shop or cosmetology school, shall annually, on or before the first day of July of each year, renew his or her certificate of registration, establishment license or permit and pay the required fee. Upon applying for a renewal certificate every registered cosmetologist or instructor shall furnish the board with a medical certificate as provided in § 504 of this subchapter. Every certificate of registration, establishment license, or permit which has not been renewed as herein required in any year, shall expire on the first day of August in that year. A registered cosmetologist or registered instructor whose certificate of registration has expired may have his or her certificate restored upon payment of the required fee. Any registered cosmetologist or instructor who has been absent from the practice of cosmetology for a period of over three (3)

years must retake and satisfactorily pass the examination for cosmetologist or instructor, respectively, before issuance of a new certificate of registration.

History

CJY-79-68, July 11, 1968.

Cross References

Fees for renewal certificates or permits, see 20 N.N.C. § 509.

Library References

Indians ⇨32(9).

Licenses ⇨22, 36.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects § 9.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 43, 45 to 48.

§ 508. Revocation of certificates

The board shall either refuse to issue a renewal or shall suspend or revoke any certificate of registration for any one or combination of the following causes:

- A. Conviction of a felony shown by certified copy of the record of the court of conviction, or conviction of a misdemeanor shown by certified copy of the record of the court of conviction, which in the opinion of the board shows an unfitness to practice cosmetology.
- B. Malpractice or incompetency.
- C. Continuing to practice cosmetology while knowingly afflicted with an infection or communicable disease.
- D. Advertising by means of knowingly false or deceptive statement(s).
- E. Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.
- F. Immoral or unprofessional conduct.
- G. Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or for any other thing of value or by fraudulent misrepresentations.
- H. Wilful failure to display certificate of registration or copy of the sanitation rules as provided in § 506 of this subchapter.
- I. Violation of any of the sanitary regulations promulgated by the Board of Cosmetology Examiners and the health advisor for the regulation of cosmetology shops and cosmetology schools.
- J. Owning, operating, or managing a cosmetology school or a portion thereof in which the practice of cosmetology is carried on, unless at each entrance to each school is displayed a sign in letters not less than eight inches in height indicating to the public that the school, place, or establishment is a cosmetology school and the work therein is done by students exclusively.
- K. Owning, managing, or operating a cosmetology shop unless there is displayed clearly visible at the main entrance thereto a sign indicating that it is

20 N.N.C. § 508

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a cosmetology shop. The phrase “beauty shop”, “beauty salon” or other phrase commonly used to designate a cosmetology shop shall be sufficient.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects § 10.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63.

§ 509. Fees

The Board of Cosmetology Examiners shall charge and collect the following fees in advance:

A. For examination of an applicant to practice as a cosmetologist: Fifteen dollars (\$15.00).

B. For issuance of a certificate to practice as a cosmetologist: Ten dollars (\$10.00).

C. For renewal of a certificate to practice as a cosmetologist: Fifteen dollars (\$15.00).

D. For restoration of an expired certificate to practice as a cosmetologist: Ten dollars (\$10.00).

E. For the examination of an applicant to practice as an instructor: Twenty dollars (\$20.00).

F. For issuance of a certificate as an instructor: Ten dollars (\$10.00).

G. For renewal of certificate as an instructor: Five dollars (\$5.00).

H. For annual establishment fee to be paid by each shop owner: Five dollars (\$5.00).

I. Each application to open or establish a cosmetology shop on the Navajo Nation shall be accompanied by a fee of one hundred dollars (\$100.00) to cover expenses of inspection which shall be retained by the Board and deposited as other fees.

J. A duplicate license, certificate or permit to replace a lost certificate shall be issued upon the filing of a statement covering the loss of same, verified by the oath of the applicant, and submitting the signed photograph of applicant, and the payment of a fee of one dollar (\$1.00) for the issuance of same. Each duplicate shall have the word “Duplicate” stamped across the face thereof, and shall be the same number as the lost certificate.

History

CJY-79-68, July 11, 1968.

Cross References

Board of Cosmetologist Examiners' Fund, see 20 N.N.C. § 460.

Library References

Indians ☞32(9).
 Licenses ☞27.
 Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 64 to 65.

Subchapter 7. Licensing of Cosmetology Shops

§ 551. Licensing requirements

No cosmetology shop shall be licensed and approved by the board unless:

- A. It is located in separate quarters, or if located in less than the whole of a single building, the quarters occupied are separated from the remainder of the building by solid walls reaching from floor to ceiling, but a barber shop and a beauty shop may be located in the same room or quarters;
- B. It has running hot and cold water therein;
- C. It conforms to and complies with the rules and regulations promulgated by the Board; and
- D. There is displayed at the main entrance thereto a sign clearly indicating that it is a cosmetology shop.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
 Licenses ☞20.
 Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 39 to 41.

Subchapter 9. Regulation of Cosmetology Schools

§ 601. Cosmetology schools—Admission requirements

No cosmetology school shall be licensed and approved by the board to operate as such unless it requires as a prerequisite to admission that the applicant:

- A. Be more than sixteen (16½) years of age;
- B. Be of good moral character and temperate habits;
- C. Furnish a diploma showing graduation from an eighth grade grammar school or have an equivalent education, as determined by the Board; and
- D. Be free from any infectious, contagious, or communicable disease.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇨32(9).
 Licenses ⇨20.
 Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 39 to 41.

§ 602. Application requirements

No school of cosmetology shall enroll or admit any student unless the student shall file, in duplicate, a newly verified application. The form and content of the application shall be prescribed by the board, and such forms shall be supplied by the board to applicants, schools, or colleges on request. One copy of the application shall be retained by the school or college enrolling or admitting the student and the other copy shall be filed by the school or college with the board. No school of cosmetology shall enroll or admit any student in a postgraduate course when the postgraduate course is for the purpose of qualifying persons to pass the examination conducted by board, unless the student shall file, in duplicate, an application duly verified. The application shall be obtained by such student or school or college from the board and the application shall show that the applicant has either: (1) graduated from a school of cosmetology approved by the board; or (2) can prove by sworn affidavits that he or she has practiced as a cosmetologist in a state of the United States for a period of at least two (2) years immediately prior to making such application. One copy of such application shall be retained by the college or school when admitting or enrolling said student and the other shall be filed by such school or college with said board. Nothing in this section shall contain or be construed as limiting or modifying the provisions of § 502 of this chapter.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇨32(9).
 Licenses ⇨20.
 Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Licenses §§ 39 to 41.

§ 603. Graduation requirements

A. The school shall require as a prerequisite to graduation a course of instruction of not less than one thousand eight hundred (1800) hours to be completed within eighteen (18) months of not more than eight (8) hours in any one (1) working day. Such course of instruction shall include the following subjects:

1. Scientific fundamentals of cosmetology, hygiene, histology of the hair, skin and nails; structure of the head, face and neck; and elementary chemistry relating to sterilization and antiseptics; and
2. Massaging and manipulating the muscles of the scalp, neck or skin of the neck, haircutting, shaving and arranging, coloring, bleaching and tinting the hair.

B. Not less than two (2) hours out of each eight (8) hour day shall be devoted to subjects in subsection (A)(1) and the remainder shall be devoted to subjects in subsection (A)(2).

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 604. Instructor qualifications

A. A person is qualified to receive a certificate to practice as a registered instructor who:

1. Is a registered beauty culturist; and
2. Satisfactorily passes an examination conducted by the board.

B. An applicant for a certificate as an instructor who fails to pass an examination shall be required to complete a further course of study of not less than one hundred (100) hours in a registered school, which shall be completed within three (3) months of not more than eight (8) hours in any one (1) day.

C. No applicant for an instructor's certificate shall be allowed to take the examination more than three times.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌20.

Westlaw Topic Nos. 209, 238.

C.J.S. Architects §§ 4, 7.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 39 to 41.

§ 605. Permit to operate cosmetology school

It shall be unlawful for any person, association of persons, or corporation to operate a cosmetology school without first obtaining a permit from the Board of Cosmetology Examiners, fully complying with the provisions of this chapter.

History

CJY-79-68, July 11, 1968.

Library References

Indians ⇌32(9).

Licenses ⇌11(1), 40.

Westlaw Topic Nos. 209, 238.

C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 2 to 3, 15.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Licenses §§ 34, 82 to 83.

C.J.S. Trading Stamps and Coupons § 6.

§ 606. Fees

A permit to operate a cosmetology school shall be purchased at an annual fee of twenty dollars (\$20.00) for each chair installed in such school upon which work or service maybe performed upon a patron of the school, but such annual fee shall not be less than two hundred dollars (\$200.00).

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞27.
Westlaw Topic Nos. 209, 238.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 64 to 65.

Subchapter 11. Violation of Provisions

§ 651. Notice

The board, upon being advised of any violations of this chapter or of any regulations enacted by the board, shall give notice to the person or persons accused of the violation or violations. The notice shall:

- A. Be in writing and shall state the violation or violations;
- B. Be included in a statement for its issuance;
- C. State a date and time for a hearing on the matter; and

D. Be served upon the owner of a cosmetology shop, or cosmetology school or his or her agent, and/or upon the individual cosmetologist or instructor who is in violation. The notice or order shall be deemed to have been properly served when a copy of the notice or order is sent by registered mail to the last known address of the person in violation of this chapter or regulations of the board.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 652. Hearing

Any person affected by any notice or regulation which is issued in implementation or enforcement of these regulations, shall upon his or her request be granted a hearing on the matter before the board provided that such person shall file with the board a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days of issuance of the notice or regulation. Upon receipt of such petition, the board shall set a time and place for such hearing and shall give the petitioner written notice. At the hearing petitioner will be given an opportunity to be heard and show why such notice or regulation should be modified or withdrawn. The hearing shall be commenced no later than ten (10) days after the day on which the petition was filed, provided that upon application of the petitioner the board may

postpone the date of the hearing for a reasonable time beyond such 10-day period.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 653. Determination

After the hearing the board may sustain, modify or withdraw the notice or regulation pending the finding as to the compliance or noncompliance with these regulations. If the board shall sustain or modify such notice, it shall be deemed to be an order. Any notice or regulation served pursuant to this chapter shall become an order if a written petition for a hearing shall not have been filed with the board within ten (10) days after such notice or regulation was passed.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 654. Record of proceedings

The proceedings at such hearings, including the finding(s) and decision(s) of the board, shall be reduced to writing and entered as a matter of public record with the board. Such records shall include every notice or order issued in connection with the matter.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 655. Emergency action

The board may, when an emergency exists requiring immediate action to protect the public health, take such action as is deemed necessary to meet the

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emergency notwithstanding any other provisions of this chapter. The orders shall be effective immediately.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 656. Orders

Orders issued under the emergency powers of the board shall remain in force and effect until revoked by the Board or until a hearing has been held before the board.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(9).
Licenses ☞38, 40, 41.
Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Architects §§ 3, 10, 15.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Trading Stamps and Coupons § 6.

§ 657. Perjury

A. The wilful making of any false statement of a material matter under any oath or affidavit which is required by provisions of this chapter is perjury and punishable as such.

B. Perjury shall be punishable by a fine of not less than twenty dollars (\$25) and no more than two hundred dollars (\$200.00), or by imprisonment in the Navajo Nation jail not less than twenty (20) days or more than six (6) months or both.

History

CJY-79-68, July 11, 1968.

Library References

Indians ☞32(13).
Perjury ☞1.
Westlaw Topic Nos. 209, 297.

C.J.S. Indians § 157.
C.J.S. Perjury §§ 2 to 3, 5 to 8, 21.

§ 658. Penalties—Generally

Each of the following constitutes a misdemeanor, punishable upon conviction by a fine of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), or by imprisonment in the Navajo Nation jail not less than ten (10) days or more than ninety (90) days, or both, in the discretion of the court:

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20 N.N.C. § 660

- A. The violation of any of the provisions of this chapter.
- B. Obtaining or attempting to obtain a certificate of registration for money other than the required fee or for any other thing of value or by fraudulent misrepresentation.
- C. Practicing or attempting to practice by fraudulent misrepresentation.
- D. The use of any room or place for cosmetology which is also used for business purposes (except the sale of hair tonics, lotions, creams, toilet articles, or other articles pertinent to cosmetology, or as a laundry delivery agency), unless said room or place is separated from the portion used for business purposes by solid walls reaching from floor to ceiling.
- E. The use for cosmetology of a room or quarters also used for residential purposes, unless said quarters have an outside entrance and are separated from the remainder of the building by solid walls reaching from floor to ceiling.

History

CJY-79-68, July 11, 1968.

Library References

- Indians ⇄32(13).
- Licenses ⇄40, 41.
- Westlaw Topic Nos. 209, 238.
- C.J.S. Agriculture § 4.5.
- C.J.S. Architects §§ 3, 15.
- C.J.S. Indians § 157.
- C.J.S. Licenses §§ 78 to 83.
- C.J.S. Trading Stamps and Coupons § 6.

§ 659. Nonmembers of Navajo Nation

Nonmembers of the Navajo Nation who fail to comply with this chapter or the regulations of the Board, issued pursuant to this chapter, may be excluded from Navajo Nation land. Nonmembers of the Navajo Nation excluded pursuant to this chapter shall be excluded under the procedures as established in Title 17 of the Navajo Nation Code.

History

CJY-79-68, July 11, 1968.

Library References

- Indians ⇄32(9).
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 130 to 132, 134.

§ 660. Payment of fines

Fines levied by the board shall be paid directly into the Navajo Nation general fund and shall not be retained to the benefit of the board.

History

CJY-79-68, July 11, 1968.

Library References

- Indians ⇄32(9).
- Licenses ⇄41.

Westlaw Topic Nos. 209, 238.
C.J.S. Agriculture § 4.5.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Licenses §§ 78 to 81.

Chapter 5. Licensing of Medical Personnel

Section

901. Persons licensed

§ 901. Persons licensed

The Navajo Nation hereby expressly authorizes and licenses any physician, surgeon, dentist, dental assistant, registered nurse, medical assistant, practical nurse, ophthalmologist, optometrist, and optician who is employed by the Navajo Nation, its instrumentalities, entities and authorities under the following circumstances:

A. The professional is employed in his or her capacity or because of his or her professional qualifications;

B. The professional is rendering professional service, assistance or advice in his or her capacity as an employee of the Navajo Nation, or instrumentality or authority thereof;

C. The professional is licensed or certified to practice in any one of the states or territories of the United States of America and his or her right to practice in any such territory is not under suspension or revocation; and

D. The professional's credentials and references have been presented to, verified, found acceptable, and approved by the Health and Social Services Committee of the Navajo Nation Council.

History

ACMA-49-77, March 9, 1977.

Services Committee" pursuant to 2 N.N.C.

Revision note. Reference to the "Advisory § 454(B)(1).
Committee" changed to the "Health and Social

Library References

Health ☞113, 135.

Westlaw Topic Nos. 198H, 209.

Indians ☞32(9).

C.J.S. Indians §§ 130 to 132, 134.

Title 21

Public Utilities and Communications

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Chapter 1. Navajo Tribal Utility Authority

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54. Removal

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55. Meetings of board of commissioners
56. Election and duties of officers
57. Staffing and compensation
58. Liability exemption
59. Conflict of interest
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Subchapter 1. Generally

History

Revision note. Subchapter 1 added as a result of codifying Subchapter 2, Ramah Navajo Utility Authority.

Library References

Indians ⚡32(4.1).
Westlaw Topic No. 209.

§ 1. History

A. The Navajo Tribal Utility Authority was created by the Navajo Tribal Council on January 22, 1959, in order to bring electric power to Shiprock, Navajo Nation, (New Mexico). The Authority has expanded into natural gas, water, and sewer utility operations, as well as increasing its electric services.

B. By CN-61-59, the Navajo Tribal Utility Authority was authorized to acquire, construct, operate and maintain utility systems throughout the Navajo Nation. Since then the Authority has extended the benefits of utility services to substantial portions of the Reservation. Over time the Plan of Operation of the Authority has been amended to meet needs associated with changing circumstances.

History

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-866, January 28, 1966.

1988 Resolution. CF-6-88, amended generally the authority of the Enterprise.

1986 Resolution. ACJN-9-86, amended generally the Plan of Operation.

1985 Resolution. ACF-30-85, amended generally the Plan of Operation.

1985 Resolution. ACF-29-85, increased the Enterprise's debt limit.

Reorganization of Tribal Utility Authority. ACJN-82-65, June 10, 1965, acting on the authority granted by CAP-46-65, adopted a series of bylaws for the Utility which were rescinded by ACN-149-65, November 8, 1965, and a revised Plan of Operation was submitted for approval to the Commissioner of Indian Affairs.

1965 Resolution. ACN-149-65 was amended by ACD-158-65, December 13, 1965, and a further revision of the Plan of Operation was

submitted for approval to the Commissioner of Indian Affairs.

1966 Resolution. ACJA-8-66, § 1, January 28, 1966, confirmed ACD-158-65 and revised the Plan of Operation attached thereto. ACJA-8-66, § 2, acknowledged Commissioner's letter of approval dated January 13, 1966.

Transfer of existing facilities. Plan of Operation, § XI, provided: "The existing plant and facilities of the Navajo Tribal Utility Authority, including all electric, natural gas, water and sewer systems now in operation or under construction, as of the effective date hereof (which totaled eight million seven hundred forty-six thousand five hundred fifty-three dollars and twenty-three cents (\$8,746,553.23), as of June 30, 1964), are to be transferred to the Enterprise and accounted for in accordance with applicable regulations and statutes. Additional funds for capital expenditure for construction of further facilities, as recommended by the Management Board may be supplied from Tribal

funds on approval of the Navajo Tribal Council and the Secretary of the Interior or his or her authorized representative, or from outside sources with the approval of the Advisory Committee and the Secretary of the Interior or his authorized representative.”

ACD-245-66, December 13, 1966, authorized the transfer of all Fort Defiance, Navajo Nation (Arizona), Water and Sewerage facilities and appurtenances thereto of P.L. 86-121 Project No. WI-61-320 to the Tribal Utility Authority, subject to acceptance of the Management Board.

Power supply lease and agreement. CJY-46-60, July 21, 1960, authorized lease of plant site for generating power and agreement for supply of power with the Arizona Public Service Company. Tribal Council Res. CF-18-66, February 23, 1966, ACMY-81-66,

May 27, 1966, and Res. ACMY-79-66, May 27, 1966, authorized and approved supplemental lease and agreement.

Repayment schedule. Plan of Operation, § XII, provided: “The Tribal Council shall determine whether the whole or any part of the Tribal funds advanced or facilities transferred to this Enterprise shall be regarded as a fixed investment. The portion of Tribal funds, if any, advanced to the Enterprise on a loan basis, shall bear interest at a rate to be agreed upon and the amount thereof shall be repaid at the times and in the manner fixed by agreement.”

Authority. Plan of Operation, § XVIII, provided: “Tribal Council Resolutions CJA-14-59, CN-61-59, CMY-22-60, CD-61-61 and CAP-46-65 contain the authority for development of the Navajo Tribal Utility Authority.”

Library References

Public Utilities ☞141 to 150.
Westlaw Topic No. 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 2. Name, location and place of business

A. Navajo Tribal Utility Authority.

B. The principal place of business and the office of the Enterprise shall be at Window Rock, Navajo Nation (Arizona), and the post office address of the principal office is Post Office Box 68, Window Rock, Arizona.

C. The Enterprise may also have offices at such other place or places as the Management Board may from time to time direct, or as the operation of the Enterprise shall require.

History

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

Library References

Indians ☞32(4.1).
Public Utilities ☞141 to 150.
Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 3. Seal

The seal of this Enterprise shall consist of two concentric circles between which shall be the name of the Enterprise and the word “seal”, and in the center shall be the words, “An Enterprise of the Navajo Nation”.

History

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

21 N.N.C. § 3

PUBLIC UTILITIES AND COMMUNICATIONS

Library References

Indians ☞32(4.1).
Public Utilities ☞141.

Westlaw Topic Nos. 209, 317A.
C.J.S. Public Utilities §§ 60 to 61.

§ 4. Duration

The duration of the Enterprise is perpetual.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(4.1).
Public Utilities ☞141.

Westlaw Topic Nos. 209, 317A.
C.J.S. Public Utilities §§ 60 to 61.

§ 5. Purposes

A. General. The purposes for which the Navajo Tribal Utility Authority is organized are as follows:

1. To operate, maintain, and promote existing utility systems furnishing electric, gas, water, and sewer utility services on the Navajo Nation.
2. To expand and execute such extensions of existing utility systems as are efficient and feasible.
3. To plan for, provide and furnish utility services to all areas of the Navajo Nation, where such services are determined to be feasible and economical.
4. To carry out the purposes and intent of the Act of April 19, 1950, Public Law 474, 81st Congress, the Navajo-Hopi Rehabilitation Act.¹
5. To promote the use of utility services where available in order to improve the health and welfare of the residents of the Navajo Nation.
6. To provide a fair return to the Navajo Nation on its investment consistent with the furnishing of utility services at low cost to residents of the Navajo Nation and with the employment of Navajo People in the operation of the Enterprise.

B. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law, or this chapter for the Enterprise.

¹ 25 U.S.C. § 631 et seq.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(4.1).
Public Utilities ☞141 to 150.
Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to
68, 78.

§ 6. Control of operations

It is intended that control and operation of this Enterprise shall be patterned as closely as is feasible on the lines of a chartered public service corporation of similar magnitude with a management board comparable to a board of directors of such a corporation.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(4.1).

Public Utilities ☞141 to 150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to
68, 78.

§ 7. Management Board; purpose; duties and powers

A. Subject to applicable federal and Navajo Nation laws and regulations, the management board shall direct the purposes and exercise the following powers and duties:

1. The management board of the Navajo Tribal Utility Authority is delegated authority and responsibility for the management and operation of the Enterprise.

2. The management board is authorized to direct the operations to accomplish the purposes set forth in 21 N.N.C. § 5 and to exercise the powers set forth in subsection (B) below without previous authorization or subsequent approval, and all parties dealing with the Authority shall have the right to rely upon any action taken by the management board pursuant to such authorization.

3. The management board shall exercise full power and shall be responsible for the custody and management, operation, inventory, and maintenance of all utilities and facilities, the planning, constructing and operating of all new facilities, and the taking of any and all usual, necessary and convenient actions incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, and the making of contracts or commitments necessary to the functioning of the organization.

4. The management board shall function in much the same capacity as an elected board of directors of a chartered public service corporation, and shall numerously be responsible for making investment decisions, subject to the limitations contained herein or in any advance of funds; for the establishment and maintenance of effective operating policies; for the selection of management personnel, except that the person selected as the general manager shall be approved by the Navajo Nation Council; and for continuous supervision of the utility authority's performance.

5. The management board shall be expected to exercise its authorized powers in the best interests of the Navajo Nation within the limits of

responsible business judgment and with the stipulation that the board shall not incur contract obligations in excess of the ability of the enterprise to make payment on due dates.

6. The management board shall select from its own membership a chairman of the board and other officers; and shall adopt such rules as it may determine necessary for the orderly conduct of business.

7. The minutes of each meeting shall be made available promptly after each meeting to the Economic Development Committee of the Navajo Nation Council, the Navajo area director and to such other officials as may be designated from time to time.

8. Members shall be reimbursed for expenses incurred in attending meetings and the Board may, at its discretion, propose a fee to be paid to members (subject to approval of the Economic Development Committee of the Navajo Nation Council) on a per-meeting attended or an annual basis.

9. The chairman of the board shall make a formal report to the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council not less often than annually and in such report, shall include a summary of the budget which the management board has approved for the coming fiscal year.

10. The management board shall establish purchasing policies and procedures, giving usual and essential latitude to the general manager and his or her delegated employees, but establishing limitations on amounts which may be expended without specific approval of the board.

11. No contract or other transaction between the Navajo Tribal Utility Authority and any one of the members of the management board, or between the Navajo Tribal Utility Authority and any corporation, partnership, firm or other legal entity in which one or more of the management board has an interest directly or indirectly shall be valid, for any purpose, unless the entire interest of the director or directors in such corporation, firm or other legal entity is fully disclosed to the management board and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the entire management board who are not so interested.

12. The management board, in its discretion, may submit any such contract or act for approval or ratification at any regularly called or noticed meeting of the Economic Development Committee of the Navajo Nation Council; and any contract or act that shall be approved or ratified by the vote of the majority of the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

13. The management board shall submit any contract or act wherein a Navajo Nation officer or employee may have an interest directly or indirectly in the matter or transaction to any regularly called or noticed meeting of the Economic Development Committee of the Navajo Nation Council. Any contract or act that shall be approved or ratified by the vote of the majority of

the Economic Development Committee of the Navajo Nation Council shall be valid and binding upon the parties.

B. Enumerated powers. Subject to Navajo Nation Council approval where required, and applicable Navajo Nation and federal laws and regulations, and solely in furtherance of the limited purposes set forth in 21 N.N.C. § 5, the management board shall have the following powers:

1. Facilities. The management board shall exercise full authority and shall be responsible for the custody, management and operation of all utility authority property and facilities owned and operated by the Navajo Nation, including such expansions and enlargements thereof as shall be authorized; for the planning, construction and operation of additional utility authority facilities including the negotiation and execution of engineering and construction contracts; and for the taking of any and all usual, necessary, and convenient actions incident thereto.

2. Capacity to act. To have the capacity to act and to direct the officers of the Enterprise to act in the same capacity as that of natural persons, but to have authority to perform only such acts as are necessary, convenient or expedient to accomplish the purposes set forth in 21 N.N.C. § 5, and such as are not repugnant to laws and regulations applicable to this Enterprise.

3. To appoint officers and agents. To elector appoint officers, agents, engineers, auditors, and such professional consultants as in the opinion of the board or Economic Development Committee may be needed from time to time, and to define their duties and fix their compensation; provided, however, that unless the Economic Development Committee shall consent and approve otherwise, the auditors shall be the firm of accountants employed by the Navajo Nation; and provided further, that the selection of a general manager shall be approved by the Navajo Nation Council. The Management board, at enterprise expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the enterprise.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the tribal enterprise.

5. To deal in real property. To negotiate the acquisition of (by purchase, exchange, lease, hire or otherwise), utilize, improve, manage, operate, and to negotiate the sale, lease, or mortgage of, either alone or in conjunction with others, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in 21 N.N.C. § 5 except as prohibited by law. Title to all such real property shall be taken in the name of the Navajo Nation and title to all trust or restricted real property shall be and remain in its trust or restricted status.

6. To deal in personal property, generally. To acquire (by purchase, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, and interest therein and com-

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modities of every kind, character and description necessary or incidental to the purposes set forth in 21 N.N.C. § 5.

7. To deal in inventions, copyrights, and trademarks. To acquire (by application, assignment, purchase, exchange, lease, hire or otherwise), hold, own, use, license, lease, and sell, either alone or in conjunction with others, the absolute or any partial or qualified interest in and to inventions, improvements, letters patent and applications therefor, licenses, formulas, privileges, processes, copyrights and applications therefor, trademarks and applications therefor, and trade names, and that title of all such acquisitions shall be taken in the name of the Navajo Nation.

8. To execute guaranties. To make any guaranty respecting indebtedness, interest, contracts or other obligations lawfully entered into by or on behalf of the Enterprise, to the extent that such guaranty is made in pursuance of the purposes set forth in 21 N.N.C. § 5, provided, that no such guaranty in excess of two hundred thousand dollars (\$200,000) shall be made without the prior written approval of the Economic Development Committee of the Navajo Nation Council.

9. Depository. To designate and approve all depositories used for the deposit of funds of the enterprise.

10. To make contracts. To enter into, make, perform and carry out or cancel and rescind, contracts for any lawful purpose pertaining to its business necessary or incidental to the purposes set forth in 21 N.N.C. § 5, including the negotiation of contracts subject to R.S. § 2103, 25 U.S.C. § 81 (1964), which shall, as therein provided, become effective only upon the approval of the Secretary of the Interior.

11. To approve budgets. To give initial approval to annual enterprise budgets, and to take final approval action with reference to the use of funds under the exclusive control of the enterprise for operating and capital addition purposes.

12. To borrow funds. To borrow money, make and issue notes, obligations and bonds of the authority for any of its purposes and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personality, revenues, income or contracts. The total outstanding long-term debt of the authority at any one time shall not exceed two hundred million dollars (\$200,000,000).

13. To accept grants and loans. To accept grants or loans from, and enter into contracts, agreements or other transactions with any federal agency, the government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof for any of the authority's purposes.

C. Ancillary powers. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the authority is organized.

D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes, but the Navajo Tribal Utility Authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in 21 N.N.C. § 5.

History

CJY-52-02, July 17, 2002.

CAP-32-94 amended subsection (13)(12) increasing debt limitation from thirty million dollars (\$30,000,000) to seventy-five million dollars (\$75,000,000).

ACF-29-85, February 19, 1985.

CO-62-80, October 29, 1980 added subsections 12 and 13.

ACJY-8 5-80, § 1, July 17, 1980.

ACN-149-65, as amended by ACD-158-65, December 13, 1965 and ACJA-8-66, January 28, 1966.

ACN-149-65, as amended by ACD-158-65, December 13, 1965, and ACJA-866, January 28, 1966.

1985 amendment. Subsection (B) (12). Amended generally.

1980 amendment. Added subsections (B)(12) and (B)(13).

Applications to put utility lines across rights-of-way. CJN-49-71 provided: "The Chairman of the Navajo Tribal Council or his designee is hereby authorized to execute any and all applications or other documents on behalf of the Navajo Tribe of Indians, for the purpose of securing permission to place utility lines across rights of way or easements within the Navajo Nation."

Confirmation and ratification of adoption of safety codes and rules. ACAU-164-66, August 30, 1966, confirmed and ratified resolution No. NTUA-28-66 of the Utility Authority which adopted specific safety codes and rules.

Consignment of supply contracts. ACAU-152-66, August 10, 1966, consigned the following utility supply contracts to the Utility Authority:

1. Arizona Public Service Wholesale Power Supply Contract, dated December 1, 1960.

2. Public Service Company of New Mexico, Electrical Service Agreement, dated July 19, 1962.

3. El Paso Natural Gas Company, Natural Gas Service Agreement, dated February 15, 1963.

4. Continental Oil Company, Natural Gas Service Agreement, dated January 28, 1963.

Compensation. ACMY-74-66 provided for compensation for the Management Board.

Delegation to act. ACMA-21-66, § 5, March 14, 1966, delegated authority for the Management Board to act in all matters incidental and pursuant to CAP-46-65 and its approved Plan of Operation.

1966 Amendments. ACJA-8-66, § 2, amended subsection (B)(10) generally.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ⇄32(4.1, 6).

Public Utilities ⇄141 to 150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 8. Indemnification of officers, employees, and members of the Management Board

The Navajo Tribal Utility Authority shall indemnify any officer, employee or member of the management board or former officer, employee or member of the management board of the Navajo Tribal Utility Authority, or any person who may have served at its request as an officer, employee or member of the management board against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding of which he or she is made a party by reason of being, or having been such officer, employee or member of the management board except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; or except in relation to matters in which such employee was acting beyond the scope of his or her employment. The Navajo Tribal Utility Authority shall also reimburse to any officer, employee or member of the management board reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the management board other than directors

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PUBLIC UTILITIES AND COMMUNICATIONS

involved in the matter of controversy (whether or not a quorum exists), that it is in the best interest of the Navajo Tribal Utility Authority and the Navajo Nation that such settlement be made and that such officer, employee or member of the management board was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such officer, employee, or member of the management board may be entitled to receive.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(6).

Public Utilities ☞144.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities § 63.

§ 9. Membership of Board; qualifications; term of office

A. Number. The management board shall consist of seven persons, all of whom shall be appointed by the Government Services Committee of the Navajo Nation Council.

B. Qualifications. The members of the management board shall be called directors, and shall have the following qualifications:

1. Four of the directors shall be members of the Navajo Nation who speak English with fluency and who have sufficient education and experience to qualify them for learning utility business practices and procedures and making sound judgments.

2. Four of the directors shall be persons having not less than ten (10) years experience in business management of substantial character and at least two of such persons shall have had such experience in the management and operation of a utility business.

C. Term of office. Directors shall be elected for the following terms of office and shall hold office until the qualification and selection of their successors:

1. The initial management board shall be appointed for a period of one (1) year or until their successors have been appointed and qualified. Directors shall be eligible for reappointment.

2. Beginning the second year, the directors shall be selected and designated by the Government Services Committee in three groups, the first group of three to serve one (1) year, the second group of two to serve for two (2) years, and the third group of two to serve for three (3) years. Thereafter, all terms shall be for three (3) years.

3. Vacancies in the management board may be filled by the Government Services Committee for the unexpired term of the vacant office.

History

ACF-30-85, February 19, 1985.

1985 amendment. Subparagraph (B)(3): Deleted.

ACS-194-68, § 2, September 16, 1968.

Amendments 1968. ACS-194-68, § 2, amended this section by substituting "Four of the Directors" for "Three of the Directors" in subsection (B)(1).

Appointment of members. The following resolutions appointed members of the Management Board of the Navajo Tribal Utility Authority and

designated the expiration dates of the term of such members:

ACS-301-69, §§ 1, 2, September 3, 1969.

ACS-194-68, §§ 3, 4, 5, September 16, 1968.

ACJ-2-68, January 5, 1968.

ACMA-21-66, §§ 2, 3, March 14, 1966.

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

Revision note. Words "Government Services Committee" inserted pursuant CD-68-89, Resolve #10.

Library References

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 10. Meetings of Board

A. Annual meeting. The annual meeting of the management board shall be held at 10:30 a.m. on the second Wednesday of October at the principal place of business, or at such other place as the Board shall fix, commencing with 1966. No notices shall be required for annual meetings.

B. Regular meetings. The management board shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings. Special meetings of the board may be held upon notice given by the chairperson, or secretary, or by any three members of the board, at such place as the Board shall direct or as shall be fixed by the notice.

D. Notice.

1. Notice of meetings stating the time and date, shall be given in writing by letter, telegram or radiogram properly addressed to each member according to the latest available enterprise records, not later than five (5) days nor more than thirty (30) days immediately preceding the meeting excluding the day of the meeting.

2. Notice may be waived in writing signed by the member or members entitled to such notices; whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at the special meeting shall constitute a waiver of notice.

E. Quorum. Five members of the management board shall constitute a quorum for the transaction of any business. The act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the board.

History

ACN-149-65, as amended by ACD-158-65, December 13, 1965.

First meeting. ACMA-21-66, § 4, March 14, 1966.

21 N.N.C. § 10

PUBLIC UTILITIES AND COMMUNICATIONS

Library References

Indians ☞32(6).

Public Utilities ☞150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities § 60.

§ 11. Executive Committee

A. Designation of committee. The management board, by resolution duly adopted, may designate four members of the board, two of whom shall be members of the Navajo Nation, to constitute an executive committee. Following such designation of Executive Committee membership or a modification thereof, the management board shall give prompt notice in writing to the Economic Development Committee and the Navajo area director of the members thereof. The designation of such executive committee and the delegation of the authority herein granted, shall not operate to relieve the management board, or members thereof, of any responsibility imposed upon it, or him or her, by law or this Plan of Operation. No member of the executive committee shall continue to be a member thereof after he or she ceases to be a member of the management board. The management board shall have the power at any time to increase the number of members of the executive committee, to all vacancies thereon, to change any member thereof, and to change the functions or to terminate the existence thereof.

B. Powers of the executive committee. During the intervals between meetings of the management board, and subject to such limitations as may be required by resolution of the management board, the executive committee shall have and may exercise such authority as may be delegated by the board.

1.¹ All minutes of meetings of the executive committee shall be submitted to the next succeeding meeting of the management board for approval, but failure to submit the same or to receive the approval thereof shall not invalidate any completed or uncompleted action taken by the enterprise upon authorization of the executive committee prior to the time at which the same was submitted as above provided.

C. Procedure, meetings. A chairperson of the executive committee shall be elected by the management board from among the members of the executive committee and shall preside at meetings of the executive committee and perform all duties incident to the office of the chairperson of the executive committee, and such other duties as, from time to time, may be assigned to him or her by the management board or the executive committee. The secretary of the enterprise shall keep a record of the acts of the executive committee and its proceedings. In the absence of the secretary, the chairperson of the management board shall designate a person to act in said capacity.

D. No individual authority. The members of the executive committee shall act only as a committee, and the individual members shall have no power as individuals.

E. Notice. Notices of all meetings of the executive committee shall be given by the chairperson, the secretary, or any member thereof, in the manner provided in 21 N.N.C. § 10(D), and maybe waived as therein provided.

F. Quorum. The presence of not less than three members shall be necessary to constitute a quorum for the transaction of business and the act of the majority of the members present and voting at a meeting at which a quorum is present shall be the act of the Committee.

¹ So in original; no subsec. (B)(2) was enacted.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(6).

Public Utilities ☞141 to 150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to
68, 78.

§ 12. Principal officers

A.¹ The principal officers of the enterprise shall consist of the following:

1. Chairperson of the management board and chairperson of the executive committee, which positions may be, but need not be, held by the same person.

2. Secretary and a treasurer, who need not be members of the management board or of the executive committee.

3. General manager, who shall not be a member of the management board.

4. In the discretion of the board, there may be a vice-chairperson of the board, assistant secretary, and assistant treasurer. Any two of these positions may be held by the same person.

¹ So in original; no subsec. (B) was enacted.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 13. Powers and duties

A. All officers and agents of the enterprise shall have the following duties and such other duties as maybe determined by resolution of the management board, not inconsistent with this chapter:

1. The chairperson of the board. The chairperson of the management board shall be chosen from among the members of the Board, shall preside at all meetings of the board if present, and shall, in general, perform all duties incident to the office of the chairperson of the board and such other duties as, from time to time, may be assigned by the management board. If a vice-

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chairperson is elected, he or she shall act in the capacity of the chairperson in the absence of the latter, and shall discharge any other duties designated by the chairperson.

2. The secretary. The secretary shall keep, or cause to be kept the minutes of the meeting of the management board and the executive committee. The secretary shall see that all notices are duly given in accordance with provisions of this chapter. The secretary shall be custodian of the seal and records, and in general, shall perform all duties incident to the office of the secretary, and such other duties as may, from time to time, be assigned by the management board, the chairperson, or the executive Committee.

3. The treasurer. The treasurer shall be the financial officer of the enterprise and shall have charge and custody of, and be responsible for, all funds of the enterprise, and shall deposit such funds in such banks, trust companies, or other depositories as shall have been approved by the management board. The treasurer shall receive and give receipts for monies due and payable to the enterprise from any source whatsoever; and, in general, shall perform all duties incident to the office of the Treasurer and such other duties as, from time to time, may be assigned by the management board, the chairperson, or the executive committee. The treasurer shall render to the chairperson and the board, whenever the same maybe required, an account of all transactions as treasurer and of the financial condition of the enterprise. The treasurer shall, at the expense of the authority, give a bond for the faithful performance and discharge of the, duties in such amount, so conditioned, and with such surety or sureties as the management board may require.

4. General manager. The general manager shall be principal operating executive of the enterprise and shall have direction of all parts of the actual operations. The general manager shall be responsible to the management board as a principal operating executive of a public service corporation normally would be. The general manager shall render reports to the board and perform all other functions and duties specified in 21 N.N.C. § 18 for the general manager.

History

ACN-149-65, as amended by ACD-158-65, special circumstances of the lands in the Former Joint Use Area in determining priorities of December 13, 1965. establishment or expansion of services.
CO-62-80; the Navajo Nation Council directed the Authority to give consideration to the

Library References

Indians ☞32(6). C.J.S. Indians § 51.
Public Utilities ☞145. C.J.S. Public Utilities §§ 18, 65 to 67.
Westlaw Topic Nos. 209, 317A.

§ 14. Election; term of office; qualifications

The officers with the exception of the general manager, shall be chosen annually by the management board at its annual meeting, or as soon after such annual meeting as newly appointed directors shall have qualified. Each officer

shall hold office until a successor is chosen and qualified, or until death, or until the general manager shall have resigned, or shall have been removed in the manner provided herein.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ⇌32(6).	C.J.S. Indians § 51.
Public Utilities ⇌142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 209, 317A.	

§ 15. Removal

Any officer or agent elected or appointed by the board may be removed by the management board whenever, in its judgment, the best interest of the enterprise will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed; provided, however, the general manager maybe removed only pursuant to any approved contract provisions.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ⇌32(6).	C.J.S. Indians § 51.
Public Utilities ⇌142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 209, 317A.	

§ 16. Resignation; vacancies

Any officer may resign at any time by giving written notice to the management board, or to the chairperson, or secretary; such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ⇌32(6).	C.J.S. Indians § 51.
Public Utilities ⇌142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 209, 317A.	

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§ 17. Other officers and agents

The management board may appoint such other officers and agents as it deems necessary or expedient, and may determine their duties, as well as the terms of their holding office.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 18. General Manager; functions; duties

A. The general manager shall be employed under a written employment contract subject to approval by the Navajo Nation Council and the Secretary of the Interior or authorized representative, and shall be responsible to the management board.

B. The function of a general manager shall be analogous to that of the president of a public service corporation. The general manager shall, among other things, execute the general policies formulated by the management board and organize the operation of the enterprise into departments each with its own specific duties and responsibilities.

C. The general manager shall exercise best judgment in the determination of the ways and means by which general policy set forth by the management board is to be effectuated.

D. The general manager shall be the active, operating executive of the enterprise and shall prepare plans and annual budgets; and make suggestions as to policies and any proposals for improvements.

E. The general manager shall have the full authority and control over all employees of the enterprise and shall be responsible for all department heads or other executives carrying out their assignments.

F. The general manager shall be responsible for the general supervision of the performance of staff in respect to all matters such as conformance to approved budgets, standards, program inspection, cost control, employee relations and in-service training.

G. The general manager shall render regular reports to the board and perform all other functions and duties specified in this chapter.

H. The general manager shall be furnished with transportation and shall be reimbursed for any personal expenses that he or she may incur in the performance of responsibilities.

I. The general manager shall employ competent department heads for the usual functional responsibilities for each department.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965.

Library References

Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞143 to 145.	C.J.S. Public Utilities §§ 18, 63, 65 to 67.
Westlaw Topic Nos. 209, 317A.	

§ 19. Accounting; fiscal year

The accounting system for the authority shall be maintained in accordance with generally accepted utility accounting practices. Financial operating statements shall be provided to the Speaker of the Navajo Nation Council, the Bureau of Indian Affairs, and the management board on a regular basis. The fiscal year of the authority shall be January 1st to December 31st.

History

ACO-135-81, § 1, October 14, 1981. calendar year to facilitate borrowing from the
1981 amendment. Amended generally and Rural Electrification Administration.
changed the fiscal year for the Authority to a

Library References

Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞116.	C.J.S. Public Utilities § 76.
Westlaw Topic Nos. 209, 317A.	

§ 20. Records; inspection; audits

The books, records and property of the authority shall be available for inspection at all reasonable times by authorized representatives of the Navajo Nation, and upon notice to the Economic Development Committee of the Navajo Nation Council, by representatives of the Secretary of the Interior. The accounts and records of the Authority shall be audited at the close of each fiscal year in accordance with the provisions of 21 N.N.C. § 7(B). Copies of such audit reports shall be furnished to the parties receiving copies of the financial and operating statements and to the Economic Development Committee of the Navajo Nation Council.

History

ACN-149-65, as amended by ACD-158-65,
December 13, 1965, and ACJA-8-66, January
28, 1966.

Library References

Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞116.	C.J.S. Public Utilities § 76.
Westlaw Topic Nos. 209, 317A.	

21 N.N.C. § 21

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§ 21. Insurance

Insurance, including liability, adequate and sufficient to protect the interests of the United States and the Navajo Nation from losses by fire or other disaster shall be carried on all property of the enterprise.

History

ACN-149-65, as amended by Res.
ACD-158-65, December 13, 1965.

Library References

Indians ☞32(4.1).
Public Utilities ☞145.

Westlaw Topic Nos. 209, 317A.
C.J.S. Public Utilities §§ 18, 65 to 67.

§ 22. Rates and charges

A. All rates and charges for utility services shall be adopted by the management board after formal public hearing for which adequate notice as the board may determine has been given.

B. The management board may, in their sole discretion, negotiate with large users of a particular utility service for special rates and charges, provided, however, that such negotiated rates shall be demonstrated to be fair and equitable to all other customers or users of the Navajo Tribal Utility Authority services.

C. Procedures shall be established by the Economic Development Committee of the Navajo Nation Council to provide for appeals of rate decisions to an impartial review board composed of specialists on utility rates.

History

ACN-149-65, as amended by ACD-158-65, confirmed and ratified all provisions included in the Authority's Tariff Rules and Regulations.
December 13, 1965.

Confirmation and ratification of Tariff Rules and Regulations. ACJN-95-66, June 15, 1966,

Library References

Indians ☞32(4.1).
Public Utilities ☞119, 161 to 169.
Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 15 to 18, 20, 39, 43 to 46, 48 to 53, 55 to 56, 58, 77 to 94, 96, 98.

§ 23. Pledges and security interests

Any pledge of, or security interest in, personalty, fixtures, revenues or other monies or funds, or of a revenue-producing contract or contracts made by the authority shall be valid and binding from the time when the pledge is made or the security interest is given; the personalty, fixtures, revenues, or other monies or proceeds of any contract or contracts so pledged or secured and thereafter received by the authority shall immediately be subject to the lien of such pledge or security interest without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. Neither the resolution, nor

any other instrument by which a pledge or security interest is created need be recorded.

History

Advisory Committee Res. ACJY-85-80, § 1 (b), July 17, 1980.
CO-62-80, October 29, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Library References

Indians ☞32(4.1).
Public Utilities ☞145.

Westlaw Topic Nos. 209, 317A.
C.J.S. Public Utilities §§ 18, 65 to 67.

§ 24. Exemption from levy and execution

All property, including funds, of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against such property nor shall any judgment against the authority be a charge or lien upon its property; provided, however, that this section shall not apply to or limit the right of noteholders or bondholders to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien given by the authority on its property, including personalty, fixtures, revenues, rates, fees, or other income of any other funds.

History

CO-62-80, October 29, 1980.

Library References

Execution ☞35 to 36.
Indians ☞32(4.1).
Public Utilities ☞117 to 118, 145.
Westlaw Topic Nos. 161, 209, 317A.

C.J.S. Executions §§ 26, 48.
C.J.S. Public Utilities §§ 4, 9, 18, 65 to 67, 70 to 72.

§ 25. Liability of authority

A. The Navajo Nation Council does hereby pledge to contract and agree with any person, firm or corporation, or any federal, Navajo Nation or state agency subscribing to or acquiring notes or bonds of the authority issued for the purposes of the authority, that it obligates itself not to limit or alter the rights or powers vested in the authority until all such notes or bonds at any time issued, together with interest thereon are fully met, paid and discharged. The Navajo Nation Council does further pledge to, contract and agree with any federal agency, that in the event any such agency shall loan or contribute any funds for construction, extension, improvement or enlargement of any facilities, the Navajo Nation Council will not alter or limit the rights or powers of the authority in any manner which would be inconsistent with the continued operation and maintenance of such facilities or the extension, improvement or enlargement thereof, or which would be inconsistent with the due performance of any agreements between the Authority and any such federal agency; and the authority shall continue to have and may exercise all rights and powers under its plan of operation, so long as the same shall be necessary or desirable for the

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carrying out of its purposes and those of any federal agency loaning or contributing funds for the construction, extension, improvement or enlargement of any facilities.

B. Any agreements of the authority with the Corps of Engineers of the Department of the Army of the United States regarding construction, extension, improvements, enlargement, or protection on any facilities may be enforced against the authority in the appropriate federal district court of appropriate jurisdiction, or in the courts of the Navajo Nation according to their respective terms, including any obligation of the Authority to pay compensatory damages in the event of failure to perform.

C. The foregoing shall be construed as an explicitly limited exception to the sovereign immunity of the Navajo Nation and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation, other than those of the Authority. Otherwise, the provisions of the Navajo Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

History

CO-62-80, October 29, 1980, as amended generally by CF-6-88, February 3, 1988. **1980 Amendment.** Added subsection (A).

1988 Amendment. Added subsections (B) and (C).

Cross References

The Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

Library References

Indians ⇄32(4.1).

Public Utilities ⇄145.

States ⇄78 to 80, 190 to 193.

United States ⇄46 to 51, 124 to 127.

Westlaw Topic Nos. 209, 317A, 360, 393.

C.J.S. Public Utilities §§ 18, 65 to 67.

C.J.S. States §§ 125 to 127, 196 to 197, 202, 297 to 309, 314.

C.J.S. United States §§ 47, 70 to 72, 216 to 226, 228 to 239, 247.

§ 26. Remedies of note or bondholders

A. Subject to any contractual limitations binding upon the holders of any issue of notes or bonds, or trustees therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of any note or bond, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of notes or bonds similarly situated:

1. By mandamus or other suit, action, or proceeding at law or in equity in the Courts of the Navajo Nation to compel the authority and its board, officers, agents or employees to perform and carry out their duties and obligations under the authority's plan of operation, and their covenants and agreements with such holders;

2. By action or suit in equity to require the authority and the board thereof to account as if they were the trustees of an express trust;

3. By action, suit or other proceeding at law or in equity to have a receiver appointed and/or to enforce any pledge, lien or security agreement given in connection with the issuance of any note or bond, such enforcement right to include the power to possess, control and sell the security in accordance with the applicable security agreement, lien or pledge;

4. By action or suit in equity against the Authority or its Board to enjoin any acts or things which may be unlawful or in violation of the rights of the note or bondholders; and

5. To bring suit against the authority upon the notes or bonds, security instruments or loan contracts.

B. No remedy conferred by this section upon any holder of the notes or bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this resolution or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of the notes or bonds, or any trustee therefor, shall extend to or shall effect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any note or bondholder, or any trustee therefor, to exercise any right or power accruing upon default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon such holder maybe enforced and exercised from time to time as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be determined adversely to the holder of the note or the bond, or any trustee therefor, then and in every such case the Authority and such holder, or such trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

C. The foregoing shall be construed as a limited exception to the general principles of Sovereign Immunity and shall not be construed to waive any immunity of the Navajo Nation, nor to extend any liability to any assets, revenues or income of the Navajo Nation other than the authority. Otherwise, the provisions of the Navajo Nation Sovereign Immunity Act (as amended) shall not be deemed altered or amended.

History

ACJN-99-86 amended subsection (C).
CO-62-80, October 29, 1980.

Revision note. Slightly reworded for purposes of statutory form.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. § 551 *et seq.*

Library References

Indians ⚡32(4.1).
Mandamus ⚡63 to 73.
Public Utilities ⚡117 to 118.
States ⚡135 to 168.

United States ⚡89 to 91.
Westlaw Topic Nos. 209, 250, 317A, 360, 393.
C.J.S. Mandamus §§ 49, 51, 66, 138 to 163,
228, 235 to 237, 240, 242, 246, 248, 250.

21 N.N.C. § 26

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C.J.S. Public Utilities §§ 4, 9, 70 to 72.
C.J.S. States §§ 242 to 262.
C.J.S. United States §§ 162, 164 to 167.

§ 27. Lands in Former Joint Use Area

The Navajo Nation Council directs the Navajo Tribal Utility Authority to give consideration to the special circumstances of those lands in the Former Joint Use Area added to the Navajo Nation by the judgment of partition of February 10, 1977, in determining priorities of establishment or expansion of services.

History

CO-62-80, October 29, 1980.

Library References

Indians ⌘32(4.1).
Public Utilities ⌘114.

Westlaw Topic Nos. 209, 317A.
C.J.S. Public Utilities §§ 6 to 10, 73 to 75.

Subchapter 2. Ramah Navajo Utility Authority

History

ACS-151-86, September 23, 1986. Enactment.

§ 51. Establishment

A. There is established the Ramah Navajo Utilities Authority within the Ramah Navajo Chapter (hereinafter referred to as “authority”).

B. A board of commissioners is delegated authority and responsibility for the management and operation of the authority.

C. The principal office of the authority shall be on the Ramah Navajo Reservation, Cibola County, New Mexico.

D. The authority may also have offices at such other place or places as the board of commissioners may from time to time direct and/or deem necessary.

History

ACS-151-86, September 23, 1986.

Library References

Indians ⌘32(4.1).
Public Utilities ⌘141 to 150.
Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 52. Purposes and objectives

A. The general purpose of the authority is to provide, maintain, and establish utility services on a cost-effective basis to the residents of the Ramah Navajo Reservation and nearby communities.

B. Objectives of the Authority are:

1. To operate, maintain, and promote existing utility systems furnishing water, sewer, electric, telephone, gas, solar, and solid waste services on the Ramah Navajo Reservation.
2. To expand and execute such extensions of existing utility systems as are efficient and feasible.
3. To plan for, provide and furnish feasible utility services to all areas of the Ramah Navajo Reservation.
4. To secure funding from either private or public sources on a contractual basis for the Ramah Navajo Community and others.
5. To seek public or private utility services in the furtherance of Ramah Navajo community health and welfare.
6. To establish and maintain executive offices and facilities to employ professional staff, personnel and others necessary to accomplish the above purposes.
7. To receive contributions by gift, bequest, devise, grant and personal or mixed property from any person, firm, corporation, state, local, federal or tribal government, upon such terms and conditions as the board of commissioners shall deem reasonable and in the best interest of the authority.
8. To establish reasonable rates to apply to all operating expenses, purchase of equipment, establish reserves for future capital replacements and expansion of the utility systems.
9. To do everything necessary, proper, advisable, and/or convenient for the accomplishment of the purposes and objectives in accordance with applicable laws, rules and regulations.

History

ACS-151-86, September 23, 1986.

Revision note. Slightly reworded for purposes of form and clarity.

Library References

Indians ☞32(4.1).
Public Utilities ☞141 to 150.
Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 53. Membership of commissioners; selection; terms of office

A. The members of the board of commissioners shall be nominated, selected and approved at a regularly scheduled chapter meeting. The board of commissioners shall consist of five members, eighteen (18) years of age or older, representing the five local grazing district units; each member shall live in the grazing district unit which each represents.

B. The terms of the members of the board of commissioners shall be as follows:

1. From District Unit #1—2 years;
2. From District Unit #2—3 years;
3. From District Unit #3—3 years;

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4. From District Unit #4—4 years;
5. From District Unit #5—2 years;

Members may serve consecutive terms for an indefinite number of terms.

C. Any member of the board of commissioners can resign at any time. In such an event, a vacancy shall be declared and filled through the procedure specified above at a regularly scheduled chapter meeting.

D. No elected chapter official shall serve on the board of commissioners.

History

ACS-151-86, September 23, 1986.

Library References

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 54. Removal

A. Any member of the board of commissioners may be removed from the board for any of the following causes or reasons:

1. Failure to attend two (2) consecutive regular board meetings without reasonable written justification; such failure shall be deemed abandonment of the position on the board of commissioners.
2. Habitual use of alcohol or substance abuse which reflects upon the integrity and prestige of the board of commissioners.
3. Conviction of a felony.
4. Other just cause as determined by the board of commissioners upon approval of the Ramah Navajo Chapter.

B. Any member of the board of commissioners who is removed has the right to file a grievance petition in writing within five (5) calendar days after receipt of the notice of removal to the president of the board of commissioners.

C. Within five (5) calendar days of receiving the written grievance petition submitted by the aggrieved party, the president of the board of commissioners shall call a board meeting to address the grievance.

History

ACS-151-86, September 23, 1986.

Library References

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 55. Meetings of board of commissioners

A. The board of commissioners shall hold a minimum of twelve (12) meetings per year, and at the discretion of the president, any number of special meetings may be called as deemed necessary.

B. Three (3) members of the board of commissioners shall constitute a quorum necessary for the conduct of official business. A majority vote of the members present shall be necessary to approve any action of the board of commissioners.

C. All proceedings of the board of commissioners shall be open to the public except for discussion of personnel and/or personal matters. A meeting may be closed to discuss such matters upon the majority vote of members present at said meeting.

D. Notice of meetings shall be posted at least a week in advance in public locations throughout the community for public participation.

History

ACS-151-86, September 23, 1986.

Library References

Indians ⇌32(6).

Public Utilities ⇌150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities § 60.

§ 56. Election and duties of officers

A. At its initial board session, the members of the board of commissioners shall nominate, select and approve a president, vice-president, and secretary.

B. The elected officers shall serve according to their terms unless removed by the board of commissioners as provided for in § 54 of this Subchapter.

C. The President shall call and preside at all meetings. The president shall represent the board of commissioners at chapter meetings and other meetings on and off Ramah Navajo Reservation lands to further the purposes and objectives of the authority.

D. The vice-president shall be vested with the responsibilities and duties of the president in the event of the president's absence and as delegated.

E. The secretary shall be responsible for:

1. Maintaining the records of all proceedings of the board of commissioners;
2. Publicizing all meetings; and
3. Carrying out other delegations of authority and assignments together with the staff.

History

ACS-151-86, September 23, 1986.

Library References

Indians ⇌32(6).

Public Utilities ⇌142.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

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§ 57. Staffing and compensation

Staff shall be retained as needed to carry out the purposes and duties of the authority. Ramah Navajo Chapter programs or executive offices may detail personnel to assist the authority as staff. Appropriate competitive compensation shall be made from available sources approved by the board of commissioners and authorized by the chapter program or executive office.

History

ACS-151-86, September 23, 1986.

Library References

Indians ☞32(6).

Public Utilities ☞142, 144.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 58. Liability exemption

The private property of the authority members, officers, and staff shall be exempt from liability, damage, or injury, debt or obligation arising out of the authority management and operations.

History

ACS-151-86, September 23, 1986.

Library References

Indians ☞32(6).

Public Utilities ☞143, 145.

States ☞78 to 79.

United States ☞46 to 50.

Westlaw Topic Nos. 209, 317A, 360, 393.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 18, 65 to 67.

C.J.S. States §§ 125 to 126, 202.

C.J.S. United States §§ 47, 70 to 71.

§ 59. Conflict of interest

Members of the Board of Commissioners who have a personal business interest or close family relationship in business or personal matters brought before the board of commissioners shall not participate in proceedings of the board of commissioners regarding the matters nor shall they vote on such matters.

History

ACS-151-86, September 23, 1986.

Library References

Indians ☞32(6).

Public Utilities ☞142, 150.

Westlaw Topic Nos. 209, 317A.

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 60, 63 to 64.

§ 60. Amendment

This plan of operation may be repealed, amended and/or revised, upon recommendation of the board of commissioners, by the Ramah Chapter at a

regular chapter meeting with the approval of the Government Services Committee of the Navajo Nation Council.

History

ACS-151-86, September 23, 1986.

Revision note. This subchapter has been reworded for form and clarity.

Library References

Indians ⇨32(4.1).

Public Utilities ⇨119, 145.

Westlaw Topic Nos. 209, 317A.

C.J.S. Public Utilities §§ 15 to 18, 20, 39, 43 to 46, 49, 55 to 56, 58, 65 to 67.

Chapter 2. Diné Power Authority

Section

- 201. Creation
- 202. Name, location and place of business
- 203. Identification
- 204. Duration
- 205. Purposes
- 206. Control of authority
- 207. Board of directors; purpose; duties and powers
- 208. Indemnification of officers, employees and members of board of directors
- 209. Membership of board of directors; qualification; term of office; removal
- 210. Meetings of board of directors
- 211. Principal officers
- 212. Powers and duties
- 213. Election; term of office; qualification
- 214. Removal
- 215. Resignations; vacancies
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- 217. General Manager; functions; duties
- 218. Accounting; fiscal year
- 219. Records; inspection; audits
- 220. Exemption from judicial process
- 221. No liability of Navajo Nation; no waiver of immunity of Navajo Nation
- 222. Amendment of plan of operation

History

CJA-2-96, January 19, 1996.

Revision note. Diné Power Authority was previously codified as Chapter 2, §§ 101-123, Title 21, Navajo Nation Code.

§ 201. Creation

A. There is established an authority of the Navajo Nation to be known as the Diné Power Authority (“authority”), in order to provide an instrumentality of the Nation to participate in the development of a major coal-fired, mine-mouth steam electric generating station to be located within the extended boundaries of the Navajo Reservation in northwestern New Mexico, together with all common facilities, transmission facilities and water facilities relating thereto,

and related infrastructure, community development, communications, transportation and support service facilities and job training and other programs; and to conduct overall development and operations of high voltage transmission lines, related transmission facilities, switchyards, substations, electric generation production, renewable energy research and development, and related power and energy development on the Navajo Nation necessary to vertically and horizontally integrate the Navajo Nation's power, utility and resource infrastructure. The Authority is authorized to participate in the above activities or projects and any part thereof. The projects or activities developed, in whole or in part, may be located within or outside the extended boundaries of the Navajo Nation or on lands selected by the Navajo Nation pursuant to the Navajo-Hopi Settlement Act.¹

B. The Navajo Nation Council hereby finds and declares that the creation of the Authority is necessary and desirable in order to promote the development of the Navajo Nation's resources and new sources of electric energy and transmission capacity, to develop the social, economic and cultural well-being of Navajo People including those subjected to relocation from Hopi Partitioned Lands, to promote the economic vitality of the Navajo Nation through the production of goods and services, the employment of Navajo People and the utilization of Navajo businesses, to promote the efficient utilization and distribution of energy, to facilitate management of the Navajo Nation's interest in energy development activities and to limit the Navajo Nation's liability with respect thereto.

¹ 25 U.S.C. § 640d et seq.

History

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.

Indians ☞32(4.1).

Public Utilities ☞141 to 150.

Westlaw Topic Nos. 145, 209, 317A.

C.J.S. Electricity § 2(1), 3(1).

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 202. Name, location and place of business

A. The name of the authority, instrumentality and enterprise of the Navajo Nation formed herein shall be "Diné Power Authority".

B. The principal place and headquarters of business and the offices of the authority shall be at Window Rock, Navajo Nation, Arizona.

C. The authority may also have offices at such other place or places as the board of directors may from time to time direct or as the activities of the Authority shall require.

D. The authority is and shall remain an authority, instrumentality and enterprise of the Navajo Nation, subject at all times to the control of the oversight authorities delegated by the Nation Council, and shall not become or

attempt to become a corporation under the laws of any state or other governmental entity, without prior approval of the Navajo Nation Council.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.
Revision note. Subsection (b): Reference to post office address of principal office deleted.

1989 Amendments to Title 2 placed enterprises under the oversight of the Economic Development Committee of the Navajo Nation Council.

Library References

Electricity ☞1.
Indians ☞32(4.1).
Public Utilities ☞141 to 150.
Westlaw Topic Nos. 145, 209, 317A.

C.J.S. Electricity § 2(1), 3(1).
C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 203. Identification

The identification of this authority shall be by seal, insignia or logo as approved by the board of directors and may be changed from time to time as warranted.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.
Indians ☞32(4.1).
Public Utilities ☞141.

Westlaw Topic Nos. 145, 209, 317A.
C.J.S. Electricity § 2(1), 3(1).
C.J.S. Public Utilities §§ 60 to 61.

§ 204. Duration

The duration of the authority is perpetual.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.
Indians ☞32(4.1).
Public Utilities ☞141.

Westlaw Topic Nos. 145, 209, 317A.
C.J.S. Electricity § 2(1), 3(1).
C.J.S. Public Utilities §§ 60 to 61.

§ 205. Purposes

A. General. The purposes for which the authority is organized are as follows:

1. To participate in energy development activities and projects, directly or indirectly, independently or with other private or public entities or enterprises, in partnership, venture, or other association or arrangement of any kind, to provide for the ownership, design, construction, equipping, supply, maintenance, financing and operation of the activities and projects

and the sale, wheeling or distribution of power, energy and transmission services from the activities and projects, the mitigation of impacts of the activities and projects and the provision of community and other services and programs related thereto; and to provide or facilitate the provision of bulk power and electricity to other Navajo enterprises.

2. To provide training and employment opportunities for Navajo People and businesses in the acquisition, construction, management and operation of the activities and projects and the authority.

3. To facilitate the economic and community development of the Navajo Nation through the activities and projects to promote and enhance self-determination, to apply to and invest in the activities and projects such resources of the Navajo Nation as are contributed or conveyed to the authority for such purpose, and to facilitate the administration of the Navajo Nation's involvement with the activities and projects.

4. To provide a fair return to the Navajo Nation and the Navajo people on its investment in the authority through declaration of dividends and distribution of profits, through participation with other Navajo enterprises to promote vertical and horizontal power and energy integration, and through the delivery and transmission of low cost, safe, reliable and efficient power and electricity, that is consistent with economic development and self-determination objectives.

5. To manage and administer, in consultation with the Navajo-Hopi Land Commission, any resources or revenues acquired from the lands selected by the Navajo Nation and as developed by the authority pursuant to the Navajo-Hopi Settlement Act of 1974,¹ solely for the benefit of Navajo relocatees designated in the Act, or the transfer of any such resources or revenues to any entities established by the Navajo Nation for the purpose of administration of benefits on behalf of such relocatees.

B. Ancillary. To do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law or this plan of operation.

¹ 25 U.S.C. § 640d et seq.

History

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.

Indians ☞32(4.1).

Public Utilities ☞141 to 150.

Westlaw Topic Nos. 145, 209, 317A.

C.J.S. Electricity § 2(1), 3(1).

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 206. Control of authority

It is intended that the control and activities of this authority shall be patterned as closely as is feasible on the fines of an agency or instrumentality of

the Navajo Nation as a public government and domestic sovereign nation with board of directors performing policy-making functions for such an agency or instrumentality.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	Westlaw Topic Nos. 145, 209, 317A.
Indians ☞32(4.1).	C.J.S. Electricity § 2(1), 3(1).
Public Utilities ☞145.	C.J.S. Public Utilities §§ 18, 65 to 67.

§ 207. Board of Directors; purpose; duties and powers

A. Direction of purposes and exercise of powers by board of directors. Subject to applicable laws and regulations, the authority shall be managed by or under the direction of the board of directors which shall direct the purposes and exercise the following powers and duties:

1. The board of directors is delegated authority and responsibility for the activities of the authority.

2. The board of directors is authorized to accomplish the purposes set forth in § 205 hereof and to exercise the powers set forth in subsection (B) below without previous authorization or subsequent approval of the Navajo Nation Council and all parties dealing with the authority shall have the right to rely upon any action taken by the board of directors pursuant to this authorization.

3. The board of directors shall exercise full power and shall be responsible for participation of the authority in the activities and projects (including the custody, management, operation, inventory, and maintenance of all property and facilities of the authority relating to the activities and projects), and the taking of any and all usual, necessary and convenient actions, incidental thereto including, should it be deemed advisable or desirable, the borrowing of funds, participation in other organizational entities, and the making of contracts or commitments which it deems necessary or advisable for participation in the activities and projects.

4. The board of directors may authorize the authority to enter into a project agreement or agreements for participation in the activities and projects on such terms as it deems necessary or advisable, including without limitation as owner, co-owner, partner, venturer, shareholder, trustor, trustee, beneficiary or some other capacity, and may designate one of its members, an officer or other person as a representative of the authority on any governing or other body related to the activities and projects.

5. The board of directors shall function in much the same capacity as an appointed board of an agency or instrumentality of the Navajo Nation as a public government and domestic sovereign nation, and shall be responsible for making investment decisions subject to the limitations contained herein; for any advance of funds; for the establishment and maintenance of effective

policies; for the selection of management personnel and for continuous supervision of the activities and projects.

6. The board of directors shall exercise its authorized powers in good faith in a manner which it believes to be in the best interests of the Navajo Nation and in full compliance in accordance with the Ethics in Government Law of the Navajo Nation.

7. The board of directors shall select from its own membership a Chairman of the Board and other officers; and it shall adopt such rules as it may determine necessary for the orderly conduct of its business.

8. Minutes of each meeting shall be made available after each meeting to the Economic Development Committee of the Navajo Nation Council, and such other officials as maybe designated from time to time.

9. Directors shall be reimbursed for reasonable expenses actually and necessarily incurred in participating in all meetings, and the board of directors may, at its discretion, propose a fee to be paid to its members on any reasonable basis and not exceeding that paid by comparable enterprises' boards of directors within the Navajo Nation.

10. The chairman of the board or his or her designee shall make a formal written report to the Navajo Nation Council and the Economic Development Committee of the Navajo Nation Council not less often than semi-annually and in such report shall include a summary of the Authority's financial condition.

11. The board of directors may delegate the management of the day-to-day operation of the authority to the general manager or acting general manager, and in exercising its authority hereunder, may rely on its officers and other experts. The board of directors shall establish policies and retain responsibility for ultimate direction of the affairs of the authority but shall give usual and essential latitude to the general manager and his or her delegated employees, after establishing limitations on amounts which may be expended without specific approval of the board of Directors and any additional restraints on relationships with related persons and on other conflict of interest situations.

12. No contract or other transaction between the authority and any one of the members of the board of directors, or between the authority and any corporation, partnership, firm or other legal entity in which one or more of the members of the board of directors has a financial interest, directly or indirectly, shall be valid, for any purpose, unless the entire interest of the director or directors in such corporation, firm or other legal entity is fully disclosed to the board of directors and the proposed contract or transaction shall be approved, ratified or confirmed by the affirmative vote of at least a majority of the members of the entire authority board who are not so interested. Any director who has such a material financial interest may not vote on any matter affecting or affected by that interest, and must recuse him or herself from all discussions concerning any transaction involving that interest.

13. a. Except as provided in subdivision (b), in investing, reinvesting, purchasing, acquiring, exchanging, selling and managing the authorities investments, the board of directors shall: (1) avoid speculation (other than as may be associated with investments in the Project); and (2) comply with any standards imposed by the plan of operation or express terms of an instrument or agreement pursuant to which the assets were contributed to the authority.

b. No investment violates this subsection where it conforms to the provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to the Authority.

c. In carrying out duties under this Subsection, each director shall act as required by the standard of conduct applicable to public officials, and may rely upon others in performing the duty of director to the extent of relying on information, opinions, reports or statements including financial statements and other financial data, in each case prepared or presented by one or more officers or employees of the authority, counsel, independent accountants or other persons as to matters which the director believes to be within such person's professional or expert competence or a committee of the board of directors as to such matters the director believes to reasonably merit confidence, so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause such reliance to be unwarranted.

14. Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board of directors.

B. Enumerated powers. Subject to approvals where required and any applicable laws and regulations, and solely in furtherance of the limited purposes set forth in § 205 of this plan of operation, the authority shall have the following powers which may be exercised by or under the direction of the board of directors:

1. Territorial jurisdiction. To qualify to conduct its activities in any other jurisdiction.

2. Capacity to act. To act in any capacity as a natural person would act and to participate with others in any partnership, joint venture or other association, transaction or arrangement of any kind, whether or not participation involves sharing or delegation of control with or to others.

3. To appoint officers and agents. To elect or appoint officers, agents, engineers, auditors, accountants, appraisers, counsel and other professional consultants as in the opinion of the board of directors may be needed from time to time, and to define their duties and compensation subject to Navajo Nation law. The board of directors, at authority expense, shall require the bonding of all officers, agents or employees responsible for the handling or safeguarding of funds, property or other assets of the authority consistent

with policies applicable to officials of the Navajo Nation. The board of directors may delegate to the general manager the election and appointment of agents for operational activities.

4. To act as agent. To act in any state, territory, district, or possession of the United States, or in any foreign country for and on behalf of the authority.

5. To deal in real property. To acquire (by purchase, exchange, lease, hire or otherwise) utilize, improve, manage, operate, and to sell, lease, or mortgage, either alone or in conjunction with others having an interest therein, real estate of every kind, character and description and any interest therein, necessary or incidental to the purposes set forth in § 205 of this plan of operation, title to all such acquired real property or interest therein may be taken in the name of the authority and title to all trust or restricted real property shall be and remain in its trust or restricted status unless otherwise legally transferred to the authority; and to convey any such real property or interest therein (including without limitation any granted right-of-way for transmission lines and other facilities or operations related to the activities and projects) to the activities and projects or others pursuant to the terms of any agreement related to or in connection with the activities and projects.

6. To deal in personal property. To deal in personal property, including intangibles, generally. To acquire (by purchase, application, transfer, exchange, lease, hire or otherwise), hold, own, manage, operate, mortgage, pledge, hypothecate, exchange, sell, deal in and dispose of, either alone or in conjunction with others, personal property, including without limitation, equity securities and inventions, copyrights, trademarks and other intangibles, and interests therein, of every kind, character and description.

7. Depository. To designate and approve all depositories used for the deposit of funds of the authority.

8. To make contracts. In addition to the authority described in subsection (A)(4) of this plan of operation regarding participation in activities and project agreements, to enter into, make, perform and carry out or cancel and rescind contracts for any lawful purpose pertaining to its purposes and activities.

9. To approve budgets. To give initial approval to annual authority budgets, and to take final approval action with reference to the use of funds under the exclusive control of the authority for operating, capital and other purposes.

10. To borrow funds. With the prior approval of the Economic Development Committee of the Navajo Nation Council, to borrow money, make and issue debt securities of the authority evidencing such borrowing, and to secure payment thereof by pledge of, or lien on, all or any of its fixtures, personalty, revenues, income, contracts or other property and income (subject to any restraints thereon imposed under law) and to purchase, redeem, receive, take or otherwise acquire any of such obligations.

11. To accept grants or loans. To accept grants or loans from, and enter into contracts, agreements or other transactions with any local govern-

ment, state and federal agencies, the government of the Navajo Nation or agencies thereof, and to expend the proceeds thereof.

12. To lend money. To lend money or otherwise use its credit for the development of its activities and projects.

13. To sue or be sued. To bring suit in its name and (subject to the Navajo Nation Sovereign Immunity Act and other limitations) contractually waive its immunity to suit.

14. To create sub-entities. To create sub-divisions, sub-entities and subsidiaries for purposes of separating and furthering authority project.

C. Ancillary powers. To have and exercise all powers necessary, convenient or incidental to the authority's express powers.

D. No construction of powers as purposes. The powers enumerated herein shall not be construed as purposes but the authority shall have and exercise such powers solely in furtherance of, but not in addition to, the limited purposes set forth in this plan of operation in § 205 hereof. A declaration of the board of directors that its powers are being so exercised shall be conclusive evidence thereof on which third parties dealing with the Authority may rely.

History

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

Library References

Electricity ☞1.

Indians ☞32(6).

Public Utilities ☞141 to 150.

Westlaw Topic Nos. 145, 209, 317A.

C.J.S. Electricity § 2(1), 3(1).

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

§ 208. Indemnification of officers, employees and members of the Board of Directors

While acting in their official capacities the authority shall indemnify any officer, employee or member of the board of directors or former officer, employee or member of the board of directors, or any person who may have served at its request as an officer, employee or member of another entity, against reasonable expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she is made a party by reason of being, or having been such officer, employee or member of such entity; except in relation to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty. The authority shall also reimburse to any officer, employee or member of the board of directors or such other entity, reasonable costs of settlements of any such action, suit or proceeding if it shall be found by a majority of the board of directors other than directors involved in the matter of controversy (whether or not a quorum exists), that it is

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in the best interest of the authority and the Navajo Nation that such settlement be made and that such person was not guilty of negligence or misconduct. Such rights of indemnification and reimbursement shall not be deemed exclusive of any other rights which such person may be entitled to receive, but shall be subject to any applicable limitation thereon.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(6).	C.J.S. Indians § 51.
Public Utilities ↻144.	C.J.S. Public Utilities § 63.
Westlaw Topic Nos. 145, 209, 317A.	

§ 209. Membership of Board of Directors; qualifications; term of office; removal

A. Number. The board of directors shall consist of seven (7) persons. All members of the board of directors shall be appointed by the President of the Navajo Nation and shall be confirmed by the Economic Development Committee of the Navajo Nation Council.

B. Qualifications. The members of the board of directors shall be called directors, and shall collectively have the following qualifications:

1. One (1) director shall have an accounting or finance background.
2. One (1) director shall have an engineering background.
3. At least four (4) Directors shall be members of the Navajo Nation, of whom at least one shall reside in areas impacted or otherwise affected by the Navajo-Hopi Land Dispute.
4. No director shall be an employee of the Bureau of Indian Affairs.
5. One (1) director shall be a member of the Economic Development Committee of the Navajo Nation Council and shall serve as an ex-officio member who shall be a non-voting member, but shall have a right to participate in all meetings of the board.
6. One (1) director shall be a member of the Resources Committee of the Navajo Nation Council and shall serve as an ex-officio member who shall be a non-voting member, but shall have a right to participate in all meetings of the board.
7. One (1) director may possess sufficient qualifications so as to meet more than one requirement as set out in 1 through 4 above.
8. The directors appointed by the Economic Development Committee and the Resources Committee of the Navajo Nation Council shall serve at the discretion of the respective committees.

C. Term of Office. Directors shall be appointed for five (5) year, staggered terms and shall hold office until the qualification and selection of their successors.

D. Vacancy. Vacancies on the board of directors may be filled by the President of the Navajo Nation with the confirmation of the Economic Development Committee of the Navajo Nation Council for the unexpired term of the vacant office.

E. Removal. Members of the board of directors may be removed with or without cause only upon recommendation by the President of the Navajo Nation with the approval of the Economic Development Committee of the Navajo Nation Council.

History

CJA-2-96, January 19, 1996.

CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.

Indians ☞32(6).

Public Utilities ☞142.

Westlaw Topic Nos. 145, 209, 317A.

C.J.S. Electricity § 2(1), 3(1).

C.J.S. Indians § 51.

C.J.S. Public Utilities §§ 63 to 64.

§ 210. Meetings of Board of Directors

A. Annual meeting. The annual meeting of the board of directors shall be held at such times as the board of directors shall designate as the principal place of business, or at such other place as the board of directors shall fix. No notices shall be required for annual meetings.

B. Regular meetings. The board of directors shall meet at least quarterly upon notice fixing the time and place.

C. Special meetings. Special meetings of the Board of Directors may be held upon notice given by the chairperson of the board, or secretary, or by majority of the board of directors at such place as the board of directors shall direct or as shall be fixed by the notice.

D. Notice. Notice of meetings, except for that of the annual meeting, stating the time, date, and place shall be given in writing by letter, telegram, radiogram or facsimile transmission properly addressed to each member according to the latest available Authority records, not later than seven (7) days nor more than thirty (30) days immediately preceding the meeting, excluding the day of the meeting.

E. Waiver of Notice. Notice may be waived in writing signed by the member or members entitled to such notices whether before or after the time stated therein, and such waiver shall be deemed equivalent to the giving of such notice. Attendance of any member at a special meeting shall constitute a waiver of notice.

F. Quorum. A majority of the members of the board of directors shall constitute a quorum for the transaction of any business. The act of the

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PUBLIC UTILITIES AND COMMUNICATIONS

majority of the members participating and voting at a meeting at which a quorum is present shall be the act of the board of directors.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	C.J.S. Electricity § 2(1), 3(1).
Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞150.	C.J.S. Public Utilities § 60.
Westlaw Topic Nos. 145, 209, 317A.	

§ 211. Principal officers

The principal officers of the authority shall consist of the following:

- A. Chairperson of the board of directors.
- B. The general manager, who shall not be a member of the board of directors.
- C. Secretary, who need not be a member of the board of directors.
- D. Treasurer, who need not be a member of the board of directors.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	C.J.S. Electricity § 2(1), 3(1).
Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 145, 209, 317A.	

§ 212. Powers and duties

All officers and agents of the authority shall have the following duties and such other duties as may be provided in any rules or determined by or pursuant to resolution of the board of directors, not inconsistent with this plan of operation:

A. The chairperson of the board. The chairperson of the board of directors shall be chosen from among the members of the board of directors, shall preside at all meetings of the board of directors if present, and shall, in general, perform all duties incident to the office of the chairperson of the board and chief executive officer and such other duties as, from time to time, may be assigned the chairperson of the board by the board of directors. If a vice-chairperson is elected, he or she shall act in the capacity of the chairperson of the board in the absence of the latter, and shall discharge any other duties designated by the chairperson of the board.

B. The secretary. The secretary shall keep, or cause to be kept the minutes of the meeting of the board of directors. The secretary shall see that all notices

are duly given in accordance with provisions of this chapter. The secretary shall be custodian of the identification and records, and in general, shall perform all duties incident to the office of the secretary, and such other duties as may, from time to time, be assigned to him or her by the board of directors, or the chairperson of the board.

C. The treasurer. The treasurer shall be the financial officer of the authority and shall have charge and custody of, and be responsible for all funds of the authority, and shall deposit such funds in such banks, trust companies, or other depositories as shall have been approved by the board of directors. The treasurer shall receive and give receipts for monies due and payable to the authority from any source whatsoever; and, in general, shall perform all duties incident to the office of the treasurer and such other duties as, from time to time, may be assigned by the board of directors or the chairperson of the board. The treasurer shall render to the chairperson of the board and the board of directors, whenever the same may be required, an account of all his or her transactions as Treasurer and of the financial condition of the authority. The treasurer shall, at the expense of the authority, give a bond for the faithful performance of discharge of his or her duties in such amount, so conditioned, and with such surety or sureties as the board of directors may require.

D. The general manager. The general manager shall be the principal administrative and chief operating officer of the authority and shall have direction of all parts of the actual operations. The general manager shall report to the board of directors and perform all other functions and duties specified in § 217 of this plan of operation for the general manager.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	C.J.S. Electricity § 2(1), 3(1).
Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞145.	C.J.S. Public Utilities §§ 18, 65 to 67.
Westlaw Topic Nos. 145, 209, 317A.	

§ 213. Election; term of office; qualification

The officers, with the exception of the general manager, shall be chosen annually by the board of directors at its annual meeting, or as soon after such annual meeting as newly appointed directors shall have qualified. The term of the general manager shall be determined by the board of directors at the time of his appointment, subject to the provisions of § 217 hereof. Each officer shall hold office until his or her successor is chosen and qualified, or until death, or until he or she shall have resigned, or shall have been removed in the manner provided in § 214 herein.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

21 N.N.C. § 213

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Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(6).	C.J.S. Indians § 51.
Public Utilities ↻142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 145, 209, 317A.	

§ 214. Removal

Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interest of the authority will be served thereby, but in the absence of dereliction in duty, negligence or malfeasance in office, or any other good cause shown, such removal shall be without prejudice to the contract rights, if any, of the persons who are removed.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(6).	C.J.S. Indians § 51.
Public Utilities ↻142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 145, 209, 317A.	

§ 215. Resignations; vacancies

Any officer may resign at any time by giving written notice to the board of directors, or to the chairperson of the board, or secretary, such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy in any office because of death, resignation, removal, or any other cause shall be filled for the unexpired portion of the term in the manner prescribed herein for election or appointment to such office.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(6).	C.J.S. Indians § 51.
Public Utilities ↻142.	C.J.S. Public Utilities §§ 63 to 64.
Westlaw Topic Nos. 145, 209, 317A.	

§ 216. Other officers and agents

The board of directors or the chairperson of the board may appoint such other officers and agents deemed necessary or expedient, and may determine the duties of them, as well as the terms of their holding office.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	C.J.S. Electricity § 2(1), 3(1).
Indians ☞32(6).	C.J.S. Indians § 51.
Public Utilities ☞142, 145.	C.J.S. Public Utilities §§ 18, 63 to 67.
Westlaw Topic Nos. 145, 209, 317A.	

§ 217. General Manager; functions; duties

A. The general manager may be employed under a written employment contract, specifying all employment benefits provided, for a term not to exceed five (5) years; the employment contract may be renewed by the board of directors. The general manager shall be responsible to and serve at the pleasure of the board of directors, notwithstanding the terms of the employment contract and this plan of operation.

B. The function of the general manager shall be analogous to that of the chief operations officer of an agency or instrumentality of a state or local government or a sovereign nation. The general manager shall, among other things, execute the general policies formulated by the board of directors, provide annual reports to the board of directors, and may organize the operation of the authority into departments each with its own specific duties and responsibilities.

C. The general manager shall exercise his or her best judgment in the determination of the ways and means by which general policy set forth by the board of directors is to be effectuated.

D. The general manager shall be the active executive of the authority and shall be responsible for the preparation of plans and annual budgets; shall initiate financial audits upon board approval, and shall make suggestions as to policies and any proposals for improvements.

E. The general manager shall have the full authority to hire and fire, subject of authority policies, and exert control over all employees of the authority and shall be responsible for all department heads or other executives performing their assignments.

F. The general manager shall be responsible for the supervision of the employees and agents of the authority, and their performance, in respect to all such matters such as conformance to approved budgets, standards, and policies, productivity, program inspection, cost control, employee relations and evaluations and in-service training.

G. The general manager shall render regular reports to the board of directors and perform all other functions and duties specified in this plan of operation.

21 N.N.C. § 217

PUBLIC UTILITIES AND COMMUNICATIONS

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(6).	C.J.S. Indians § 51.
Public Utilities ↻142, 145.	C.J.S. Public Utilities §§ 18, 63 to 67.
Westlaw Topic Nos. 145, 209, 317A.	

§ 218. Accounting; fiscal year

The accounting system for the authority shall be maintained in accordance with generally accepted accounting principles applicable to its activities and projects. Financial statements shall be provided to the president of the Navajo Nation and the board of directors on a regular basis. The fiscal year of the authority shall be determined by the board of directors.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ↻1.	Westlaw Topic Nos. 145, 209, 317A.
Indians ↻32(4.1).	C.J.S. Electricity § 2(1), 3(1).
Public Utilities ↻116.	C.J.S. Public Utilities § 76.

§ 219. Records; inspection; audits

The books, records and property of the authority shall be available for inspection at all reasonable times and upon notice by authorized representatives of the Navajo Nation, and or by the president of the Navajo Nation or the Economic Development Committee of the Navajo Nation Council or the Navajo Nation Council. The accounts and records of the authority shall be audited at the close of each fiscal year in accordance with the provisions of § 207(B) of this plan of operation. Copies of such audit reports shall be furnished to the parties receiving copies of the financial statements and to the appropriate Navajo Nation Council standing committees.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ↻1.	Westlaw Topic Nos. 145, 209, 317A.
Indians ↻32(4.1).	C.J.S. Electricity § 2(1), 3(1).
Public Utilities ↻116.	C.J.S. Public Utilities § 76.

§ 220. Exemption from judicial process

All property, including funds of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall

issue against such property; provided; however, that this section shall not apply to or limit the right of participants in any activity or project agreement or any holders of contractual obligations of the authority or the activities or projects to pursue any remedies or rights, including, but not limited to, possession, execution, attachment, and sale of security, for the enforcement of any pledge or lien given by the authority on its property, including personalty, fixtures, revenues, rates, fees, or other income or funds.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Library References

Electricity ☞1.	C.J.S. Electricity § 2(1), 3(1).
Execution ☞35 to 36.	C.J.S. Executions §§ 26, 48.
Indians ☞32(4.1).	C.J.S. Public Utilities §§ 4, 9, 18, 65 to 67, 70 to 72.
Public Utilities ☞117 to 118, 145.	
Westlaw Topic Nos. 145, 161, 209, 317A.	

§ 221. No liability of Navajo Nation; no waiver of immunity of Navajo Nation

The acts or omissions of the authority (whether pursuant to the powers enumerated in this plan of operation or otherwise) shall not create any liability on the part of the Navajo Nation, nor create any obligation, indebtedness, or recourse to the assets of the Navajo Nation (whether denominated assets, revenues or income of the Navajo Nation) and only the assets, revenue and income held by or in the name of the authority shall be subject (to the extent otherwise permitted herein and by law) to the debts, obligations or other liabilities created or incurred by the authority.

Any waiver of immunity of or by the authority shall not be construed to waive any immunity of the Navajo Nation or other covered persons and entities or extend any liability to any assets, revenues, or income of the Navajo Nation, nor shall the provisions of the Navajo Nation Sovereign Immunity Act (as amended) be deemed altered or amended by this plan of operation.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Cross References

Navajo Sovereign Immunity Act, see 1 N.N.C. §§ 551-555.

Library References

Electricity ☞12 to 20.	Westlaw Topic Nos. 145, 209, 317A, 360, 393.
Indians ☞32(4.1).	C.J.S. Electricity §§ 38, 40 to 60, 62 to 64, 66(1, 2, 3), 67 to 68, 70 to 75.
Public Utilities ☞143, 145.	C.J.S. Public Utilities §§ 18, 65 to 67.
States ☞191 to 193.	C.J.S. States §§ 196 to 197, 202, 297 to 309, 314.
United States ☞125 to 127.	

21 N.N.C. § 221

PUBLIC UTILITIES AND COMMUNICATIONS

C.J.S. United States §§ 217 to 226, 228 to 239, 247.

§ 222. Amendment of Plan of Operation

This plan of operation may be amended from time to time by resolution duly adopted by the Navajo Nation Council upon recommendation of the Economic Development Committee of the Navajo Nation Council.

History

CJA-2-96, January 19, 1996.
CN-87-85, Exhibit A, November 5, 1985.

Cross References

Navajo Nation Enterprises, see 2 N.N.C. § 724(E)(1).

Library References

Electricity ↻1.	C.J.S. Electricity § 2(1), 3(1).
Indians ↻32(4.1).	C.J.S. Public Utilities §§ 15 to 18, 20, 39, 43
Public Utilities ↻119, 145.	to 46, 49, 55 to 56, 58, 65 to 67.
Westlaw Topic Nos. 145, 209, 317A.	

Chapter 3. Transportation Systems

Subchapter 1. Buses

Section

- 301. Operation generally
- 302. Use of bus
- 303. Route and schedule of bus
- 304. Operator of bus—Qualifications
- 305. Duties
- 306. Compensation
- 307. Fare; fare tickets; identification cards
- 308. Conduct of passengers
- 309. Certification of safety
- 310. Service and maintenance
- 311. Insurance

History

Revision note. Transportation System was previously codified at Chapter 3, §§ 201-211, Title 21, Navajo Nation Code.

Subchapter 3. [Reserved]

Subchapter 1. Buses

§ 301. Operation generally

A scheduled bus transportation system shall be operated between Window Rock, Navajo Nation (Arizona) and Gallup and Wingate Village, New Mexico.

History

CAU-56-60, August 19, 1960.

Library References

Automobiles ☞59.	C.J.S. Aeronautics and Aerospace § 236.
Carriers ☞262.	C.J.S. Carriers §§ 500 to 501.
Counties ☞22.	C.J.S. Counties §§ 41 to 42.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 112, 114 to 118, 120, 137 to 138.
Municipal Corporations ☞273.5, 718.	C.J.S. Municipal Corporations §§ 1547 to 1548.
Westlaw Topic Nos. 48A, 70, 104, 209, 268.	

§ 302. Use of bus

A. The principal use of the bus shall be the transporting of Tribal officials and employees commuting between Wingate Village and Gallup, New Mexico, who are employed at Window Rock, Navajo Nation (Arizona) and the vicinity, and the employees of the Bureau of Indian Affairs and the United States Public Health Service who commute between Wingate Village and Gallup, New Mexico.

B. The secondary use of the bus shall be the transporting of groups of people on special occasions during the time the bus is not required for its principal use. Such trips shall be scheduled in advance and approved by the Director of Division of General Services.

History

ACS-167-60, § I, September 14, 1960.

Cross References

Division of General Services, see Title 2, Navajo Nation Code.

Library References

Automobiles ☞59.	C.J.S. Aeronautics and Aerospace § 233.
Carriers ☞233.	C.J.S. Carriers § 492.
Counties ☞22.	C.J.S. Counties §§ 41 to 42.
Indians ☞32(4.1).	C.J.S. Motor Vehicles §§ 112, 114 to 118, 120, 137 to 138.
Municipal Corporations ☞718.	C.J.S. Municipal Corporations §§ 1547 to 1548.
Westlaw Topic Nos. 48A, 70, 104, 209, 268.	

§ 303. Route and schedule of bus

A. The bus shall not deviate from the following route: From the Motor Pool down Window Rock Boulevard to the Fort Defiance junction, left to the Ganado—Gallup—Fort Defiance junction, right to the warehouse area, return

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to the Ganado—Gallup—Fort Defiance junction, proceeding east on Arizona Highway 3—New Mexico Highway 68—to Highway 491 junction, taking Highway 491 to Gallup, then east on Highway 66 to Wingate Village and return on the same route.

B. The bus schedule shall be established to assure its arrival in Window Rock at 7:50 a.m. each day. Departure from Window Rock shall be 5:15 p.m. each day. A schedule of arrival and departure times from the following stops shall be available to all passengers.

C. Passengers shall embark and disembark only at the following regularly scheduled points:

1. Motor Pool—Window Rock
2. Window Rock Boulevard northwest entrance to the main administration building
3. Warehouse entrance—Fairgrounds
4. U.S. Highway 491—State 68 junction
5. North turnoff—Highway 491 to Gamerco
6. Intersection at Post Office, Gallup
7. East “Y” Highway 66, Gallup
8. Rehoboth turnoff—Highway 66
9. Office—Wingate Village

D. Changes in the route, schedule or stops shall be authorized in writing by the Director of the Division of General Services.

History

ACS-167-60, § II, September 14, 1960.

Library References

Automobiles ⇨59.

Carriers ⇨233.

Counties ⇨22.

Indians ⇨32(4.1).

Municipal Corporations ⇨718.

Westlaw Topic Nos. 48A, 70, 104, 209, 268.

C.J.S. Aeronautics and Aerospace § 233.

C.J.S. Carriers § 492.

C.J.S. Counties §§ 41 to 42.

C.J.S. Motor Vehicles §§ 112, 114 to 118, 120, 137 to 138.

C.J.S. Municipal Corporations §§ 1547 to 1548.

§ 304. Operator of the bus—Qualifications

A.¹ The operator of the bus shall have the following qualifications:

1. Be an employee of the Navajo Nation; and
2. Have valid chauffeur’s licenses issued by the States of New Mexico and Arizona.

¹ So in original; no subsec. (B) was enacted.

History

ACS-167-60, § III, September 14, 1960.

Library References

Automobiles ☞131, 135.	C.J.S. Indians § 51.
Indians ☞32(6).	C.J.S. Officers and Public Employees §§ 21 to
Officers and Public Employees ☞18 to 25.	23, 26 to 27, 34 to 36, 59 to 60, 64, 120.
Westlaw Topic Nos. 48A, 209, 283.	

§ 305. Duties

A.¹ The operator of the bus shall have the following duties:

1. Drive the bus in lieu of the fare charged passengers.
2. Be responsible for the sale of fare tickets and the preparation of reports until other arrangements are necessary.
3. Be in complete charge of the bus with authority to expel disagreeable passengers.
4. Not operate the bus at speeds that exceed 50 miles per hour and have it fully under control at all times.
5. Be responsible for the proper maintenance of the bus.
6. Be responsible for obtaining monthly safety inspection of the bus by the Navajo Nation Police Department.
7. Park the bus overnight and over weekends at Wingate Village in a location that will assure adequate protection of the vehicle.

¹ So in original; no subsec. (B) was enacted.

History

ACS-167-60, § II, September 14, 1960. paragraph. Language substituted for such deleted paragraph is now set out in § 306 of this title.
1961 Amendment. ACJY-109-61, § 2, amended this section by deleting the first numbered

Library References

Automobiles ☞114 to 122.	C.J.S. Carriers §§ 2, 158 to 161, 492 to 502,
Carriers ☞233 to 269.	504 to 506, 517, 577.
Indians ☞32(6).	C.J.S. Indians § 51.
Officers and Public Employees ☞110.	C.J.S. Motor Vehicles §§ 38 to 40, 105 to 113,
Westlaw Topic Nos. 48A, 70, 209, 283.	139 to 149, 154.
C.J.S. Aeronautics and Aerospace §§ 179, 233	C.J.S. Officers and Public Employees §§ 234
to 236, 272 to 273.	to 245.

§ 306. Compensation

The operator of the bus shall be paid at his or her regular salary rate and his or her time shall be reported by the head of the motor pool. The driving time shall be considered to be one (1) hour for a one-way trip between Window Rock and Wingate Village. The operator shall not be paid in excess of two (2) hours time each day unless he or she is requested to make special trips during off-duty hours.

History

ACJY-109-61, § 2, July 21, 1961.
 ACS-167-60, September 14, 1960.

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Library References

Indians ☞32(6).

Officers and Public Employees ☞93.

Westlaw Topic Nos. 209, 283.

C.J.S. Indians § 51.

C.J.S. Officers and Public Employees §§ 270 to 271.

§ 307. Fare; fare tickets; identification cards

A. The fare shall be thirty cents (30¢) for each passenger which shall be collected by the driver for each one-way trip on the bus.

B. The passengers shall purchase fare tickets from the driver. The fare tickets shall be assembled in books of ten (10) and sold for three dollars (\$3.00) per book on a cash basis only.

C. The driver shall obtain a supply of fare ticket books from the controller who shall charge him or her therewith. The driver shall deliver daily to the controller the funds collected from the sale of fare ticket books.

D. The driver shall prepare a daily report on the sale of fare tickets, the number of passengers and other pertinent data. One copy of the report shall be provided the Controller which shall be attached to the official receipt. One copy shall be provided the Division of General Services Director. The tickets collected from the passengers shall be attached to the copy of the report provided the Division of General Services Director.

E. The Controller shall credit the driver for tickets sold after the funds have been delivered to the Controller as evidenced by the official receipt.

F. Authorized passengers shall be issued an identification card by the Division of General Services Director of the Navajo Nation (or a designee), and such passengers shall be required to show their identification card each time they board the bus.

History

ACJY-109-61, July 21, 1961.

ACS-167-60, § VI, September 14, 1960.

1961 Amendment. ACJY-109-61, § 3, amended subsections (A) and (B) by increasing fare from 20 cents to 30 cents and cost of books of

tickets from two dollars (\$2.00) to three dollars (\$3.00), and added subsection (F).

Revision note. Slightly reworded for purposes of form and clarity.

Cross References

Division of General Services, see Title 2 of the Navajo Nation Code.

Library References

Automobiles ☞114 to 122.

Carriers ☞236 to 269.

Counties ☞22.

Indians ☞32(4.1).

Municipal Corporations ☞718.

Officers and Public Employees ☞110.

Westlaw Topic Nos. 48A, 70, 104, 209, 268, 283.

C.J.S. Aeronautics and Aerospace §§ 234 to 236.

C.J.S. Carriers §§ 158 to 161, 493 to 502, 504 to 506, 577.

C.J.S. Counties §§ 41 to 42.

C.J.S. Motor Vehicles §§ 38 to 40, 105 to 113, 139 to 149, 154.

C.J.S. Municipal Corporations §§ 1547 to 1548.

C.J.S. Officers and Public Employees §§ 234 to 245.

§ 308. Conduct of passengers

The conduct of passengers shall at all times be such that the safety, moral and general welfare of all passengers will not be jeopardized.

History

ACS-167-60, § V, September 14, 1960.

Library References

Automobiles ☞114 to 120.

Carriers ☞236.

Counties ☞106.

Indians ☞32(4.1).

Municipal Corporations ☞718.

Westlaw Topic Nos. 48A, 70, 104, 209, 268.

C.J.S. Aeronautics and Aerospace § 234.

C.J.S. Carriers § 493.

C.J.S. Counties § 147.

C.J.S. Motor Vehicles §§ 38 to 40, 105 to 113, 139 to 149.

C.J.S. Municipal Corporations §§ 1547 to 1548.

§ 309. Certification of safety

Written certification of the safety of the bus shall be provided by the Navajo Nation police department and shall be displayed in the bus.

History

ACS-167-60, § III(8), September 14, 1960.

Library References

Automobiles ☞65 to 87.

Counties ☞22.

Indians ☞32(4.1).

Municipal Corporations ☞273.5.

Westlaw Topic Nos. 48A, 104, 209, 268.

C.J.S. Counties §§ 41 to 42.

C.J.S. Motor Vehicles §§ 5, 105 to 113, 156, 158, 161, 171 to 174, 178 to 202, 205 to 206, 211 to 214, 216 to 220, 222, 241, 248 to 249, 1296.

§ 310. Service and maintenance

All service and maintenance of the bus shall be provided through the Navajo Nation motor pool.

History

ACS-167-60, § III(7), September 14, 1960.

Library References

Automobiles ☞114.

Counties ☞22.

Indians ☞32(4.1).

Municipal Corporations ☞718.

Westlaw Topic Nos. 48A, 104, 209, 268.

C.J.S. Counties §§ 41 to 42.

C.J.S. Motor Vehicles §§ 146 to 149.

C.J.S. Municipal Corporations §§ 1547 to 1548.

§ 311. Insurance

Insurance for the bus shall be provided under the comprehensive automobile insurance policy that provides insurance protection for all other vehicles owned by the Navajo Nation.

History

ACS-167-60, § VI, September 14, 1960.

Library References

Automobiles ⇨114.

Counties ⇨22.

Indians ⇨32(4.1).

Insurance ⇨2646.

Municipal Corporations ⇨718.

Westlaw Topic Nos. 48A, 104, 209, 217, 268.

C.J.S. Counties §§ 41 to 42.

C.J.S. Motor Vehicles §§ 146 to 149.

C.J.S. Municipal Corporations §§ 1547 to 1548.

Subchapter 3. [Reserved]

§§ 351 to 400. [Reserved]

Chapter 4. Navajo Paragon Generating Station Policy Board and Task Force

Section

401. Establishment

402. Purposes

403. Powers

404. Establishment of NPGS Task Force

405. Term of operation

406. Purposes of NPGS Task Force

407. Powers of the NPGS Task Force

408. Conflict of interest

409. Finance

410. Amendments

History

Revision note. Navajo Paragon Generating Station Policy Board and Task Force was previously codified as Title 21, Chapter 4, §§ 301-310, Navajo Nation Code.

§ 401. Establishment

The Navajo Paragon Generating Station Policy Board (hereinafter “NPGS policy board”) was established by the Executive Order of February 25, 1985, consisting of fifteen (15) regular voting members appointed by and serving at the pleasure of the President of the Navajo Nation upon confirmation by the Economic Development Committee of the Navajo Nation Council.

History

ACJN-110-85, June 13, 1985.

ACAP-60-85, April 11, 1985.

1985 amendment. Substituted “fifteen (15) regular voting members” for “twelve (12) regular voting members”.

Library References

Electricity ⇨9.

Indians ⇨32(4.1).

Public Utilities ⇨141 to 150.

States ⇨45 to 52.

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United States ⇌30 to 35.
Westlaw Topic Nos. 145, 209, 317A, 360, 393.
C.J.S. Electricity §§ 5, 16, 50.
C.J.S. Public Utilities §§ 18, 60 to 61, 63 to 68, 78.

C.J.S. States §§ 61, 79 to 80, 82 to 85, 87, 91 to 94, 96, 98 to 103, 123, 136.
C.J.S. United States §§ 23, 49 to 51, 53, 56 to 57, 162 to 163.

§ 402. Purposes

The NPGS policy board is established to assess the ongoing development of talks with other NPGS participants and to advise the Office of the President and Vice-President, the Government Services Committee, the Navajo-Hopi Land Commission and the Navajo Nation Council on policy direction for the Navajo Nation in this project, including advice on the desired organization within the Navajo government to develop further analysis of the proposed enterprise and the ways and means to fund such effort.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Library References

Electricity ⇌9.
Indians ⇌32(4.1).
Public Utilities ⇌141.
States ⇌45.
United States ⇌30.

Westlaw Topic Nos. 145, 209, 317A, 360, 393.
C.J.S. Electricity §§ 5, 16, 50.
C.J.S. Public Utilities §§ 60 to 61.
C.J.S. States §§ 79, 82, 136.
C.J.S. United States § 49.

§ 403. Powers

A. The NPGS policy board shall have all powers necessary and proper to carry out the purposes set forth in § 402 of this plan of operation.

B. Enumerated powers of the NPGS policy board shall include the power to:

1. Establish subcommittees to further any purpose of the policy board.
2. Hold meetings at the call of the chairperson of the policy board, the President or vice-president of the Navajo Nation, or upon written request of any seven (7) members of the policy board. A quorum shall consist of seven (7) members for the purposes of conducting policy board business.
3. Establish this plan of operation for the Navajo Paragon Generating Station Task Force (hereinafter "NPGS task force").
4. Conduct all proper and necessary business of the policy board by written resolution adopted by a majority of the members present and duly certified by the presiding officers.

History

ACJN-110-85, June 13, 1985.
ACAP-60-85, April 11, 1985.

1985 amendment. Subsection (b)(2): Substituted "seven (7) members" for "five (5) members" in the first and second sentences.

Library References

Electricity ⇌9.

Indians ⇌32(4.1).

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Public Utilities ⇌145.

States ⇌65.

United States ⇌40.

Westlaw Topic Nos. 145, 209, 317A, 360, 393.

C.J.S. Electricity §§ 5, 16, 50.

C.J.S. Public Utilities §§ 18, 65 to 67.

C.J.S. States § 120.

C.J.S. United States §§ 58 to 60.

§ 404. Establishment of NPGS Task Force

The Advisory Committee of the Navajo Nation Council established the plan of operation for the NPGS task force.

History

ACAP-60-85, April 11, 1985.

Library References

Electricity ⇌9.

Indians ⇌32(4.1).

Public Utilities ⇌145.

States ⇌65.

United States ⇌40.

Westlaw Topic Nos. 145, 209, 317A, 360, 393.

C.J.S. Electricity §§ 5, 16, 50.

C.J.S. Public Utilities §§ 18, 65 to 67.

C.J.S. States § 120.

C.J.S. United States §§ 58 to 60.

§ 405. Term of operation

The duration of the NPGS Task Force shall be continuous until terminated by resolution of the Navajo Nation Council or by executive order of the Office of the President.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Library References

Electricity ⇌9.

Public Utilities ⇌142.

States ⇌51.

United States ⇌35.

Westlaw Topic Nos. 145, 317A, 360, 393.

C.J.S. Electricity §§ 5, 16, 50.

C.J.S. Public Utilities §§ 63 to 64.

C.J.S. States §§ 61, 87, 92.

C.J.S. United States §§ 23, 53, 56 to 57.

§ 406. Purposes of NPGS Task Force

The purposes of the NPGS task force shall be:

A. To provide direction, analysis and management expertise to determine the viability of, financeability of, structure of, and means of participation by the Navajo Nation in the proposed New Mexico Generating Station at the Paragon Ranch area.

B. To provide coordination, analysis, and professional direction to the negotiation of leases or contracts for land, water and coal, including valuation, resource assessment and necessary and proper lease terms unrelated to the resources (e.g., business and employment preference, scholarship fund, etc.) to the extent necessary to assure they are consistent with the proposed NPGS Project.

C. To provide coordination, development, implementation, and delivery of a comprehensive community information and planning effort, to include identification and mitigation of plant and project impacts.

D. To provide comprehensive assessment of all regulatory and legislative issues germane to Navajo Nation participation in the NPGS Project, including a detailed plan of strategy with draft legislation where appropriate.

E. To provide coordination with and direction to intergovernmental relations between the Navajo Nation and the various state and federal agencies and legislatures.

F. To provide coordination and direction to the analysis, review, and development of the legal organization and business structure of the NPGS Project and the evolution of the entity which will maximize the Navajo Nation interest in such enterprise.

G. To provide budgetary, financial, contracting, and accounting reporting as required to all Navajo Nation government or other offices or agencies, including any consultant contract requirements, upon approval by the Budget and Finance Committee of the Navajo Nation Council, and to assure the fiscal accountability of the task force.

H. To develop the information and analysis necessary to provide recommendations concerning the participation of the Navajo Nation in all aspects of this project.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Revision note. Slightly reworded for purposes of form and clarity.

Cross References

Government Services Committee authority, see 2 N.N.C. § 343(B)(4).

Library References

Electricity ☞9.

Indians ☞32(4.1).

Public Utilities ☞141.

States ☞45.

United States ☞30.

Westlaw Topic Nos. 145, 209, 317A, 360, 393.

C.J.S. Electricity §§ 5, 16, 50.

C.J.S. Public Utilities §§ 60 to 61.

C.J.S. States §§ 79, 82, 136.

C.J.S. United States § 49.

§ 407. Powers of the NPGS Task Force

The NPGS task force shall have the following powers:

A. To fulfill the purposes set out in § 406.

B. To establish such offices for conducting its activities within or without the Navajo Nation as are necessary and proper to its purposes under this plan of operation.

C. To contract for services necessary to fulfill the purposes set out in § 406.

D. To provide reimbursement to NPGS Policy Board members for costs to attend meetings of the policy board at which a quorum is present, including all travel and per diem costs.

E. To provide for reimbursement to NPGS policy board members for all expenses incurred in the discharge of their official duties as policy board

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members other than duly called meetings, when done with the approval of the President of the Navajo Nation.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Library References

Electricity ↻9.	Westlaw Topic Nos. 145, 209, 317A, 360, 393.
Indians ↻32(4.1).	C.J.S. Electricity §§ 5, 16, 50.
Public Utilities ↻145.	C.J.S. Public Utilities §§ 18, 65 to 67.
States ↻65.	C.J.S. States § 120.
United States ↻40.	C.J.S. United States §§ 58 to 60.

§ 408. Conflict of interest

Members of the NPGS policy board or staff of the NPGS task force shall not use their position or influence to personal advantage or the advantage of any other individuals or organization in a manner which would disadvantage the NPGS policy board, the NPGS task force, the Navajo Nation, its subdivisions or instrumentalities. A member, officer, or employee shall be disqualified from dealing in any matter where there exists a conflict of interest.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Library References

Electricity ↻9.	Westlaw Topic Nos. 145, 209, 317A, 360, 393.
Indians ↻32(6).	C.J.S. Electricity §§ 5, 16, 50.
Public Utilities ↻142.	C.J.S. Indians § 51.
States ↻48.	C.J.S. Public Utilities §§ 63 to 64.
United States ↻35.	C.J.S. States §§ 83, 91.
	C.J.S. United States §§ 23, 53, 56 to 57.

§ 409. Finance

The NPGS task force may pursue, with approval from the Budget and Finance Committee, funding for its activities from all available sources, including but not limited to, banks, profit and non-profit institutions, individuals, federal and state agencies, foreign investors, debt financing, and any other financing alternative allowed by law.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Cross References

Government Services Committee authority, see 2 N.N.C. §§ 185(B) and § 343(B)(4).

Library References

Electricity ↻9.	United States ↻40, 81.
Indians ↻32(4.1).	Westlaw Topic Nos. 145, 209, 317A, 360, 393.
Public Utilities ↻145.	C.J.S. Electricity §§ 5, 16, 50.
States ↻65, 122.	

C.J.S. Public Utilities §§ 18, 65 to 67.
 C.J.S. States §§ 120, 224.
 C.J.S. United States §§ 58 to 60, 154.

§ 410. Amendments

The plan of operation of the NPGS Task Force may be amended or altered to add or delete provisions from time to time as necessary with the concurrence of the Government Services Committee of the Navajo Nation Council.

History

ACAP-60-85, Exhibit A, April 11, 1985.

Cross References

Redelegated Committee authority, see CD-68-89, December 15, 1989, and 2 N.N.C. § 343(B)(4).

Library References

Electricity ↔9.	Westlaw Topic Nos. 145, 209, 317A, 360, 393.
Indians ↔32(4.1).	C.J.S. Electricity §§ 5, 16, 50.
Public Utilities ↔141.	C.J.S. Public Utilities §§ 60 to 61.
States ↔45.	C.J.S. States §§ 79, 82, 136.
United States ↔30.	C.J.S. United States § 49.

Chapter 5. Telecommunications

Subchapter 1. Navajo Telecommunications Regulatory Act

Section

- 501. Short title
- 502. Purposes and intent
- 503. Definitions
- 504. Establishment; composition; staff
- 505. Powers and duties
- 506. Compliance and enforcement
- 507. Jurisdiction
- 508. Cooperation with other jurisdictions
- 509. General provisions
- 510. Certificate of convenience and necessity
- 511. Tariffs
- 512. Requirements for accounting, annual statement and audits
- 513. Quality of service; complaints
- 514. Health and safety
- 515. Rulemaking process; adoption of rules and regulations
- 516. Tariff adjustments; complaints; notice of hearings; hearings; evidence; decisions; appeal
- 517. Violations and civil penalties
- 518. Injunctions; show cause orders; contempt
- 519. Telephone and telegraph
- 520. Protection of customer privacy
- 521. Cable television
- 522. Other television delivery systems
- 523. Regulation of telemarketing and/or television marketing
- 524. Attachments to poles, ducts and conduits

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Section

- 525. Radio and television
- 526. Radio communications systems
- 527. Severability
- 528. Prior inconsistent law superseded
- 529. Effective date

Subchapter 2. [Reserved]

Subchapter 3. Television

551. Development of television reception

Subchapter 1. Navajo Telecommunications Regulatory Act

History

CD-56-86, December 10, 1986. CD-56-86 repealed former § 501 and redesignated Chapter 5, Navajo Telecommunications Regulatory Code, formerly "Radio and Television".

§ 501. Short title

This Act shall be known and may be cited as the Navajo Telecommunications Regulatory Act and is codified at Chapter 5 of Title 21 of the Navajo Nation Code.

History

CD-56-86, December 10, 1986, repealed former § 501, entitled "Tribal radio system and maintenance facilities".

Library References

Indians ⇐32(4.1).
Telecommunications ⇐1.
Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 2 to 5.

§ 502. Purposes and intent

A. The purposes of this Act are to make available within the Navajo Nation efficient, reasonably priced and rapid communications, to promote and expand communications within the Navajo Nation, and ensure that communication activity within the Navajo Nation is consistent with the traditions, customs and desires of the Navajo People.

B. It is the intention of the Navajo Nation Council that the provisions of this Act be construed and applied in each instance, so as to accomplish its purposes. Furthermore, the Navajo Nation by virtue of its inherent sovereign powers has the authority to assert jurisdiction over telecommunications not preempted by applicable law and regulation of the federal government of the United States. Areas which may be preempted include matters relating to frequency allocation, licensing, permissible use of specific bands and interstate commerce.

Federal laws now in force regulating telecommunications activity which do not preempt the Navajo Nation's jurisdiction to regulate telecommunications shall have the same force and effect and shall be binding and obligatory upon the Navajo Nation to the extent that said laws benefit and protect the traditions, customs and desires of the Navajo People and are not otherwise inconsistent with the provisions of this Act.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

States ☞18.81.

Telecommunications ☞1.

Westlaw Topic Nos. 209, 360, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 2 to 6.

§ 503. Definitions

For the purposes of this Act, the following definitions shall apply:

A. "Broadcasting" means the dissemination of any radio or television communications intended to be received by the public, directly or by the intermediary of relay stations.

B. "Cable System" means a system of antennas, cables, amplifiers, towers, microwaves, waveguides, laser devices, satellites, and/or other conductors, converters, equipment and facilities designed and constructed for the purpose of producing, transmitting, receiving, amplifying, storing, processing, and distributing audio, video, digital, or other forms of electronic or electrical signals capable of being transmitted by wire and cable to subscribing members of the public who pay for such services.

C. "Certificate of convenience and necessity" means the certificate issued by the Commission to a person(s) doing business in telecommunications within defined service areas of the Navajo Nation. A certificate of convenience and necessity may include or require to be filed with terms, conditions, or tariffs, and may contain terms, conditions, or tariffs found within franchise agreements.

D. "Act" means the Navajo Telecommunications Regulatory Act.

E. "Commission" means the Navajo Telecommunications Regulatory Commission or any successor agency authorized by the Navajo Nation to regulate telecommunications.

F. "Common Carrier" means a person(s) providing, or holding itself out as providing telecommunications service or services to the public for hire within the Navajo Nation.

G. "Communications" means transmission, emission, or reception of information by any means of telecommunications.

H. "Electromagnetic spectrum" or "Radio Frequency Environment" means the entire range of wavelengths or frequencies of electromagnetic radiation from the longest radio waves to the shortest gamma rays.

I. "Federal Communications Commission" or "FCC" means that agency as presently authorized by the U.S. Congress or any successor agency authorized by the Congress to regulate cable television, telephone systems, and other communications matters or facilities.

J. "Franchise" means the contractual agreement between a telecommunications provider, who is required to have a franchise, and the commission which defines the rights and responsibilities of each regarding the installation, construction, operation, terms and conditions of services and maintenance of a communications system within the Navajo Nation. A franchise agreement may include the terms, conditions, and tariffs contained within or required by a certificate of convenience and necessity.

K. "Franchises" means the approved holder of a franchise.

L. "Licensee" means the holder of a valid license granted.

M. "Navajo Nation" has the same meaning as Navajo Indian Country as defined in 7 N.N.C. § 254, as amended.

N. "Person" means a natural person, either a Navajo or non-Navajo individual, sole proprietorship, partnership, corporation, joint venture, trust, estate, unincorporated association, government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of that government), public or private organization, and any part, division or agency of any of the foregoing or any other entity.

O. "Pole Attachment" means an attachment of a wire or cable by a telephone system, or a cable television system to a pole; the term also includes ducts or conduits and other underground apparatus requiring the use of public right-of-way, owned or controlled by a public utility.

P. "Public Utility" means those applicants who have obtained a Certificate of Convenience and Necessity from the Commission to provide telecommunications service to subscribers or the general public within the Navajo Nation.

Q. "Radio Communication" means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatuses, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission.

R. "Radio Station" means a station equipped to engage in radio communication or radio transmission of energy.

S. "Rates" mean any rate, toll, rental, charge or classification of any person engaged in providing telecommunications services.

T. "Subscriber" means the person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for that service, or by the receipt and/or payment of statements, invoices or bills regularly issued in such name regardless of the identity of the actual user of the service.

U. "Tariff" means the filed and approved rates, rules and regulations of a telecommunications service-provider that sets forth the services and products

offered and the rates charged, and the terms and conditions for the use of those services and products.

V. “Telecommunications” or “telecommunication” means any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum system, including but not limited to the telecommunications activity set forth in § 505(A)(2) of this Code.

W. “Telecommunication Service” means the providing of voice or other communication services by telecommunications including, without limitation, non-voice communication services, or data communication services which may interconnect with other telecommunication networks and/or involve operation of transmission/reception devices for binary information representation.

X. “Telephone System” means all property and facilities used in connection with telephone communication, including without limitation, the providing of telephone service, with or without the use of transmission wires.

Y. “Television Delivery Systems” means any transmission of television programming, via broadcasting, cable, microwave, or other such means of program delivery.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞449 to 460, 461.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and

Television §§ 190 to 191, 199, 217 to 218.

§ 504. Establishment; composition; staff

The commission shall carry out the duties of regulating telecommunications activities within the Navajo Nation. The establishment and composition of the commission shall be governed by a plan of operation adopted by the commission and approved by the Government Services Committee of the Navajo Nation Council. The administrative staff to carry out the duties and responsibilities of the commission shall be as provided for in the Commission’s plan of operation or in the Commission’s rules and regulations.

History

CD-56-86, December 10, 1986.

Cross References

Commission definition, see 21 N.N.C. § 503(E).

Library References

Indians ☞32(6).

Telecommunications ☞5.

Westlaw Topic Nos. 209, 372.

C.J.S. Indians § 51.

C.J.S. Telegraphs, Telephones, Radio, and

Television §§ 5, 7.

§ 505. Powers and duties

A. In accordance with the commission's plan of operation, the commission shall have the power to perform any and all acts necessary and convenient to supervise, monitor, and regulate telecommunication and those persons providing telecommunications service within the Navajo Nation as specifically designated in this chapter or in any rule, regulation, decision, order or other official pronouncement adopted hereunder, in the exercise of such power and jurisdiction. The commission shall have the following specific powers:

1. To promulgate such rules and regulations as appropriate for the accomplishment of its purpose and authority, duties and responsibilities pursuant to this Act, and to enforce such rules and regulations;

2. To act upon and regulate any and all telecommunications activity within the Navajo Nation, including but not limited to telephone, television, telegraph, radio, cable television, satellite dishes, two-way radio, and other telecommunication services employing wire, radiowave, lightwave, electricity or any other electromagnetic system;

3. To establish methods, procedures, conditions and fees for obtaining permits and approved tariff schedules for telecommunications services within the Navajo Nation;

4. To establish procedures and requirements for hearings and investigations pertinent to the functions and powers of the commission; to receive, consider and hear complaints concerning the noncompliance by any person, of any provision of this Act and/or the commission's rules and regulations, decisions, orders or other official pronouncements; to issue and compel by power of subpoena the presence of any person or the production of any document, or any type of evidence deemed relevant to a matter properly before the commission; to issue decisions and orders, opinions or other official pronouncements, on any matter properly raised before the commission, and as may be necessary in the enforcement and implementation of its functions;

5. To establish and impose fines and/or any other civil sanction(s) deemed appropriate by the commission, for violations of any provision of this Act and/or its rules and regulations, decisions, orders or other official pronouncements; and

6. To establish and collect franchise, filing and other fees from persons at amounts which are appropriate for the matter for which such collection is being made.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(6).
Telecommunications ☞5.
Westlaw Topic Nos. 209, 372.

C.J.S. Indians § 51.
C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 5, 7.

§ 506. Compliance and enforcement

A. All persons engaging in telecommunications activities shall comply with the provisions of this Act and all decisions or orders, rules and regulations or other official pronouncements issued pursuant to the Act. Enforcement of this Act shall be by the commission or through the Navajo Nation courts. The exhaustion of administrative remedies doctrine will apply to any third party seeking enforcement of the Act. The commission is authorized to seek judicial enforcement of the Act without first acting administratively if circumstances so require. Members of the public shall have standing to make complaints or inquiries to the commission about any telecommunications activities on the Navajo Nation.

B. Any Indian who violates any of the provisions of this chapter shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of not more than one hundred eighty (180) days, or ordered to pay a fine not exceeding five hundred dollars (\$500.00), or both, in accordance with the provisions of Title 17, Navajo Nation Code.

C. Any nonmember of the Navajo Nation who violates any of the provisions of this chapter may be excluded from land subject to the jurisdiction of the Navajo Nation in accordance with the procedures set forth in 17 N.N.C. §§ 1901–1906, as amended.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	189, 236, 239, 241 to 242, 246 to 248, 250
Telecommunications ☞1 to 11, 361 to 368, 445, 459, 497 to 498.	to 252, 255 to 257, 260 to 262, 264, 266, 268, 271 to 273.
Westlaw Topic Nos. 209, 372.	
C.J.S. Telegraphs, Telephones, Radio, and Television §§ 2 to 12, 15 to 17, 130 to 146,	

§ 507. Jurisdiction

The provisions of this Act shall apply within the Navajo Nation, as that term is defined in § 503(M) of this Act.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞1.	Television §§ 2 to 5.
Westlaw Topic Nos. 209, 372.	

§ 508. Cooperation with other jurisdictions

A. Intergovernmental Agreements. Where the extent of telecommunications regulatory jurisdiction of the Navajo Nation and the states, and their subdivisions and agencies are not clearly defined or involve potential jurisdic-

tional conflict, including, without limitation, potential jurisdictional conflict arising from the commission's transition to a fully operational telecommunications regulatory body for the Navajo Nation, the commission is authorized as the designated representative of the Navajo Nation to negotiate and develop for approval by the Intergovernmental Relations Committee of the Navajo Nation Council appropriate intergovernmental agreements or joint powers agreements as are necessary to resolve such jurisdictional issues, and is further authorized to represent or intervene on behalf of the Navajo Nation in proceedings before the states and their subdivisions and agencies.

B. Federal Communications Commission (FCC) Coordination. The commission is vested with the authority of acting as the intermediary agency between the Navajo Nation and the FCC and in furtherance thereof to pool information and receive complaints. The Commission may, subject to applicable law, act as the intermediary for applications or complaints, filings, registrations, rulings, approvals and similar acts or matters before the FCC in those areas of telecommunications not specifically addressed in this Act or in the Commission's rules and regulations, provided nothing in this Act will prevent or interfere with the right of the public to communicate directly with the FCC. The Commission is authorized and delegated the responsibility of representing the Navajo Nation in proceedings before the FCC, including, without limitation, intervening on behalf of the Navajo Nation on matters pending before the FCC.

History

CD-56-86, December 10, 1986.

Cross References

Intergovernmental agreements and intergovernmental relations, see Intergovernmental Relations Committee authority at 2 N.N.C. § 821 *et seq.*

Library References

Indians ☞3, 32(4.1).

States ☞6.

Telecommunications ☞1, 5.

Westlaw Topic Nos. 209, 360, 372.

C.J.S. Indians § 33.

C.J.S. States §§ 31 to 32, 143.

C.J.S. Telegraphs, Telephones, Radio, and Television §§ 2 to 5, 7.

§ 509. General provisions

A. Unlawful Use of Service. It shall be unlawful to obtain, with the intent to defraud, or with the intent to evade lawful charge, telecommunication services without proper payment therefor or the authorization of the subscriber of such services.

B. Unlawful Discrimination. No telecommunications service provider shall, as to rates or service, make or grant any unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or disadvantage based upon race, creed, national origin, sex, age, or religion.

C. Emergency. The commission, upon its determination that an emergency exists, is authorized to take any and all actions necessary to address the emergency notwithstanding any other provision in this Act.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞5, 362, 445, 459, 494.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 5, 7, 145 to 146, 189, 247 to

249, 254, 264 to 265.

§ 510. Certificate of convenience and necessity

A. Restriction. No person shall engage in providing telecommunications services within the Navajo Nation, nor shall exercise any right or privilege under any franchise or permit, without first having obtained from the commission a certificate of convenience and Necessity, unless otherwise authorized in this Act. The commission shall promulgate and issue specific rules and regulations establishing filing and informational requirements for applications for certificates of convenience and necessity.

B. Exemption of certain activities. The commission may by rule or regulation exempt certain telecommunications services from the requirement of a certificate of convenience and necessity.

C. Construction. No person engaged, or intending to engage, in providing telecommunications services within the Navajo Nation shall begin construction of any line, service or system, or any extension beyond the defined boundaries of any existing franchise or certificate of convenience and necessity without first having obtained from the commission a certificate of convenience and necessity for the territory in which such construction or extension will occur, unless otherwise authorized in this Act.

D. Application. Every applicant for a certificate of convenience and necessity shall file with the commission an application disclosing such information required by the commission's rules and regulations, and accompanied by appropriate filing fees. Each applicant shall provide evidence of compliance with the applicable laws of the Navajo Nation, in accordance with the rules and regulations of the commission.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞8, 73 to 77, 332, 385
to 388, 411, 455.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 8, 21 to 22, 34 to 37, 39 to 40,
42 to 43, 99, 148, 153 to 159, 170 to 171.

§ 511. Tariffs

A. Rates; publication. Rates established by a person engaged in providing telecommunication services shall first be approved by the commission for reasonableness and justness before such rates are implemented, in accordance with the commission's rules and regulations. Every person engaged in provid-

ing telecommunications services shall print, and make available for public inspection its approved tariffs which include schedules showing the rates and terms of condition of service for the services rendered to the public.

B. Unlawful rates; refunds. The commission will have authority to prescribe rates where it finds the rates in effect to be unlawful. The commission is authorized to compel the return of any rates unlawfully collected by a direct refund or a general credit against future billings.

C. Rules and regulations. All rules and regulations affecting or pertaining to its charges or services to the public adopted by a person engaged in providing telecommunications services shall be approved by the commission for reasonableness or justness before such rule or regulation is implemented. Every rule and regulation not found to be reasonable or just by the commission is prohibited and unlawful.

D. Rate and tariff changes; application; notice; filing.

1. No changes or adjustments to any existing, filed and approved tariff including, without limitation, any change in rates, territory served, rules, regulations or contracts, shall be made by any person engaged in providing telecommunications services except upon a showing before, and a finding by the commission, that a change or adjustment is reasonable and justified. Application for changes to the filed and approved tariff shall be made in writing to the commission along with a filing fee, in accordance with the commission's rules and regulations. A notice plainly stating the proposed change or changes and the existence of such application for a new proposed tariff shall be made available for public inspection and will be given to all subscribers.

2. Requests for change in rates shall be heard and acted upon by the Commission pursuant to § 516 of this Act and the commission's rules and regulations. The Commission will render a final decision on a request for a change in rates within one hundred eighty (180) days from the date of filing, or the rate that is filed will thereafter become effective at the beginning of the next billing period following, the expiration of the 180-day period and will remain in effect until the Commission makes its decision on the requested rate change. The 180-day period specified in this § 511(D)(2) will not begin to run for any pending request for a change until the effective date of this Code.

3. The commission may for good cause shown, or upon agreement with the person requesting tariff changes, modify, deny, suspend or delay the implementation of any proposed tariff changes.

4. Nothing within this section shall prohibit any person providing telecommunications service from offering discounts or promotions or establishing rates at a level below that established by the commission on a non-discriminatory basis, provided at least fifteen (15) days prior to offering such discounts or promotions such discount or promotion will be filed with the commission in accordance with its rules and regulations.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞306, 328 to 332.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and

Television §§ 73, 77, 81, 99 to 100, 104 to

105.

§ 512. Requirements for accounting, annual statement, and audits

A. Accounting Systems. The commission may adopt rules and regulations establishing an accounting system to be kept by any person(s) engaged in providing telecommunications services, and prescribe the manner in which accounts shall be kept. It may prescribe the forms of accounts, records and memoranda to be kept, including records covering receipts and expenditures of money, and other records necessary to carry out the provisions of this Act. Special rules maybe established for different classes of those providing telecommunications services, such as those persons additionally engaged in providing interstate communications services.

B. Certified Annual Financial Statement. Every person engaged in providing telecommunications services shall file a current annual financial statement to the commission certified by a certified public accountant and in accordance with the rules and regulations of the commission, every year on or before the 1st day of May or as may otherwise be approved by the commission.

C. Audits. If any person engaged in providing telecommunications services fails to comply with any provision of this section or upon the discretion of the commission if there is good cause, the commission or its designated representative is authorized to conduct or cause to be conducted an audit of the financial records and management of such person. Expenses incurred for such an audit shall be borne by the person.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞5 to 8.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and

Television §§ 5 to 8, 17.

§ 513. Quality of service; complaint

A. Rules and Regulations for Quality Service. The commission may adopt, promulgate, and enforce rules and regulations to insure that the quality of telecommunications services are adequate, efficient, just and reasonable. All persons providing telecommunications services within the Navajo Nation shall take all reasonable actions to ensure that the quality of service provided is equivalent or superior to similar service available in areas outside of the Navajo Nation. The scope of this provision may include, but shall not be limited to, continuity of service, service availability, the extent of service, service interrup-

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tions, billing and collection procedures, quality of equipment, termination of service, deposits, and resolution of complaints.

B. Telecommunications connections; joint rates. When the commission finds that a physical connection can reasonably be made between the lines of two or more telecommunications service providers to form a continuous line of communication, and that public convenience and necessity will be served thereby, or that two or more telecommunications service providers have failed to establish joint rates, tolls, charges for service by or over their lines, and that it is reasonable and just that a connection be established, the commission may require that a connection and joint rates be made in accordance with § 524, provided this § 513(B) will not apply where the purpose of the connection is primarily to secure transmission of local messages or conversations between points within the same town or community.

C. Non-compliance; violations. Complaints alleging non-compliance or violations of rules, regulations, decisions, orders or other official pronouncements adopted by the commission concerning the quality of telecommunications services shall be filed with the commission in accordance with the rules and regulations of the Commission and shall be heard by the commission within forty-five (45) days of filing.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞7 to 8, 46, 266 to 267, 323, 332, 346, 382 to 388, 411.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and Television §§ 5, 8, 31 to 32, 99, 110, 114, 117 to 118, 122 to 123, 147 to 148, 153 to 159, 170 to 171, 178 to 179, 192, 211.

§ 514. Health and safety

A. Compliance with health and safety codes. The commission may adopt, promulgate, and enforce rules and regulations requiring every person engaged in telecommunications to construct, maintain, and operate its line, system, facilities, equipment, apparatuses and premises in such manner as to promote and safeguard the health, safety and welfare of its employees, customers, and the public; to this end, the commission may prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices, and to require the performance of any other acts which the health, safety or welfare of its employees, customers or the public may demand.

B. Non-compliance; Violations. Complaints alleging non-compliance or violations of the rules and regulations, decisions, orders or other official pronouncements adopted by the commission concerning the health and safety as described herein may be filed with the commission by any aggrieved party in accordance with the commission's rules and regulations.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞5 to 8, 266, 311, 332, 389, 411, 455.	Television §§ 5 to 8, 17, 79, 85, 99, 114, 117 to 118, 122 to 123, 147, 155 to 156, 170 to 171.
Westlaw Topic Nos. 209, 372.	

§ 515. Rulemaking process; adoption of rules and regulations

A. Establishment of Rules and Regulations. The commission may promulgate rules and regulations in accordance with this Act, for the purpose of enforcement of this Act. Prior to the adoption by the commission of any rules and regulations being promulgated in accordance with this Act, notice shall be given to the public of such proposed rules or regulations, by a method deemed proper by the commission. Such notice shall include: the nature of the proposed rule or regulation; the meeting date of the commission where it will be reviewed and public comment solicited; the deadline date for submitting written comments; the proposed effective date of proposed rule or regulation implementation, and the location where the proposed rule or regulation will be available for public inspection. The commission shall take no action on any proposed rules or regulations for at least forty-five (45) days from the date of the last publication of the commission's notice; the restrictions of § 515(A) will not apply to rules or regulations adopted pursuant to § 509(C).

B. Promulgation of other official pronouncements. The commission may promulgate other official pronouncements governing matters not requiring a formal rule or regulation from time to time.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞7.	Television § 5.
Westlaw Topic Nos. 209, 372.	

§ 516. Tariff adjustments; complaints; notice of hearings; hearings; evidence; decisions; appeal

A. Tariff Adjustments. Any person providing telecommunications services may apply to the commission for a rate/service adjustment by filing an application in accordance with the commission's then effective rules and regulations.

B. Complaint. A written complaint may be filed by any person with the commission by any person or by the commission itself, in accordance with the commission's rules and regulations. A complaint will detail the alleged act or omission of the person engaged in telecommunications which is asserted to be in violation of the Act or any decision, order, rule or regulation, or other official pronouncements of the commission and will further contain the remedy or relief sought. A complaint may also be filed by any person regarding the justness or reasonableness of any rates. The commission is also authorized to initiate the filing of a complaint.

C. Notice of Hearing. Upon the filing of a complaint, if it is determined by the commission to establish probable cause, the commission shall serve notice within ten (10) days, upon the person complained of, an order to show cause why the person should not be ordered to cease operations. The notice shall specify the charge, time, date and place of hearing.

D. Procedures for Hearing. The commission shall conduct a full and fair hearing on all matters properly brought before it. All such hearings will be held in accordance with the requirements of the rules and regulations adopted by the commission.

E. Decision and Order. After the conclusion of the hearing, the commission shall make and enter its findings of facts, based upon the evidence presented at the hearing and supported by substantial evidence on the record as a whole. The commission will further issue an order of its determination and decision based upon such findings and make known the effective date of such decision and order. Every order shall be in writing and signed by at least a majority of the commission membership, and should bear the seal of the commission affixed thereto. A certified copy of such order shall be served upon each party to the proceeding or their legal counsel by certified mail.

F. Reconsideration; Appeals. After an order or decision has been made by the commission, any party to the proceeding may apply for reconsideration of any matters determined in said proceeding, in accordance with the commission's rules and regulations. Any party adversely affected by the final decision or order of the commission is entitled to seek judicial review by filing a notice of appeal with the Navajo Nation Supreme Court within thirty (30) days following entry of the order and decision entered following reconsideration. No judicial review shall be allowed unless an application for reconsideration has been filed with and ruled upon by the commission. Review of commission actions in the Supreme Court will be on the record made in the commission and not de novo and will be limited to the determination of whether the decision and order of the commission is supported by substantial evidence, is arbitrary, capricious or an abuse of discretion, is beyond the commission's authority or otherwise contrary to applicable Navajo Nation or federal law. The Supreme Court is empowered, to affirm, reverse or modify a decision and order of the commission, or to remand the matter to the commission for further action and it may stay the effect of the decision and order pending the appeal. The commission will determine by its rules and regulations whether the right of appeal will exist with respect to its adoption of any proposed rule or regulation.

G. Jurisdiction of courts. The courts of the Navajo Nation are vested with jurisdiction:

1. Over any and all persons subject to this chapter;
2. To hear and determine any challenge to the validity of this chapter, either generally or as applied to any person, provided that the provisions of this § 516 and § 506 and the regulations which may be adopted pursuant thereto are complied with.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞306, 318, 328 to 344,	Television §§ 73, 77, 81, 89 to 90, 93, 99 to
452, 455(2).	108.
Westlaw Topic Nos. 209, 372.	

§ 517. Violations and civil penalties

A. Criminal Penalties. Any person engaged in telecommunications who intentionally violates or fails to comply with the provisions of the Act or decision or order, rule or regulation, or other official pronouncement issued pursuant to the Act is guilty of an offense punishable as provided in § 506.

B. Civil Penalties. Any person engaged in telecommunications who violates any provision of the Act or decision, order, rule or regulation, or other official pronouncement of the commission issued pursuant to that Act may be subject to a civil fine imposed by the commission of not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each violation, provided the commission will have the discretion to suspend, or impose probationary conditions for avoiding, the fine.

C. Agency. In determining the existence of any offense under § 517(A) or grounds for imposing any civil penalty under § 517(B), the act or omission of any officer, agent or employee of a person engaged in telecommunications, within the scope of his or her authority, duties or employment, shall be deemed to be the act or omission of the person engaged in telecommunications.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(13).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞364, 445, 459, 494 to	Television §§ 145 to 146, 189, 235 to 237,
498.	239, 241 to 242, 245 to 252, 254 to 257, 260
Westlaw Topic Nos. 209, 372.	to 268, 271 to 273, 307.
C.J.S. Indians § 157.	

§ 518. Injunctions; show cause orders; contempt

The commission may apply through the office of the Attorney General of the Navajo Nation to any court of competent jurisdiction for injunctions to prevent continuing violations of any provision of the Act or of any rule, regulation, decision, order or other official pronouncement of the commission issued pursuant to that Act, and for show cause orders to enforce any duly issued subpoena of the commission, and such courts shall have power to grant such injunctions and show cause orders, and to enforce such injunctions and show cause orders by contempt procedure.

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PUBLIC UTILITIES AND COMMUNICATIONS

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(13).

Injunction ☞3.

Telecommunications ☞15, 263, 340, 349,
419, 458(2), 497 to 498.

Westlaw Topic Nos. 209, 212, 372.

C.J.S. Indians § 157.

C.J.S. Injunctions § 13.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 9, 11 to 12, 72, 103, 111, 113,
125, 173, 236, 239, 241 to 242, 246 to 248,
250 to 252, 255 to 257, 260 to 262, 264,
266, 268, 271 to 273.

§ 519. Telephone and telegraph

A. Certificate of convenience and necessity. For the purposes of this section, the commission is vested with authority to grant a certificate of convenience and necessity for the provision of telephone services as provided for in § 510. Tariffs shall be established and amended in accordance with §§ 511 and 516. All telephone service providers shall comply with all applicable laws, rules and regulations, decisions and orders governing leases, easements, licenses, certificates, permits or rights-of-way, and tariffs.

B. Regulation of quality of service. The commission may adopt rules and regulations, decisions and orders governing quality of service which may govern not only service transmission quality standards, but also the service itself. The commission shall have the power to issue rules and regulations, decisions and orders governing the establishment of service, temporary service, line connection, provision of service, billing and collection, resolution of customer disputes, termination of service and notice, and telecommunication service for the disabled, handicapped, and the elderly, and like matters.

C. Additions and/or extensions of service. Applications for additions and/or extensions to existing certificates of convenience and necessity shall be addressed in accordance with rules and regulations of the commission.

D. Application of state/tribal intergovernmental agreement or state statutes. The commission in considering tariff rate approvals and adjustments of telephone services may, pursuant to its authority under § 511, employ state statutes pertaining to rate regulation in accordance with intergovernmental agreements citing the necessity for deferring commission authority and jurisdiction to the state in matters of rate regulation.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).

Telecommunications ☞73 to 77, 261, 306 to
309, 332.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 6, 17, 21 to 22, 34 to 37, 39 to
40, 42 to 43, 68 to 71, 73, 77 to 82, 84, 99,
114.

§ 520. Protection of customer privacy

A. Unlisted Number. It shall be the duty of telephone companies providing services within the Navajo Nation not to disclose the number or address of a

subscriber holding an unlisted number, except upon permission of said subscriber, or except by request by law enforcement and emergency authorities.

B. Unlawful Use of Telephone.

1. Preventing use of a telephone in an emergency; false emergency request for Telephone. It shall be unlawful for any person willfully to refuse to yield or surrender immediately the use of a party line or of a public telephone to another person for the purpose of permitting such person to report a fire, or summon police or medical aid, or to communicate any other *bona fide* emergency. It is unlawful for any person to ask for or request the use of a party line or public telephone on the false pretext that such an emergency exists.

2. Obscene or harassing telephone calls. It shall be unlawful for any person, with intent to annoy, abuse, threaten, or harass any person at the called number to: make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent; make a telephone call, whether or not conversation ensues, without disclosing upon request of the person called the identity of the caller; make or cause the telephone of another repeatedly or continuously to ring; make repeated telephone calls, during which no conversation ensues; knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

History

CD-56-86, December 10, 1986.

Library References

Indians ⇨32(4.1).

Telecommunications ⇨269 to 270, 362.

Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and

Television §§ 120 to 121.

§ 521. Cable television

A. Franchise

1. Authority. For purpose of this section the commission is vested with authority to grant franchises in defined boundaries for provision of cable television services, including pay cable services, premium and basic service, within the Navajo Nation for a maximum period of fifteen (15) years. No person shall provide cable television services within the Navajo Nation without having been granted a franchise by the commission. No exclusive franchises shall be granted for the whole or part of the Navajo Nation. The commission is authorized to issue and promulgate rules and regulations for franchise requirements, applications, franchise and other fees, tariff schedules, hearing, granting or denial procedures. The commission is further authorized, subject to restrictions of applicable law, to regulate the rates for provision of cable television services, and any other communication service provided over a cable system to cable subscribers, in accordance with §§ 511 and 516 of this Act.

2. No certificate of convenience and necessity. A person holding a validly issued franchise from the Navajo Nation to provide cable television

services is not required also to hold a certificate of convenience and necessity from the Navajo Nation.

B. Revocation of Franchise. Non-compliance with provisions of this Act or any duly adopted rule, regulation, decision, order, or other official pronouncement of the commission, or for other good cause found to exist after a full and fair hearing of the commission shall be cause for revocation or termination of the franchise. Notice of such claim or complaint against the franchisee shall be given at least ten (10) days before hearing with an opportunity for the franchisee to show cause why the franchise should not be revoked or terminated.

C. Obtaining cable television services fraudulently; penalty. No person shall tamper with, or make connection with, the equipment providing cable television services by mechanical, electrical, acoustical, or other means with intent to avoid payment of the lawful charges for cable television service. In addition to other sanctions provided in the Act, any person violating the provisions of this section shall be liable to the cable television operator for reasonable damages plus reasonable attorneys' fees and costs.

D. Satellite Dish. Any person, using a satellite dish for retransmission of cable television signals for hire, monetary consideration or reimbursement shall be subject to the provisions of this Act except for those systems expressly preempted by applicable federal law as non-regulated.

E. Obscenity—indecent; penalties. It is unlawful for any person providing cable television services within the Navajo Nation to broadcast or in any way produce, transmit, process or distribute by video programming, obscene or indecent material. This section of § 521(E) will not become effective until the commission has issued and promulgated rules and regulations defining "obscene" and "indecent".

History

CD-56-86, December 10, 1986.

Library References

Indians ↻32(4.1).
Telecommunications ↻455.
Westlaw Topic Nos. 209, 372.

§ 522. Other television delivery systems

A. Purpose. Pursuant to regulatory guidance of the FCC, the commission may issue, promulgate and enforce rules and regulations governing multi-point distribution systems, multi-channel-multi-point distribution systems, satellite main antenna systems, direct broadcast systems, two-way television systems, and any other television programming delivery systems involving the use of microwave, fiber optic, and other video technology, video storage devices, and electromagnetic spectrum frequencies, as those technologies evolve into commercial or private use on the Navajo Nation.

B. Commercial delivery systems. Any person providing television programming delivery services for the purpose of generating revenues from subscribers

must adhere to the rules and regulations, decisions, orders, or other official pronouncements of the Commission.

C. Non-profit delivery systems. Any person providing television programming delivery services in a non-profit capacity, or as a public service, must also adhere to the rules and regulations, decisions, orders, or other official pronouncements of the commission.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).
 Telecommunications ☞382, 385, 448, 460.
 Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
 Television §§ 152 to 155, 178 to 179.

§ 523. Regulation of telemarketing and/or television marketing

The commission may issue, promulgate and enforce rules and regulations governing telemarketing and/or television marketing within the Navajo Nation.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).
 Telecommunications ☞382, 429, 462.
 Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
 Television §§ 175, 178 to 179, 223 to 224.

§ 524. Attachments to poles, ducts and conduits

A. The commission is authorized to issue and promulgate rules and regulations governing use of public utility facilities.

1. Joint/Pole Use. In order to provide efficient and quality telephone and cable services, the commission may authorize joint use of public utility poles, ducts, and conduits located within the Navajo Nation, owned or controlled by a public utility company. All joint use agreements including the compensation provisions thereof for wire or cable attachments to a pole, duct, or conduit must be approved by the commission. Upon the approval of the joint use agreement for pole attachments, all persons to such agreement shall have the right to use or share in and enjoy the use of the right-of-way easement granted to the pole owner.

2. Disputes. Disputes concerning terms and conditions, including rental rates, of the joint use agreement for attachments shall be resolved by the commission at a full and fair hearing conducted for that purpose pursuant to § 516 of this Act, and in accordance with the Commission's rules and regulations.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).
 Telecommunications ☞118.
 Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
 Television §§ 58, 60, 62 to 64.

§ 525. Radio and television

A. The purpose of this section is to further the development of television reception to areas of the Navajo Nation not presently receiving this service.

B. The Radio Frequency Environment. Subject to applicable federal law, the radio frequency environment as defined by § 503(H) is recognized by the Navajo Nation as a Navajo Nation resource. The commission shall have the authority to review, develop, and issue policy to ensure that this resource is utilized to the fullest extent possible for the future benefit of the Navajo Nation and its residents subject to applicable federal law.

C. Leases, easements, licenses, permits, rights-of-way. Any person engaged in broadcasting, seeking to install, construct, operate, or maintain any radio or television station, translator station, facility, tower, microwave equipment, or apparatus, prior to such installation, construction, operation, or maintenance shall file with the commission evidence of compliance with applicable laws of the Navajo Nation and the federal government, governing leases, easements, licenses, permits, or rights-of-way.

D. Application of FCC Doctrines. Any person engaged in broadcasting shall be subject to the FCC doctrines and rules, including, but not limited to, “the fairness doctrine”, “equal access time”, “personal attack” and “political editorializing” as such doctrine may be further defined and clarified by the rules and regulations of the commission.

History

CD-56-86, December 10, 1986.

Note. The paragraphs under this section have been redesignated with letters for clarity and statutory form.

Library References

Indians ☞32(4.1).
 Telecommunications ☞73 to 77, 385, 392,
 451, 453.
 Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
 Television §§ 21 to 22, 34 to 37, 39 to 40,
 42 to 43, 147, 153 to 155.

§ 526. Radio communications systems

A. Authorization; Rules and Regulations. For purposes of this § 526, the establishment and operation of maintenance facilities for the Navajo Nation radio systems are authorized. The commission is vested with the authority to issue, promulgate, and enforce rules and regulations for the provision of two-way radio service on the Navajo Nation. Any holder of any class of FCC radio license will adhere to the rules and regulations of the commission pertaining to the certificate of convenience and necessity when two-way radio services are provided by a person to a customer with the intent to generate revenue or profit.

B. Filing of certified copy of license. Any holder of any class of FCC radio license, excluding citizens band radio, shall maintain on file with the commission, a certified copy of that license.

C. Protection of public. It shall be unlawful to use two-way radio communications to transmit messages which abuse or further the fraudulent use of such apparatuses or facilities.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞382 to 385, 461 to	Television §§ 147, 153 to 155, 178 to 179,
461.10.	192, 211, 217 to 220.
Westlaw Topic Nos. 209, 372.	

§ 527. Severability

If any provision of this Act or the application of such provision shall be held invalid the remainder of the Act and the application of such provision other than those held invalid shall not be affected thereby.

History

CD-56-86, December 10, 1986.

Revision note. Slightly reworded for purposes of clarity.

Library References

Indians ☞32(4.1).	C.J.S. Statutes § 83.
Statutes ☞64.	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞4.	Television §§ 3 to 4.
Westlaw Topic Nos. 209, 361, 372.	

§ 528. Prior inconsistent law superseded

Upon the effective date of this Navajo Telecommunications Regulatory Act, all prior inconsistent enactments, laws, rules, policies, ordinances and regulations of the Navajo Nation and all branches, divisions, departments, offices and political subdivisions thereof, are superseded hereby and/or amended to comply herewith.

History

CD-56-86, December 10, 1986.

Library References

Indians ☞32(4.1).	C.J.S. Statutes §§ 245, 287.
Statutes ☞142, 159.	C.J.S. Telegraphs, Telephones, Radio, and
Telecommunications ☞4.	Television §§ 3 to 4.
Westlaw Topic Nos. 209, 361, 372.	

21 N.N.C. § 529

PUBLIC UTILITIES AND COMMUNICATIONS

§ 529. Effective date

The effective date of all provisions of this Navajo Telecommunications Regulatory Act shall be December 10, 1986.

History

CD-56-86, December 10, 1986.

Library References

Telecommunications ☞4.
Westlaw Topic No. 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 3 to 4.

Subchapter 2. [Reserved]

§§ 530 to 550. [Reserved]

Subchapter 3. Television

§ 551. Development of television reception

The Navajo Nation Council approves of the further development of television reception to areas of the Navajo Nation not presently receiving this service.

History

CN-70-59.

Revision note. § 551 was not repealed by CD-56-86 and is not inconsistent with the Navajo Telecommunications Regulatory Code.

Library References

Indians ☞32(4.1).
Telecommunications ☞382.
Westlaw Topic Nos. 209, 372.

C.J.S. Telegraphs, Telephones, Radio, and
Television §§ 178 to 179.

Chapter 6. [Reserved]

§§ 601 to 617. [Reserved]

History

Former §§ 601 to 617 were transferred to 5 N.N.C. §§ 1651 to 1655 pursuant to CAP-23-03.

Title 22

Water

Chapter	Section
1. Development and Improvement	1
2. [Reserved]	
3. Use of Water by Non-Navajos	401
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Chapter 1. Development and Improvement

Subchapter 1. Generally

Section

1. Program; authority to prepare and present

Subchapter 3. Emergency Water Transportation Assistance Program

51. Establishment
52. Justification
53. Objective
54. Duties and responsibilities
55. Trucking operation
56. Amendment

Subchapter 5. Distribution to Drought-Distressed Areas

121. Applications; survey of drought-stricken areas
122. Contract trucks; Navajo Nation trucks
123. Development of water sources; equipment and labor; costs

Subchapter 7. Window Rock Water Supply and Storage System

171. Construction and operation; authority

Library References

- Indians ↻16.5.
- Westlaw Topic No. 209.
- C.J.S. Indians §§ 101 to 106.

Subchapter 1. Generally

§ 1. Program; authority to prepare and present

The President of the Navajo Nation is authorized and directed, with the approval of the Resources Committee, to prepare and present to the Navajo Nation Council a program to increase the supply of available water on Navajo Nation lands and by sanitary measures to make a larger portion of such water safe for domestic use.

History

CF-36-57, § 1, February 15, 1957.

CJ-66-53, 1953 Res. p. 276, July 31, 1953.

CJ-23-53, 1953 Res. p. 274, January 23, 1953.

CJ-15-53, 1953 Res. p. 268, January 15, 1953, authorized water development programs and appropriations for such programs.

Shortages of water; control. ACJN-95-66, June 15, 1966.

Sewage treatment facilities at Tuba City. CAP-43-65, April 21, 1965.

Water development survey. By ACMA-25-65, March 15, 1965.

Agreement for repair and maintenance of water wells. CD-60-64, § 2, December 11, 1964.

Water and sanitation facilities-Support of federal program. CN-62-59, § 1, November 12, 1959.

Agreements with Surgeon General:

ACMY-65-66, May 3, 1966.

ACD-174-64, December 3, 1964.

ACJN-90-64, June 15, 1964.

ACJN-88-64, June 15, 1964.

ACMA-37-64, March 19, 1964.

ACMA-36-64, March 19, 1964.

ACJA-10-64, January 15, 1964.

ACJN-95-63, June 27, 1963.

ACJN-94-63, June 27, 1963.

ACJN-93-63, June 27, 1963.

ACJN-83-63, June 3, 1963.

ACF-45-63, February 15, 1963.

ACJY-99-60, July 5, 1960.

ACJY-98-60, July 5, 1960.

ACAP-56-60, April 25, 1960.

ACD-169-59, December 2, 1959.

CN-62-59, November 12, 1959.

CN-62-59, § 2.

Library References

Waters and Water Courses ⇄217.

Westlaw Topic No. 405.

C.J.S. Waters § 762.

Subchapter 3. Emergency Water Transportation Assistance Program

§ 51. Establishment

The Navajo Nation Council established the Emergency Water Transportation Assistance Program and the Program will be operated within the Water Operations and Maintenance Department within the Division of Natural Resources.

History

ACJN-66-84, Exhibit A, § I, June 12, 1984.
Amended generally.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞217.	C.J.S. Waters § 762.
Westlaw Topic Nos. 209, 405.	

§ 52. Justification

The lack of rainfall and snowfall on Navajo rangelands has resulted in severe drought conditions. Navajo stockmen are subject to unbearable hardship and, therefore, as an absolute necessity to alleviate some of the hardship suffered by the livestock during this drought season, prompt implementation of the Emergency Water Transportation Assistance Program is imperative.

History

ACJN-66-84, Exhibit A, § III, June 12, 1984.
Amended generally.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞217.	C.J.S. Waters § 762.
Westlaw Topic Nos. 209, 405.	

§ 53. Objective

A. The Water Operations and Maintenance Department shall be responsible for the implementation of the Emergency Water Transportation Assistance Program in close coordination with the Bureau of Indian Affairs, Land Operations, Navajo Tribal Utility Authority, the Indian Health Services, the Grazing Committees and the Land Board Members, Chapter officers, and other agencies engaged in water and livestock resources.

B. A Coordinator shall be employed by the Water Operations and Maintenance Department who will be responsible for the administration and implementation of the Emergency Water Transportation Assistance Program.

History

ACJN-66-84, Exhibit A, § III, June 12, 1984.
Amended generally.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞217.	C.J.S. Waters § 762.
Westlaw Topic Nos. 209, 405.	

§ 54. Duties and responsibilities

The duties and responsibilities of the Coordinator are as follows:

A. The Coordinator shall implement the Emergency Water Transportation Assistance Program. The Construction Supervisor II of the Water Operations and Maintenance Agency Stations will designate "Field Inspectors" to monitor and provide directions to the Navajo Truckers in their respective areas on a daily basis, during the duration of this Emergency Water Transportation Assistance Program.

22 N.N.C. § 54

WATER

B. The Coordinator will keep and maintain accurate records of all expenditures, keep accurate records of all Trucking Agreements and submit a weekly financial and general program status report to the Director of the Water Operations and Maintenance Department.

C. The Coordinator shall insure adherence to proper accounting procedures, and existing policies and procedures established by the Navajo Nation Division of Finance.

D. The Coordinator shall have sufficient supervisory control to insure that the intent and objectives of the Emergency Water Transportation Assistance Program are accomplished.

E. The Coordinator shall receive all resolutions for water hauling which shall be reviewed by the Director of the Water Operations and Maintenance Department for proper action. Priorities will then be established according to the severity of the drought conditions existing in the various areas of the Navajo Nation.

History

ACJN-66-84, Exhibit A, § IV, June 12, 1984. Amended generally. **Revision note.** Slightly reworded for purposes of clarity.

Library References

Indians ☞16.5.

Waters and Water Courses ☞217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 55. Trucking operation

A formal "Trucking Agreement" shall be drawn up with the individual truckers who shall provide trucks, water tanks, and insurance in accordance with conditions set forth in the Agreement. It shall be the responsibility of the Field Inspector to see that the truckers adhere to all the conditions contained in the Agreement.

History

ACJN-66-84, Exhibit A, § V, June 12, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 56. Amendment

This Plan of Operation maybe amended, as necessary and appropriate, by the Government Services Committee of the Navajo Nation Council.

History

ACJY-115-85, Exhibit A, July 9, 1985.

Library References

Indians ☞16.5. C.J.S. Indians §§ 101 to 106.
 Waters and Water Courses ☞217. C.J.S. Waters § 762.
 Westlaw Topic Nos. 209, 405.

Subchapter 5. Distribution to Drought–Distressed Areas**History**

Change of name. The Division of Water and Sanitation, referred to in ACJY–128–60 and ACJY–129–60, is the predecessor to the Resources Division and the Ground Water Development Department. The Water Department is now under the Division of Natural Resources.

§ 121. Applications; survey of drought-stricken areas

Applications for water for drought stricken areas shall be made by Chapter organizations to the Division of Natural Resources. After the approval of applications by the Division of Natural Resources, the Division shall survey the drought stricken areas to determine the extent of distress and suggest feasible economical sources of relief.

History

CAP–25–67, April 13, 1967. ACJY–128–60, § 1, July 26, 1960.
 QN–67–66, June 9, 1966. ACJY–129–60, § 1, July 26, 1960.
 CJY–32–63, § 4, July 16, 1963. CJY–49–60, § 1, July 22, 1960.

Library References

Indians ☞16.5. C.J.S. Indians §§ 101 to 106.
 Waters and Water Courses ☞217. C.J.S. Waters § 762.
 Westlaw Topic Nos. 209, 405.

§ 122. Contract trucks; Navajo Nation trucks

A. The Division of Natural Resources shall contract for individually owned trucks to haul water to designated areas and each trucker shall be assigned the source from which the water is to be hauled. Preference shall be given to Navajo truck owners who are not presently employed elsewhere. Contract truckers shall be paid 14 cents per ton mile, in liquid measurements, or equivalent thereof, one-way, and there will be no payment for dead runs. The maintenance and upkeep of the contracted trucks shall be the responsibility of the truck owner.

B. Trucks for hauling water shall be provided by the Navajo Nation whenever contract truckers are not available or when tanks cannot be found. Special equipment, repairs and the cost of operating Navajo Nation vehicles shall be paid for out of appropriated funds.

History

ACJY–128–60, § 1, July 26, 1960. **Revision note.** The last sentence of subsection (B) was slightly rephrased for purposes of clarity.

Library References

Indians ☞16.5.

Waters and Water Courses ☞217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 123. Development of water sources; equipment and labor; costs

A. All reasonable efforts shall be made to develop water sources already available in stricken areas. Where sound wells equipped with windmills are not producing properly, engines and pump jacks shall be installed. Equipment and labor shall be paid for out of appropriated funds, but operation of the installations shall be at the direction of each community, and the costs paid for by the people making use of the facilities.

B. In areas where natural water sources are not adequate, special equipment shall be purchased and installed under the special water program. Storage tanks, hauling tanks, drinking troughs, pumps, pipe and fixtures shall be acquired and installed under the program where the need and efficiency make it most feasible.

History

ACJY-28-60, § 1, July 26, 1960.

Library References

Indians ☞16.5.

Waters and Water Courses ☞217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

Subchapter 7. Window Rock Water Supply and Storage System**§ 171. Construction and operation; authority**

The President of the Navajo Nation, with the approval of the Resources Committee, is authorized, empowered, and instructed to do any and all things deemed to be necessary, advisable or incidental to accomplish the construction and operation of a water supply and storage system for Window Rock.

History

CJA-18-59, § 3, January 23, 1959.

Library References

Indians ☞16.5.

Waters and Water Courses ☞217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

Chapter 2. [Reserved]

History

Note: The Navajo Primary Drinking Water Regulation, 22 N.N.C. § 201 et seq. Chapter 2, was removed from the code by Council Resolution CJY-70-98, because these sections served

as regulations promulgated under the Navajo Nation Safe Drinking Water Act and should not be codified. See 22 N.N.C. § 2501 *et seq.*

Chapter 3. Use of Water by Non-Navajos

Section

- 401. Sale—Generally
- 402. Price
- 403. Exploration or drilling of wells; permit

§ 401. Sale—Generally

All water sales to non-Navajo individuals and organizations shall be by means of a “standard water purchase contract”.

History

ACO-140-65, October 22, 1965.
ACD-168-59, § 1, December 2, 1959.

Nonpotable water. ACF-17-65, February 11, 1965.

Library References

Indians ⇌ 16.5.
Waters and Water Courses ⇌ 254.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 890 to 894.

§ 402. Price

- A. Well water shall be sold at the rate of 30 cents per 1,000 gallons on a “pump it yourself” basis.
- B. Surface water shall be sold at the rate of 25 cents per 1,000 gallons.
- C. The selling price of water supplied from a pumping station or system operated by the Navajo Nation shall be determined in each such case by the President of the Navajo Nation.

History

ACD-168-59, §§ 2-4, December 2, 1959.

Library References

Indians ⇌ 16.5.
Waters and Water Courses ⇌ 254.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 890 to 894.

§ 403. Exploration or drilling of wells; permit

No exploration or drilling of wells by non-Navajo individuals or organizations shall be done without first obtaining from the Navajo Nation a permit to perform such exploration or drilling.

History

ACD-168-59, § 5, December 2, 1959.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

Chapter 5. Irrigation Projects**Section**

601. Responsibility for operation and maintenance; policy

602. Acquisition of land

Cross References

Irrigated farm lands, see 3 N.N.C. §§ 45 and 61.

§ 601. Responsibility for operation and maintenance; policy

It is in the best interests of the Navajo Nation to accept responsibility for the operation and maintenance of irrigation projects on the Navajo Nation.

History

CMY-36-67, May 9, 1967.

CO-106-66, October 5, 1966.

CAP-56-66, April 28, 1966.

ACJN-80-65, June 9, 1965.

ACAU-129-64, August 24, 1964.

CMA-14-64, March 2, 1964.

ACJY-113-62, July 19, 1962.

CJA-15-60, January 22, 1960.

CJA-12-60, January 20, 1960.

CF-11-58, February 14, 1958.

CD-86-5, December 12, 1957.

CS-81-57, § 1(b), September 18, 1957.

CF-33-57, February 6, 1957.

Cross References

Navajo Indian Irrigation Project, for text of Act, see Appendix in Title I of this Code.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 602. Acquisition of land

A. The Resources Committee of the Navajo Nation Council is authorized to cooperate with the Secretary of the Interior in the purchase of non-Navajo ranches within the boundaries of the Navajo Indian Irrigation Project insofar as such purchases pertain to private and state lands.

B. The President of the Navajo Nation shall enter into, and execute on behalf of the Navajo Nation, such agreements as he or she finds may be necessary and desirable to acquire lands within the Navajo Indian Irrigation Project, and is further authorized and directed to do any and all things necessary, advisable or incidental to the accomplishment of the purpose and intent of this chapter.

History

CJN-44-71, §§ 2 and 3, June 1, 1971.

Cross References

Land acquisitions, 2 N.N.C. § 695(B)(3).

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄240.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 860 to 861.

Chapter 7. [Reserved]

History

The Emergency Services Department Plans of Operation codified previously at Chapter 7, §§ 801-807 deleted pursuant to Navajo Nation Attorney General's memorandum dated January

4, 1991. See Plans of Operation for Emergency Management, Disaster Assistance, and the Public Safety Committee.

**Chapter 9. Water Development
Technical Review Board**

Section

1001. Establishment

1002. Purposes

1003. Membership; selection; term

1004. Powers; duties and responsibilities

1005. Meetings

1006. Compensation

§ 1001. Establishment

The Navajo Water Development Technical Review Board is established.

History

ACMY-51-82, Plan, § I, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 1002. Purposes

The purposes of the Water Development Technical Review Board are:

A. To act as a technical review board for proposed water projects of the Navajo Nation.

22 N.N.C. § 1002

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B. To authorize, review and implement a five (5) year water development plan with regard to the economic and construction feasibility of proposed Navajo water projects as was authorized by Navajo Tribal Council Resolution CF-17-82.

History

ACMY-51-82, Plan, § II, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

Library References

Indians ⇌ 16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ⇌ 217.

C.J.S. Waters § 762.

Westlaw Topic Nos. 209, 405.

§ 1003. Membership; selection; term

Five members shall be appointed by the President of the Navajo Nation who shall serve at the pleasure of the President of the Navajo Nation.

History

ACMY-51-82, Plan, § III, May 11, 1982.

Library References

Indians ⇌ 16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ⇌ 217.

C.J.S. Waters § 762.

Westlaw Topic Nos. 209, 405.

§ 1004. Powers; duties and responsibilities

A. General. The Navajo Water Development Technical Review Board shall have all powers, duties and responsibilities necessary to carry out its purposes as set forth in 22 N.N.C. § 1002, pursuant to Navajo Tribal Council Resolution CF-17-82.

B. Enumerated duties and responsibilities. The Water Development Technical Review Board shall have the following duties and responsibilities:

1. To review all documents presenting proposals for Navajo Nation water development projects.
2. To determine if the construction of a proposed water development project is economically and technically feasible.
3. To require that all necessary Tribal and local approvals and clearances have been obtained.
4. To finally review, authorize and prepare water development project proposals, with the assistance of such technical advisors as deemed necessary or appropriate by the Board so that the project may be implemented.
5. To assist in development and to approve a budget for each proposed Navajo Nation water development project so that the project can be included in the budget of the Navajo Nation for implementation in any one given Navajo Nation fiscal year.

6. To submit to the Resources Committee two written reports each year on the status and progress of all pending and approved water projects of the Navajo Nation.

History

ACMY-51-82, Plan, § IV, May 11, 1982.

Revision note. Slightly reworded for purposes of clarity.

Library References

Indians ⇨16.5.

Waters and Water Courses ⇨217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 1005. Meetings

A. Regular meetings of the Navajo Water Development Review Board shall be held not more than two times per month. Special meetings may be called by the Chairperson of the Board of Navajo Water Development Technical Review Board.

B. Procedures. The Water Development Technical Review Board is empowered to develop its own procedures for the conduct of meetings, provided that all formal substantive action shall be taken by written resolution duly certified by the presiding officer, or memorialized by written memorandum setting forth the action taken and signed by the presiding officer and filed with the Central Records Department of the Navajo Nation.

C. Members of the Navajo Water Development Technical Review Board shall have authority only when acting as a Board legally in session; the Review Board shall not be bound in any way by any statement or action on the part of any individual Board member or advisor, unless such statement or action is in pursuance of a specific resolution or authority of the Review Board, which shall be duly recorded in minutes of the Board meetings, and attested to by the Chairperson of the Navajo Water Development Technical Review Board.

D. The Chairperson of the Navajo Water Development Technical Review Board shall be appointed by the President of the Navajo Nation. In the absence, of the Chairperson or the Vice-Chairperson or other Review Board member as the Chairperson or Vice-Chairperson shall delegate, shall call, conduct and preside at all meetings of the Navajo Water Development Technical Review Board, enforce the procedural rules adopted by the Review Board and sign all papers and documents required for action by the Review Board.

E. A majority of the members of the Review Board shall constitute a quorum for the transaction for business, and all actions and decisions of the Review Board shall be determined by a vote of the majority of Review Board members, including the Chairperson and members represented by duly executed proxy. Each such member shall have one vote.

F. A Review Board member may designate any other Review Board member present, by prior written authorization as his or her proxy to vote upon any

or all matters to be determined at a specified Review Board meeting, or to take any other action on his or her behalf as specified in his or her said proxy.

G. A Review Board member may vote only one proxy vote and must be present at the specified meeting in order to vote as proxy for a Review Board member who is not present there at.

H. Advisors. The Chairperson of the Navajo Water Development Technical Review Board is authorized to enlist the assistance of representatives of such Navajo Nation entities and other technical staff advisors as deemed appropriate in furtherance of the function and duties of the Navajo Water Development Technical Review Board, who the Chairperson may designate as official advisors to the Review Board on a continuing or on a designated project basis, and such advisors shall provide appropriate support, advice and counsel on substantial matters.

History

ACMY-51-82, Plan, § V, May 11, 1982.

Revision note. Slightly reworded for clarity.

Indians ⇆16.5.

Waters and Water Courses ⇆217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

§ 1006. Compensation

A. Members of the Navajo Water Development Technical Review Board shall be provided per diem allowances for expenses for attendance at regular or special meetings or in the performance of official duties as assigned and authorized in writing by the Chairperson of the Navajo Water Development Technical Review Board, at the rate of fifty dollars (\$50.00) per diem for such meetings held within the exterior boundaries of the Navajo Nation and one hundred dollars (\$100.00) per diem for such meetings held elsewhere, together with the current Tribal mileage rate for their travel expenses.

B. Technical or other advisory staff members may be reimbursed by written authorization of the Chairperson of the Navajo Water Development Technical Review Board at the current Tribal rates for actual travel expenses only and will receive no additional compensation.

C. Members of the Navajo Water Development Technical Review Board and Navajo Nation advisory staff shall otherwise assume their responsibilities in addition to their other responsibilities as employees of the Navajo Nation.

History

ACMY-51-82, Plan, § VI, May 11, 1982.

Library References

Indians ⇆16.5.

Waters and Water Courses ⇆217.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 762.

Cross References

Travel and travel expenses, see 2 N.N.C. § 3851 et seq.

See also Navajo Nation Personnel Policies and Procedures.

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Subchapter 1. General Provisions

§ 1101. Declaration of purposes; assertion of authority

In order to provide for a permanent homeland for the Navajo People to protect the health, the welfare and the economic security of the citizens of the Navajo Nation, to develop, manage, and preserve the water resources of the Navajo Nation, to secure a just and equitable distribution of the use of water within the Navajo Nation through a uniform and coherent system of regulation, and to provide for the exercise of the inherent sovereign powers of self-government by the Navajo Nation, the Navajo Nation asserts its sovereign authority over all actions taken within the territorial jurisdiction of the Navajo Nation which affect the use of water within the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1102. Application of the Code

Upon the effective date of this Code, it shall be unlawful for any person within the territorial jurisdiction of the Navajo Nation, as defined in 7 N.N.C. § 254, to impound, divert, withdraw, otherwise make any use of, or take any action of whatever kind affecting the use of water within the territorial jurisdiction of the Navajo Nation unless the applicable provisions of this Code and regulations and determinations made hereunder have been complied with. No right to use water, from whatever source, shall be recognized, except use-rights obtained under and subject to this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞37.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 9.

§ 1103. Nature of ownership

A. The Navajo Nation is the owner of the full equitable title to all of the waters of the Navajo Nation as defined in § 1104 of this subchapter, and that title resides undiminished in the Navajo Nation; the United States holds the legal title to those waters solely as trustee for the Navajo Nation.

B. All rights to the use of the waters of the Navajo Nation are held subject to the overriding, prior and supreme rights, interests and governmental authority of the Navajo Nation, and the policy and provisions contained in this Code,

amendments hereto, and administrative regulations and determinations hereunder.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1104. Waters of the Navajo Nation defined

The waters of the Navajo Nation are defined as: (1) all waters reserved at any time for any purpose to the Navajo Nation, and to Navajo Indian lands by the Navajo Nation or by the United States including any waters which, in the course of nature or as the result of artificial works or artificial streamflow enhancement or weather modification methods, flow into or otherwise enhance such waters; (2) all waters held by the Navajo Nation through prior or existing use, appropriation, purchase, contract, gift, bequest, or other means of acquisition; (3) all surface and groundwaters which are contained within hydrologic systems located exclusively within the lands of the Navajo Nation; and (4) all groundwaters located beneath the surface of the lands held in trust by the United States of America for the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞38.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 3 to 8, 91.

Subchapter 2. Notice of Enactment and Effect

§ 1201. Notice required

To insure that all persons and entities affected by this Code are given adequate notice of the enactment and effect of this Code, the Director of the Division of Natural Resources shall, within thirty (30) days after the effective date of this Code, provide for public notice of its enactment and effect in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞37.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 9.

§ 1202. Contents of notice

A. Such public notice shall contain the following statement, prominently displayed and in large, boldface type:

NOTICE: AFTER _____ NO PERSON OR PUBLIC OR PRIVATE ENTITY OF ANY KIND SHALL BE ENTITLED TO TAKE ANY ACTION WITHIN THE TERRITORIAL JURISDICTION OF THE NAVAJO NATION WHICH AFFECTS THE USE OF WATER WITHIN THE NAVAJO NATION, UNLESS SUCH ACTION IS AUTHORIZED BY A PERMIT AS PROVIDED FOR BY THE NAVAJO NATION WATER CODE. NO OTHER WATER USE RIGHTS OF ANY KIND, FROM WHATEVER SOURCE, SHALL BE RECOGNIZED. THE NECESSARY FORMS MAY BE PROCURED FROM THE DIVISION OF NATURAL RESOURCES, POST OFFICE BOX 308, WINDOW ROCK (NAVAJO NATION), ARIZONA 86515, (928) 729-5281-5284. COMPLETE COPIES OF THE NAVAJO NATION WATER CODE ARE ALSO AVAILABLE AT THE ABOVE ADDRESS.

B. In addition to the foregoing statement, the Director of the Division of Natural Resources may include in such public notice additional information deemed necessary in order to assure adequate notice of the enactment and legal effect of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄37.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 9.

§ 1203. Notice-How given

A. The Director of the Division of Natural Resources shall give notice of the provisions of this Code as follows:

1. The notice provided above shall be placed in the Navajo Times at least once each week over a six-week period.
2. The notice provided above shall be placed in a prominent and conspicuous location at the chapter houses, the Navajo Nation government offices, the Bureau of Indian Affairs offices, U.S. Post Offices, Indian Health Service hospitals and clinics, and in such other locations as are deemed necessary or appropriate.
3. The Director of the Division of Natural Resources may take any other steps and post any other notices as is deemed necessary to provide notice of the provisions of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.

Waters and Water Courses ↻37.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 9.

Subchapter 3. Resources Committee of the Navajo Nation Council

§ 1301. Resources Committee—General powers

A. In administering this Code, the Resources Committee may in addition to other actions:

1. Enter appropriate orders;
2. Recommend to the Navajo Nation Council for consideration, adoption, modification, or amendment such regulations as are deemed necessary to implement this Code;
3. File or intervene in any lawsuit, at the direction of Navajo Nation Council, or the President of the Navajo Nation Council;
4. Receive regular reports from the Director of the Division of Natural Resources;
5. Make determinations of availability and need as provided for in Subchapter 8 of the Code;
6. In cooperation with the Navajo Land Department, negotiate for and propose to the Navajo Nation Council the purchase or sale of real or personal property or other interests;
7. With the consent of the appropriate standing committees of the Navajo Nation Council and/or the Navajo Nation Council, enter into administrative agreements, exchange information, and otherwise cooperate with governmental agencies both on and off Navajo Nation lands, for appropriate purposes including the administration of interstate streams and groundwaters;
8. In cooperation with the other standing committees of the Navajo Nation Council, determine existing and foreseeable uses of and needs for water and other related resources; and
9. Take other actions as provided for in this Code.

History

CAU-34-84, August 2, 1984.

Cross ReferencesResources Committee powers, 2 N.N.C. § 694 *et seq.***Library References**

Indians ↻16.5.

Waters and Water Courses ↻36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1302. Disqualification

Any member of the Resources Committee may be disqualified either on his or her own motion or upon a majority vote of the Resources Committee whenever he or she is unable, because of a direct economic interest or other conflict of interest, to serve impartially with respect to any matter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1303. Water reserves

In connection with a determination of availability and need as provided for in Subchapter 8 or in connection with other actions taken under this Code, the Resources Committee may establish within particular areas dependent on common water supplies, reserve water supplies which, although subject to existing uses on an interim basis, are set aside for a definite or indefinite term of years for future Navajo Nation and other needs.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1304. Water assessments

Whenever the Resources Committee of the Navajo Nation Council determines that water not presently available is necessary for purposes and projects beneficial to a part or all of the Navajo Nation and the inhabitants thereof, the Resources Committee may assess individual water users a fair share of water, in predetermined units for such purposes, according to the relative priorities of the classes of uses.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1305. Designations of local management areas

The Resources Committee may, upon the recommendation of the Director of the Division of Natural Resources, Navajo Nation Departments or any person,

isolate and define, within the surface and groundwater systems in which individual water uses are to some degree related by reason of common supply, "local management areas," such as municipal water districts or irrigation districts, for specialized administration under regulations adopted pursuant to this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻36.	C.J.S. Waters § 10.
Westlaw Topic Nos. 209, 405.	

§ 1306. Large user water permits

The Resources Committee may, at its option or upon application, recommend for consideration by the Navajo Nation Council the granting of water use permits for amounts in excess of 1000 acre feet per year and/or for uses which require assurance of long-term supply. Such permits may be conditioned upon payment of consideration and contain other contractual terms including but not limited to, limited periods of times of use, differing conditions of revocability or terminability, and other conditions providing varying degrees of permanence.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻40.	C.J.S. Waters § 12.
Westlaw Topic Nos. 209, 405.	

§ 1307. Charges for water uses

Reasonable charges may be imposed by regulations of the Resources Committee for the use of the waters of the Navajo Nation. Such charges shall not apply to domestic uses, stockwatering uses, fish and wildlife uses and irrigated agriculture uses. Additional charges may be imposed on users by regulations of the Resources Committee for the operation and maintenance of water delivery systems. Waivers of charges may be granted by the Resources Committee, if the use is shown to be of benefit to the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻40.	C.J.S. Waters § 12.
Westlaw Topic Nos. 209, 405.	

§ 1308. Resources Committee—Method of operation

In performing its duties under this Code, the Resources Committee is a standing committee of the Navajo Nation Council subject to the oversight and control of the Navajo Nation Council.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

Subchapter 4. Division of Natural Resources**§ 1401. Information function**

It is the duty of the Director of the Division of Natural Resources to gather for Navajo Nation use and for submission to the Resources Committee information related to the waters administered under this Code. To this end the Director of the Division of Natural Resources shall:

A. Collect, organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters within the Navajo Nation;

B. Develop such additional data and studies pertaining to water availability, quality, and use as are necessary to accomplish the objectives of this Code;

C. Solicit public comment, consult the Chapters and obtain expert advice when appropriate;

D. Investigate water uses and other activities affecting the waters within the Navajo Nation to determine compliance with this Code and with applicable regulations, orders, determinations, permits, water quality standards, etc., issued pursuant to this Code;

E. Investigate water quality when appropriate; and

F. Develop standards and regulations concerning water quality and water allocation and submit them for recommendation by the Resources Committee and for consideration and approval by the Navajo Nation Council.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1402. Enforcement function

It shall be the duty of the Director of the Division of Natural Resources to insure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken under this Code, as well as the policies and guidelines expressed throughout the Code. To this end the Director of the Division of Natural Resources may:

A. Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, withdrawal, and impoundment, obstructions to the flow of water and other activities adversely affecting water quantity or quality;

B. Initiate by means provided herein, proceedings for violations of this Code and the actions taken under this Code; and

C. Enter upon land to inspect methods of diversion, withdrawal and impoundment, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when necessary, and compel testimony and data, by Navajo Nation Court subpoena, if necessary, concerning actions affecting the quality or quantity of the waters administered under this Code.

D. All enforcement actions shall be subject to the limitations imposed by the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq., and the Navajo Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1403. Advisory function

The Director of the Division of Natural Resources may, from time to time, make proposals to the Resources Committee concerning the following:

A. The advisability of establishing local management areas as provided for in Subchapter 3 of this Code;

B. The advisability of making determinations of availability and need as provided for in Subchapter 8 of this Code;

C. The advisability of taking other actions and adopting other plans and methods in order to optimize available water supplies and to minimize pollution and thermal degradation;

D. The advisability, in cooperation with the Navajo Land Department, of purchasing, selling, exchanging and acquiring any interest in real or personal property;

E. The advisability of participating in administrative proceedings, law suits and other legal proceedings;

22 N.N.C. § 1403

WATER

F. The advisability of entering into administrative agreements and other cooperative ventures with tribal, local, state or federal agencies outside of the Navajo Nation Council and the Resources Committee, for appropriate purposes including the administration of interstate streams and groundwaters;

G. The advisability of amending or otherwise changing sections of this Code or adding new sections; and

H. The advisability of taking other actions which will further the policies and purposes contained herein and increase the effectiveness of this Code.

History

CAU-34-84, August 2, 1984.

Cross References

Intergovernmental agreements, see 2 N.N.C. § 824(B)(4) and (6).

Library References

Indians ⇌16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ⇌36.

C.J.S. Waters § 10.

Westlaw Topic Nos. 209, 405.

§ 1404. Administrative function

In administering this Code, the Director of the Division of Natural Resources may:

- A. Grant, deny, modify and revoke water use permits;
- B. Make determinations of water use rights;
- C. Initiate proceedings to enforce this Code;
- D. Insure, in coordination with other appropriate agencies, adequate water levels in streams, rivers, ponds, and lakes to protect Navajo traditional religious practices, wildlife conservation and other values; and
- E. Enter appropriate orders.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ⇌36.

C.J.S. Waters § 10.

Westlaw Topic Nos. 209, 405.

Subchapter 5. Guidelines for Administration

§ 1501. General policy provisions

In taking any action under this Code, the Resources Committee and the Director of the Division of Natural Resources shall be guided by the following basic policy guidelines:

WATER

22 N.N.C. § 1501

A. Whenever practicable, actions taken should benefit the Navajo Nation and the members of the Navajo Nation and further the objective for which the Navajo Nation was created to provide a permanent home and abiding place for the members of the Navajo Nation, both now and in the future. Alternatives to existing and proposed uses are to be considered whenever practicable in order to achieve this goal. Included in those alternatives shall be the option to restrict or prohibit entirely any further use of water for the benefit of the Navajo Nation. If there is presented to the Resources Committee or the Director of the Division of Natural Resources a conflict between water uses for the benefit of the Navajo Nation or any of the members of the Navajo Nation and non-Navajo Nation projects or uses, the Resources Committee or the Director of the Division of Natural Resources may grant such preference as may be required by this Code, which lie in the best interests of the Navajo Nation and its members.

B. In taking any action under this Code which may impose substantial economic hardship on persons or entities presently using water, or which threaten degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values, the Resources Committee, or the Director of the Division of Natural Resources shall, in reaching their decision, carefully consider and weigh:

1. The economic dislocation and hardship which will be imposed by such actions;
2. The investment in time, money and other resources made by the parties affected in reliance upon any previous system of distribution and use of water;
3. Any other burdens as may be imposed by such action;
4. The nature and extent of degradation of other economic, cultural, religious, historic, aesthetic, natural or environmental values.

C. The Resources Committee or the Director of the Division of Natural Resources, when considering a proposed action, shall balance the adverse effects against the benefits to the Navajo Nation and other interests which are advanced as justifying the proposed action; shall consider alternatives to the proposed action which will lessen adverse effects; and shall shape any final action so that its adverse effects will be minimized to the greatest extent possible to protect the water resources.

D. When insufficient water supplies are present for whatever reason or term, the following priority of uses shall be considered in the order in which they are listed:

1. Domestic and municipal uses;
 2. Stock watering uses;
 3. Agricultural uses;
 4. Instream needs, for fish, wildlife conservation and recreational uses;
 5. Economic development uses including industrial and power uses;
- and
6. Other uses.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1502. Guidelines for making most effective use of available resources

In addition to the policy guidelines contained in the previous section, the Resources Committee and the Director of the Division of Natural Resources shall take appropriate actions to:

- A. Insure adequate water supplies;
- B. Maintain water levels for diversion and withdrawal systems;
- C. Maintain head and pressure in groundwaters;
- D. Prevent or reduce obstruction of surface water flows;
- E. Increase efficiency of conveyance systems; increase efficiency in water application; increase return flow; prevent waste and maximize use of the available supply,
- F. Create and enhance the efficiency of natural and artificial surface and underground storage;
- G. Enhance natural and artificial recharge of aquifers;
- H. Define and control interbasin transfers of both surface and groundwaters;
- I. Provide for some degree of overdraft from aquifers when short term recharge is not possible;
- J. Minimize interference between competing users of water sources, whether above or below ground;
- K. Minimize water quality degradation and the adverse effects of water pollution whether from point sources or non-point sources;
- L. Minimize thermal degradation or the adverse effects of thermal degradation;
- M. Minimize interaquifer communication;
- N. Plan for long-term water development;
- O. Penalize misuse; and
- P. Otherwise insure conformity with the policies and provisions of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1503. Additional policy guidelines

A. Rivers, streams, lakes and ponds within the Navajo Nation are to be retained substantially in their natural conditions, with the base flows and water levels necessary to provide for preservation of traditional and religious, recreation, wildlife, fish, scenic, aesthetic, and other environmental values, to the extent possible. Withdrawals of water which would conflict with these interests should be authorized only where it is clear that overriding considerations of the public interest and welfare will be served.

B. Multiple-purpose impoundment structures are to be preferred over single-purpose structures. Due regard shall be given as to means and methods for protection of recreation, fish and wildlife resources in the planning for and construction of water impoundment structures and other artificial obstructions.

C. Individuals, corporations, groups, associations and other entities shall be required to carry out reasonable practices of water and resource conservation and environmental protection as they relate to the use of waters within the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

Subchapter 6. Descriptions of Use and Applications for Permit**§ 1601. Existing use inventory**

In order to determine existing uses of water within the Navajo Nation, the Division of Natural Resources shall cause an inventory of existing water uses to be made and completed within two (2) years following the effective date of this Code. The inventory shall be based upon the information contained in § 1602, "Descriptions of Use".

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1602. Description of Use—Required

All persons desiring to continue to operate existing uses must file a “Description of Use”, as required by this subchapter, within one (1) year of the effective date of this Code. After such date, it shall be unlawful to continue to operate any use or to continue any other action within the jurisdiction of the Navajo Nation which affects the waters therein except as authorized by this subchapter. Individuals or groups making use of a well or other water source operated by another need not file a Description of Use unless the operator fails to do so.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1603. Application for permit—Required

Upon the effective date of this Code, all persons desiring to initiate new uses of, or take other actions within the jurisdiction of the Navajo Nation affecting the waters therein shall file an Application for Permit as required by this subchapter. After such date, it shall be unlawful for any person to make any new use or take any other action within the jurisdiction of the Navajo Nation affecting the waters therein except as authorized by this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1604. Description of Use and Application for Permit—Contents

“Descriptions of Use” and “Applications for Permit” shall be on forms provided by the Director of the Division of Natural Resources and shall include the following information;

- A. The name and mailing address of the claimant;
- B. The name, if available or a description of the source or sources from which water is or will be diverted or withdrawn;
- C. The purpose or purposes for which water is or will be used;
- D. The quantity of water which is or will be used;
- E. A legal description, if such is readily available, and other descriptions reasonably describing the point or points of diversion, withdrawal or impoundment;

F. A description of the method or methods of diversion, withdrawal or impoundment. The description of the method or methods of groundwater withdrawals shall be by a Drilling Permit on a form approved by the Resources Committee;

G. A description of how water is or will be applied or consumed, including acreage and crop if the water is for irrigation; the kind and number of stock if the water is for stock watering; and the number of people and/or homes to be served if the water is for domestic or municipal use;

H. The best estimate reasonably possible of return flow to the source or sources, including how, when, at what point or points, and with what changes in quality and temperatures;

I. The estimated date on which the use or uses began or will be commenced;

J. If any preexisting use is claimed, a description of any documents or programs upon which it is based; any statute or statutes or legal doctrine upon which the use is based; and any pertinent litigation creating or affecting the use;

K. The water user’s plan for future development of the water use or uses and related activities; and

L. Any other information deemed necessary by the Resources Committee.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻36.	C.J.S. Waters § 10.
Westlaw Topic Nos. 209, 405.	

§ 1605. Interim permits

A “Description of Use” which is made with respect to a use existing prior to the effective date of this Code shall, until a permit is issued or denied, serve as an interim permit authorizing the use of a reasonable quantity of water for the uses described and actually made while the application is pending. Additional uses planned but not commenced prior to the effective date of this Code may be made on an interim basis upon Emergency Certification by the Director of the Division of Natural Resources until a permit covering such uses is issued or until other action is taken under this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻36.	C.J.S. Waters § 10.
Westlaw Topic Nos. 209, 405.	

§ 1606. Fees

Each “Application for Permit” shall be accompanied by a twenty-five dollars (\$25.00) filing fee. Provided, however, that the Director of the Division of Natural Resources may waive payment of such filing fee in cases of demonstrated financial hardship.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1607. Public notice of Descriptions of Use and Applications for Permit—Initial notice

As soon as possible and no more than two (2) years after the effective date of this Code, the Director of the Division of Natural Resources shall divide the Navajo Nation into hydrologic basins or watersheds in which water uses are to some degree interrelated and prepare:

- A. A map of the Navajo Nation showing such basins or watersheds;
- B. A listing for each basin or watershed of each use described and permit applied for, which listing shall include names and addresses of applicants, descriptions of water sources, quantities applied for, points of diversion, withdrawal or impoundment, methods of diversion, withdrawal or impoundment and descriptions of the uses to be made;
- C. A statement that the applicants described in the listing have applied for permits under the Navajo Nation Water Code and that any persons claiming that their uses may be adversely affected by the issuance of such permits may object to their issuance in accordance with the provisions for objection, notice and hearing provided for in this Code;
- D. A brief description of the objection, notice and hearing provisions of this Code and information which will assist the objecting parties in procuring the necessary forms and commencing an objection;
- E. A statement that any person may comment either orally or in writing on the issuance of any permit; and
- F. A brief description of the public comment and investigation sections of this chapter.
- G. The map, listings, statements and descriptions prepared under the preceding paragraphs shall forthwith be published and posted in the same manner as provided in § 1203 “Notice—How given”, subject to the following exceptions: (A) maps and description of objection procedures may be omitted if deemed impractical; (B) newspaper publications may be limited to four weekly notices; and (C) listings need be published and distributed only in the hydrologic basins or watersheds affected by proposed or existing uses.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1608. Public notice of Applications for Permit—Continuing operation

When additional “Applications for Permit” are received during the course of the administration of this Code, the Director of the Division of Natural Resources shall, in conformance with the preceding Section:

A. Include in the listing provided for in § 1607(B) the necessary information concerning the new use or action.

B. Prepare a statement that one or more new “Applications for Permit” have been made and objections may be made to them in accordance with § 1607(C).

C. Prepare the descriptions and statements provided in § 1607(D), (E) and (F).

D. The revised listing, statements and descriptions provided for in the preceding paragraphs shall forthwith be published, posted and mailed in the affected area in the same manner as provided for in § 1607, in order to assure adequate notice and an opportunity for hearing to persons who may be adversely affected by the proposed uses or actions.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1609. Objections affecting descriptions of use and applications for permit

Any person or entity whose interests are or may be affected by a water use described and/or applied for may, within thirty (30) days from the date of publishing, and posting of notice that such use has been described and/or applied for, file a formal objection to the issuance of the permit applied for.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌36.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 10.

§ 1610. Form and contents of objections

A. Objections may be made on forms prepared and made available by the Director of the Division of Natural Resources and shall include the name and mailing address of the party objecting; the name of the applicant whose application is objected to; a description of the water use objected to; a short and plain statement of reasons why a permit should not be issued or should be issued in a form different from that applied for; and any suggested conditions or other provisions which should be included in any permit granted.

B. Oral objections may be made to the Director of the Division of Natural Resources when it is determined by the Director that the circumstances permit an oral objection. Such oral objections shall be reduced to writing on the proper forms by the Director of the Division of Natural Resources.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1611. Reply by applicant

Any applicant for a permit whose use is objected to may reply in writing or orally in the same manner as provided herein for objections.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1612. Hearings regarding issuance of permits

Any applicant directly affected or any party objecting in accordance with this Subchapter may request and obtain as a matter of right a hearing on such objection. In addition, the Director of the Division of Natural Resources or the Resources Committee may schedule a hearing concerning the issuance of a permit or permits on their own motion whenever they determine that such hearings are needed. Provided, that whenever possible hearings concerning proposed or existing uses in a particular basin or area shall be consolidated to promote efficiency, minimize expense or hardship, and prevent duplication. Unless otherwise provided for in this Subchapter, notice of such hearings shall be as provided for in Subchapter 10, and shall be given to: the applicants whose uses are objected to; the objecting parties; other persons designated by the objecting parties and applicants; all other persons affected by the proposed use in question and all other persons requesting notice. Unless otherwise

provided for in this Subchapter, hearings shall be conducted as provided for in Subchapter 10.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1613. Public comment

Any person or entity may comment orally or in writing upon the proposed issuance of any permit under this Code. It is the policy of the Navajo Nation that all interested parties be given the opportunity to participate in the decision making process as set forth in this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1614. Investigation and review of permit issuance

In addition to gathering information from the objections, comments, and hearings as provided for above, the Director of the Division of Natural Resources may make any reasonable investigation of the facts and circumstances surrounding the permit application; may solicit comments and information from the public and from appropriate governmental agencies; and may otherwise gather information which will assist in making the decision to issue or deny a permit in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1615. Issuance or denial of permits

As soon as possible after application, hearing, if any, and a reasonable period for public comment shall have passed, and no more than ninety (90) days after the date of the application, if uncontested, or the hearing, if a hearing is held, the Director of the Division of Natural Resources shall review the comments and information gathered with respect to a specific application and either deny a permit or issue a permit in the form provided for in Subchapter 7.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

Subchapter 7. Water Use Permits

§ 1701. Form

Water use permits issued in accordance with this Code shall be on a form approved by the Resources Committee.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1702. Information contained

Each permit shall include:

- A. The name and mailing address of the permittee;
- B. The name of, if available, or a description of, the source or sources from which water is or will be diverted, withdrawn or impounded;
- C. The quantity of water which will be used;
- D. The legal description, if such is readily available, or other description reasonably describing the point or points of diversion, withdrawal or impoundment;
- E. A description of the method or methods of diversion, withdrawal or impoundment;
- F. The purpose or purposes for which water is or will be used;
- G. A description of how water maybe applied or consumed, including acreage and crop if the water is for irrigation, the kind and number of stock if the water is for stock watering, and the number of people and/or homes to be served if the water is for domestic or municipal use;
- H. The approximate date upon which the use or uses permitted began or will be commenced;
- I. Any other information as is deemed necessary and appropriate.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.

Waters and Water Courses ↻49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1703. Conditions

Each water use permit issued pursuant to this Code shall contain whatever conditions are necessary to insure adequate quality and quantities of water; to otherwise further the purposes, policies and guidelines contained within this Code; and to assist in the effective administration of this Code. These may include, but are not limited to, conditions and limitations concerning:

- A. The source from which water may be diverted, withdrawn or impounded;
- B. The quantity of water which may be diverted, withdrawn or impounded during any particular time;
- C. The point or points of diversion, withdrawal or impoundment;
- D. The method or methods of diversion, withdrawal or impoundment;
- E. The purposes for which water will be used;
- F. The method of application;
- G. The location and purpose of application, including acreage for crops and number of livestock for livestock watering;
- H. The quantity and quality of return flow;
- I. The time period during which water may be used;
- J. Schedules for diversion, withdrawal or impoundment, including optional rotation schedules;
- K. Provisions for surface or groundwater storage of surplus flows;
- L. Provisions for increasing the efficiency of diversion, withdrawal or impoundment and application;
- M. Provisions for maintaining minimum pools and streamflows for fish, wildlife, recreation, aesthetic and Navajo religious values;
- N. Provisions for insuring minimum pumping and diversion levels with respect both to surface and underground water;
- O. Provisions designed to maintain head and pressure in groundwaters;
- P. Provisions designed to prevent or reduce obstruction of surface water flows;
- Q. Provisions designed to minimize point and non-point source pollution, water quality degradation and thermal degradation;
- R. Provisions designed to enhance recharge of aquifers;
- S. Provisions designed to define and control interbasin transfers of surface and groundwaters;
- T. Provisions for some degree of overdraft from aquifers when short-term recharge is not possible;

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- U. Provisions designed to prevent or reduce interference between competing users or water sources whether above or below ground;
- V. Provisions to minimize interaquifer communication;
- W. Provisions to insure long-term water development;
- X. Any other provisions necessary to insure conformity with the policies and provisions of this Code and actions taken pursuant to this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 1704. Entry on land

No person shall be authorized to use or otherwise take any action affecting the waters administered under this Code unless he or she shall consent to reasonable entry upon his or her land by Navajo Nation employees engaged in the administration of this Code. Every permit issued under this Code shall contain the condition that no use or other action affecting the waters in question maybe made unless the applicant consents to such reasonable entry upon his or her land.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻40.	C.J.S. Waters § 12.
Westlaw Topic Nos. 209, 405.	

§ 1705. Effect

A water use permit issued under this Code constitutes nothing more than Navajo Nation permission to use the water within the territorial jurisdiction of the Navajo Nation, subject to the terms and conditions of the permit, to this Code, and to actions taken pursuant to this Code. No water use permit issued hereunder shall be construed as creating or recognizing any right other than Navajo Nation permission to use water, nor shall any water use permit ripen into any interest other than such limited permission.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻40.	C.J.S. Waters § 12.
Westlaw Topic Nos. 209, 405.	

§ 1706. Revocability

Unless otherwise indicated, water permits issued under this Code are revocable by the Director of the Division of Natural Resources in accordance with the policies, purposes, guidelines and procedures established in this Code, and in accordance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Bill of Rights 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇐16.5.

Waters and Water Courses ⇐40.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 12.

§ 1707. Modification

Water permits are modifiable in accordance with the procedures provided in this Code, and in accordance with the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.* and the Navajo Bill of Rights 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇐16.5.

Waters and Water Courses ⇐40.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 12.

Subchapter 8. Determination of Availability and Need**§ 1801. When proceeding available**

Whenever at any time after the Existing Use Inventory is completed an application for a permit covering a new or changed use of, or other action affecting water is made, or a complaint concerning an existing or proposed use, or other action affecting the water is made, or a request is made by the Resources Committee, and it appears probable to the Director of the Division of Natural Resources that a water supply common to a particular area is or will be used beyond its capacity, or otherwise adversely affected, the Director of the Division of Natural Resources may initiate a proceeding to determine the availability of and need for water in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇐16.5.

Waters and Water Courses ⇐49.

22 N.N.C. § 1801

WATER

Westlaw Topic Nos. 209, 405.
C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 16 to 17.

§ 1802. Purposes

The purposes of a proceeding to determine availability of and need for water under this subchapter shall be: to evaluate existing and future needs dependent upon a particular supply; to compute with reasonable certainty the characteristics of a particular supply, including quantity, surface and groundwater levels, rates and directions of flow, rates of recharge, out-of-basin sources, pollution, thermal degradation, and other characteristics, at particular locations and times; to explore various methods for increasing supply such as artificial recharge, storage, increased efficiency, alternatives to present uses, alternatives to activities presently requiring the consumption of water; to assist in land use planning in accordance with the policies and action of the Navajo Nation; and to make available to other Navajo Nation, local, state and federal agencies and to members of the public information concerning the waters in question.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 1803. Notice of proceeding

A. Whenever a proceeding is initiated under § 1801 of this Subchapter, the Director of the Division of Natural Resources shall provide notice of such proceeding in the same manner as provided in § 2002 to all parties who are using or will use or otherwise affect or rely upon the water supply in question, or will otherwise be directly affected by such proceeding.

B. Such notice shall state in plain and simple language the reason for initiation of the proceeding; the nature of the proceeding; the geographic area covered by the proceeding; and, as nearly as may be determined, the possible effects of such a proceeding on individual water uses.

C. The Director of the Division of Natural Resources shall make every reasonable effort to ensure that all persons or entities whose interests are or will be affected by the proceeding have reasonable notice of the nature, scope and possible effects of the proceeding and a reasonable opportunity to prepare for and participate in the proceeding.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	Waters and Water Courses ⇌49.
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Westlaw Topic Nos. 209, 405.
 C.J.S. Indians §§ 101 to 106.
 C.J.S. Waters §§ 16 to 17.

§ 1804. Division of Natural Resources—Investigation initiation

As soon as the Director of the Division of Natural Resources determines that a proceeding shall be initiated under this subchapter, he or she shall define as accurately as possible the area covered by the proceeding and commence an investigation as provided herein.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 1805. Division of Natural Resources—Information gathering

The Director of the Division of Natural Resources shall initiate an investigation to gather and evaluate all available, pertinent data from whatever sources concerning the water supply and needs for water in question; to formulate proposals concerning the use of the water in question; and to provide other information, alternatives, and recommendations shall be contained in the report of the Director of the Division of Natural Resources provided for in § 1806 of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 1806. Division of Natural Resources—Report

Upon completion of the investigation provided for in § 1805, and no more than ninety (90) days after the initiation of the investigation, the Director of the Division of Water Resources shall transmit to the Resources Committee the report concerning the availability of and need for water in the particular area to which the proceeding applies. The report shall include the following:

- A. A geographic and geologic description of the area studied, setting out as precisely as possible the boundaries of the area;
- B. A general description of the water supply in that area, from all sources;
- C. A description of the various characteristics of the water supply which are relevant to present and proposed uses and other actions;
- D. A computation of the water supply available at particular times and places;

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- E. A description of present and proposed uses of and other actions affecting the water supply in question;
- F. A description and evaluation of the need for each such present or proposed use or other action;
- G. A description of possible methods for increasing available water supply;
- H. A description of economic and technical methods which may be implemented to increase the efficiency of use;
- I. Alternatives for present uses which will minimize the impacts described in § 1501 of this Code;
- J. Amounts of water within the particular supply which shall be subject to a reserve as provided in § 1303 of this Code;
- K. Proposals for assessing varying amounts of water as provided for in § 1304 of this Code; and
- L. Any additional information and recommendations which the Director of the Division of Natural Resources deems is necessary for inclusion.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1807. Proposed Determination of Availability and Need

As soon as possible and no more than thirty (30) days after receipt of the report of the Director of the Division of Natural Resources, the Resources Committee shall cause to be prepared a proposed “Determination of Availability and Need” in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.

Waters and Water Courses ⇌49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1808. Determination of Availability and Need—Contents

“Determination of Availability and Need” may include the following, either as recommendations or mandatory provisions:

- A. A description and map of the affected area;
- B. A description of the water supply in the affected area, including a description of the various characteristics of the supply which are especially pertinent to present and proper water uses within that area;

- C. A description of the various, present and future needs for using or affecting the water supply in the area;
- D. A list of priorities to be observed within the affected area;
- E. A list of storage methods which are or may be proposed and implemented;
- F. A description of methods for increasing efficiency;
- G. A description of possible interbasin transfers; and
- H. Other information, provisions and recommendations or requirements reasonably calculated to inform the affected parties concerning the future management of the water supply in question.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1809. Notice of hearing

As soon as possible and no more than thirty (30) days after the drafting of a proposed “Determination of Availability and Need”, the Director of the Division of Natural Resources shall provide notice, in the manner provided for in § 1803, of a public hearing at which interested persons may present oral or written comments concerning the proposed “Determination of Availability and Need”. Included in the notice shall be a description and map of the affected area; a description of the proceeding to date and a clear statement that copies of the proposed “Determination of Availability and Need” shall be made reasonably available to interested person. The notice shall state the date, time and place for a hearing to be held not less than thirty (30) nor more than sixty (60) days after the date notice is required.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1810. Hearing

A hearing shall be held with respect to every proposed “Determination of Availability and Need”. Whenever possible, such hearings shall be held in the affected area, at a date, time and place which is reasonably convenient to a major portion of the parties affected. At such hearings, the Resources Committee or its designees shall provide a brief oral statement of the purpose of the

hearing and a description of the proceeding to date, including the proposed “Determination”. At least one member of the Resources Committee shall be present and shall preside over the hearing. After the presentation is made by the Resources Committee or its designees, public comment shall be allowed. Public comment may be limited by reasonable rules adopted by the Resources Committee to insure an opportunity for full comment. Hearings may be continued if necessary to such times and places as are deemed appropriate upon adequate notice.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ☞49.

C.J.S. Waters §§ 16 to 17.

Westlaw Topic Nos. 209, 405.

§ 1811. Final Determination of Availability and Need

As soon as possible, and no more than sixty (60) days after the public hearing provided in § 1810, the Resources Committee shall cause to be prepared a final “Determination of Availability and Need”. Notice of this final “Determination” shall be made in the same manner as provided for in § 1803 and shall indicate that copies of the “Determination” are reasonably available for public review.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

C.J.S. Indians §§ 101 to 106.

Waters and Water Courses ☞49.

C.J.S. Waters §§ 16 to 17.

Westlaw Topic Nos. 209, 405.

§ 1812. Subsequent action

Upon completion of the above proceedings, the Director of the Division of Natural Resources shall make copies of the “Determination of Availability and Need” made under the provisions of this subchapter reasonably available to parties requesting the same; shall grant, revoke, deny or modify permits in accordance with such “Determination”, shall enter appropriate orders and take other actions authorized by this Code to prevent overuse and/or pollution in accordance with such Determination; and shall take whatever other actions are necessary and authorized by this Code to assist in the implementation of the “Determination” and of the policies, provisions and guidelines set forth in this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 1813. Appeal

Appeals from the final “Determination of the Availability and Need” shall be taken in the same manner as provided for in Subchapter 11 of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

Subchapter 9. Transfer and Loss of Rights**§ 1901. Transfer, assignment, descent, distribution and creation of security interest**

Permits issued under this Code shall not be subject to transfer, assignment, descent, distribution or creation of any security interest without the express written consent of the Director of the Division of Natural Resources. Applications for transfer, assignment, or creation of a security interest shall be made on forms prepared and made available by the Director of the Division of Natural Resources. Such forms shall be designed to solicit information concerning any substantial changes which will or may occur as a result of the transfer, assignment or creation of a security interest in a water use permit. Every attempt should be made to conform with the purposes of Subchapter 6, governing “Descriptions of Use and Applications for Permit”. Heirs and successors in interests of permittees shall apply for permits in their own names; however, such substitute permits shall be freely granted unless changing hydrological conditions clearly warrant a modification of the prior permits.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞153.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 457.

§ 1902. Loss by non-use

A. Any right to use or otherwise affect in any way water within the territorial jurisdiction of the Navajo Nation, regardless of its origin, shall become void and revert, to the extent of the abandonment or non-use, to the

Navajo Nation when the holder of such use right wholly or partially abandons the same, or voluntarily fails without sufficient cause to use all or a portion of the water available under such use right for a period of five (5) consecutive years.

B. "Sufficient cause" shall include:

1. Drought or other unavailability of water;
2. Active service in the armed forces of the United States;
3. The operation of legal proceedings;
4. The application of any laws restricting water use;
5. Incarceration in a penal institution;
6. Confinement in a mental institution, whether voluntary or involuntary;
7. Incompetence by reason of age or mental incapacity;
8. Provisions for future use as provided in this Code; or
9. Other causes of non-use beyond the control of the holder or holders of the use right claimed.

C. Before such rights to use water may be deemed lost by non-use or abandonment, the Director of the Division of Natural Resources shall serve notice on the holders of such use rights to appear at a hearing to be held before the Resources Committee not less than thirty (30) days after the mailing or personal service of such notice and show cause why their use rights should not be deemed void. Such notice and hearing shall be in the manner provided for in Subchapter 10 of this Code governing notice and hearing.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞153.	C.J.S. Waters § 457.
Westlaw Topic Nos. 209, 405.	

§ 1903. Loss by adverse possession, prescription, estoppel, or acquiescence

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water maybe acquired by adverse possession, prescription, estoppel or acquiescence.

History

CAU-34-84, August 2, 1984.

Library References

Adverse Possession ☞5.1.	Westlaw Topic Nos. 20, 209, 405.
Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞153.	C.J.S. Waters § 457.

§ 1904. Outside proceedings

No use right granted under this Code may be reduced or taken or otherwise affected in any procedure or determination or adjudication except as provided for in this Code, and in compliance with the Indian Civil Rights Act, 25 U.S.C. § 1301 *et seq.*, and the Navajo Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞153.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 457.

Subchapter 10. General Hearing Provisions

§ 2001. Applicability

Unless otherwise provided for in this Code, hearings shall be held in accordance with the provisions of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2002. Notice

A. All parties who will or may be directly affected by a proposed action shall be given notice by mail of any hearings held under this Subchapter. In addition, notice of hearings shall be published in one paper having general circulation in the affected area and notice of hearings shall be posted in prominent places in the affected area, as set forth in Subchapter 2 of this Code.

B. Every attempt shall be made to give each party who will or may be directly affected by any action actual notice of that action and fair and adequate opportunity to be heard.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2003. Time and place of hearing

Whenever possible hearings shall be held in the affected area, at a date, time and place which is convenient for a major portion of the parties affected.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2004. Continuances

Continuances shall be freely granted when the ends of justice so require and in order to assure adequate notice and opportunity to be heard.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2005. Presiding officer

The Resources Committee shall designate a qualified and impartial hearing officer to preside over hearings provided for in this Subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2006. Forms of evidence

Evidence may be submitted in any practical form including oral testimony, written evidence, and descriptive evidence. The ordinary rules of evidence shall not apply but evidence which is irrelevant, cumulative, unduly prejudicial, or would otherwise be unfairly admitted, may be excluded or admitted only under special conditions or stipulations.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 16 to 17.

§ 2007. Consolidation of hearings

Whenever possible, hearings concerning proposed or existing actions in a particular watershed or area shall be consolidated to promote efficiency, minimize expense or hardship, and to prevent duplication.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2008. Recording

Hearings shall be recorded by mechanical means, provided, that any person may provide at his or her own expense for a stenographic record.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2009. Decision

Whenever a decision is required in accordance with the provisions of this Code following a public hearing, the Hearing Officer shall prepare findings of fact and conclusions of law and shall recommend a proposed decision to the Director of the Division of Natural Resources. The Director may make such modifications as are clearly warranted by the evidence and applicable law and shall issue a final decision, including an explanation for any changes made in any recommendation of the Hearing Officer, within thirty (30) days of such recommendation. Such decision shall be published and served upon the parties in the same manner as provided in § 2002 governing notice of hearings.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

Subchapter 11. Appeals

§ 2101. Appeals provided for

There shall be no appeal from actions taken under this Code except as provided herein. Appeals shall be to the Supreme Court of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Cross References

Navajo Rules of Civil Appellate Procedure, see Rule 7.
Supreme Court of the Navajo Nation, 7 N.N.C. § 801.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2102. Notice of Appeal—jurisdiction

Any party aggrieved by any final action taken under this Code may, by filing a Notice of Appeal with the Supreme Court of the Navajo Nation, obtain review of such final action. The Supreme Court shall have no jurisdiction to hear any appeal initiated pursuant to this subchapter unless the Notice of Appeal is filed with the Supreme Court of the Navajo Nation within thirty (30) days after the date of the final action. “Final action” means any action taken under this Code for which no further consideration by the Director of the Division of Natural Resources or the Resources Committee is required.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2103. Notice of Appeal—Service

Upon filing of the Notice of Appeal the party appealing the final action shall forthwith, and no more than ten (10) days after filing of the Notice of Appeal, cause the Notice of Appeal to be served on all parties to the proceeding being appealed from, on the Director of the Division of Natural Resources, and on the Chairperson of the Resources Committee.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇌16.5.	Waters and Water Courses ⇌49.
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Westlaw Topic Nos. 209, 405.
C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 16 to 17.

§ 2104. Transmittal of record

A. Upon receipt of the Notice of Appeal, the Director of the Division of Natural Resources and the Resources Committee shall cause all pertinent documents in their possession, and any other articles of evidence in their possession, to be transmitted to the Supreme Court of the Navajo Nation.

B. Any party to an appeal may, at the Director's own expense, cause a transcript of any hearings or other proceedings below to be prepared and transmitted to the Supreme Court of the Navajo Nation. Provided that the Director of the Division of Natural Resources in his or her discretion shall bear the final financial burden of preparing such transcript when it appears, after good cause shown, that a party is financially unable to do so.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↔16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↔49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2105. Oral argument

Upon receipt of the Notice of Appeal, the Supreme Court of the Navajo Nation shall, as soon as possible and no more than fifteen (15) days after receipt thereof, notify the Resources Committee, the Director of the Division of Natural Resources, the appealing party, and the other parties to the proceedings of a date certain for full hearing before the Supreme Court of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↔16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↔49.	C.J.S. Waters §§ 16 to 17.
Westlaw Topic Nos. 209, 405.	

§ 2106. Briefs

Parties may at their own option or shall when requested to do so by the Supreme Court of the Navajo Nation file briefs in support of their appeal. Briefs shall be due on dates set by the Supreme Court of the Navajo Nation and no less than thirty (30) days after receipt of the notice provided for in § 2105 of this subchapter.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2107. Scope of review

The Supreme Court of the Navajo Nation, in reviewing the final action appealed from, shall limit its review to the issues and the evidence which were before the Director of the Division of Natural Resources or the Resources Committee at the time of the final action appealed from. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action appealed from. Provided, final actions appealed from may only be reversed, modified or remanded when they are arbitrary, capricious, unsupported by substantial evidence, not in substantial conformity with this Code, or otherwise contrary to law.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

§ 2108. The Supreme Court—Additional powers

A. The Supreme Court of the Navajo Nation may on its own motion or upon motion of any party dismiss an appeal for want of prosecution, gross procedural irregularity, or mootness when the ends of justice so require.

B. In addition, the Supreme Court may stay the operation of final actions appealed from, in whole or in part, and may when the ends of justice require, provide for a supersedeas bond or other security from the parties to the appeal.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

Subchapter 12. Definitions

§ 2201. Director of the Division of Natural Resources

“Director of the Division of Natural Resources” means the Executive Director of the Division of Natural Resources of the Navajo Nation government, his or her designated representative or agent, or his or her successor in responsibility, as determined by the President of the Navajo Nation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄36.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 10.

§ 2202. Domestic use

“Domestic use” means any use of water for individual personal needs or for household purposes such as drinking, bathing, heating, cooking, or sanitation.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄36.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 10.

§ 2203. Effective date

The “effective date” referred to herein shall be the date of the resolution of the Navajo Nation Council approving adoption of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄49.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 16 to 17.

§ 2204. Municipal use

“Municipal use” means all reasonable water uses necessary in carrying out the functions of municipal government, local Chapter government and growth centers or towns.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄49.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 16 to 17.

§ 2205. Person

“Person” includes an individual; a partnership; a corporation, whether public and private; and a governmental entity, unit or agency, whether tribal, local, state or federal.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄49.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 16 to 17.

Subchapter 13. Prohibited Acts**§ 2301. Waste of water prohibited**

No waters that have been withdrawn, diverted, impounded or otherwise taken pursuant to a valid permit or otherwise shall be wasted. The withdrawal of reasonable quantities of water in connection with construction, development, testing or repair of diversion, withdrawal and impoundment works shall not be construed as waste. In the event of inadvertent loss of water owing to defects in equipment for diversions, withdrawals and impoundments such shall not be construed as waste if reasonable diligence is shown by the permittee in effecting necessary repairs.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄266.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 920 to 922.

§ 2302. Unauthorized actions affecting waters prohibited

Whenever any use or other action affecting the use of waters within the territorial jurisdiction of the Navajo Nation is required by this Code to be authorized under the provisions of this Code, it shall be a violation of this Code to knowingly make such use or take such other action without the authorization required.

History

CAU-34-84, August 2, 1984.

Library References

Indians ⇄16.5.

Waters and Water Courses ⇄266.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 920 to 922.

§ 2303. Obstruction of Navajo Nation employees

The willful obstruction of or interference with Navajo Nation employees performing their lawful duties under this Code shall be a violation of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞266.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 920 to 922.

§ 2304. Misstatement of material facts

The knowing misstatement of any material fact by any person or entity when providing information required by this Code, with respect to “Descriptions of Use and Applications for Permit” or otherwise, shall be a violation of this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞266.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 920 to 922.

§ 2305. Sanctions for Code violations

Violations of this chapter may subject the person(s) or entity(ies) responsible to forfeiture or suspension of rights to the use of water administered under this Code. Sanctions may also include the requirement of payment for water improperly used or adversely affected by the improper use; payment of the costs for all associated remedial actions taken, including the replacement of lost water; payment of associated administrative costs incurred by the Navajo Nation as a result of the violation; and payment of such other costs as are necessary to render the Navajo Nation and its inhabitants whole. Sanctions shall be imposed by the Director of the Division of Natural Resources subject to the limitations imposed by the Indian Civil Rights Act 25 U.S.C. § 1301 *et seq.*, and the Navajo Bill of Rights, 1 N.N.C. § 1 *et seq.*

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞266.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 920 to 922.

Subchapter 14. Miscellaneous Provisions

§ 2401. Severability

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the Code can be given effect without the invalid

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provision or application; and to this end the provisions of this Code are declared to be severable.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻37.	C.J.S. Waters § 9.
Westlaw Topic Nos. 209, 405.	

§ 2402. Construction

This Code shall be liberally construed to effectuate its objectives, policies, guidelines, purposes, and provisions.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻37.	C.J.S. Waters § 9.
Westlaw Topic Nos. 209, 405.	

§ 2403. Review of authority

The Resources Committee and the Director of the Division of Natural Resources shall, from time to time, review the authority granted to them under this Code and propose amendments and additions thereto to the Navajo Nation Council in order to improve administration under this Code.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻37.	C.J.S. Waters § 9.
Westlaw Topic Nos. 209, 405.	

§ 2404. Extension of time limits

The time limits provided for in various places of this Code may be extended, for good cause shown, by the agency before whom the proceeding is pending when the ends of justice so require.

History

CAU-34-84, August 2, 1984.

Library References

Indians ↻16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ↻37.	C.J.S. Waters § 9.
Westlaw Topic Nos. 209, 405.	

§ 2405. Representation

Parties appearing at hearings and other proceedings provided for by, this Code may represent themselves or maybe represented by individuals licensed to practice before the Courts of the Navajo Nation if they so desire.

History

CAU-34-84, August 2, 1984.

Library References

Indians ☞16.5.

Waters and Water Courses ☞37.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters § 9.

Chapter 13. Navajo Nation Safe Drinking Water Act

Subchapter 1. General Provisions

Section

- 2501. Title
- 2502. General policy
- 2503. Purpose
- 2504. Definitions
- 2505. Applicability
- 2506. Voluntary Compliance Agreement
- 2507. Authority of Director
- 2508. Severability
- 2509. Construction

Subchapter 2. Prohibited Acts

- 2521. Use of lead pipes, solder and flux
- 2522. Tampering with public water systems
- 2523. Other violations
- 2524. Operating a public water system without a permit
- 2525. Operating an underground injection facility without a permit

Subchapter 3. Drinking Water Regulations

- 2531. Primary drinking water regulations
- 2532. Secondary drinking water regulations
- 2533. Sampling and analytical regulations
- 2534. Reporting, record keeping and public notification requirements
- 2535. Surface water treatment regulations
- 2536. Lead and copper regulations
- 2537. Laboratory requirements
- 2538. Wellhead protection
- 2539. Operator certification

Subchapter 4. General Responsibilities of Public Water System Owners and Operators

- 2541. Record keeping
- 2542. Reporting results of tests and analyses
- 2543. General public notification requirements
- 2544. Lead public notification requirements
- 2545. Emergency Water plan
- 2546. Consumer confidence reports by community water systems

Subchapter 5. Standards for Construction

- 2551. Design criteria

Subchapter 6. Variances and Exemptions

- 2561. Variances
- 2562. Small systems variances
- 2563. Exemptions

Subchapter 7. Permit Requirements for Public Water Systems and Underground Injection Facilities

- 2571. Permits
- 2572. Submission of information
- 2573. Program funds

Subchapter 8. Inspections, Enforcement and Judicial Review

- 2581. Inspections
- 2582. General enforcement authority
- 2583. Judicial enforcement
- 2584. Administrative assessment of penalties
- 2585. Administrative hearings and subpoenas
- 2586. Judicial review

History

The Navajo Public Water Systems Supervision Program, previously adopted by resolution CD-57-86, December 10, 1986, and codified at 22 N.N.C. § 2501 *et seq.*, was rescinded and replaced by resolution CJY-50-95 which originally enacted the Navajo Nation Safe Drinking Water Act. The Navajo Nation Safe Drinking Water Act was subsequently amended by resolu-

tions CJY-70-98 and CAU-69-01. For purposes of organizational consistency and to maintain the NNSDWA's subchapters, the NNSDWA has been relocated from Subchapter 15 of Chapter 11 to its own Chapter 13 within Title 22 but maintains its section numbers at 22 N.N.C. § 2501 *et seq.*

Subchapter 1. General Provisions

§ 2501. Title

This Act may be cited as the “Navajo Nation Safe Drinking Water Act” (NNSDWA).

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞180.	C.J.S. Waters §§ 483 to 484.
Westlaw Topic Nos. 209, 405.	

§ 2502. General policy

It is the policy of the Navajo Nation to recognize, preserve, and protect the health and welfare of the Navajo People by ensuring that water is safe for drinking and to protect underground sources of drinking water from contamination by the subsurface emplacement of fluids by injection wells as well as by surface and subsurface discharges.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞180.	C.J.S. Waters §§ 483 to 484.
Westlaw Topic Nos. 209, 405.	

§ 2503. Purpose

The purpose of this Act is to protect the health and welfare of the Navajo People and the environment by establishing appropriate drinking water standards to ensure that drinking water is safe for consumption, and by protecting underground sources of drinking water from potential contamination by underground injection activities.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞180.	C.J.S. Waters §§ 483 to 484.
Westlaw Topic Nos. 209, 405.	

§ 2504. Definitions

A. “Administrator” — Means the Administrator of the United States Environmental Protection Agency.

B. “Aquifer” — means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

C. “Attorney General” — means the Attorney General of the Navajo Nation.

D. “Contaminant” — means any physical, chemical, biological or radiological substance or matter in water including uranium and other radiological isotopes.

E. “Community Water System” — A public water system that:

1. Serves at least 15 service connections used by year-round residents of the areas served by the system; or

2. Regularly serves at least twenty-five (25) year-round residents. Community water systems serve a residential population on a year-round basis. Users of community systems are likely to be exposed to any contaminants in the water supply over an extended time period.

F. “Director” — Means the Executive Director of the Navajo Nation Environmental Protection Agency or his/her designee.

G. “Endangerment to Drinking Water Sources” — Means, in reference to underground injection, that such injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply a public water system, and that the presence of such contaminant may result in such system’s not complying with a Navajo Nation Primary Drinking Water Regulation or may otherwise adversely affect the health of any person.

H. “EPA” — The United States Environmental Protection Agency.

I. “Exempted Aquifer” — Means an aquifer or portion of an aquifer that meets the criteria in the definition of “underground source of drinking water” but which has been exempted according to the procedures in the Navajo Nation Underground Injection Control regulations.

J. “Exemption” — Means a waiver granted by the Director to a public water system pursuant to this Act and regulations promulgated hereunder.

K. “Fluid” — Means any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gas or any other form or state.

L. “Groundwater” — Means water below the land surface in a zone of saturation.

M. “Injection Well” — Means a “well” into which “fluids” are being injected.

N. “Lead-Free” — When used with respect to solders and flux, “lead-free” shall mean not more than two-tenths percent (0.2%) lead, and when used with

respect to pipes and pipe fittings, “lead-free” means not more than eight percent (8%) lead.

O. “Maximum Contaminant Level” — means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system, except in the case of turbidity, where the maximum permissible level is measured at the point of entry to the distribution system.

P. “Navajo Nation” — Means:

1. When referring to the body politic, except as the context by otherwise require, the same meaning as set forth in 1 N.N.C. § 552.

2. When referring to governmental territory, all lands and water within the territorial boundaries of the Navajo Nation, including:

a. All lands and waters within the exterior boundaries of the Navajo Indian Reservation or of the Eastern Navajo Agency or within the boundaries of Navajo dependent Indian communities, including all lands within the boundaries of Navajo chapter governments, all without regard to the nature of this title thereto;

b. All lands and waters held in trust by the United States for or restricted by the United States or otherwise set apart under the superintendence of the United States for the use or benefit of the Tribe, any Band of Navajo Indians, or any individual Navajo Indians as such; and

c. All other lands and waters over which the Navajo Nation may exercise governmental jurisdiction in accordance with federal or international law.

Q. “Navajo Nation Environmental Protection Agency, or NNEPA” — Means the agency established by the Navajo Nation Council pursuant to CAP-47-95, 2 N.N.C. § 1921 *et seq.* to carry out the environmental laws and regulations adopted by the Navajo Nation.

R. “Non-Community Water System” — Means a public water system that is not a community water system.

S. “Person” — means an individual, public or private corporation, company, partnership, firm, association or society of persons, the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

T. “Primary Drinking Water Regulations” — Means requirements promulgated under this Act that:

1. Apply to public water systems;

2. Specify contaminants which, in the judgment of the Director, may have an adverse effect on the health of persons;

3. Specify for each contaminant either:

a. A maximum contaminant level if, in the judgment of the Director, it is economically and technologically feasible to ascertain the level of contaminant in public water systems; or

b. If, in the judgment of the Director, it is not economically or technologically feasible to so ascertain the level of contaminant, each treatment technique known to the Director which leads to a reduction in the level of contaminant sufficient to satisfy the requirements of § 1412 of the SDWA, 42 U.S.C. § 300g-1, and of Subchapter 3 of this Act; and

4. Contain criteria and procedures to assure a supply of drinking water which dependably complies with maximum contaminant levels, including accepted methods for quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the public water system, and requirements as:

a. To the minimum quality of water which may be taken into the system; and

b. Siting for new facilities for public water systems.

U. “Public Water System Owner or Operator” — Means any person who owns and/or operates a public water system.

V. “Public Water System” —

1. The term “public water system” means a system for the provision to the public water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Such term includes:

a. Any collection, treatment, storage and distribution facilities under control of the operator of such system and which are used primarily in connection with such system; and

b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a “community water system” or a “non-community water system.”

2. For purposes of paragraph 1, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:

a. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);

b. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or

c. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable primary drinking water regulations.

W. “PWSSP” — Means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to public water systems.

X. “Regularly Serves” — Means that a public water system serves an average of at least twenty-five individuals daily at least sixty (60) days out of the year.

Y. “Resources Committee” — Means the standing committee of the Navajo Nation Council as defined in 2 N.N.C. § 691 *et seq.* with oversight authority over the Navajo Nation Environmental Protection Agency as provided for by the Navajo Nation Council Resolution No. CAP-47-95.

Z. “Safe Drinking Water Act or SDWA” — means the Public Health Service Act, as amended by the Safe Drinking Water Act Amendments of 1986 as amended, 42 U.S.C. § 300f *et seq.*

AA. “Sanitary Survey” — Means an on-site review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

BB. “Secondary Drinking Water Standards” — Standards promulgated under this Act that apply to public water systems and specify the maximum contaminant levels which, in the judgment of the Director, are requisite to protect the public welfare primarily with regard to aesthetic qualities. Such standards may apply to any contaminant in drinking water;

1. Which may adversely affect the odor or appearance of water and, consequently, may cause a substantial number of persons served by the public water system providing such water to discontinue its use, or

2. Which may otherwise adversely affect the public welfare. Such standards may vary according to geographic and other circumstances.

CC. “Tamper” — Means to introduce a contaminant into a public water system with the intention of harming persons; or to otherwise interfere with the operation of a public water system with the intention of harming persons.

DD. “Total Dissolved Solids” — Means the total dissolved (filterable) solids as determined by use of established US EPA test methods.

EE. “Underground Injection Activity or Facility” — means any underground injection well or another facility or activity that is subject to regulation under the SDWA.

FF. “Underground Injection Control (UIC) Program” — Means the NNEPA program responsible for implementing and enforcing the provisions of this Act pertaining to underground injection and the protection of underground sources of drinking water.

GG. “Underground Injection” — Means the subsurface emplacement of fluids by well injection. The term does not include the underground injection of natural gas for purposes of storage.

HH. “UIC Owner or Operator” — Means any person who owns or operates an underground injection facility.

II. “Underground Source of Drinking Water (USDW)” — Means an aquifer or its portion of an aquifer:

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1. Which supplies any public water system; or
2. Which contains a sufficient quantity of groundwater to supply a public water system; and
 - a. Currently supplies water for human consumption; or
 - b. Contains fewer than 10,000 mg/l total dissolved solids.
3. Which is not an exempted aquifer.

JJ. “Variance” — Means a waiver granted by the Director to a public water system pursuant to this Act and regulation promulgated hereunder.

KK. “Well” — Means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than its largest surface dimension.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ⇄16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇄180.	C.J.S. Waters §§ 483 to 484.
Westlaw Topic Nos. 209, 405.	

§ 2505. Applicability

A. Except as otherwise provided in this Section, the provisions of this Act and the regulations promulgated hereunder shall apply to all within the Navajo Nation.

B. This Act does not apply to any water system that meets all of the following conditions:

1. It consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
2. It obtains all of its water from, but is not owned or operated by, a public water system to which these regulations apply;
3. It does not sell water to any person;
4. It is not a carrier which conveys passengers in interstate commerce; and
5. It does not provide water to any school, tribal, state or federal governmental office or private entity serving twenty-five (25) or more employees or individuals.

C. Except as otherwise provided in Subsections (D) and (E) of this Section, the provisions of this Act and/or regulations promulgated hereunder in whole or in part; shall not apply to any person or property where, but only to the limited extent that, such application would be in violation of any covenant not to regulate or otherwise exercise jurisdiction over such person or property.

D. Notwithstanding the provisions of Subsection (C) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person who has submitted an application for and received a permit pursuant to this Act or is otherwise subject to its provisions

and to all property within the Navajo Nation owned or operated by such person.

E. If not otherwise applicable in accordance with Subsection (D) of this Section, the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, shall apply to any person and to such property owned or operated by such person to such extent and under such terms and conditions as may be provided in any voluntary compliance agreement entered into pursuant to § 2506.

F. Nothing in this Act shall excuse the required performance of any act as set out in any other applicable law or regulation of the Navajo Nation.

G. Nothing in this Section shall be construed as a determination or admission by the Navajo Nation that any claim of covenant not to regulate or otherwise exercise jurisdiction is valid.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.

Waters and Water Courses ☞180.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 483 to 484.

§ 2506. Voluntary Compliance Agreement

A. Any person to whom the provisions of this Act are not otherwise applicable, may apply to the Director to enter into a voluntary compliance agreement with the Navajo Nation with respect to any property to which the provisions of this Act and/or regulations promulgated hereunder, in whole or in part, are not otherwise applicable.

B. A proposal to enter into a voluntary compliance agreement shall be in writing, shall indicate the person and property proposed to be subject to the agreement, shall indicate the proposed term of the agreement, and shall indicate the part or parts of this Act and/or regulations promulgated hereunder, in whole or in part, with which voluntary compliance is proposed.

C. A voluntary compliance agreement shall be for a term of not less than one (1) year, and may be subject to renewal for successive terms of not less than one (1) year. A voluntary compliance agreement may not vary the requirements of this Act, except that the consent required to be given in accordance with § 2572 of this Act shall be strictly limited to the application of this Act and regulations promulgated pursuant to this Act in accordance with the terms of said voluntary compliance agreement, including any renewals thereof.

D. A voluntary compliance agreement shall not be effective unless and until there is final approval of the agreement by the Director.

E. Except as otherwise expressly provided in the agreement, by entering into a voluntary compliance agreement, no person shall be deprived of the

benefit of any valid covenant not to regulate or otherwise exercise jurisdiction over such person or property owned or operated by such person.

F. A person may enter into a voluntary compliance agreement in accordance with this Section, notwithstanding that the validity of such person's claim to be exempt from the provisions of this Act has not been judicially determined, whenever the Director determines that entering into such an agreement is in the best interest of the Navajo Nation. Entering into an agreement pursuant to this Subsection shall not constitute a determination of admission by the Navajo Nation that such claim of exemption is valid.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞ 16.5.
Waters and Water Courses ☞ 180.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 483 to 484.

§ 2507. Authority of Director

A. General Responsibilities.

1. The Director is responsible for administering this Act and is authorized to exercise all the legal authority necessary for this purpose. The Director may delegate to any officer or employee of the Navajo Nation Environmental Protection Agency such of his or her powers and duties under this Act, except the making of regulations, as he or she may deem necessary or expedient.

2. The Director shall promulgate regulations for the enforcement of this Act.

3. Inventory. The Director shall establish and maintain a current inventory of all public water systems and of all underground injection facilities within the Navajo Nation.

a. In compiling such inventory, the Director shall review and incorporate all appropriate materials previously developed by the USEPA, by the Navajo Nation, and by other appropriate governmental agencies. It shall, however, be the duty of each public water system owner or operator and each UIC owner or operator to provide all information needed for this inventory, and all amendments or modifications, in the form required by the Director.

b. The Director shall make available, at the Navajo Nation EPA offices, a copy of the inventory information and other information regarding each Navajo public water system and underground injection facility and shall provide a copy when requested to the appropriate public water system owner or operator, UIC owner or operator and to the general public.

c. All public water system and UIC owners and operators shall provide, in writing, all information, corrections or amendments necessary for the development and maintenance of a complete inventory.

4. Records. The Director shall establish and maintain a file for each public water system and underground injection facility listed in the inventory. With respect to public water systems each file shall contain the information and be maintained as required by 40 C.F.R. 142.14, as that regulation may be amended from time to time, as well as any additional information deemed appropriate by the Director. These records shall be made available for public inspection at the office of the Director during regular business hours.

5. Reports. The Director shall submit reports to the USEPA as required by 40 C.F.R. 142.15, with regard to public water systems, and by 40 C.F.R. 144.8, with regard to underground injection facilities as those provisions are amended from time-to-time. These reports shall be made available for public inspection at the office of the Director during regular business hours.

B. Contracts and Grants. The Director is authorized to:

1. In compliance with Title 2 of the Navajo Nation Code enter into agreements, contracts or cooperative arrangements with other tribal departments, divisions or entities; with state, federal or interstate agencies; municipalities; local health departments, educational institutions or other organizations; or other persons for the purpose of ensuring the safety of drinking water or underground sources of drinking water within the Navajo Nation.

2. In compliance with Title 2 of the Navajo Nation Code, accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this Act, provided that all monies resulting therefrom shall be deposited in the PWS Fund or the UIC Fund, as the case may be, pursuant to § 2573 and as authorized under Navajo Nation law.

3. Participate in demonstration programs, such as the sole source aquifer demonstration program provided for in § 1427 of the SDWA, 42 U.S.C. § 300h-6.

C. Investigations and Hearings. In order to fulfill the obligations of this Act, the Director is authorized to:

1. Conduct investigations, inspections and tests to carry out the duties of this Act;

2. Hold hearings related to any aspect of or matter within the duties of this Act and, in connection therewith, compel the attendance of witnesses and the production of records according to the procedures established in this Act;

3. Encourage voluntary cooperation by advising and consulting with persons or affected groups, tribes or states to achieve the purposes of this Act;

4. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, to carry out the purposes of this Act;

5. Compile and publish, from time to time, reports, data and statistics with respect to matters studied or investigated by the Director or at his or her direction;

6. Implement and administer the provisions of this Act; and

7. Perform such other activities as the Director may find necessary to carry out his or her functions under this Act.

D. Regulations

1. The Director is authorized to promulgate such regulations from time to time as may be necessary to carry out the provisions of this Act. Such regulations may include:

a. Regulations governing the determination of penalties, denials, suspension or revocation of permits;

b. Regulations governing appeals from actions taken under this Act; and

c. Regulations governing administration of this Act by the Director.

2. Notice of any proposed regulation shall be published in a newspaper of general circulation for the areas of the Navajo Nation that are concerned and shall be given orally in English and in the Navajo language over local radio and/or television stations. The notice shall specify the period available for public comment and the date, time and place of any public hearing, and shall make available to the public a copy of the proposed regulation. Not later than the date of proposal of the regulation in question, the Director shall establish a rulemaking docket and shall make the docket available to the public for inspection and copying during regular business hours. The Director shall provide a comment period at least thirty (30) calendar days; allow any person to submit written comments, data or documentary information; give interested persons an opportunity to present orally their views, data or arguments in the Navajo or English languages; and keep the docket open for at least ten (10) days after such proceeding to provide an opportunity for submission of rebuttal and supplementary information.

3. The final regulation shall be based on the record of the rulemaking proceeding, contained in the docket, and shall be accompanied by an explanation of the reasons for any major changes from the proposed regulation and a response to each of the significant comments submitted in written or oral presentations during the comment period.

4. The effectiveness and enforceability of the provisions of this Subchapter shall not be dependent upon the adoption of regulations pursuant to Subsection (D)(1) of this Section.

5. Regulations shall be effective in accordance with their terms after approval of the Resources Committee of the Navajo Nation Council.

6. Regulations promulgated under Subsection (D)(1) shall contain minimum requirements for an effective program to prevent underground injection which endangers drinking water sources. Such regulations shall require that the Navajo Underground Injection Control Program:

- a. Prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection which is not authorized by a permit issued by the EPA or NNEPA;
 - b. require:
 - i. that that the applicant for a permit to inject must satisfy to the Navajo Nation that the underground injection activity will not endanger drinking water sources; and
 - ii. that no regulation may be promulgated which authorizes any underground injection which endangers drinking water sources;
 - c. include inspection, monitoring, record keeping, and reporting requirements; and
 - d. apply to all underground injection activities on the Navajo Nation, including but not limited to:
 - i. underground injections by federal agencies; and
 - ii. underground injections by any other person whether or not occurring on property owned or leased by the United States, including injection for the purpose of uranium protection.
7. Regulations pertaining to underground injection control may not prescribe requirements which interfere with or impede:
- a. the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations; or
 - b. any underground injection for the secondary or tertiary recovery of oil or natural gas, unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.
8. The regulations of the Director under this Section shall permit or provide for consideration of varying geologic, hydrological or historical conditions in different areas within the Navajo Nation.
9. Nothing in this Section shall be construed to alter or affect the duty of ensuring that underground sources of drinking water will not be endangered by any underground injection activities.

History

CAU-69-01, August 8, 2001.
 CJY-70-98, July 30, 1998.
 CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2506.

Cross References

Intergovernmental agreements, see 2 N.N.C. §§ 824(B)(4) and (6).

Library References

Indians ⇄ 16.5.
 Waters and Water Courses ⇄ 180.
 Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
 C.J.S. Waters §§ 483 to 484.

§ 2508. Severability

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall remain unaffected, and to this end the provisions of this Act are declared to be severable.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2507.

Library References

Indians ⇌16.5.
Waters and Water Courses ⇌182.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 505.

§ 2509. Construction

A. The provisions of this Act shall be liberally construed to fulfill the intent and purposes of this subchapter and so as not to conflict with applicable law of the United States.

B. Nothing contained in this Act shall be construed to diminish, limit or otherwise adversely affect any right or remedy otherwise held or available to the Navajo Nation or its members under applicable law.

History

CJY-70-98, July 30, 1998.
CJY-50-95 July 31, 1995.

Note. This Section previously codified at § 2508.

Library References

Indians ⇌16.5.
Waters and Water Courses ⇌182.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 505.

Subchapter 2. Prohibited Acts**§ 2521. Use of lead pipes, solder and flux**

A. No person may use any pipe, any pipe or plumbing fitting or fixture, any solder, or any flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption which is not lead-free, as defined in § 2504. This subsection shall not apply to leaded joints necessary for the repair of cast iron pipes.

B. No person shall introduce into commerce any pipe or any pipe or plumbing fitting or fixture that is not lead-free, except for a pipe that is used in manufacturing or industrial processing.

C. No person engaged in the business of selling plumbing supplies, except manufacturers, shall sell solder or flux that is not lead-free.

D. No person shall introduce into commerce any solder or flux that is not lead-free unless the solder or flux bears a prominent label stating that it is

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illegal to use the solder of flux in the installation or repair of any plumbing providing water for human consumption.

E. The requirements of this prohibition on lead shall be enforced by the Director and through local plumbing codes or such other means of enforcement as the Navajo Nation may determine to be appropriate.

History

CAU-69-01, August 8, 2001.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2509.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄210.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters § 740.

§ 2522. Tampering with public water systems

It shall be unlawful to tamper or attempt or threaten to tamper with a public water system. Any person who tampers or attempts or threatens to tamper with a public water system may be subject to civil and/or criminal fines, pursuant to § 2583 of this Act.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2510.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄212.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 483, 739.

§ 2523. Other violations

No person shall violate:

A. Any conditions of any variance, exemption, permit or order, including cease and desist orders and orders to comply, decisions, rules, or any other actions taken pursuant to this Act;

B. Any of the requirements of this Act or the regulations promulgated hereunder.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2511.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄212.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 483, 739.

§ 2524. Operating a public water system without a permit

Within ninety (90) days of the effective date of these amendments, no person shall operate or construct a public water system unless said person holds, or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or, if a Navajo Nation PWS permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the public water system.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2512.

Library References

Indians ☞16.5.
Waters and Water Courses ☞212.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 483, 739.

§ 2525. Operating an underground injection facility without a permit

Within ninety (90) days of the effective date of these amendments, no person shall operate or construct an underground injection facility unless said person holds or, in the case of an existing facility, has applied for a permit from the Director, pursuant to regulations promulgated under § 2571 of this Act and the NNEPA Uniform Permit Procedures, or if a Navajo Nation UIC permit program has not yet been developed, has contacted the Director in writing and has provided whatever information the Director reasonably requests regarding the underground injection facility.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.

Library References

Indians ☞16.5.
Waters and Water Courses ☞212.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 483, 739.

Subchapter 3. Drinking Water Regulations**§ 2531. Primary drinking water regulations**

The Director may prescribe by regulation the maximum permissible levels for contaminants in all public water systems on the Navajo Nation. These regulations shall govern monitoring and reporting of the water quality of all public water systems, and shall be at least as stringent as federal regulations promulgated pursuant to the SDWA or with respect to quality control and testing

procedures, as stringent as the alternative procedures published by the Administrator as guidance pursuant to SDWA § 1401(1), 42 U.S.C. § 300f(1).

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2513.

Library References

Indians ⇨16.5.
Waters and Water Courses ⇨202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2532. Secondary drinking water regulations

The Director may prescribe by regulation controls including water purification systems for contaminants in drinking water that primarily affect the aesthetic qualities (such as taste, color and smell) relating to the public acceptance of drinking water. Such secondary regulations should be guided by any national secondary drinking water regulations, but may vary from any non-mandatory federal guidelines.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2514.

Library References

Indians ⇨16.5.
Waters and Water Courses ⇨202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2533. Sampling and analytical regulations

The Director may prescribe by regulation the microbiological, inorganic, organic, radioactivity, and turbidity sampling requirements.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note: This Section previously codified at § 2515.

Library References

Indians ⇨16.5.
Waters and Water Courses ⇨202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2534. Reporting, record keeping and public notification requirements

The Director may prescribe by regulation the method of record-keeping and reporting of sample analyses as well as the requirements for public notification.

History

CJY-70-98, July 30, 1998.

CJY-50-95, July 31, 1995.

22 N.N.C. § 2534

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Note: This Section previously codified at § 2516.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

§ 2535. Surface water treatment regulations

The Director may prescribe by regulation the filtration, disinfection, analytical and sampling requirements for those public water systems that use surface water and/or groundwater under the influence of surface water.

History

CJY-70-98, July 30, 1998.	Note: This Section previously codified at
CJY-50-95, July 31, 1995.	§ 2517.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

§ 2536. Lead and copper regulations

The Director may prescribe by regulation corrosion control treatment, source water treatment and lead service line replacement requirements. These regulations may also prescribe sampling requirements, analytical methods, reporting requirements and record keeping requirements.

History

CJY-70-98, July 30, 1998.	Note: This Section previously codified at
CJY-50-95, July 31, 1995.	§ 2518.

Library References

Indians ⇌16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ⇌194.	C.J.S. Waters §§ 536 to 542, 602, 606 to 611.
Westlaw Topic Nos. 209, 405.	

§ 2537. Laboratory requirements

The Navajo Nation adopts the certified laboratory lists maintained by the USEPA or any state with primacy over that state's drinking water program, as they may be amended from time to time. Public water system owners or operators are required to use a certified laboratory from such lists in contracting for laboratory services. The Director may maintain a service contract with one or more certified laboratories to meet this requirement.

History

CJY-50-95, July 31, 1995.
Note: This Section previously codified at § 2519.

Library References

Indians ⇨16.5.

Waters and Water Courses ⇨202.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.**§ 2538. Wellhead Protection**

A. Wellhead Protection Program. The Director shall develop by regulation a program to protect wellhead areas within the Navajo Nation from contaminants that may have an adverse effect on public health. Such program shall at a minimum:

1. Specify the duties of Navajo agencies, other governmental entities and public water supply systems with respect to the development and implementation of the program;
2. For each wellhead, determine the wellhead protection area as defined in Subsection (B) based on all reasonably available hydrogeologic information on groundwater flow, recharge and discharge and other information the Director deems necessary;
3. Identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have an adverse effect on public health;
4. Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply with wellhead protection areas from such contaminants;
5. Include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or well field contamination by such contaminants;
6. Include a requirement that consideration be given to all potential sources of such contaminants within the expected wellhead area of a new water well which serves a public supply system; and
7. Provide for the addition of new wellhead protection areas for water well sited after promulgation of the initial program.

B. Definition of Wellhead Protection Area. As used in this section the term "wellhead protection area" means the surface and subsurface area surrounding a water well or well field supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field. The extent of a wellhead protection area is necessary to provide protection from contaminants which may have an adverse effect on the public health and is to be determined by the Director in the program developed under Subsection (A). The Director may rely on technical guidance issued by the Administrator in making such determination. In any event, the determination should reflect factors such as the radius of influence around a well or wellhead, the depth of drawdown of the water table by such well or well field at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or well field, or other factors affecting the likelihood of contaminants reaching the well or well field, taking into account

available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellhead is located.

C. Public Participation. The Director shall establish procedures to encourage public participation in developing the wellhead protection program. Such procedures may include the establishment of technical and citizens' advisory committees and the presentation of program proposals at chapter meetings. Such procedures shall include notice and opportunity for public hearing on the program before it is promulgated by the Director.

D. Reports. Every two (2) years after promulgation of a wellhead protection program, the Director shall submit to the Navajo Resources Committee and to the Administrator a report describing the progress in implementing the program. Such report shall include amendments to the program for water wells sited during the two (2) year period.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞99.	C.J.S. Waters §§ 190 to 192.
Westlaw Topic Nos. 209, 405.	

§ 2539. Operator Certification

All operators of public water systems on the Navajo Nation must be certified to operate such a facility. The Director shall develop by regulation a program, consistent with guidelines published by the Administrator pursuant to § 1419(a) of the SDWA Amendments of 1996 (Pub. L. 104-182), to certify all public water system operators in accordance with the standards described below. The Director shall serve as the Certification Administrator. The Director shall:

A. Implement a program requiring the certification of all operators of public water systems and requiring that such operators comply with the applicable requirements of the certification and training program;

B. Classify all public water systems and specify operator certification, renewal and re-certification procedures and requirements for each level of classification;

C. Establish minimum operator qualifications to validate skills, knowledge, ability and judgment for each level of classification, and include provisions for reciprocity for operator certifications from neighboring states;

D. Establish procedures for suspension, revocation and other appropriate enforcement action for operator and owner noncompliance;

E. Establish a fee system for the examination and certification of operators;

F. Establish an advisory committee for ongoing involvement in the revision and operation of operator certification; and

G. Develop a procedure to review and evaluate the adequacy of the operator certification program, including to revise the certification requirements based on revisions to applicable law and on new technology or construction techniques that change operator requirements.

History

CAU-69-01, August 8, 2001.

Library References

Indians ☞16.5.

Waters and Water Courses ☞99.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 190 to 192.

Subchapter 4. General Responsibilities of Public Water System Owners and Operators

§ 2541. Record keeping

A. A public water system owner or operator shall retain, on the premises or at a convenient location near the premises of the public water system, the following records:

1. Records of microbiological analyses made pursuant to this chapter or the regulations hereunder shall be kept for no fewer than five (5) years. Records of chemical analyses made pursuant to this Act or the regulations hereunder shall be kept no fewer than ten (10) years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

- a. The date, place and time of sampling, and the name of the person who collected the sample;
- b. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or processed water sample or other special purpose sample;
- c. Date of analysis;
- d. Laboratory and person responsible for performing analysis;
- e. The analytical technique or method used; and
- f. The results of the analysis.

B. Records of actions taken by the public water system owner or operator to correct violations of this Act or the regulations shall be kept for a period of not less than three (3) years after the last action taken with respect to the particular violation involved.

C. Copies of any written reports, summaries or communication relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any tribal, state, or federal agency, shall be kept for no fewer than ten (10) years after completion of the sanitary survey involved.

D. Records concerning a variance or exemption to the system shall be kept for no fewer than five (5) years following the expiration of such variance or exemption.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2520.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄99.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 190 to 192.

§ 2542. Reporting test and analyses

A. It shall be the duty of each public water system owner or operator to ensure that copies of all tests and analyses performed on each public water system, pursuant to the requirements of the Primary Drinking Water Regulations and other applicable Navajo and federal law, are, made available to the Director, on a timely basis, for inclusion in such files.

B. Except where a shorter period is specified in this Section, each public water system owner or operator shall report to the Director the results of any test, measurement, or analysis required by this Act or the regulations hereunder within:

1. The first ten (10) days following the month in which the result is received; or
2. The first ten (10) days following the end of the monitoring period required by the Director, whichever of these is shortest.

C. The public water system owner or operator shall report to the Director within forty-eight (48) hours any violation of a primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this Act or the regulations thereunder.

D. The public water system owner or operator is not required to report analytical results to the Director in cases where a USEPA-approved laboratory performs the analysis and reports the results to the Director.

E. The public water system owner or operator shall, within ten (10) days of completion of each public notice required by this Act or the regulations hereunder submit to the Director a representative copy of each type of notice distributed, published, posted, and/or made available to the media or to persons served by the system.

F. The Director may request from the public water system owner or operator all pertinent information. The public water system owner or operator shall submit to the Director, within the time stated in the request, copies of any records required by this Act or the regulations hereunder to be maintained and copies of any documents which the Director is entitled to inspect pursuant to this Act.

G. By January 1st of each year the Director shall prepare, make readily available to the public and submit to the Administrator an annual report on violations of primary drinking water regulations by public water systems within the Navajo Nation, including violations with respect to maximum containment levels, treatment requirements determined to be significant by the Administrator after consultation with NNEPA.

H. The NNEPA must make reports of the public water systems available to the public upon request, and must maintain a copy of the reports for one (1) year. The certifications submitted by the public water system should be kept for five (5) years.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2521.

Library References

Indians ⇌16.5.
Waters and Water Courses ⇌202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2543. General public notification requirements

A. Each owner or operator of a public water system shall give notice of each of the following to the persons served by the public water system:

1. Failure of the public water system to comply with an applicable maximum contaminant level or treatment technique, specified in the regulations promulgated under this Act;
2. Failure to limit fluoride concentration to less than 2.0 mg/l;
3. Failure to comply with an applicable testing procedure established by this Act or the regulations promulgated hereunder;
4. The existence of a variance or exemption from an applicable maximum contaminant level;
5. Failure to comply with a schedule prescribed pursuant to such variance or exemption; or
6. Failure to perform any monitoring required by this Subchapter or the regulations promulgated hereunder; or
7. The concentration level of any unregulated contaminant for which public notice is required either under § 1414(c)(2)(E) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(c)(2)(E), or under this Section. Such notice shall comply with federal regulations issued under SDWA § 1414(c)(2) and the provisions set forth in this Section except to the extent that the Director establishes alternative requirements regarding form and content pursuant to SDWA § 1414(c)(2)(b).

B. If a community water system has violated an applicable maximum contaminant level, the public water system owner or operator shall notify the public of such violation in addition to the notification required in Subsection (C) below, as follows:

1. By publication for no fewer than three (3) consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such notice shall be completed within fourteen (14) days after the public water system owner or operator learns of the violation.

2. By furnishing a copy of the notice to the radio and television stations serving the area served by the system. Such notice shall be furnished within seven (7) days after the public water system owner or operator learns of the violation. The notice shall be given orally in English and in the Navajo language.

3. The requirements of paragraph (2) of this subsection may be waived by the Director if he or she determines that the violations have been corrected promptly after discovery, the causes of the violation have been eliminated, and there is no longer a risk to public health.

C. In addition, in the case of a community water system and with respect to all violations listed in Subsection (A) and the grant of variances and exemptions, the owner or operator of the system shall notify the users of the water system as soon as possible and in any event within three (3) months after a violation or grant of an exemption or variance. The notification shall be by any means necessary to ensure that all users are notified of the problem. This may require the house to house distribution of handouts in cases where inclusion with monthly utility bills is not practical. Such notice shall be repeated at least once every three (3) months as long as the violation or the variance or exemption remains in effect.

D. Customers of a community water system must be notified by the owner or operator of the public water system in question every three (3) months when drinking water concentrations for fluoride exceed 2.0 mg/l. The notification must consist of any means necessary to make users aware of the problem. The notices must also be mailed on a quarterly basis to tribal and federal public health officials, and published in the local newspaper(s). Continued notification is desirable to alert, new users who may begin using the system. The exact form and manner of such notice shall be prescribed by the Director as may be necessary to ensure adequate notice.

E. In the case of a non-community water system, the public water system owner or operator shall give notice by continuous posting of any violation of an applicable maximum contaminant level or of the granting of a variance or exemption from any such level to the persons served by the system as long as the violation or variance or exemption continues. The form and manner of such notice shall be prescribed by the Director, and shall ensure that the public using the system is adequately informed of the violation or the variance or exemption.

F. Notice given pursuant to this section other than that specified in Subsection (D) of this Section shall be written in a manner reasonably designed to inform fully the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print, or other methods which could frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject, including the nature of the problem and, when

appropriate, a clear statement that a primary drinking water regulation has been violated and preventive measures that should be taken by the public, such as the necessity for seeking alternative water supplies. Where appropriate, or where designated by the Director, bilingual notice shall be given. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

G. Notice to the public required by this Section may be given by the Director on behalf of the public water system owner or operator, where, in the Director's discretion, this is warranted.

H. In any instance in which notification by mail or other suitable means is required by this Section but notification by newspaper, radio or television stations is not required by this Section, the Director may nevertheless require the owner or operator of a public water system to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public's health.

I. Any person who violates this Section or regulations issued under this Section shall be subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2522.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2544. Lead public notification requirements

A. Each owner or operator of a public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from the lead content in the construction materials of the public water distribution system or the corrosivity of the water supply sufficient to cause leaching of lead.

B. Notice shall be provided in such manner and form as may be reasonably required by the Director. Notice under this Subsection shall be provided notwithstanding the absence of a violation of any Navajo Nation Drinking Water standard.

C. Notice under this Section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water and the potential adverse health effects. The notice shall also include reasonably available methods of mitigating known or potential lead content in drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

D. The public notice requirements shall apply throughout the Navajo Nation upon enactment of this Act.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2523.

Library References

Indians ☞16.5.
Waters and Water Courses ☞196.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 495 to 497.

§ 2545. Emergency water plan

Each public water system owner or operator shall develop an emergency water plan and submit a copy to the Director for review within one hundred eighty (180) days after the enactment of this Act. An emergency water plan is a plan for the provision of alternative safe drinking water in emergencies. The Director shall review and comment on the emergency water plan and notify the public water system owner or operator of his or her determinations within ninety (90) days after having received the emergency water plan. The public water system owner or operator shall incorporate the changes or modifications, if any, recommended by the Director in his or her comments.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2524.

Library References

Indians ☞16.5.
Waters and Water Courses ☞202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2546. Consumer confidence reports by community water systems

Each community water system shall prepare annually a report on the quality of drinking water delivered by the system. Such report also shall characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner, and shall comply with regulations issued by the Director pursuant to this Section and applicable federal regulations. Each community water system shall mail such report annually to each customer of the system, unless other means of disseminating the report are provided by NNEPA by regulation.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.

Library References

Indians ☞16.5.

Waters and Water Courses ☞202.

Westlaw Topic Nos. 209, 405.
C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

Subchapter 5. Standards for Construction

§ 2551. Design criteria

A. Public Water Systems

1. No new or substantially modified public water system shall be authorized to begin construction or operation within the jurisdiction of the Navajo Nation until such time as the Director has reviewed the proposed design of such facility to ensure that it is capable of compliance with applicable minimum construction guidelines for public water systems. In conducting this review, the Director is authorized to rely upon the technical assistance of the Office of Environmental Health and Engineering, United States Indian Health Service.

2. In the event that the proposed design is satisfactory, the Director shall so advise the applicant, in writing, in a timely manner. Appropriate design changes must be made by the applicant prior to initiating any operation of the system.

B. Underground Injection Wells

1.¹ Proposed designs and plans for new or substantially modified underground injection wells must be submitted with the permit application for each such well. The Director shall decide what standards for construction shall be required based on the geologic formation of the area in question and any relevant standards in the regulations promulgated under this Act or in 40 C.F.R. part 146, and shall include any such requirements in the permit, if a permit is issued.

¹ So in original; no subsec. (B)(2) was enacted.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2525.

Library References

Indians ⇌16.5.
Waters and Water Courses ⇌202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

Subchapter 6. Variances and Exemptions

§ 2561. Variances

A. The Director may grant one or more variances from an applicable Primary Drinking Water Regulation to one or more public water systems which, because of characteristics of the raw water sources that are reasonably available to the systems, cannot meet the requirements respecting the maxi-

mum contaminant levels of such drinking water regulation. A variance may be issued to a system on condition that the system install the best technology, treatment techniques, or other means which the Administrator finds are available (taking costs into consideration), and based upon an evaluation satisfactory to the Director that indicates that alternative sources of water are not reasonably available to the system. Before the Director may grant a variance under this Subsection, the Director must find that the variance will not result in an unreasonable risk to health. If the Director grants a public water system a variance under this Subchapter, the variance shall become part of the permit issued to the public water system under § 2571, and the Director shall prescribe, at the time the variance is granted, a schedule for:

1. Compliance (including increments of progress) by the public water system with each contaminant level requirement with respect to which the variance was granted; and
2. Implementation by the public water system of such additional control measures as the Director may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

a.¹ The Director shall provide notice and opportunity for public hearing on the schedule before such schedule may take effect. A notice given pursuant to the preceding sentence may cover the granting of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice, and may be conducted as part of the permit hearing. A schedule prescribed pursuant to this Subchapter for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable as the Director may reasonably determine.

B. The Director may grant to one or more public water systems one or more variances from any provision of a primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the Director that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this Subchapter shall be conditioned on such monitoring and other requirements as the Administrator may prescribe, which conditions shall become part of the permit.

C. Before a variance proposed to be granted by the Director under Subsection (A) or (B) of this Section may take effect, the Director shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The hearing may be conducted as part of a permit hearing. The Director shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under Subsection (A), the basis for the

finding required by that Subsection before the granting of the variance) and documentation of the need for the variance.

D. The Director shall condition each public water system's variance granted under Subsection (A) of this Section upon compliance by the public water system with the schedule prescribed pursuant to Subsection (A) of this Section. Any schedule or other requirement on which a variance granted under Subsection (A) or (B) of this Section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.

E. Each schedule prescribed pursuant to Subsection (A) of this Section shall be deemed approved by the Administrator pursuant to § 1415(a) of the U.S. SDWA² unless the variance for which it was prescribed is revoked by the Administrator or the schedule is revised by the Administrator under such Section.

F. If an application for a variance under Subsection (A) or (B) of this Section is made, the Director shall act upon such application within sixty (60) days after the date of its submission.

G. For purposes of this Subchapter, the term "treatment technique requirement" means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with SDWA § 1401(1)(C)(ii))³ each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of § 1412(b)(3) of the U.S. SDWA.⁴

¹ So in original; no subsec. (A)(2)(b) was enacted.

² 42 U.S.C. § 300g-4.

³ 42 U.S.C. § 300f(1)(C)(ii).

⁴ 42 U.S.C. § 300g-1(b)(3).

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2531.

Library References

Indians ⇄ 16.5.

Waters and Water Courses ⇄ 202.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 616, 640, 643, 646, 651, 656, 659 to 665.

§ 2562. Small systems variances

A. In general. The Director may grant a variance under this Section for compliance with a requirement specifying a maximum contaminant level or treatment technique contained in a national primary drinking water regulation to:

1. Public water systems serving three thousand three hundred (3,300) or fewer persons; and
2. With the approval of the Administrator pursuant to Subsection (I) (9), public water systems serving more than three thousand three hundred

(3,300) persons but fewer than ten thousand (10,000) persons, if the variance meets each requirement of this Section.

B. Availability of variances. A public water system may receive a variance pursuant to Subsection (A) if:

1. The Administrator has identified a variance technology under SDWA § 1412 300g-1(b)(15) that is applicable to the size and source water quality conditions of the public water system;

2. The public water system installs, operates, and maintains, in accordance with guidance or regulations issued by the Administrator, such treatment technology, treatment technique, or other means; and

3. The Director determines that the conditions of Subsection (C) are met.

C. Conditions for granting variances. A variance under this Section shall be available only to a system:

1. That cannot afford to comply, in accordance with affordability criteria established by the Director, with a national primary drinking water regulation, including compliance through:

a. Treatment;

b. Alternative source of water supply; or restructuring or consolidation (unless the Director makes a written determination that restructuring or consolidation is not practicable); and

2. For which the Director determines that the terms of the variance ensure adequate protection of human health, considering the quality of the source water for the system and the removal efficiencies and expected useful life of the treatment technology required by the variance.

D. Compliance schedules. A variance granted under this Section shall require compliance with the conditions of the variance not later than three (3) years after the date on which the variance is granted, except that the Director may allow up to two (2) additional years to comply with a variance technology, secure an alternative source of water, restructure or consolidate if the Director determines that additional time is necessary for capital improvements, or to allow for financial assistance provided pursuant to SDWA § 1452 ¹ or any other federal or tribal program.

E. Duration of variances. The Director shall review each variance granted under this section not less often than every five (5) years after the compliance date established in the variance to determine whether the system remains eligible for the variance and is conforming to each condition of the variance.

F. Ineligibility for variances. A variance shall not be available under this Section for:

1. Any maximum contaminant level or treatment technique for a contaminant with respect to which a national primary drinking water regulation was promulgated prior to January 1, 1986; or

2. A primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

G. Regulations and guidance. The Director shall promulgate regulations for variances to be granted under the section, specifying:

1. Procedures for granting or denying variances, including requirements for notifying the Director and consumers of the public water system that a variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the variance before the variance is granted;

2. Requirements for the installation and proper operation of variance technology that is identified for small systems and the financial and technical capability to operate the treatment system, including operator training and certification;

3. Eligibility criteria for a variance for each primary drinking water regulation, including requirements for the quality of the source water (pursuant to § 1412(b)(15)(A) of the SDWA ²); and

4. Information requirements for variance applications.

H. Approval of variances. Before proposing to grant a variance under this section to a public water system serving more than 3,300 and fewer than 10,000 person, the Director shall submit the variance to the Administrator for review and approval prior to the issuance of the variance, pursuant to SDWA § 1415(e)(9).³

I. Petition by consumers. Not later than thirty (30) days after the Director proposes to grant a variance for a public water system, any person served by the system may petition the Administrator to object to the granting of a variance, pursuant to SDWA § 1415(e)(10).⁴

J. Timing. No variance shall be granted by the Director until the later of the following:

1. Ninety (90) days after the Director proposes to grant a variance; or

2. If the Administrator objects to the variance, the date on which the Director makes the recommended modifications or responds in writing to each objection, pursuant to SDWA § 1415(e)(10)(A).⁵

¹ 42 U.S.C. § 300j-11.

² 42 U.S.C. § 300g-1(b)(15)(A).

³ 42 U.S.C. § 300g-4(e)(9).

⁴ 42 U.S.C. § 300g-4(e)(10).

⁵ 42 U.S.C. § 300g-4(e)(10)(A).

History

CAU-69-01, August 8, 2001.

Library References

Indians ☞16.5.

Waters and Water Courses ☞202.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 616, 640, 643, 646, 651, 656, 659 to 665.

§ 2563. Exemptions

A. The Director may exempt any public water system from any requirement respecting a maximum contaminant level or any treatment technique requirement, or both, of an applicable primary drinking water regulation upon a finding that:

1. Due to compelling factors (which may include economic factors) the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;
2. The public water system was in operation on the effective date of such contaminant level or treatment technique requirement or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system;
3. The granting of the exemption will not result in an unreasonable risk to health; and

B. If the Director grants a public water system an exemption under Subsection (A) of this Section, the exemption shall become part of the permit issued to the public water system under § 2571. The Director shall prescribe, at the time the exemption is granted, a schedule for:

1. Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted; and
2. Implementation by the public water system of such control measures as the Director may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

a.¹ Before an exemption or a schedule prescribed by the Director pursuant to this Section may take effect, the Director shall provide notice and opportunity for a public hearing on the exemption and schedule which hearing may be conducted as part of the permit hearing. A notice given pursuant to the preceding sentence may cover more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

C. A schedule prescribed pursuant to this Subchapter for a public water system granted an exemption under Subsection (A) of this Section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the Director may reasonably determine) but not later than three (3) years after the otherwise applicable compliance date established under SDWA § 1412(b)(10).²

1. No examination shall be granted unless the public water system establishes that:

a. The system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to SDWA § 1412(b)(10).²

b. In the case of a system which needs financial assistance for necessary improvements, the system has entered into an agreement to obtain such financial assistance or an assistance program is likely to be available within the period of the exemption; or

c. The system has entered into an enforceable agreement to become a part of a regional public water system; and

d. The system is taking all practicable steps to meet the standard.

2. In the case of a system which does not serve more than a population of three thousand three hundred (3,300) and which needs financial assistance for the necessary improvements, an exemption granted under clause a or b of the above Subsection may be renewed for one or more additional two (2) year periods, but not to exceed a total of six (6) years if the system establishes that it is taking all practicable steps to meet the requirements of Subsection (C)(1).

3. A public water system may not receive an exemption under this Section if the system was granted a variance under SDWA § 1415(e)³ or § 2562 of this Act.

F. Each public water system's exemption granted by the Director under Subsection (A) of this Section shall be conditioned upon compliance by the public water system with the schedule prescribed pursuant to Subsection (B) of this Section. The requirements of each such schedule shall be enforceable by the Director under Navajo Nation law as part of the permit issued to the public water system. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under § 2583 as if such requirement were part of a primary drinking water regulation.

G. Each schedule prescribed pursuant to Subsection (B) of this Section shall be deemed approved by the Administrator unless the exemption for which it was prescribed is revoked by the Administrator under § 1416(d)(2) of the SDWA⁴ or the schedule is revised by the Administrator under such Section.

H. The Director will promptly notify the Administrator of the granting of any exemption under Subsection (A) of this Section. Such notification shall contain the reasons for the exemption (including the basis for the finding required by Subsection (a)(3) of this Section, before the exemption may be granted) and document the need for the exemption.

I. If an application for an exemption under this Section is made, the Director shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

J. The Director shall make any revisions or revocations of exemptions or schedules that may be required by the Administrator, pursuant to the Administrator's authority to review such exemptions or schedules under the SDWA.⁵

¹ So in original; no subsec. (B)(2)(b) was enacted.

- ² 42 U.S.C. § 300g-1(b)(10).
- ³ 42 U.S.C. § 300g-4.
- ⁴ 42 U.S.C. § 300g-5.
- ⁵ 42 U.S.C. § 300f et seq.

History

CAU-69-01, August 8, 2001.
 CJY-70-98, July 30, 1998.
 CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2541.

Library References

Indians ⇄16.5.
 Waters and Water Courses ⇄202.
 Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
 C.J.S. Waters §§ 616, 640, 643, 646, 651, 656, 659 to 665.

**Subchapter 7. Permit Requirements for Public Water
 Systems and Underground Injection Facilities**

§ 2571. Permits

A. The Director shall establish, by regulation, a permit program, requiring owners or operators of public water systems and underground injection facilities within the jurisdiction of the Navajo Nation to obtain a Navajo Nation permit to operate or construct a public water system or an underground injection facility.

B. Such permit program shall specify permit fees to be paid upon application for a PWS or UIC permit and annually thereafter upon receipt of a permit and may also include fees for the processing of variances and exemptions. Such permit program shall also specify requirements for applications for and issuance of modifications to permits, shall specify monitoring and reporting requirements and shall provide for hearings on permit determination.

C. Before a UIC permit is issued under this Section, the owner or operator of the underground injection facility must demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection facility as required by the Director by regulation. Evidence of such financial responsibility shall include a surety bond, letter of credit, insurance, corporate guarantee or other submission acceptable to the Director.

History

CAU-69-01, August 8, 2001.
 CJY-70-98, July 30, 1998.
 CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2553.

Library References

Indians ⇄16.5.
 Waters and Water Courses ⇄202.
 Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
 C.J.S. Waters §§ 616, 640, 643, 646, 651, 656, 659 to 665.

§ 2572. Submission of information

A. The Director may prescribe conditions for permits (by issuing regulations and/or on a case-by-case basis) and require the submission of plans, specifications, and other information in connection with permit applications of the issuance of permits or permit modifications, variances or exemptions.

B. All permit applications shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit:

“Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to or in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation Safe Drinking Water Act otherwise apply. This consent shall be effective when a permit is issued, and may not be withdrawn. This consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant.”

C. The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for “applicant” as appropriate and substituting the phrase “this agreement” in place of the phrase “any permit issued pursuant to this application”. If applicant fails to include such statement, or enters into an agreement with another party without such party agreeing and subscribing to such statement, applicant shall be subject to civil penalties in accordance with this Act.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

§ 2573. Program funds

Monies derived from fees and penalties collected under this Act, appropriations authorized by the Navajo Nation Council for the use of the Navajo Nation Public Water Systems Supervision Program or the Navajo Nation Underground Injection Control Program, and federal, state or other grants to such programs, shall be available solely to the Navajo Nation EPA for the administration, implementation and enforcement of this Act and the regulations promulgated hereunder. Such monies shall be deposited into one of two duly established Special Revenue Funds, call the PWS Fund and the UIC Fund, as the case may

be, and shall be expended by the Director for the use of the PWS or UIC Program in accordance with the Special Revenue Fund plan of operation and pursuant to an approved budget. The Director shall report annually to the Navajo Nation Council on the sums deposited into the funds, including the sources and uses thereof. Any monies contained in either of the two funds at the end of the fiscal year shall not revert to the general fund and shall remain available for appropriation as provided in this section.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

Subchapter 8. Inspections, Enforcement and Judicial Review

§ 2581. Inspections

A. The Director shall make such investigations and inspections as are necessary to ensure the compliance of public water systems and underground injection facilities with this Act, the Navajo primary drinking water regulations, Navajo underground injection control regulations, and other applicable laws, decisions, orders, rules or other actions taken pursuant to this Act.

B. The Director shall have the right to enter the property of any public water system or underground injection facility for the purpose of inspecting and investigating the sanitary condition of the public water system, the quality of the water, compliance with drinking water regulations or underground injection control regulations, and compliance with applicable Navajo law. This right shall include the right to review and copy the records required to be established and maintained by this Act.

C. Except in an emergency, as determined by the Director, notify and permit the public water system owner or operator or underground injection facility owner or operator to be present when an inspection or investigation is being conducted.

D. The Director is authorized to utilize the services of the United States Indian Health Service or appropriate tribal departments to ensure that necessary inspections are performed, to coordinate his or her activities with those agencies or departments, and to rely upon competent inspections and investigations performed by those agencies or departments.

E. In any instance in which an inspection reveals that a public water system or underground injection facility is not in compliance with applicable law, the Director is authorized to charge the owner or operator of such system or facility a fee for the cost of conduction inspection, whether undertaken by the

Director or by another Navajo department (in which case the department undertaking the inspection would be reimbursed). Such fee shall be based on the time taken and expenses incurred in conducting the inspection, but not to exceed the costs of such time and expenses that are reasonable in light of the circumstances.

History

CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2566.

Library References

Indians ☞16.5.
Waters and Water Courses ☞202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2582. General Enforcement Authority

A. In general. Whenever, on the basis of any information available to the Director, the Director finds that any person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits or orders, variances, exemptions, decisions, rules, or any other actions take pursuant to this Subchapter, the Director is authorized to:

1. Issue and serve on such person an order to comply with such requirement, or prohibition, including an emergency order to comply, in accordance with provisions of this Section;
2. Issue and serve on such person an administrative penalty order, in accordance with § 2584;
3. Request that the Attorney General bring a civil action including an action for injunctive relief in accordance with § 2583; and/or
4. Request that the Navajo Nation Prosecutor's Office bring a criminal action in accordance with § 2583(C) and/or refer any criminal enforcement action or portion of such action to the U.S. EPA Regional Administrator for Region 9.

B. Requirements for orders to comply. An administrative order, including an administrative penalty order, issued under Subsection (A)(1) or (A)(2) of this Section shall state with reasonable specificity the nature of the violation, shall state that the alleged violator is entitled to a hearing pursuant to the Uniform Hearing Regulations if such hearing is requested in writing within thirty (30) days after the date of issuance of the order, and shall specify a time for compliance that the Director determines is as expeditious as practicable, taking into account the severity of the violation and any good faith efforts to comply with applicable requirements.

- 1.¹ The order shall become final immediately upon the expiration of the thirty (30) days if no hearing is requested and, if a timely request for a hearing is made, upon the decision of the Director. The order may be conditional and require a person to refrain from particular acts unless certain conditions are met. A copy of the order shall be sent to the appropriate EPA region and, if the order is issued to a corporation, to the

appropriate corporate officers and registered agent of the corporation. No order to comply issued under this Section shall prevent the Nation from assessing any penalties nor otherwise affect or limit the Nation's authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any Section of this Act, permits, orders, variances or exemptions issued pursuant to this Act, or regulations promulgated under this Act.

C. Emergency Compliance Orders.

1. Notwithstanding any other provision of this Act, if the Director determines that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water is presenting an imminent and substantial endangerment to the public health or welfare or the environment, and determines, in consultation with the Attorney General, that it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of a civil action pursuant to § 2583, the Director may take such actions as the Director may deem necessary in order to protect the public health welfare or environment. Such actions may include requiring the immediate closure of such public water system or underground injection facility and issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment. Such orders shall be effective immediately upon issuance and shall remain in effect for not more than sixty (60) days, unless the Director brings an action for injunctive relief pursuant to this Section within the sixty (60) day period. If the Director brings such an action, the order shall remain in effect for an additional fourteen (14) days or for such longer period as may be authorized by the court in which such action is brought.

2. In the event that the Director is required to take direct action, in place of the owner or operator of the public water system or underground injection facility at issue, to respond to an emergency in order to protect the public health and welfare from imminent and substantial endangerment, the Director may charge a fee to cover the cost of such action. Such action may include, but is not limited to, conduction cleanup, closing a facility or providing alternative water supplies to the affected population. The fee shall be charged to the owner or operator of the relevant public water system or underground injection facility, and may be in addition to any penalty imposed under Subsection (B) for failure to comply with applicable orders issued under this Section.

D. Enforcement of compliance orders. Enforcement actions of the Director shall be enforced by the Navajo Nation Environmental Protection Agency, the Navajo Department of Justice, Navajo Prosecutors Office, Resources Enforcement and/or the Division of Public Safety. Those authorized to enforce the Director's actions may take reasonable steps to assure compliance, consistent with the requirements established by this Act (including rights of appeal), including but not limited to:

1. Entering upon any property or establishment believed to be violating the order and demanding compliance; and
2. Terminating operations at facilities not in compliance.

E. Repeated violations. In addition, when a person has repeatedly violated any requirements of this Act, the regulations promulgated under this Act, or permits, orders, variances, or exemptions or other actions taken pursuant to the Act, or refused to comply with any such requirements, the Director may:

1. Issue an order prohibiting such person from continuing to operate a public water system or underground injection facility within the Navajo Nation;
2. Prohibit such person from entering into any new contracts (including leases) that would permit such person to engage in any activity within the Navajo Nation that is governed by requirements of this Act or regulations under this Act which the person has repeatedly violated;
3. Take action declaring the person ineligible to do business on the Navajo Nation pursuant to the Business and Procurement Act; or
4. Take any other action available under law.

¹ So in original; no subsec. (B)(2) was enacted.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2568.

Library References

Indians ⇄16.5.
Waters and Water Courses ⇄202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2583. Judicial enforcement

A. Civil judicial enforcement. The Director may request the Attorney General to file an action for a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief provided by law, including damages and the assessment and recovery of civil penalties in an amount not to exceed twenty-five thousand dollars (\$25,000) per day per violation in any of the following instances:

1. Whenever a person has violated, or is in violation of, any requirement or prohibition of this Act, the regulations promulgated under this Act, or permits, orders, variances, exemptions, rules, decisions or any other actions taken pursuant to this Subchapter.
2. Whenever a person has violated, or is in violation of, any duty to allow or carry out inspection, entry or monitoring activities; or
3. Whenever a person is creating an imminent and substantial endangerment to the public health or the environment, in which case the Director shall request the Attorney General to pursue injunctive relief but not the assessment of civil penalties, unless the endangerment is caused by a violation, as specified in Paragraphs (1) and (2).

B. Calculation of Penalties.

1. For purposes of determining the number of days of violation for which a penalty is assessed under this Section or § 2584, if the Director has notified the violator in writing of the violation and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continue or recurred past the date of notice, the days of violation shall be presumed to include the date such and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature. Notice under this section shall be accomplished by the issuance of a written notice of violation or written order to comply or by filing a complaint in the Navajo Nation District Court in Window Rock that alleges any violation described in Subsection (A) of this Section.

2. In determining the amount of a penalty assessed under this Section or § 2584, the court or the Director, as the case may be, shall consider the history, severity and duration of the violation; any good faith efforts to comply with the applicable requirements; the violator's full compliance history, including the severity and duration of past violations, if any; the economic impact of the penalty on the violator; as an aggravating factor only, the economic benefit, if any resulting from the violations; and any other factors that the court or the Director deems relevant. All penalties collected pursuant to this section shall be deposited in the PWS Fund or the UIC Fund, as the case may be, special revenue funds established under § 2573 of this Act.

C. Criminal Penalties. The Director may request that the Navajo Nation Prosecutor's Office initiate criminal proceedings against any person who knowingly:

1. Violates any requirement or prohibition of this Act, including but not limited to any regulation adopted pursuant to this subchapter, a variance, exemption or order issued pursuant to this Act, or a reporting or notice requirement under this Act;

2. Makes any false material statement, representation or certification in, or omits material information from, or alters, conceals or fails to file or maintain any notice, record, reports, or other document required pursuant to this Act to be filed or maintained; or

3. Tampers with any public water system as prohibited in § 2522 of this Act.

Such person shall, upon conviction, be punished by a fine not to exceed five thousand dollars (\$5,000) per day of violation or imprisonment for not more than one (1) year, or both, notwithstanding the provisions of 17 N.N.C. §§ 222 and 223, or be subject to any other penalty imposed by the court that is available under Navajo Nation law. In any instance where the Nation lacks jurisdiction over the person charged, or where the Director is limited in the amount of the fine that he may impose, the Director may refer the action to the

appropriate EPA Regional Administrator pursuant to § 2582 of this Act. For the purpose of this paragraph, the term “person” includes, in addition to the entities referred to in § 2504 of this Act, any responsible corporate officer.

D. Jurisdiction and venue. Any action under this Section shall be brought in the Navajo Nation District Court in Window Rock, and such court shall have jurisdiction to restrain such violation, require compliance, assess civil and criminal penalties up to the amounts provided in this Section, collect any fees or noncompliance penalties owed the Nation under this Act, and award any other appropriate relief.

E. Failure to pay penalty. If any person fails to pay an assessment of a civil penalty, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, from the date of the final order or recover the amount ordered or assessed plus interest, from the date of the final order or decision or the date of the final judgment, as the case may be. In such an action the validity, amount and appropriateness of the order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this Section shall be required to pay, in addition to such penalty and interest, the Director’s enforcement expenses, including but not limited to attorneys’ fees and costs of collection proceedings. Such person shall also pay a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be no less than ten percent (10%) of the aggregate amount of the person’s outstanding penalties and nonpayment penalties accrued as of the beginning of the quarter; the Director may by regulation establish higher penalties to take into account situations where the prime rate is higher.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Note. This Section previously codified at § 2569.

Library References

Indians ☞16.5.
Waters and Water Courses ☞202.
Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.
C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

§ 2584. Administrative Assessment of Penalties

A. Basis for penalty. The Director may issue against any person an administrative order assessing a civil administrative penalty of up to ten thousand dollars (\$10,000) per day per violation whenever the Director finds that a person has violated, or is in violation of, any requirement or prohibition of this Act, including but not limited to, a regulation adopted pursuant to this Act, or permits, orders, variances or exemptions issued pursuant to this Subchapter. The Director’s authority under this Subsection, combined with actions under Subsection (C), shall be limited to matters where the total penalty sought does

not exceed one hundred thousand dollars (\$100,000) and the first alleged date of violation occurred no more than one (1) year prior to the initiation of administrative action, except where the Director and Attorney General jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative penalty action. The communications required to make such a joint determination and the method(s) utilized for making such a joint determination shall be privileged, and shall not be subject to judicial review. The Director may compromise, modify or remit, with or without any conditions, any administrative penalty imposed under this Section.

B. Hearing requirement. The Director shall assess an administrative penalty under this section by an order made after opportunity for a hearing, pursuant to § 2585 of this Act. Before issuing such an order, the Director shall give written notice of the proposed order to the person on whom the penalty is to be assessed and provide such person an opportunity to request a hearing within thirty (30) calendar days of receipt of the notice.

C. Field citations. After consultation with the Attorney General, the Director may implement a field citation program through regulations establishing minor violations for which field citations (assessing civil penalties not to exceed one thousand dollars (\$1,000) per day per violation) may be issued by officers or employees designated by the Director, for any violation for which an administrative order could be issued under Subsection (A) to the extent permissible under applicable law. The Director's authority under this Subsection, combined with action taken under Subsection (A), shall be limited into total amount by the provisions in Subsection (A). Any person on whom a field citation is assessed may, pursuant to regulations issued under this Section, elect to pay the penalty or request a hearing on the citation under the provisions of Subsection (B). If a timely request for a hearing is not made, the penalty shall be final and the opportunity for judicial review shall be waived. Any hearing shall provide a reasonable opportunity to be heard and to present evidence. Payment of a penalty required by a field citation shall not be a defense to further enforcement by the Director to correct a violation or to assess the statutory maximum penalty pursuant to other authorities in this Act, except as to the days of violation for which the penalty required by a field citation is paid.

D. Judicial review. Any person subject to a penalty under Section A or C of this section may seek review of such penalty assessment in the Navajo Nation District Court in Window Rock, by filing a petition for review in such court within thirty (30) days following the date that the penalty becomes final and by simultaneously sending a copy of such filing by certified mail to the Director and the Attorney General. A notice of intent to challenge such penalty assessment, otherwise required by the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.* is not required. Within thirty (30) days thereafter, the Director shall file in such court a certified copy or certified index of the record on which the penalty was based. The court shall not set aside or remand an order or assessment under this Section unless the record, taken as a whole, does not substantially support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. In any such proceed-

ings, the Director may seek to recover civil penalties ordered or assessed under this Section.

E. Failure to pay penalty. If any person fails to comply with an administrative penalty order after the order or assessment has become final, the Director shall request the Attorney General to bring a civil action in the Navajo Nation District Court in Window Rock to enforce the order or recover the amount ordered or assessed plus interest, pursuant to the provisions of § 2583(E).

F. Calculation of penalty. In determining the amount of any penalty to be assessed under this Section the Director or the court, as appropriate, shall take into consideration the factors enumerated in § 2583(B) of this Act.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

§ 2585. Administrative hearings and subpoenas

A. Administrative hearings. The Director shall, by regulation, establish a formal administrative hearing process which meets due process standards to hear appeals taken under §§ 2582(B) and 2584. Until the Director establishes this administrative hearing process and appoints a qualified presiding officer, the Navajo Office of Hearings and Appeals is authorized to conduct hearings under this Act; provided, in addition, that the Director may, at his/her discretion, transfer other hearings conducted under this Act and the regulations promulgated hereunder to the Navajo Office of Hearings and Appeals when the need arises.

B. Administrative subpoenas.

1. In connection with any investigation, monitoring, reporting, entry, compliance inspection or administrative enforcement proceeding under this Act, the Director may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may administer oaths.

2. Witnesses summoned shall be paid the same fees and mileage that are paid in the Navajo Nation courts. In case of contumacy or refusal to obey a subpoena, the Navajo Nation District Court for the district in which such person is found, resides or transacts business shall have jurisdiction to issue an order requiring such person to appear before the Director and give testimony or produce papers, books or documents, or both, and any failure to obey such an order may be punished by the court as contempt. A person may challenge the lawfulness of an administrative subpoena issued by the Director in the Navajo Nation District Court for the District of Window Rock, naming as defendant the Director in his or her official capacity and not in

any other manner, in any such action, relief will be limited to declaratory relief.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.

Library References

Indians ☞16.5.	C.J.S. Indians §§ 101 to 106.
Waters and Water Courses ☞202.	C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
Westlaw Topic Nos. 209, 405.	659 to 665.

§ 2586. Judicial review

A. Any person aggrieved by any final action of the Director taken pursuant to the authority of this Act (but not including imposition of administrative penalties under § 2584), shall have the right to appeal such action in the Navajo Nation Supreme Court. The appeal shall be taken in accordance with the Navajo Rules of Civil Appellate Procedure. The Navajo Nation Supreme Court, in reviewing the final action, shall limit its review to the issues and the evidence that were before the Director at the time of the final action from which the appeal is taken. The Supreme Court may affirm, reverse, modify in whole or in part, or remand for further consideration, any final action that is the subject of the appeal, provided that final actions may be reversed, modified or remanded only when they are:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
2. In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
3. Without observance of procedure required by law; or
4. Unsupported by substantial evidence.

B. Any challenge to the lawfulness of authority of the Navajo Nation Council to enact any provision of this Act or regulations promulgated thereunder must be filed in accordance with Navajo law within ninety (90) calendar days after the date of enactment of this Act in the district court for the District of Window Rock, naming as defendant the Navajo Nation, and not thereafter or in any other manner. Provided, however, that any challenge to regulations promulgated under this Act must be filed within ninety (90) days of their adoption. In any such action, relief shall be limited to declaratory relief. The district court for the District of Window Rock shall have exclusive jurisdiction and venue over any action challenging any provision of this Act. Any action brought pursuant to the provisions of this section shall be brought in compliance with the Navajo Nation Sovereign Immunity Act, 1 N.N.C. § 551 *et seq.* and not in any other manner.

History

CAU-69-01, August 8, 2001.
CJY-70-98, July 30, 1998.
CJY-50-95, July 31, 1995.

WATER

22 N.N.C. § 2586

Library References

Indians ↻16.5.

Waters and Water Courses ↻202.

Westlaw Topic Nos. 209, 405.

C.J.S. Indians §§ 101 to 106.

C.J.S. Waters §§ 616, 640, 643, 646, 651, 656,
659 to 665.

23 N.N.C. § 3

CONSERVATION AND WILDLIFE

§ 3. Redelelegation of authority

The Resources Committee from time to time may redelegate, all or any part of its authority under 23 N.N.C. § 2 to the appropriate Division of Natural Resources officials and may from time to time terminate any such redelegation.

History

CJ-41-56, July 18, 1956.

Revision note. Reference to the "Advisory Committee" changed to the "Resources Committee" pursuant to 2 N.N.C. § 695(B)(6) and reference to "Resources Committee" changed to

"the appropriate Division of Natural Resources" officials pursuant to 2 N.N.C. § 695(B), CN-72-92.

ACF-7-56, § 6, February 14, 1956.

Cross References

Resources Committee redelegation of authority, see 2 N.N.C. § 695(B), CN-72-92, November 4, 1992.

Library References

Fish ↻8.

Game ↻3.5.

Indians ↻32.5.

Westlaw Topic Nos. 176, 187, 209.

C.J.S. Indians §§ 122 to 123.

§ 4. Cooperative arrangements with United States Fish and Wildlife Service; approval

The Intergovernmental Relations Committee of the Navajo Nation Council approves cooperative arrangements between the United States Fish and Wildlife Service and the Navajo Nation in consultation with appropriate standing committees of the Navajo Nation Council, Navajo communities and/or individual members of the Nation.

History

CM-24-51, § 4, May 9, 1951.

Revision note. Reference to the "Tribal Council" changed to the "Intergovernmental

Relations Committee of the Navajo Nation Council" pursuant to 2 N.N.C. § 824(B)(6).

Library References

Indians ↻32.5.

Westlaw Topic No. 209.

C.J.S. Indians §§ 122 to 123.

Chapter 3. Department of Fish and Wildlife [Repealed]

History

Note. Chapter 3, previously entitled "Department of Fish and Wildlife", repealed by CAP-41-94, Exhibit "P", April 20, 1994. See

also the Attorney General's Memorandum regarding plans of operation and enabling legislation (January 4, 1991).

Chapter 5. Regulations

Section

- 501. Application of federal law
- 502. Navajo Nation permit requirements
- 503. [Reserved]
- 504. [Reserved]
- 505. Restocking and management; federal and state cooperation
- 506. Revolving fund; establishment; expenditure; report
- 507. Predator control—Generally
- 508. United States Fish and Wildlife Service
- 509. Violations

§ 501. Application of federal law

All hunting and fishing on lands subject to the jurisdiction of the Navajo Nation shall be conducted in conformity with Navajo and federal laws and regulations. Notwithstanding any other provision of law, it shall be permissible at any time for any Navajo to take any species in a ceremonial manner for use by a Navajo medicine man. This Section is not intended to apply to bald eagles, or to authorize hunting in violation of federal law.

History

- | | |
|------------------------------|--|
| CJN-38-75, June 18, 1975. | ACO-53-52, October, 1952. |
| CF-11-69, February 1969. | ACD-101-51, December, 1951. |
| ACAU-123-59, August, 1959. | Executive Committee Res. 1922—1951, Res. p. 673, September 15, 1938. |
| CJ-41-56. | Tribal Council Res. 1922—1951 Res. p. 671—2, July 12, 1934. |
| ACJ-56-56. | |
| ACF-7-56, February 14, 1956. | |

Cross References

Fish and wildlife violations, see 17 N.N.C. § 500 et seq.

Library References

- | | |
|----------------|-----------------------------------|
| Fish ↻8. | Westlaw Topic Nos. 176, 187, 209. |
| Game ↻3.5. | C.J.S. Indians §§ 122 to 123. |
| Indians ↻32.5. | |

§ 502. Navajo Nation permit requirements

All persons hunting, fishing or trapping on lands subject to the jurisdiction of the Navajo Nation shall have in their possession a proper Navajo permit as set forth in the regulations established by the Resources Committee of the Navajo Nation Council. For purposes of this Section, person shall mean either Indian or non-Indian.

History

- | | |
|-----------------------------|-------------------------------|
| CJN-38-75, June 18, 1975. | ACAU-123-59, August 19, 1959. |
| CF-11-69, February 3, 1969. | ACF-7-56, February 14, 1956. |

Library References

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| Fish ↻10. | Game ↻5. |
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23 N.N.C. § 502

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Indians ⇌32.5.
Westlaw Topic Nos. 176, 187, 209.
C.J.S. Indians §§ 122 to 123.

§ 503. [Reserved]

History

Repealed by CJN-38-75, June 18, 1975.

§ 504. [Reserved]

History

CJN-38-75, June 18, 1975.

§ 505. Restocking and management; federal and state cooperation

The restocking and proper management of fish and adapted wildlife and full cooperation with the United States Fish and Wildlife Service and the respective state fish and game departments shall be encouraged.

History

ACF-7-56, § 3, February 14, 1956.

Library References

Fish ⇌12. Westlaw Topic Nos. 176, 209.
Indians ⇌32.5. C.J.S. Indians §§ 122 to 123.

§ 506. Revolving fund; establishment; expenditure report

A. All permit fees and fines assessed by the Navajo Nation Courts for violation of these regulations and other similar collections shall be set up as a special revolving fund for use in management, protection and regulation of fish and wildlife resources. These funds may be expended by the Controller of the Navajo Nation upon the recommendations of the Resources and the Budget and Finance Committees of the Navajo Nation Council.

B. The Controller shall report annually on the status of the special revolving fund to the Navajo Nation Council during consideration of the Navajo Nation Budget and the ensuing fiscal year.

History

CF-5-88, February 3, 1988. "Treasurer" changed to "Controller" pursuant
ACF-7-56, § 4, February 14, 1956. to CF-5-73.

Revision note. Slightly reworded for purposes of statutory form. Also, reference to

Cross References

Committee powers, generally, see 2 N.N.C. §§ 185.
Budget and Finance Committee powers, see 2 N.N.C. § 374(B)(1).

Library References

Indians ⇌32.5. Westlaw Topic No. 209.

C.J.S. Indians §§ 122 to 123.

§ 507. Predator control—Generally

A. The control and eradication of predatory animals shall be the responsibility of the Resources Committee of the Navajo Nation Council. Such controls shall be exercised according to the wishes of the District Grazing Committees, local Grazing Committee members and/or family groups. Assistance on predator control matters may be secured from any available source.

B. Costs of control shall be borne by the stockmen or individuals requesting such assistance, unless funds are provided from other sources. Funds provided in 23 N.N.C. § 506 are not applicable for use in predator control work unless the Resources Committee of the Navajo Nation Council finds that such control is required as a measure to insure greater success in restocking game birds and animals in specified localities.

History

ACF-7-56, § 10, February 14, 1956. Tribal Council Res. 1922-1951 Res. p. 675, 1922-1951 Res. p. 677, February 2, 1950. July 13, 1945.

Library References

Indians ⇄32.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 122 to 123.

§ 508. United States Fish and Wildlife Service

A. The United States Fish and Wildlife Service is authorized to utilize all of the modern techniques and restricted materials normally used by them in conducting rodent and predator control work on Navajo Nation range areas; provided that prior approval is obtained from each District Grazing Committee as to the specific locations of control stations.

B. With the prior approval of District Grazing Committees, studies may be conducted to develop new and better predator and rodent control techniques.

History

CS-74-57, September 9, 1957.

Library References

Indians ⇄32.5.
Westlaw Topic No. 209.
C.J.S. Indians §§ 122 to 123.

§ 509. Violations

A. Any person hunting or fishing on lands subject to the jurisdiction of the Navajo Nation in violation of Navajo Nation or federal hunting and fishing laws or regulations shall be delivered to the appropriate Navajo Nation or federal authorities for prosecution.

B. Any person hunting or fishing on lands subject to the jurisdiction of the Navajo Nation in violation of Navajo Nation hunting and fishing laws or

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regulations shall be brought to trial before the District Courts of the Navajo Nation, which shall assess penalties under 17 N.N.C. § 500 et seq. of the Navajo Nation Code. Collections of fines for game violations shall be distinguished from regular Court fines pursuant to Resolution ACF-7-56 and shall be earmarked for purposes as provided in 23 N.N.C. § 506(A).

C. For purposes of this section, person shall mean either Indian or non-Indian.

History

CJN738-75, June 18, 1975.
CJ-11-69.

ACJ-56-56, June 21, 1956.
ACF-7-56, February 14, 1956.

Cross References

Fish and wildlife violations, see 17 N.N.C. § 500 et seq.

Library References

Fish ↻13, 15.
Game ↻7, 9.
Indians ↻32.8, 32.10(8).

Westlaw Topic Nos. 176, 187, 209.
C.J.S. Indians §§ 122, 167.

Chapter 7. Navajo Forestry Department [Repealed]

History

Note. Chapter 7, previously entitled “Navajo Forestry Department”, repealed by CAP-41-94, Exhibit “T”, April 20, 1994. See also the Attorney General’s memorandum regarding plans of operation and enabling legislation (January 4, 1991).

Chapter 9. Regulation of Forest Use

Section

- 901. Application of federal laws, rules and regulations
- 902. Authority to regulate forest use
- 903. Permit requirements, noncommercial—Generally
- 904. Contract and permit requirements, commercial—Generally
- 905. Enforcement authority
- 906. Authority to amend
- 907. Revolving fund; establishment; expenditure; report

History

Prior law. Chapter 9, previously entitled the “Uniform Refuse Receptacles Color Code”, was rescinded by CD-40-82, § 2, December 14, 1982.

§ 901. Application of federal laws, rules and regulations

A. The harvesting of all tree species on lands subject to the jurisdiction of the Navajo Nation shall be conducted in conformity with Navajo Nation and applicable federal laws and regulations.

B. The right of free exercise of religion guaranteed by the Navajo Bill of Rights, the Indian Civil Rights Act,¹ and the U.S. Constitution shall not be infringed by these forest laws and regulations.

¹ 25 U.S.C. § 1301 et seq.

History

CN-84-85, Exhibit A, November 1, 1985.
CD-74-82, Exhibit B, December 14, 1982.

Cross References

Forest and woodlands violations, see 17 N.N.C. § 520 et seq.

Library References

Indians ⇌17. C.J.S. Indians §§ 110 to 113.
Public Lands ⇌9. C.J.S. Public Lands § 7.
Westlaw Topic Nos. 209, 317.

§ 902. Authority to regulate forest use

A. The Forest Manager shall develop and recommend appropriate forest product use standards to become part of all timber sales permits and agreements for any commercial or non-commercial use.

B. The Forest Manager shall develop, recommend and enforce appropriate forest regulations and forest product use and transportation permit requirements.

C. The Resources Committee of the Navajo Nation Council shall have the authority to establish regulations as proposed by the Forest Manager and set fees for the use, transportation and protection of the Navajo forests and products thereof, under the authority of this chapter.

D. The Executive Director of the Navajo Division of Natural Resources, in conjunction with the Forest Manager, may issue orders which temporarily close or restrict the use of Navajo forests or woodlands when:

- 1. Weather and environmental conditions create extreme fire hazards;
- or
- 2. Soil saturation limits for Navajo forests or woodlands are such that use of the Navajo forests or woodlands would result in damage to the soil and/or water resources.

History

CN-84-85, Exhibit A, November 1, 1985.
CD-74-82, Exhibit B, December 14, 1982.

Cross References

Forest and woodlands violations, see 17 N.N.C. § 520 et seq.

Library References

Indians ⇌17. Westlaw Topic Nos. 209, 317.
Public Lands ⇌9. C.J.S. Indians §§ 110 to 113.

C.J.S. Public Lands § 7.

§ 903. Permit requirements, noncommercial—Generally

A. Any person who harvests or attempts to harvest or remove any tree species or other forest and woodland products on lands subject to the jurisdiction of the Navajo Nation for noncommercial purposes shall possess a valid Navajo Nation forest product use or transportation permit. This requirement will become effective only upon approval of forest regulations and procedures by the Resources Committee of the Navajo Nation Council.

B. The procedures and fees for obtaining forest product use or transportation permits shall be outlined in the forest regulations established by the Resources Committee of the Navajo Nation Council.

C. The authority granted, as well as the limitations and restrictions on harvesting methods and other special provisions governing permit possession, shall be outlined in forest regulations established by the Resources Committee of the Navajo Nation Council.

D. The fee and charges for forest product use or transportation permits or associated fees shall be deposited in a special revolving account as outlined in § 907 of this chapter.

History

CN-84-85, Exhibit A, November 1, 1985.
CD-74-82, Exhibit B, December 14, 1982.

Cross References

Forest and woodlands violations, see 17 N.N.C. § 520 et seq.

Library References

Indians ⇌17.	C.J.S. Indians §§ 110 to 113.
Public Lands ⇌9.	C.J.S. Public Lands § 7.
Westlaw Topic Nos. 209, 317.	

§ 904. Contract and permit requirements, commercial—Generally

A. On lands subject to the jurisdiction of the Navajo Nation, all persons harvesting or attempting to harvest any tree species or other forest products for commercial purposes shall have authorization pursuant to a timber sales contract, forest product use permit or agreement approved pursuant to the forest regulations.

B. The procedures for obtaining a timber sales contract or agreement or forest product use permit shall conform with provisions contained in Part 163, Title 25 of the Code of Federal Regulations, and the Forest Regulations.

C. The authority granted, the limitations and restrictions on harvesting methods, and all other special provisions or regulations governing timber and forest product sales shall be outlined in the sales contract or permit.

D. The Forest Manager shall review all timber sales contracts, prepare his or her recommendations, and present the package before the Resources Committee for recommendation to the Navajo Nation Council for approval.

History

CN-84-85, Exhibit A, November 1, 1985.
 CD-74-82, Exhibit B, December 14, 1982.

Cross References

Forest and woodlands violations, see 17 N.N.C. § 520 et seq.

Library References

Indians ⇌17.	C.J.S. Indians §§ 110 to 113.
Public Lands ⇌9.	C.J.S. Public Lands § 7.
Westlaw Topic Nos. 209, 317.	

§ 905. Enforcement authority

A. The Forest Manager may delegate his or her enforcement authority to certain field staff within the Department of Forestry and other Departments or Divisions of the Navajo Nation.

B. The Forest Manager shall be responsible for the identification of such enforcement personnel and shall develop appropriate training standards related to the exercise of enforcement authority.

C. The Forest Manager and the identified enforcement personnel shall, after adequate training, be commissioned by the President of the Navajo Nation with the authority to enforce forest and woodland laws, regulations and tree cutting permit requirements as approved by the Resources Committee of the Navajo Nation Council. Identified enforcement personnel shall have the authority to make arrests and to search for and seize evidence in the same manner as a Navajo Nation police officer, and to cite violators of said laws, regulations and tree cutting permit requirements into the proper court.

D. The scope of enforcement authority and responsibility of Department of Forestry personnel shall be limited to the enforcement of forest laws and regulations as established by the Resources Committee and the Navajo Nation Council.

E. The Department of Forestry, with the approval of the appropriate oversight Committee, may enter into cooperative agreements with federal, Navajo Nation and state authorities to enforce applicable forest laws and regulations. Specifically, Navajo Nation Tribal Rangers and the Navajo Division of Public Safety are authorized and directed to enforce forest and woodland laws and regulations in addition to commissioned Forestry personnel.

History

CN-84-85, Exhibit A, November 1, 1985.	Revision note. Slightly reworded for purposes of statutory form.
CD-74-82, Exhibit B, December 14, 1982.	

Cross References

Intergovernmental Agreements, see 2 N.N.C. § 824(B)(6).

Library References

Indians ⇌17.	Public Lands ⇌9.
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23 N.N.C. § 905

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Westlaw Topic Nos. 209, 317.
C.J.S. Indians §§ 110 to 113.
C.J.S. Public Lands § 7.

§ 906. Authority to amend

The Navajo Nation Council shall have the authority to revise or amend this Chapter.

History

CN-84-85, Exhibit A, November 1, 1985.
ACAU-129-83, § 2, August 9, 1983.
CD-74-82, Exhibit B, December 14, 1982.

§ 907. Revolving fund; establishment; expenditure; report

All forest product use or transportation permit fees and fines assessed by the Districts Courts of the Navajo Nation for violation of Navajo Nation laws and regulations governing forest management and other similar collections shall be deposited in a special Navajo Nation revolving fund and shall be used for the following purposes:

- A. Forest protection, permit operation costs, development and regeneration projects not formally covered by Navajo Nation budget appropriations; and
- B. Educational and training programs to develop the technical and managerial capabilities of Department of Forestry personnel.

History

CN-84-85, Exhibit A, November 1, 1985.
CD-74-82, Exhibit B, December 14, 1982.

Library References

Indians ¶17.
Westlaw Topic No. 209.
C.J.S. Indians §§ 110 to 113.

Chapter 11. Young Adult Conservation Corps [Deleted]

History

Note. Chapter 3, previously entitled “Young Adult Conservation Corps” has been deleted from the Code as the Navajo Nation no longer has a contract with the BIA to administer the ACC program.

Title 24

Taxation

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4. Oil and Gas Severance Tax	301
5. Business Activity Tax	401
6. Sales Tax	601
7. Hotel Occupancy Tax	701
8. Tobacco Products Tax and Licensing Act	800
9. Fuel Excise Tax	901
10. Fuel Distributor's Licensing Act [Repealed]	

Chapter 1. Uniform Tax Administration Statute

Section
101. Short title
102. Purpose
103. Administration
104. Definitions
105. Assessment of Tax
106. [Reserved]
107. Nondiscrimination
108. Designation
109. Extension of time
110. Record keeping
111. Interest imposed
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126. Transfer of business
127. Mutual assistance agreements
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Section

- 135. Notice
- 136. Investigative authority
- 137. Oaths and affirmations
- 138. Receipts; disbursements
- 139. Severability
- 140. Effective dates
- 141. Repeals

§ 101. Short title

This chapter shall be known as Chapter One of the Navajo Tax Code, the Uniform Tax Administration Statute.

History

CJY-52-95, July 20, 1995.

Library References

Indians ⇨32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 102. Purpose

The purpose of this Chapter is to provide statutory rules applicable to all of the taxes imposed by the Navajo Nation.

History

CJY-52-95, July 20, 1995.

Library References

Indians ⇨32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 103. Administration

A. The Navajo Tax Commission is empowered to administer, and delegate the administration of, all Navajo taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings, and instructions such as may be necessary to the proper and efficient administration of these laws.

B. The Office of the Navajo Tax Commission shall have day-to-day responsibility for the administration of the Navajo Tax Code, and shall have all powers consistent with its plan of operation.

History

CJY-52-95, July 20, 1995.

Library References

Indians ⇨32(9).
Taxation ⇨2.
Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 4, 7, 14.

§ 104. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter or in subsequent chapters:

A. “Code” means the Navajo Tax Code, which includes this Chapter and any tax statute enacted by the Navajo Nation Council.

B. “Control” means the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.

C. “Commission” means the Navajo Tax Commission.

D. “Fraud” occurs when any person:

1. Willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter;

2. Files any return electronically, knowing that the information in the return is not true and correct as to every material matter; or

3. With intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person’s act will be to evade or defeat the payment or collection of any tax, removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.

E. “Office of the Navajo Tax Commission” is located within the Navajo Nation Executive Branch and is responsible for the administration of the Navajo Tax Code.

F. “Person” means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government (other than the government of the Navajo Nation and any wholly owned subdivision or enterprise of the Navajo Nation government), or any part, division, or agency of any of the foregoing, and an individual or group of individuals.

G. “Regulations” means the regulations adopted by the Commission.

H. “Related persons” means two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural persons, “related persons” means two or more natural persons who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

I. “Taxes” means any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Code.

J. “Taxpayer” means the person liable for the taxes or the person responsible for collecting and remitting the taxes.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

Annotations

1. **Occupancy tax** within the Navajo Nation." *In the Matter of Atkinson Trading Company, Inc.*, 7 Nav. R. 275, 287 (Nav. Sup. Ct. 1997).
"The Navajo Nation Hotel Occupancy Tax generally applies to the class of hotel-keepers

§ 105. Assessment of Tax

A. The taxes imposed by the Code are assessed for a statutory period and are the liability of the taxpayers.

B. The Office of the Navajo Tax Commission is authorized to assess taxes against a person and those assessments are presumed to be correct.

1. When it appears that the return filed by a person understates the taxes due under the Code, the Office of the Navajo Tax Commission is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.

2. If no return is timely filed as required, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.

3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Code, the Office of the Navajo Tax Commission is authorized to make an estimate of the tax due and to assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Office of the Navajo Tax Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the taxpayer from the operation of this Section.

C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, or partnership, or a part thereof, then all the associates, participants, or partners both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnerships consistent with their treatment by the Internal Revenue Service.

D. The owners of the interests in a unit or lease shall be jointly and severally liable for the taxes assessed with respect to said unit or lease.

E. Consistent with § 129 of this Chapter, the Office of the Navajo Tax Commission shall have the authority to redetermine incorrect or erroneous assessments, to issue amended assessments, if necessary, and to assess unassessed possessory interests as of the date on which they first became assessable.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Taxation §§ 112 to 114, 135 to 138,
Taxation ☞80, 319(2), 838, 1311.	472, 1588 to 1590, 1592 to 1594, 2038,
Westlaw Topic Nos. 209, 371.	2040 to 2042.
C.J.S. Indians §§ 130 to 132, 134.	

§ 106. [Reserved]

§ 107. Nondiscrimination

No provision of this Code shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞41.	C.J.S. Taxation §§ 29 to 34, 46 to 51.
Westlaw Topic Nos. 209, 371.	

§ 108. Designation

Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a Form 100. The Commission may by regulation impose requirements as to the individuals who shall be designated under this Section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this Section only, the term “taxpayers” shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax. In addition, for purposes of this Section only, “taxpayers” shall include all persons owning an interest in a lease subject to the Navajo Possessory Interest Tax.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞329, 1313.	C.J.S. Taxation §§ 483, 2038.
Westlaw Topic Nos. 209, 213, 371.	

§ 109. Extension of time

A. Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date. An automatic extension of fifteen (15) days will be granted by the Office of the Navajo Tax Commission.

B. Forms other than Forms 200 and 245: A taxpayer may request an extension of time for filing. The request must be made to the Office of the Navajo Tax Commission by filing the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of sixty (60) days will be granted by the Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞526, 1331.	C.J.S. Taxation §§ 883 to 884, 2055.
Westlaw Topic Nos. 209, 213, 371.	

§ 110. Record keeping

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞336(3), 1313.	C.J.S. Taxation §§ 488 to 490, 2038.
Westlaw Topic Nos. 209, 371.	

§ 111. Interest imposed

Rates of interest shall be established by regulation. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The Commission is authorized to set different rates of interest for underpayments and overpayments.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).

Innkeepers ☞4.

Interest ☞27.

Taxation ☞528, 1331.

Westlaw Topic Nos. 209, 213, 219, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

C.J.S. Interest and Usury.

C.J.S. Consumer Credit § 34.

C.J.S. Taxation § 2055.

§ 112. Penalties for failure to file

A. If a taxpayer fails to timely file any required form by the time due, including, but not limited to, a Form 100, return, operator's questionnaire, or declaration of interest, a penalty shall be assessed for each month or fraction thereof that the form is not filed, in the amount of five percent (5%) of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this Section shall be fifty dollars (\$50.00).

B. The total penalty imposed by this Section shall not exceed twenty-five percent (25%) of the tax due, except when the fifty dollars (\$50.00) minimum is applicable.

C. A form filed on or before an extended due date for filing is timely filed.

D. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).

Innkeepers ☞4.

Taxation ☞838, 1342.

Westlaw Topic Nos. 209, 213, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

C.J.S. Taxation §§ 1588 to 1590, 1592 to 1594, 2068 to 2069.

§ 113. Penalties for failure to pay

A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed a penalty of five percent (5%) of the amount of the underpayment.

B. For each full month the payment is overdue, an additional penalty shall be assessed of five-tenths percent (0.5%) of the underpayment.

C. The total penalty imposed under this Section shall not exceed ten percent (10%) of the tax due.

D. For purposes of this Section, a payment received on or before an extended date for payment is timely paid.

E. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ⇌32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ⇌4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ⇌840, 1342.	C.J.S. Taxation §§ 1595 to 1604, 2068 to 2069.
Westlaw Topic Nos. 209, 213, 371.	

§ 114. Penalties for attempt to evade or defeat tax

A. Any taxpayer understating the tax imposed by the Code through negligence of the Code and regulations, but without the intent to defraud, may be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

B. Any taxpayer understating the tax imposed by the Code through reckless disregard of the Code and regulations, but without the intent to defraud, shall be assessed a penalty of two hundred fifty dollars (\$250.00), plus twenty-five percent (25%) of the underpayment of tax.

C. If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of five hundred dollars (\$500.00), plus fifty percent (50%) of the underpayment of tax.

D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Code shall be subject to a penalty of five hundred dollars (\$500.00), plus twenty-five percent (25%) of the underpayment of tax.

E. Any liability arising under this Section shall be assessed and collected as taxes imposed by the Code.

F. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this Section.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ⇌32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ⇌4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ⇌837, 1342.	C.J.S. Taxation §§ 1689, 2068 to 2069.
Westlaw Topic Nos. 209, 213, 371.	

§ 115. Charges for administrative costs

A. A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection outside the jurisdiction of the Navajo Nation.

B. For good cause shown, the Office of the Navajo Tax Commission may relieve the taxpayer from all or part of the charges imposed under this Section.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞598, 1337.	C.J.S. Taxation §§ 1049, 1079 to 1080, 2061.
Westlaw Topic Nos. 209, 213, 371.	

§ 116. Failure to comply with Code

A. Any taxpayer who fails to comply with a requirement: to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Office of the Navajo Tax Commission, may have all or some of its rights to engage in productive activity within the Navajo Nation suspended, until compliance is made or for such shorter time as the Office of the Navajo Tax Commission may provide.

B. Upon receipt of a notice of non-compliance issued by the Office of the Navajo Tax Commission, a taxpayer has thirty (30) days in which to come into compliance. If the taxpayer fails to do so, the Office of the Navajo Tax Commission shall issue a notice of intent to suspend. The taxpayer shall have thirty (30) days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to § 131. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the thirty (30) days shall result in the Office of the Navajo Tax Commission issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Office of the Navajo Tax Commission shall issue a final order of suspension.

C. The Navajo Nation Division of Public Safety shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞838, 1342.	C.J.S. Taxation §§ 1588 to 1590, 1592 to 1594, 2068 to 2069.
Westlaw Topic Nos. 209, 213, 371.	

§ 117. Interference with administration

Information concerning criminal interference with administration of the Code shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞603, 1343.	C.J.S. Taxation §§ 1032, 2070.
Westlaw Topic Nos. 209, 213, 371.	

§ 118. Collection powers

A. In accordance with the provisions of the Code, the Office of the Navajo Tax Commission has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to lien. In addition, the Office of the Navajo Tax Commission has all other powers available to the Navajo Nation for collection of debts owed it.

B. The Office of the Navajo Tax Commission may request the Attorney General of the Navajo Nation to bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceedings shall not constitute a waiver of sovereign immunity and further provided that the Office of the Navajo Tax Commission shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞550, 1337.	C.J.S. Taxation §§ 1002, 2061.
Westlaw Topic Nos. 209, 213, 371.	

§ 119. Security for payment

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Office of the Navajo Tax Commission is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Commission shall prescribe by regulation the terms and conditions for requiring such security. For purposes of § 131, the requirement of security for payment shall be considered an adverse action.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	Westlaw Topic Nos. 209, 213, 371.
Innkeepers ☞4.	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞527, 1332.	

TAXATION

24 N.N.C. § 121

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
C.J.S. Taxation §§ 888 to 894, 1676, 2056.

§ 120. Lien for taxes

A. If a taxpayer fails to pay any taxes after demand or assessment by the Office of the Navajo Tax Commission, or fails to provide security as set out in § 119, the amount shall be a lien in favor of the Navajo Nation upon all property or rights to property of those liable under § 105.

B. The lien shall arise at the time the demand or assessment is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.

C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.

D. If a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.

E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Office of the Navajo Tax Commission and the Business Regulatory Department in a form available for inspection by the public.

F. The Commission may by regulation exempt certain property from the operation of the lien created by this Section.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞503 to 508, 1320.	C.J.S. Taxation §§ 824 to 827, 830, 835 to 838, 2065.
Westlaw Topic Nos. 209, 213, 371.	

§ 121. Priority of lien

A lien arising pursuant to § 120 shall have priority over all other liens imposed by any government other than the Navajo Nation, regardless of the date of perfection.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞509, 510, 1320.	
Westlaw Topic Nos. 209, 213, 371.	

C.J.S. Taxation §§ 843 to 850, 2065.

§ 122. Release of lien

A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.

B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.

C. Where a lien has been recorded and the Office of the Navajo Tax Commission thereafter receives all or part of the taxes giving rise to the lien, the Office of the Navajo Tax Commission will cause a notation of the complete or partial release of the lien to be made in the record.

D. The Office of the Navajo Tax Commission may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause and where the interests of the Navajo Nation are adequately protected by other security.

History

CJY-52-95, July 20, 1995.

Library References

Indians ⇌32(9).

Innkeepers ⇌4.

Taxation ⇌513, 514, 1320.

Westlaw Topic Nos. 209, 213, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

C.J.S. Taxation §§ 831 to 832, 2065.

§ 123. Foreclosure of lien

A. The Office of the Navajo Tax Commission may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this section and accompanying regulations.

B. Seizure:

1. After seizure of property or rights to property, the Office of the Navajo Tax Commission shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

2. Any person shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof, to the Office of the Navajo Tax Commission at any time prior to the sale thereof, and upon payment or furnishing of security, the Office of the Navajo Tax Commission shall restore the property to him, and all further proceedings in connection with the seizure of the property shall cease from the time of the payment.

3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to § 131 under the following conditions:

a. The seized property shall not be removed from the jurisdiction of the Navajo Nation;

b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the Navajo Nation.

4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under § 105 shall be continuous from the date the seizure is first made until the liability out of which the seizure arose is satisfied.

5. Any person in possession of or obligated with respect to property or rights to property which has been seized who, upon demand by the Office of the Navajo Tax Commission, surrenders such property or rights to property (or discharges said obligation) to the Office of the Navajo Tax Commission, shall be discharged from any obligation or liability to the taxpayer or persons liable under § 105 whose property or rights to property were seized.

C. Sale of Seized Property:

1. The Office of the Navajo Tax Commission shall publish a notice of sale, setting forth the time and place of the sale.

2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee.

D. The Office of the Navajo Tax Commission may delegate and empower persons to carry out the procedures of this Section, including officers of the Navajo Division of Public Safety, who shall render assistance in this regard on request by the Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).

Innkeepers ☞4.

Taxation ☞512, 635.

Westlaw Topic Nos. 209, 213, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

C.J.S. Taxation §§ 842, 1133.

§ 124. Application of proceeds

A. Money seized by the Office of the Navajo Tax Commission, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Office of the Navajo Tax Commission may set time limits or other reasonable conditions on the making and proving of such claims.

History

CJY-52-95, July 20, 1995.

Library References

Indians ↻32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ↻4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ↻512, 681, 1320.	C.J.S. Taxation §§ 842, 1197 to 1198, 2065.
Westlaw Topic Nos. 209, 213, 371.	

§ 125. Interference with foreclosure

A. No person shall remove from the jurisdiction of the Navajo Nation any property on which there is a lien for taxes pursuant to § 120.

B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Office of the Navajo Tax Commission therefor, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.

C. Any person violating the provisions of this Section shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the seizure was made. Any liability arising under this section shall be assessed and collected as taxes imposed by the Code.

History

CJY-52-95, July 20, 1995.

Library References

Indians ↻32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ↻4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ↻108, 511, 1320.	C.J.S. Taxation §§ 88, 839 to 841, 2065.
Westlaw Topic Nos. 209, 213, 371.	

§ 126. Transfer of business

A. If a person buys substantially all of the assets of a taxpayer within the Navajo Nation, that person shall withhold from the purchase price and pay to the Office of the Navajo Tax Commission the amount of taxes due on account of activities of the taxpayer prior to the purchase.

B. Prior to transfer, a buyer may make a written request and, within forty-five (45) days after the owner's records are made available for audit, the Office of the Navajo Tax Commission shall send a notice to the buyer for the taxes due. Thereafter, the buyer shall not be personally liable under this Section for any taxes in excess of the amount stated in the notice, or for any such taxes if no notice is given within the time required.

C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price shall be personally liable up to the value of all the property acquired. Any liability arising under this Section shall be assessed and collected as taxes imposed by the Code.

D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Navajo Nation shall be granted by the

Navajo Nation unless the Office of the Navajo Tax Commission first certifies that all applicable taxes have been paid, or that payment has been adequately secured.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞108, 511, 1320.	C.J.S. Taxation §§ 88, 839 to 841, 2065.
Westlaw Topic Nos. 209, 213, 371.	

§ 127. Mutual assistance agreements

The Office of the Navajo Tax Commission is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Navajo Tax Commission and the Intergovernmental Relations Committee of the Navajo Nation Council; no other committee approval is required.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Innkeepers ☞4.	C.J.S. Social Security and Public Welfare § 204.
Taxation ☞319(1), 544, 1337.	C.J.S. Taxation §§ 462, 466 to 468, 482, 973 to 976, 984, 1692, 2061.
Westlaw Topic Nos. 209, 213, 371.	
C.J.S. Indians §§ 130 to 132, 134.	

§ 128. Prohibition of suits

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Code shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Code shall be brought pursuant to § 131.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞498, 606, 1341.	C.J.S. Taxation §§ 801 to 804, 1085 to 1088, 2067.
Westlaw Topic Nos. 209, 213, 371.	

§ 129. Statute of limitations

A. Except for the Business Activity Tax and the Hotel Occupancy Tax, taxes imposed and required to be collected by the Code shall be assessed within four (4) years after the return is filed, or the Possessory Interest Tax notice of assessment is issued, except as provided in Subsection (B) of this Section. Taxes imposed and required to be collected by the Business Activity Tax and the Hotel Occupancy Tax shall be assessed within six (6) years after the return is filed, except as provided in Subsection (B) of this Section.

B. Exceptions to the statute of limitations on assessment:

1. In the case of fraudulent conduct, no period of limitations shall apply.
2. In the case of failure to file a return, declaration of interest, or other required document, no period of limitations shall apply.
3. The running of the period of limitations on assessment is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from making an assessment.
4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

C. Except for the Business Activity Tax and the Hotel Occupancy Tax, any action in a court or by seizure for collection of taxes imposed by the Code must be commenced within four (4) years of the date of assessment, except as provided in Subsection (D). Any action in a court or by levy for collection of taxes imposed by the Business Activity Tax and the Hotel Occupancy Tax must be commenced within six (6) years of the date of assessment, except as provided in Subsection (D).

D. Exceptions to the statute of limitations on collection:

1. The running of the period of limitations on collection is suspended during any period the Office of the Navajo Tax Commission is prohibited by any court from commencing collection proceedings and during any period of appeal under § 131.
2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Office of the Navajo Tax Commission.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Revision Note. Partially reworded for clarity.

Library References

Indians ☞32(9).

Taxation ☞318, 589, 1314, 1340.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 481, 1061 to 1063, 2039, 2066.

§ 130. Procedure for refunds

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Office of the Navajo Tax Commission. These refund claims must be filed within one (1) year after the alleged overpayment was made. The procedure for refund claims shall be established in regulations.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).

Innkeepers ☞4.

Taxation ☞535, 1333, 1335.1.

Westlaw Topic Nos. 209, 213, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

C.J.S. Social Security and Public Welfare § 207.

C.J.S. Taxation §§ 910 to 914, 919, 1679, 1690, 2058 to 2059.

§ 131. Procedure for appeal

A. Appeals from assessments, denials of refund, or other adverse action shall be made first to the Office of the Navajo Tax Commission according to procedures established in regulations; these procedures shall also apply to any challenges to the validity of the Code. The Commission may permit or require one or more levels of review by the Office of the Navajo Tax Commission or its designees and may provide for hearings before the Commission as a body. The failure to duly proceed to a next required level of review under this Subsection shall constitute a waiver of any further appeal pursuant to this Subsection or Subsection (B).

B. Appeals from final actions of the highest level of administrative review shall be made only to the Supreme Court of the Navajo Nation, according to procedures established in regulations, but in no case may an appeal of an assessment be taken to the Supreme Court until payment of the taxes assessed has first been made.

C. Actions before the Supreme Court:

1. Review of administrative actions in the Supreme Court shall be on the record and not *de novo*, and shall be limited to the determination whether the administrative action was not supported by the evidence, or was arbitrary, capricious, an abuse of discretion, beyond its authority, or otherwise contrary to applicable Navajo or federal law. However, where affirmation of an administrative action taken pursuant to § 116 would suspend a right of an appellant to engage in productive activity within the Navajo Nation, the appellant shall on request be entitled to a hearing *de novo* on any material question of fact.

2. The Supreme Court shall be empowered to affirm, reverse, or modify any administrative action, or to remand the matter for further action.

D. Procedures for staying the payment of taxes which are being appealed under Subsection (A) of this Section may be established in regulations. The

Office of the Navajo Tax Commission in its discretion may condition the grant of a stay on the posting of a bond or provision of other security.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ⇌32(9).	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Innkeepers ⇌4.	C.J.S. Social Security and Public Welfare §§ 199 to 200, 203, 208.
Taxation ⇌451 to 493, 543, 1318 to 1319, 1333 to 1336.	C.J.S. Taxation §§ 678 to 727, 729, 732 to 733, 737 to 740, 748 to 751, 2046 to 2055, 2057 to 2060.
Westlaw Topic Nos. 209, 213, 371.	
C.J.S. Indians §§ 130 to 132, 134.	

Annotations

1. Due process

“ . . . [T]he statutory ‘pay first, litigate later’ requirement satisfies Blaze’s due process rights. Blaze was on notice of its obligation to pay the taxes, penalties and interest that were eventually assessed against it. [. . .] Further, we note that although due process does not require the Navajo Nation to provide predeprivation process, taxpayers are afforded an informal conference and a full hearing before the Tax Commission prior to paying their tax liabilities.” *Blaze*

Construction, Inc. v. Navajo Tax Commission, 7 Nav. R. 435, 438 (Nav. Sup. Ct. 1999).

“24 N.T.C. § 234(b) does not empower the Supreme Court with original jurisdiction to issue injunctions. Neither can the Supreme Court properly use 24 N.T.C. § 234(b) to invoke its supervisory authority over lower courts. An appeal to the Supreme Court of a final Tax Commission decision is the only remedy available under 24 N.T.C. § 234(b).” *Chuska Energy Company v. The Navajo Tax Commission*, 5 Nav. R. 98, 101 (Nav. Sup. Ct. 1986).

§ 132. Abatement of authority

A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Office of the Navajo Tax Commission may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.

B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Office of the Navajo Tax Commission shall abate the appropriate amount of the assessment.

C. Abatements in excess of one thousand dollars (\$1,000) shall be recorded in the Office of the Navajo Tax Commission in a form available for public inspection. The records shall be maintained for a minimum of four (4) years after the date of the abatement.

History

CJY-52-95, July 20, 1995.

Library References

Indians ⇌32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ⇌4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ⇌470, 1318.	C.J.S. Taxation §§ 698, 724 to 725, 2046 to 2047.
Westlaw Topic Nos. 209, 213, 371.	

§ 133. Closing agreements

A. If in good faith the Office of the Navajo Tax Commission at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the Navajo Nation, provided that such agreement shall be subject to approval by the Attorney General of the Navajo Nation.

B. If entered into after an appeal has been filed pursuant to § 131, a closing agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the Office of the Navajo Tax Commission may require the provision of security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to the liability or nonliability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞552.5, 1318.	C.J.S. Taxation §§ 907 to 909, 1007, 2046 to 2047.
Westlaw Topic Nos. 209, 213, 371.	

§ 134. Confidentiality rules

A. Nothing in this Section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.

B. It shall be unlawful for any employee or former employee of the Office of the Navajo Tax Commission to reveal to any person, other than another employee or legal counsel for the Office of the Navajo Tax Commission, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Office of the Navajo Tax Commission, except:

1. In accordance with § 132(C);
2. Where the taxpayer has given detailed consent in writing to the release of specific information;
3. To an authorized representative of the taxpayer;
4. To an employee of the government of the Navajo Nation for use in connection with the governmental function of said employee, provided that it shall be unlawful for the Navajo Nation employee to reveal said information except as permitted in this Section;

5. To an authorized representative of another Indian nation or a state, provided that the receiving nation or state has entered into a written agreement with the Office of the Navajo Tax Commission to use the information for tax purposes only and that the receiving nation or state has enacted a confidentiality statute similar to this section;

6. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

7. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the Navajo tax laws in issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged;

8. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the information sought is material to the inquiry;

9. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

10. In statistical releases not identifying the information provided as applicable to any single taxpayer;

11. To the extent of revealing whether a taxpayer has or has not made a designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated); and

12. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

C. For purposes of this Section, “employee of the Office of the Navajo Tax Commission” shall include any person for whose services the Office of the Navajo Tax Commission has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this Section.

D. Any Navajo Nation employee or former employee who violates any of the provisions of this Section shall be subject to a civil fine not to exceed five hundred dollars (\$500.00). The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this Section, which may only be brought by the taxpayer harmed by the violation of this Section.

E. The Office of the Navajo Tax Commission may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of § 131.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Library References

Indians ⇨32(9).

Innkeepers ⇨4.

Taxation ⇨328.1, 1313.

Westlaw Topic Nos. 209, 213, 371.

C.J.S. Indians §§ 130 to 132, 134.

TAXATION

24 N.N.C. § 136

C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
C.J.S. Taxation §§ 483, 2038.

§ 135. Notice

The Office of the Navajo Tax Commission may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞363, 591, 1340.	C.J.S. Taxation §§ 530, 1056, 2066.
Westlaw Topic Nos. 209, 213, 371.	

§ 136. Investigative authority

A. For the purpose of enforcing the provisions of the Code, the Office of the Navajo Tax Commission is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, and to require the presence of any person and require testimony under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceeding.

B. As a means for accomplishing the foregoing, the Office of the Navajo Tax Commission is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.

C. The Courts of the Navajo Nation shall have the power to enforce administrative subpoenas and summonses issued by the Office of the Navajo Tax Commission.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Taxation ☞336, 1311.	C.J.S. Taxation §§ 488 to 490, 2038, 2040 to 2042.
Westlaw Topic Nos. 209, 213, 371.	

§ 137. Oaths and affirmations

Any agent or employee designated by the Office of the Navajo Tax Commission for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Code or the regulations.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).

Oath ☞2.

Westlaw Topic Nos. 209, 280.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Oaths and Affirmations §§ 5 to 6.

§ 138. Receipts; Disbursements

A. There is hereby created in the treasury of the government of the Navajo Nation the Tax Administration Suspense Fund.

B. Except as otherwise provided in the Hotel Occupancy Tax, all money received by the Office of the Navajo Tax Commission as taxes shall be deposited forthwith to the credit of said Fund.

C. Payment of claims for refund shall be disbursed from this Fund, except to the extent that there is a pertinent escrow established pursuant to Subsection (E) of this Section.

D. At the end of each month, the balance remaining in the Fund, after the payment of refunds under Subsection (C) of this Section, shall be transferred to the general fund or to such other funds or the credit of such accounts, as may be provided by Navajo Nation law.

E. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance or a percentage of receipts to be maintained in the Tax Administration Suspense Fund from month-to-month in anticipation of disbursements which may have to be made therefrom.

F. Balances maintained pursuant to Subsection (E) may only be reappropriated by a two-thirds (2/3) vote of the full Navajo Nation Council.

History

CAP-37-99, April 21, 1999.

CJY-52-95, July 20, 1995.

Revision Note. Slightly reworded for clarity.

Library References

Indians ☞32(9).

Taxation ☞906.75, 1344.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 1654, 1660, 1665 to 1668, 1691, 2071.

§ 139. Severability

If any provision of this Code, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent

jurisdiction, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are severable.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).
Statutes ☞64(8).
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes §§ 86, 100, 106.

§ 140. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

History

CAP-37-99, April 21, 1999.
CJY-52-95, July 20, 1995.

§ 141. Repeals

All laws or parts of laws which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CJY-52-95, July 20, 1995.

Library References

Indians ☞32(9).
Statutes ☞157.
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes § 282.

Chapter 3. Possessory Interest Tax

Section

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202.	Tax imposed
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Section

- 215. Class one possessory interest
- 216. Class two possessory interest
- 217. Class three possessory interest
- 218. Class four possessory interest
- 219. Class five possessory interest
- 220–242. [Reserved]
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History

Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: “The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability

for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a).”

Note. See also 24 N.N.C. § 244.

§ 201. Short title

The tax imposed by this Chapter shall be called the “Possessory Interest Tax.”

History

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Revision note. “Tribe” and “Tribal” changed to “Nation” throughout this Chapter pursuant to 1 N.N.C. § 301.

Library References

Indians ⇌32(9).
Taxation ⇌80.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 112 to 114, 135 to 138.

§ 202. Tax imposed

A. A tax is hereby imposed on possessory interests within the Navajo Nation at the rate established under § 206.

B. The tax assessed under this Chapter is computed by multiplying the taxable value of a possessory interest on the assessment date by the tax rate.

C. All possessory interests shall be uniformly classified into only one of the five possessory interest classifications, § 204 (I) to (M), to determine the taxable value.

History

CO-76-00, October 20, 2000.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ⇌32(9).
Taxation ⇌80.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 112 to 114, 135 to 138.

Annotations

1. Construction with other laws

Unilateral imposition by Navajo Nation of possessory interest tax (PIT), which applied to mining activity on Navajo Partitioned Lands within former Joint Use Area, did not violate Navajo-Hopi Land Settlement Act, notwithstanding provision for joint management of subsurface mineral estate by Navajo Nation and Hopi Tribe; PIT did not require Hopi approval as Navajo Nation acted under its governmental authority in imposing tax, which did not constitute management of subsurface mineral estate, and Hopi Tribe's management interest in coal did not constitute governmental interest. *Pea-*

body Coal Co. v. Navajo Nation, 75 F.3d 457, (9th Cir.(Ariz.) 1996).

2. Prior approval

Possessory interest tax (PIT) imposed by Navajo Nation, which affected coal mining activity on lands partitioned to Navajo pursuant to Navajo-Hopi Land Settlement Act, did not require approval of Secretary of Interior, which was mandated only when "otherwise required by law," as PIT was not a contract or agreement which would have required such approval. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

§ 203. Administration

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

History

CJY-52-95, July 20, 1995.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ⇄32(9).
Taxation ⇄309 to 606.
Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Social Security and Public Welfare
§§ 196 to 197, 199 to 208.
C.J.S. Taxation §§ 455 to 1081, 1085 to 1088,
1676 to 1680, 1685 to 1688, 1690, 1692.

Annotations

1. Approval of taxes

It was not necessary that Secretary of the Interior approve taxes imposed by an Indian tribe on the value of leasehold interests in tribal lands and on receipts from sale of property

produced or extracted for the sale of services within those lands. *Kerr-McGee Corp. v. Navajo Tribe of Indians*, 471 U.S. 195, 105 S.Ct. 1900, 85 L.Ed.2d 200, (U.S.Ariz.1985).

§ 204. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

A. "Possessory interest" means the property rights under a lease approved, consented to, or granted by the Navajo Nation, including the rights to the lease premises and underlying natural resources.

B. "Assessment date" means each January 1st.

C. "Lease" means any agreement conferring rights to use or possess tribal lands or to sever products therefrom, including, but not limited to, a lease, right-of-way, use permit, or a joint venture or operating agreement.

D. "Owner" means any person who owns an interest in a lease, or part thereof, as grantee, lessee, permittee, assignee, sublessee, or transferee, whether of the whole interest or less than the whole. In the case of parties to a joint venture or operating agreement, owners and their interests shall be determined under regulations.

E. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;

2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam into injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;

3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;

4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;

6. Microemulsion flooding—an augmented water flooding technique in which a "surfactant" system is injected to enhance oil displacement toward producing wells;

7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;

8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;

9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than twenty-five thousand (25,000) feet or which recover oil with a gravity less than ten (10) degrees API;

F. "Expanded tertiary recovery project" or "expansion" means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;

G. “Incremental production value” means (1) the value of the oil that could be produced by a tertiary recovery project in excess of the base production value established under conditions before production under the tertiary recovery project; or (2) the value of the oil that could be produced by an expanded tertiary recovery project in excess of the base production value established under conditions before production under the expanded tertiary recovery project;

H. “Base production value” means (1) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office of the Navajo Tax Commission; or (2) the value of the oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

I. “Class one possessory interest” means any lease used to extract, sever, transport or process coal, oil, gas, minerals, and other natural resources.

J. “Class two possessory interest” means any lease used for the generation of electricity, or used for the transportation of electricity upon lines greater than 14.5 kV.

K. “Class three possessory interest” means any lease used for commercial, industrial, manufacturing, assembling or fabricating purposes.

L. “Class four possessory interest” means any lease used for residential purposes.

M. “Class five possessory interest” means any lease used for other purposes.

History

CO-76-00, October 20, 2000.
CJA-6-96, January 19, 1996.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ⇨32(9).
Taxation ⇨80.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 112 to 114, 135 to 138.

Annotations

1. Proceeds

Possessory interest tax (PIT) constituted “proceeds” derived from coal underlying former Joint Use Area, which Navajo Nation thus had to share with Hopi Tribe pursuant to Navajo-Hopi Land Settlement Act, even though Navajo excluded one-half of value of leasehold from PIT

in attempt to divide otherwise “undivided” interest in coal, as PIT was tax on rights to “underlying natural resources” granted under lease to mining company and was thus a benefit derived from coal in which Hopi interest was “joint, undivided, and equal” with that of Navajo. *Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457 (9th Cir.(Ariz.) 1996).

§ 205. Valuation

A. The value of a possessory interest shall be determined as provided in this Section, or by any method adopted by the Office of the Navajo Tax Commission

24 N.N.C. § 205

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which accurately reflects fair market value. Provided, that the value of a possessory interest shall exclude the value of leasehold improvements.

B. Fair market value method: The value of a possessory interest may be determined on the basis of the selling prices of comparable leases (whether within or without the Navajo Nation) which are sold by willing sellers to willing buyers, neither of whom are under a compulsion to act.

C. Present value of income method: The value of a possessory interest may be determined by computing the capitalized value of the gross income to be received from the lease less the reasonable expenses to be incurred in producing the income. The allowable expenses shall be set forth in regulations. Such capitalization shall be done for the remaining life of the lease. If the lease term is indefinite, for the purpose of this method, the life of the lease shall be presumed to be twenty-five (25) years.

D. The Office of the Navajo Tax Commission may engage private appraisal firms for the valuation of possessory interests and determination of valuation factors.

History

CO-76-00, October 20, 2000.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).
Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 206. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than one percent (1%), or more than ten percent (10%). Until another rate is established, the tax rate is three percent (3%). A change in the rate must be announced by July 1st following the assessment date for which it is effective.

History

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞305.
Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 440.

§ 207. Assessment

A. Possessory interests shall be assessed annually as of the assessment date.

B. Taxes assessed shall be a lien against the lease and any leasehold improvements in favor of the Navajo Nation. Such lien shall arise as of the assessment date, without notice or demand, and shall be prior and superior to all other liens and encumbrances upon the property.

C. Owners of possessory interests shall be liable for the taxes assessed.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞80, 318, 503 to 510.
Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 112 to 114, 135 to 138,
481, 824 to 827, 830, 835 to 838, 843 to
850.

§ 208. Exemptions

A. No possessory interest with a taxable value of less than one hundred thousand dollars (\$100,000) shall be subject to this tax. Provided, however, that all possessory interests of a person who owns interests in more than one lease, and of related persons, shall be combined to determine the eligibility of said possessory interests for this exemption.

B. 1. The portion of the possessory interest value attributable to a tertiary recovery project (certified after 1/1/96) or the portion of the possessory interest value attributable to an expanded tertiary recovery project (certified after 1/1/96) shall be exempt from the Possessory Interest Tax from the date the application is received subject to the following:

a. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production value for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

b. Disapproval of the base production value or rejection of the project shall constitute an adverse action appealable pursuant to § 131 of the Uniform Tax Administration Statute.

2. The exemption granted under § 208(B)(1) shall be limited as follows: the value associated with the exemption shall not exceed three-fourths of the total value. The Possessory Interest Tax shall be applied to the greater of the following: the base production value or twenty-five percent (25%) of the total value, including the value associated with the incremental production.

3. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

History

CO-76-00, October 20, 2000.
CJA-6-96, January 19, 1996.

CJY-52-95, July 20, 1995.
CO-53-84, October 24, 1984.

24 N.N.C. § 208

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CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞211, 233.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 280 to 281, 305 to 307,
317, 361, 365.

§ 209. [Reserved]

History

CJY-52-95, July 20, 1995.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

§ 210. [Reserved]

History

CJY-52-95, July 20, 1995.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

§ 211. Filing of declaration

A. Each owner must file a declaration of its interest in any lease on or before April 1st following each assessment date, or in accordance with regulations. The Office of the Navajo Tax Commission may by form or regulation require the information and documents which it deems necessary for proper and efficient administration of the tax and require that the declaration be signed by specified persons.

B. If an owner fails to provide information or documents within its possession or control which are relevant to a determination of the value of a possessory interest and which it is required to provide under this Chapter, the Office of the Navajo Tax Commission may proceed to determine the value and to assess the taxes. This assessment is binding on the owner unless it is shown that the valuation, on the basis of the best information available to the Office of the Navajo Commission, was clearly erroneous or unless the Office of the Navajo Tax Commission for other good cause shown relieves the owner from the operation of this Subsection.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞328, 336(2).
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 483.

§ 212. Payment of tax

A. The tax shall be paid in two installments, one-half being due by November 1st of each year and the other one-half being due by May 1st of the

following year. Provided, that no payment of tax shall be due less than three (3) months after the time an assessment is made and notice thereof given and that the Commission shall extend the time for payment accordingly.

B. In the case of an oil and gas lease, an operator who has a right to receive monetary payments for products severed for other than its own interest may be required to make payments of tax to the Office of the Navajo Tax Commission on behalf of an owner, and shall credit such amounts paid against monetary payments due to the owner and provide the owner with a statement of the tax paid.

History

CO-76-00, October 20, 2000.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞526, 527.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 883 to 884, 888 to 894,
1676.

§ 213. [Reserved]

History

CJY-52-95, July 20, 1995.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

§ 214. Record keeping

Records required to be kept must be preserved for four (4) years beyond the time payment of tax is made, or if no payment is due, for four (4) years beyond the due date of the declaration to which the records relate.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞336.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 488 to 490.

§ 215. Class one possessory interest

The taxable value of a Class one possessory interest shall be one hundred percent (100%) of its value.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 216. Class two possessory interest

The taxable value of a Class two possessory interest shall be one hundred percent (100%) of its value.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 217. Class three possessory interest

The taxable value of a Class three possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 218. Class four possessory interest

The taxable value of a Class four possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 219. Class five possessory interest

The taxable value of a Class five possessory interest shall be ten percent (10%) of its value.

History

CO-76-00, October 20, 2000.
CJY-52-95, July 20, 1995.

CO-53-84, October 24, 1984.

CJA-13-78, January 26, 1978.

Library References

Indians ☞32(9).
Taxation ☞348(7).

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§§ 220–242. [Reserved]

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

§ 243. Severability

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

History

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978

Library References

Indians ☞32(9).
Statutes ☞64(8).
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes §§ 86, 100, 106.

§ 244. Effective date

This Chapter shall become effective in accordance with Title 2 of the Navajo Nation Code.

History

CO-76-00, October 20, 2000.
CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978.

Note. Effective date of 1984 revision of Chapter 3. CO-53-84, § 2, October 24, 1984, states as follows: “The Amendments shall take effect upon approval by the Navajo Nation Council for all assessment dates on or after January 01, 1978; provided, that any amend-

ment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any assessment date before January 01, 1985, and further provided, that a lien for assessment dates prior to January 01, 1985, shall not arise except as provided in § 224(a).”

Effective date and application of revisions by CO-79-85, October 31, 1985.

§ 245. Repeals

All laws or parts of laws (or attachments thereto), which are inconsistent with the provisions of this Chapter, are hereby repealed, including, without limitation, any law purporting to waive any rights of taxation by the Navajo Nation.

History

CO-53-84, October 24, 1984.
CJA-13-78, January 26, 1978

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Statutes ☞157.	C.J.S. Statutes § 282.
Westlaw Topic Nos. 209, 361.	

Chapter 4. Oil and Gas Severance Tax**Section**

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307.	[Reserved]
308.	Exemptions
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315-340.	[Reserved]
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345.	Repeals

§ 301. Short title

The tax imposed by this Chapter shall be called the “Oil and Gas Severance Tax.”

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Mines and Minerals ☞87.	C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.	

§ 302. Tax imposed

A tax is hereby imposed on the severance of products within the Navajo Nation at the rate established under § 306. The tax due for a period is computed by multiplying the value of products severed and sold during the period by the tax rate.

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 303. Administration

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 304. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this chapter:

A. "Severance" means severing, producing, or taking from the soil in any manner whatsoever.

B. "Products" means oil, natural gas, or other liquid hydrocarbons, individually or any combination thereof.

C. "Value" means the actual price received for the products at the production unit, or the value which is determined under § 305.

D. "Production unit" means a unit of property which is designated and identified under § 305(C).

E. "Interest" means an entire or fractional interest of any kind or nature in products at the time of severance from a production unit.

F. "Operator" means any person engaged in severing products from a production unit, or who owns an interest and receives all or a portion of the products for its interest.

G. "Owner" means any person who owns an interest, or who has a right to a monetary payment which is determined by the value of products.

H. "Purchaser" means any person who is the first purchaser of products after severance from a production unit.

I. "Period" means a calendar month.

J. "Tertiary recovery project" means an enhanced recovery project by the following means:

1. Alkaline or caustic flooding—an augmented water flooding technique where the water is made chemically basic by the addition of alkali metals;
 2. Conventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam in to injection wells to effect oil displacement toward production wells. This method may include the supplemental injection of water, solvents, or other fluids;
 3. Cyclic steam injection—the alternating injection of at least fifty percent (50%) quality steam and production of oil with condensed steam from the same well or wells;
 4. Immiscible gas displacement—the injection of non-hydrocarbon gas into an oil reservoir to effect oil displacement under conditions in which miscibility with reservoir oil is not obtained. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;
 5. In situ combustion—the combustion of oil in the reservoir sustained by continuous air injection, to displace unburned oil toward producing wells—provided it continues until at least fifteen percent (15%) of reservoir volume has been served or is burned;
 6. Microemulsion flooding—an augmented water flooding technique in which a “surfactant” system is injected to enhance oil displacement toward producing wells;
 7. Miscible fluid displacement—an oil displacement process in which fluid is injected into an oil reservoir at pressure levels such that the injected fluid and reservoir oil are miscible. This method may include the supplemental injection of water and has a ten percent (10%) volume requirement;
 8. Polymer augmented waterflooding—an augmented waterflooding technique in which polymers are injected with the water to improve areal and vertical sweep efficiency;
 9. Unconventional steam drive injection—the continuous injection of at least fifty percent (50%) quality steam to effect oil displacement toward producing wells. This method may include the supplemental injection of water, solvents, or other fluids and applies only to steam drive projects with an average depth greater than twenty-five thousand (25,000) feet or which recover oil with a gravity less than ten (10) degrees API;
- K. “Expanded tertiary recovery project” or “expansion” means the addition of injection and producing wells, the change of injection pattern, or other operating changes to an existing tertiary recovery project that will result in the recovery of oil that would not otherwise be recovered;
- L. “Incremental oil production” means the volume of oil produced by a tertiary recovery project or an expanded tertiary recovery project in excess of the base production established under conditions before production under the tertiary recovery project or expanded tertiary recovery project;
- M. “Base production” means (1) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the tertiary recovery project being certified by the Office

of the Navajo Tax Commission; or (2) the amount of oil which could have been produced economically and efficiently from the unit by production methods being utilized prior to the expanded tertiary recovery project being certified by the Office of the Navajo Tax Commission.

History

CJA-7-96, January 19, 1996.
CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Mines and Minerals ☞87.	C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.	

§ 305. Value and unit

A. The Commission may determine the value of products severed from production unit when: The operator and purchaser are affiliated or related persons; or, the sale and purchase of products is not an arm's length transaction; or, products are severed and removed from a production unit and a price is not established for such products.

B. The value determined by the Commission shall be commensurate with the actual price received for products of like quality, character, and use which are severed in the same field or area. If there are no sales of products of like quality, character, or use severed in the same field or area, then the Commission shall establish a reasonable value based upon the best information available.

C. The Commission shall designate the property that will constitute a production unit and assign to each production unit a number or symbol, which shall serve as identification for the purposes of reporting the severance of products and paying taxes. The Commission shall inform the operators of production units as to the designations made and identification so assigned. If the Commission fails to designate production units and assign numbers, taxpayers are in no way relieved from the liability imposed by this Chapter and the operator shall request that such designations and assignments be made.

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Mines and Minerals ☞87.	C.J.S. Mines and Minerals §§ 334, 373 to 374.
Westlaw Topic Nos. 209, 260.	

§ 306. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than three percent (3%) or more than eight percent (8%). Until another rate is established, the rate is four percent (4%). A change in the tax rate must be announced at least three full periods before its scheduled effective date.

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
 Mines and Minerals ☞87.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 307. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

§ 308. Exemptions

A. Nothing in this Chapter shall be construed as imposing a tax on actual royalty payments made to the Navajo Nation government or the federal government.

B. The incremental oil production from a tertiary recovery project (certified after January 1, 1996) and the incremental oil production from an expanded tertiary recovery project (certified after January 1, 1996) shall be exempt from the Oil and Gas Severance Tax from the date the application is received subject to the following:

1. The operator must file an application with the Office of the Navajo Tax Commission for certification of a tertiary recovery project or an expanded tertiary recovery project. At the time the application is filed, the operator must file its projection of base production for validation and approval by the Office of the Navajo Tax Commission. The Office of the Navajo Tax Commission will review the application and make a determination if the project qualifies as a tertiary recovery project or an expanded tertiary recovery project. The Office of the Navajo Tax Commission will certify or reject the project in writing to the operator in a reasonable timely manner.

2. Disapproval of the base production or rejection of the project shall constitute an adverse action appealable pursuant to 24 N.N.C. § 131.

3. If the tertiary recovery project or expanded tertiary recovery project is certified by the Office of the Navajo Tax Commission pursuant to the provisions of § 308(B)(1), the taxpayer may claim exemption for the incremental oil production from the date the application is received. Any Navajo severance tax paid on the incremental oil production during the period from the date the application is received to the date of certification shall be creditable against Navajo severance tax for subsequent periods.

4. The exemption granted by this Subsection shall be separate from and in addition to any exemptions granted under other chapters of Title 24.

History

CJA-7-96, January 19, 1996.
 CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
 Mines and Minerals ☞87.
 Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 309. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

§ 310. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

§ 311. Filing of reports

A. Taxpayers must file reports of the severance or purchase of products and the tax due, or withheld and remitted, for the period, by the fifteenth day of the second month after the end of each calendar month, in accordance with subsections (B), (C), and (D) of this Section. The Commission may by form or regulation require that information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included in or with reports, and that reports be signed by specified persons.

B. Each purchaser shall include in its report the total value, volume, and kind of products purchased during the period, by production unit, and any tax withheld from payments. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to report purchases.

C. Each operator shall include in its report the name of the property and the total value, volume, and kind of products severed and sold, by production unit, the identity of each owner and any tax withheld therefrom. For products severed and taken-in-kind other than for itself, the operator's report need not include the value of the products taken.

D. An owner whose interest in products severed is reported under Subsections (B) or (C) of this Section is not required to file a report. Provided that, where an operator or purchaser has not reported or not included in a report, any part of the value, volume, and kind of products severed and sold or taken with respect to an owner, such owner shall be required to file a report as to its interest, in accordance with this Chapter and the regulations.

E. The Commission may by form or regulation require information reports to be filed by any person it deems necessary for the proper and efficient administration of the tax.

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 312. Withholding and payment of tax

A. A purchaser making a monetary payment to an owner or an operator for an owner's portion of the value of products purchased shall withhold from such payment the amount of tax due from the owner. Provided that, under an agreement with an operator to which the Commission consents, a purchaser may be relieved of an obligation to withhold tax from payments.

B. An operator making a monetary payment to an owner for the owner's portion of the value of products severed and sold shall withhold from such payment the amount of tax due from the owner. Provided that, if a purchaser has withheld the tax, an operator shall not also withhold.

C. Payment of tax is due at the time a report is due. In addition to the tax due for itself as an owner, a taxpayer must remit to the Commission in full any and all amounts which, as an operator or purchaser, it has withheld from owners.

D. An operator or purchaser who withholds the tax and remits it, pursuant to subsections (A), (B), and (C) of this Section, shall credit such amounts against the monetary payment to the owner and shall, in a reasonable time and manner, provide the owner with a statement of the tax withheld.

E. An owner whose tax has been withheld and remitted pursuant to subsections (A), (B), and (C) of this Section is relieved from liability for the amount withheld. Provided, that where any part of the tax due from an owner of products severed has not been so withheld, or has been withheld and not remitted, such owner shall remain liable for the unpaid tax and must make payment in accordance with this chapter and the regulations. Further provided, that an owner shall have a cause of action in any court of competent jurisdiction to recover from the operator or purchaser amounts withheld as tax, but not remitted to the Commission.

History

CO-79-85, October 31, 1985.

Library References

Indians ☞32(9).
Mines and Minerals ☞87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§ 313. [Reserved]**History**

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

§ 314. Record keeping

Records required to be kept must be preserved for four (4) years beyond the time payment of tax is made, or if no payment is due, for four (4) years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

Library References

Indians ⇄32(9).
Mines and Minerals ⇄87.
Westlaw Topic Nos. 209, 260.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Mines and Minerals §§ 334, 373 to 374.

§§ 315-340. [Reserved]**History**

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

§ 341. Relief from Business Activity Tax

A. For any period beginning on or after October 1, 1985, the gross receipts from the sale of products, including those products exempt under § 308(A), shall be excluded from source gains of a branch for the purpose of the Business Activity Tax, 24 N.N.C., §§ 401-445.

B. For any period beginning prior to October 1, 1985, if products are assessed and the tax paid pursuant to this Chapter, then the gross receipts from the sale of such products, including those products exempt under § 308(A), shall be excluded from source-gains of a branch for the purpose of the Business Activity Tax.

C. In any case, that the severance tax must be paid to the Commission in order for any exclusion to apply or be finally effective, and no such exclusion shall apply or be finally effective until the tax determined under this chapter has been paid to the Commission.

D. For the purpose of § 411(F) of the Business Activity Tax, the proper filing of severance tax reports shall constitute a claim of the exclusions provided in this Section.

History

CO-79-85, October 31, 1985.

Library References

Indians ⇨32(9).
 Mines and Minerals ⇨87.
 Taxation ⇨1234.
 Westlaw Topic Nos. 209, 260, 371.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Mines and Minerals §§ 334, 373 to 374.
 C.J.S. Taxation § 2016.

§ 342. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

§ 343. Severability

If any provision of this Chapter, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

History

CO-79-85, October 31, 1985.

Library References

Indians ⇨32(9).
 Statutes ⇨64(8).
 Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Statutes §§ 86, 100, 106.

§ 344. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council. The tax imposed hereunder shall be due and payable for periods beginning on or after October 1, 1985, and for the purposes of Section 341, may be applied for periods beginning prior to October 1, 1985.

History

CO-79-85, October 31, 1985.

§ 345. Repeals

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CO-79-85, October 31, 1985.

Library References

Indians ⇨32(9).
 Statutes ⇨157.
 Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Statutes § 282.

Chapter 5. Business Activity Tax

Section

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444.	Effective date
445.	Repeals

History

Effective date and application of 1984 revision of chapter 5. CS–47–84, § 2, September 20, 1984, states as follows: “This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on or, after July 1, 1978; provided, that

any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984.”

§ 401. Short title

The tax imposed by this Chapter shall be called the “Business Activity Tax.”

History

CS–47–84, September 20, 1984.
CAP–36–78, April 28, 1978.

Library References

Indians ⇄32(9).
Taxation ⇄1202.5.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 1991.

§ 402. Tax imposed

A tax is hereby imposed on the source-gains of a branch at the rate established under § 406. The tax due for a period is computed by multiplying the source-gains of the branch for the period by the tax rate.

History

CO–79–85, October 31, 1985.
CS–47–84, September 20, 1984.
CAP–36–78, April 28, 1978.

Effective date and application of revisions to this chapter; see 24 N.N.C. § 444 and notes.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1209.	C.J.S. Taxation § 2000.
Westlaw Topic Nos. 209, 371.	

Annotations

- 1. Construction and application** Communications.” *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).
- Re: Business Activity Tax: “The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo

§ 403. Administration

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this chapter.

History

CJY-52-95, July 20, 1995.	Effective date and application of revisions to this chapter see notes under 24 N.N.C. § 444.
CS-47-84, September 20, 1984.	
CAP-36-78, April 28, 1978.	

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1311 to 1344.	C.J.S. Taxation §§ 2038 to 2071.
Westlaw Topic Nos. 209, 371.	

§ 404. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter and unless the context otherwise requires, in this Chapter:

A. “Branch” means any person engaged in trade, commerce, manufacture, power production, or any other productive activity, whether for profit or not, wholly or in part within the Navajo Nation.

B. “Source-gains” of a branch are the gross receipts of that branch from the sale, either within or without the Navajo Nation, of Navajo goods, or services, as those terms are defined in paragraphs (C) and (D) of this Section, minus the deductions allowable under § 405.

C. “Navajo goods” are all personal property produced, processed, or extracted within the Navajo Nation, including coal, oil, uranium, gas, and other natural resources and electrical power.

D. “Services” are all services performed within the Navajo Nation, including the transport or transmission by whatever means of coal, oil, uranium, gas, other natural resources and electrical power.

E. “Sale.”

1. General rule: A “sale” consists of a transfer of ownership between buyer and seller for a consideration.

2. Intra-branch rule: A “sale” also consists of the delivery of Navajo goods, or the performance of services, by a branch, for the use or benefit of any person of which the branch is a part.

F. "Gross receipts" of a branch means and are to be determined according to the following rules.

1. General rule: Except as provided in paragraphs (2) and (3) below, the "gross receipts" of a branch are the amount of money or the fair market value of property and services received by the branch on the sale of Navajo goods or services.

2. Sales without the Navajo Nation: For sales without the Navajo Nation, "gross receipts" are determined by the value of the Navajo goods and services at the time and place said goods and services are transported outside the Navajo Nation.

3. Sales among related persons: On the sale of Navajo goods and services by a branch to a related person, "gross receipts" are the fair market value of the Navajo goods or services sold.

4. Estimate of fair market value: When practical, fair market value is to be determined on the basis of consideration paid in comparable transactions, but if such information is not available, the estimate of fair market value will be made according to regulations.

G. "Period" means a calendar quarter.

H. "New business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in the Navajo Nation on or after January 1, 1999.

I. "New business facility" means a facility in the Navajo Nation that satisfies the following requirements:

1. The facility is used by the taxpayer in the operation of a revenue-producing business. The facility shall not be considered a "new business facility" if the taxpayer's only activity with respect to the facility is to lease it to another person;

2. The facility is acquired by or leased to the taxpayer on or after July 1, 1998. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer, or the commencement of the term of the lease to the taxpayer occurs on or after that date, or if the facility is constructed, erected, or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

3. The facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing business that previously was in operation in the Navajo Nation; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was used in a revenue-producing business in the Navajo Nation immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person, provided that the revenue-producing business of the previous occupant was

not the same or substantially identical to the taxpayer's revenue-producing business; and

4. The facility is not a replacement business facility for a business facility that existed in the Navajo Nation.

History

CO-87-98, October 19, 1998.

CJY-52-95, July 20, 1995.

CO-79-85, October 31, 1985.

CO-53-84, October 24, 1984.

CS-47-84, September 20, 1984.

CAP-36-78, April 28, 1978.

Library References

Indians \S 32(9).

Westlaw Topic No. 209.

C.J.S. Indians $\S\S$ 130 to 132, 134.

Annotations

1. Construction and application

Re: Business Activity Tax: "The statutory language in 24 N.T.C. § 402, as defined in section 404, plainly includes the taxing of Navajo

Communications." *Navajo Communications Company v. Navajo Tax Commission*, 6 Nav. R. 366, 374 (Nav. Sup. Ct. 1991).

§ 405. Deductions

A. In computing source-gains, a branch may deduct from its gross receipts the expenses set forth in Subsection (B) of this Section and the standard deduction set forth in Subsection (C) of this Section.

B. Deductions are allowed for the following expenses paid or accrued during the period in connection with the business activities giving rise to gross receipts includible in source-gains:

1. Salaries and/or other compensation paid to members of the Navajo Nation;
2. Purchases of Navajo goods and services; and
3. Any payment made to the government of the Navajo Nation, except for taxes paid pursuant to this Chapter and any penalties or fines.

C. A standard deduction is allowed equal to ten percent (10%) of the includible gross receipts for the period, or one hundred twenty-five thousand dollars (\$125,000), whichever is greater; except as provided in subsections (D) and (E).

D. If a person owns or controls more than one branch or there exists more than one branch owned or controlled by related persons, then either all said branches shall be entitled to one (1) one hundred twenty-five thousand dollars (\$125,000) standard deduction collectively, or each branch must take the ten percent (10%) standard deduction.

E. Except that, a branch which is engaged in construction activity as a general contractor shall not, with respect to said construction activity, be allowed the deductions provided in this section and, in lieu thereof, shall be subject to the reduced rate of tax provided in § 406.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
Taxation ☞1281.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2035 to 2036.

§ 406. Rate of tax

The tax rate shall be established in regulations. The rate shall not be less than four percent (4%) or more than eight percent (8%). Until another rate is established, the rate is five percent (5%). A change in the tax rate must be announced at least one full period before its scheduled effective date. Except that, for a branch, which is engaged in construction activity as a general contractor, the tax on the gross receipts from said construction activity shall be computed at sixty percent (60%) of the general rate herein provided.

History

CO-79-85, October 31, 1985.
CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
Taxation ☞1281 to 1285.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2035 to 2037.

§ 407. [Reserved]**History**

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

§ 408. Exemptions and exclusions

A. For any period beginning on or after January 1, 2001, a branch may exclude from its gross receipts any amounts on which the Navajo Sales Tax has been paid, provided that no such exclusion shall apply or be finally effective until the Sales tax has been paid to the Office of the Navajo Tax Commission. The proper filing of Navajo Sales Tax reports shall constitute a claim of the exclusions provided in this section.

B. Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation or on any wholly owned subdivision or enterprise of the government of the Navajo Nation.

C. Nothing in this Chapter shall be construed as imposing on the Federal government a tax, which is prohibited by Federal law.

D. Nothing in this Chapter shall be construed as imposing a tax on the salary or wages of an individual engaged as an employee.

E. A branch may exclude from its gross receipts any amount received under a subcontract and a certificate of exemption issued from the general contractor, provided that the general contractor is a person wholly exempt under § 408(A) or is a branch which reports the gross receipts for the entire prime contract and is subject to the exception in § 405(E) and the reduced tax rate provided in § 406. The Commission may by form or regulation provide for proper issuance and filing of certificates of exemption.

F. A branch, which is engaged in retail sales, may exclude from its gross receipts any amount received from the sale of non-Navajo goods at retail within the Navajo Nation.

G. A branch may exclude from its gross receipts any amount derived directly from traditional farming or livestock activities within the Navajo Nation.

H. A branch engaged in manufacturing activities may exclude from its gross receipts the cost of raw materials imported into the Navajo Nation to be used in the process of manufacturing Navajo goods.

History

CO-84-01, October 18, 2001.
CJY-53-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
Taxation ☞1232.5.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 409. Credits

A. 1. If on receipts from selling coal severed from Navajo Nation land a qualifying gross receipts, sales, business activity or similar tax has been levied by a state, the amount of state tax paid and not refunded may be credited against any Business Activity Tax due. The amount of the credit shall be equal to the lesser of twenty-five percent (25%) of the tax imposed by the state on the receipts or twenty-five percent (25%) of the Business Activity Tax.

2. A qualifying gross receipts, sales, business activity or similar tax levied by a state shall be limited to a tax that:

a. Is substantially similar to the Business Activity Tax;

b. (1) for the period July 1, 2001 through June 30, 2002, provides a credit against the state tax equal to the lesser of thirty-seven and one-half percent (37½%) of the tax imposed by the state on the receipts or thirty-seven and one-half percent of the Business Activity Tax imposed on the receipts, and (2) after June 30, 2002, provides a credit against the state tax equal to the lesser of seventy-five percent (75%) of the tax imposed by the state on the receipts or seventy-five percent (75%) of the Business Activity Tax imposed on the receipts;

c. Is not used to calculate an intergovernmental coal severance tax credit with respect to the same receipts for the time period; and

d. Is subject to a cooperative agreement between the Navajo Nation and the state.

B. 1. With respect to the gross receipts of a taxpayer engaged in the transaction of business occurring after January 1, 1999, from a new business in the Navajo Nation, the person who is responsible for the payment of the Business Activity Tax may claim a credit against the Business Activity Tax for the amount of tax paid to a state as corporate income tax, in accordance with this section.

2. A taxpayer may claim a credit against the Business Activity Tax equal to fifty percent (50%) of the lesser of:

a. The total Business Activity Tax liability of the taxpayer and associated with the activities for which the taxpayer is claiming the credit; or

b. The total state corporate income tax paid by the taxpayer and associated with the activities for which the taxpayer is claiming the credit.

3. For purposes of this section, the total state corporate income tax shall include estimated payments made by the taxpayer and associated with the activities for which the taxpayer is claiming the credit. After the taxpayer has filed the final return for a tax year, the taxpayer may file amended Business Activity Tax returns for the previous four quarters if necessary to accurately reflect the amount of credit to which the taxpayer is entitled.

4. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming the entitlement, and the taxpayer shall furnish to the Office of the Navajo Tax Commission, in the manner determined by the Office of the Navajo Tax Commission, proof of payment of the aggregate amount of tax on which the credit is based.

History

CAU-67-01, August 7, 2001.
CO-87-98, October 19, 1998.
CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Revision Note. This section was renumbered for statutory reform.

Library References

Indians ☞32(9).
Taxation ☞1281.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2035 to 2036.

§ 410. Designation of individual

No designation need be made until a branch has gross receipts of one hundred twenty-five thousand dollars (\$125,000) or more in any period after the effective date of this Chapter. This exception shall not apply if the branch is one which is described in § 405(D) and one to which the limitations of that subsection will apply.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ⇄32(9).
Taxation ⇄1232.5.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 411. Filing of return

A. Except as provided in Subsection (B) of this Section, each branch must file a return of source-gains and the tax due for the period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year. The Commission may by form or regulation require that other information and relevant documents which it deems necessary for the proper and efficient administration of the tax be included with the return, and that the return be signed by specified persons.

B. No return need be filed by a branch for any period in which gross receipts are less than one hundred twenty-five thousand dollars (\$125,000). This exception does not apply if the branch had annualized gross receipts of five hundred thousand dollars (\$500,000) or more in any of the three (3) years preceding the period. Nor does this exception apply if the branch is a general contractor subject to the exception in § 405(E) and the reduced tax rate provided in § 406, or if the branch is a subcontractor described in § 408(D) and for any period to which that Subsection applies.

C. If the branch is one, which is described in Section 405(D), and one to which the limitation of that Subsection will apply, then for Subsection (B) of this Section to apply, all the related branches must in the aggregate meet both qualifications.

D. If a branch is an association, joint venture, or partnership, or a part thereof, the Commission may require that each associate, participant, or partner whether general or limited, file a separate return in accordance with regulations, provided that the limits under § 405(D) shall apply as though each associate, participant, or partner were owned or controlled by the branch and by each other.

E. No return need be filed by any person who is exempt under § 408(A), (B), and (C), provided that the Commission may require such person to file the information necessary to establish its exempt status.

F. Exclusions from gross receipts shall be claimed in a return. In the case of the exclusion provided in § 408(D), a proper certificate of exemption shall constitute such a claim.

History

CJY-52-95, July 20, 1995.
CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
 Taxation ☞1313.
 Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Taxation § 2038.

§ 412. Payment of tax

Payment of tax is due at the time the return is due. The Commission, however, may require payment of tax on a monthly basis in appropriate cases.

History

CO-79-85, October 31, 1985.
 CS-47-84, September 20, 1984.
 CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
 Taxation ☞1331.
 Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Taxation § 2055.

§ 413. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
 CAP-36-78, April 28, 1978.

§ 414. Record keeping

Records required to be kept must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six (6) years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
 CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
 Taxation ☞1311, 1313.
 Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Taxation §§ 2038, 2040 to 2042.

§§ 415-442. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CO-79-85, October 31, 1985.

CS-47-84, September 20, 1984.
 CAP-36-78, April 28, 1978

§ 443. Severability

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the

chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

History

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
Statutes ☞64(8).
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes §§ 86, 100, 106.

§ 444. Effective date

This Chapter shall take effect upon approval by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

History

CJY-52-95, July 20, 1985.
CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Note. (1) Effective date and application of 1984 revision of chapter 5. CS-47-84, § 2, September 20, 1984, states as follows: "This resolution shall take effect upon approval by the Navajo Tribal Council for all calendar quarters, beginning on or, after July 1, 1978; provided,

that any amendment which is not merely clarifying, interpretive, or procedural, and which has the effect of increasing the liability for taxes of any person, shall not be effective as to such person for any quarter beginning before October 1, 1984."

(2) Effective date and application of 1985 revision of this chapter by CO-79-85, October 31, 1985 is for all periods beginning on or after January 1, 1986.

§ 445. Repeals

All laws or parts of laws (or attachments thereto), which are inconsistent with the provisions of this Chapter, are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CS-47-84, September 20, 1984.
CAP-36-78, April 28, 1978.

Library References

Indians ☞32(9).
Statutes ☞157.
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes § 282.

Chapter 6. Sales Tax

Section

601.	Short title
602.	Purpose
603.	Tax imposed
604.	Legal incidence and responsibility for payment
605.	Rate of tax
606.	Administration

TAXATION

24 N.N.C. § 603

Section

- 607. Definitions
- 608. Navajo Nation government
- 609. Exemptions and exclusions
- 610. Credits
- 611. [Reserved]
- 612. Filing of return
- 613. Payment of tax
- 614. Record keeping
- 615–619. [Reserved]
- 620. Allocation of Revenue
- 621. No conflict with Local Governance Act
- 622. Severability
- 623. Effective date
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§ 601. Short title

The tax imposed by this Chapter shall be called the “Sales Tax.”

History

CO–84–01, October 18, 2001.

Library References

Indians ☞32(9).
Taxation ☞1201.1.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 602. Purpose

The Navajo Nation Council hereby enacts this tax for the privilege of engaging in business activity within the Navajo Nation, and for purposes of defraying necessary governmental expenses at the national and local level incurred in providing for the public welfare.

History

CO–84–01, October 18, 2001.

Library References

Indians ☞32(9).
Taxation ☞1201.1.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 603. Tax imposed

A tax is hereby imposed on the gross receipts of a person. The tax due for a period is determined by first calculating applicable gross receipts for a period, and then multiplying those gross receipts by the applicable tax rate.

History

CO–84–01, October 18, 2001.

Library References

Indians ☞32(9).
Taxation ☞1209.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

24 N.N.C. § 603

TAXATION

C.J.S. Taxation § 2000.

§ 604. Legal incidence and responsibility for payment

The person liable for the payment of the tax imposed by this Chapter is the person receiving the gross receipts from a sale.

History

CO-84-01, October 18, 2001.

Library References

Indians ⌘32(9).
Taxation ⌘1262.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 2029.

§ 605. Rate of tax

The tax imposed by this Chapter is imposed at a rate of not less than two percent (2%), nor more than six percent (6%), which shall be specifically established by regulations promulgated by the Navajo Tax Commission. Until another rate is established, the rate shall be three percent (3%) of the applicable gross receipts from all retail sales (.03 x applicable gross receipts).

History

CO-84-01, October 18, 2001.

Library References

Indians ⌘32(9).
Taxation ⌘1281 to 1285.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2035 to 2037.

§ 606. Administration

All provisions of the Uniform Tax Administration Statute apply to this Chapter.

History

CO-84-01, October 18, 2001.

Library References

Indians ⌘32(9).
Taxation ⌘1311 to 1344.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2038 to 2071.

§ 607. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this Chapter:

A. "Consideration" means any money or other pecuniary benefit, goods, personal or real property, services, or any combination thereof, which accrues as a right, profit, advantage, or benefit to a person, or which reflects a payment, detriment, loss, or responsibility of a person.

B. "Construction activity" means any building, altering, repairing, installing, or demolishing in the ordinary course of business, whether a project is completed or not, any:

1. Road, highway, bridge, parking area, fence, livestock guard, gate, or related structure;
2. Building, stadium, or other structure;
3. Airport, railway, or similar transportation facility;
4. Park, trail, athletic field, golf course, or similar facility;
5. Dam, reservoir, canal, ditch, culvert, or similar facility;
6. Sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility;
7. Sewerage, water, coal, coal slurry, gas, or other pipeline;
8. Transmission line;
9. Radio, television, microwave, telephone, or other similar tower;
10. Water, oil, gasoline, fuel or other storage tank;
11. Shaft, tunnel, or other mining appurtenance;
12. Microwave station, or similar facility;
13. Leveling, clearing, or other preparation of land;
14. Excavating of earth;
15. Drilling of wells of any type, including seismograph shot holes or core drilling; or
16. Any similar work or activity.

C. "Employee" means a person in the service of another person under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

D. "Enterprise" means any non-corporate business entity created by action of the Navajo Nation Council.

E. "Fair market value" means the amount of consideration at which personal or real property or services would change hands via an arms-length transaction between a willing buyer and a willing seller, or a willing lessor and a willing lessee, neither of whom is under any compulsion to act.

"Fair market value" is to be determined on the basis of consideration in comparable sales, leasing, or rental transactions. If such information is not available, the Office of the Navajo Tax Commission may estimate the fair market value of the subject of a transaction according to procedures established by regulations.

F. "General contract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, which is entered into by a general contractor.

G. "General contractor" means a person primarily responsible for the performance of a construction project pursuant to a contract.

A “General contractor” may enter into subcontracts, but remains primarily responsible for the management, planning, supervision, coordination, and performance of the contract.

H. “Gross receipts” means the total amount of money, credit, or any other pecuniary benefit or advantage, plus the fair market value of any other consideration, which is actually received during any period by any person from the sale or leasing of real or personal property of any kind, the sale of services of any kind, and any other productive activity of any kind, whether for profit or not, conducted wholly or partially within the Navajo Nation. “Gross receipts” does not include the salary or wages of an individual engaged as an employee.

“Gross receipts” includes those amounts received for any and all personal or real property which is an integral, but not necessarily a significant or primary, component of the service(s) rendered, regardless of the date, time, manner, and location of sale, delivery, or use of such personal or real property.

“Gross receipts” includes those amounts received for any and all services which are an integral, but not necessarily a significant or primary, component of the sale or delivery of personal or real property, such as those amounts received as payment or reimbursement for costs of putting personal or real property into a finished and marketable form, payment for delivery and set-up, and payment for warranty or service contracts, regardless of the date, time, manner, or location of performance of such service(s).

“Gross receipts” does not include amounts received as reimbursement for federal, state, or Navajo Nation taxes.

I. “Manufacturing activity” means combining or processing components or materials into a finished product, whether manually or mechanically, for the purpose of resale in the ordinary course of business, but does not include construction activity.

J. “Navajo Nation” means all areas within the territorial jurisdiction of the Navajo Nation government.

K. “Performance” means the partial or complete fulfillment or accomplishment of a promise, contract, or other obligation according to the terms of such promise or contract.

L. “Period” means a calendar quarter.

M. “Personal property” means any tangible property which may be seen, touched, weighed or measured, or is in any manner perceptible to the human senses, including, but not limited to, electricity, natural gas, goods or merchandise of any kind, goods purchased for consumption or other use, goods purchased for incorporation into other personal or real property, and goods purchased for use in the performance of any service, whether or not such goods are consumable, movable, separable, affixed to, or incorporated into, other personal or real property, and whether or not such goods retain their original character upon final sale.

“Personal property” also means any intangible property which cannot be physically perceived by the human senses, such as patents, trademarks, copy-

rights, franchises, licenses, knowledge, information, ideas, advice, and other intangible items of value or legal rights of any kind.

N. "Sale" means any transaction, including a lease or rental, for consideration of any kind that results in the transfer of ownership and/or possession, delivery, use, or enjoyment of personal or real property, or the performance of any service.

A "Sale" includes circumstances where the title to personal or real property is retained as security for payment, and includes circumstances where no actual physical transfer of personal or real property or services occurs.

O. "Sale for resale" means a sales transaction for purposes of any further sale, processing, manufacturing, or other commercial or industrial purposes, as distinguished from a retail sale.

P. "Services" means manual, mechanical, or intellectual labor performed, and includes other business activity that does not have physical characteristics.

Q. "Subcontract" means any legal duty, obligation, or responsibility, express or implied, unilateral or bilateral, written or unwritten, between a general contractor and a subcontractor.

R. "Subcontractor" means a person who takes from the general contractor a specific part of the work undertaken by the general contractor.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).
Westlaw Topic No. 209.
C.J.S. Indians §§ 130 to 132, 134.

§ 608. Navajo Nation government

A. Sales by corporations owned by the Navajo Nation government or any political subdivision thereof shall be fully subject to the tax imposed by this Chapter.

B. Sales by the government of the Navajo Nation, or political subdivisions or enterprises thereof, shall be subject to the tax imposed by this Chapter according to the following schedule:

1. For all periods during calendar years 2001 and 2002, the Navajo Nation government, political subdivisions, and enterprises shall not be subject to the tax;
2. For all periods during calendar year 2003, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to twenty-five percent (25%) of the rate imposed under § 605 of this Chapter;
3. For all periods during calendar year 2004, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a

rate equal to fifty percent (50%) of the rate imposed under § 605 of this Chapter;

4. For all periods during calendar year 2005, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to seventy-five percent (75%) of the rate imposed under § 605 of this Chapter;

5. For all periods during calendar year 2006 and all periods thereafter, the Navajo Nation government, political subdivisions, and enterprises shall be subject to the tax at a rate equal to one hundred percent (100%) of the rate imposed under § 605 of this Chapter;

C. In cases where a person is partially owned by the Navajo Nation government or any of its political subdivisions or enterprises, gross receipts shall be prorated if necessary.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).

Taxation ☞1209, 1281 to 1290.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 1990, 2000, 2021, 2025, 2035 to 2037.

§ 609. Exemptions and exclusions

A. Nothing in this Chapter shall be construed as imposing a tax on the gross receipts of a subcontractor, provided that:

1. The general contractor with whom the subcontractor has contracted has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter by signing and issuing a certificate of exemption to the subcontractor; and,

2. The subcontractor must obtain from the general contractor a certificate of exemption issued to the general contractor by the Office of the Navajo Tax Commission. This certificate must be signed by the general contractor, and must indicate that the general contractor has reported and paid all taxes due under this Chapter, or has assumed liability for payment of all taxes due under this Chapter.

3. The Commission may by form or regulation provide for the proper issuance and filing of the certificate of exemption.

B. In calculating applicable gross receipts, a person may exclude those gross receipts on which any of the following Navajo Nation taxes have been paid:

1. Navajo Nation Oil and Gas Severance Tax;
2. Navajo Tobacco Products Tax; or
3. Navajo Nation Fuel Excise Tax.

C. The tax imposed by this Chapter does not apply to gross receipts generated directly by the following:

1. Sales for resale;

2. Sales related to agricultural, farming, or livestock activities conducted within the Navajo Nation;
3. Sales, other than sales from an unrelated trade or business as defined in §§ 511–513 of the Internal Revenue Code,¹ by any person operating exclusively for non-profit or charitable purposes, and recognized as such pursuant to § 501(c)(3) and 501(c)(19) of the United States Internal Revenue Code² at the time of sale;
4. Sales by facilities engaged in childcare, foster care or adoption placement, or battered families and homeless shelters;
5. Sales of stocks, private or government-issued bonds, mutual funds, or other investments, including income received as dividends or interest;
6. Sales by itinerant salespersons;
7. Occasional sales by persons who are not regularly engaged in the business of selling personal or real property or services;
8. Sales by educational institutions, including primary and secondary schools, colleges, vocational, and job training programs;
9. Sales by hospitals and health-care organizations or facilities, such as nursing care institutions, residential care and mental health facilities, senior citizen care facilities or retirement homes, kidney dialysis facilities and blood banks, or other facilities which provide medical care and services;
10. Sales from coin-operated vending machines of any type;
11. Sales related to traditional Native American ceremonies or services;
12. Sales of prescription medicines, prosthetic devices, or other medical devices, including medical oxygen, monitoring devices, dentures, hearing aids, crutches, insulin syringes, blood sugar monitoring strips or devices, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition;
13. Sales related to funerals and human burials;
14. Sales paid for by coupons issued by the United States Department of Agriculture under the Foods Stamp Act of 1977 (P.L. 95–113);³
15. Sales paid for by vouchers issued under § 17 of the Child Nutrition Act (P.L. 95–627 and P.L. 99–669);⁴
16. Sales of newspapers or other daily publications; or
17. Sales of mobile homes, motor homes, motor vehicles, tractors, and hauling trailers for private use, possession, or enjoyment, provided that such items are not resold or used in any business activity or service.

D. Nothing in this Chapter shall be construed as imposing directly upon the United States a tax which is prohibited by federal law.

E. Through December 31, 2005, a person may exclude from gross receipts any amount received from a transaction on which the Hotel Occupancy Tax has been paid.

¹ 26 U.S.C. §§ 511 to 513.

² 26 U.S.C. § 501(c)(3) and (19).

³ 7 U.S.C. § 2011 et seq.

24 N.N.C. § 609

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⁴ 42 U.S.C. § 1786.

History

CO-84-01, October 18, 2001.

Library References

Indians ⇄32(9).

Taxation ⇄1234 to 1246, 1268.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Steam § 4.

C.J.S. Taxation §§ 2014, 2016 to 2024, 2031.

§ 610. Credits

A person may take a credit against the tax imposed by this Chapter for taxes paid pursuant to any nondiscriminatory excise tax imposed by any duly established township or local government subunit, provided that revenues from such excise tax are utilized to provide essential governmental services.

History

CO-84-01, October 18, 2001.

Library References

Indians ⇄32(9).

Taxation ⇄1281.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation §§ 2035 to 2036.

§ 611. [Reserved]

§ 612. Filing of return

A. Each person must file a return indicating all sales from applicable gross receipts and the tax due under this Chapter for each period by the fifteenth day of the second month after the end of each calendar quarter. Returns are due on May 15, August 15, November 15, and February 15 of each calendar year.

B. The Commission may by form or regulation require that other information, records or relevant documents which it deems necessary for the proper and efficient administration of this Chapter be included with the return, and that the return be signed by a specified person.

C. No return need be filed by any person who is exempt under § 609, provided that the Office of the Navajo Tax Commission may require such person to file the information necessary to establish its exempt status.

D. In the case of the exemption provided for in § 609(A), the filing by a person of a proper certificate of exemption with the Office of the Navajo Tax Commission shall constitute a claim for exemption.

History

CO-84-01, October 18, 2001.

Library References

Indians ⇄32(9).

Taxation ⇄1313.

Westlaw Topic Nos. 209, 371.
 C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Taxation § 2038.

§ 613. Payment of tax

Payment in full of the taxes owed for a particular period is due on the same date that the completed return for that same period is due. The Office of the Navajo Tax Commission, however, may require payment of any taxes due on a monthly basis.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1331.	C.J.S. Taxation § 2055.
Westlaw Topic Nos. 209, 371.	

§ 614. Record keeping

A. Each person shall keep all records which pertain to or relate in any manner to all sales from any business activity engaged in at any time by such person. Such records shall be maintained separately for each reporting period during which a person is engaged in business activity.

B. Records required to be kept must be preserved for four (4) years beyond the end of the period to which the records relate.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1311, 1313.	C.J.S. Taxation §§ 2038, 2040 to 2042.
Westlaw Topic Nos. 209, 371.	

§§ 615–619. [Reserved]

§ 620. Allocation of revenue

After allocation to permanent or special revenue funds as required by Navajo Nation law, and allocation to the Tax Administration Suspense Fund as required by the fiscal policy adopted by the Navajo Tax Commission for such Fund, the net revenue from this Chapter shall be disbursed as follows:

A. Except as otherwise provided in subsections (B) and (C), one hundred percent (100%) of the revenue collected shall be deposited into the General Fund of the Navajo Nation.

B. One hundred percent (100%) of the revenue collected from retail establishments shall be allocated to the specific chapter in which the retail sale occurred, provided that such chapter is governance-certified pursuant to the Local Governance Act at the time of such sale.

C. One hundred percent (100%) of the revenue collected from retail establishments in chapters that are not governance-certified shall be deposited into a trust fund to be appropriated pursuant to a plan of operation developed by the Office of Navajo Government Development and approved by the Budget and Finance Committee of the Navajo Nation Council.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).
Taxation ☞1344.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 2071.

§ 621. No conflict with Local Governance Act

The provisions of this Chapter and corresponding regulations shall not be construed inconsistently with the Local Governance Act, 26 N.N.C. §§ 1-2008 (1998).

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).
Statutes ☞245.
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes § 385.

§ 622. Severability

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).
Statutes ☞64(8).
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes §§ 86, 100, 106.

§ 623. Effective date

This Chapter shall take effect in accordance with 2 N.N.C. § 1005.

History

CO-84-01, October 18, 2001.

§ 624. Repeals

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CO-84-01, October 18, 2001.

Library References

Indians ☞32(9).

Statutes ☞157.

Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Statutes § 282.

Chapter 7. Hotel Occupancy Tax**Section**

700.	Definitions
701.	Tax imposed
702.	Rate of tax
703.	Collection of tax
704.	Exception: Permanent resident
705.	Exception: Navajo Nation
706.	Return and payment
707.	Administration
708.	Reimbursement for tax collection
709.	[Reserved]
710.	Recordkeeping
711-737.	[Reserved]
738.	Severability
739.	Effective dates
740.	Repeals
741.	Allocation

§ 700. Definitions

A. “Hotel” means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, or nursing home.

B. “Branch” means any person owning, operating, managing or controlling any hotel.

C. “Period” means a calendar quarter any other reporting period established by regulation.

History

CJY-52-95, July 20, 1995.

CJY-27-92, July 21, 1992.

Library References

Indians ↻32(9).
 Innkeepers ↻4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 701. Tax imposed

A. A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing two dollars (\$2.00) or more each day.

B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person except for those services related to cleaning and readying the room for use or possession.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ↻32(9).
 Innkeepers ↻4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

Annotations**1. Validity**

While as a general proposition the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers on non-Indian fee land located within reservation boundaries, under *Montana* rule, two possible bases exist for tribal jurisdiction over non-Indian fee land: first, a tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with tribe or its members, through commercial dealings, contracts, leases, or other arrangements, and second, a tribe may exercise civil authority over conduct of nonmembers on fee lands within reservation when that conduct threatens or has some direct effect on the political integrity, economic security, or health or

welfare of tribe. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

Indian tribe lacked authority to impose hotel occupancy tax on nonmember guests staying in hotel rooms located on non-Indian fee land that was within boundaries of tribe's reservation; neither exception to general *Montana* rule that inherent sovereign powers of an Indian tribe do not extend to the activities of nonmember was applicable, as no consensual relationship between tribe and hotel guests sufficient to justify taxation existed, and tax was not necessary to vindicate tribe's political integrity. *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889, (U.S.N.M. 2001).

§ 702. Rate of tax

The rate of tax imposed by this chapter is five percent (5%) of the price paid for a room in a hotel. On January 1, 1994, the rate of the tax imposed by this Chapter will increase to eight percent (8%) of the price paid for a room in a hotel.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⚡32(9).
 Innkeepers ⚡4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 703. Collection of tax

A branch owning, operating, managing, or controlling a hotel shall collect for the Commission the tax that is imposed by this Chapter and that is calculated on the amount paid for room in the hotel.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⚡32(9).
 Innkeepers ⚡4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 704. Exception: Permanent resident

This Chapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least thirty (30) consecutive days.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⚡32(9).
 Innkeepers ⚡4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 705. Exception: Navajo Nation

Nothing in this Chapter shall be construed as imposing a tax on the government of the Navajo Nation. For the purposes of this Chapter, the term Navajo Nation does not include tribal enterprises.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⚡32(9).
 Innkeepers ⚡4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 706. Return and payment

On the last day of each period, a branch required to collect the tax imposed by this Chapter shall pay the Commission the tax collected during the preced-

ing period, and at the same time shall file with the Commission a return stating:

A. The total amount of the payments made for rooms at the branch's hotel during the preceding period;

B. The amount of the tax collected by the branch during the preceding period; and

C. Other information that the Commission requires to be in the return. Provided, that the Commission shall be authorized to assess against a branch responsible for the collection of taxes under this chapter, and that such assessments are presumed to be correct.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Westlaw Topic Nos. 209, 213.	

§ 707. Administration

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Innkeepers ☞4.	C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.
Westlaw Topic Nos. 209, 213.	

§ 708. Reimbursement for tax collection

The branch required to file a return under this Chapter may deduct and withhold from the taxes otherwise due to the Navajo Nation on the quarterly return, as reimbursement for the cost of collecting the tax, one percent (1%) of the amount of the tax due as shown on the return. If taxes due under this chapter are not paid to the Navajo Nation within the time required or if the branch required to file a return fails to file the return when due, the branch forfeits the claim to reimbursement that could have been taken if the tax had been paid or the return filed when due.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

Library References

Indians ⇨32(9).
 Innkeepers ⇨4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§ 709. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

§ 710. Record keeping

Records required to be kept must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six (6) years beyond the end of the period to which the records relate.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⇨32(9).
 Innkeepers ⇨4.
 Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

§§ 711-737. [Reserved]**History**

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

§ 738. Severability

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

History

CJY-52-95, July 20, 1995.
 CJY-27-92, July 21, 1992.

Library References

Indians ⇨32(9).
 Statutes ⇨64(8).
 Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
 C.J.S. Statutes §§ 86, 100, 106.

§ 739. Effective dates

This Chapter shall take effect upon approval by the Navajo Nation Council. The tax imposed by this Chapter shall be due and payable for calendar quarters beginning January 1, 1993.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

§ 740. Repeals

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

Library References

Indians ☞32(9).
Statutes ☞157.
Westlaw Topic Nos. 209, 361.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Statutes § 282.

§ 741. Allocation

The tax imposed by this Chapter is imposed for the purposes of promoting tourism and tourism development.

To accomplish this end, this tax shall be retained in a special fund entitled the "Navajo Nation Tourism Fund" which shall be administered by the Navajo Tourism Department, and which shall, consistent with the laws of the Navajo Nation and utilizing the prudent person rule, be applied for the advancement of local tourism promotion, and to develop projects throughout the Navajo Nation. The Division of Economic Development and the Navajo Tourism Department are hereby authorized to develop and recommend to the Budget and Finance Committee of the Navajo Nation Council the Fund's management plan.

History

CJY-52-95, July 20, 1995.
CJY-27-92, July 21, 1992.

Library References

Indians ☞32(9).
Innkeepers ☞4.
Westlaw Topic Nos. 209, 213.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Inn, Hotels and Eating Places §§ 8 to 9.

Chapter 8. Tobacco Products Tax and Licensing Act

Section

- 800. Short title
- 801. Administration
- 802. Definitions
- 803. Tax imposed—rates
- 804. Legal incidence
- 805. Liability for remittance and payment of tax
- 806. Licensing—requirements
- 807. Licensing—enforcement
- 808. Use of funds
- 809. Effective date
- 810. Severability

§ 800. Short title

This Chapter shall be called the “Tobacco Products Tax and Licensing Act.”

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1203.	C.J.S. Taxation § 1993.
Westlaw Topic Nos. 209, 371.	

§ 801. Administration

The provisions of Chapter 1, the Uniform Tax Administration Statute, shall apply to this Chapter.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1311 to 1344.	C.J.S. Taxation §§ 2038 to 2071.
Westlaw Topic Nos. 209, 371.	

§ 802. Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this Chapter, and unless the context otherwise requires, in this chapter:

1. “Tobacco” means commercially cultivated tobacco, the leaves of which are processed chiefly for use in cigarettes, cigars, snuff, plug or chewing tobacco, or for smoking in pipes.
2. “Tobacco product” means any commercially processed and/or manufactured product for human consumption which contains tobacco, including cigarettes.

3. “License” means a certificate issued by the Office of the Navajo Tax Commission which authorizes a distributor or retailer to engage in the sale or resale of tobacco products.

4. “Distributor” means any person within the Navajo Nation who manufactures, produces, ships, transports, or imports tobacco products into the Navajo Nation or in any manner acquires or possesses tobacco products for the purpose of making the first sale.

5. “First sale” means the first sale or distribution within the Navajo Nation or the first use or consumption of tobacco products within the Navajo Nation.

6. “Retailer” means any person engaged in the sale or resale of tobacco products within the Navajo Nation.

7. “Sale” means a transfer of possession or ownership between buyer and seller for a consideration.

8. “Consumer” means any person who comes into possession or ownership of a tobacco product by purchasing or otherwise acquiring it for the purpose of using, consuming, or giving away such product.

9. “Period” means one calendar month.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1292.	C.J.S. Taxation § 2026.
Westlaw Topic Nos. 209, 371.	

§ 803. Tax imposed—rates

There is hereby levied and imposed by this Chapter for each period, the following tax upon the first sale by any retailer or distributor of tobacco products:

1. On each cigarette, two (2¢) cents;
2. On smoking tobacco, snuff, chewing tobacco, cut and granulated tobacco, shorts and refuse of fine cut tobacco, refuse, scraps, clippings, cuttings and sweepings of tobacco, excluding tobacco powder or tobacco products used exclusively for agricultural or horticultural purposes and unfit for human consumption, four and five-tenths (4.5¢) cents per ounce or major fraction thereof;
3. On all cavendish, plug or twist tobacco, one and one-tenth (1.1¢) cents per ounce or fractional part thereof;
4. On each twenty small cigars or fractional part thereof weighing not more than three (3) pounds per thousand, eight and nine-tenths (8.9¢) cents;
5. On cigars of all descriptions except those included in paragraph 4 of this subsection, made of tobacco or any substitute therefore, if manufactured to retail at not more than five (5¢) cents each, four and four-tenths (4.4¢)

cents on each three (3) cigars, but if manufactured to retail at more than five (5¢) cents each, four and four-tenths (4.4¢) cents on each cigar.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).
Taxation ☞1209, 1281, 1292.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2000, 2026, 2035 to 2036.

§ 804. Legal incidence

The tax imposed by this Chapter is presumed to be a direct tax on retailers and distributors of commercially processed and/or manufactured tobacco products.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).
Taxation ☞1263.

Westlaw Topic Nos. 209, 371.
C.J.S. Indians §§ 130 to 132, 134.

§ 805. Liability for remittance and payment of tax

Distributors and retailers are responsible for the collection and remittance of the tax imposed under this Chapter. Distributors and retailers are liable for taxes regardless of whether the taxes are collected from the consumer.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).
Taxation ☞1338.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 2062.

§ 806. Licensing—requirements

1. All distributors and retailers shall obtain from the Office of the Navajo Tax Commission a license, as defined in § 802(3).
2. The application procedures for obtaining a license and the licensing requirements shall be prescribed in regulations adopted by the Navajo Tax Commission.
3. The Office of the Navajo Tax Commission shall issue a license upon the condition that the applicant fully complies with the provisions of this Chapter and the regulations adopted by the Navajo Tax Commission pursuant to this Chapter.

4. Refusal by the Office of the Navajo Tax Commission to issue or renew a license shall be considered an adverse action under § 131 of the Uniform Tax Administration Statute.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).
Licenses ☞16(1).
Westlaw Topic Nos. 209, 238.
C.J.S. Indians §§ 130 to 132, 134.

§ 807. Licensing—enforcement

A. A license may be revoked if the licensee fails to fully comply with this Chapter or the Uniform Tax Administration Statute. If the licensee comes into full compliance within fifteen (15) calendar days from the date of the notice of revocation from the Office of the Navajo Tax Commission, the revocation shall be withdrawn. Revocation of a license shall be considered an adverse action.

B. It is unlawful for any person to sell or resell, or have available for sale, tobacco product within the Navajo Nation without a license.

C. Any person engaging in the unlawful action described in Subsection (B) shall be subject to an initial fine of five hundred thousand dollars (\$500.00), plus an additional fine of five hundred dollars (\$500.00) for each calendar month or part thereof during which the person operates without a license. For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the person from all or part of the fine imposed under this Section. Imposition of a fine shall be considered an adverse action.

D. 1. The Office of the Navajo Tax Commission shall issue an order to any person engaging in the unlawful action described in Subsection (B) to cease and desist from such sales. Violation of this order shall subject the tobacco product to seizure by the Office of the Navajo Tax Commission or its designee. Issuance of an order or seizure of the tobacco product shall be considered an adverse action.

2. If the person from whom the tobacco product was seized obtains a license within ten (10) working days of the seizure, the seized product shall be released to that person. The Office of the Navajo Tax Commission shall act in a timely fashion to grant or deny the issuance of a license. The Office of the Navajo Tax Commission may require the posting of a bond before a license is issued. The requirement of the posting of a bond shall be considered an adverse action.

3. Following a final decision that no license will be issued, the seized tobacco product shall be sold to the highest bidder after public advertisement. Only licensed persons shall be eligible to bid. The proceeds of any sale, less the amount retained by the Office of the Navajo Tax Commission to cover any taxes due and the costs of confiscation and sale, shall be deposited into the General Fund of the Navajo Nation.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).	C.J.S. Architects §§ 3, 10, 15.
Licenses ☞38, 40, 41.	C.J.S. Indians §§ 130 to 132, 134.
Westlaw Topic Nos. 209, 238.	C.J.S. Licenses §§ 48, 50 to 63, 78 to 83.
C.J.S. Agriculture § 4.5.	C.J.S. Trading Stamps and Coupons § 6.

§ 808. Use of funds

Tax, interest, and penalties collected by the Office of the Navajo Tax Commission pursuant to this Chapter shall be deposited in the General Fund of the Navajo Nation.

History

CAP-39-98, April 27, 1998.
CO-107-95, October 25, 1995.

Library References

Indians ☞32(9).	C.J.S. Architects §§ 3, 15.
Licenses ☞40.	C.J.S. Indians §§ 130 to 132, 134.
Taxation ☞1344.1.	C.J.S. Licenses §§ 82 to 83.
Westlaw Topic Nos. 209, 238, 371.	C.J.S. Taxation § 2071.
C.J.S. Agriculture § 4.5.	C.J.S. Trading Stamps and Coupons § 6.

§ 809. Effective date

The tax imposed by this Chapter shall be effective as of the date of adoption by the Navajo Nation Council and in accordance with 2 N.N.C. § 1005.

History

CAP-39-98, April 27, 1998.

§ 810. Severability

If any provision of this Chapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

History

CAP-39-98, April 27, 1998.

Library References

Indians ☞32(9).	C.J.S. Indians §§ 130 to 132, 134.
Statutes ☞64(8).	C.J.S. Statutes §§ 86, 100, 106.
Westlaw Topic Nos. 209, 361.	

Chapter 9. Fuel Excise Tax

Part I. General Provisions

Section

- 901. Purpose and short title
- 902. Administration and definitions

Part II. Tax Administration

- 903. Tax imposed
- 904. Taxable unit
- 905. Rate of tax
- 906. Legal incidence
- 907. Retailer notice requirement
- 908. Fuel inventories and payment of tax
- 909. Exemptions
- 910. Refunds

Part III. Enforcement

- 911. Licensing
- 912. Restrictions on fuel importation, distribution, transportation, refining and retailing
- 913. Procedures for lawful importation and distribution
- 914. Detention and inspection
- 915. Filing returns and payment of tax
- 916. Record keeping
- 917. Violations
- 918. Penalties

Part IV. Miscellaneous

- 919. Effective date
- 920. Severability
- 921. Repeals
- 922. No conflict with Local Governance Act
- 923. Disbursements

Part I. General Provisions

§ 901. Purpose and short title

A. Purpose. The Navajo Nation Council hereby enacts this tax for purposes of defraying necessary governmental expenses incurred in providing for the public welfare.

B. Short title. The tax imposed by this Chapter shall be called the "Fuel Excise Tax."

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).

Taxation ☞1204.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.

C.J.S. Taxation § 1994.

§ 902. Administration and definitions

A. Administration. All provisions of the Uniform Tax Administration Statute shall apply to this Chapter.

B. Definitions. Subject to additional definitions (if any) contained in the subsequent section of this Chapter, and unless the context otherwise requires, in this Chapter:

1. "Authorized carrier" means any person issued a current and valid authorized carrier's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of an authorized distributor for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

"Authorized carrier" does not include any person who imports into, and transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

2. "Authorized carrier's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

3. "Authorized distributor" means any person issued a current and valid authorized distributor's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

"Authorized distributor" does not include any person who imports into, and transports within the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation, nor any common carrier who obtains, imports into, or transports and delivers within, the Navajo Nation, on behalf of any distributor, any fuel which is not owned by such common carrier.

4. "Authorized distributor's license" means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

5. "Authorized refiner" means any person issued a current and valid authorized refiner's license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away such fuel to distributors, retailers, or consumers.

6. “Authorized refiner’s license” means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

7. “Authorized retailer” means any person issued a current and valid authorized retailer’s license, properly issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

8. “Authorized retailer’s license” means a license properly issued by the Office of the Navajo Tax Commission to any person pursuant to § 911 of this Chapter and corresponding regulations.

9. “Bill of lading” means any document, way bill, shipping paper, certificate, consignment contract, billing statement, invoice or other written record issued by a supplier, which evidences the obtaining of any amount of fuel from such supplier by any distributor, or any common carrier thereof.

10. “Cargo tank” means any liquid fuel container mounted on or attached to a truck, trailer, wagon, or any other mobile vehicle used for transporting fuel, but does not include the fuel supply tank of motor vehicles.

11. “Common carrier” means any person, whether an Authorized Carrier or an Unauthorized Carrier, who obtains fuel from a supplier on or for the account of any distributor, for importation into, and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

“Common Carrier” does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

12. “Consumer” means any person who purchases, acquires, holds, possesses, uses, or consumes any amount of fuel for use by such person and not for resale or transfer to, or use by, any other person(s).

13. “Deliver” or “Delivery” means the physical transfer of any amount of fuel by dispensing or transferring it by any method from a cargo tank, pipeline, or any other container into a fuel storage tank, terminal device, or any other container for purposes of sale, resale, use or giving away of such fuel.

14. “Distribute” means to own by any means any amount of fuel and:

a. To import by any method such fuel into the Navajo Nation for delivery of the fuel to any person(s) at any location(s) within the Navajo Nation; or,

b. At any refinery located within the Navajo Nation, to receive such fuel by any method, which fuel is transferred or dispensed from any container at the refinery into a cargo tank for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

“Distribute” does not include the importation into, or transportation within, the Navajo Nation of any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

15. “Distributor” means any person, whether an Authorized Distributor or an Unauthorized Distributor, who distributes by any method any amount of fuel within the Navajo Nation.

“Distributor” does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

16. “Fuel” means flammable hydrocarbon liquid used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles, and generally dispensed into the fuel supply tank of a motor vehicle, including any blended gasoline of any type, and diesel fuel.

“Fuel” does not include kerosene, liquefied petroleum gas, compressed or liquefied natural gas, butane, propane, non-fuel stove oil, and fuel products used for the propulsion of aircraft.

17. “Fuel supply tank” means any receptacle on a motor vehicle designed for containing fuel from which such fuel is supplied directly to the engine of a motor vehicle for purposes of propulsion of the motor vehicle.

18. “Gallon” means the quantity of fuel, which fills a standard United States gallon liquid measurement.

19. “Government vehicle” means any motor vehicle, which is owned and operated exclusively by the government of the Navajo Nation or any political subdivision, chapter, enterprise, or instrumentality thereof.

20. “Import” or “Importation” means to cause, by any means, to be transported across the exterior boundaries of, and into, the jurisdiction of the Navajo Nation.

21. “Manifest” means the original individually-numbered document, or non-carbon reproduction thereof (Form NN-MANF-), issued by the Office of the Navajo Tax Commission to an Authorized Distributor authorizing the Authorized Distributor, or an Authorized Carrier thereof, to obtain a fuel load from a supplier for distribution of such fuel within the Navajo Nation.

22. “Motor vehicle” means any self-propelled motor-driven mobile vehicle operated primarily or incidentally on a highway, and includes vehicles designed for grading, paving, earth moving, or other construction or demolition purposes, all-terrain vehicles, motor scooters and cycles, motor boats, jet skis or other watercraft, snowmobiles, and any other recreational motor vehicle designed primarily for use off- road, or any other motor vehicle which may not be subject to license for operation on a highway, but does not include aircraft of any kind.

23. “Period” means one calendar month.

24. “Refine” or “Refining” means to produce, manufacture, blend or compound, or otherwise prepare as a finished product by any method, any amount of fuel for purposes of sale, resale, use or giving away as such finished product.

25. “Refiner” means any person, whether an Authorized Refiner or an Unauthorized Refiner, who refines any amount of fuel at any refinery and sells, resells, uses or gives away such fuel to consumers, distributors, or retailers.

26. “Refinery” means any plant, facility, or other location where any amount of fuel is refined by any method.

27. “Regulations” means the regulations adopted by official resolution of the Navajo Tax Commission for purposes of administering the letter and intent of this Chapter.

28. “Retail Facility” means any place of business where any amount of fuel is delivered and/or received by any method for purposes of sale, resale, use or giving away by any retailer.

29. “Retailer” means any person, whether an Authorized Retailer or an Unauthorized Retailer, who sells, resells, uses or gives away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

30. “Retailing” means to sell, resell, use or give away any amount of fuel from any retail facility or any refinery, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

31. “Sale” or “Sell” means the transfer of ownership, title, or possession to another in exchange for a consideration and includes the transfer of possession on a consignment basis.

32. “Supplier” means any person engaged in the business of selling bulk quantities of fuel to other persons for purposes of further transportation of such fuel in bulk quantities for subsequent delivery and sale.

33. “Unauthorized Carrier” means any person not issued a current and valid Authorized Carrier’s License, properly issued by the Office of the Navajo Tax Commission pursuant to Section 911 of this Chapter and corresponding regulations, who obtains fuel from a supplier on or for the account of any distributor, for importation into and delivery within, the Navajo Nation, and transports such fuel via cargo tank to any person(s) at any location(s) within the Navajo Nation.

“Unauthorized Carrier” does not include any person who imports into, or transports within, the Navajo Nation any fuel contained in the fuel supply tank of a motor vehicle at the time of such importation or transportation.

34. “Unauthorized Distributor” means any person not issued a current and valid Authorized Distributor’s License, issued by the Office of the Navajo Tax Commission pursuant to Section 911 of this Chapter and corresponding regulations, who distributes by any method any amount of fuel within the Navajo Nation.

“Unauthorized Distributor” does not include any person who imports into, and transports within, the Navajo Nation any fuel carried in the fuel supply tank of a motor vehicle at the time of such importation and transportation.

35. “Unauthorized Refiner” means any person not issued a current and valid Authorized Refiner’s License, properly issued by the Office of the

Navajo Tax Commission pursuant to Section 911 of this Chapter and corresponding regulations, who refines fuel at any refinery located within the Navajo Nation, and sells, resells, uses or gives away fuel to consumers, distributors, or retailers.

36. “Unauthorized Retailer” means any person not issued a current and valid Authorized Retailer’s License, properly issued by the Office of the Navajo Tax Commission pursuant to Section 911 of this Chapter and corresponding regulations, who sells, resells, uses or gives away fuel from any retail facility located within the Navajo Nation or any refinery located within the Navajo Nation, generally dispensing such fuel into the fuel supply tanks of motor vehicles.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).

C.J.S. Indians §§ 130 to 132, 134.

Taxation ☞1293, 1311 to 1344.

C.J.S. Taxation §§ 1990, 2027, 2038 to 2071.

Westlaw Topic Nos. 209, 371.

Part II. Tax Administration

§ 903. Tax imposed

For the privilege of distributing or retailing any amount of fuel within the Navajo Nation, there is imposed an excise tax on each gallon of fuel, or fraction thereof, at the rate fixed by § 905 of this Chapter.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).

C.J.S. Indians §§ 130 to 132, 134.

Taxation ☞1209, 1293.

C.J.S. Taxation §§ 1990, 2000, 2027.

Westlaw Topic Nos. 209, 371.

§ 904. Taxable unit

The unit of fuel on which the fuel excise tax is imposed is the gallon, with the tax computed to the nearest mill on all amounts of fuel.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).

C.J.S. Indians §§ 130 to 132, 134.

Taxation ☞1293.

C.J.S. Taxation §§ 1990, 2027.

Westlaw Topic Nos. 209, 371.

§ 905. Rate of tax

The rate of tax imposed by this Chapter shall be set in regulations, provided that the rate shall not be less than ten cents per gallon and no more than twenty-five cents per gallon. Until another rate is established, the rate shall be eighteen cents per gallon (.18 x number of gallons or fraction thereof).

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).
Taxation ☞1297.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2035 to 2036.

§ 906. Legal incidence**A. Fuel imported into the Navajo Nation**

1. Time and place of importation. Any and all fuel that is imported into the Navajo Nation for purposes of delivery to any person(s) at any location(s) within the Navajo Nation, other than in the fuel supply tank of a motor vehicle, is taxed at the time and place such fuel is imported.

2. Distributors liable for tax. The tax imposed by this Chapter is presumed to be a tax on all distributors of any amount of fuel imported into the Navajo Nation, notwithstanding the use of any common carrier. The distributor owning fuel at the time and place of importation of such fuel is the taxpayer.

3. Payment by distributors. For each period, all distributors shall pay any and all fuel excise tax or taxes due on all amounts of imported fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by the distributor until paid in full to the Office of the Navajo Tax Commission.

B. Fuel refined within the Navajo Nation

1. Time and place of transfer at a refinery. Fuel refined at a refinery located within the Navajo Nation by any person is taxable at the time and place of transfer at the refinery of such fuel by any method from one container into a separate fuel container, and is taxable to the person owning such fuel immediately after its transfer, so long as there is no further transportation of the fuel in bulk quantities for purposes of sale, resale, use or giving away directly from such container.

2. Payment by refiners or retailers. For each period, the person owning the fuel immediately after its transfer as described in § 906(B)(1) of this Chapter, shall pay directly to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on all amounts of transferred fuel, less the applicable discount, if any, taken pursuant to § 915(C)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed

by such person(s) until paid in full to the Office of the Navajo Tax Commission.

3. Time and place of loading into a cargo tank. Fuel that is loaded by any method from any refinery located within the Navajo Nation into a cargo tank is taxable at the time and place of such loading to the distributor on or for whose account such fuel was loaded for further transportation in bulk quantities and subsequent delivery to any person(s) at any location(s) within the Navajo Nation.

4. Payment by distributors. For each period, all distributors, on or for whose account fuel was loaded as described in § 906(B)(3) of this Chapter, shall pay any and all fuel excise tax or taxes due on all amounts of such fuel, less the applicable discount, if any, taken pursuant to § 915(A)(3) of this Chapter. Any amount of fuel excise tax or taxes that arise shall constitute a debt owed by such distributors until paid in full to the Office of the Navajo Tax Commission.

C. Fuel retailed within the Navajo Nation. Any retailer, whether authorized or unauthorized, who has controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full, shall be liable for payment of any and all fuel excise tax or taxes due for all such fuel received or obtained by the retailer.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).
Taxation ☞1233, 1293, 1331.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 1990, 2015, 2027, 2055.

§ 907. Retailer notice requirement

A. Tax must be indicated. All retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation, a notice reading substantially as follows:

“THE PRICE OF MOTOR VEHICLE FUEL INCLUDES APPLICABLE NAVAJO NATION FUEL EXCISE TAX COMPUTED TO THE NEAREST MILL ON EACH GALLON OR FRACTION THEREOF.”

B. Notice regarding other applicable fuel taxes. In accordance with regulations, all retailers shall keep posted at all times on all fuel pumps or other fuel dispensing apparatus at any and all retail facilities located within the Navajo Nation an appropriate notice regarding any other applicable fuel tax.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).
Taxation ☞1293.1.

Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation § 2027.

§ 908. Fuel inventories and payment of tax

A. Inventory requirement. The fuel excise tax imposed by this Chapter applies to all fuel within the Navajo Nation other than fuel contained in the fuel supply tank of a motor vehicle, as of the date that the tax becomes effective or the tax rate is increased. By the close of business on such day, each and every owner of fuel storing, controlling, transporting, holding or otherwise possessing any amount of fuel shall take a complete inventory of the total amount of gallons of such fuel on hand, including any fuel loads in transit, and record such inventory.

B. Reporting and payment requirement. Within ten (10) days of taking fuel inventory as required by § 908(A) of this Chapter, each and every person owning any amount of fuel inventory shall prepare and submit to the Office of the Navajo Tax Commission a written record of such inventory, in form and content prescribed by regulations, which report shall be accompanied by a Fuel Excise Tax Return and payment in full of all fuel excise tax or taxes due on such inventory, as required by § 915 of this Chapter and corresponding regulations.

C. Discount for timely reporting and payment. Any person owning any amount of fuel inventory who is in compliance with all applicable provisions of this Chapter and corresponding regulations, and who timely submits a fuel inventory record accompanied by a Fuel Excise Tax Return and timely submits payment in full of all fuel excise tax or taxes due on such inventory, as required by § 908(B) of this Chapter, may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent ($\frac{1}{2}\%$) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

D. Regulations. The procedure for administration of this § 908 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).
Taxation ☞1313, 1331.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 2038, 2055.

§ 909. Exemptions

The fuel excise tax imposed by this Chapter does not apply to any amount of fuel used solely and exclusively for the following:

- A. Propulsion and operation of a farm tractor or other farm machinery designed primarily for agricultural use;
- B. Operation of electricity-producing generators for private residential or household use;

- C. Operation of chainsaws, lawn mowers, or other landscaping or wood-cutting machinery;
- D. Propulsion of any government vehicle.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).
Taxation ☞1294, 1296.
Westlaw Topic Nos. 209, 371.

C.J.S. Indians §§ 130 to 132, 134.
C.J.S. Taxation §§ 1990, 2014, 2027, 2034.

§ 910. Refunds

A. Consumer refunds. A refund of the fuel excise tax, if based on any exemption(s) listed in § 909 of this Chapter, shall be available only to a consumer who provides adequate proof that the fuel excise tax has been charged to and paid in full by such consumer for any and all fuel purchases for which the consumer seeks a fuel excise tax refund.

B. Refunds due to loss or destruction.

1. Authorized distributors and authorized retailers only. A refund of the fuel excise tax shall be available only to an authorized distributor or an authorized retailer for fuel which has been lost or destroyed by fire, accident, leakage, acts of God, or other mishap while such fuel was owned, at the time of such loss or destruction, by the authorized distributor or authorized retailer seeking a fuel excise tax refund.

2. Requirements of proof. Refunds under this § 910(B) shall be available only upon adequate proof of the following:

a. That the fuel excise tax on any and all such fuel lost or destroyed has been charged to and paid in full by the authorized distributor or the authorized retailer seeking a refund; and

b. Full compliance by the authorized distributor or the authorized retailer seeking a refund, both at the time of loss or destruction of fuel and at the time the application for refund is received by the Office of the Navajo Tax Commission, with all applicable provisions of this Chapter; and,

c. Full compliance at the time of loss or destruction, by any person(s) possessing the fuel at the time of such loss or destruction, with all applicable provision(s) of § 911 of this Chapter; and,

d. Proof that such loss or destruction was not due to the negligence or recklessness of the authorized distributor or the authorized retailer seeking a refund, or of any person(s) possessing the fuel at the time of loss or destruction; and,

e. Proof that such loss or destruction was not due to any violation(s) of applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation; and,

f. Any other requirements adopted by regulations.

C. Regulations. The procedure for refunds under this § 910 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Library References

Indians ☞32(9).

C.J.S. Indians §§ 130 to 132, 134.

Taxation ☞1334.

C.J.S. Taxation § 2055.

Westlaw Topic Nos. 209, 371.

Part III. Enforcement

§ 911. Licensing

A. Licenses required. Except for fuel contained in the fuel supply tank of a motor vehicle, licenses must be obtained from the Office of the Navajo Tax Commission as follows:

1. Authorized distributors. For the privilege of distributing within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized distributor's license.

2. Authorized carriers. For the privilege of importing into, or carrying or transporting within, the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized carrier's license.

3. Authorized refiners. For the privilege of refining within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized refiner's license.

4. Authorized retailers. For the privilege of retailing within the Navajo Nation any amount of fuel, each and every person seeking to do so shall first secure and maintain a current and valid authorized retailer's license.

B. Term and fee.

1. Licenses required yearly. A separate license must be secured and maintained for each calendar year, or fraction thereof, ending on December 31st, during which a person seeks to operate as a licensee. In the case of an existing licensee, the deadline for receipt of an application by the Office of the Navajo Tax Commission for a new license to operate for the subsequent year shall be ten (10) calendar days prior to the date of expiration of the existing license.

2. License fee. The application fee for any license applied for under this § 911 shall be set by regulations, but shall not be less than one hundred dollars (\$100.00) per calendar year, or fraction thereof, ending on December 31st. Until another fee is set, the license fee shall be one hundred dollars (\$100.00). A separate application fee must be paid for each calendar year, or fraction thereof, ending on December 31st, for which a person seeks to secure and maintain a license. The application fee is non-refundable and

shall be retained by the Office of the Navajo Tax Commission whether or not the applicant is issued a license.

C. Criteria of licensees. As a condition of securing and maintaining any license under this § 911, any person(s) applying for a license, shall, from the date of receipt of a license application by the Office of the Navajo Tax Commission to the time of issuance of such license, or the issuance of a Letter of License Denial, satisfy in full all of the following criteria:

1. No felony conviction of the applicant, or any officer or any director thereof, in any Navajo Nation court or any other court of competent jurisdiction, within ten (10) years prior to the issuance of a license by the Office of the Navajo Tax Commission; and,

2. No permanent or temporary suspension or revocation of any license or other authorization granted or issued to the license applicant, or any officer or any director thereof, which pertains in any manner to the distribution, carrying or transportation of fuel via cargo tank, refining, or retailing of fuel, which was issued by the Office of the Navajo Tax Commission or any other jurisdiction, within ten (10) years prior to the issuance of a license by the Office of the Navajo Tax Commission; and,

3. Disclosure of all principal and primary persons involved in any way with the license applicant; and,

4. Proof of insurance, in an amount prescribed and governed by regulations, for purposes of indemnification for any loss of, destruction of, or damage caused by, any amount of fuel which will be imported into, or distributed, transported, delivered, refined, or retailed within, the Navajo Nation, by or on behalf of the license applicant; and,

5. Adequate proof that the license applicant, or any employees, agents, or other personnel thereof who will be engaged in the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, have been certified by a recognized and accredited program as trained in appropriate safety procedures pertaining to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel; and,

6. Adequate proof that any and all fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, to be used by the license applicant or any employees, agents, or other personnel thereof, have been fully inspected and certified as fully complying with all applicable laws and/or regulations pertaining to the handling, carrying, , storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel, of the federal government and any state(s) where such vehicles or other personal property were licensed, manufactured or constructed, leased, purchased or obtained by any means; and,

7. In the case of an applicant for an authorized distributor's license, the posting of a bond with the Office of the Navajo Tax Commission as follows:

a. Such bond may be in the form of a cash payment or a bond issued by a surety, or may be in the form of any other acceptable negotiable instrument in lieu thereof; and,

b. The dollar amount of such bond shall be equal to or greater than double the full amount of fuel excise tax which the Office of the Navajo Tax Commission estimates to be due for the first period in which the license applicant proposes to operate as an authorized distributor; and,

c. The bond shall be retained by the Office of the Navajo Tax Commission for a minimum time of at least two (2) calendar years from the date of posting of the bond, and thereafter shall be released only to an authorized distributor who is in full compliance, for the entire duration such bond is held, with all applicable provisions of this Chapter and corresponding regulations; and,

d. The bond shall be released by the Office of the Navajo Tax Commission in accordance with procedures prescribed and governed by regulations; and,

8. In the case of an applicant for an authorized carrier's license, proof of such applicant's possession of a current and valid transportation and/or common carrier's license issued by the United States Interstate Commerce Commission or equivalent state agency; and,

9. No violation(s) of any applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation, within ten (10) years prior to the receipt by the Office of the Navajo Tax Commission of the application for a license; and,

10. Any other requirements for licensing adopted by regulations.

D. Licenses non-transferable. No license issued by the Office of the Navajo Tax Commission pursuant to this Chapter shall be assigned or transferred in any manner, except as specifically provided by resolution of the Navajo Tax Commission in its discretion.

E. License or letter of denial. The Office of the Navajo Tax Commission shall issue a license, or shall issue a Letter of License Denial within thirty (30) days after the application for license is received by the Office of the Navajo Tax Commission. Failure of the Office of the Navajo Tax Commission to issue a license or Letter of License Denial within the thirty (30) day period shall be deemed a Letter of License Denial.

F. Regulations. The procedure for administration of licensing under this § 911 shall be prescribed and governed by regulations.

G. Appeal. A Letter of License Denial shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

History

CAU-85-99, August 26, 1999.

Library References

Indians ↻32(9).	C.J.S. Architects §§ 4, 7.
Licenses ↻16(9), 20, 26, 37.	C.J.S. Indians §§ 130 to 132, 134.
Taxation ↻1293.	C.J.S. Licenses §§ 34, 39 to 42, 49.
Westlaw Topic Nos. 209, 238, 371.	C.J.S. Taxation §§ 1990, 2027.

§ 912. Restrictions on fuel importation, distribution, transportation, refining, and retailing

A. Persons authorized to import, distribute, and/or transport fuel. Other than in the fuel supply tank of a motor vehicle, fuel shall not be imported into, and/or transported or distributed within, by any method, the Navajo Nation, except by the following persons as hereby authorized:

1. Any authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations; and/or,
2. Any authorized carrier who is in fully compliance with all applicable requirements of § 911, § 913(B), and any other applicable provision(s) of this Chapter and corresponding regulations.

B. Persons authorized to refine fuel. Only authorized refiners in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to refine any amount of fuel within the Navajo Nation.

C. Persons authorized to retail fuel. Only authorized retailers in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations, are hereby authorized to retail any amount of fuel within the Navajo Nation.

History

CAU-85-99, August 26, 1999.

Library References

Indians ↻32(9).	C.J.S. Indians §§ 130 to 132, 134.
Licenses ↻16(9).	C.J.S. Licenses § 34.
Westlaw Topic Nos. 209, 238.	

§ 913. Procedures for lawful importation and distribution

A. Importation and distribution by authorized distributors. Any authorized distributor in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to distribute fuel within the Navajo Nation by fully complying with all of the following provisions:

1. Issuance of manifests. In the case of distribution of fuel by cargo tank, the authorized distributor must first notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized distributor to acquire the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel.

2. Bill of lading required. In the case of distribution of fuel by cargo tank, the authorized distributor must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

3. Authorized Distributor responsible for tax. In the case of distribution of fuel by any method, the authorized distributor shall be deemed the distributor of fuel imported under this § 913(A), and shall timely remit to the Office of the Navajo Tax Commission any and all fuel excise tax or taxes due on such imported fuel along with a fully completed Fuel Excise Tax Return for such fuel, as required by regulations.

B. Importation by authorized carriers. Any authorized carrier in full compliance with all requirements of § 911, and any other applicable provision(s) of this Chapter and corresponding regulations is hereby authorized to import fuel into, and/or transport and deliver fuel within, the Navajo Nation, by fully complying with all of the following provisions:

1. Authorized carrier contract with authorized distributor. The authorized carrier must first contract only with an authorized distributor who is in full compliance with all requirements of § 911, § 913(A), and any other applicable provision(s) of this Chapter and corresponding regulations.

2. Issuance of a manifest. The authorized carrier, or authorized distributor employing such authorized carrier, must notify the Office of the Navajo Tax Commission of its proposed importation of each and every single load or shipment of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

The Office of the Navajo Tax Commission may then issue a manifest for such fuel authorizing the authorized carrier to obtain the fuel from the supplier. The manifest must be in the form and content prescribed by regulations and must identify the authorized distributor as the buyer of fuel, and must identify the authorized carrier as the carrier of fuel.

3. Bill of lading required. The authorized carrier, or authorized distributor employing such authorized carrier, must secure a valid bill of lading issued by the supplier for each and every single shipment or load of any amount of fuel obtained for importation into, transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

4. Authorized distributor remains liable. Notwithstanding the use of an authorized carrier, the authorized distributor shall be deemed, for purposes of this § 913(B), the distributor of fuel imported and shall comply with all requirements of § 913(A) of this Chapter and corresponding regulations.

C. Authority to issue manifests. The Office of the Navajo Tax Commission is hereby authorized to issue a Navajo Nation manifest (Form NN-MANF-), to any authorized distributor in full compliance with all applicable requirements of this Chapter and corresponding regulations or to any authorized carrier in full compliance with all applicable requirements of this Chapter and corresponding regulations, for each and every single load or shipment of any amount of fuel obtained for importation into, and/or transportation and delivery or distribution within, the Navajo Nation to any person(s) at any location(s) within the Navajo Nation.

History

CAU-85-99, August 26, 1999.
CD-81-03, December 23, 2003.

Library References

Licenses ☞37.	C.J.S. Licenses § 49.
Taxation ☞1293.	C.J.S. Taxation §§ 1990, 2027.
Westlaw Topic Nos. 238, 371.	

§ 914. Detention and inspection

A. Carrying of documents. A current and valid original of the following documents, completed in full, shall be kept on file at the Office of the Navajo Tax Commission, and an exact copy thereof must be carried at all times in any vehicle in which any amount of fuel is being imported into, and transported within, the Navajo Nation:

1. Authorized carrier's license; and,
2. In the case of a distributor who is also acting as a common carrier, an authorized distributor's license; and
3. Bill(s) of lading pertaining to the fuel load being imported and transported, issued by the supplier; and,
4. Manifest(s) pertaining to the fuel load being imported and transported, issued by the Office of the Navajo Tax Commission.

B. Presentation of documents. Any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter and corresponding regulations must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

C. Authorization to stop, detain, and inspect. For purposes of determining compliance by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to stop, detain and/or inspect at any time, any fuel transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel.

D. Presentation of vehicles or other property. Any fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel must be immediately delivered up and presented upon request by a representative or designee of the Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety.

E. Notification of violation. Upon discovery of any failure to comply by any person(s) with any and all applicable provision(s) of this Chapter and corresponding regulations, the representative, designee, or officer is hereby authorized and directed to immediately notify the Office of the Navajo Tax Commission of the violation(s) and identify the violator(s).

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
Taxation ☞1293, 1337.
Westlaw Topic Nos. 238, 371.

C.J.S. Licenses § 49.
C.J.S. Taxation §§ 1990, 2027, 2061.

§ 915. Filing of returns and payment of tax

A. Distributors.

1. Monthly returns. All distributors, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax Commission a Fuel Excise Tax Return (Form 900), for each period for any fuel excise tax or taxes that arise, as prescribed by regulation. Returns are due on the twentieth day of each month immediately following the end of each period.

2. Payment of tax. All distributors, whether authorized or unauthorized, shall timely remit to the Office of the Navajo Tax Commission all fuel excise tax or taxes imposed by this Chapter. Payment in full of the tax or taxes owed is due at the time the Fuel Excise Tax Return is due. The returns required to be filed under § 915(A)(1) of this Chapter shall be accompanied by payment in full of all fuel excise tax or taxes due.

3. Discount for timely remittance. Any authorized distributor who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent ($\frac{1}{2}\%$) of the number of gallons reported on the return (.005 x number of gallons or fraction thereof).

B. Carriers. All common carriers, whether authorized or unauthorized, shall prepare and submit, on a monthly basis, to the Office of the Navajo Tax

Commission a Carrier's Reporting Form (Form NN-CAR-), for each period, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each period.

C. Refiners.

1. Quarterly reports. All refiners, whether authorized or unauthorized, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Refiner's Reporting Form (Form NN-REF-), for each quarter, as prescribed by regulation. Forms are due on the twentieth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All refiners, whether authorized or unauthorized, who own fuel immediately after its transfer as described in § 906(B)(1)-(2) of this Chapter shall timely remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. Discount for timely remittance. Any authorized refiner who is in compliance, both at the time the fuel excise tax arises and at the time the return and payment are due, with all applicable provisions of this Chapter and corresponding regulations, and who timely files a Fuel Excise Tax Return and timely remits all fuel excise tax due with respect to such return may claim a discount on the payment of such fuel excise tax in an amount specified by regulations. Until another amount is set by regulations, the discount shall be one-half of one-percent ($\frac{1}{2}\%$) of the number of gallons reported on the return ($.005 \times$ number of gallons or fraction thereof).

D. Retailers.

1. Quarterly reports. All retailers, whether authorized or unauthorized, and whether or not obtaining fuel as described in § 906(C) of this Chapter, shall prepare and submit, on a quarterly basis, to the Office of the Navajo Tax Commission a Retailer's Reporting Form (Form NN-RET-), for each quarter, as prescribed by regulation. Forms are due on the twenty-fifth day of each month immediately following the end of each quarter.

2. Filing of returns and payment of tax. All retailers, whether authorized or unauthorized, who have controlled or obtained by any method any amount of fuel on which the fuel excise tax has not been timely paid in full shall immediately remit to the Office of the Navajo Tax Commission fuel excise tax returns accompanied by payment in full of all fuel excise tax or taxes due, as required of distributors by all provisions of § 915(A) of this Chapter and corresponding regulations.

3. No discount for fuel on which the fuel excise tax has not been timely paid. No discount shall be available to retailers for the payment of fuel excise tax as required by § 915(D)(2) of this Chapter, for fuel on which the fuel excise tax has not been timely paid in full which fuel has been controlled or obtained by a retailer.

E. Regulations administering discount. The procedure for claiming a discount under any applicable provision of this § 915 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.
CD-81-03, December 23, 2003.

Library References

Licenses ☞37.	C.J.S. Licenses § 49.
Taxation ☞1313, 1331.	C.J.S. Taxation §§ 2038, 2055.
Westlaw Topic Nos. 238, 371.	

§ 916. Record keeping

Where appropriate, any and all distributors, common carriers, refiners, and retailers required by this Chapter to file any application, report, return, and/or form shall maintain full, true, legible, and accessible records, for four (4) years beyond the period to which the records relate, pertaining in any manner to the following:

- A. All incidents of receipt, acquisition, delivery, or distribution of fuel by any method;
- B. All incidents, with dates and volumes, of fuel transfers and/or sales;
- C. All suppliers, distributors, common carriers, refiners, retailers, sellers, and/or buyers of fuel;
- D. All person(s) and location(s) within the Navajo Nation to which fuel was delivered by any method; and,
- E. Any other information required by regulations.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.	C.J.S. Licenses § 49.
Taxation ☞1293, 1311, 1313.	C.J.S. Taxation §§ 1990, 2027, 2038, 2040 to 2042.
Westlaw Topic Nos. 238, 371.	

§ 917. Violations

In addition to violations described in the Uniform Tax Administration Statute, the following violations of this Chapter shall apply:

- A. Presentation of documents. Each single act of refusal or failure by any person(s) to present, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, any license, bill of lading, manifest, application, report, return, form, inventory record, or any other document required to be secured and maintained, filed, and/or carried under any applicable provision(s) of this Chapter shall constitute a separate violation.

B. Permission to inspect. Each single act of refusal or failure by any person(s) to permit, upon request by a representative or designee of the Office of the Navajo Tax Commission or an on-duty officer of the Navajo Nation Division of Public Safety, the inspection of any and all fuel inventory, transportation vehicles, cargo tanks, storage tanks, pipelines, equipment, paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the handling, carrying, storage, possession, dispensing, delivery, distribution, transportation, refining, or retailing of fuel shall constitute a separate violation.

C. Unlawful distribution of fuel. Each single act by any person(s) of importation into, or transportation, delivery, or distribution within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, delivery, or distribution of such fuel, owns the fuel and:

1. Fails to secure, maintain, carry, or deliver up a valid authorized distributor's license as required under § 911 and § 914 of this Chapter and corresponding regulations;
2. Fails to secure, maintain, carry, or deliver up any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations;
3. In such case where any common carrier is employed by any distributor to transport fuel, such distributor shall be deemed vicariously liable for the failure of such common carrier thereof to secure, maintain, carry, or deliver up a valid authorized carrier's license or any manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 911 and § 914 of this Chapter and corresponding regulations;
4. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

D. Unlawful transportation of fuel. Each single act by any person(s) of importation into, or transportation or delivery within, the Navajo Nation of any amount of fuel shall constitute a separate violation by such person(s) who, at the time of importation, transportation, or delivery of fuel:

1. Fails to secure, maintain, carry, or deliver up a valid authorized carrier's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;
2. Fails to secure, maintain, carry, or deliver up a valid manifest(s) and/or bill(s) of lading with all appropriate information thereon, as required by § 914 of this Chapter and corresponding regulations, which violation applies in addition to the vicarious liability of any distributor under § 917(C)(3) of this Chapter, if any;
3. Has failed to prepare and timely submit a Carrier's Reporting Form (Form NN-CAR-), as required by § 915(B) of this Chapter and corresponding regulations;

4. In such case where any common carrier transports fuel on behalf of any distributor, such common carrier shall be deemed vicariously liable for the failure of such distributor to secure and maintain a valid authorized distributor's license, as required by § 911 of this Chapter and corresponding regulations.

E. Unlawful refining of fuel. Each single act by any person(s) of refining of any amount of fuel at any refinery located within the Navajo Nation shall be considered a separate violation if such person(s) at the time of refining:

1. Fails to secure, maintain, carry, or deliver up a valid authorized refiner's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. Has failed to prepare and timely submit a Refiner's Reporting Form (Form NN-REF-), as required by this Chapter and corresponding regulations;

3. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

F. Unlawful retailing of fuel. Each single act by any person(s) of retailing of any amount of fuel shall be considered a separate violation if such person(s) at the time of retailing:

1. Fails to secure, maintain, carry, or deliver up a valid authorized retailer's license, as required under § 911 and § 914 of this Chapter and corresponding regulations;

2. In the case of fuel delivery by cargo tank, has acquired such fuel from any person(s) who was not an authorized distributor duly licensed at the time of such fuel acquisition, or who was not an authorized carrier thereof duly licensed at the time of such fuel acquisition;

3. Fails to post a notice as required by § 907 of this Chapter and corresponding regulations;

4. Has failed to prepare and timely submit a Retailer's Reporting Form (Form NN-RET-), as required by this Chapter and corresponding regulations;

5. Has failed to prepare and timely submit a report of any fuel inventory, and timely submit a Fuel Excise Tax Return accompanied by payment in full of any fuel excise tax or taxes due on such inventory, as required by § 908 of this Chapter and corresponding regulations.

G. Other violations. Each act or omission, or any document filed or submitted, shall be considered a separate violation by any person(s) who knowingly:

1. Has failed to prepare and timely submit a completed Fuel Excise Tax Return for any tax or taxes due, as required by this Chapter and corresponding regulations;

2. Has failed to timely remit payment in full of any fuel excise tax or taxes due, as required by this Chapter and corresponding regulations;

3. Refuses or fails to file a report or return as required by any applicable provision(s) of this Chapter and/or corresponding regulations;
4. Knowingly makes a false statement in connection with the administration of any provision(s) of this Chapter and/or corresponding regulations;
5. Fails to keep any and all records as required by § 916 of this Chapter and/or corresponding regulations;
6. Collects a refund or discount of fuel excise tax or taxes without being lawfully entitled under this Chapter and/or corresponding regulations to receive such refund or discount;
7. Causes to be paid to any other person(s) a refund or discount of the fuel excise tax or taxes which refund or discount such person(s) is not lawfully entitled under this Chapter and/or corresponding regulations to receive;
8. Violated any applicable Navajo Nation law or any applicable federal law, with a fine or any other punishment constituting a violation, at any time during which the violator ostensibly possesses a license issued by the Office of the Navajo Tax Commission pursuant to § 911 of this Chapter;
9. Violates any other applicable provision(s) of this Chapter and/or corresponding regulations.

H. Regulations. The procedure for administration of this § 917 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
Taxation ☞1293, 1342.
Westlaw Topic Nos. 238, 371.

C.J.S. Licenses § 49.
C.J.S. Taxation §§ 1990, 2027, 2068 to 2069.

§ 918. Penalties

In addition to the penalties provided for in the Uniform Tax Administration Statute, the following penalties shall apply whenever any activity by any person(s) constitutes an immediate and substantial threat to the collection of taxes imposed by this Chapter and is attributable to the activity:

A. Suspension and revocation of license. Regardless of the date of discovery of any violation(s), the license(s) (if any) of the violator(s) shall be deemed automatically suspended pending a preliminary review by the Office of the Navajo Tax Commission. The suspension shall be deemed effective as of the date of the first act, omission, or date of any document filed or submitted, in violation of this Chapter and corresponding regulations.

B. Closure of refinery. The Office of the Navajo Tax Commission is hereby authorized to immediately close any refinery that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be

immediately suspended according to procedures found in the Uniform Tax Administration Statute.

C. Closure of retail facility. The Office of the Navajo Tax Commission is hereby authorized to immediately close any retail facility that is in violation of any applicable provision(s) of this Chapter and corresponding regulations, by issuing a Notice of Closure to the alleged violator(s). Thereafter, the privilege of any violator(s) to engage in productive activity within the Navajo Nation may be immediately suspended according to procedures found in the Uniform Tax Administration Statute.

D. Impoundment of fuel, vehicles, or other property. The Office of the Navajo Tax Commission, or any on-duty officer of the Navajo Nation Division of Public Safety, is hereby authorized to immediately detain and/or impound any fuel load, fuel inventory on hand, transportation vehicles, cargo tanks, storage tanks, equipment paraphernalia, measuring or other devices, or any other tangible personal property used for or incident to the distribution, transportation, delivery, refining, storage, possession, or retailing of fuel, which fuel or property is owned or possessed by any person(s) discovered violating or having violated any applicable provision(s) of this Chapter and corresponding regulations.

E. Preliminary review.

1. Request for preliminary review. Within ten (10) calendar days from receipt by the alleged violator(s) of a Notice of License Suspension or a Notice of Closure, the alleged violator(s) may request a preliminary review of the action taken by the Office of the Navajo Tax Commission. Upon receipt by the Office of the Navajo Tax Commission of a written request for review by the alleged violator(s), a preliminary review shall be held within thirty (30) calendar days after receipt by the Office of the Navajo Tax Commission of the request for review.

2. Purpose of preliminary review. The preliminary review shall be held for the purpose of determining the following:

a. A license suspension occurring pursuant to § 918(A) is to be lifted or continued for any amount of time specified in regulations, or the suspended license is to be revoked permanently, or for any amount of time specified in regulations; or,

b. A closure of a refinery or retail facility is to be rescinded or continued for any amount of time specified in regulations, or the refinery or retail facility is to be permanently closed.

3. Burden of proof at preliminary review. At the preliminary review, the alleged violator(s) shall bear the burden of demonstrating, by a preponderance of the evidence, good cause why the action taken by the Office of the Navajo Tax Commission under § 918 (A)-(D) of this Chapter should not be continued.

F. Action after preliminary review. Notwithstanding the filing of an appeal by an alleged violator(s) under § 918(G) of this Chapter, upon determination by the Office of the Navajo Tax Commission after the preliminary review conduct-

ed pursuant to § 918(E) of this Chapter that any adverse action taken by the Office of the Navajo Tax Commission under § 918(A)-(D) of this Chapter is not to be lifted or rescinded, the Office of the Navajo Tax Commission is hereby authorized to take the following action(s):

1. Sale to satisfy tax liability.

a. Sale of fuel or property after fifteen (15) days. Unless proof is presented to the Office of the Navajo Tax Commission within fifteen (15) calendar days of impoundment under § 918(D) of this Chapter that all fuel excise tax or taxes due on the impounded fuel, or due on any fuel to which the impounded personal property relates, have been paid in full, the impounded fuel and/or property may be sold by the Office of the Navajo Tax Commission to satisfy any unpaid and outstanding fuel excise tax or taxes owed.

b. Return of excess revenue from sale. Any amount of fuel and/or property remaining after such sale shall be returned to the person(s) from whom it was impounded within ten (10) working days of the final date of such sale. In lieu thereof, the Office of the Navajo Tax Commission may, in its discretion, determine the fair market value of such fuel and/or property and apply this amount as a credit against any subsequent fuel excise tax or taxes owing, provided that the person(s) to receive such credit has, within sixty (60) days after impoundment, demonstrated full compliance with all applicable provision(s) of this Chapter and corresponding regulations.

2. Civil penalties. In addition to any other applicable penalties provided for in this Chapter, the following penalties shall apply:

a. Standard penalty. A civil penalty of no less than five hundred dollars (\$500.00) and no more than one thousand five hundred dollars (\$1500) for each single and separate violation shall be assessed against any violator(s) for each month, or fraction thereof, in which the violation has occurred. The standard penalty amount shall be specified in regulations.

b. Penalty on each gallon. In addition to any other applicable penalties provided for in this Chapter, a civil penalty of five dollars (\$5.00) per gallon of fuel, or fraction thereof, shall be assessed against any violator(s) for each single and separate violation involving any amount of fuel owned or possessed by, or under the control of, the violator(s) at the time of such violation(s).

G. Appeal. Failure to lift a license suspension, failure to rescind the closure of a refinery or retail facility, or the imposition of a standard or per-gallon penalty by the Office of the Navajo Tax Commission, after conclusion of the preliminary hearing conducted pursuant to § 918(E) of this Chapter, shall be considered an adverse action which may be appealed pursuant to § 131 of the Uniform Tax Administration Statute.

H. Relief of penalties. Upon receipt of an appeal and upon written recommendation of the Director of the Compliance Department of the Office of the Navajo Tax Commission, the Office of the Navajo Tax Commission may in its

discretion relieve the appealing person(s) of all or part of the penalties assessed under this Chapter.

I. Regulations. The procedure for the determination, assessment, and/or relief of penalties under this § 918 shall be prescribed and governed by regulations.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
Taxation ☞1293, 1342.
Westlaw Topic Nos. 238, 371.

C.J.S. Licenses § 49.
C.J.S. Taxation §§ 1990, 2027, 2068 to 2069.

Part IV. Miscellaneous

§ 919. Effective date

This Chapter shall take effect October 1, 1999.

History

CAU-85-99, August 26, 1999.

§ 920. Severability

If any provision of this Chapter, as amended, or its application to any person or factual circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this Chapter are severable.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
Statutes ☞64(8).
Westlaw Topic Nos. 238, 361.

C.J.S. Licenses § 49.
C.J.S. Statutes §§ 86, 100, 106.

§ 921. Repeals

All laws or parts of laws (or amendments or attachments thereto) which are inconsistent with the provisions of this Chapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
 Statutes ☞157.
 Westlaw Topic Nos. 238, 361.

C.J.S. Licenses § 49.
 C.J.S. Statutes § 282.

§ 922. No conflict with Local Governance Act

The provisions of this Chapter and corresponding regulations shall not be construed inconsistent with the Local Governance Act, adopted April 20, 1998 by Navajo Nation Council Resolution No. CAP-34-98.

History

CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
 Statutes ☞245.
 Westlaw Topic Nos. 238, 361.

C.J.S. Licenses § 49.
 C.J.S. Statutes § 385.

§ 923. Disbursements

The net revenue generated from this Chapter, after 1) payment to any state pursuant to a fully executed and valid intergovernmental agreement between the Navajo Nation and such state; 2) allocation to permanent or special revenue funds as required by Navajo Nation law; and 3) allocation to the Tax Administration Suspense Fund, as required by the fiscal policy adopted by the Navajo Tax Commission in accordance with the Uniform Tax Administration Statute, shall be deposited into the Navajo Nation Road Fund.

History

CJY-55-01, July 20, 2001.
 CAU-85-99, August 26, 1999.

Library References

Licenses ☞37.
 Taxation ☞1345.
 Westlaw Topic Nos. 238, 371.

C.J.S. Licenses § 49.
 C.J.S. Taxation § 2071.

Chapter 10. Fuel Distributor's Licensing Act [Repealed]

History

Repealed. Pursuant to CAU-85-99, August 26, 1999.