

RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL

23RD NAVAJO NATION COUNCIL - First Year, 2015

AN ACTION

RELATING TO BUDGET AND FINANCE, APPROVING THE EXPENDITURE PLAN FOR
LICENSING AND FEES GENERATED BY THE OFFICE OF THE NAVAJO TAX
COMMISSION

BE IT ENACTED:

Section One. Findings

- A. The Navajo Nation Council established the Budget and Finance Committee (B&F) as a Navajo Nation standing committee; B&F possess oversight authority over the Office of the Navajo Tax Commission and promulgates rules and regulations regarding financial matters. 2 N.N.C. §§ 300 (A) and 301 (B) (13) and (1) (2012) *see also* CJA-03-13.
- B. The Budget and Finance Committee approved the Eligibility Criteria for the Expenditure Generated by Programs and Departments which allows Navajo Nation Programs and Departments that do not meet the fund management plan criteria to generate revenue. BFN-187-03, 19th Navajo Nation Council, (2003), EXHIBIT 1.
- C. The Expenditure Plan for Licensing and Fees Generated by the Office Of The Navajo Tax Commission ("Expenditure Plan") (EXHIBIT 2) meets all the requirements established in BFN-187-03, as follows:
1. The Navajo Tax Commission Office's approved Plan of Operation is current and on file with the Controller's Office. EXHIBIT 3.

2. A detailed explanation of the specific revenue generated sources is attached as EXHIBIT 4.
3. A detailed explanation of the rate and fee setting process is attached. Expenditure Plan, para. IV.
4. A statement defining the purpose for which the revenue generated is to be expended is attached. Expenditure Plan, para V.
5. A statement that the revenues generated cannot be expended on or allocated to other uses other than those specified in the plan is attached. Expenditure Plan, para. VI.
6. A statement that the revenue expenditure and utilization shall comply with Navajo Nation law, including the Navajo Business Opportunity Act, 5 N.N.C. § 201-215, is attached. Expenditure Plan, para VII.
7. A statement that any unexpended revenue generated shall revert to the Navajo Nation General Fund at the end of the fiscal year is attached. Expenditure Plan, para VII.

D. The Navajo Tax Commission Office's Expenditure Plan requires Budget and Finance Committee's approval. EXHIBIT B.

E. Approving the Expenditure Plan for Licensing and Fees Generated by the Office of the Navajo Tax Commission is in the Navajo Nation's best interest.

Section Two. Expenditure Plan for Licensing and Fees Generated by the Office of the Navajo Tax Commission Approval

A. The Navajo Nation approves the Expenditure Plan for Licensing and Fees Generated by the Office of the Navajo Tax Commission pursuant to 2 N.N.C. § 301(B) (1) (2013) *see also* CJA-03-13 and BFN-187-03.

B. The Navajo Nation Controller shall establish an account for the Expenditure Plan for Licensing and Fees Generated by the Office of the Navajo Tax Commission and the account shall be managed in accord with the Expenditure Plan and all applicable Navajo Nation laws and policies.

C. The Expenditure Plan for Licensing and Fees Generated by the Office of the Navajo Tax Commission shall be effective upon approval by the Budget and Finance Committee.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting held at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 4 in favor, 0 opposed, this 7th day of July, 2015.

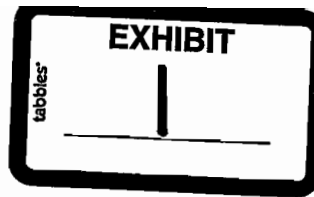
A handwritten signature in black ink, appearing to read 'Seth Damon', with a long horizontal flourish extending to the right.

Seth Damon, Chairperson

Budget and Finance Committee

Motion: Dwight Witherspoon

Second: Lee Jack, Sr.



BFN-187-03

**RESOLUTION OF THE
BUDGET AND FINANCE COMMITTEE
OF THE NAVAJO NATION COUNCIL**

**Approving the Eligibility Criteria for the Expenditure of
Revenues Generated by Programs and Departments**

WHEREAS:

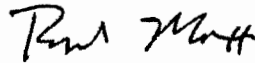
1. Pursuant to 2 N.N.C. § 374 (B) (2), the Budget and Finance Committee of the Navajo Nation Council is authorized to the extent permitted by federal or Navajo Nation laws and regulations, to appropriate, allocate, cancel, reappropriate and review the use of Navajo Nation funds received including but not limited to all grants, contracts, gifts and other funds from all sources; and
2. Pursuant to 2 N.N.C. § 374 (B) (4), the Budget and Finance Committee of the Navajo Nation Council is authorized to coordinate and review all fiscal, financial and investment activities of the Navajo Nation and its enterprises, as well as other agencies, federal, state, regional and private; and
3. The Budget and Finance Committee has received requests from programs and departments to establish a Fund Management Plan to utilize revenues generated to support the program operations; and
4. Pursuant to directive from the Budget and Finance Committee of the Navajo Nation Council, the committee requested the development of criteria to determine what plan should be adopted. Through a couple of drafts and a work session between the Office of the Controller, Office of the Auditor General, Office of Management and Budget and the Department of Justice the plan has been finalized. The Eligibility Criteria for the Expenditure of Revenues Generated by Programs and Departments has been prepared and is attached hereto and incorporated herein as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

The Budget and Finance Committee of the Navajo Nation Council hereby adopts the Eligibility Criteria for the Expenditure of Revenues Generated by Programs and Departments, attached hereto as Exhibit "A", to provide as a guide review criteria.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Budget and Finance Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 7 in favor, 0 opposed and 0 abstained, this 18th day of November, 2003.



**Raymond Maxx
Chairperson**

**Motion : Ernest Hubbell
Second : Jerry Bodle**

ELIGIBILITY CRITERIA FOR THE EXPENDITURE OF REVENUES GENERATED BY PROGRAMS AND DEPARTMENTS

I. PURPOSE

To establish criteria for Navajo Nation Programs and Departments, who do not meet the criteria of BFMY-38-02 (Eligibility Criteria for the Establishment of a Fund and Related Fund Management Plan), to generate revenue, including the collection of fees, for goods and/or services provided and to expend such revenue generated. This criteria is not intended to apply to chapters or fund raising activities conducted by employees.

II. CRITERIA

1. Programs and departments shall have a current and approved Plan of Operation on file with the Office of the Controller.
2. A program's and/or department's generation of revenue for goods and/or services provided and expenditure of such revenues shall have Navajo Nation oversight committee and Budget and Finance Committee approval legislation. Such legislation can be part of or separate from the program or department's Plan of Operation. The program or department shall provide the Office of the Controller with copies of the legislation. At a minimum, such legislation shall include:
 - A. A detailed explanation of the specific sources from which such revenue is to be generated; and
 - B. A detailed explanation of the rate or fee setting method and process used; and
 - C. A statement defining the purposes for which the revenue generated can be expended and/or utilized. The expenditure and/or utilization of revenue shall have a correlation with the reason for the generation of revenue. For example, if a program collects fees for the use of its equipment, such revenue should only be expended for the repair, maintenance, and/or replacement of such equipment.

- D. A statement that the revenues generated cannot be expended on or allocated to uses other than those specified in the legislation.
- E. A statement that the expenditure and utilization of all revenue generated and/or fees collected will comply with Navajo Nation law, including the Navajo Business Opportunity Act.
- F. A statement that any unexpended revenue generated shall revert to the Navajo Nation General Fund at the end of the fiscal year.

III. EXPENDITURE REQUIREMENT

The expenditure and generation of revenues and/or collection of fees shall comply with sound financial administration, including accountability principles. Programs and departments shall utilize the Office of the Controller's established internal process for recording and depositing all revenues generated and/or fees collected. The program or department shall provide the Office of the Controller with written in-house procedures governing the expenditure and generation of revenue. Such procedures shall ensure the safeguarding of revenues and/or fees and depositing of such revenues and or fees intact into the Navajo Nation's depository account or to the Navajo Nation's Cashier's Section.

IV. BUDGET REQUIREMENT

The revenues generated will be credited to the program's or department's general fund budget upon receipt by the Office of the Controller Cashier's Section. Programs and/or departments shall develop a general fund budget using Navajo Nation Budget Form #___ at the beginning of the fiscal year that includes a conservative projection of the revenues that will be generated. The estimated expenditures shall be consistent with Section II above. This conservative yearly projection shall meet the intent of this policy.

V. AMENDMENTS

The Budget and Finance Committee may amend these Eligibility Criteria for the Expenditure of Revenues Generated by Programs and Departments upon recommendation by the Office of the Controller.

EXPENDITURE PLAN FOR LICENSING
AND FEES GENERATED BY THE
OFFICE OF THE NAVAJO TAX COMMISSION

I. ESTABLISHMENT

Pursuant to BNF-178-03, hereby establishes the criteria for the Expenditure of Revenues Generated by Programs and Departments. The Office of the Navajo Tax Commission (ONTC) annually has collected fees for issuance of Fuel Excise Tax (FET) Licenses to Distributors, Carriers, and Retailers since the enactment of the FET.

As part of the Navajo Nation Liquor Regulations, licensing is required for Wholesalers and Retailers to distribute or sell alcohol at licensed locations. Depending on the licensing, a fee is collected.

The Uniform Tax Administration Statutes allows for an administrative/attorney fee incurred in collecting outstanding tax amounts. The fee assessed will be contingent on the enormity of the administrative efforts required to close the case.

The Tobacco Products Tax and Licensing Act Regulations allows for licensing of Retailers and Distributors on an annual basis upon approval of application.

ONTC has a conference room that other departments and programs can rent for a fee if readily available.

II. PURPOSE AND OBJECTIVE

To allow the ONTC to utilize fees collected for licenses issued in the administration of the Fuel Excise Tax, Navajo Nation Liquor Regulations and the Tobacco Products Tax. Secondly, to utilize administrative fees assessed for

taxpayer appeals and conference room rentals are considered operational and administrative responsibilities. Usage of licensing fees will allow ONTC to expand operational and administrative oversight in maximizing tax revenues.

III. REVENUE SOURCE

The revenue source for this plan shall be fees collected from licensing, administrative fees, and conference room rentals. All fees collected will be deposited into ONTC's General Fund, Business Unit 106001.

IV. RATE AND FEE SETTING PROCESS:

The rate or fee setting method of this plan shall be based on the prevailing licensing fees as set forth in applicable tax regulations:

- A. Fuel Excise Tax Regulations, Section 9.1005. Licensing, F. License Fees:
 - a. Fuel Retailers
 - b. Fuel Carriers
 - c. Fuel Distributors
- B. Navajo Nation Liquor Regulations, Section 1.112. Licensing.
 - a. Wholesaler License
 - b. Retailer License-Restaurant
 - c. Retailer License-Hotel/Motel
 - d. Retailer License-Special Events
 - e. Retailer License-Other
- C. Tobacco Products Tax and Licensing Act Regulations, Section 1.803 Licensing.
 - a. Licenses shall be issued a Retailer or Distributor on an annual basis.
- D. Charges for Administrative Costs, UTAS 115(a).
 - a. Administrative costs incurred in collecting an unpaid tax amount, including, but not limited to attorney fees and the cost of collection.
- E. Conference room rental rates will be determined by the hour:
 - a. First Hour: \$50.00

V. USE OF REVENUE

All revenue collected by the Office of the Navajo Tax Commission shall be used to finance the operations and administration of the Navajo Nation taxes. Costs include supplies, technological hardware upgrades, and training to meet the demands of increased taxpayer responsibilities.

VI. RESTRICTION

Revenues generated pursuant to this plan shall not be expended on or allocated to other uses other than specified herein this plan.

VII. COMPLIANCE

Expenditures and utilizations of all revenue generated by and through licenses issued, fees and rental collected shall comply with Navajo Nation Law, including but not limited to the Navajo Business Opportunity Act and the Navajo Nation Ethics in Government Law.

VIII. UNEXPENDED FUNDS:

Any unexpended revenue shall revert to the Navajo Nation General Fund at the end of each fiscal year unless legislation is made to carry over to the next fiscal year so that such funds may be sustained and retained for use by the ONTC.

IX. RECORDING, DEPOSITING AND EXPENDITURE OF REVENUES

The recording and deposit of all fees and rental collected shall be exercised by the ONTC Accounting Department with sound financial administration of generally accepted accounting principles. The ONTC shall utilize the Office of the Controller's Cashiers Department's established internal process to record and deposit all revenues generated and/or fees collected. All expenditures will be based on approved budget guidelines as set forth by the Office of Management and Budget as approved by the Navajo Nation Council.

X. BUDGET REQUIREMENT

Annually, ONTC will develop a General Fund budget based on the projected revenues to comply with the Navajo Nation's Budget Instructions Manual and the Appropriations Act.

XI. AMENDMENTS

The Budget and Finance Committee may amend the Office of the Navajo Tax Commission's Expenditure Plan as deemed necessary by ONTC and the Office of the Controller.



NABIJY-39-14

RESOLUTION OF THE
NAABIK'ÍYÁTI' COMMITTEE OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL -- Fourth Year, 2014

AN ACTION

RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI'; AMENDING
GSCMY-18-10, THE PLAN OF OPERATION FOR THE NAVAJO TAX COMMISSION
BE IT ENACTED:

1. The Navajo Nation hereby amends GSCMY-18-10 the Plan of Operation for the Navajo Tax Commission, as set forth in Exhibit "A."
2. The Plan of Operation for the Navajo Tax Commission, as amended by this Resolution, shall take immediate effect and shall supersede any and all prior plans of operation for the Navajo Tax Commission, including Resolution GSCMY-18-10, attached hereto as Exhibit B.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Náabik'íyáti' Committee of the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 9 in favor and 4 opposed, this 10th day of July 2014.

A handwritten signature in black ink, appearing to read "LoRenzo Bates", with a stylized flourish at the end.

LoRenzo Bates, Pro Tem Chairperson
Náabik'íyáti' Committee

Motion: Honorable Jonathan Hale
Second: Honorable Joshua Lavar Butler



PLAN OF OPERATION

OFFICE OF THE NAVAJO TAX COMMISSION

I. ESTABLISHMENT

There is hereby established the Office of the Navajo Tax Commission within the Executive Branch of the Navajo Nation Government. The Navajo Tax Commission shall provide general direction and guidance to the Office of the Navajo Tax Commission, and the ~~Government Services Committee~~ Naa'bik'iyati' Committee of The Navajo Nation Council shall provide legislative oversight.

II. PURPOSES AND OBJECTIVES

A. The purpose of the Office of the Navajo Tax Commission shall be to provide professional management, training, technical expertise, supervisory and administrative support in the administration of all Navajo Nation taxes.

B. Objectives delegated by the Navajo Tax Commission to the Office of the Navajo Tax Commission shall be as follows:

1. To review and study all sources of wealth and income within the Navajo Nation and the possible revenue from the taxation of those sources in order to provide funds for basic governmental services;
2. With the authorization of the Navajo Nation Council, to lay and collect taxes on wealth and income from whatever source derived, on property (both tangible and intangible) and on sales, uses, inventories, wages earned, and other measures of economic activity or engagement within the Navajo Nation;
3. To propose other rules and regulations, as it may deem necessary for the proper function of the Office of the Navajo Tax Commission;
4. To interpret, defend, enforce compliance with and ensure the proper and efficient administration of the tax laws of the Navajo Nation, and to collect taxes;
5. To provide technical assistance in the area of taxation to Navajo chapters interested in enacting tax codes within their boundaries based upon the Local Governance Act.

III. PERSONNEL AND ORGANIZATION

A. STAFFING

1. The Office of the Navajo Tax Commission shall be administered by the Executive Director a regular status employee, employed in accordance with the Personnel Policies Manual.

2. The Executive Director of the Office of the Navajo Tax Commission shall exercise the powers granted to the Office and conduct its affairs as part of the Executive Branch of the Navajo Nation Government. As part of the Executive Director responsibilities, the Executive Director, with the assistance of the office department section managers, will develop policies and guidelines under which the office will operate.

3. The Executive Director shall be authorized to recommend the hiring of additional professional, technical, and clerical positions as needed to carry out the organization purposes as stated herein. Additional positions shall be acquired in accordance with the Navajo Nation Personnel Policy Manual and within applicable budget rules established for conducting the annual tribal budget process. All personnel shall be employed and compensated in accordance with the applicable Navajo Nation Personnel Policies Manual.

B. The Office of the Navajo Tax Commission shall be divided into the following sections (Exhibit A):

1. ADMINISTRATION: The Administration Section shall support the overall administration of the Office and sections.

2. VALUATION: The Valuation Section shall be responsible for determining the taxable values under the Possessory Interest Tax within the appraisal parameters set by the Navajo Tax Commission.

3. ACCOUNTING: The Accounting Section shall be responsible for maintaining records and information on the various taxes collected, as well as ensuring office compliance with the Navajo Nation budget policies.

4. COMPLIANCE: The Compliance Section shall be responsible for enforcing voluntary taxpayer compliance through office and desk audits, taxpayer education and monitoring of past and present taxpayer filings.

5. AUDIT: The Audit Section shall be responsible for performing field audit examinations of the taxpayer's financial documents.

6. LEGAL: Consistent with the Plan of Operation for the Navajo Nation Department of Justice, the Legal Section shall be responsible for handling all aspects of taxpayer appeals and tax litigation, as well as for providing legal and technical interpretation and drafting services to the other sections of the Office of the Navajo Tax Commission. In addition, this Section acts as the liaison between the Office of the Navajo Tax Commission and the Navajo Nation Department of Justice.

IV. RESPONSIBILITY AND AUTHORITY

A. The Office of the Navajo Tax Commission shall be responsible for the administration and enforcement of the Navajo Nation tax laws, as codified in

the Navajo Nation Code, and in accordance with the regulations and general instructions of the Navajo Tax Commission.

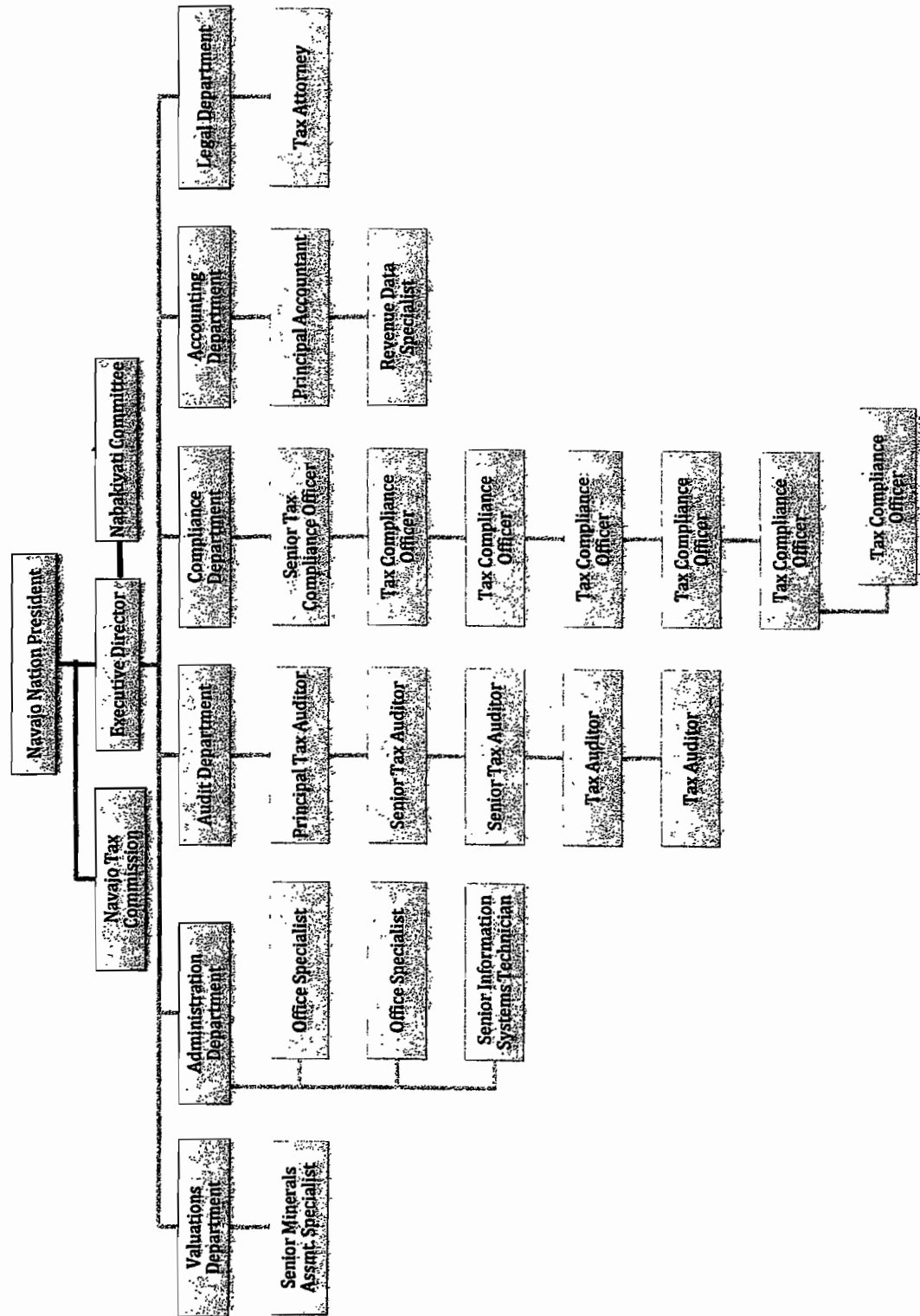
B. The Office of the Navajo Tax Commission shall have the authority to authorize usage of its conference room and to charge a fee for such usage, and shall have the authority to retain funds generated by such rentals.

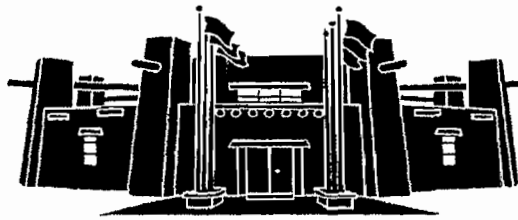
V. LEGISLATIVE OVERSIGHT

The Office of the Navajo Tax Commission shall be accountable to the Navajo Tax Commission, which is accountable to the Navajo Nation Council. In addition, pursuant to 2 N.N.C. §343(B)(4), and consistent with the Navajo law, the ~~Government Services Committee~~ Naa'bik'iyati' Committee shall have legislative oversight over the Office of the Navajo Tax Commission.

VI. AMENDMENTS

The Navajo Tax Commission may recommend amendments to Articles I through V to the ~~Government Services Committee~~ Naa'bik'iyati' Committee of the Navajo Nation Council from time to time as deemed necessary.





MEMORANDUM

To : Honorable LoRenzo Bates
Speaker Pro Tem, Navajo Nation Council

22nd Navajo Nation Council Delegates
Navajo Nation Council

✓ Mr. Tom Platero
Executive Director, Office of Legislative Services

From : Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

Date : August 18, 2014

Re NABIJY-39-14 *AN ACTION RELATING TO BUDGET AND FINANCE AND NAABIK'ÍYÁTI'*; AMENDING GSCMY-18-10, THE PLAN OF OPERATION FOR THE NAVAJO TAX COMMISSION



Mr. Speaker Pro Tem LoRenzo Bates, Mr. Tom Platero and the staff at the Office of Legislative Services have asked for clarification as to whether Naabik'íyáti' Committee Resolution No. NABIJY-39-14 has removed the Budget and Finance Committee as the oversight authority of the Navajo Nation Tax Commission.

A Title Two amendment passed by the newly downsized (88 delegates to 24 delegates) Navajo Nation Council, gave the Budget and Finance Committee oversight of the Navajo Nation Tax Commission. CAP-10-11(further amendments in CO-45-12). The NABIJY-39-14 legislation passed a couple weeks ago was drafted as an amendment of the Tax Commission's plan of operation; it was written to remove the now defunct Government Services Committee as the oversight authority of the Tax Commission and replace it with the Budget and Finance Committee which was already authorized as the oversight authority for the Commission by CAP-10-12. An amendment to the legislation was made on the day the legislation was considered and the Naabik'íyáti' Committee was inserted as the oversight committee instead of the Budget and Finance Committee.

The Budget and Finance Committee's oversight authorities, as memorialized at 2 N.N.C. §301 (B)(13), can only be changed through an amendment of that section of Title Two. Amending Title Two requires a Navajo Nation Council resolution. NABIJY-39-14 is a Naabik'íyáti' Committee resolution; and, as such, is insufficient to transfer oversight from the Budget and Finance Committee to the Naabi'íyáti' Committee.

In summary, legislation amending 2 N.N.C. §301 (B)(13) would need to be passed by the Navajo Nation Council to remove the Budget and Finance Committee as the oversight committee for the Navajo Nation Tax Commission.

XC: Levon Henry, Chief Legislative Counsel

File



**Office of the Navajo Tax Commission
Fund Management Plan
Estimated Revenues to Be Generate**

FET Retailer, Carrier, Distributor License revenue -	\$18,000
Liquor License revenue	\$ 4,000
Appeals case fee	\$ 2,600
Conference Room rental	\$ 2,600
Tobacco License (to be established)	<u>\$13,500</u>
Approximate Annual Revenue	\$40,700

9.1001. TITLE

This Chapter is called the **Fuel Excise Tax Regulations**.

9.1002. PURPOSE

The purpose of this chapter is to facilitate the comprehensive and equitable administration and enforcement of the Navajo Nation Fuel Excise Tax with the efficient and timely collection of fuel excise tax revenue.

9.1003. RATE OF TAX

A. The tax rate for gasoline shall be eighteen cents per gallon (.18 x number of gallons or fraction thereof).

B. As of July 1, 2010, the tax rate for special fuel shall be twenty-five cents per gallon (.25 x number of gallons or fraction thereof).

9.1004. DEFINITIONS

A. All definitions contained in the Uniform Tax Administration Statute, the Tax Administration Regulations, and the Fuel Excise Tax Statute shall apply to these Regulations.

B. "Gasoline" means any flammable liquid hydrocarbon used primarily as fuel for the propulsion of motor vehicles except for special fuel.

C. "Special fuel" means any diesel-engine fuel or kerosene used for the propulsion of a motor vehicle and includes the gasoline/diesel combination commonly referred to as "transmix" but does not include gasoline.

D. In addition, for purposes of the Intergovernmental Agreement between the Office of the Navajo Tax Commission (ONTC) and the Arizona Department of Transportation (ADOT) entitled "Establishing Cooperative Fuel Tax Administration" (approved by the Navajo Tax Commission by Resolution No. TAX-99-145, and approved by the Intergovernmental Relations Committee of the Navajo Nation Council by Resolution No. IGRAP-49-99, hereinafter referred to as "IGA-AZ") and any amendments thereto, the following definitions shall apply:

1. "Fuel" includes liquid use fuel as defined in §3.1.4 of the IGA, and motor vehicle fuel as defined in §3.1.7 of the IGA-AZ.

2. "Retail Facility" as defined in §902(B)(28) of the Fuel Excise Tax shall be deemed a "Vending Location" as defined in §3.1.16 of the IGA-AZ.

3. Any "Authorized Distributor" as defined in §902(B)(3) of the Fuel Excise Tax shall be deemed an "Authorized Importer" as defined in §3.1.1 of the IGA-AZ.



9.1005. LICENSING

A. Separate licenses required. Any person intending to engage in the distribution, carrying, refining, or retailing of any amount of fuel within the Navajo Nation shall submit a completed Application for License designating the type of license for which such person is applying. A separate application must be submitted, and a separate license secured, for each activity in which such person will engage, except as indicated in paragraph 9.1005(B) below. A license must be secured regardless whether such person is liable for the Fuel Excise Tax.

Example 1: Yazzie's Fuel Distribution Company seeks to distribute fuel within the Navajo Nation, and will also be using its own company fuel tanker trucks to transport the fuel. Yazzie's Company must submit two separate applications, one for a Fuel Distributor's License and one for a Fuel Carrier's License. Both licenses must be maintained as current and valid in order for Yazzie's Company to avoid a violation.

Example 2: Notah's Fuel Retailer's Corporation is a single business entity, which owns and operates several retail facilities within the

Navajo Nation. Notah's Corporation must apply for and secure a separate Fuel Retailer's License for each and every retail facility at which fuel is being retailed. A license must be maintained as current and valid for each facility in order for Notah's Corporation to avoid a violation.

Example 3: Joe's Fuel Distribution Service is a corporation engaged in distribution of fuel within the Navajo Nation and is liable for payment of the Fuel Excise Tax although the corporation distributes fuel exclusively for use in government vehicles. Joe's Service must still apply for and secure a Fuel Distributor's License, and it must also apply for and secure a Fuel Carrier's License if Joe's will also be transporting fuel within the Navajo Nation.

- B. Exception for fuel carriers. In the case of carriers transporting fuel via cargo tank, any person(s) who transports fuel by two or more fuel transportation vehicles may apply for and secure just one Fuel Carrier's License. The license application and license must list all drivers and vehicles authorized to use the Fuel Carrier's License. The fuel carrier is responsible for adding or deleting any drivers or vehicles during the term of the license.

Example 1: Begay's Fuel Carrying Company seeks to transport fuel within the Navajo Nation, and will be using several fuel tanker trucks to transport the fuel. Begay's Company need only obtain one Fuel Carrier's License, but must list all drivers and vehicles to which the single license pertains.

- C. Compliance with Navajo Business and Procurement Act. Before any license is issued to an applicant or renewed, the ONTC shall make a determination that such applicant is not ineligible under the provisions of 12 NNC §1505(C) of the Navajo Business and Procurement Act. If such applicant is determined to be ineligible, the license application shall be denied.
- D. Notification of denial. When the ONTC denies an application, the applicant shall be notified in writing that the application has been denied.
- E. License must be carried. Any license, or true and exact copy thereof, must be kept in all fuel transportation vehicles at all times.

F. License fee.

- 1. The license fee for fuel retailers shall be \$100 per calendar year or portion thereof.
- 2. The license fee for fuel carriers shall be \$150 per calendar year or portion thereof.
- 3. The license fee for fuel distributors shall be \$200 per calendar year or portion thereof.
- 4. No license shall be issued or renewed until the fee is received by the ONTC. All licenses expire at midnight on December 31st.

9.1006. MANIFESTS

- A. Compliance with licensing and importation/distribution requirements. Each and every person distributing any amount of fuel via cargo tank must first fully comply with the provisions of §911 and §913(A) of the Fuel Excise Tax. For purposes of §913(A)(1) of the Fuel Excise Tax, the ONTC may pre-issue several manifests to an Authorized Distributor.
- B. Number of manifests. Each fuel load being distributed must have a manifest. A separate manifest, signed by the person accepting the fuel load or portion thereof, is required for every separate delivery of such fuel in the load.

Example 1: Taylor's Fuel Distributorship, Inc. picks up an 8,000-gallon load of fuel at a refinery located in Farmington, New Mexico, completely filling the cargo tank on a fuel tanker truck. Taylor's Authorized

OMB Control Number: 1076-0114.

Type of Review: Extension.

Description: These eligibility application forms are voluntary for students but are mandatory in determining a student's eligibility for educational services.

Total Number of Respondents: 4,000.

Total Number of Annual Responses: 4,000.

Total Annual Burden Hours: 30 minutes per application × (number of HINU applications) and 30 minutes per application × (number of SIPI applications) = 2000 total burden hours.

Filing fee: \$10 per application for HINU; fee for SIPI included in school cost but we have estimated a \$10 fee per completed application. We estimate the total filing fee to be \$16,500.00. SIPI has a number of applications which are never completed; therefore, their filing fee is not \$3,000, as it would be otherwise. Dormitory fees may also apply.

Dated: December 17, 2008

Sanjeev Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E8-30615 Filed 12-23-08; 8:45 am]

BILLING CODE 4310-6W-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Navajo Nation Liquor Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Secretary's certification of the Navajo Nation Liquor Regulations. These Regulations regulate and control the possession, sale and consumption of liquor within the Navajo Nation. The Navajo Nation is located on extensive reservation lands, and these Regulations establish a legal framework for licensing the transportation and sale of alcoholic beverages within the exterior boundaries of the Nation. These regulations will ensure the ability of the tribal government to control the distribution and possession of liquor within the reservation and at the same time will provide an important source of revenue. These Regulations provide solely for civil enforcement (fines) imposed on parties whose actions are subject to the licensing provisions set forth herein. Any violation of these regulations may also result in prosecution under other sections of the Navajo Nation Code, or under relevant State or Federal law.

DATES: *Effective Date:* These Regulations are effective as of December 24, 2008.

FOR FURTHER INFORMATION CONTACT:

Irene Herder, Tribal Operations Specialist, Navajo Regional Office, P.O. Box 1060, Gallup, New Mexico 87305; Telephone (505) 863-8207; Fax (505) 863-8292; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240; Telephone (202) 513-7627; Fax (202) 208-5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

The Navajo Nation is governed by the Navajo Nation Council, which has developed a comprehensive legal code (the Navajo Nation Code, N.N.C.). Title 17, subchapter 12, of the N.N.C. bars the transportation, sale, and consumption of alcoholic beverages on the Navajo Reservation. Section 412 of Title 17 sets out exceptions to the prohibitions in the title.

In 2001, the Council amended 17 N.N.C. section 412 to permit use of alcohol at the Antelope Point Development Area of the Navajo Nation, and the Glen Canyon National Recreation Area. (Resolution CYJ-62-01). In 2008, the Council again amended 17 N.N.C. section 412, to authorize transportation, sale, delivery and consumption on the Navajo Reservation at authorized casinos. (Resolution CJA-03-08, passed by the Council January 31, 2008, and signed into law by the President of the Navajo Nation on February 11, 2008). By the same resolution, the Council delegated the authority to promulgate liquor regulations to the Navajo Tax Commission.

The following Liquor Regulations were adopted and approved by the Navajo Nation Tax Commission by Resolution TAX-08-208.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that these Liquor Regulations of the Navajo Nation were promulgated by the Navajo Tax Commission pursuant to the authority vested in the Commission by the Navajo Nation Council by Resolution CJA-03-08.

Dated: December 19, 2008.

George T. Skibine

Acting Deputy Assistant Secretary for Policy and Economic Development.

The Navajo Nation's Liquor Regulations read as follows:

Navajo Nation Liquor Regulations

1.101. Title. These Liquor Regulations shall be known as the Navajo Nation Liquor Regulations ("Liquor Regulations").

1.102. Purpose. The purpose of these Liquor Regulations is to ensure the proper transportation, sale, delivery, and consumption of alcoholic beverages within the exterior boundaries of the Navajo Nation and to ensure the health, safety, and welfare of the Navajo people.

1.103. Authority. The Commission enacts these Liquor Regulations pursuant to the authority delegated to the Commission by the Navajo Nation Council in 17 N.N.C. § 412.

1.104. Definitions. Except as otherwise provided herein, the following definitions apply throughout these Liquor Regulations:

A. "Antelope Point" means the area covered by the Antelope Point Resort and Marina Business Site Lease;

B. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt, and hops or other cereals in drinking water, and includes porter, beer, ale and stout;

C. "Certified Server" means any employee of a Retailer Licensee who is certified to Sell Liquor on the Navajo Nation on behalf of the Retailer Licensee in accordance with these Liquor Regulations, and who has successfully completed a liquor server training program approved by the Office;

D. "Commission" means the Navajo Tax Commission, delegated by the Navajo Nation Council to ensure the proper transportation, sale, delivery, and consumption of alcoholic beverages; or any such commission so delegated by the Navajo Nation;

E. "Enterprise" means a Navajo Nation Enterprise or entity that is engaged in, or wishes to engage in, the business of Selling Liquor within the Navajo Nation;

F. "Liquor" means the product of distillation of any fermented liquid, rectified either once or more often, of whatever the origin, and includes synthetic ethyl alcohol, which is considered potable. "Liquor" includes distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including

blended or fermented beverages, dilutions, or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but less than twenty-one percent alcohol by volume, including Beer, Spirits, Wine, and Malt Liquor. Beer, Spirits, Wine, and Malt Liquor and liquors or solids containing in excess of one half of one percent (.05%) of alcohol by volume, but not more than twenty-one percent (21%) shall be considered liquor;

G. "Malt Liquor" means an alcoholic drink made from malt, typically having a higher alcohol content than most Beer or ale;

H. "Minor" means any individual under the age of 21;

I. "Navajo casino facility" means a gaming facility operated by the Navajo Nation, pursuant to the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497, 25 U.S.C. 2701-2721 and U.S.C. 1166-1168), Navajo Gaming Ordinance, (5 N.N.C. §§ 2001-2057) and any gaming compact entered into between the Navajo Nation and a State;

J. "Navajo Nation" means:

1. When referring to the body politic, the same meaning as set forth in 1 N.N.C. § 551 *et seq.*

2. When referring to governmental territory, the same meaning as set forth in 7 N.N.C. § 254;

K. "Navajo Nation Court" means any or all of the courts established by the Navajo Nation;

L. "Office" means the Office of the Navajo Tax Commission, charged by the Commission with the day-to-day administration of these Liquor Regulations; or any such administrative office so charged by the Commission;

M. "Package Sale" means any Sale of Liquor in containers filled or packed by a manufacturer or wine bottler and Sold in an unbroken package for consumption off the premises designated in the Retailer License and not for resale;

N. "Person" means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever;

O. "Public Place" means commercial or community facilities of every nature that are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access;

P. "Retailer License" means a revocable license granted by the Office authorizing the Licensee named therein and its Certified Servers to Sell Liquor at a specified location within the Navajo Nation;

Q. "Retailer Licensee" means the holder of a valid Retailer License allowing the Sale of Liquor in a designated location, as authorized and granted by the Office;

R. "Sale" or "Sell" means an exchange, transfer, sale, supply, barter, traffic, donation (with or without consideration), serving for consumption, dispensing, delivering, or distributing, by any means whatsoever, of Liquor within the Navajo Nation by any Person;

S. "Spirits" means any beverage that contains alcohol obtained by distillation, mixed with drinkable water and other substances in solution, including brandy, rum, whiskey, and gin;

T. "Wholesaler" means a person whose place of business is located off the Navajo Nation and who Sells, or possesses for the purpose of Sale, any Liquor for resale by a Retailer Licensee;

U. "Wholesaler License" means a revocable license granted by the Office authorizing the Wholesaler named therein to do business within the Navajo Nation with a Retailer Licensee;

V. "Wholesaler Licensee" means the holder of a valid Wholesaler License; and

W. "Wine" means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry, and champagne.

1.105. Powers of Enforcement.

A. The Commission is empowered by the Navajo Nation Council to regulate the subject matter of these Liquor Regulations, pursuant to 17 N.N.C. § 412. The Commission shall have the following powers and duties:

1. To approve, establish, and publish such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale, delivery and consumption of alcoholic beverages within the Navajo Nation in accordance with 17 N.N.C. § 412;

2. To exercise such other delegated powers as are necessary and appropriate to fulfill the purposes of these Liquor Regulations.

B. The Office is delegated the authority to enforce these Liquor Regulations and shall have the following powers and duties:

1. To adopt policies and procedures as necessary to implement these Liquor Regulations, subject to approval by the Commission;

2. To authorize the Sale of Liquor within the Navajo Nation in accordance with 17 N.N.C. § 412;

3. To bring any necessary action to enforce these Liquor Regulations;

4. To determine penalties and seek damages for violations of these Liquor Regulations;

5. To collect fees levied or set in relation to these Liquor Regulations and keep accurate records, books, and accounts; and

6. To employ managers, accountants, security personnel, inspectors, and other such persons as may be reasonably necessary to administer these Liquor Regulations.

1.106. Limitations.

A. Notwithstanding any other provision of these Liquor Regulations, no penalty may be imposed pursuant or related to these Liquor Regulations in contravention of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. 1301, *et seq.*, or other applicable federal law.

B. Any regulatory action taken by the Office pursuant to these Regulations will be civil in nature and will therefore apply to both Indians and non-Indians.

C. Any alleged activity which would be deemed a criminal act under tribal, state, or federal law involving the transportation, sale, delivery, or consumption of liquor within the Navajo Nation will be referred to the appropriate tribal, state, and/or federal authorities.

D. Nothing in these Liquor Regulations, including but not limited to any penalty imposed by the Office, shall be construed to bar a similar trial or punishment to the full extent of any applicable tribal, state, and/or federal civil or criminal law.

1.107. Inspection Rights.

A. All premises upon which Liquor is sold, stored, or distributed shall be open to inspection by duly authorized tribal officials or their designees for the purposes of ascertaining compliance with these Liquor Regulations and applicable law.

B. Any Person who prevents or hinders, or attempts to prevent or hinder, such inspection shall be in violation of these Liquor Regulations.

1.108. Authorized Liquor Sales and Practices.

A. Generally. Except as otherwise provided herein, Retailer Licensees may Sell Liquor on the Navajo Nation at such places and hours permitted by their Retailer License and allowed by applicable Navajo Nation law.

B. Sales on Sundays and Election Days. Except as otherwise limited by the Navajo Nation Council, the Sale of Liquor shall be allowed on Sunday and on any Navajo Nation, federal, or State election day.

C. Sales Only by Certified Servers. All Liquor Sales within the Navajo Nation

authorized by these Liquor Regulations must be made only by Certified Servers.

D. Liquor Sales at the Navajo Casino Facility. Any Sale of Liquor at a Navajo casino facility must comply with all applicable provisions of any Navajo Nation-State class II gaming compact between the Navajo Nation and any State, as it now exists or hereafter may be amended.

E. Liquor Sales at Antelope Point. Any Sale of Liquor at Antelope Point must comply with all applicable laws and regulations.

F. Wholesale Liquor Transactions. A Retailer Licensee may purchase Liquor for resale at a designated location only from a Wholesaler possessing a valid Wholesaler License issued by the Office. A Wholesaler Licensee may Sell Liquor for resale at a designated location only to holders of valid Retailer Licenses issued by the Office, provided that such Sales are otherwise in conformity with these Liquor Regulations and applicable laws of the State.

1.109. Prohibited Liquor Sales and Practices.

A. No Package Sales; Resale. No Retailer Licensee shall Sell Liquor on the Navajo Nation for resale; all such Sales must be for the personal use and consumption of the purchaser. Any Person who is not licensed pursuant to these Liquor Regulations who purchases Liquor within the Navajo Nation and resells it, whether in the original container or not, shall be in violation of these Liquor Regulations and shall be subject to penalties pursuant to these Liquor Regulations.

B. Bringing Liquor onto premises. No Licensee shall allow any Person to bring any Liquor for personal consumption into the premises designated in the Retailer License.

C. Other Prohibitions on Hours and Days of Sales. The Navajo Nation Council may establish other days on which, or times at which, Sales or consumption of Liquor is not permitted within the Navajo Nation. The Office will provide notice of any such enactment to all Wholesaler Licensees and Retailer Licensees doing business within the Navajo Nation.

D. No Sales to Minors. No Licensee, Certified Server, or Person shall Sell Liquor on the Navajo Nation to a Minor; provided, however, that it shall be a defense to an alleged violation of this Section that the Minor presented to the Seller of the Liquor an apparently valid identification document showing the Minor's age to be 21 years or older.

E. No Sales to Intoxicated Persons. No Licensee, Certified Server, or Person shall Sell Liquor on the Navajo Nation

to a Person believed by a Certified Server to be intoxicated.

F. All Sales Cash. A Retailer Licensee shall not make any Sale of any Liquor without receiving payment therefore by cash, check, or credit card at or about the time the Sale is made; provided that nothing herein shall preclude the Retailer Licensee from receiving a delivery of Liquor from a Wholesaler Licensee if arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude the Retailer Licensee from allowing a customer to purchase more than one item in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the premises; and provided further that nothing herein shall prevent the Retailer Licensee from distributing Liquor to customers without charge, so long as such distribution is not otherwise in violation any provision of these Liquor Regulations.

G. Open Containers Prohibited. No Person shall have an open container of any Liquor in any automobile, whether moving or standing still, or in a Public Place, other than on the premises designated in a Retailer License.

H. All Designated Premises Posted. A Retailer Licensee shall not make any Sale of Liquor unless signs are prominently posted in all premises designated in the Retail License informing the customers that removing Liquor from the premises is a violation of federal law prohibiting the possession of alcohol on Indian reservations. In the case of outdoor sales, such signage shall be prominently displayed no more than ten (10) feet from the point of sale.

1.110. Reserved.

1.111. Reserved.

1.112. Licensing.

A. Any Person wishing to Sell Liquor as a Wholesaler shall obtain and retain a Wholesaler License for such purpose.

B. Any person wishing to Sell Liquor as a Retailer shall obtain one of the following types of License:

1. Retailer License—Restaurant.
2. Retailer License—Hotel/Motel.
3. Retailer License—Special Events.
4. Retailer License—Other. The Office shall have the authority to issue policies and procedures regarding the issuance of other types of licenses, subject to the Commission's approval of such policies and procedures.

C. The pre-conditions to the issuance of a License include but are not limited to the following:

1. Compliance with Business and Procurement Act—Before any License is issued to an applicant or renewed, the

Office shall make a determination that such applicant is not ineligible under the provisions of 12 N.N.C. § 1505(C) of the Navajo Business and Procurement Act. If such applicant is determined to be ineligible, the license application shall be denied.

2. An applicant who has had a License revoked is ineligible to apply for a License within one year of the date of the revocation.

3. An applicant who has had two or more License revocations is ineligible to apply for a License within five years of the date of the last revocation.

4. An applicant who has been convicted of a felony or a misdemeanor involving a crime of moral turpitude is ineligible for a License.

5. Any applicant who has committed any of the violations listed in Section 1.119 below is ineligible for a License.

D. Liabilities of Licensee. The Licensee shall be accountable for all violations of its License and these Liquor Regulations, and for all taxes, fees, and penalties that may be charged against its License.

E. License is Not a Property Right. Notwithstanding any other provision of these Liquor Regulations, a License is a mere permit for a fixed duration of time. A License shall not be deemed a property right or vested right of any kind, nor shall the granting of a License give rise to a presumption of legal entitlement to the granting of such License for a subsequent time period.

F. Licenses Non-transferable. No License issued by the Office shall be assigned or transferred in any manner.

G. Licenses or letter of denial.

1. After considering the information submitted on the application for a License, the Office shall grant and issue a License if it concludes that granting the License will serve the best interests of the Navajo Nation.

2. The Office shall deny the application if it finds that granting a License would be contrary to the best interests of the Navajo Nation, considering such factors as the applicant's compliance history with applicable Navajo Nation and federal law, whether the applicant is currently in violation of any Navajo Nation law, the number and density of locations selling liquor on the Navajo Nation, whether the applicant will operate a new or existing establishment, or any other reason bearing on the health, safety, and welfare of the Navajo Nation community or the economic security of the Navajo Nation.

3. The Office shall send the applicant a final written decision within thirty days after the application is received by the Office, explaining the grounds for its

decision either granting or denying the application for a License.

4. Failure of the Office to issue a License or a letter of denial within thirty days shall be deemed a denial.

H. Appeal. A letter of denial for a License shall be considered an adverse action and may be appealed in accordance with these Liquor Regulations.

1.113. Wholesaler License.

A. Term.

1. A separate License must be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Wholesaler License to Sell Beer and Wine shall be \$500.

b. The fee for subsequent renewals of the same License shall be \$200 per year.

2. Spirits.

a. The fee for the initial term of a Wholesaler License to Sell Spirits shall be \$700.

b. The fee for subsequent renewals of the same License shall be \$250 per year.

C. Condition. A copy of the License shall be carried at all times in any vehicle used to transport liquor pursuant to this License.

1.114. Retailer License—Restaurant.

A. Term.

1. A separate License shall be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Retailer License for a restaurant Selling Beer and Wine shall be \$1,000.

b. The fee for subsequent renewals of the same License shall be \$250 per year.

2. Spirits.

a. The fee for the initial term of a Retailer License for a restaurant selling Spirits shall be \$1,500.

b. The fee for subsequent renewals of the same License shall be \$500 per year.

C. Conditions.

1. The Retailer License shall be for a specific location. The Licensee may not transfer the License to any other person, even if such person takes over operation of the premises designated in the Retailer License. Nor may the Licensee use the license for any location operated by the Licensee, other than the premises designated in the Retailer License.

2. The Retailer License shall at all times be on public display at the

location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.115. Retailer License—Hotel/Motel.

A. Term.

1. A separate License shall be secured and maintained for each calendar year or portion thereof, ending on December 31st.

2. Regardless of when the License is issued, it expires at midnight December 31st.

B. Fee.

1. Beer/Wine.

a. The fee for the initial term of a Retailer License for a Hotel/Motel Selling Beer and Wine shall be \$1,000.

b. The fee for subsequent renewals of the same License shall be \$250 per year.

2. Spirits.

a. The fee for the initial term of a Retailer License for a Hotel/Motel selling Spirits shall be \$1,500.

b. The fee for subsequent renewals of the same License shall be \$500 per year.

C. Conditions.

1. The Retailer License shall be for a specific location and may not be transferred or used for any location other than that identified on the face of the License.

2. The Retailer License shall at all times be on public display at the location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.116. Retailer License—Special Event.

A. Term. The term of the License shall be for the term of the special event.

B. Fee.

1. Beer/Wine. The fee for a Retailer License for a Special Event Selling Beer/Wine shall be \$300.

2. Spirits. The fee for a Retailer License for a Special Event Selling Spirits shall be \$500.

C. Conditions.

1. The Retailer License shall be for a specific location and shall not be transferred or used for any location other than that identified on the face of the License.

2. The Retailer License shall at all times be on public display at the location designated in the Retailer License.

3. The Location where Liquor is sold shall not be closer than 300 feet to any existing church or school.

1.117 License Renewal.

A. If a Wholesaler Licensee or a Retailer Licensee fails to renew a License before December 31st of any year, the Licensee is hereby suspended

from Selling Liquor until such Licensee renews the License or obtains a new License.

B. So long as the Licensee renews the License by January 15th, the issuance of the License shall be treated as a renewal, and the fee shall be calculated accordingly; provided, provided, however, that there shall also be a \$50 late fee assessed.

C. If the Licensee fails to renew the License by 5:00 p.m. on January 15th, the Licensee must submit a new application for a License and pay the initial License application fee.

D. In order to be eligible for renewal of a License, the Licensee must be in compliance with all terms and conditions of such License and these Liquor Regulations.

1.118. Recordkeeping and Reporting.

The Office shall maintain recordkeeping and reporting requirements for Licensees, in accordance with policies and procedures, including but not limited to, periodic reports of the amount of liquor sold or delivered within the Navajo Nation during a particular period.

1.119. Violations.

These Liquor Regulations apply to all persons licensed to transport or sell Liquor within the Navajo Nation. Violations of these Liquor Regulations include, but are not limited to, the following:

A. Violating any term or condition of the License;

B. Selling Liquor within the Navajo Nation without a License;

C. Buying Liquor within the Navajo Nation from an unlicensed person;

D. Selling Liquor within the Navajo Nation to a minor;

E. Selling Liquor within the Navajo Nation to an intoxicated person;

F. Permitting an uncertified server to sell or serve Liquor within the Navajo Nation;

G. Failing to allow inspection of premises designated in a Retailer License or vehicles used to deliver Liquor within the Navajo Nation;

H. Failure to present documents required by these Regulations upon a request by the Office;

I. Failing to display License;

J. Being convicted of a felony or a misdemeanor involving a crime of moral turpitude;

K. Permitting repeated acts of violence or disorderly conduct on or near the premises designated in the Retailer License;

L. Submitting false or fraudulent information on a License application; and

M. Violating any applicable Navajo Nation or federal law.

1.120. Penalties.

Penalty amounts shall be set for each violation of these Liquor Regulations in accordance with policies and procedures.

1.121. Appeals.

A. A Person may appeal any adverse action taken pursuant to these Regulations, including but not limited to, denial of an application for a License, issuance of a penalty, denial of a request for approval of a Certified Server program, or revocation of a License.

B. Appeals shall follow the following process.

1. Appeals shall be made first to the Office. Upon notice of any adverse action by the Office, a Person may request a conference with the Office.

a. To be entitled to a conference, the Person must make a written request within the time prescribed by the notice of the adverse action.

b. The request for a conference must identify the disputed notice of assessment or notice of denial of refund or notice of other adverse action, state the determination sought, and contain a short and plain statement of the relevant facts and law.

c. After receiving a timely request and within a reasonable period of time, the Office shall confer with the Person filing the appeal. The Office and the Person may agree on a suitable location for the conference or may agree to hold the conference by telephone and to exchange written documentation by mail. The Office and the Person may agree to confer more than once.

d. Within sixty days following the conclusion of the conference, the Office will issue a written conference decision. If the Office denies in whole or in part the relief that the Person requests, then the decision shall state the basis for the denial of relief.

2. Within thirty days after the issuance of the decision of the Office, the Person may appeal the decision to the Office of Hearings and Appeals. If the Person fails to appeal within that time period, then the decision of the Office is final and not subject to review by appeal to a hearing officer or to any court.

a. A request for a hearing before a hearing officer must be in writing and contain a short and plain statement of the facts and law forming the basis for the relief sought. The Person appealing the decision must sign the request for Hearing.

b. The hearing officer has the authority to enter pre-hearing orders. Where necessary, the hearing officer may confer with the parties before entering pre-hearing orders. Such orders

may, for example, eliminate or narrow disputes concerning questions of fact or law, establish identities and subject matter of testimony of witnesses, require the identification and disclosure of documents, or provide for the time, place, and duration of hearings. Pre-hearing orders will control the course of the hearing.

c. At the request of the parties, the hearing officer shall issue subpoenas for the attendance of witnesses at hearings and for production of books, records, maps, documents, or physical evidence. Any witness subject to a subpoena may petition the hearing officer to vacate or modify the subpoena served on the witness. The hearing officer shall promptly notify the party who requested the subpoena and proceed to rule on the petition. The hearing officer may investigate the grounds of the petition or, upon the petition itself, may deny or grant the petition, in whole or in part. The hearing officer's rulings on petitions to quash subpoenas are not subject to interlocutory appeal to any court.

d. The hearing officer shall preside over these hearings and shall conduct them according to the following provisions.

i. All documents filed by any party at a hearing shall be served personally or by first-class mail, postage prepaid, at the last known address, on all parties, including the Office, and proof of service must be filed on record.

ii. Oral evidence shall be taken only on oath or affirmation.

iii. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach any witness regardless of which party first called the witness to testify, and may rebut any evidence presented. A party, a party's employee, or a party's agent, may be called by the opposing party and be examined as if under cross-examination. The hearing officer may question any witness, may call the appellant as a witness, or may call as a witness any person who is present at the hearing.

iv. Any privileges that apply in civil actions before Navajo courts shall be followed.

v. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall be liberal in admitting evidence, but objections to its admission, and comments or observations of its weight, are relevant in weighing the evidence. The hearing officer may deny admission

of evidence that is irrelevant, untrustworthy, or unduly repetitious.

vi. All evidence will be offered and made part of the record and the hearing officer shall not consider any other factual information, except for matters officially noticed.

vii. Where after proper notice a Person or its authorized representative fails to appear, the hearing officer may proceed with the hearing, dispose of the issues raised, and enter a final order.

viii. Reasonable continuances may be granted for good cause.

ix. Prior to entering an order, the hearing officer will afford the parties a reasonable time in which to submit any post-hearing memoranda, proposed findings of fact, and proposed conclusions of law.

e. The hearing conducted under this part concludes when the hearing officer enters findings of fact, conclusions of law, and a final order. The final order issued by the hearing officer shall be a matter of public record, and all final orders issued shall be available for public inspection.

f. A party may file a petition for rehearing. Such petition will allege as grounds for rehearing either a mistake of law or fact, or the discovery of new evidence which by due diligence could not have been discovered by the party at the time of the hearing. The petition must set out in some detail the mistake in law or fact claimed, or summarize the new evidence that has become available, specifically mentioning the source of such evidence and what it would tend to establish. The hearing officer will have wide discretion in accepting or rejecting such petitions.

3. The decision of the hearing officer entered under this part may be appealed to the Navajo Supreme Court within 30 days. If not timely appealed, the hearing officer's order is binding on the parties and may not be appealed to any court.

a. The rules of Appellate Procedure of the Navajo Supreme Court shall govern the conduct of appeals from orders of the hearing officer rendered under this section.

b. Appeal to the Navajo Supreme Court shall be limited to the record on appeal.

c. The record on appeal will be based on the findings, conclusions, and order of the hearing officer.

C. In all administrative and judicial proceedings governed by this section, the orders, assessments, factual findings, and legal conclusions of the Office are presumed correct unless the Person filing the appeal demonstrates otherwise. In all factual hearings, the Person filing the appeal has the burden of proving by a preponderance of the

evidence the existence of an asserted fact, except where another standard is provided by statute or these Liquor Regulations.

1.122. Revenue.

All revenue collected pursuant to these Liquor Regulations shall be used to defray the expenses of administering the Liquor Regulations.

1.123. Certified Servers.

A. Every employee of a Retailer Licensee who Sells Liquor must be a Certified Server 21 years of age or older.

B. The Office will adopt policies and procedures regarding the certification of servers.

C. The Office shall have authority to approve certification programs offered by third-party providers and may adopt policies regarding minimum requirements of such programs.

D. The Office may revoke any certification issued under this Section if the Certified Server violates any provision of these Liquor Regulations, the policies and procedures issued pursuant to them, any applicable Navajo Nation law, makes a material misstatement on the application for certification, is convicted of a felony, or for other good cause shown.

E. The denial or revocation of a certification is an appealable action.

1.124. Transportation Through the Navajo Nation.

Nothing in these Liquor Regulations shall apply to the otherwise lawful transportation of Liquor through the Navajo Nation by Persons remaining on public highways or other paved facilities for motor vehicles provided that such Liquor is not Sold, or offered for Sale, within the Navajo Nation.

1.125. Sovereign Immunity.

Nothing in these Liquor Regulations is intended to be, nor shall be construed as, a waiver of the sovereign immunity of the Navajo Nation. No employee, officer, or agent of the Office shall be authorized, nor shall he or she attempt, to waive the immunity of the Navajo Nation.

1.126. Jurisdiction.

Except as otherwise provided in these Liquor Regulations, any and all actions pertaining to alleged violations of these Liquor Regulations, or seeking any relief against the Navajo Nation, its officers, employees, or agents arising under these Liquor Regulations, shall be brought in the Navajo Nation Courts, which courts shall have exclusive jurisdiction consistent with the inherent sovereignty and immunity of the Navajo Nation and applicable federal and Navajo Nation law.

1.127. Severability.

If any provisions of these Liquor Regulations or the application of any

provision to any Person or circumstances is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of these Liquor Regulations and its application to any other Person or circumstances, and, to this end, the provisions of these Liquor Regulations are severable.

1.128. Effective Date.

These Liquor Regulations shall be effective on such date as the Secretary of the Interior certifies these Liquor Regulations and publishes the same in the **Federal Register**.

[FR Doc. E8-30688 Filed 12-23-08; 8:45 am]

BILLING CODE 4310-02-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Storage Feasibility Study; Benton, Yakima, and Kittitas Counties, Washington INT-FES 08-65

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of the Final Planning Report and Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a combined Final Planning Report and Environmental Impact Statement (Final PR/EIS) on the Yakima River Basin Water Storage Feasibility Study (Storage Study). The cooperating agencies on this study are the Washington Department of Ecology (Ecology), Yakima County, the U.S. Department of the Army: Yakima Training Center and the Seattle District of the U.S. Corps of Engineers, and the U.S. Department of Energy: Office of River Protection.

The purpose of the Storage Study is to evaluate alternatives that would create additional water storage for the Yakima River Basin and assess their potential to supply the water needed for ecosystem aquatic habitat, basin-wide agriculture, and municipal demands. The need for the study is based on the existing finite water supply and limited storage capability of the Yakima River Basin in low water years. This finite supply and limited storage capacity do not meet the water supply demands in all years and result in significant adverse impact to the Yakima River Basin's economy, which is agriculture-based, and to the basin's aquatic habitat, specifically, anadromous fisheries. The

study seeks to identify means of increasing water storage available, including storage of Columbia River water, for purposes of improving anadromous fish habitat and meeting irrigation and municipal water supply needs.

DATES: Written comments on the Final PR/EIS will be accepted through February 2, 2009.

ADDRESSES: Written comments on the Final PR/EIS should be addressed to the Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Programs Manager, 1917 Marsh Road, Yakima, Washington 98901-2058. Comments may also be submitted electronically to storagestudy@pn.usbr.gov. Requests for paper or CD copies of the Final PR/EIS may be made to (509) 575-5848, ext. 612.

See the **SUPPLEMENTARY INFORMATION** section on public review for locations where copies of the Final PR/EIS are available for public review. Information on this project can also be found at http://www.usbr.gov/pn/programs/storage_study/index.html.

FOR FURTHER INFORMATION: Contact David Kaumheimer, Environmental Programs Manager, Telephone: (509) 575-5848, extension 232.

SUPPLEMENTARY INFORMATION:

Background Information

Reclamation has undertaken this study to explore ways to augment water supplies in the Yakima River Basin for the benefit of anadromous fish, irrigated agriculture, and municipal water supply under the authority of Public Law 108-7, Title II, Section 214 which was passed by Congress on February 20, 2003. Public Law 108-7 states:

The Secretary of the Interior, acting through the Bureau of Reclamation, shall conduct a feasibility study of options for additional water storage in the Yakima River Basin, Washington, with emphasis on the feasibility of storage of Columbia River water in the potential Black Rock Reservoir and the benefit of additional storage to endangered and threatened fish, irrigated agriculture, and municipal water supply. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

Ecology was a joint lead with Reclamation in the preparation of the Draft PR/EIS, in order to meet compliance under the State Environmental Policy Act (SEPA). However, they elected to become a cooperating agency on the Final PR/EIS as they believe they may not have fulfilled their requirements under Washington State law to identify and evaluate all reasonable water supply

- (c) If a person fails to timely file a Form 100, Fuel Excise Tax Retailer Report, Carrier Report, or Refiner Report, a one-time \$50 penalty shall be assessed for each document that is not timely filed.
- (d) If a person fails to timely file a Possessory Interest Tax Form 200 or 245, a one-time penalty of \$50 shall be assessed for each form that is filed after the due date but within 30 days of that date, and the penalty shall be increased to \$150 if the form is filed more than 30 days after the required date.
- (e) For purposes of this section, a form filed on or before an extended due date for filing is timely filed.
- (f) For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

113. PENALTIES FOR FAILURE TO PAY.

- (a) A taxpayer failing to timely pay an amount of tax by the time due shall be assessed an immediate penalty of 5% of the amount of the underpayment.
- (b) For each month the payment is overdue, an additional penalty shall be assessed of 0.5% of the underpayment.
- (c) The total penalty imposed under this section shall not exceed 10% of the tax due.
- (d) For purposes of this section, a payment received on or before an extended date for payment is timely paid.
- (e) For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

114. PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX.

- (a) Any taxpayer understating the tax imposed by the Code through negligence of the Code and regulations, but without the intent to defraud, may be assessed a penalty of \$250, plus 25% of the underpayment of tax.
- (b) Any taxpayer understating the tax imposed by the Code through reckless disregard of the Code and regulations, but without the intent to defraud, shall be assessed a penalty of \$250, plus 25% of the underpayment of tax.
- (c) If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of \$500, plus 50% of the underpayment of tax.
- (d) Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Code shall be subject to a penalty of \$500, plus 25% of the underpayment of tax.
- (e) Any liability arising under this section shall be assessed and collected as taxes imposed by the Code.
- (f) For good cause shown, the Office of the Navajo Tax Commission may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

115. CHARGES FOR ADMINISTRATIVE COSTS.

- (a) A taxpayer failing to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.
- (b) For good cause shown, the Office of the Navajo Tax Commission may relieve the taxpayer from all or part of the charges imposed under this section.

116. FAILURE TO COMPLY WITH CODE.

- (a) Any taxpayer who fails to comply with a requirement: to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Office of the Navajo Tax Commission, may have all or some of its rights to engage in productive activity within the

TOBACCO PRODUCTS TAX AND LICENSING ACT REGULATIONS

Table of Contents

Section	Page
1.801 TITLE.....	2
1.802 PAYMENT OF TAX.....	2
1.803 LICENSING.....	2
1.804 EFFECTIVE DATE.....	2

1.801. TITLE

This chapter shall be called the Tobacco Products Tax and Licensing Act Regulations.

1.802. PAYMENT OF TAX

- A. The forms and payment of tax required under the Tobacco Products Tax and Licensing Act are due on the 15th day of the month following the period to which the tax applies.
- B. Distributors are responsible for filing Forms 800 and 801. If a retailer sells or makes available for sale tobacco product that is not purchased from a licensed distributor, the retailer is responsible for filing Forms 800R and 801R.

1.803. LICENSING

- A. Prior to engaging in the sale or resale of, or making available for sale, tobacco products within the Navajo Nation, retailers and distributors shall obtain a license from the Office of the Navajo Tax Commission.
- B. Licenses shall be issued by the Office of the Navajo Tax Commission upon approval of the application filed by the retailer and distributor. Applications shall be made on a form prescribed by the Office of the Navajo Tax Commission.
- C. If a retailer or distributor engages in the sale or resale of, or makes available for sale, tobacco products at two or more separate places, a separate license for each place of business is required.
- D. The license fee shall be \$50 per calendar year.
- E. The license, or a copy thereof, must be prominently displayed in each place of business. The original must be produced when requested by an official representative of the Office of the Navajo Tax Commission or the designee of the representative.
- F. Licenses are non-transferable.
- G. Unless revoked by the Office of the Navajo Tax Commission, licenses are valid from the date of issuance through the end of that calendar year, and the licensee must apply for renewal for each subsequent year.
- H. A person whose license has been revoked may obtain a new license only upon the payment of a \$200 reinstatement fee, in addition to the license fee, and a showing that the noncompliance for which the revocation was initiated has been corrected. Upon a showing of good cause, the Office of the Navajo Tax Commission may waive some or all of the reinstatement fee.

1.804. EFFECTIVE DATE

These regulations shall go into effect in accordance with the Tax Administration Regulations.