

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

23<sup>rd</sup> NAVAJO NATION COUNCIL - Second Year, 2016

AN ACTION

RELATING TO HEALTH, EDUCATION AND HUMAN SERVICES AND  
NAABIK'ÍYÁTI' COMMITTEES; SUPPORTING THE NAVAJO NATION  
DEPARTMENT OF HEALTH POLICIES AND RECOMMENDATIONS

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Health, Education and Human Services Committee (HEHSC) as a standing committee of the Navajo Nation Council, with the authority to review and recommend resolutions regarding matters concerning health. See 2 N.N.C. §§ 164 (A)(9), 400 (A), 401 (B)(6)(a) (2015); See also CO-45-12.
- B. The Navajo Division of Health (NDOH) shall operate under the legislative oversight of the HEHSC pursuant to the powers granted in 2 N.N.C. § 401 (C)(1).
- C. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and has the authority to review and continually monitor the programs and activities of federal and state departments and to assist the development of such programs designed to serve the Navajo people and the Navajo Nation. See 2 N.N.C. §§ 164 (A)(9), 700 (A), 701 (A)(7) (2015); see also CO-45-12.
- D. The Navajo Nation has a government-to-government relationship with the United States of America and holds the government of the United States responsible for the health of the Navajo People, pursuant to the Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.

**SECTION TWO. FINDINGS**

- A. The Navajo Department of Health (NDOH) is established as a Department under the Executive Branch of the Navajo Nation Government. See 2 N.N.C. § 1602.
- B. The purpose of the NDOH is to ensure the highest quality of overall health care for the Navajo people by coordinating with the Indian Health Service and other federal, state and private entities and the appropriate public health and quality assurance regulatory authority. See 2 N.N.C. § 1062 (B).
- C. The NDOH recommends an amendment to H.R. 994, 2015 Radiation Exposure Compensation Act (RECA), and to recommend the passage of H.R. 994 to ensure its passage to mandate Congress to meet its responsibilities to Navajo communities that continue to be impacted by the uranium mining undertaken by the United States during the Cold War era. See Exhibit A (Recommendations from NDOH).
- D. The NDOH requests that the United States Congress amend national policies to provide waivers regarding the prohibition of USDA, FNS, WIC to provide localized emergency response to situations that endanger the life, health, safety and property of the Navajo Nation. See Exhibit A (Recommendations from NDOH).
- E. The NDOH recommends the United States Congress to advocate and support the amendments of 7 CFR § 246.4 (a) so the State Plan provides a continuum of services between the last year of the funding cycle and the first year of the next funding cycle, or the funding cycle ending after the first year of a multi-year Navajo WIC State Plan. See Exhibit A (Recommendations from NDOH).
- F. The NDOH recommends an establishment for a Native American Indian Tribes and Alaskan Natives office within the United States Department of Agriculture (USDA) Food Nutrition Services (FNS), Women, Infant and Children (WIC) program. See Exhibit A (Recommendations from NDOH).
- G. It is in the best interest of the Navajo Nation to support the policies and recommendations as listed by the Navajo Department of Health.

### SECTION THREE. SUPPORTING POLICIES

The Navajo Nation hereby supports the Navajo Department of Health's policies and recommendations regarding the Women, Infant and Children Program; waiving the limitation to provide emergency response through the Women, Infant and Children Program; multiple year state plans; and amendments to the 2015 Radiation Compensation Act.

### CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Naabik'íyáti' Committee of the 23<sup>rd</sup> 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 11 in favor, 0 oppose, (Pursuant to 2 N.N.C. §700 (D), Two members from each committee) this 26<sup>th</sup> day of May, 2016.



Leonard Tsosie, Pro Tem Chairperson  
Naabik'íyáti' Committee

Motion: Honorable Tuchoney Slim, Jr.  
Second: Honorable Davis Filfred

# NAVAJO NATION

RCS# 422

Naa'bik'iyati Committee

5/26/2016

05:02:40 PM

Amd# to Amd#

Legislation No. 0152-16

PASSED

MOT Slim

Supporting the NN Department  
of Health Policies and  
Recommendations

SEC Filfred

**Yea : 11**

**Nay : 0**

**Not Voting : 13**

**Yea : 11**

Begay, K  
BeGaye, N  
Bennett

Chee  
Damon  
Filfred

Hale  
Jack  
Slim

Tso  
Yazzie

**Nay : 0**

**Not Voting : 13**

Bates  
Begay, NM  
Brown  
Crotty

Daniels  
Perry  
Pete

Phelps  
Shepherd  
Smith

Tsosie  
Vacant  
Witherspoon

# THE NAVAJO NATION

EXHIBIT

A

## Issue: 2015 Radiation Exposure Compensation Act (RECA) Amendments

**Background:** The Radiation Exposure Compensation Act was passed on October 5, 1990. The Act addresses monetary compensation to individuals who have developed certain cancers and other serious diseases as a result of uranium mining. (The Act's scope of coverage was broadened in 2000.) Since the Act of 1990, the Navajo Nation faced difficulties meeting the eligibility and documentation requirements. These challenges called for an amendment to the Radiation Exposure Compensation Act.

The Navajo Nation established a contract with an independent attorney in 2006 to assist with the amendment. The attorney presented the proposed amendments to the Radiation Exposure Compensation Act on behalf of the Navajo Nation in July 2009. The contractual agreement for the attorney expired in October 2015.

The Radiation Exposure Compensation Act Amendments of 2010 was introduced April 22, 2010, during the 111<sup>th</sup> Congress as H.R. 5119; which was referred to the Committee on the Judiciary, and the Committee on Energy and Commerce. This bill was not enacted, which led to the Radiation Exposure Compensation Act Amendments of 2011 which was introduced April 2011 during the 112<sup>th</sup> Congress as H.R. 1490; which was referred to the Committee on the Judiciary, and to the Committee on Education and the Workforce and Energy and Commerce. Respectively, this bill was not enacted.

Eventually, this led to the Radiation Exposure Compensation Act Amendments of 2013 which was introduced April 2013 as H.R. 1645; which was referred to the Committee on the Judiciary, and to the Committee on Education and the Workforce and Energy and Commerce. Again, the bill was not enacted. Lastly, the Radiation Exposure Compensation Act Amendments of 2015 was introduced February 2015, as S.331; which referred to the Committee on the Judiciary. The bill was also assigned to a congressional committee on February 13, 2015, as H.R. 994; where it will be considered for further action.

If passed, the amendments will: broaden the use of affidavits; allow the combination of work histories; the list of compensable diseases would be expanded for miners; include core drillers as a compensable category; compensate onsite nuclear test participants equally with uranium workers; compensate nuclear test downwinders equally with uranium workers; expand the covered "downwind" counties; extend the time frame of coverage beyond 1971; and address other elements such as vicinity, property and groundwater exposure and attorney fees.

### Impact:

The Navajo people continue to deal with the health effects of uranium mining. The Navajo people worked in the uranium mines and returned home after a long day with the dust from the mine on their clothes and greet their families. These workers are now sick with cancer or other diseases as a direct result of work-related radiation exposure.

### Recommendation:

- Work with appropriate federal representatives and legislative committees, the Navajo Nation, various Uranium Radiation Victims Committees, and New Mexico Representative Ben Lujan (Bill Sponsor) to request a hearing on H.R. 994, the Radiation Exposure Act Amendments of 2015 to ensure its passage. The passage of this bill would mandate the Congress to meet its responsibilities to Navajo communities that continue to be impacted by the uranium mining undertaken by the United States during the Cold War era.

# THE NAVAJO NATION

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**Issue:** National Incident Management System and Public Health Emergency Preparedness: WIC

## **Background:**

The United States has a unique legal and political relationship with Indian tribal governments, as established and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. The Navajo Nation, a separate sovereign entity operates under a three branch governmental system - Executive, Legislative and Judicial Branches. The Navajo Department of Health (NDOH) is under the Executive Branch and has oversight of the Navajo Women, Infant and Children (WIC) Program. Navajo Nation WIC and other Native American Indian and Alaskan Native tribes are designated as State Units for the WIC Program under Regional offices of the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS). Navajo WIC is linked to the USDA, FNS – Western Region Office in San Francisco and is the federal oversight of the Navajo WIC Program.

Navajo Nation is often faced with emergency situations requiring immediate response by the Nation, including NDOH. NDOH has a Public Health Emergency Preparedness Program that has the primary responsibility of collaborating with the Navajo Nation Emergency Management System, to protect lives, health and safety of people living on the Navajo Nation. NDOH responders are trained in various levels of the National Incident Management System to provide an efficient response to minimize adverse impacts by emergency situations.

In the fall, 2015 Navajo Nation was faced with contamination of its water source from toxic spills into the San Juan River. Water from the San Juan River provides water to farms, livestock and often for human consumption. The toxic spill required an immediate response to warn families living downstream of the spill. Navajo WIC communicated this information to USDA, FNS – WRO. The response from USDA, FNS – WRO reiterated that WIC funds cannot be used for disaster response and if WIC funds were so used, it would be an unallowable cost.

## **Impact:**

In exigent circumstances, it is critical for the Navajo Nation to provide an efficient and timely response to emergency situations which threaten lives, health and safety of Navajo citizens. External responses from local and state governments are time delayed due to distance, geographical environment, such as isolation, rurality, limited transportation systems, language barriers, cultural sensitivity, and other factors depending on types of incidents. Unlike emergency response in urban and metropolitan settings, Navajo Nation is dependent on its workforce to provide initial responses to immediately protect lives and to ensure the health status of its people is maintained and to provide a safe environment.

Lack of an emergency response contradicts the local and national effort to improve the quality of life of the people through various and diverse direct service programs. In contracts, a responsive organization to emergency situation provides services which promote the high value of individual lives and communities as a whole. These contributions are often intangible, but valuable to the society as a whole for its survival.

## **Recommendations:**

- The Navajo Nation to request the U.S. Congress to amend national policies to provide waivers for prohibition of USDA, FNS, WIC funds and resources to provide localized emergency response to situations that could endanger life, health, safety and property.
- The Navajo Nation to advocate and collaborate with USDA, FNS, WIC to amend national policies to provide waivers for prohibition of using funds and resources to provide localized emergency response to situations endangering life, health, safety and property.
- The Navajo Nation and USDA, FNS, WIC – WRO to develop recommendation to U.S. Congress to amend national legislation to provide reasonable and prudent emergency responses.



# THE NAVAJO NATION

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**Issue:** Multiple Year State Plans: WIC

**Background:**

7 CFR Chapter II (Food and Nutrition Service), Subpart B (State and Local Agency Eligibility), Section 246.4 (State Plan), (a) (*Requirements*) states in part "By August 15 of each year, each State Agency shall submit to FNS for approval a State Plan for the following fiscal year as a prerequisite to receiving funds under this section..."

In compliance with 7 CFR §246.4 (a) Navajo WIC develops a State Plan each fiscal year concentrating on eleven major components to the State Plan. These components are Vendor and Farmer Management, Nutrition Services and Administration, Nutrition Services, Information Technology, Caseload Management, Civil Rights, Funds Management, Monitoring and Evaluation, Certification & Eligibility, Food Instruments, and Organization & Management. Navajo WIC's State Plan development process begins in April providing the first draft to USDA, FNS – Western Region Office by July 15<sup>th</sup>. The drafts are reviewed by the FNS WRO for completeness and recommended changes are made to the Navajo Nation. A completed State Plan is approved or denied by FNS WRO by the end of September. Navajo WIC as a State Unit develops State Policy and Procedures to carry the intent of each component of the State Plan.

**Impact:**

The WIC State Plan development process is extremely time consuming and is a high cost activity. Planning requires staff time away from their regular duties, travel, lodging, and meals. Because the planners are exempt employees staff donate personal time to complete assigned project for the next phase(s) of the planning process. Planning happens over an extended period of time. The planning process is consumed and dedicated to locating and research documents, data collection, writing and organizing of the policy and procedure.

Upon completion of the State Plan, Navajo WIC provides orientation to the administrative and field clinic staff. This too is a costly event and requires no less than three business days to orientate the staff. The orientation requires staff time away from their regular duties, travel, lodging, and meals. Further, printing cost for the updated and revised standards and procedures are printed for each employee.

**Recommendations:**

- Advocating for the U.S. Congress to support amending 7 CFR §246.4 (a) to allow Navajo WIC State Plans to be valid for multiple years..
- Advocating for the U.S. Office of the President to support amending 7 CFR §246.4 (a) to allow Navajo WIC State Plans to be valid for multiple years..
- Supporting amendment to 7 CFR §246.4 (a) so the State Plan provides a continuum of services between the last year of a funding cycle and the first year of the next funding cycle by having the State Plan expire at the end of the first year of the next funding cycle, or the funding cycle end after the first year of a multi-year Navajo WIC State Plan.

# THE NAVAJO NATION

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**Issue:** Establish an Office for Native American Indian Tribes and Alaskan Natives within USDA – Food Nutrition Services, WIC Program

**Background:**

The Navajo Nation is a federally recognized Native American Indian Tribe with a land base covering approximately 27,245 square miles in the States of Arizona, New Mexico, and Utah. It is one of the largest tribal governments in the United States as well as North America. The population is over 300,000 with about 50% living on the Navajo Nation and the rest residing off the reservation and across the United States. The Navajo Nation has treaties with the United States government, therefore is a sovereign Nation. As such, it administers its own financial, personnel, legal system, and many supportive services. It has a three branch governmental system - Executive, Legislative and Judicial Branches. Navajo Department of Health is under the Executive Branch which has oversight of the Navajo WIC Program. The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions.

Navajo Nation WIC and other Native American Indian and Alaska Native tribes are designated as State Units for WIC Program under Regional offices of the U.S. Department of Agriculture (USDA), Food and Nutrition Services (FNS). Navajo WIC is linked to the USDA, FNS – Western Region Office in San Francisco. Each USDA, FNS regional offices have oversight of several States, territories, and Indian Tribal Organizations. Oversight of State Units by the regional offices are standardized and uniformed regardless of whether it is a State, territory, or an Indian Tribal Organization. Native American Indian and Alaskan Native tribes (ITO – Indian Tribal Organizations) have unique needs in the administration of federal, state and local program and services. As such, USDA, FNS-Western Region Office (WRO) is the federal oversight of the Navajo WIC Program.

The unique needs of Native American Indian Tribes and Alaska Natives have to be experienced to fully understand the value of the cultures and traditional practices of the indigenous tribes and population. USDA, FNS regional offices do not have the experience of addressing unique needs of ITOs in a manner that is sensitive to the uniqueness of Native American Indians and Alaska Natives (ITOs).

**Impact:**

In establishing an Office for Native American Indian Tribes and Alaska Natives, there will be enhanced sensitivity to the needs of Indian tribes and Alaskan Natives. By having the same functions as the existing regional offices, the proposed Office of Native American Tribes and Alaska Natives will exist to collaborate, coordinate, and communicate directly with ITOs.

**Recommendations:**

- Navajo Nation partner with other Native American Indian Tribes and Alaska Natives to support this initiative.
- Navajo Nation partner with National WIC Association and National Indian and Native American WIC Coalition to support this initiative.
- Amend 7 CFR 246 that establishes an office equivalent to a ‘regional’ office for Native American Indians and Alaska Natives.
- Amend 7 CFT 246 that would provide a funding set aside for the Office of Native American Indians & Alaska Natives (ITOs).
- Ensure that amendments do not adversely impact the State Unit designation of ITOs.