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# TITLE 1
# GENERAL PROVISIONS
# CHAPTER 1-1
# ADMINISTRATION OF TRIBAL COURT

## PRELIMINARY PROVISIONS

### §1-1-1 Definitions

The following definitions will apply to this code:

(a) "Business day" means any day in which the business of the Nez Perce Tribe is normally conducted and excluding weekends and holidays.

(b) "Child or minor" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(c) "Code" shall mean the Code of the Nez Perce Tribe and "chapter" shall mean an individual code chapter such as the "Criminal Offenses Chapter", "Civil Procedures Chapter", etc.

(d) "Guardian ad litem" means a guardian who is appointed to represent a party for the purpose of actual, threatened or contemplated litigation.

(e) "Indian" means a member of any Indian tribe, band, group, pueblo or community recognized by the United States and any Alaskan native as defined in the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1628.

(f) "In-lieu fishing site" means certain federal lands along the Columbia River designated by the federal government via PL 79-14 for Indian treaty fishing activities in lieu of usual and accustomed fishing placed inundated by construction of Bonneville Dam. **(definition was added by NPTEC 5/25/10 the addition changed the numerical order of the following subsections)**

(g) "Member of the Nez Perce Tribe" shall include a person whose name appears on the membership roll of the Nez Perce Tribe.

(h) "Nez Perce Tribal Executive Committee", "Executive Committee" or "NPTEC" shall mean the Nez Perce Tribal Executive Committee as described in Article VI of the Constitution and By-Laws of the Nez Perce Tribe.

(i) "Party" means any person having a legal interest in or anything which is the subject of a legal action. A party shall not include any person who may be affected indirectly or consequently by the proceedings but has no legal interest in such proceedings.

(j) "Person" includes but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations, governmental entities, Indian tribes and any other organization or entity involved in private, commercial, or non-profit activity.

(k) “Proceedings” in the Tribal Court shall mean or include all arraignments in criminal cases and all hearings and trials in civil and criminal cases before the Court. **(added by NPTEC 1/12/16)**

(l) "Reservation" shall include all lands within the exterior boundaries of the Nez Perce Reservation as defined in Article III of the Constitution and By-Laws of the Nez Perce Tribe.

(m) "Treaty fishing access site (tfas)" means certain federal lands along the Columbia River designated or acquired by the federal government via Public Law PL 100-581 for Indian treaty fishing activities in lieu of usual and accustomed fishing places inundated by the construction of Bonneville, The Dalles and John Day Dams. **(definition was added by NPTEC 5/25/10 the addition changed the numerical order of the following subsections)**

(n) "Tribal Police" means BIA Law Enforcement, tribal police officers, or any other peace officer authorized by the Nez Perce Tribe to enforce the laws of the tribe.

(o) "Tribe" shall mean the Nez Perce Tribe unless another or no specific Indian tribe is clearly intended.

(p) "Court" or "Tribal Court" means the Tribal Court of the Nez Perce Tribe unless another court is clearly intended.

(q) "Tribal member" means any person enrolled as a member of the Nez Perce Tribe unless another tribe is clearly intended.

**§1-1-2 Citation**

This code shall be known as the Nez Perce Tribal Code and may be cited as "N.P.T.C."

**§1-1-3 Constitutional Authority and Name**

This code is adopted pursuant to the authority vested in the Nez Perce Tribal Executive Committee under Article VIII of the Constitution and By-Laws of the Nez Perce Tribe.

**§1-1-4 Prior Inconsistent Ordinances and Code Provisions Repealed**

Any ordinances or codes previously adopted by the Nez Perce Tribal Executive Committee which are in conflict with this code are hereby repealed.

**§1-1-5 Principles of Construction**

In this code:

(a) masculine words shall include the feminine and singular words shall include the plural and vice versa, unless another meaning is clearly stated;

(b) words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other definition is specified;

(c) whenever a term is defined for a specific section or chapter, that definition shall apply to all sections and chapters of this code unless a contrary meaning is clearly intended;

(d) provisions shall be construed as a whole to give effect to all its parts (i.e. titles, chapters, sections, etc...) in a logical, consistent manner; and

(e) if any provisions of this code or their application to any person or circumstance is held invalid, the remainder of this code, or the applications of the affected provisions to other persons or circumstances is not affected.

**§1-1-6 Records of Court Open to Public Inspection; Exceptions**

Except for files and records in adoptions, incompetency proceedings, juvenile court matters and records sealed by court order, the files and records of the courts of the Nez Perce Tribe shall be open for public inspection. The Court may authorize inspection of closed files and records upon motion and showing of extraordinary need.

**§1-1-7 Specification of Time for Action**

When, pursuant to this code:

(a) the doing of an act within a specified time period is required or authorized, the period of time indicated shall commence on the next day following the act which initiated the time period;

(b) the doing of an act between certain dates, or from one date to another, is allowed or prohibited, the period of time indicated shall include both dates specified. The first date specified designates the first day of the period and the second date specified designates the last day of the period.

**§1-1-8 Court and Clerk**

(a) The Court shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) All acts or proceedings other than those closed to the public pursuant to this code or sealed by order of the presiding judge shall be done or conducted in open session and on the record, whether conducted at the Court in Lapwai, Kamiah, or at any other place within the reservation. The judge may not engage in ex-parte communications with either party or either party's attorney in a matter which is before the Tribal Court, with the exception of those matters which may be conducted ex-parte pursuant to this Code, or limited communications required for scheduling, administrative purposes or emergencies that do not deal with substantive matters. **(amended by NPTEC 1/12/16)**

(c) All motions and application in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the clerk; but the clerk's action be suspended or altered or rescinded by the Court upon cause shown.

(d) Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in this code upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Any party may in addition serve a notice of such entry in the manner provided in this code for the service of papers. Lack of

notice of the entry by the clerk does not affect the time to appeal or relieve a party for failure to appeal within the time allowed except as authorized by the Court.

## JURISDICTION

### §1-1-9 Scope and Extent

The judicial power of the Nez Perce Tribe shall be vested in the tribal judiciary of the Nez Perce Tribe, and shall extend to all cases and controversies in law and equity, arising under the Constitution, By-Laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

### §1-1-10 Territorial Jurisdiction

(a) The territorial jurisdiction of the Nez Perce Tribe shall include all land within the exterior boundaries of the Nez Perce Reservation as defined under Article III of the Nez Perce Tribe's Constitution and By-Laws, and to the greatest extent permissible by law, such other lands as have been or may be added to the reservation, held in trust by the United States for the Nez Perce Tribe or its members or which consist of usual and accustomed fishing locations, in-lieu fishing sites, and treaty fishing access sites (tfas) of the Nez Perce Tribe or open and unclaimed lands. **(amended by NPTEC 5/25/10)**

(b) The jurisdiction of the courts of the Nez Perce Tribe shall extend beyond the Nez Perce Tribe's territorial jurisdiction as set forth above to the extent permissible by law.

### §1-1-11 Original Jurisdiction

The Nez Perce Tribal Court shall have original jurisdiction over all:

(a) crimes committed by any Indian within the Nez Perce Reservation;

(b) violations of the Nez Perce Tribe Fish and Game laws committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands; and

(c) any and all violations of the Nez Perce Tribal Code committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any in-lieu site or any treaty fishing access site (tfas); and **(added by NPTEC 5/25/10)**

(d) civil actions at law or in equity, involving any person or entity and arising under the Constitution, By-laws, laws and regulations of the Nez Perce Tribe, or to which an Indian or Indian owned property is a party.

### §1-1-12 Personal Jurisdiction

(a) The Nez Perce Tribe shall have civil jurisdiction over:

(1) any person residing or present within the reservation or land protected by treaty with the United States government;

(2) any person who transacts, conducts, or performs any business or activity within the reservation by being present on the reservation or by mail, phone, broadcast, cable either in person or by an agent or representative;

(3) any person who owns, uses or possesses any real or personal property situated within the reservation, for any civil cause of action arising from such ownership, use or possession;

(4) any person who commits a tortious act or engages in tortious conduct within the reservation;

(5) persons under the age of eighteen (18) years who are eligible for membership in any federally-recognized tribe; **(amended by NPTEC 4/28/15)**

(6) children and their parent(s), guardian, legal custodians or other persons with responsibility for or control of the child who leave the exterior boundaries of the reservation and over whom the Court had jurisdiction at the time they left;

(7) any real or personal property located on the reservation, the determination of ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable; and

(8) all causes of action, which involve either the tribe, its officers, agents, employees, property or enterprises, a member of the tribe, a member of a federally recognized tribe, or any other matter which effects the interest or rights of the tribe.

(b) The Nez Perce Tribe shall have criminal jurisdiction over:

(1) all crimes committed by any Indian within the boundaries of the Nez Perce Reservation; and

(2) all violations of the Nez Perce Fish and Game Code committed by a member of the Nez Perce Tribe outside the Nez Perce Reservation at any usual and accustomed fishing place or upon open and unclaimed lands.

## ESTABLISHMENT OF COURTS; JUDGES AND OTHER COURT PERSONNEL

### §1-1-13 Establishment of Court

There is hereby established the Nez Perce Tribal Court. The Court shall exercise the jurisdiction of the Nez Perce Tribe including any civil, criminal or juvenile action.

### §1-1-14 Appointment and Number of Judges of the Nez Perce Tribal Judiciary

The Nez Perce Tribal Court shall consist of one chief judge and as many associate judges as the Nez Perce Tribal Executive Committee shall appoint.

## §1-1-15 Judges - Probationary Period; Selection and Training

(a) The Nez Perce Tribal Executive Committee shall appoint for a probationary term of ninety (90) days, a chief judge and one or more associate judges who shall be empowered to act in the absence of the chief judge. During such probationary term, the chief judge or any associate judge may be removed by the Nez Perce Tribal Executive Committee without cause.

(b) Following satisfactory completion of their probationary term, judges may be appointed by NPTEC to a regular term of four years; provided that during such term, a chief judge or associate judge may be removed by NPTEC for cause.

(c) Any judge may be reappointed for any number of terms by the Nez Perce Tribal Executive Committee. Any judge who is not subject to removal for cause **may** be reappointed for a subsequent term of 4 years.

(d) The Chief and Associate Judge(s) of the Tribal Court shall be required to complete and provide to the Law and Order Executive Officer evidence of completion of 30 hours of state-bar approved Continuing Legal Education (CLE) training every three years, including no less than 10 hours of state-bar approved CLE training in subject matter relevant to the practice of law before a tribal court, and no less than 3 hours of ethics training as a minimum for continuing in their positions. **(amended by NPTEC 1/12/16)**

## §1-1-16 Eligibility of Persons to Serve as Judges

(a) Any person, who has attained the age of twenty five years, has graduated from an accredited law school, is a member of the bar of any state and has at least three years of experience as a judge shall be eligible to serve as chief judge of the Tribal Court. When there are otherwise equally qualified candidates for chief judge, those persons who have experience in tribal courts will be given preference in hiring decisions.

(b) Any person, who has attained the age of twenty five years, has graduated from an accredited law school and is a member of the bar of any state shall be eligible to serve as an associate judge of the Tribal Court. Prior experience as a judge or in litigation shall be preferred.

(c) The chief judge may appoint a judge pro tempore of the Nez Perce Tribal Court as necessary. A judge pro tempore shall meet the minimum requirements of an appointed associate judge with tribal court experience preferred. **(Amended by NPTEC 12/26/12)**

(d) No person having been convicted of a crime shall be eligible to be chief judge or associate judge of the Tribal Court.

## §1-1-17 Judges' Duties and Powers

(a) The chief judge shall have general supervisory powers over the Tribal Court.

(b) The chief judge may assign an associate judge or a judge pro tempore to hear and adjudge a particular case. A judge designated by the chief judge shall hear and determine each matter filed in the Nez Perce Tribal Court. If the chief judge is a party to any case before the Tribal Court or Court of Appeals, the most senior associate judge shall appoint a judge pro tempore to hear and adjudge that case.

(c) The chief judge shall be responsible for administration of the courts, shall assign cases, and insure management of the Court's calendar and business. The chief judge may designate an associate judge to act in his absence.

**(addition of subsection (d) and (e) adopted by NPTEC 5/28-29/02)**

(d) The chief judge shall prescribe all necessary rules concerning:

(1) The application process for the selection of Tribal Court of Appeals justices.

(2) Training of Tribal Court judges, Tribal Court of Appeals justices, and court clerks.

(3) The operation of the Tribal Court, subject to the rules being in compliance with NPTEC-approved administrative policies and procedures for the Court's operation. **(amended by NPTEC 1/12/16)**

(4) The operation of the Tribal Court of Appeals.

The rules shall be approved by the Nez Perce Tribal Executive Committee prior to becoming effective and shall be consistent with the provisions of this Code.

(e) On an annual basis, the chief judge with the assistance of the associate judges shall submit a report to the Nez Perce Tribe Office of Legal Counsel of recommended amendments to the Nez Perce Tribal Code, which are deemed necessary for the efficient function of the Tribal Court, the Tribal Court of Appeals, and the exercise of justice.

### §1-1-18 Removal of Judges or Justices for Cause **(section amended by NPTEC action 5/28-29/02)**

(a) In order to remove a judge of the Tribal Court or a justice of the Court of Appeals for cause, a written complaint recommending such removal for cause shall be prepared by the Nez Perce Tribal Executive Committee Office of Legal Counsel at the direction of the Nez Perce Tribal Executive Committee Chairman. Such complaint shall set forth with specificity the facts constituting the basis for such removal. Copies of such complaint shall be delivered to the accused judge or justice, the Nez Perce Tribal Executive Committee, and the Law and Order Subcommittee.

(b) Sufficient cause for such action shall include any of the following:

(1) use of intoxicants or illegal drugs while on duty or to the extent that the person's capacity to perform duties of the position are impaired;

(2) behavior reflecting adversely on the position of the judge or justice of the Nez Perce Tribe, or subject to sanction by the licensing authority of the State in which the judge or justice is licensed to practice law or constituting a violation of the Code of Judicial Conduct approved by the American Bar Association;

(3) conviction of any offense other than minor traffic violations;

(4) desertion of office;

(5) blatant and repeated violations of the civil rights of persons appearing before the Tribal Court or Court of Appeals; or

(6) a pattern of undignified and/or discourteous conduct towards litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity; **(added by NPTEC 1/12/16)**

(7) failure to maintain licensure in good standing with a state bar; **or (added by NPTEC 1/12/16)**

(8) the judge or justice fails to comply with his oath of office and duties.

(c) The complaint shall be investigated by an independent investigator hired by the tribe who shall report his findings and recommendations within ten (10) business days to NPTEC.

(d) A hearing shall be held by NPTEC within ten (10) business days after its receipt of the report from the Office of Legal Counsel and after due notice to the judge or justice involved. At the hearing, the accused judge or justice shall be provided the opportunity to hear and answer all charges made against him, and to present evidence in his defense. Removal can occur only with a majority vote by the members of NPTEC. An action taken by NPTEC to remove a judge or justice is final and not subject to any appeal.

(e) The court clerk shall report any removal for cause under this section to the state bar or bars of which the removed judge or justice is a member.

(f) The chief judge shall periodically review the qualifications of all judges and justices to ensure that continue to be qualified to continue in their duties.

(1) If the chief judge determines that a judge or a justice is no longer qualified to serve as judge or justice, the chief judge shall provide a written report setting forth with specificity the reasons to NPTEC.

**§1-1-19 Disqualification or Incapacity**

(a) A judge shall disqualify himself from acting in any judicial proceeding in which he has any direct interest or when any party in the proceeding is a relative by marriage or blood in the first or second degree. A judge may otherwise disqualify himself when he believes he is unable to be an impartial fact finder in any case.

(b) Disqualification of a judge may be petitioned for by any party to a proceeding by filing a motion setting forth with specificity the reasons for the disqualification. The judge shall refer such a petition to another judge for decision. Such a motion shall only be granted when an actual basis exists that indicates that actual conflict or bias exists so as the judge will be unable to be impartial in a case. (**amended by NPTEC action 5/28-29/02)**

(1) If such a motion to disqualify is denied, the case shall be heard by the original judge in question.

(c) In case of death, illness, incapacity or removal of an associate or pro tempore judge during the course of a trial, the chief judge shall order a new trial and designate another judge to preside.

**§1-1-20 Nez Perce Court of Appeals (amendments to section approved by NPTEC 5/28-29/02)**

(a) The Nez Perce Tribal Court of Appeals is hereby established and granted jurisdiction to hear and determine all appeals from the Nez Perce Tribal Court. Unless otherwise prohibited by this Code or other regulations, ordinances, or resolutions, a party aggrieved by a final judgment or order of the Tribal Court shall be entitled to appeal to the Nez Perce Court of Appeals. The Appeals Court shall:

(1) consist of three (3) justices who have not participated in the case being appealed and are selected randomly by the chief judge. If the decision being appealed is that of the chief judge, an associate judge shall randomly select the justices;

(2) hear an appealed case and other motions via telephonic or video hearing;

(A) A party may move in a timely fashion to have an appealed case or other motion heard at the location of the Nez Perce Tribe Court by demonstrating a compelling reason why such a request is necessary to prevent prejudice to the movant. Any hearing on such a motion shall be via telephone or video conference.

(3) delegate a presiding justice to be chosen by the three (3) justice panel;

(4) rule on all properly filed motions filed during the pendency of an appeal no later than two (2) weeks before a scheduled hearing on the merits of the appeal; and

(5) issue written appellate opinions within three (3) months of the appeals hearing that comply with NPTC § 2-9-8.

(b) Any person who has attained the age of twenty five years, has graduated from an accredited law school, is a member in good standing of the bar of any state, and has at least three years of legal experience shall be eligible to serve as a justice for the Nez Perce Court of Appeals.

(c) The chief judge shall nominate all candidates to serve as justices to the Nez Perce Tribal Executive Committee for confirmation and approval.

(d) Justices of the Nez Perce Court of Appeals are subject to removal for cause as provided in NPTC § 1-1-18.

(e) A justice shall disqualify himself from acting in any judicial proceeding in which he has any direct interest or when any party in the proceeding is a relative by marriage or blood in the first or second degree. A justice may otherwise disqualify himself when he believes he is unable to be unbiased in any case.

(1) Any party may move to disqualify a justice by setting forth with specificity the reasons for the disqualification. Such a motion shall only be granted when evidence of an actual conflict or bias exists.

(2) A motion to disqualify a justice shall be referred to the Chief Judge of the Tribal Court, who shall only hear the issue of disqualification.

(f) In case of death, illness, incapacity or removal of a justice, the Chief Judge shall designate another justice to preside and may grant other necessary relief as necessary to avoid prejudice to a party.

**§1-1-21 Court Clerks**

(a) The court clerk and any deputy clerks shall be appointed in accordance with tribal policies and procedures.

(b) The court clerk and any deputy clerks shall:

(1) be twenty-one (21) years of age or older and of good moral character;

(2) have never been convicted of a felony or of a misdemeanor within the year prior to appointment;

(3) have demonstrated competence in the skills essential to the preparation and maintenance of court records, including word processing and computer docketing skills, filing skills and basic understanding of court procedure;

(4) have obtained a high school diploma or equivalent experience;

(5) be bondable; and

(6) be a notary public or become a notary public within six (6) months following hiring.

**§1-1-22 Duties of the Court Clerk**

The court clerk and any deputy clerks shall:

(a) supervise the receipt and maintenance of all court records, files and dockets;

(b) keep a record of all proceedings of the Court;

(c) administer oaths and affirmations;

(d) collect and account for all fines, bail or bond money, fees or other funds which come to the Court, issue receipts and promptly deliver such funds to the finance department;

(e) assist the Court in the preparation and issuance of documents at the direction of any tribal court judge; and

(f) perform other functions as directed by the chief judge.

### §1-1-23 Indian Child Welfare Worker

NPTEC shall appoint an Indian child welfare worker to carry out the duties and responsibilities set forth in this code and to perform such other duties in connection with the care or custody of children as the Court may require.

### §1-1-24 Case Worker

A case worker shall be a case worker or social worker employed by or authorized to act on behalf of the tribe to carry out the duties and responsibilities set forth in this code and to perform such other duties in connection with the welfare of individuals as the Court may require.

### §1-1-25 Court Rules

The Nez Perce Tribal Court and all courts established under this chapter may from time to time prescribe rules for the conduct of court business. Such rules shall be consistent with and supplement the NPTEC-approved policies and procedures, manuals, handbooks, etc., for the operation of the Tribal Court as well as the rules of procedure and other provisions of this code. Copies of such rules shall be made available for public inspection and copying. **(amended by NPTEC 1/12/16)**

## JURORS

### §1-1-26 Selection of Jury Panel

In January of each year, the court clerk shall select at least fifty (50) names from the list of eligible jurors and each shall be notified of his or her selection. This selected list shall comprise the trial jury list for the ensuing year from which jury panels shall be selected from time to time. A jury panel shall consist of not less than eighteen (18) names. The selection from the list of eligible jurors shall be by lot or some other means of random impartial selection.

### §1-1-27 Time and Manner of Notification

Those persons who are selected to serve on a jury panel shall be notified at a reasonable time prior to the trial date and the notice shall state the date, time and place they are to report for jury duty. Written notice shall be mailed, or delivered to the prospective juror in person and proof of service filed.

### §1-1-28 Excusing or Postponing Jury Duty **(Amended by NPTEC 7/8/14)**

(a) The following persons are exempt from jury duty:

(1) Nez Tribal Executive Committee (NPTEC) Members - tribal members who are actively sitting as NPTEC members shall be exempt from jury service.

(2) Members of police departments.

(b) In addition, the judge may excuse the prospective jurors as described below:

(1) A person who is sixty-five (65) years of age or older excused if the person indicates that he or she wishes to be excused. This excusal shall be permanent.

(2) Anyone who is incapable, by reason of mental or physical infirmity, of rendering satisfactory jury service.

(c) The judge may determine that the person requesting to be excused, may instead have their jury service postponed.

**§1-1-29 List of Eligible Jurors**

(a) The court clerk shall be responsible for developing a list of eligible jurors annually.

(b) The jury list shall be drawn from the names of all tribal members residing within the 1855 reservation boundaries who are eighteen (18) years or older and any tribal employee eighteen (18) years or older.

**§1-1-30 Compensation of Jurors**

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily service and/or mileage if any, as established by court rule.

**§1-1-31 Number of Jurors**

(a) A jury shall consist of six (6) persons seated by the judge selected from the jury list. The Court may allow one or two additional jurors to be chosen as alternate jurors. In the event an alternate juror is chosen he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberation.

(b) When the jury has been seated, the jurors' oath shall be administered by the judge.

**§1-1-32 Verdict of Jury**

The verdict of the jury may be rendered by a majority vote of four (4) jurors in a civil case, but must be unanimous in a criminal case. In the event the jury shall be unable to agree upon a verdict within a reasonable period of time and shall declare to the Court that they are hopelessly deadlocked, the Court shall declare a mistrial and discharge the jury. In the event a mistrial is declared and the jury discharged, the case shall be set for a new trial before a different jury as soon as practicable unless the prosecution should move the Court for dismissal of the case, and such motion is granted by the Court.

**§1-1-33 Jurors' Responsibilities**

The Court may order the jury to view the premises where the offense or other material facts occurred. The Court may order the discharge of a juror who becomes sick or is otherwise unable to perform his duty and substitute an alternate juror. In the absence of an alternate and the failure of the parties to stipulate to continue the trial with five (5) or less jurors, the jury shall be discharged and a new jury shall be formed to hear the case.

**§1-1-34 Examination of Jurors**

(a) Prior to voir dire examination by the attorneys of the parties, the Court may conduct a preliminary examination of all prospective jurors. Following examination of the jury by the Court, if any, the plaintiff and defense, in that order, shall have the opportunity to ask questions of the prospective jurors to determine if there is any reason why a particular candidate for the jury should not be seated as a juror.

(b) Either party may challenge any prospective juror for cause based upon bias or inability to sit as a fair and impartial juror. The Court shall make all final determinations of law and fact on any challenges for cause. The number of challenges for cause by either party is unlimited.

(c) A person is unable to sit as a fair and impartial juror under this section if he:

(1) is not a tribal member residing on or near the Nez Perce Reservation or an employee of the tribe, and eighteen (18) years of age;

(2) is incapable, by reason of physical or mental disability of rendering satisfactory jury service;

(3) is unable to read, speak and understand the English language; and

(4) has lost his right to vote because of a criminal conviction.

(d) A person is biased under this section if he has a state of mind in reference to the case, or to either of the parties which in the exercise of a sound discretion on the part of the Court, leads to the inference that he will not act with entire impartiality.

(e) When both sides have completed their voir dire questioning of the prospective jurors and alternates, each side shall exercise its preemptory challenges. Each party shall have four (4) peremptory challenges with which they may disqualify any prospective juror and need not state any reason for so doing.

**§1-1-35 Oath to Trial Jury**

After the six (6) members of the jury and the alternate, if applicable, have been selected and seated, the Court shall administer an oath by which the jury swears or affirms that it will act fairly and impartially in the trial it will hear.

**ATTORNEYS; LEGAL INTERNS**

**§1-1-36 Attorneys – Admission**

(a) Any person appearing as a party in any civil, criminal or juvenile action shall have the right to be represented by an attorney of his own choice at his own expense.

(b) Any attorney who is licensed to practice in any state or the District of Columbia is eligible to be admitted to practice before the courts of the Nez Perce Tribe.

(c) To practice before the courts of the Nez Perce Tribe, an attorney must certify: **(amended by NPTEC 1/12/16)**

(1) that he is eligible to be admitted to the Court;

(2) that he will abide by the rules of the courts of the Nez Perce Tribe and any orders issued by such courts; and

(3) that he has never in the past been convicted of any crime.

(d) Upon receipt of an application for admission to practice before the courts of the Nez Perce Tribe, the chief judge shall review the application and may investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the chief judge shall notify the attorney that he has been admitted to practice.

(e) The chief judge shall require any attorney admitted to practice before the courts of the Nez Perce Tribe to take the following oath either orally or in writing:

> "I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States and support and defend the Nez Perce treaties, constitution and laws of the Nez Perce Tribe, and that I will maintain proper respect for the courts and judicial officers of the Nez Perce Tribe."

(f) An attorney may appear in person to take the oath prescribed herein or may subscribe his signature to the oath and forward it to the chief judge. Upon administering the oath, the Court shall issue a certificate of admission to practice before the courts of the Nez Perce Tribe.

(g) All persons employed as attorneys in the Law and Justice Department shall be required to complete and provide to the Law and Order Executive Officer evidence of completion of 30 hours of state-bar approved Continuing Legal Education (CLE) training every three years, including no less than 10 hours of state-bar approved CLE training in subject matter relevant to the practice of law before a tribal court, and no less than 3 hours of ethics training as a minimum for continuing their positions. **(added by NPTEC 1/12/16)**

## §1-1-37 Attorneys – Suspension

(a) The chief judge may suspend or disbar any attorney from practice before the courts of the Nez Perce Tribe after due notice and a hearing if such attorney shall be found guilty of the following:

(1) a violation of his oath to the Court;

(2) suspension or disbarment from practice before any state, federal or tribal court;

(3) a violation of the rules of professional conduct of any state bar to which he is a member; and

(4) the conviction of a felonious act.

(b) All suspensions and disbarments from practicing before the Nez Perce Tribal Court shall be for a period as determined by the judge.

(c) The court clerk shall report all suspensions and disbarments from the Tribal Court to the licensing authority of each jurisdiction in which the affected attorney is licensed.

(d) Any attorney who has been suspended from the Nez Perce Tribal Court may appeal to the Nez Perce Tribal Court of Appeals.

**§1-1-38 Attorneys - Annual Fees**

As a condition of admittance to practice before the courts of the Nez Perce Tribe, an attorney shall pay a fee of $50.00 unless waived by the tribal court chief judge. On February 1st of each year thereafter, the attorney shall pay to the Court $50.00 as an annual fee. Any attorney failing to pay such annual fee by February 1 of each year shall forfeit the right to practice before the courts of the Nez Perce Tribe until formally readmitted. The Chief Court Clerk/designee shall keep timely and accurate records of attorneys admitted to practice in the Court and shall remove all attorneys from the admittance list who have not paid annual fees as required herein by February 1 of each year and notify the attorney in writing of his or her removal from the admittance list. **(amended by NPTEC 1/12/16)**

**§1-1-39 Attorneys – Pro Hac Vice**

A judge of a court of the Nez Perce Tribe may waive the formal admission procedure and payment of the annual fee as required herein only on motion of an attorney making an appearance for the limited purpose of a single, specific case, and only if such attorney is associated in such case with an attorney who is formally admitted to practice before the courts of the Nez Perce Tribe. Any attorney wishing to appear in Tribal Court under this section shall submit a $50.00 filing fee with the motion provided above.

**§1-1-40 Court Bar Roster**

The clerk of the Court of the Nez Perce Tribe shall maintain a roster of all attorneys admitted to the Tribal Court.

**§1-1-41 Legal Interns**

Any person who has obtained a legal intern license under the Idaho State Bar Commission Rules shall be eligible to practice in the Nez Perce Tribal Court provided the supervisory attorney of any such person is eligible to practice before the Court. A legal intern admitted to practice before the Tribal Court under this section shall be considered an attorney while engaged in such practice and for the purposes of this code.

**§1-1-42 Law and Order Executive Officer, Nez Perce Tribal Prosecutor, Deputy Prosecutor, and Public Defender, Conflict Prosecutor and Public Defender, Child Support Enforcement Attorney-Appointment and Duties (section amended by NPTEC 1/12/16)**

(a) Prior to the beginning work for the Tribe, the following positions must be appointed by resolution of Nez Perce Tribal Executive Committee:

(1) the Law and Order Executive Officer (LOEO) to oversee the Law and Justice Department (Department). The LOEO shall directly supervise the Chief Judge, Tribal Prosecutor and Tribal Public Defender, conflict Prosecutor(s) and Public Defender(s) and other program managers in the Department in regards to administrative matters, and have the authority to develop comprehensive written policies and procedures which must be approved by the NPTEC, as well as other documents such as written guidelines to assure the integrity, fairness, consistency, independence, timeliness and transparency of all entities within the Law and Justice Department. The LOEO shall be law-trained and possess a license to practice law from any state.

(2) the Prosecutor and Deputy Prosecutor(s) for the Nez Perce Tribe to pursue criminal prosecutions and other matters on behalf of the Nez Perce Tribe. The Prosecutor and any Deputy Prosecutor(s) shall be law trained and possess a license to practice law from any state.

(3) the Public Defender and Deputy Public Defender(s) for the Nez Perce Tribe to provide free public defense services to eligible criminal defendants in the Nez Perce Tribal Court. The Public Defender and any Deputy Public Defender(s) shall be law trained and possess a license to practice law in from any state.

(4) Conflict Public Defender(s) and Conflict Prosecutor(s), who shall be law-trained and possess a license to practice law in any state. These attorneys may represent either the Nez Perce Tribe or eligible criminal defendants in the Nez Perce Tribal Court when a conflict of interest exists for both the Prosecutor and the Deputy Prosecutor, or for both the Public Defender and the Deputy Public Defender, in a case before the Nez Perce Tribal Court. Prior to appointment in any case, conflict counsel must be under a contract approved by resolution of the NPTEC.

(5) a Child Support Enforcement attorney(s) who shall be law-trained and possess a license to practice law in any state to assist in the enforcement of laws pertaining to the Tribe's Child Support Enforcement Program.

(b) No such attorney shall be appointed unless the appointee is admitted to practice before the Court as provided herein.

(c) The Prosecutor and Public Defender and any conflict Prosecutor(s) or Public Defender(s) shall be under the supervision of the Law and Order Executive Officer, the Deputy Prosecutor and the Child Support Enforcement Attorney shall be under the supervision of the Prosecutor, and the Deputy Public Defender shall be under the direct supervision of the Public Defender. Decisions regarding which cases will be charged and the manner in which prosecution is conducted will be made at the discretion of the Prosecutor/conflict Prosecutor. Decisions regarding the manner in which a defense is to be conducted will be made at the discretion of the Public Defender/conflict Public Defender.

(d) The Prosecutor/Deputy Prosecutor is authorized to represent the tribe in the prosecution of all civil infractions, criminal prosecutions, and juvenile matters. The Prosecutor shall make all final decisions on the submission of complaints or other legal action to be taken in the prosecution of cases.

(e) The Public Defender is authorized to represent adult and juvenile tribal members charged with a crime or crimes in the Tribal Court and civil matters before the Court, under the Nez Perce Tribal Code, so long as the opposing parties in a civil matter are not both Nez Perce tribal members. The Public Defender may also represent other eligible defendants in Tribal Court in cases where the Nez Perce Tribe has jurisdiction over that defendant. The Public Defender shall zealously represent his or her clients as required by the rules of professional conduct in the jurisdiction in which he/she is licensed to practice law.

## CONTEMPT

### §1-1-43 Acts or Failures to Act Which Constitute Contempt of Court

Any person may be held in contempt of court for any of the following reasons:

(a) disorderly or contemptuous or insolent behavior, committed in immediate view and presence of any tribal court which interrupts its proceedings;

(b) any breach of the peace, noise or other disturbance which interrupts the proceedings of the Court;

(c) disobedience or resistance to any process, judgment, summons or order lawfully issued by the Court;

(d) misbehavior in office, or other willful neglect or violation of duty as an attorney or a clerk, court administrator, police officer or other person appointed, elected, or hired to perform a representative, judicial or ministerial service in connection with the operation of the Court;

(e) deceit or abuse of process of the Court by a party or attorney to a judicial proceeding;

(f) acting as an attorney, officer, spokesman or official of the Court without authority;

(g) refusing to be sworn or answer as a witness; and

(h) any other interference with the process, proceedings, or dignity of the Court or a judge of the Court while in the performance of his official duties.

### §1-1-44 Civil Contempt

(a) A civil contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform, or a past act which violates a Tribal Court rule or the authority of the Court.

(b) Relief in a civil contempt proceeding may include:

(1) a fine payable to the Court; or

(2) the imposition of a fine or imprisonment for the purpose of coercing performance. Such fine or imprisonment shall remain in effect for so long as the party in contempt has the ability to comply with the Court order or directive.

**§1-1-45 Criminal Contempt**

(a) Criminal contempt is a past act which knowingly or wilfully violates a Tribal Court rule or the authority of the Court.

(b) Criminal contempt is an offense which may be punishable by a fine or imprisonment.

**§1-1-46 Contempt Procedure**

(a) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and as such may be adjudged and punished summarily.

(b) All other contempts shall be determined at an outside hearing. Notice of the hearing shall be given orally by the judge in open court in the presence of the defendant, upon the filing of a complaint by the prosecutor, by an order to show cause or the issuance of an arrest warrant. The notice shall state:

(1) the time and place for the contempt hearing, allowing a reasonable time for the preparation of the defense;

(2) the exact contempt charges and the essential facts constituting such charges;

(3) whether the contempt proceedings are civil or criminal as provided by this chapter; and

(4) the sanctions which may be imposed against the defendant.

(c) In proceedings involving other than direct contempt cases:

(1) the defendant in a criminal contempt proceedings shall have the right to a jury trial in any case where the punishment to be imposed may exceed six (6) months;

(2) if the charge involved disrespect to or criticism of a judge, such judge is disqualified from presiding at the trial or hearing except with the defendants consent.

## SOVEREIGN IMMUNITY

### §1-1-47 Sovereign Immunity (addition authorized 10/9/01)

(a) Except when explicitly and unequivocally provided in this Code or specifically waived by a resolution of the Nez Perce Tribal Executive Committee specifically referring to such a waiver, the Nez Perce Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

(b) Any waiver of sovereign immunity shall be narrowly construed and any ambiguities in any waiver of sovereign immunity shall be construed in favor of the Nez Perce Tribe.

## CHOICE OF LAW (section added by NPTEC 12/24/02)

### §1-1-48 Choice of Law

(a) When choosing what law applies, the Tribal Court and Tribal Court of Appeals shall apply the law of the Tribe except to the extent that federal law governs. In construing and applying the Nez Perce Tribal Code or other tribal regulations, ordinances, or resolutions, the Tribal Court and Tribal Court of Appeals shall consider Nez Perce Tribal Code or other tribal regulations, ordinances, or resolutions first and secondly, tribal case law.

(b) To the extent no law of the Tribe is applicable, the Tribal Court and Tribal Court of Appeals shall consider and, if appropriate, apply customs and traditions of the Tribe as they are relevant to the controversy.

(c) The Tribal Court and Tribal Court of Appeals may consider other tribal and federal laws and procedures as persuasive authority in ruling on questions of procedure and case law of other tribal and federal courts as persuasive authority in ruling on questions of substance. In the absence of any persuasive tribal or federal authority, the Tribal Court and Tribal Court of Appeals may look to the statutes or case law of the states for guidance.

# CHAPTER 1-2
# SMALL CLAIMS

## §1-2-1 Scope and Purpose

(a) The purpose of this chapter is to provide an alternative means of resolving disputes for the parties to appropriate civil law suits. Specifically, this chapter will allow individuals to save time and costs by reaching early resolution of cases in an informal setting without sacrificing the quality of justice.

(b) This chapter shall apply only to claims for money damages of $3,500 or less including interest or property disputes in which the property involved is valued at $3,500 or less. No appeal shall be available from the judge's decision under this chapter and the losing party shall be responsible for the payment of court costs.

## §1-2-2 Procedure

(a) A party may petition the Tribal Court for a hearing under this chapter or, at any time prior to trial, request that rather than continue with formal litigation proceedings the matter be submitted to small claims proceedings.

(b) A request or petition for small claims proceedings shall be submitted to the Tribal Court in writing, signed by the party submitting the request or petition and shall include:

(1) the names and addresses of the person(s) requesting the proceedings;

(2) the names and addresses of any other person(s) involved in the dispute that could contribute to resolution of the matter; and

(3) a short statement of the problem involved and the reason the proceedings are requested.

(c) If formal litigation proceedings have already been instigated and based upon the best interest of all parties involved and whether significant and complex issues of law exist, the judge, prior to the date set for trial:

(1) shall grant or deny a request for small claims proceedings; and

(2) may transfer an eligible case to small claims proceedings regardless of whether a request has been submitted.

## §1-2-3 Mediation and Hearings (amendment to section adopted by NPTEC 5/28-29/02)

(a) Upon petition to the Court, all small claims proceedings are subject to mandatory court-ordered mediation established pursuant to NPTC chapter 1-3 prior to any hearing.

(b) If no agreement is reached through mediation, the Mediator shall file a written report signed by the parties with the Court stating that the parties were unable to reach an agreement and the clerk shall set a date for a small claims hearing within twenty (20) business days after the Mediator contacts the court. The date for hearing shall not be changed except for

extreme and unanticipated emergencies as established in writing and approved by the judge assigned to the case. The Court shall issue a notice of the petition or request for transfer which shall be served upon the other party in the manner provided by the Rules of Civil Procedure.

(c) At least ten (10) business days prior to the hearing, each party shall submit a detailed summary of his position together with copies of all documents including medical reports, bills, records, photographs and any other materials supporting the party's claim to the opposing party by certified mail and the clerk of the Court.

(d) Each individual party shall attend the hearing in person. Corporations, governmental bodies, or other entities, shall be represented at the hearing by an officer or other person. Attorneys shall be barred from participating in any small claims proceedings. During the hearing, the parties may call and subpoena witnesses and present evidence on their behalf. Following the hearing, the Court shall decide the matter in dispute and issue a judgment.

# CHAPTER 1-3
# ALTERNATIVE DISPUTE RESOLUTION
**(amendments to chapter adopted by NPTEC 5/28-29/02)**

## §1-3-1 Scope and Purpose

The purpose of this chapter is to provide an alternative means of resolving disputes for the parties to certain civil law suits. Specifically, this chapter will allow individuals to save time and costs by reaching early resolution of cases in an informal setting without sacrificing the quality of justice. Mediation is a process by which a neutral mediator appointed by the court or agreed to by the parties in reaching a mutually acceptable agreement. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, and finding points of agreement. The decision made is that of the parties, not of the mediator. No appeal shall be available from an agreement reached by the parties under this chapter.

## §1-3-2 Matters Subject to Mediation

(a) All small claims cases defined in NPTC chapter 1-2 are subject to mandatory court-ordered mediation prior to trial.

(b) All civil domestic relations matters involving a controversy over custody or visitation of minor children are subject to mediation by agreement of the parties prior to trial.

(c) The Court has the discretion to order mediation in other civil cases prior to trial where the Court believes such mediation is in the best interests of all the parties and is not otherwise inappropriate under the facts of the particular case.

(d) The parties to any civil action may petition the Tribal Court for mediation at any time prior to trial.

(e) Matters involving housing or gaming disputes, employment termination, domestic relations matters where domestic violence is alleged, and any dispute where there is a risk of severe prejudice to a party from delay are exempt from this Chapter.

## §1-3-3 Application

(a) The parties to a civil action who have petitioned the Court for mediation shall submit their request to the Tribal Court in writing, signed by all parties to the dispute including:

(1) the names and addresses of the parties;

(2) the names and addresses of any other persons involved in the dispute who may contribute to resolution of the matter; and

(3) a short statement of the problem involved and the reason mediation is requested.

(b) The judge:

(1) shall grant or deny a request for mediation;

(2) may refer an eligible case to mediation regardless of whether a request has been submitted; or

(3) once mediation is granted or otherwise imposed, shall stay the proceedings in the litigation unless the parties agree to lift the stay.

(c) Any action may be exempt or withdrawn from mediation by the presiding judge at any time upon a determination that, for any reason, the case is not suitable for mediation.

**§1-3-4 Certification and Compensation of Mediators**

(a) The chief judge shall compile a list to be maintained by the clerk of court of persons certified as mediators. An individual may be certified as a mediator if he:

(1) is determined by the chief judge to be qualified and competent to perform the duties of a mediator based on experience and official training;

(2) has read and understands this Code and all applicable ethical standards;

(3) takes the following oath either orally or in writing:

"I do solemnly swear (or affirm) that I will support the Constitution and laws of the United States and support and defend the Nez Perce Treaties, Constitution and laws of the Nez Perce Tribe, and that I will maintain proper respect for the Courts and Judicial Officers of the Nez Perce Tribe."

(b) The chief judge may require additional training of certified mediators if deemed necessary and appropriate.

(c) Mediators shall be paid a fee of $10.00 per day and shall be reimbursed for expenses reasonably incurred. At the time when the mediator files his report, or when a case is withdrawn from mediation, the mediator shall submit a voucher on the form prescribed by the clerk for payment of compensation and reasonable expenses necessarily incurred in the performance of his duties. In determining whether actual expenses incurred are reasonable, the mediator shall be guided by the limitations placed upon travel and subsistence expenses of tribal employees in accordance with tribal policy and procedures. All mediator costs shall be borne by the parties. Where the court orders mediation, the party's filing fee shall be applied to the costs of the mediator.

**§1-3-5 Selection of Mediator for Individual Cases**

A certified mediator may be chosen to mediate a dispute by written agreement of the parties. If the parties do not select a mediator one shall be appointed by the chief judge.

**§1-3-6 Disqualification**

(a) A mediator shall be disqualified to preside at mediation if he:

(1) violates the Canons of Judicial Ethics which apply to Nez Perce tribal judges under this code;

(2) has a personal or financial interest or is a close relation to a party.

(b) Any person whose name appears on the roster maintained in the clerk's office may ask at any time to have his name removed or, if selected to serve, decline to serve, but remain on the roster.

(c) Complaints regarding mediators shall be made to the chief judge in writing and shall be treated as any complaint against a judge of the Nez Perce Tribe.

**§1-3-7 Hearings**

(a) The mediator shall contact the parties to schedule an initial meeting within twenty (20) business days after the case is referred to mediation.

(b) At least ten (10) business days prior to the meeting, each party shall submit a detailed summary of his position together with copies of all documents including, bills, records, photographs and any other materials supporting the party's claim to the mediator and the opposing party by means of certified mail.

(c) Each individual party shall attend the meeting in person. Corporations, governmental bodies, or other entities, shall be represented at the hearing by an officer or other person with complete settlement authority. Attorneys shall be barred from participating in any mediation proceedings except to assist their clients in filing complaints against mediators or petitions for protective orders.

(d) The parties may upon obtaining the advance consent of the mediator, bring with them such other persons, not including their attorney, as will tend to further the resolution of the issues of the case.

(e) The conduct of the meeting shall be within the discretion of the mediator. The mediator shall define and describe the process of the mediation, confidentiality, the duties and requirements of the mediator and the parties, the fact that any agreement reached will be reached by mutual consent of the parties, and the ability of the parties to seek advice of counsel. The mediator shall objectively listen to the positions of the parties and assist the parties in reaching a settlement of all or some of the issues of the case.

(f) Mediator meetings may be held at the Tribal Court or other room in a tribally owned building made available to the mediator by the clerk's office. When no such room is available, the meeting shall be held at any other suitable location selected by the mediator. In making the selection, the mediator shall consider the convenience of the parties.

(g) (omitted in original by error)

(h) The mediator shall be authorized to establish reasonable rules and issue orders necessary to make the meeting productive and may with the agreement of the parties, hold additional meetings to attempt resolution of the issues.

**§1-3-8 Petition to Terminate Mediation**

Any party in a mediation proceeding may petition the Court in writing for an order to terminate the mediation process. Upon receipt of the petition, the Court shall grant the request and issue an order lifting the stay of proceedings in the litigation.

**§1-3-9 Judgments**

(a) If an agreement is reached during the mediation, the mediator shall file a report with the clerk's office not more than five (5) business days following the date of the agreement. The clerk shall serve copies of the report filed on the parties.

(b) The mediators report shall be in writing, signed by the mediator and shall include:

(1) the names and addresses of each party;

(2) a statement that the parties have agreed to a particular resolution to a disputed issue, if such is the case;

(3) a statement that all parties agreed that the mediator would decide on a disputed issue, if such is the case;

(4) a general description of the dispute;

(5) the final resolution of any disputed issues.

(c) A copy of any agreement between the parties shall be signed by the parties and appended to the mediator's report.

(d) Promptly upon the filing of the mediator's report and the parties' agreement with the clerk, the Court shall review the documents and enter judgment thereon if the Court finds the agreement to be consistent with the laws of the Nez Perce Tribe and is satisfied that the parties entered into the agreement knowingly and freely. The judgment shall have the same force and effect as any judgment of the Tribal Court in a civil action.

# CHAPTER 1-4
# AMENDMENT OF CODE
**(chapter amendments adopted effective 9/14/99)**

## §1-4-1 Definitions

(a) "BIA-NIA" means the North Idaho Agency of the Bureau of Indian Affairs.

(b) "OLC" means the Office of Legal Counsel of the Nez Perce Tribal Executive Committee.

(c) "Subcommittee" means the Law and Order Subcommittee of the Nez Perce Tribe.

## §1-4-2 Amendment Process

(a) A proposed amendment to the Nez Perce Tribal Code shall be in writing and presented to the OLC. Any proposed amendment shall include:

(1) the reason for the proposed amendment;

(2) the specific action the proponent wishes the Nez Perce Tribal Executive Committee (NPTEC) to take on the amendment; and

(3) the code sections which would be amended (each numbered) or a statement that the amendment would create new sections.

(b) Upon receipt of the amendment, the OLC shall research the code and other applicable laws to determine if conflicting provisions exist. Upon completion of this review, the OLC shall submit the amendment to the subcommittee along with OLC comments including the identification of any conflicting code provisions or other laws and any appropriate legislative history.

(c) Following receipt of the proposed amendment and comments from the OLC, the subcommittee shall determine whether the amendment is meritorious. If so, at least fifteen (15) business days prior to subcommittee action on the proposed amendment, it shall post in a conspicuous location in Lapwai, Kamiah, and Orofino:

(1) a statement of the purpose and effect of the intended action;

(2) the text of the proposal;

(3) those provisions of the code which would be repealed by the proposed amendment, if any;

(4) that written comments may be submitted over the next fifteen (15) business days to the chairman of the subcommittee; and

(5) that any comments submitted after the close of the fifteen (15) day comment period will not be considered in subcommittee or NPTEC action on the proposed amendment.

(d) The subcommittee shall determine whether to hold a public hearing on the amendment. Such determination may be based upon the potential controversy related to the proposal or whenever the subcommittee otherwise determines that additional public input would be useful and constructive. If a hearing is to be held, the subcommittee shall post in a conspicuous location in Lapwai, Kamiah and Orofino:

(1) a statement of the purpose and effect of the intended action;

(2) the text of the proposal;

(3) those provisions of the code which would be repealed by the proposed amendment, if any;

(4) that on a specified date not sooner than fifteen (15) business days from the time of posting, a hearing will take place at a specified location for the purpose of taking public comment; and

(5) that the comment period on the proposed amendment will be extended until the end of the hearing.

(e) The public comment provisions of this chapter shall not apply when the subcommittee determines that a proposed amendment is an interpretive rule, general statement of policy, or rule which addresses the internal management of the Nez Perce Tribe so long as such a rule does not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

(1) No resolution is necessary to enact an amendment if the amendment is made to correct a non-substantive clerical or typographical error. **(NPTEC authorized addition of section July 9, 2002).**

(f) After the end of the comment period, if any, the subcommittee shall work with the OLC to produce an acceptable draft of the amendment by incorporating any comments determined to be meritorious by the subcommittee and any subcommittee directives and converting the proposed amendment into the appropriate code and resolution format.

(g) Once an acceptable draft is produced, the subcommittee shall present it to NPTEC along with a summary of written public comments, the public hearing record, if any, and its own recommendations and/or comments related to the proposed amendment.

(h) Following presentation of the amendment to NPTEC, it shall approve, reject or re-submit the amendment to the subcommittee with further instructions. NPTEC shall make the final determination of any matter related to the amendment including whether public comment must be provided or whether to hold a public hearing.

(i) Following approval of an amendment by NPTEC, NPTEC staff shall present it to the office of the superintendent of the BIA-NIA for review as provided in the Constitution and By-Laws of the Nez Perce Tribe Art. VIII, Section 3.

(j) Following the enactment of an amendment, NPTEC staff shall:

(1) index it by both recording the resolution number and placing a copy of the resolution in the annual indexes;

(2) post in a conspicuous location in Lapwai, Kamiah and Orofino a copy of the final amendment. The amendment shall also be listed in the NPTEC minutes mailed to tribal members.

(k) Within twenty (20) business days following receipt of the adopted amendment from NPTEC staff, the OLC shall submit pre-codification notices to a pre-determined list of individuals who have copies of the code and have requested updates. Actual codification shall be conducted annually, according to a schedule determined by the subcommittee.

**§1-4-3 Emergencies**

(a) The regular amendment process shall not apply when NPTEC determines that prompt action is necessary for the preservation of life, health, property, order or natural resources. Emergency amendments may only be proposed by NPTEC, the NPTEC chairman or the subcommittee and shall be submitted to the OLC.

(b) The OLC shall research the code and other applicable law to determine if conflicting provisions exist. Following OLC review, it shall present the amendment to the subcommittee along with OLC comments, any conflicting code provisions, appropriate legislative history and the rationale for an emergency amendment. If necessary, the NPTEC chairman may direct that an emergency amendment be submitted directly to NPTEC without subcommittee review.

(c) Following presentation of the emergency amendment to the subcommittee, it shall work with the OLC to produce an acceptable draft of the amendment by incorporating any subcommittee directives and converting the proposed amendment into the appropriate code and resolution format.

(d) Once an acceptable draft is produced, the subcommittee shall present it to NPTEC along with any recommendations and/or comments related to the proposed amendment. Emergency amendments shall be reviewed by NPTEC following receipt of the amendment from the subcommittee. If necessary, the NPTEC chairman may call a special NPTEC meeting for this purpose. During such review, NPTEC shall adopt, reject or return the amendment to the subcommittee with further modifications and/or instructions.

(e) Following approval of an emergency amendment by NPTEC, NPTEC staff shall present it to the office of the superintendent of the BIA-NIA for review as provided in the Constitution and By-Laws of the Nez Perce Tribe Art. VIII, Section 3.

(f) Following enactment of an emergency amendment, NPTEC staff shall:

(1) index the amendment by both recording the resolution number and placing a copy of the resolution in the annual indexes in a separate section designated and labeled specifically for emergency amendments;

(2) post in a conspicuous location in Lapwai, Orofino and Kamiah a copy of the amendment. If possible, the amendment shall also be listed in the

NPTEC minutes mailed to tribal members. Posting of emergency amendments shall clearly provide that such an amendment is an emergency, include the rationale for the emergency rule.

(g) An emergency amendment shall be effective immediately for a period of not longer than ninety (90) business days thereafter unless during that time it is enacted as a regular amendment pursuant to this chapter.

**§1-4-4 Time Line/Coordination**

The time period from the initial submission of a proposed amendment to the OLC to posting and indexing of an enacted amendment shall not exceed ninety (90) business days for regularly adopted amendments and shall not exceed forty (40) business days for emergency amendments. The chairman of the subcommittee shall ultimately be responsible for the oversight, enforcement and coordination of the procedures under this chapter.

**§1-4-5 Elimination of BIA Review**

In the event the Constitution and By-Laws of the Nez Perce Tribe are amended to eliminate BIA review and approval of amendments to the code, the provisions related to such review and approval in this chapter are hereby repealed and all amendments shall be enacted upon approval by NPTEC.

**§1-4-6 Hearings**

(a) All available members of the subcommittee shall attend hearings scheduled for the purpose of taking both oral and written public comment on proposed amendments.

(b) The chairman of the subcommittee shall preside over the proceedings. During the hearing the chairman shall:

(1) call upon each individual in the order provided on the registration list to present his testimony;

(2) limit each speaker to the amount of time that the chairman determines is appropriate and announced at the beginning of the proceedings;

(3) direct questions presented to the speakers by members of the subcommittee and questions presented to members of the subcommittee or NPTEC staff by speakers;

(4) designate appropriate staff to be present at the hearing to assist in answering questions from speakers.

(c) Written comments shall be presented to the chairman of the subcommittee following the hearing. Such comments shall be presented to NPTEC at the time of NPTEC review of the proposed amendment.

# CHAPTER 1-5
# LIMITATIONS ON ACTIONS

## §1-5-1 Limitations in General (amended 8/24/99)

(a) Any action or prosecution under this code must be commenced within the periods prescribed in this chapter except when a different limitation is prescribed by tribal law.

(b) The period of limitation shall not run during any period in which a party is not physically on the Nez Perce Reservation, is in the custody of another sovereign, or in any way knowingly avoids service.

## §1-5-2 Criminal Offenses (amended 8/24/99)

(a) A complaint shall be filed within five (5) years following the commission of a criminal offense.

(b) The period of limitations shall commence upon the commission of the offense**,** except that the period of limitations will commence on the date that the Tribe knows or should reasonably know of the offenses commission for:

(1) offenses involving deceit, fraud, breach of trust;

(2) where the defendant has acted to conceal the offense; or

(3) where the offense is of the nature that its commission is unlikely to be discovered upon commission.

(c) The period of limitation shall not run during any period in which the defendant is not physically on the Nez Perce Reservation, is in the custody of another sovereign, or in any way knowingly avoids service.

## §1-5-3 Contracts

An action upon any contract, obligation or liability founded upon an instrument in writing shall be commenced within five (5) years. An action upon a contract obligation or liability not founded upon an instrument of writing shall be commenced within four (4) years.

## §1-5-4 Statutory Liabilities, Trespass, Trover, Replevin, and Fraud

(a) The following actions shall be commenced within (3) years:

(1) an action upon a liability created by this code, other than a penalty or forfeiture. The cause of action in favor of the Nez Perce Tribe or any political subdivision thereof, upon a surety bond or undertaking provided for or required by this code shall not be deemed to have accrued against any surety on such bond or undertaking until the discovery by the tribe or any political subdivision thereof of the facts constituting the liability;

(2) an action for trespass upon real property;

(3) an action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property;

(4) an action for relief on the ground of fraud or mistake. The cause of action in such case shall not be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

**§1-5-5 Actions Against Officers, for Penalties, on Bonds, and for Professional Malpractice or for Personal Injuries**

(a) The following actions shall be commenced within two (2) years:

(1) an action against a tribal police officer, upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution;

(2) an action provided by this code in relation to a criminal action for a forfeiture or penalty;

(3) an action to recover damages for professional malpractice, or for an injury to the person, or for the death of one caused by the wrongful act or neglect of another, including any such action arising from breach of an implied warranty or implied covenant. When the action is for damages arising out of the placement and inadvertent, accidental or unintentional leaving of any foreign object in the body of any person by reason of the professional malpractice of any hospital, physician or other person or institution practicing any of the healing arts or when the fact of damage has, for the purpose of escaping responsibility therefor, been fraudulently and knowingly concealed from the injured party by an alleged wrongdoer standing at the time of the wrongful act, neglect or breach in a professional or commercial relationship with the injured party, the action shall be deemed to accrue when the injured party knows or in the exercise of reasonable care should have been put on inquiry regarding the condition or matter complained of. In such a case, the action must be commenced within one (1) year following the date of accrual or two (2) years following the occurrence, act or omission complained of, whichever is later. In all other actions, whether arising from professional malpractice or otherwise, the cause of action shall be deemed to have accrued as of the time of the occurrence, act or omission complained of, and the limitation period shall not be extended by reason of any continuing consequences or damages resulting therefrom or any continuing professional or commercial relationship between the injured party and the alleged wrongdoer;

(4) an action for defamation, assault, battery or false imprisonment.

**§1-5-6 Limitations Apply to Tribe**

The limitations prescribed in this chapter apply to actions brought in the name of the Tribe, or for the benefit of the Tribe, in the same manner as to actions by private parties.

**§1-5-7 Actions for Other Relief**

An action for relief not otherwise provided for in this chapter must be commenced within four (4) years after the cause of action shall have accrued.

**§1-5-8 Action, when Commenced**

An action is commenced within the meaning of this chapter when the complaint is filed.

**§1-5-9 Persons under Disabilities**

(a) If a person entitled to bring an action, other than for the recovery of real property, be, at the time the cause of action accrued, either:

(1) under the age of majority;

(2) insane; or

(3) imprisoned on a criminal charge or under the sentence of a criminal court for a term less than for life; the time of such disability is not a part of the time limited for the commencement of the action, provided however, that the time limited for the commencement of an action shall not be tolled for a period of more than six (6) years on account of minority, incompetency, any legal disability or for other cause or reason except as specifically provided in this section.

(b) If a person entitled to commence an action for the recovery of real property, or for the recovery of the possession thereof, or to make any entry or defense founded on the title to real property, or to rents or services out of the same, be at the time such title first descends or accrues, either:

(1) under the age of majority;

(2) insane; or

(3) imprisoned on a criminal charge, or in execution, upon conviction of a criminal offense, for a term less than for life; then the term during which such disability continues is not deemed any portion of the time limitation for the commencement of such action or the making of such entry or defense, but such action may be commenced, or entry or defense made, within the period of five (5) years after such disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced or entry or defense made after that period.

(c) No person can avail himself of a disability unless it existed when his right of action accrued. When two (2) or more disabilities coexist at the time the right of action accrues, the limitation does not attach until they are removed.

### §1-5-10 Aliens in Time of War

When a person is an alien subject, or citizen of a country at war with the United States, the time of the continuance of war is not part of the period limited for the commencement of the action.

### §1-5-11 Reversal Judgment - New Action

If an action is commenced within the time prescribed therefor and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives, may commence a new action within one (1) year after the reversal.

### §1-5-12 Action Stay by Injunction or Code

When the commencement of an action is stayed by injunction or prohibition under this code the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

### §1-5-13 Actions against directors and stockholders

This chapter does not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law; but such actions must be brought within three (3) years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created.

# CHAPTER 1-6
# NEZ PERCE TRIBAL CIVIL RIGHTS ACT
**(chapter added 10/24/00)**

## §1-6-1 Title

This chapter shall be known as the Civil Rights Act of the Nez Perce Tribe.

## §1-6-2 Civil Rights of Persons Within Tribal Jurisdiction

The Nez Perce Tribe in exercise of its sovereign powers of self-government shall not:

(a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the tribal council for a redress of grievances.

(b) Take private property for public use without just compensation.

(c) Make or enforce any law which divests title of a tribal member or his heirs or assigns to an allotment of tribal land.

(d) Deny any person within its jurisdiction the equal protection of the law or to deprive any person within its jurisdiction of liberty or property without the due process of the law.

(e) Subject any person for the same tribal offense to be twice put in jeopardy.

(f) Compel any person in any criminal case to be witness against himself.

(g) Deny any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense, to have assistance of counsel and to have these rights explained to him at the time of arrest. If the defendant can show to the satisfaction of the court that he cannot afford counsel, counsel may be provided at tribal expense if funds for this purpose are available in the tribal judicial budget.

(h) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments.

(i) Pass any bill of attainder or ex post facto law.

(j) Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

(k) Full Disclosure

The members of the Nez Perce Tribe are guaranteed full disclosure of information concerning criminal and civil proceedings in which they are a party, pursuant to §1-1-6 of Chapter 1-1, Administration of Tribal Court of the Nez Perce Tribal Code.

# CHAPTER 1-7
# TRIBAL NOTICE
**(Chapter adopted 10/9/01)**

## §1-7-1 Findings

(a) The Nez Perce Tribe has a compelling interest in protecting tribal sovereignty and jurisdiction and the validity of tribal laws; and

(b) Tribal sovereignty and jurisdiction or the validity of tribal law may be questioned in cases in the Tribal Court or the Nez Perce Tribal Court of Appeals in which the Nez Perce Tribe or any agency, officer, or employee thereof is not a party; and

(c) With adequate, timely, and uniform notice of cases in the Tribal Court or the Nez Perce Tribal Court of Appeals that question tribal sovereignty and jurisdiction or the validity of tribal law, the Nez Perce Tribe can effectively assess whether and how to participate in such cases.

## §1-7-2 Purpose

The purpose of this Chapter is to provide the Nez Perce Tribe with adequate, timely, and uniform notice of any and all cases in the Tribal Court or the Nez Perce Tribal Court of Appeals that question tribal sovereignty and jurisdiction or the validity of any tribal law and in which the Nez Perce Tribe or any agency, officer, or employee thereof is not a party.

## §1-7-3 Notice Required

(a) Upon the filing of any action or proceeding in which the Nez Perce Tribe or any agency, officer or employee thereof is not a party, the Tribal Court or the Nez Perce Tribal Court of Appeals will promptly inform all parties in writing of the requirements of this Chapter. Any party to such a proceeding that questions tribal sovereignty or jurisdiction or the validity of any tribal law will give notice thereof to Chairman of the Nez Perce Tribal Executive Committee and the Office of Legal Counsel. Such notice will identify the action or proceeding and will include a brief written explanation of the grounds upon which tribal sovereignty or jurisdiction or the validity of tribal law is being questioned. Any party giving notice under this Chapter will simultaneously file proof with the Tribal Court or the Nez Perce Tribal Court of Appeals that notice has been given as required by this Chapter.

(b) If notice is required under this Chapter, upon the Nez Perce Tribe's timely written request, the Tribal Court or the Nez Perce Tribal Court of Appeals or any party will timely serve copies of all subsequent filings and orders in the case on the Chairman of the Nez Perce Tribal Executive Committee and the Office of Legal Counsel.

## §1-7-4 Manner and Timing of Notice

(a) Notice required under this Chapter will be given in writing and simultaneously with the raising of a question about tribal sovereignty or jurisdiction or the validity of any tribal law.

(b) Notice required under this Chapter will be made by certified mail.

**§1-7-5 Tribal Participation Following Notice**

(a) Upon timely motion or application, the Nez Perce Tribe may intervene as a matter of right in any action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law. Upon intervening under this Chapter, the Nez Perce Tribe may assert any and all available claims and defenses and may present any and all admissible evidence relating to the question of its sovereignty or jurisdiction or the validity of any tribal law, and is entitled to the same relief, as if the Nez Perce Tribe had instituted a separate action or proceeding; provided that, the Tribe will not be required to pay costs of litigation in any action or proceeding in which it has intervened under this Chapter. Intervention under this Chapter does not abridge, limit, or otherwise affect the right of the Nez Perce Tribe to commence, maintain, defend, or otherwise intervene in actions or proceedings in the Tribal Court or the Nez Perce Tribal Court of Appeals.

(b) Upon timely motion or application, the Nez Perce Tribe may appear as *amicus curiae* (friend of the court) in any action or proceeding that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

(c) The Nez Perce Tribe may timely determine that it is in the best interest of the Tribe not to intervene, appear as *amicus curiae*, or otherwise participate in an action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law.

**§1-7-6 Information Sharing and Consultation**

In any action or proceeding in the Tribal Court or the Nez Perce Tribal Court of Appeals that questions tribal sovereignty or jurisdiction or the validity of any tribal law in which the Nez Perce Tribe does not intervene or appear as *amicus curiae*, the Nez Perce Tribe may nevertheless share important knowledge with any party involved in the action or proceeding. This could include assistance in responding to formal discovery requests or acting as an informal consultant.

**§1-7-7 Timeliness of Participation Determinations**

Unless the Tribal Court or the Nez Perce Tribal Court of Appeals orders otherwise, where timely and proper notice has been given under this Chapter, the Nez Perce Tribe will notify the Tribal Court or the Nez Perce Tribal Court of Appeals and parties in writing within sixty (60) days of receipt by the Tribe of such notice of any determination to participate in any action or proceeding by way of intervention or appearance as *amicus curiae*.

**§1-7-8 Failure to Give Notice Not Jurisdictional or Waiver of Rights**

The failure of the Tribal Court or the Nez Perce Tribal Court of Appeals or any party to give notice as required by this Chapter does not deprive the Tribal Court or the Nez Perce Tribal Court of Appeals of jurisdiction and is not a waiver or modification of any rights otherwise timely asserted by any party. Any notice given under this Chapter is not a substitute for, or a waiver or a modification of, any other requirement under this Code.

### §1-7-9 Late Notice

If the Tribal Court or the Nez Perce Tribal Court of Appeals or any party discovers that notice to the Nez Perce Tribe under this Chapter should have been but has not been given, the Tribal Court or the Nez Perce Tribal Court of Appeals or party will promptly give notice in writing to the Tribe as required by this Chapter. The Tribal Court or the Nez Perce Tribal Court of Appeals may stay the action or proceeding at any stage to allow compliance with this Chapter. If final judgment has already been entered, the Tribe may motion or apply for rehearing as of right, the Tribal Court or the Nez Perce Tribal Court of Appeals will entertain promptly any such motions or applications for rehearing by the Tribe, and in disposing of such motions the Tribal Court or the Nez Perce Tribal Court of Appeals, for good cause shown, may vacate a judgment or any portion thereof.

### §1-7-10 Civil Sanctions

The Tribal Court or the Nez Perce Tribal Court of Appeals may impose civil sanctions on any party for willful or unreasonable failure to give notice as required by this Chapter, and may use other reasonable means to cure any significant harm caused by failure to give notice as required by this Chapter.

### §1-7-11 Jurisdiction

Nothing in this Chapter shall be deemed or construed to deprive, limit, or extend the jurisdiction of the Tribal Court or the Nez Perce Tribal Court of Appeals.

### §1-7-12 Sovereign Immunity

Notice required under this Chapter does not authorize any party to name the Nez Perce Tribe or any agencies, officers, or employees thereof as a party to any action or proceeding. Nothing in this Chapter shall be deemed or construed as a waiver or limitation of the sovereign immunity from suit of the Nez Perce Tribe, its agencies, officers, or employees.

# TITLE 2
# RULES OF PROCEDURE
# CHAPTER 2-1 RULES OF CRIMINAL PROCEDURE

## GENERAL PROVISIONS

### Rule 1 Definitions

(a) "Criminal action" means the proceedings by which a party charged with a public offense is accused and brought to trial and punishment, potentially including imprisonment, is imposed.

(b) "Probable cause" exists under this chapter when an officer or the Tribal Court has substantial objective basis for believing that a person has committed an offense. In determining whether probable cause exists, the officer or tribal judge may take into account all information which a prudent officer or judge would deem relevant to the likelihood that an offense has been committed and that the person charged has committed it.

### Rule 2 Legal Conviction Necessary for Punishment

No person can be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court. No incarceration or other disposition of one accused of an offense prior to trial in accordance with these rules shall be deemed a punishment.

### Rule 3 Rights of Defendant

In a criminal action the defendant is entitled:

(a) to a speedy and public trial;

(b) to be informed of the nature of the charges against him and to have a written copy of the charges;

(c) to appear and defend in person or by an attorney at the defendant's expense;

(d) to not be twice placed in jeopardy for the same offense by the Nez Perce Tribe;

(e) to not be compelled in a criminal action to be a witness against himself;

(f) to confront and cross examine all witnesses against him;

(g) to be subjected before conviction to no more restraint than is necessary to insure his appearance to answer the charge and/or to protect the public;

(h) to compel by subpoena the attendance of witnesses in his own behalf;

(i) to a trial by jury unless expressly waived;

(j) to appeal in all cases.

**Rule 3a Right to a Speedy Trial (Section approved by NPTEC 1/27/15)**

(a) Right of person in custody. Every person in custody for an alleged offense charged by the Nez Perce Tribal Prosecutor shall be tried by the Nez Perce Tribal Court within 180 days from the date he or she was arraigned following the filing of a complaint in the Tribal Court by the Prosecutor, unless delay is occasioned by the defendant, by an examination for fitness ordered by the Tribal Court, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed after the Court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal.

(b) Demand for trial. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. The provisions of this subsection do not apply to a person on bail or recognizance for an offense but who is in custody for a violation of his or her probation.

(c) Computing term for incarcerated persons. The 180-day term in (1) above must be one continuous period of incarceration. In computing the 180-day term, separate periods of incarceration may not be combined. For a defendant released from incarceration who is subsequently taken into custody for a violation of the conditions of release, the term will begin again at day zero.

(d) Right of person not in custody. Every person on bail or recognizance shall be tried by Tribal Court within 220 days from the date of arraignment unless delay is occasioned by the defendant, by an examination for fitness ordered by the Court, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed after the Court’s determination of the defendant's incapacity for trial, or by an interlocutory appeal. The defendant's failure to appear for any court date set by the court operates to waive the defendant's right to speedy trial unless the court determines that the failure to appear was unavoidable.

(e) Computing term for persons released from custody. Every person who was in custody for an alleged offense and is subsequently released on bail or recognizance, shall be given credit for time spent in custody following the making of the demand while in custody and trial shall be held within 220 days of the person’s arraignment.

(f) Continuing the term. If the Court determines that the Tribe has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the Court may continue the case on application of the Tribe for not more than an additional 60 days. If the court determines that the Tribe has exercised without success due diligence to obtain results of DNA testing that is material to the case and that there are reasonable grounds to believe that such results may be obtained at a later day, the Court may continue the cause on application of the Tribe for not more than an additional 120 days.

(g) Discharge or release. For every person not tried in accordance with subsections (a)-(f) of this Section, the complaint against him or her shall be dismissed without prejudice.

(h) Persons in custody for more than one charge. If a person is simultaneously in custody upon more than one charge pending against him by the Tribe, and the charges are bifurcated, he shall be tried, or adjudged guilty after waiver of trial, upon at least one such

charge before expiration relative to any of such pending charges of the period prescribed by subsections (a)-(f) of this Section. Such person shall be tried upon all of the remaining charges thus pending within 180 days from the date on which judgment relative to the first charge thus prosecuted is rendered or, if such trial upon such first charge is terminated without judgment and there is no subsequent trial of, or adjudication of guilt after waiver of trial, the person shall be tried upon all of the remaining charges thus pending within 180 days from the date on which such trial is terminated; if either such period of 180 days expires without the commencement of trial of, or adjudication of guilt after waiver of trial of, any of such remaining charges thus pending, such charge or charges shall be dismissed and barred for want of prosecution unless delay is occasioned by the defendant, by an examination for fitness ordered by the Court, by a fitness hearing, by an adjudication of unfitness for trial, by a continuance allowed after the Court's determination of the defendant's incapacity for trial, or by an interlocutory appeal; provided, however, that if the Court determines that the Tribe has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the Tribe for not more than an additional 60 days.

(i) Delay occasioned by the defendant. Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsections (a)-(f) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended. Where such delay occurs within 60 days of the end of the period within which a person shall be tried as prescribed by subsections (a)-(f) of this Section, the Court may continue the case on application of the Tribe for not more than an additional 60 days beyond the period prescribed by subsections (a)-(f).

(j) Effective date. This subsection shall become effective on, and apply to persons charged with alleged offenses committed on or after, the date of adoption of this Section by the Nez Perce Tribal Executive Committee pursuant to applicable requirements for said adoption.

## PRELIMINARY PROCEEDINGS

### Rule 4 Complaint

(a) The complaint is a written statement of the alleged facts constituting the offense charged and shall be filed by the tribal prosecutor. The complaint shall state:

(1) the name of the person accused, and if known his address, date of birth, enrollment number and driver's license number;

(2) the location where the offense was committed and facts showing the offense to be within the original jurisdiction of the court;

(3) the offense committed;

(4) a short concise statement of the specific acts or omissions that constitute the elements of the offense;

(5) the person, if any, against whom or against whose property the offense was committed, if known; and

(6) the approximate date and time of the commission of the offense.

(b) Only one person and one violation may be charged by a single complaint. The court shall allow the complaint to be amended for good cause upon request of the prosecution until the date of trial.

**Rule 5 Arrest Warrant**

(a) Upon the submission of an arrest warrant application, by the tribal prosecutor or tribal police, the Nez Perce Tribal Court may issue an arrest warrant to bring the person named in the warrant before a judge of the court.

(b) An arrest warrant application shall:

(1) be supported by affidavit or sworn testimony;

(2) include the name of the person accused, if known, or some other name if not known, plus whatever available description of the person accused;

(3) include the general location where the offense was committed and facts showing the offense to be within the original jurisdiction of the court;

(4) include the general name and code designation of the offense. If the facts show more than one offense then each offense shall be stated separately;

(5) include a short concise statement of the specific act or omission to act complained of;

(6) include the name of the person against whom or against whose property the act was committed, if known;

(7) include the date and approximate time of the commission of the offense, if known; and

(8) include a request that the Tribal Court issue an arrest warrant for the person named in the application.

(c) Any testimony submitted in relation to a warrant application shall be simultaneously tape recorded. Upon reviewing the application for an arrest warrant, if the judge is satisfied of the existence of the grounds of the application, and that it appears based on such review that probable cause exists to believe that an offense has been committed and that the person named in the application committed it, he shall issue a signed arrest warrant. The warrant of arrest shall be signed by the judge and shall contain the name of the person to be arrested or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall command that the person named in the warrant be arrested and brought before the judge.

(d) An officer need not have the warrant in his possession at the time of arrest; but, if he does not, he shall inform the defendant that a warrant has been issued and the nature of the charge. The arrested person shall be provided with a copy of the arrest warrant and complaint as soon as practicable but not later than at the time of arraignment.

**Rule 6 Summons (amended by NPTEC 1/8/08)**

(a) In lieu of an arrest and upon a finding that it appears probable cause exists to believe an offense has been committed and that the defendant committed it, the Tribal Court may issue a summons directing the person accused to appear before a tribal judge at a stated date, time and place. The summons will also inform the defendant that a warrant of arrest will be issued if he fails to appear as directed. Issuance of a summons will initiate prosecution of an action under this chapter.

(b) If the summons is issued by the Tribal Court it shall be served on the defendant as provided by this chapter. Should a defendant refuse service of a summons or should a defendant's whereabouts be unknown after a reasonable search, an arrest warrant shall issue.

**Rule 7 Arrest without a Warrant**

(a) A tribal officer may make an arrest without warrant if the officer has probable cause to believe a person has committed an offense within the jurisdiction of the Nez Perce Tribe or is named in an arrest warrant.

**Rule 8 Arrest Procedure**

Any arresting officer:

(a) Upon taking an arrested person into custody and before interrogation, shall inform the person that:

(1) he has the right to remain silent; and

(2) anything he says can be used against him in court; and

(3) he has the right to talk to an attorney for advice before he is asked any questions and to have an attorney present during questioning.

(b) May use reasonable and necessary force to effect the arrest of a person.

**Rule 9 Fresh Pursuit**

(a) Any arresting officer may continue in fresh pursuit of a person including outside the boundaries of the Nez Perce Reservation, if the person:

(1) is reasonably believed by the officer to have committed an offense on the reservation;

(2) has committed, or attempted to commit, any offense or civil infraction on the reservation in the presence of the officer; or

(3) is named in an outstanding warrant of arrest for a criminal offense.

(b) When an arrest following fresh pursuit occurs outside of the boundaries of the Nez Perce Reservation but within the state of Idaho the arresting officer may return the arrested individual to the reservation. When an arrest following fresh pursuit occurs outside the state of Idaho, then the arresting officer shall turn the arrested person over to the local police officials

pending extradition.

**Rule 10 Arraignment**

(a) Arrested persons shall be taken without unnecessary delay, but in no case later than three (3) business days, before a tribal judge for arraignment. In the event a summons has been issued, the defendant shall appear at the time designated in the summons. The schedule for arraignments shall be determined by the Tribal Court. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea or making any statement.

(b) During arraignment, the defendant shall be provided with a copy of the complaint if he has not received one. The complaint shall be read to the defendant and he will be asked to plead guilty or not guilty to the offense charged.

(c) Before accepting a plea of guilty, the court must:

(1) determine that the defendant understands that the plea is voluntary and is not the result of any force, threats, or promises apart from any plea agreement between the tribal prosecutor and the defendant;

(2) inform the defendant:

(A) of the nature of the charge to which the plea is offered;

(B) of the maximum penalty;

(C) if the defendant is not represented by an attorney, that the defendant has the right to be so represented at every stage of the proceedings at the defendant's expense; and

(D) that the defendant has the right to:

(i) confront and cross-examine all of the witnesses against him in person or by counsel;

(ii) have witnesses compelled by subpoena to appear and testify for him;

(iii) testify regarding the charges against him or to testify in his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding; and(iv) an impartial trial by an impartial judge or jury.

(d) Upon a plea of guilty the court may sentence the defendant or set a future date for sentencing. If a future date for sentencing is established, the court may release the defendant on bail, have the defendant committed or released without bail.

(e) If the defendant is silent or if the defendant pleads guilty and the judge determines that the plea is made involuntarily or that the defendant does not understand the nature of the charge he shall enter a plea of not guilty for the defendant.

**Rule 10a Pre-Trial Release (revised 6/22/99)**

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall review the facts of the arrest and detention of the person and determine whether the person:

(1) is a threat to the alleged victim;

(2) is a threat to public safety; and

(3) is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall make findings on the record if possible concerning the determination made in accordance with subsection 1 and may impose conditions of release and/or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

(1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;

(2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;

(3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the court.

(5) An order suspending or revoking a person's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;

(6) An order prohibiting the person from possession or consumption of alcohol or controlled substances.

(7) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.

(c) The bond for the crimes of domestic violence and violation of a domestic protection order shall be a cash bond in an amount set by the court in the bond schedule.

(d) The court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(e) If conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

**Rule 11 Pleadings and Motions Before Trial; Defenses and Objections**

(a) Pleadings in criminal proceedings shall be the complaint and the pleas of guilty or not guilty.

(b) Any defense, objection, or request which is capable of determination outside of trial may be raised before trial by motion. Pre-trial motions may be written or oral at the discretion of the judge who may allow the parties to submit supporting and response briefs. Any supporting brief shall be filed at least twenty (20) business days and any response brief shall be filed at least ten (10) business days before trial unless other time periods are established by the judge.

(c) The following motions must be raised before trial:

(1) motions challenging the sufficiency of the complaint and those raising procedural errors and the claim that the proceedings are prejudicial to the civil rights of the defendant;

(2) discovery motions;

(3) motions demanding separate trials for multiple defendants or severance of multiple charges.

(4) defense and objection based on defects in the institution of the prosecution, or in the complaint other than the failure to show jurisdiction or to charge an offense.

(d) The failure to raise any motion under subsection (c) shall constitute waiver unless the court for cause shown determines that relief from the waiver will be granted. All rulings on such motions will be made before trial unless the court for good cause determines that the ruling will be made at trial, but no such determination will be made if a party's right to appeal will be adversely affected.

**Rule 12 Discovery (Rule amended 12/9/03)**

(a) At the expense of the defendant and upon his request, the prosecutor shall permit the defendant to inspect and copy or photograph the following items which are within the possession, custody or control of the prosecutor and/or tribal police:

(1) relevant written or recorded statements made by the defendant or copies thereof;

(2) copies of the defendant's prior criminal record;

(3) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case;

(4) results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof made in connection with the defendant's case.

(b) Upon the written request of the defendant the prosecuting attorney shall furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the Tribe as a witness at trial. In the event that the Tribe discovers additional witnesses to be called at trial the prosecutor shall furnish those names and addresses to the defendant in a timely manner.

(c) Upon the request of the prosecutor and at the expense of the tribe, the defendant shall permit the prosecutor to inspect and copy or photograph:

(1) results or reports of physical or mental examinations, scientific tests or experiments made in connection with the defendant's case;

(2) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case.

(d) Upon the written request of the prosecuting attorney, the defendant shall furnish the Tribe with a list of names and addresses of witnesses the defendant intends to call at trial. In the event that the defendant discovers additional witnesses to be called at trial, the defendant shall furnish those names and addresses to the prosecution in a timely manner.

(e) If, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or the court of the existence of the additional evidence or material.

(f) Except to the extent such material is otherwise subject to discovery, this rule shall not authorize the discovery or inspection of:

(1) reports, memoranda, or other internal documents made by the defendant, an attorney for either party or agents of the either party in connection with the investigation, prosecution or defense in the case;

(2) statements made by the defendant, witnesses or prospective witnesses in connection with the case.

(g) Upon motion by a party, the court may deny or restrict discovery or issue such other order as is appropriate. If the court enters an order granting relief all items or documents reviewed in camera shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

(h) Once the court determines that a party has failed to comply with this rule, it may grant a motion to compel submitted by the opposing party, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such other order as it deems just. In addition to any other action taken by the court upon a finding that a party has failed to comply with this rule, the court may award attorney’s fees and costs to the prevailing party resulting from procedures to compel discovery.

**Rule 13 Subpoena**

(a) All witnesses shall be subpoenaed to appear at the date and time set for trial. The parties shall notify the clerk of the court of the names and addresses of witnesses not less than fourteen (14) business days prior to the scheduled trial date.

(b) A subpoena shall be an order of the court requiring the attendance of a witness at trial and/or commanding the person to whom it is issued to produce books, papers, documents or other objects designated therein. It shall be signed by the judge and issued by the tribal court clerk. It shall state the name of the court and the name of the case and shall command the person to whom it is directed to attend and give testimony and/or produce or present evidence at the time and place specified. The clerk shall submit a signed, sealed and otherwise complete subpoena except for the name of the individual and items subpoenaed to the requesting party, who shall complete the subpoena before it is served.

(c) A subpoena shall be served in accordance with the provisions for service of process provided by this chapter. The party requesting the subpoena shall provide a $10.00 fee for one day's attendance and mileage allowances as determined by the court to each witness following their compliance with the subpoena. The court shall pay the expenses of any witness subpoenaed by the defense upon a satisfactory showing that the defendant is unable to pay such expenses and the witness is necessary to the defense.

(d) The court on motion may quash or modify a subpoena if compliance would be unreasonable or oppressive.

**TRIAL**

**Rule 14 Trial Procedures**

(a) Motions

(1) Before opening statements, the court shall hear and rule on any remaining pre-trial motions. All arguments shall be made outside the presence of the jury in a trial by jury.

(b) Rule of Exclusion

(1) The exclusion of witnesses shall be allowed by the court upon motion of either party. Once a motion is made the court will invoke the rule excluding all witnesses for either party from the courtroom until they are called to testify.

(2) If invoked, the court shall order that the witnesses remain outside and out of hearing of the courtroom until they are called as witnesses. The court shall also instruct the witnesses not to discuss their testimony with any other witnesses under penalty of contempt until the trial has been declared ended. The defendant is entitled to be present during the entire trial regardless of a motion to exclude witnesses.

(c) Opening Statements

The court will allow opening statements by the prosecution and defendant. The

prosecution will present its statement first followed by the defense who may preserve its opening statement until the end of the prosecution's case in chief. Either party may waive making a statement.

(d) Burden of Proof

(1) The burden of proof is upon the prosecution to show that the defendant committed all elements of the specific charge or charges in the complaint, beyond a reasonable doubt, and this burden remains with the prosecution at all times.

(2) Following the prosecution's case in chief, the burden of going forward with the evidence shifts to the defense which then presents its witnesses, documents and other exhibits.

(3) Following presentation of the case for the defense the prosecution may offer rebuttal witnesses.

(4) After all of the evidence has been presented, the parties may make closing arguments. The prosecution will have the right to open, the defense to follow and the prosecution to close.

(e) Motion for Judgment of Acquittal

(1) The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of any offenses if the evidence is insufficient to sustain a conviction of such of tense. If a defendant's motion for judgment of acquittal at the close of evidence offered by the tribe is not granted, the defendant may proceed to offer evidence without having reserved the right to do so.

(2) If a motion for judgment of acquittal is made at the close of all of the evidence, the court may either decide the motion or reserve decision on the motion, until after the jury verdict.

(3) If the jury returns a verdict of guilty, no verdict or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed immediately after the jury is discharged, or within such further time as the court may fix. If the court grants the motion following a verdict of guilty, it may set aside the verdict and enter the judgment of acquittal.

(f) Expert Witnesses and Interpreters

(1) Either party may call expert witnesses of their own selection and each bears the cost of such witnesses.

(2) The court may appoint an interpreter of its own selection through whom testimony is received from a defendant or witness or communicated to a defendant or witness. Such interpreter shall be put under oath to faithfully and accurately translate and communicate. In addition, each

party may provide their own interpreters.

(g) Jury Instruction

(1) The court may request proposed jury instructions and either accept or reject each instruction.

(2) In all criminal cases, the court will inform the jury that the defendant's plea of not guilty places upon the prosecution the burden of proving guilt beyond a reasonable doubt, that the defendant is presumed innocent until his guilt is established, and that if the defendant does not testify this may not be considered as any evidence of guilt.

**Rule 15 Verdict**

(a) After the presentation of evidence in non-jury cases is completed and all motions have been ruled upon, the court shall render its decision as to the guilt or innocence of the defendant. The court may take the case under advisement rather than passing judgment immediately.

(b) In jury trials:

(1) the verdict shall be unanimous and shall be returned by the jury to the judge in open court;

(2) if the verdict is not guilty the court will order the defendant released from custody;

(3) if the verdict is guilty the court may impose sentence immediately or set a later date for sentencing.

(c) If the required number of jurors does not support the verdict or the jury is unable to make a decision, the court must declare a mistrial. Polling of the jury may take place upon the request of either party.

(d) If there are multiple defendants, the trier of fact (judge/jury), at any time during its deliberations, may return a verdict or verdicts with respect to any charge.

(e) The defendant may be found guilty of an offense necessarily included in the offense charged and the lesser included offense need not have been included in the original charge.

**Post Trial**

**Rule 16 Judgment and Sentencing**

(a) A judgment of conviction shall set forth the plea, the verdict or findings, and sentence when imposed. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered into record by the court clerk.

(b) If a motion for withdrawal of a plea of guilty is made before sentence is imposed,

the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. In order to correct manifest injustice, the court after sentence, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

**Rule 17 Post Trial Motions**

(a) Motion to Set Aside the Verdict

(1) The defendant may file a motion to set aside the verdict if he believes the jury verdict was contrary to the law or the evidence presented at trial. The court will set the jury verdict aside only where it finds there was insufficient evidence to support the verdict and there was reasonable doubt as to the defendant's guilt as a matter of law.

(b) Motion for New Trial

(1) The defendant may file a motion for a new trial based upon error or mistake by the court or on the basis of newly discovered evidence. The court may grant the motion only if the errors or mistakes substantially prejudice the defendant or if the newly discovered evidence could result in acquittal.

(2) A motion for a new trial based on:

(A) newly discovered evidence shall be made within thirty (30) business days after final judgment, but if an appeal is pending, the court may grant the motion only once the appeal is resolved;

(B) any other grounds shall be made within ten business (10) days after a guilty verdict is entered.

(3) In the case of a non-jury trial, on motion of a defendant for new trial the court may vacate the judgment if entered, take additional testimony and enter a new judgment.

(c) Motion for Stay

While an appeal is pending, the court may stay the execution of the sentence pending the filing and conclusion of an appeal. The court may order the defendant released on bail, released without bail or continued in detention.

**Habeas Corpus**

**Rule 18 Right to Apply for Writ**

(a) Any person detained or imprisoned by order, authority or action of the Nez Perce Tribe may challenge the legality of that detention or imprisonment by application to the Nez Perce Tribal Court for a writ of habeas corpus. The application shall be heard by a judge who has not participated in any proceeding related to the detention or imprisonment of the applicant.

(b) The application for writ of habeas corpus shall be in writing and must include:

(1) the facts concerning the person's commitment or detention;

(2) the cause or reason why detention is illegal; and

(3) a copy of the warrant of commitment or other documentary authority, if any, or an affidavit that such copy has been requested and refused.

(c) Upon receipt of a writ of habeas corpus the court may:

(1) issue an order directing the person(s) alleged to be detaining the petitioner to show cause why the writ should not be issued; or

(2) deny the writ.

(d) If an order to show cause is issued it will be served on the person(s) alleged to have custody of the petitioner. Once served, the person(s) to whom the order is directed shall make a return of such order to the court certifying the true cause for detention. Following service, the court shall hear the petition and order the petitioner be brought before it for the hearing. If the writ is granted, it shall be served on the person(s) having custody of the petitioner.

## GENERAL PROVISIONS

### Rule 19 Search and Seizure

(a) Upon the request of any law enforcement officer the Tribal Court may issue a written search warrant to search for and seize evidence of a criminal offense.

(b) A search warrant shall be supported by affidavit or sworn testimony and must particularly describe the person or place to be searched and the item(s) to be seized. If probable cause exists to believe that a crime has been committed and that evidence of the crime is present at the place or on the person to be searched the warrant shall issue. The search warrant shall direct police officers to search the location or person described for the items specified.

(c) A search warrant shall be served during the hours of 6:00 a.m. to 10:00 p.m., unless a night search is expressly provided for in the warrant. The officer taking property under a search warrant shall provide a copy of the warrant and a receipt for the property taken to the person from whom it was taken or in the absence of any such person, he shall leave it in the place where the property was found.

(d) A search warrant shall be executed within fourteen (14) days after issuance. Upon execution of the warrant, a return shall be executed and filed with the court along with an inventory of the items seized.

(e) A search warrant will not be required in the following situations:

(1) the evidence is in plain view and can be seen by the officer(s) from a place where the officer has a right to be;

(2) a person who has authority to do so voluntarily consents to the search and the search is limited to the scope of the consent given;

(3) the search is incident to a lawful arrest and is conducted on the person arrested and within the area of the person's immediate reach and control for any evidence, contraband or weapons;

(4) the officer(s) reasonably believe that a person is armed and presents a danger to the officer or the public in which case the officer may conduct a pat down of the person's outer clothing in search of weapons;

(5) the officer(s) enter a residence or structure in fresh pursuit of a fleeing suspect;

(6) the area to be searched is an automobile actually moving or temporarily stopped, as long as the officer(s) have probable cause to believe that it contains items which are subject to seizure.

(7) there are reasonable grounds to believe that the delay in obtaining a search warrant would endanger the physical safety of the police officers or third persons or allow the destruction, dissipation or removal of seizable evidence.

**Rule 20 Extradition**

(a) A written request seeking the extradition of any individual found within the exterior boundaries of the Nez Perce Reservation to any state, tribal or federal jurisdiction shall be submitted to the chief judge of the Nez Perce Tribal Court and shall be accompanied by:

(1) a certified exemplified copy of the warrant; or

(2) other reliable information that the warrant exists.

(b) If the chief judge, after receiving the extradition request is satisfied as to its validity, he shall issue an arrest warrant. If the request is oral, and the judge determines an emergency exists due to the individual's record, risk of reoffending, or risk of flight, he/she may authorize the warrant verbally for immediate detention. The person named in the warrant shall be taken into custody by the tribal police officers with the assistance of the other law enforcement officials involved if requested and held by tribal police for arraignment by the Tribal Court. **(Amendment authorized by NPTEC 10/14/14)**

(c) Once the person suspected of being the one named in the extradition request is in custody of the tribal police, the police shall notify the jurisdiction which issued the request.

(d) Within three (3) business days after arrest, the person arrested shall be brought before the chief judge of the Tribal Court. The court shall inform the person of the demand for his surrender and of the crime with which he is charged, that he has a right to representation of legal counsel at his own expense and to request a hearing to challenge the extradition request. If a hearing is requested, the judge shall fix a reasonable time for the hearing release the person on bail, release the person without bail or hold him in custody until the date of the hearing. If the hearing is waived, the person shall be promptly turned over to the custody of the appropriate authorities.

(e) Following an extradition hearing conducted by the chief judge of the Tribal Court, if the judge determines that the person brought before the court is in fact the person named in the

extradition request and that there is probable cause to believe that he committed the offense complained of, an extradition order shall be issued and the person immediately turned over to the custody of the appropriate authorities.

**Rule 21 Bail; Release without Bail; Confinement**

(a) To insure defendant's appearance at any court proceeding or to protect the public, the court may:

(1) set bail in lieu of confinement;

(2) turn the defendant over to the tribal police for confinement;

(3) release the defendant on his own recognizance upon his promise to appear; or

(4) impose any other reasonable condition deemed necessary to assure the appearance of the accused as required.

(b) The amount of bail shall reflect the gravity and nature of the offense charged and the defendant's ability to pay. Other factors to be considered by the court in setting bail include: the location of the defendant's permanent residence, family responsibilities, and past criminal record. If the defendant is committed in lieu of bail then he may be credited for such time spent in jail.

(c) No person shall be detained or jailed for more than three (3) business days unless there has been a commitment bearing the signature of a judge of the Nez Perce Tribal Court.

(d) Any person arrested for a crime involving domestic violence or a violation of a domestic protection order shall not be released on bond or on his/her own recognizance prior to being arraigned. Such arraignment shall not occur less than 48 business hours or more than 72 business hours following arrest. **(added 6/22/99)**

**Rule 22 Motions**

Unless made at trial or hearing or otherwise provided, an application to the court for an order shall be by written motion. The motion shall state the grounds upon which it is made and shall specify the relief order sought. It shall be supported by a memorandum of points and authorities.

**Rule 23 Signing of Pleadings, Motions, and Other Papers**

(a) For those parties represented by an attorney, all pleadings, motions and other papers shall be signed by at least one attorney of record in his individual name, who shall also state his address. A party who is not represented by an attorney shall sign the pleading, motion or other paper himself and state his address.

(b) A person's signature constitutes a certification by the signer that:

(1) he has read the pleading, motion, or other paper;

(2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and

(3) that it is not interposed or introduced for any improper purpose.

**Rule 24 Service and Filing of Papers**

(a) This section shall apply to any service of process required under this chapter. Service of process in criminal cases shall be by tribal police, court employee or any other person designated by the chief judge, who is at least eighteen (18) years of age and is not a party. Service shall be made upon the defendant, by delivering to the defendant a copy of the documents to be served in person, by registered or certified mail, or after first appearance, by first class postage pre-paid with certificate of mailing.

(b) Service may be accomplished at any place within the exterior boundaries of the Nez Perce Reservation. The person conducting service of process on another shall make a return to the clerk stating the name of the case, the name of the person served, the place, date and time of service, and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

(c) All written pleadings and motions, notices and similar papers other than those which are heard ex-parte, shall be served on each party as provided in civil actions and filed with the court. The party filing the motion or pleading shall certify the date and method of service upon the opposing party.

# CHAPTER 2-2
# RULES OF CIVIL PROCEDURE

## SCOPE AND PURPOSE OF RULES--ONE FORM OF ACTION

### Rule 1 Scope of Rules

These rules govern the procedure in the Nez Perce Tribal courts in all suits of a civil nature whether cognizable as cases at law or in equity. They shall be construed and administered to secure determination of every action as just, speedy, and inexpensive as possible.

### Rule 2 One Form of Action

There shall be one form of action to be known as "civil action".

## COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

### Rule 3 Commencement of Action

A civil action is commenced by filing a complaint with the Court.

### Rule 3.1 Inability to pay fees – Affidavit

(a) The Tribal Court may authorize the commencement or defense of any civil suit, action or proceeding, or an appeal therein, without prepayment fees, costs or security therefor, by any person who makes affidavit that he is indigent and unable to pay such costs or give security therefor, whenever the Court finds, after informal inquiry, the person to be indigent for the purpose of prepayment of fees, costs or security in a civil action or proceeding. Such affidavit shall state the nature of the action, defense or appeal and the affiant's belief he is entitled to redress.

(b) No fees, costs or security shall be waived for an appeal if the Court certifies in writing that the action is frivolous or malicious or that it is not taken in good faith.

(c) The Court may, upon the filing of a like affidavit and a finding of indigency, direct that the expense of printing the transcript or record on appeal be paid out of the Court fund.

(d) The Court may retroactively require payment for any fees, costs or security which may have been waived in the case if the allegation of poverty is untrue, or if the Court is satisfied that the action is frivolous or malicious, or if the action is not taken in good faith.

### Rule 4 Summons

(a) Form. The summons shall be signed by the clerk, bear the seal of the Court, identify the Court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney, or, if unrepresented, of the plaintiff. It shall also state the time period

within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The Court may allow a summons to be amended.

(b) Issuance. Upon or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is in proper form, the clerk shall sign, seal, and issue it to the plaintiff for service on the defendant. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) Service With Complaint; By Whom Made.

(1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for service of a summons and complaint within the time allowed under subsection (l) and shall furnish the person effecting service with the necessary copies of the summons and complaint.

(2) Service may be affected by any person who is not a party and who is at least eighteen (18) years of age. At the request of the plaintiff, however, the Court may direct that service be effected by a tribal police officer, or other person or officer specially appointed by the Court for that purpose.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of summons does not thereby waive any objection to the jurisdiction of the Court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subsection (e), (f), or (h) and that receives notice of an action in the manner provided in this subpart has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request shall:

(A) be in writing and be addressed directly to the defendant, if an individual, or to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subsection (h);

(B) be dispatched through first-class mail or other reliable means;

(C) be accompanied by a copy of the complaint and shall identify the Court in which it has been filed;

(D) inform the defendant of the consequences of compliance and of a failure to comply with the request;

(E) set forth the date on which the request is sent;

(F) allow the defendant a reasonable time to return the waiver, which shall be at least thirty (30) days from the date on which the request

is sent, or sixty (60) days from that date if the defendant is addressed outside the United States; and

(G) provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the Court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until sixty (60) days after the date on which the request for waiver of service was sent, or ninety (90) days after that date if the defendant was addressed outside the United States.

(4) When the plaintiff files a waiver of service with the Court, the action shall proceed, except as provided in subpart (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under subpart (2) for failure to comply with a request to waive service under subsection (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service of summons shall include the costs subsequently incurred in effecting service.

(e) Service. Service upon any person from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for

service in that country in an action in any of its courts of general jurisdiction;

(B) as directed by the foreign authority in response to a letter rogatory or letter of request;

(C) unless prohibited by the law of the foreign country, by:

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the Court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the Court.

(g) Service Upon Minors and Incompetent Persons. Service upon a minor or an incompetent person shall be effected by service on the minor or incompetent person and the parent or legal guardian of the minor or incompetent person.

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in the United States in the manner prescribed for individuals by subsection (e), or by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process; or

(2) in a place not within the United States in any manner prescribed for individuals by subsection (f) except personal delivery as provided in subpart (2)(C)(i) thereof.

(i) Service Upon Foreign, State or Local Governments

(1) Service upon a foreign state or a political subsection, agency, or instrumentality thereof shall be in accordance with the procedures for federal and state courts as provided in 28 U.S.C. § 1608.

(2) Service upon a state or municipal corporation or other government organization subject to suit shall be effected by delivering a copy of the summons and the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(j) Territorial Limits of Effective Service. Service of a summons on a person otherwise subject to the jurisdiction of the Nez Perce Tribal Court may be made anywhere in the

United States or elsewhere if effected under this rules.

(k) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the Court. If service is made by a person other than a tribal police officer, the person shall make affidavit thereof. Proof of service in a place not within the United States shall, if effected under subpart (1) of subsection (f), be made pursuant to the applicable treaty or convention, and shall, if effected under subpart (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the Court. Failure to make proof of service does not affect the validity of the service. The Court may allow proof of service to be amended.

(l) Time Limit for Service. If service of the summons and complaint is not made upon a defendant within one hundred and twenty (120) days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the Court shall extend the time for service for an appropriate period. This subsection does not apply to service in a foreign county pursuant to subsection (f) or (i)(1) of this rule.

(m) Seizure of Property; Service of Summons Not Feasible. The Court may assert jurisdiction over property. Notice to claimants of the property shall then be sent in the manner provided by the statute or by service of a summons under this rule.

**Rule 4.1 Service of Other Process**

(a) Generally. Process other than a summons as provided in Rule 4 or subpoena as provided in Rule 45 shall be served by a tribal police officer within the reservation, or a person specially appointed for that purpose, who may serve anywhere in the United States. Proof of service shall be made as provided in Rule 4(1). The process may be served anywhere within the United States.

(b) Enforcement of Orders; Commitment for Civil Contempt. An order of civil commitment of a person held to be in contempt of a decree or injunction issued by the Court may be served and enforced anywhere in the United States.

**Rule 5 Service and Filing of Pleadings and Other Papers**

(a) Service; When Required. Every pleading subsequent to the original complaint unless the Court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the Court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its

seizure.

(b) Same; How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the Court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

(c) Same; Numerous Defendants. In any action in which there are unusually large numbers of defendants, the Court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the Court directs.

(d) Filing; Certificate of Service. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the Court within a reasonable time after service, but the court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the court or for use in the proceeding.

(e) Filing with the Court Defined. The filing of papers with the Court as required by these rules shall be made by filing them with the clerk of the Court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. The Court may permit papers to be filed by facsimile or other electronic means. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or practices.

**Rule 6 Time**

(a) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion:

(1) with or without motion or notice order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order; or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect;

but it may not extend the time for taking any action under Rules 48(b) and (c)(2), 50 (b), 57(b), (d) and (e), and 58(b), except to the extent and under the conditions stated in them.

(b) For Motions--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served no later than five (5) days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 57(c), opposing affidavits may be served not later than one (1) day before the hearing, unless the Court permits them to be served at some other time.

(c) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

**Rule 7 Pleadings Allowed; Form of Motions**

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim, denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

**Rule 8 General Rules of Pleadings**

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain

(1) a short and plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it;

(2) a short and plain statement of the claim showing that the pleader is entitled

to relief; and

(3) a demand for judgment for the relief the pleader seeks.

Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or subparts or may generally deny all the averments except such designated averments or subparts as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the Court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 1.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of the statements if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

**Rule 9 Pleading Special Matters.**

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the Court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

**Rule 10 Form of Pleadings**

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party of each side with an appropriate indication of other parties.

(b) Subparts; Separate Statements. All averments of claim or defense shall be made in numbered subparts, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a subpart may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each

defense other than denials shall be state in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

**Rule 11 Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions**

(a) Signature. Every pleading, written motion and other paper of a party shall be signed by at least one attorney of record in the attorney's individual name, or if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by this code, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the Court determines that subsection (b) has been violated, the Court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subsection (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the Court unless, within twenty-one (21) days after service of the motion (or such other period as the Court may

prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the Court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the Court may enter an order describing the specific conduct that appears to violate subsection (b) and directing an attorney, law firm, or party to show cause why it has not violated subsection (b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparts (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may be awarded against a represented party for a violation of subsection (b)(2).

(B) Monetary sanctions may not be awarded on the Court's initiative unless the Court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the Court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subsections (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

**Rule 12 Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings**

(a) When Presented.

(1) A defendant shall serve an answer:

(A) within twenty (20) days after being served with the summons and complaint; or

(B) if service of the summons has been timely waived on request under Rule 4(d), within sixty (60) days after the date when the request for waiver was sent, or within ninety (90) days after that date if the defendant was addressed outside the United States.

(2) A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within twenty (20) days after being served. The plaintiff shall serve a reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order, unless the order otherwise directs.

(3) Unless a different time is fixed by court order, the service of a motion permitted under this rule alters these periods of time as follows:

(A) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action; or

(B) if the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter;

(2) lack of jurisdiction over the person;

(3) improper venue;

(4) insufficiency of process;

(5) insufficiency of service of process;

(6) failure to state a claim upon which relief can be granted; or

(7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted.

No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 53, and all

parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 53.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 53, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 53.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subsection (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subsection (c) of this rule shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty (20) days after the service of the pleading upon the party or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived:

(A) if omitted from a motion in the circumstances described in subsection (g); or

(B) if it is neither made by motion under this rule nor included in the responsive pleading or an amendment thereof permitted by Rule

15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and the objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

**Rule 13 Counterclaim and Cross-Claim**

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the Court cannot acquire jurisdiction. But the pleader need not state the claim if:

(1) at the time the action was commenced the claim was the subject of another pending action; or

(2) the opposing party brought suit upon the claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive Counterclaims. A pleading may state as a counter claim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

(e) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(f) Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim

asserted in the action against the cross-claimant.

(g) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(h) Separate Trials; Separate Judgments. If the Court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 51(b) when the Court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

**Rule 14 Third Party Practice**

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than ten (10) days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counter-claims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

**Rule 15 Amended and Supplemental Pleadings**

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty (20) days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the

Court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when:

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action;

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading; or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and, within the period provided by Rule 4(l) for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental Pleadings. Upon motion of a party the Court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

**Rule 16 Pretrial Conferences; Scheduling; Management**

(a) Pretrial Conferences; Objectives. In any action, the Court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) Scheduling and Planning. Except in categories of actions exempted by court rule as inappropriate, the judge shall after receiving the report from the parties under Rule 26(f) or after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time:

(1) to join other parties and to amend the pleadings;

(2) to file motions; and

(3) to complete discovery.

The scheduling order also may include:

(4) modifications of the times for disclosures under Rules 26(a) and 26(e)(1) and of the extent of discovery to be permitted;

(5) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(6) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in any event within ninety (90) days after the appearance of a defendant and within one hundred and twenty (120) days after the complaint has been served on a defendant. A schedule shall not be modified except upon a showing of good cause and by leave of the judge.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the Court may take appropriate action, with respect to:

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the Court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence, and

limitation or restrictions on the use of testimony under the Rules of Evidence;

(5) the appropriateness and timing of summary adjudication under Rule 53;

(6) the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37;

(7) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(8) settlement and the use of special procedures to assist in resolving the dispute when authorized by this code;

(9) the form and substance of the pretrial order;

(10) the disposition of pending motions;

(11) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;

(12) an order for a separate trial pursuant to Rule 42(b) with respect to a claim, counterclaim, cross-claim, or third-party claim, or with respect to any particular issue in the case;

(13) an order directing a party in the trial with respect to a manageable issue that could, on the evidence, be the basis for a judgment as a matter of law under Rule 48(a) or a judgment on partial findings under Rule 50(c);

(14) an order establishing a reasonable limit on the time allowed for presenting evidence; and

(15) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. If appropriate, the Court may require that a party or its representative be present or reasonably available by telephone in order to consider possible settlement of the dispute.

(d) Final Pretrial Conference. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) Pretrial Orders. After any conference held pursuant to this rule, an order shall be

entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

## PARTIES

### Rule 17 Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another may sue in that person's own name without joining the party for whose benefit the action is brought and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The Court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

### Rule 18 Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, or equitable, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the Court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff,

without first having obtained a judgment establishing the claim for money.

**Rule 19 Joinder of Persons Needed for Just Adjudication**

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

(1) in the person's absence complete relief cannot be accorded among those already parties; or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(A) as a practical matter impair or impede the person's ability to protect that interest; or

(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

If the person has not been so joined, the Court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subsection (a)(1)-(2) hereof cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the Court include:

(1) to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties;

(2) the extent to which, by protective provision in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;

(3) whether a judgment rendered in the person's absence will be adequate; and

(4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subsection (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

**Rule 20 Permissive Joinder of Parties**

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials. The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

**Rule 21 Misjoinder and Non-Joinder of Parties**

Misjoinder of parties is not ground for dismissal of action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

**Rule 22 Interpleader**

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

**Rule 23 Class Actions**

(a) Prerequisite to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subsection (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class;

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the Court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) the difficulties likely to be encountered in the management of a class action.

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.

(1) As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subsection (b)(3), the Court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that:

(A) the Court will exclude the member from the class if the member so requests by a specified date;

(B) the judgment, whether favorable or not, will include all members who do not request exclusion; and

(C) any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

(3) The judgment in an action maintained as a class action under subsection (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the Court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.

(4) When appropriate:

(A) an action may be brought or maintained as a class action with respect to particular issues; or

(B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this rule applies, the Court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the Court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) imposing conditions on the representative parties or on intervenors;

(4) requiring that the pleadings be amended to eliminate therefrom allegations to representation of absent persons, and that the action proceed accordingly;

(5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to all the members of the class in such manner as the Court directs.

**Rule 23.1 Derivative Actions by Shareholders**

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege:

(a) that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the plaintiff's share or membership thereafter devolved on the plaintiff by operation of law; and

(b) that the action is not a collusive one to confer jurisdiction on the Nez Perce Tribal Court which it would not otherwise have.

The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors of comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the Court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the Court directs.

**Rule 23.2 Actions Relating to Unincorporated Associations**

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the Court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

**Rule 24 Intervention**

(a) Intervention of Right. Upon timely application anyone shall be permitted to

intervene in an action:

(1) when this code confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action:

(1) when this code confers a conditional right to intervene; or

(2) when an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relies for ground of claim or defense upon any law or executive order administered by a federal, state or tribal governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the law or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when this code gives a right to intervene. When the legality of an act of the tribe is drawn in question in any action in which the tribe or an officer, agency, or employee thereof is not a party, the Court shall notify the tribal office of legal counsel. A party challenging the legality of legislation should call the attention of the Court to its consequential duty, but failure to do so is not a waiver of any constitutional right otherwise timely asserted.

**Rule 25 Substitution of Parties**

(a) Death

(1) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) Incompetency. If a party becomes incompetent, the Court upon motion served as provided in subsection (a) of this rule may allow the action to be continued by or against the party's representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a) of this rule.

(d) Tribal Officers; Death or Separation from Office.

(1) When a tribal officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A tribal officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the Court may require the officer's name to be added.

## DEPOSITIONS AND DISCOVERY

### Rule 26 General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

(1) Initial Disclosures. Except to the extent otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the

possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Unless otherwise stipulated or directed by the Court, these disclosures shall be made at or within ten (10) days after the meeting of the parties under subsection (f). A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by subpart (1), a party shall disclose to other parties the identity of any person who may be used at trial to present evidence under Rules 45, 46 or 48 of the Rules of Evidence.

(B) Except as otherwise stipulated or directed by the Court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten (10) years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four (4) years.

(C) These disclosures shall be made at the times and in the sequence directed by the Court. In the absence of other directions from the Court or stipulation by the parties, the disclosures shall be made at

least ninety (90) days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under subpart (2)(B), within thirty (30) days after disclosure made by the other party. The parties shall supplement these disclosures when required under subsection (e)(1).

(3) Pretrial Disclosures. In addition to the disclosures required in the preceding subparts, a party shall provide to other parties the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:

(A) the name and, if not previously provided, the address and telephone number of each of those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the Court, these disclosures shall be made at least thirty (30) days before trial. Within fourteen (14) days thereafter, unless a different time is specified by the Court, a party may serve and file a list disclosing:

(i) any objections to the use under Rule 32(a) of a deposition designated by another party under subpart (B); and

(ii) any objection, together with the grounds therefor, that may be made to the admissibility of materials identified under subpart (C).

Objections not so disclosed, other than objections under Rules 10 and 11 of the Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.

(4) Form of Disclosures; Filing. Unless otherwise directed by order, all disclosures under subparts (1) through (3) shall be made in writing, signed, served, and promptly filed with the Court.

(5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or

things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the Court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. By order, the Court may alter the limits in these rules on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the Court if it determines that:

(A) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.

The Court may act upon its own initiative after reasonable notice or pursuant to a motion under subsection (c).

(3) Trial Preparation; Materials. Subject to the provisions of subsection (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the

materials by other means. In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion. For purposes of this subpart, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If a report from the expert is required under subsection (a)(2)(B), the deposition shall not be conducted until report is provided.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) the Court shall require that the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery under this subsection; and

(ii) with respect to discovery obtained under subsection (b)(4)(B) of this rule the Court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining

facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the Court;

(6) that a deposition after being sealed be opened only by order of the Court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

If the motion for a protective order is denied in whole or in part, the Court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except when authorized under these rules or by order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by subsection (f). Unless the Court upon motion,

for the convenience of parties and witnesses and in the interests of justice orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party who has made disclosure under subsection (a) or responded to a request for discovery with a disclosure or response is under a duty to supplement or correct the disclosure or response to include information thereafter acquired if ordered by the Court in the following circumstances:

(1) A party is under duty to supplement at appropriate intervals its disclosures under subsection (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under subsection (a)(2)(B) the duty extends both to information contained in the report and to information provided through a deposition of the expert, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Rule 26(a)(3) are due.

(2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(f) Meeting of Parties; Planning for Discovery. Except in actions exempted by law or when otherwise ordered, the parties shall, as soon as practicable and in any event at least fourteen (14) days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subsection (a)(1), and to develop a proposed discovery plan. The plan shall indicate the parties' views and proposals concerning:

(1) what changes should be made in the timing, form, or requirement for disclosures under subsection (a) or law, including a statement as to when disclosures under subsection (a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules or by law, and what other limitations should be imposed; and

(4) any other orders that should be entered by the Court under subsection (c) or under Rule 16(b) and (c).

The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the Court within ten (10) days after the meeting a written report outlining the plan.

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subsection (a)(1) or subsection (a)(3) shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the Court upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate

sanction, which may include an order to pay the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

**Rule 27 Depositions Before Action or Pending Appeal**

(a) Before Action

(1) Petition. A person who desires to perpetuate testimony regarding any claim for relief that may be brought in the Court may file a verified petition with the Court. The petition shall be entitled in the name of the petitioner and shall show:

(A) that the petitioner expects to be a party to an action brought in the Court but is presently unable to bring it or cause it to be brought;

(B) the subject matter of the expected action and the petitioner's interest therein;

(C) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(D) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(E) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the Court, at a time and place named therein, for the order described in the petition. At least twenty (20) days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service or summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the Court may make such order as is just for service by publication or otherwise.

(3) Order and Examination. If the Court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these rules; and the Court may make orders of the character provided for by Rules 34 and 35.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these rules it may be used in any action involving the same subject matter subsequently brought in the Tribal Court in accordance with the provisions of Rule 32(a).

(b) Pending Appeal. If an appeal has been taken from a judgment of the Court or before the taking of an appeal if the time therefor has not expired, the Court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the Court. In such case the party who desires to perpetuate the testimony may make a motion in the Court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the Court. The motion shall show:

(1) the names and address of the persons to be examined and the substance of the testimony which the party expects to elicit from each; and

(2) the reasons for perpetuating their testimony.

If the Court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions.

(c) Perpetuation by Action. This rule does not limit the power of the Court to entertain an action to perpetuate testimony.

**Rule 28 Persons Before Whom Depositions May Be Taken**

(a) Within the United States. Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and take testimony. The term officer as used in Rules 30, 31, and 32 includes a person appointed by the Court or designated by the parties under Rule 29.

(b) In Foreign Countries. Depositions may be taken in a foreign country:

(1) pursuant to any applicable treaty or convention;

(2) pursuant to a letter of request (whether or not captioned a letter rogatory);

(3) on notice before a person authorized to administer oaths in the place where the examination is held, either by the law thereof or by the law of the United States; or

(4) before a person commissioned by the Court, and a person so commissioned shall have the power by virtue of commission to administer

any necessary oath and take testimony. A commission or a letter of request shall be issued on application and notice and on terms that are just and appropriate.

It is not requisite to the issuance of a commission or a letter of request that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter of request may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter of request may be addressed "To the Appropriate Authority in [here name the country]." When a letter of request or any other device is used pursuant to any applicable treaty or convention, it shall be captioned in the form prescribed by that treaty or convention. Evidence obtained in response to a letter of request need not be excluded merely because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

**Rule 29 Stipulations Regarding Discovery Procedure**

Unless otherwise directed by the Court, the parties may by written stipulation:

(a) provide the depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(b) modify other procedures governing or limitations placed upon discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may, if they would interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the Court.

**Rule 30 Depositions Upon Oral Examination**

(a) When Depositions May be Taken; When Leave Required.

(1) A party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in subpart (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined, is confined in prison or if, without the written stipulation of parties:

(A) a proposed deposition would result in more than ten (10) depositions being taken under this rule or Rule 31 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined already has been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the United States and be unavailable for examination in this country unless deposed before that time.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to, or included in, the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the Court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means and the party taking the deposition shall bear the cost of the recording. Any party may arrange for transcription to be made from the recording of a deposition taken by nonstenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at that party's expense unless the Court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:

(A) the officer's name and business address;

(B) the date, time, and place of the deposition;

(C) the name of the deponent;

(D) the administration of the oath or affirmation to the deponent; and

(E) an identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The

appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the Court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a) and 37(b)(1) a deposition taken by such means is taken at the place where the deponent is to answer questions.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Rules of Evidence except Rules 3 and 43. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subsection (b)(4) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a

privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under subpart (3).

(2) By order, the Court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the Court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon order of the Court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subsection (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(1) The officer shall certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Court, the officer shall securely seal the deposition in an envelope or package indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Court or send it to the attorney who arranged for the transcript or recording, who shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may:

(A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals; or

(B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Court, pending final disposition of the case.

(2) Unless otherwise ordered by the Court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the Court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

**Rule 31 Depositions Upon Written Questions**

(a) Serving Questions; Notice.

(1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in subpart (2). The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the Court prescribes.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) a proposed deposition would result in more than ten (10) depositions being taken under this rule or Rule 30 by the plaintiffs, or by the defendants, or by third-party defendants;

(B) the person to be examined has already been deposed in the case; or

(C) a party seeks to take a deposition before the time specified in Rule 26(d).

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(A) the name and address of the person who is to answer, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(B) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

(4) Within fourteen (14) days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within seven (7) days after being served with cross questions, a party may serve redirect questions upon all other parties. Within seven (7) days after being served with redirect questions, a party may serve recross questions upon all other parties. The Court may for cause shown enlarge or shorten the time.

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and prepare, certify, and file or mail the deposition attaching thereto the copy of the notice and the questions received by the officer.

(c) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

**Rule 32 Use of Depositions in Court Proceedings**

(a) Use of Depositions. At the trial or upon the hearing of a motion or an

interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions.

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under the Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court finds:

(A) that the witness is dead;

(B) that the witness is at a greater distance than 100 miles from the Tribal Court, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than eleven (11) days' notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and when an action has been brought and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subsection (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Form of Presentation. Except as otherwise directed by court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the Court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenograhic form, if available, unless the Court for good cause orders otherwise.

(d) Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Deposition.

(A) Objections to competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or

other questions and within five (5) days after service of the last questions authorized.

(4) As to Completion and Return of Deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

**Rule 33 Interrogatories to Parties**

(a) Availability. Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding twenty-five (25) in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2). Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d).

(b) Answers and Objections

(1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objections and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties subject to Rule 29.

(4) All grounds for an objection to an interrogatory shall be stated with specifity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the Court for good cause shown.

(5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b)(1), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

**Rule 34 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes**

(a) Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. Without leave of court or written stipulation, a request may not be served before the time specified in Rule 26(d).

The party upon whom the request is served shall serve a written response within thirty (30) days after the service of the request. A shorter or longer time may be directed by the Court or, in the absence of such an order, agreed to in writing by the parties, subject to Rule 29. The

response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection permitted for the remaining parts. The party submitting the request may move for any order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons and parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

**Rule 35 Physical and Mental Examinations of Persons**

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the Court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.

(1) If requested the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requesting party a copy of the detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The Court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the Court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subsection applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subsection does not preclude discovery of a report of an examiner or the taking of a deposition of the examiner in accordance with the provisions of any other rule.

**Rule 36 Requests for Admission**

(a) Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b)(1) set forth in the request that relate to statements or opinions for fact or of the application of law to fact including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Without leave of court or written stipulation requests for admission may not be served before the time specified in Rule 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the Court may allow or as the parties may agree to in writing, subject to Rule 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which the admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The Court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(3) apply to the award of expenses incurred in relation to the motion.

(b) Effect of Admission. Any matter admitted under this rule is conclusively established unless the Court on motion permits withdrawal or amendment of the admission. Subject to the provision of Rule 16 governing amendment of a pre-trial order, the Court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the Court that

withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

**Rule 37 Failure to Make or Cooperate in Discovery; Sanctions**

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) Motion.

(A) If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(2) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subsection an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(3) Expenses and Sanctions.

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the Court finds that the

motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the Court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the Court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the Court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) If a deponent fails to be sworn or to answer a question after being directed to do so by the Court, the failure may be considered a contempt of court.

(2) If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection (a) of this rule or Rule 35, or if a party fails to obey an order entered under Rule 26(f), the Court may make such orders in regard to the failure as are just, and among others the following:

(A) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) in lieu of any of the foregoing orders or an addition thereto, an order treating as a contempt of court the failure to obey any orders

except an order to submit to a physical or mental examination;

(E) where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in subparts (A), (B), and (C) of this subsection, unless the party failing to comply shows that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the Court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit.

(1) A party that without substantial justification fails to disclose information required by Rule 26(a) or 26(e)(1) shall not, unless such failure is harmless, be permitted to use as evidence at a trial, at a hearing or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the Court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparts (A), (B), and (C) of subsection (b)(2) of this rule and may include informing the jury of the failure to make the disclosure.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the Court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The Court shall make the order unless it finds that:

(A) the request was held objectionable pursuant to Rule 36(a);

(B) the admission sought was of no substantial importance;

(C) the party failing to admit had reasonable grounds to believe that the party might prevail on the matter; or

(D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails:

(1) to appear before the officer who is to take the deposition, after being served with a proper notice; or

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or

(3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the Court in which the action is pending on motion may make such orders in regard to the failure as are just, and under subparts (A), (B), and (C) of subsection (b)(2) of this rule.

Any motion specifying a failure under clause (2) or (3) of this subsection shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the Court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

(e) Failure to Participate in the Framing of a Discovery Plan. If a party or a party's attorney fails to participate in good faith in the development and submission of a proposed discovery plan as is required by Rule 26(f), the Court may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by failure.

## TRIALS

### Rule 38 Jury Trial of Right

(a) Right Preserved. The right of trial by jury shall be preserved to the parties for any claim in which a legal remedy is sought, but excluding a claim in which an equitable remedy is sought.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by:

(1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue; and

(2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

(c) Same: Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the

issues, any other party within ten (10) days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues or fact in the action.

(d) Waiver. The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

**Rule 39 Trial by Jury or by the Court**

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open court and entered in the record, consent to trial by the Court sitting without a jury or (2) the Court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Indian Civil Rights Act of 1968.

(b) By Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the Court; but, notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the Court in its discretion upon motion may order a trial by a jury of any or all issues.

**Rule 40 Assignment of Cases for Trial**

The Court shall provide by rule for the placing of actions upon the trial calendar (1) without request of the parties or (2) upon request of a party and notice to the other parties or (3) in such other manner as the courts deem expedient. Precedence shall be given to actions entitled thereto by tribal law.

**Rule 41 Dismissal of Actions**

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 64, and of any tribal law, an action may be dismissed by the plaintiff without order of court:

(A) by filing notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or

(B) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed an action based on or including the same claim.

(2) By Order of Court. Except as provided in subpart (1) of this subsection

of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the Court and upon such terms and conditions as the Court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court. Unless otherwise specified in the order, a dismissal under this subpart is without prejudice.

(b) Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subpart (1) of subsection (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(c) Costs of Previously Dismissed Actions. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the Court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until plaintiff has complied with the order.

**Rule 42 Consolidation; Separate Trials**

(a) Consolidation. When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claim, cross-claim, counterclaims, third-party claims, or issues, always preserving the right of trial by jury as declared Rule 38.

**Rule 43 Taking of Testimony**

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by tribal law, these rules or the Rules of Evidence.

(b) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(c) Evidence on Motions. When a motion is based on facts not appearing of record the Court may hear the matter on affidavits presented by the respective parties, but the Court may direct that the matter be heard wholly or partly on oral testimony or deposition.

(d) Interpreters. The Court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct, and may be taxed

ultimately as costs, in the discretion of the Court.

**Rule 44 Proof of Official Record**

(a) Authentication.

(1) Domestic. An official record kept by the tribe or within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of the Tribal Court or a court of record of the district or political subsection in which the record is kept, authenticated by the seal of the Court, or may be made by any tribal officer or public officer having a seal of office and having official duties in the district or political subsection in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subsection (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subsection (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

**Rule 44.1 Determination of Foreign Law**

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law.

**Rule 45 Subpoena**

(a) Form; Issuance.

(1) Every subpoena shall:

(A) state that it is issued from the Nez Perce Tribal Court;

(B) state the title of the action, that it is pending in the Nez Perce Tribal Court, and its civil action number;

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subsections (c) and (d) of this rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) The clerk of the Court shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service.

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person a $10.00 fee for one day's attendance plus mileage. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) A subpoena directed to a witness in a foreign country who is a national or resident of the United States shall issue under the circumstances and in the manner and be served pursuant to the procedures used by federal courts as provided in Title 28 U.S.C. § 1783.

(3) Proof of service when necessary shall be made by filing with the clerk of the Court a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court shall enforce this duty and impose upon the party or attorney in breach of this duty as appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)

(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to subpart (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the Court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)

(A) On timely motion, the Court shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iii) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential

research, development, or commercial information;

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party;

(iii) requires a person who is not a party or an officer of a party to travel more than 100 miles to attend trial, the Court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the Court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the Court.

**Rule 46 Exception Unnecessary**

Formal exceptions to rulings or orders of the Court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the Court is made or sought, makes known to the Court the action which the party desires the Court to take or the party's objection to the action of the Court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

**Rule 47 Special Verdicts and Interrogatories**

(a) Special Verdicts. The Court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the Court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written

findings thereon as it deems most appropriate. The Court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the Court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the Court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The Court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The Court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the Court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 55. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 55 in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the Court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

**Rule 48 Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings**

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim, or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Renewal of Motion of Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than ten (10) days after entry of judgment. A motion for a new trial under Rule 57 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than ten (10) days after entry of judgment. A motion for new trial under Rule 57 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the Court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the Court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against who judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 57 not later than ten (10) days after entry of the judgment.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in these rules precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

**Rule 49 Instructions to Jury: Objection**

At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the requests. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The Court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

**Rule 50 Findings by the Court; Judgment on Partial Findings**

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 55; and in granting or refusing interlocutory injunctions the Court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the Court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 53, or any other motion except as provided in subsection (c) of this rule.

(b) Amendment. Upon motion of a party made not later than ten (10) days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 57. When findings of fact are made in actions tried by the Court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) Judgment on Partial Findings. If during a trial without a jury a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the Court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subsection (a) of this rule.

**JUDGMENT**

**Rule 51 Judgments; Costs**

(a) Definition; Forms. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the Court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is not just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and

liabilities of all the parties.

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) Costs; Attorneys' Fees.

(1) Costs Other than Attorneys' Fees. Except when express provision therefor is made either in this code or these rules, costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the Court otherwise directs. Such costs may be taxed by the clerk on one day's notice. On motion served within five (5) days thereafter, the action of the clerk may be reviewed by the Court.

(2) Attorneys' Fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by this code or order of the Court, the motion must be filed and served no later than fourteen (14) days after entry of judgment; must specify the judgment and the law, rule or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the Court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

(C) On request of a party or class member, the Court shall afford an opportunity for adversary submission with respect to the motion in accordance with Rule 43(c). The Court may determine issues of liability for fees before receiving submissions bearing on issues of evaluation of services for which liability is imposed by the Court. The Court shall find the facts and state its conclusions of law as provided in Rule 50(a), and a judgment shall be set forth in a separate document as provided in Rule 55.

(D) The provisions of subparts (A) through (C) do not apply to claims for fees and expenses as sanctions for violations of these rules.

**Rule 52 Default**

(a) Entry. When a party against whom a judgment for affirmative relief is sought

has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the Court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three (3) days prior to the hearing on such application. If, in order to enable the Court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make the truth of any averment by evidence or to make an investigation of any other matter, the Court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by this code.

(c) Setting Aside Default. For good cause shown the Court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 58(b).

(d) Plaintiffs, Counterclaims, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 51(c).

**Rule 53 Summary Judgment**

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without

supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating, counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the Court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**Rule 54 Declaratory Judgments**

(a) In a case of actual controversy within its jurisdiction, the Tribal Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought.

(b) The procedure for obtaining a declaratory judgment shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

**Rule 55 Entry of Judgment**

(a) Subject to the provisions of Rule 51(b):

(1) upon a general verdict of a jury, or upon a decision by the Court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the Court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the Court;

(2) upon a decision by the Court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the Court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

Every judgment shall be set forth on a separate document. Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees. Attorneys shall not submit forms of judgment except upon direction of the Court, and these directions shall not be given as a matter of course.

**Rule 56 Recognition and Enforcement of Foreign Judgments**

(a) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court.

(b) A copy of any foreign judgment authenticated in accordance with the laws of the jurisdiction in which it was issued may be filed in with the clerk of the Court. The clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the Tribal Court and may be enforced or satisfied in like manner, with the following exception:

(1) The terms of a judgment providing for the custody of a minor child may not be modified, vacated, reopened nor stayed unless the Court has assumed jurisdiction of the case.

(c)

(1) At the time of the filing of the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk of the court an affidavit setting forth the name and last known post-office address of the judgment debtor, and the judgment creditor.

(2) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(3) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until five (5) days after the date the judgment is filed.

(d)

(1) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or until the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment required by the law of the jurisdiction in which it was rendered, if the Court determines such security is necessary.

(2) If the judgment debtor shows the Court any ground upon which enforcement of the judgment would be stayed in the issuing jurisdiction, the Court shall stay enforcement of the foreign judgment for an appropriate period, and may require security for satisfaction of the judgment during the stay.

(e) Any person filing a foreign judgment shall pay to the clerk of the Court a fee established by the Tribal Court.

(f) The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this rule remains unimpaired.

(g) This act may be cited as the 'Enforcement of Judgments Act.

**Rule 57 New Trials; Amendment of Judgments**

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues:

(1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the Courts of the United States; and

(2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than ten (10) days after entry of judgment the Court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the Court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than ten (10) days after entry of the judgment.

**Rule 58 Relief From Judgment or Order**

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 57(b);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita querela and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

**Rule 59 Harmless Error**

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

**Rule 60 Stay of Proceedings to Enforce a Judgment**

(a) Automatic Stay; Exceptions--Injunctions, Receiverships, and Patent Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of ten (10) days after its entry. Unless otherwise ordered by the Court an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subsection (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 57, or of a motion for relief from a judgment or order made pursuant to Rule 58, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 48, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 50(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subsection (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the Court.

(e) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(f) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 51(b), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

### Rule 61 Inability of a Judge to Proceed

If a trial or hearing has been commenced and the judge is unable to proceed, any other judge may proceed with it upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

## PROVISIONAL AND FINAL REMEDIES

### Rule 62 Seizure of Person or Property

At commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the tribe, existing at the time the remedy is sought.

### Rule 63 Injunctions **(revised 6/22/99)**

(a) Preliminary Injunction.

(1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing With Trial on Merits. Before or after the

commencement of the hearing of an application for a preliminary injunction, the Court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subsection (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) There shall exist an action known as a "petition for a domestic protection order" in cases of domestic violence.

(1) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the Nez Perce Tribal Court, alleging that they are a victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter.

(2) A person's right to petition for relief under this chapter shall not be affected by that person having left the residence or household to avoid abuse.

(3) The petition shall disclose the existence of any custody or any marital annulment, dissolution, or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection, or adoption proceedings affecting the children of any of the parties.

(4) When the petitioner requests custody of any child, the petition shall disclose:

(A) The county and state where the child has resided for six months immediately prior to filing of the petition;

(B) The party or other responsible person with whom the child is presently residing; and

(C) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(5) A petition shall be filed:

(A) Where the petitioner currently or temporarily resides;

(B) Where the respondent resides; or

(C) Where the act of domestic violence occurred.

(6) There is no minimum requirement of residency to petition for a domestic protection order.

(7) The petition shall not be a matter of public record.

(c) Ex Parte Protection Order.

(1) The Court may grant an ex parte temporary protection order pending a full hearing, granting such relief as the Court deems proper, where a petition under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. The temporary order may include an order:

(A) Restraining the respondent from contacting the petitioner, either directly or indirectly;

(B) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(C) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner until further ordered by the Court;

(D) Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children;

(E) Restraining any party from interfering with the other's custody of the children or from removing the children from the jurisdiction of the Court;

(F) Ordering other relief as the Court deems necessary for the protection of a domestic partner, including orders or directives to peace officers as allowed under this code;

(G) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(H) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(2) An ex parte temporary domestic protection order shall remain in effect for 10 days from the date of issuance.

(3) A full hearing shall be held no more than 10 days from the date of

issuance of an ex parte temporary domestic protection order. The respondent shall be personally served with a copy of the temporary order and notice of hearing, in accordance with the Rules of Civil Procedure of the Nez Perce Tribal Code.

(4) If the respondent is not personally served with a copy of the temporary order and notice of hearing, the existing temporary order may be extended for 10 days from the date originally set for hearing, and a new hearing date set. The respondent must be personally served with the new notice of hearing.

(d) Domestic protection order.

(1) A court may grant the following relief, if requested, in a domestic protection order after notice and hearing, whether or not the respondent appears:

(A) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if the exercise of such jurisdiction is consistent with the provisions of this code, or consistent with prior custody orders entered by a court of competent jurisdiction.

(B) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(C) Restraining the respondent from contacting, harassing, telephoning, or otherwise communicating with the petitioner, either directly or indirectly;

(D) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner;

(E) Other relief as the Court deems necessary for the protection of the petitioner, including orders or directives to peace officers as allowed under this code;

(F) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(G) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(H) Prohibiting the respondent from having in their possession any firearm and/or ammunition whether working or not; or

(I) Suspending or revoking the respondent's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

(2) No protection order under this section shall in any manner affect title to real property.

(3) Relief shall not be denied because the petitioner used reasonable force in self-defense against the respondent, or because the petitioner or respondent was a minor at the time of the incident of domestic violence.

(4) Any relief granted by the domestic protection order shall be for a fixed period not to exceed 90 days; provided that an order obtained pursuant to this chapter may, upon written motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order is entered.

(5) In providing relief under this chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

(6) A court shall not grant a mutual domestic protection order to opposing parties.

(e) Full Faith and Credit.

(1) Any domestic protection order issued that is consistent with subsection (b) of this section by one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the Nez Perce Tribe and enforced as if it were the order of the Nez Perce Tribe.

(2) A domestic protection order issued by a State or Tribal court is consistent with this subsection if:

(A) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(B) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or Tribal law, and in any event within a reasonable time after the order is issued.

(3) A domestic protection order issued by a State or Tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a domestic household member is not entitled to full faith and credit if:

(A) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or

(B) a cross or counter petition has been filed and the Court did not make specific findings that each party was entitled to such an order.

(f) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition; and

(2) the applicant's attorney certifies to the Court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice, and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless a party against whom the order is directed consents that it may be extended or a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining or protection order is granted without notice, the motion for a preliminary injunction or protection order shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction or protection order and, if the party does not do so, the Court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(g) Security. No restraining order, preliminary injunction or protection order shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

The provisions of Rule 63.1 apply to a surety upon a bond or undertaking under this rule.

(h) Form and Scope of Injunction, Restraining Order or Protection Order. Every order granting an injunction and every restraining or protection order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**Rule 63.1 Security: Proceedings Against Sureties**

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the Court and irrevocably appoints the clerk of the Court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the clerk of the Court, who shall forthwith mail copies to the sureties if their addresses are known.

**Rule 64 Receivers Appointed by Court**

An action wherein a receiver has been appointed shall not be dismissed except by order of the Court. The practice in the administration of estates by receivers or by other similar officers appointed by the Court shall be in accordance with the practice followed in the courts of the United States or as provided in rules promulgated by such courts. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

**Rule 65 Deposit in Court**

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the Court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the Court.

**Rule 66 Offer of Judgment**

At any time more than ten (10) days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within ten (10) days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a

proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

**Rule 67 Execution**

In General. Process to enforce a judgment for the payment of money shall be a writ of execution, unless the Court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with this code. In aid of the judgment of execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules.

**Rule 68 Process in Behalf of and Against Persons Not Parties**

When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.

**SPECIAL PROCEEDING**

**Rule 69 Condemnation of Property**

(a) Applicability of Other Rules. The Rules of Civil Procedure for the United States District Court for the District of Idaho govern the procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided in this rule.

(b) Joinder of Properties. The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) Complaint.

(1) Caption. The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) Contents. The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification, the interests to be acquired, and as to each separate piece of property a designation of the

defendants who have been joined as owners thereof or of some interest therein. Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonable diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners." Process shall be served as provided in subsection (d) of this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in subsection (e) of this rule. The Court meanwhile may order such distribution of a deposit as the facts warrant.

(3) Filing. In addition to filing the complaint with the Court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) Process.

(1) Notice: Delivery. Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) Same; Form. Each notice shall state the Court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of the defendant's property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, and that the failure so to serve an answer constitutes a consent to the taking and to the authority of the Court to proceed to hear the action and to fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and an address where the attorney may be served. The notice need contain a description of no other property than that to be taken from the defendants to whom it is directed.

(3) Service of Notice.

(A) Personal Service. Personal service of the notice (but without copies of the complaint) shall be made in accordance with Rule 4

upon a defendant whose residence is known and who resides within the United States or a territory subject to the administrative or judicial jurisdiction of the United States.

(B) Service by Publication. Upon the filing of a certificate of the plaintiff's attorney stating that the attorney believes a defendant cannot be personally served, because after diligent inquiry the defendant's place of residence cannot be ascertained by the plaintiff, or, if ascertained, that it is beyond the territorial limits of personal service as provided in this rule, service of the notice shall be made on the defendant by publication in a newspaper published in a newspaper having a general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall also be mailed to a defendant who cannot be personally served as provided in this rule but whose place of residence is then known. Unknown owners may be served by publication in like manner by a notice addressed to "Unknown Owners."

Service by publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked thereon.

(4) Return; Amendment. Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons under Rule 4.

(e) Appearance or Answer. If a defendant has no objection or defense to the taking of the defendant's property, the defendant may serve a notice of appearance designating the property in which the defendant claims to be interested. Thereafter, the defendant shall receive notice of all proceedings affecting it. If a defendant has any objection or defense to the taking of the property, the defendant shall serve an answer within twenty (20) days after the service of notice upon the defendant. The answer shall identify the property in which the defendant claims to have an interest, state the nature, and extent of the interest claimed, and state all the defendant's objections and defenses to the taking of the property. A defendant waives all defenses and objections not so presented, but at the trial of the issue of just compensation, whether or not the defendant has previously appeared or answered, the defendant may present evidence as to the amount of the compensation to be paid for the property, and the defendant may share in the distribution of the award. No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) Amendment of Pleadings. Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subsection (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subsection (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the Court for the use of the defendants at

least one copy of each amendment and shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subsection (e) of this rule a defendant may serve an answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) Substitution of Parties. If a defendant dies or becomes incompetent or transfers an interest after the defendant's joinder, the Court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subsection (d)(3) of this rule.

(h) Trial. If the action involves the exercise of the power of eminent domain under the law of the tribe, any party may have a trial by jury of the issue of just compensation by filing a demand therefor within the time allowed for answer or within such further time as the Court may fix, unless the Court in its discretion orders that, because of the character, location, or quantity of the property to be condemned, or for other reasons in the interest of justice, the issue of compensation shall be determined by commission of three persons appointed by it.

In the event that a commission is appointed the Court may direct that not more than two (2) additional persons serve as alternate commissioners to hear the case and replace commissioners who, prior to the time when a decision is filed, are found by the Court to be unable or disqualified to perform their duties. An alternate who does not replace a regular commissioner shall be discharged after the commission renders its final decision. Before appointing the member of the commission and alternates the Court shall advise the parties of the identity and qualifications of each prospective commissioner and alternate and may permit the parties to examine each such designee. The parties shall not be permitted or required by the Court to suggest nominees. Each party shall have the right to object for valid cause to the appointment of any person as a commissioner or alternate. Trial of all issues shall otherwise be by court.

(i) Dismissal of Action.

(1) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) By Stipulation. Before the entry of any judgment vesting the plaintiff with title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and if the parties so stipulate, the Court may vacate any judgment that has been entered.

(3) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the

Court may dismiss the action as to that property, except that it shall not dismiss the action as to any party of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The Court at any time may drop a defendant unnecessarily or improperly joined.

(4) Effect. Except as otherwise provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

(j) Deposit and Its Distribution. The plaintiff shall deposit with the Court any money required by law as a condition to the exercise of the power of eminent domain; and although not so required, may make a deposit when permitted by statute. In such cases the Court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to that defendant on distribution of the deposit, the Court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to that defendant, the Court shall enter judgment against that defendant and in favor of the plaintiff for the overpayment.

**Rule 70 Stenographer; Stenographic Report or Transcript as Evidence**

Stenographic Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

**Rule 71 Jurisdiction Unaffected**

These rules shall not be construed to extend or limit the jurisdiction of the Nez Perce Tribe.

**Rule 72 Rules by Court**

The Court may from time to time, after giving appropriate public notice and an opportunity to comment, make and amend rules governing its practice not inconsistent with these rules. The rules shall take effect upon the date specified by the Court and shall remain in effect unless amended by the Court. In all cases not provided for by rule, the Court may regulate its practice in any manner not inconsistent with these rules.

**Rule 73 Name Change**

(a) Jurisdiction of Tribal Court

(1) petitioner must be subject to Tribal jurisdiction

(2) application for change of name will be heard and determined in Tribal Court

(3) petitioner will be required to pay the designated filing fee upon initial application

(b) Application must be made to Tribal Court by petition and must include:

(1) signature of petitioner seeking a name change

(2) if petitioner is under eighteen (18) years of age, petition must include the signature of not less than one (1) parent if one or both are living, or

(3) if both parents are deceased, then the signature of the guardian; or

(4) if no appointed guardian then the signature of a near relative or friend must be included.

In addition, petition must also include:

(5) name and current address of petitioner

(6) date of birth and place of birth of petitioner

(7) present name of petitioner

(8) new name proposed by petitioner

(9) reason for requested name change

(10) name and current address(es) of parents of petitioner, or if both parents deceased, the name(s) and address(es) of petitioner's immediate relatives

(c) Publication of petition

(1) petition, after receiving the signature of the Court clerk and seal of the Court, must be published for four (4) successive weeks in the Nez Perce Tribal newspaper, or not less than four (4) successive publications if not published weekly.

(2) if no Tribal newspaper is being printed, then a copy of the petition must be posted at not less than three (3) of the most public places within the reservation boundary for a period of not less than four (4) successive weeks.

(d) Proof of publication or posting must be presented at the hearing for such name change. Notice of hearing to be published or posted may read as follows:

In Nez Perce Tribal Court in the State of Idaho, County of Nez Perce, city of Lapwai. In the matter of petition by _____(name)_____ for a change in name. A petition by _____(name)_____, born _

(date) at _____(place)_____, currently residing at _____ (address)_____is seeking a change of name to_____(new name)_____ . Petition has been filed in the Nez Perce Tribal Court. Name of petitioner's father is _____ , currently residing at _____(address)_____; name of petitioner's mother is ____ , currently residing at _____(address)_____ . [If both parents deceased, names & addresses of nearest living relatives should be placed here]

Petition will be heard by the Court at the appointed time of _____ . [or, if no hearing date yet set, print as 'at such time as the Court may appoint]. Objections may be filed by any person who can show to the Court good reason for the Court to consider denying the proposed name change.

Signature of Court Clerk

Name of petitioner's attorney if applicable.

(e) The Court may examine petitioner or any persons filing objections to the sought name change, under oath, as the Court deems necessary to decide whether to deny or order the sought name change.

# CHAPTER 2-3
# CIVIL INFRACTION PROCEDURES

## GENERAL PROVISIONS

### §2-3-1 Definitions

(a) "Business day" means any day in which the business of the Nez Perce Tribe is normally conducted and excluding weekends and holidays.

(b) "Contraband" means any item which is unlawful to possess or produce

(c) "Defendant" means the person against whom an action is filed under this chapter.

(d) "Infraction" means a civil offense in which the remedy involved shall be a civil fine. An infraction is not a crime and the punishment imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(e) "Instrumentality" means any item used in connection with an infraction.

(f) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing that a person has committed an infraction. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an infraction has been committed and that the person to be cited has committed it.

(g) "Personal delivery" means the physical presentation of a citation to a person accused of an infraction violation.

(h) "Notice" means to hand deliver notice to a party or mail such notice to the party's most recently known address.

(i) "Tribal Police Officer" means BIA law enforcement officers, tribal police officers, or other peace officers authorized by the Nez Perce Tribe to enforce the laws of the Tribe.

(j) "Tribe" means the Nez Perce Tribe.

### §2-3-2 Application

The procedures in this chapter shall apply to any general or traffic infraction listed in this code. Unless otherwise provided, the sole remedy for a violation of a general or traffic infraction under this code shall be those which are provided herein.

### §2-3-3 Rights of Defendant

A defendant charged with a general or traffic infraction, shall have the right to:

(a) present evidence and examine witnesses;

(b) compulsory process for obtaining witnesses in his favor and at his own expense; and

(c) have the assistance of counsel for his defense at his own expense.

## INFRACTION PROCEDURE

### §2-3-4 Citations

(a) Issuance of a Nez Perce Tribal infraction citation will initiate prosecution of an action under this chapter. An infraction citation may be issued by:

(1) a tribal police officer once the officer has probable cause to believe an infraction under this code has been committed;

(2) service by the Court clerk upon the filing of a complaint by the tribal prosecutor.

(b) A tribal police officer shall serve a copy of a tribal citation on the defendant by personal delivery to him when the defendant is present, or when the citation is for a traffic infraction and the defendant is not present, by issuing the citation to the registered owner of the vehicle involved and affixing it in plain view on the vehicle. Certification of service of a citation shall be indicated on the face of the citation by the issuing officer. The original citation shall be filed with the Tribal Court and a copy delivered to the tribal prosecutor within one (1) business day of serving.

(c) The filing of a complaint by the tribal prosecutor and service of a citation by the Court clerk shall be in accordance with the Rules of Civil Procedures except that a citation shall be served in lieu of a summons.

(d) The Tribal Court may permit the amendment of any process or pleading at any time so long as the substantial rights of the defendant are not prejudiced. If an amendment of a citation complaint is made, the Court may grant a continuance of the trial for good cause.

(e) Only one person and one violation may be charged by a complaint on a single citation. A citation shall require that the defendant appear in Tribal Court not less than five (5) nor more than fifteen (15) business days after the date of the citation.

(f) Any person charged with a violation of this chapter may pay the fine prior to the date set for trial by returning the citation and fine to the Tribal Court by mail or in person. Payment of the fine in such a manner shall constitute an admission of the charge. The payment must be received by the Court on or before the appearance date set forth in the citation.

### §2-3-5 Preliminary Hearing/Trial **(revised 6/22/99)**

### A. <u>Preliminary Hearing</u>

(a) Unless the defendant pays an infraction fine prior to a preliminary hearing, he shall appear before the tribal judge on the date listed in the citation. At the preliminary hearing the defendant shall admit or deny the allegations in the civil infraction citation. If the defendant

admits the allegations the tribal judge may consider any evidence presented by the defendant in imposing an appropriate fine.

(b) If the defendant denies the allegations in the civil infraction citation the tribal judge shall schedule a trial date.

**B. <u>Trial</u>**

(a) If the defendant is not represented by counsel, the citing officer may present evidence on behalf of the Tribe. If the defendant is represented by counsel, the Court shall notify the tribal prosecutor who shall appear on the Tribe's behalf.

(b) The burden of proof shall be on the tribe to establish the commission of the violation by a preponderance of the evidence. If the trier of fact does not find by a preponderance of the evidence that the defendant committed the infraction offense, the Court shall enter judgment for the defendant. If the trier of fact finds by a preponderance of the evidence, that the defendant committed the infraction, the Court shall enter judgment against the defendant.

(c) The Rules of Evidence shall apply to trial proceedings under this chapter.

**§2-3-6 Remedies**

(a) Unless otherwise provided, fines for individual infractions shall be fixed as determined by NPTEC and shall reflect the severity of the offense and the tribe's interest in protecting individuals and property. A list of such fines, which shall be updated periodically as the Court shall determine is necessary, shall be provided to the tribal police for use in issuing citations.

(b) A fixed fine shall be the primary remedy for a traffic infraction under this code. Fines for traffic infractions shall be in an amount equal to the total amount charged by the State of Idaho for the same offense as provided by the "Idaho Court Rules" as of the date of adoption of this chapter and as amended, less $5.00; provided, that no fine shall be reduced below the amount of $5.00. In addition to a fine, violators of the Nez Perce traffic laws may also be subject to the assessment of points, suspension or revocation of driving privileges and assessment of costs or fees related to revocation or suspension in accordance with the applicable law of the jurisdiction where the violator resides.

(c) For civil infractions other than traffic violations, the Nez Perce Tribal Court may apply any of the following remedies singularly or in combination:

(1) issue an injunction, by ordering the defendant to temporarily or permanently refrain from conducting the acts or actions that gave rise to the complaint;

(2) order the defendant to pay compensation or restitution to the tribe, an individual or any other entity injured by the actions of the defendant. In the event that evidence of damage or loss to an individual or entity other

than the tribe arises in the course of an infraction proceeding, the victim shall be so notified by the citing officer. Compensation or restitution shall reflect the actual documented damages or loss suffered as determined by the Tribal Court at a separate hearing and shall not include compensation for emotional distress or other special damages. The victim shall bear the burden of proving damages in damage hearings and mitigating circumstances shall be taken into account. Once a damage determination is made the victim shall bear the burden of collecting any and all judgments;

(3) assess a fine; or

(4) order community service.

(d) In any proceedings in which the defendant is found to have committed an infraction, the Tribal Court may assess court costs against the defendant to be added to any fine, restitution or other remedy prescribed. The Court may also allow the assessment of attorney's fees against the defendant if the tribe is required to pursue the collection of a judgment under this chapter. Where the infraction involves a controlled substance or alcohol either as an element of the offense or as a factor contributing to the commission of the offense, the Court may impose a period of probation and order drug and/or alcohol evaluation, counseling and random testing as a condition of probation, the violation of which probation shall itself be an offense under § 4-1-33 of the Nez Perce Tribal Code punishable by up to sixty days in detention/jail and a fine up to $500. In the event of a repeated offense by a minor, the Court may require the family of the offender residing with the offender to participate in counseling.

(e) When in the judgment of the Prosecutor it would be appropriate, the Prosecution may also commence an action for forfeiture under Chapter 2-6 of the Nez Perce Tribal Code.

**§2-3-7 Failure to Appear**

(a) If the defendant fails to appear before the Court at or before the time stated in the infraction citation or to otherwise pay the fine in accordance with this chapter, the Court shall enter default judgment against the defendant.

(b) If a default judgment is entered against a defendant, the Court clerk shall issue notice of judgment to the defendant advising him that he must pay the judgment by a date certain which shall not be less than ten (10) business days after the date of the notice. The notice shall state that failure to pay the judgment will result in suspension of his driver's license and/or proceedings for contempt.

(c) If a defendant fails to pay a civil infraction fine or other penalty within the time allowed by a notice of default judgment under this section then the Court shall:

(1) for traffic infractions, sign a notice of nonpayment of traffic fine and send it to the Idaho Department of Transportation for suspension of defendant's driver's license; and

(2) find the defendant in contempt of court in accordance with this code.

**§2-3-8 Method of Payment of Penalty and Costs**

The judgment and court costs for an infraction offense shall be paid by cash, money order, cashier's check or other certified funds payable to the Nez Perce Tribe.

**§2-3-9 Appeals**

(a) Any party may appeal a final decision of the Tribal Court on an infraction violation. In addition, the victim of such violation may appeal the final judgment in a damages hearing.

(b) Upon review, the Appeals Court shall reverse the judgment of the Trial Court if it finds there are no facts to support the Trial Court's determination or the law was misinterpreted or misapplied.

# CHAPTER 2-4
# JUVENILE JUSTICE
**(Chapter revised 8/24/99)**

## §2-4-0 Purpose

The purpose of this Chapter is to secure for each child coming before the Tribal Court, such care, guidance, and control preferably in his/her own home or with an extended family member, that will serve his/her welfare and the best interests of the Nez Perce Tribe; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity whenever possible; to improve any home conditions or home environment which may be contributing to his/her delinquency; and, at the same time, to protect the peace and security of the Nez Perce Reservation and its individual residents from juvenile violence. To this end, this Chapter shall be liberally construed.

## INTRODUCTORY PROVISIONS

## §2-4-1 Definitions

(a) "Adult" means an individual who is eighteen (18) years of age or older or who is sixteen (16) years of age or older and has been married or who is sixteen (16) years of age or older and is the custodial parent of a child or who has been otherwise emancipated by the Court.

(b) "Child" or "minor" means an individual who is less than eighteen (18) years old who does not fall within the meaning of "Adult" as set out in §2-4-1(a).

(c) "Custodian" means a person, other than a parent or guardian, to whom custody of a child has been given.

(d) "Delinquent act" means an act which would be a crime if committed by an adult.

(e) "Detention" means exercising authority over a child by physically placing him in any juvenile facility designated by the Court and restricting the child's movement in that facility.

(f) "Domicile" means a person's residence in which they intend to remain indefinitely.

(g) "Emergency foster home" means a foster home which has been licensed to accept emergency placements of children at any hour of the day or night.

(h) "Foster home" means a home licensed by the tribe as provided in the Minor in need of Care chapter.

(i) "Guardian" means a person, other than a parent, assigned by a court of law, having the duty and authority to provide care and control of a child.

(j) "Habitual status offender" means any minor who has been found to have committed three (3) status offenses within twelve months.

(k) “Home Detention” means a dispositional alternative available to the Court whereby a juvenile offender may be released to the parent or legal guardian provided that the juvenile offender may not be out between the hours of 6:00 P.M. and 6:00 A.M. nor go beyond fifty (50) yards of the residence in which the Court ordered them to be detained without twenty-four (24) hour prior approval of the Court.

(l) "Juvenile delinquent" means a child who commits a delinquent act.

(m) "Juvenile shelter care facility" means any juvenile facility (other than a school) that cares for juveniles, including alcohol or substance abuse programs, emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, shelter homes and medical facilities.

(n) "Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father who has not been acknowledged or established as the child's biological father.

(o) "Probable cause" exists under this chapter when a tribal police officer has substantial objective basis for believing that a minor has committed or will commit a delinquent act. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an act has or will be committed and that the juvenile involved has committed or will commit such act.

(p) "Probation" means a legal status created by court order whereby a juvenile delinquent is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A juvenile delinquent on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

(q) "Secure juvenile facility" means a facility which (1) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (2) restricts the movement of those placed in the locked cells or rooms, and (3) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

(r) "Status offense" means truancy, running away from or being beyond the control of parents, guardian or custodian and curfew violations.

**§2-4-2 Personal Jurisdiction**

(a) Except as otherwise specifically provided, the Nez Perce Tribal Court shall have jurisdiction over any child who is a member or eligible to become a member of the Nez Perce Tribe no matter where domiciled, residing, or found and any other Indian child domiciled or found within the territorial boundaries of the Nez Perce Tribe. The Court may decline jurisdiction where a forum with concurrent jurisdiction is exercising its authority or in cases where neither the child nor either parent is a Reservation resident in cases where justice may require declination.

(b) To the extent necessary to make a proper disposition of the case, the Nez Perce Tribal Court shall have authority to exercise jurisdiction over all persons having the care,

custody or control of a child over whom the Court exercises jurisdiction. This authority shall include the power to punish for contempt whether or not such contempt is committed in its presence.

**§2-4-3 Extension of Jurisdiction**

Under this Chapter, the Court has exclusive jurisdiction to try a child under eighteen (18) limited jurisdiction between eighteen (18) and twenty-one (21), and none thereafter. If the child turns eighteen (18) before a Petition is filed but after offense is committed, the child shall be tried as a juvenile, subject to §2-4-6.

Jurisdiction can be extended to twenty-one (21) if done before the juvenile is eighteen (18) in order to retain jurisdiction to impose sentence or to have time to execute full sentence.

**§2-4-4 Capacity**

A child under the age of six (6) is deemed incapable of committing a crime. A child of six (6) and under ten (10) is presumed incapable of committing a crime, but the presumption is rebuttable. A child ten (10) or over is deemed to be capable of committing a crime for capacity purposes.

**§2-4-5 Nature of Juvenile Cases**

Adjudication of a juvenile matter by the court shall not under any circumstances be deemed a criminal conviction unless the minor is tried as an adult for the alleged act.

**§2-4-6 Trial as Adult**

(a) The Tribal Prosecutor or the child may file a petition requesting the court to try a child as an adult if the child is fourteen (14) years of age or older and is alleged to have committed an act which would have been considered a crime if committed by an adult. Once the petition is filed, the court shall conduct a hearing on the matter.

(1) The court may try the minor as an adult only if it:

(A) finds clear and convincing evidence that:

(i) there are no reasonable prospects for rehabilitating the child through resources available to the court; and

(ii) the act(s) allegedly committed by the child demonstrate conduct which constitutes a substantial danger to the public.

(B) issues a written order that the child shall be tried as an adult with respect to the delinquent acts alleged in the petition after the conclusion of the hearing.

(b) If the child is between the ages of sixteen (16) and eighteen (18) and is accused of a violent offense: Aggravated Assault §4-1-39, Aggravated Battery §4-1-40, Aggravated

Stalking §4-1-42, Murder §4-1-43, Manslaughter §4-1-44, Kidnaping §4-1-45, False Imprisonment §4-1-46, Rape §4-1-48, Forcible Sexual Penetration with a Foreign Object §4-1-49,Unlawful Sexual Intercourse §4-1-50, Sexual Assault §4-1-51, Sexual Molestation of a Minor under Sixteen §4-1-52, Aggravated Arson §4-1-55, Extortion §4-1-68, Domestic Violence §4-1-88, Abuse of Vulnerable Adults §4-1-89, Child Abuse §4-1-90, Riot §4-1-121, Setting a Dangerous Device §4-1-125, Weapons Offense §4-1-126, or Committing an Offense While Armed §4-1-127, the child will automatically be tried as an adult.

(c) Once a juvenile is transferred to Adult Court he/she no longer meets the definition of a child or minor and all subsequent charges will be brought in Adult Court.

**§2-4-7 Comity**

State, federal or other Tribal Court orders involving children over whom the court has jurisdiction may be recognized by the court only after an independent review of such state proceedings has determined:

(a) the court has jurisdiction over the child;

(b) due process was provided to all participants; and

(c) the proceeding did not violate the public policies or law of the tribe.

**§2-4-8 Juvenile Probation Officers**

(a) Such Juvenile Probation Officers as may be required to carry out the purposes of this Chapter shall be appointed by the Tribe. Juvenile Probation Officers shall be chosen for their ability and special aptitude for working with children. In addition, any members of Tribal Law Enforcement assigned duties similar to those of Juvenile Probation officers shall be deemed "Juvenile Probation Officers" for all purposes under this Chapter.

(b) Juvenile Probation Officers shall have the power and duty to carry out the objectives and provisions of this Chapter with regard to juvenile offender cases and shall:

(1) make preliminary inquiries, social studies, and such other investigations as the Court may direct;

(2) keep written records of such inquiries, social studies, and such other investigations and shall make written reports to the Court;

(3) supervise and assist each child placed on probation or under his/her supervision;

(4) keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Court as the Judge may direct;

(5) use all suitable methods to aid children on probation or under protective supervision to bring about improvements in their conduct or conditions;

(6) take children into custody when there is reasonable cause to believe that they have violated conditions of their probation; and

(7) perform such other duties in connection with the care, custody, or transportation of children as the Court may require.

(c) Juvenile Probation officers shall have the powers of Tribal Police Officers for purposes of this Chapter, but shall, whenever possible, refrain from exercising such powers except in urgent situations in which an on-duty Tribal Police Officer is not immediately available.

**CUSTODY**

**§2-4-9 When Juvenile may be Taken into Custody**

A Tribal police officer may take a child into custody when:

(a) the child commits a delinquent act in the presence of the officer;

(b) the officer has probable cause to believe the child has committed a delinquent act;

(c) a custody order or warrant for child has been issued by the court;

(d) when the officer has reasonable grounds to believe the child has committed a status offense; or

(e) when the juvenile probation officer has reasonable cause to believe that the child has violated conditions of their probation.

**§2-4-10 Notification of Rights**

A Tribal police officer taking a child into custody shall inform the child that:

(a) he has a right to remain silent;

(b) anything he says can be used against him in court;

(c) he has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and

(d) he has a right to an attorney at his own expense.

**§2-4-11 Custody Procedures**

(a) While in custody, a child shall not be finger printed or photographed except by order of the court.

(b) After taking a child into custody the officer shall:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to a relative or other responsible adult if the child's parent, guardian or custodian consents to the release; or

(3) deliver the child to a juvenile shelter care facility or a secure juvenile facility. Status offenders shall not be placed in any secure juvenile facility, but instead, may be placed in a juvenile shelter care facility.

## COURT PROCEDURES IN JUVENILE MATTERS

### §2-4-12 Petition

An advisory hearing shall be initiated by a petition filed by the tribal prosecutor on behalf of the tribe. The petition shall set forth with specificity:

(a) the name, birth date, residence, and tribal affiliation of the child;

(b) the names and residences of the child's parent, guardian or custodian;

(c) a citation to the section containing the offense which the child is alleged to have committed;

(d) a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and

(e) whether the child is in custody and, if so, the place of detention, date and time he was taken into custody.

### §2-4-13 Juvenile Proceedings **(amendment authorized 10/9/01)**

(a) During proceedings in juvenile matters:

(1) unless otherwise provided by this chapter, the rules of procedure shall be the same as that for adult criminal proceedings;

(2) the child and his parent, guardian or custodian present in court shall be informed by the court of the rights provided to the child by the arresting officer and the:

(A) allegations against the child;

(B) right to cross-examine witnesses;

(C) right of the child to subpoena witnesses and to introduce evidence on his own behalf;

(D) privilege against self-incrimination;

(E) there is no right to a jury trial; and

(F) possible consequences if the allegations in the petition are found to be true.

(3) the child has a right to an attorney at his own expense;

(4) the child has no right to a jury trial; and

(5) the general public shall be excluded.

(b) Discovery

(1) At the expense of the defendant and upon his request, the prosecutor shall permit the defendant to inspect and copy or photograph the following items which are within the possession, custody or control of the prosecutor and/or tribal police:

(A) relevant written or recorded statements made by the defendant or copies thereof;

(B) copies of the defendant's prior criminal record;

(C) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case;

(D) results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof made in connection with the defendant's case.

(2) Regardless of a request by the defendant, the prosecution and/or tribal police shall at least fifteen (15) business days before the Adjudicatory Hearing if the defendant is not in custody and five (5) business days if defendant is in custody, provide the defendant with:

(A) any evidence of an exculpatory nature in their possession or of which they may be aware;

(B) written notice staling names and addresses of the witnesses the prosecution intends to call at trial.

(3) Upon the request of the prosecutor and at the expense of the tribe, the defendant shall permit the prosecutor to inspect and copy or photograph:

(A) results or reports of physical or mental examinations, scientific tests or experiments made in connection with the defendant's case;

(B) books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case.

(4) Regardless of a request by the prosecutor, the defendant shall at least seven (7) business days before the Adjudicatory Hearing if defendant is not in custody and three (3) business days if the defendant is in custody, provide the prosecution with written notice of names and addresses of the witnesses it intends to call at the Adjudicatory Hearing.

(5) If, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or the court of the existence of the additional evidence or material.

(6) Except to the extent such material is otherwise subject to discovery, this rule shall not authorize the discovery or inspection of:

(A) reports, memoranda, or other internal documents made by the defendant, an attorney for either party or agents of the either party in connection with the investigation, prosecution or defense in the case;

(B) statements made by the defendant, witnesses or prospective witnesses in connection with the case.

(7) Upon motion by a party, the court may deny or restrict discovery or issue such other order as is appropriate. If the court enters an order granting relief all items or documents reviewed in camera shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.

(8) Once the court determines that a party has failed to comply with this rule, it may grant a motion to compel submitted by the opposing party, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such other order as it deems just. In addition to any other action taken by the court upon a finding that a party has failed to comply with this rule, the court may award attorney's fees and costs to the prevailing party resulting from procedures to compel discovery.

**§2-4-14 Detention Hearing**

(a) When a child is placed into secured confinement upon being taken into custody, the court shall hold a detention hearing within one (1) business day of the initial detention. At such hearing, the court shall determine:

(1) whether probable cause exists to believe the child committed the alleged delinquent act; and

(2) whether continued detention is necessary pending further proceedings.

(b) If the court determines that there is a need for continued detention, it shall specify where the child is to be placed until the adjudicatory hearing.

## INFORMAL ADJUSTMENT/ADVISORY HEARING

### §2-4-15 Informal Adjustment (section amended effective 3/12/02)

(a) In the case of a minor who commits a status offense or is a first time offender, the Prosecutor may hold an informal conference with the child and the child's parent, guardian or custodian, and/or other persons whose presence is considered appropriate to discuss alternatives to the filing of a petition for an adjudicatory hearing if:

(1) The admitted facts bring the case within the jurisdiction of the Court;

(2) An informal adjustment conference of the matter would be in the best interest of the child and the Tribe;

(3) The child and his parent, guardian or custodian consent to an informal adjustment conference; and

(4) An informal adjustment is not in conflict with §2-4-6.

(b) Notice of the informal adjustment conference shall be given to the child and his parent, guardian or custodian and their counsel as soon as the time for the conference has been established.

(c) Any statement made during the informal adjustment conference may be admitted into evidence at any adjudicatory hearing or any other proceeding under this Code. The child and his parent, guardian or custodian shall be informed of this provision.

(d) At the conclusion of the informal adjustment conference the Prosecutor will:

(1) refer the child and the parent, guardian or custodian to a community agency for needed assistance;

(2) order, by agreement of the child and his/her parent(s,) terms of supervision calculated to assist and benefit the child which regulate the child's activities and which are within the ability of the child to perform, such an order must be approved by the Court;

(3) recommend restitution to be made by the child; or

(4) make a decision to file a petition with the Court.

(e) Upon the successful completion of the informal adjustment, the case shall be closed and no further action taken. If the child fails to attend the informal adjustment conference, the Prosecutor shall file a petition for an adjudicatory hearing. If the child fails to successfully complete the terms of the agreement, the Prosecutor shall file a petition for an adjudicatory hearing.

**§2-4-16 Advisory Hearing**

(a) After receipt of the petition, the Court shall schedule an advisory hearing and inform the parties of the date and time of the hearing in the summons. If a child is in custody the advisory hearing must be held within ten (10) business days after receipt of the petition or the petition shall be dismissed unless:

(1) The hearing is continued upon motion of the child;

(2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Court finds the Prosecutor has exercised due diligence to obtain the evidence or witnesses and reasonable grounds exist to believe that the evidence or witnesses will become available;

(3) The hearing is continued upon motion of the Prosecutor by reason of difficulty of serving the summons and upon a showing of due diligence in attempting to discover the address or whereabouts of the person(s) to be served; or

(4) The hearing is continued upon the Court's determination that a continuance is in the best interest of the child.

(b) At the Advisory Hearing the Court shall:

(1) Read the Petition to the child and explain the allegation(s) in the petition;

(2) Explain the consequences of the Petition to the child;

(3) Give an explanation to the child of his rights in the proceedings, including the right to request a continuance to obtain counsel; and

(4) Offer the child the opportunity to admit or deny the allegation(s) in the petition.

(c) If the child admits to the allegation(s) in the petition, the Court shall schedule a Dispositional Hearing within ten (10) business days if the child is in custody. If the child is released from custody or was not taken into custody, then the dispositional hearing shall be held within twenty (20) business days thereafter, if the Court finds:

(1) The child fully understands his/her rights and the potential consequences of his/her admission.

(2) The child voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for the action; and

(3) The child has not, in his/her purported admission to the allegation(s), set forth facts which, if found to be true, constitute a defense to the allegation(s).

(d) If the child denies the allegation(s) in the petition, the Court shall schedule an Adjudicatory hearing.

## ADJUDICATORY HEARING/DISPOSITIONAL HEARING

### §2-4-17 Adjudicatory Hearing

(a) The court shall conduct the adjudicatory hearing to determine whether the child has committed a delinquent act or status offense. If the child remains in custody, the adjudicatory hearing shall be held within ten (10) business days after the advisory hearing. If the child is released from custody or was not taken into custody, the hearing shall be held within thirty (30) business days after the advisory hearing. If the Adjudicatory Hearing is not held within ten (10) business days after the advisory hearing when the child is in custody, the Petition shall be dismissed and cannot be filed again unless:

(1) The hearing is continued upon motion of the child;

(2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Court finds the Prosecutor has exercised due diligence to obtain the evidence or witnesses and reasonable grounds exist to believe that the evidence or witnesses will become available; or

(3) The hearing is continued upon the Court's determination that a continuance is in the best interest of the child.

(b) The Court shall conduct the adjudicatory hearing for the sole purpose of determining the guilt or innocence of the child. The hearing shall be private and closed.

(c) The Court shall hear testimony concerning the circumstances which gave rise to the Petition. If the court finds beyond a reasonable doubt that the allegations contained in the juvenile delinquent petition are true it shall schedule a disposition hearing and specify whether the child is to be placed or continued in out-of-home placement pending the hearing. If the court finds that the allegations in the petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

### §2-4-18 Consolidation of Proceedings

When more than one child is alleged to be involved in the same delinquent act, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

### §2-4-19 Predisposition Report

(a) Once a juvenile is found to have committed a delinquent act or status offense, the Juvenile Probation Officer shall prepare a written report describing reasonable and appropriate alternative dispositions. The report shall contain specific recommendations for the care of and assistance to the child calculated to resolve the problems presented in the Petition. The Juvenile

Probation Officer shall present the predispositional report to the Court, the child or his/her representative, and the Prosecutor at least two (2) days before the dispositional hearing.

(b) By motion of a party or by its own authority, the Court shall continue the dispositional hearing pending the receipt of a predispositional study and report.

(c) The Court may order a psychiatric examination of the child, parent, guardian or custodian. The parent, guardian or custodian may refuse to be examined but such refusal can be considered by the Court in making its determination on disposition.

**§2-4-20 Dispositional Hearing**

(a) A date for a dispositional hearing shall be set by the Court at the conclusion of the advisory hearing or the adjudicatory hearing as appropriate. The court shall conduct dispositional hearings to determine how to resolve a case after a finding that a child has committed a delinquent act or status offense. If the child remains in custody after the advisory hearing or adjudicatory hearing, the dispositional hearing shall be held within ten (10) business days thereafter. If the child is released from custody or was not taken into custody after the advisory hearing or adjudicatory hearing, then the dispositional hearing shall be held within twenty (20) business days thereafter.

(b) If a child has been adjudicated a juvenile offender, a habitual status offender or the child has admitted the allegation(s) in an advisory hearing, the Court may make the following dispositions:

(1) Place the child on probation subject to conditions set by the Court and subject to the probation requirements set by the Probation Officer;

(2) Place the child in an institution or agency designated by the Court for the purpose of treatment and/or rehabilitation;

(3) The Court may order home detention where such disposition is in the best interests of the child and the Tribe;

(4) The Court may order community service where appropriate supervision is available by any individual or organization duly authorized by the Court to supervise such community service;

(5) The child may be committed to a detention facility.

(6) The Court may order the child and/or the parent, guardian or custodian to attend any counseling or treatment that the Court finds is in the best interests of the child and the Tribe;

(7) The Court may order the child and the parent, guardian or custodian to pay any restitution for damages to person or property that has resulted from the actions of the child. Restitution shall include payment of money damages, surrender of property, or performance of any other act for the benefit of any person or party injured personally or in his property by the juvenile offender.

(8) The Court may order the child and the parent, guardian or custodian to pay Court costs not to exceed twenty-five dollars ($25.)

(9) The Court may enter any other order it deems appropriate.

### §2-4-21 Jurisdiction Over Parents

Whenever a juvenile is found to come under the purview of this chapter, the court shall have jurisdiction and authority to have the juvenile and the juvenile's parent(s), legal guardian or custodian sign a probationary contract with the court containing terms and conditions that the juvenile and the juvenile's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract the juvenile's parent(s), legal guardian or custodian shall be liable to the court for a specific monetary sum not to exceed one thousand dollars ($1,000) for the breach of contract. All such monies received by the court pursuant to this section shall be paid to the Nez Perce Tribal Court. In lieu of or in addition to a monetary payment, the court may order that the parent(s), legal guardian or custodian provide community service, attend parenting classes or undergo other treatment or counseling.

### §2-4-22 Status Offenses

(a) Truancy. Any minor who violates § 4-3-53(a) may be charged, petitioned and adjudicated with the status offense of being a Truant; **(subsection amended eff. 11/12/02)**

(b) Runaway. Any minor who violates § 4-3-53(c) Runaway may be charged, petitioned and adjudicated with the status offense of being a Runaway; **(subsection amended eff. 11/12/02)**

(c) Beyond Parental Control. Any minor who behaves in such a way as to be deemed by the court's caseworker as beyond the control of his parent(s), guardian or custodian may be charged, petitioned and adjudicated with the status offense of being Beyond Parental Control;

(d) Curfew Violation. Any minor who violates §4-3-52 may be charged, petitioned and adjudicated with the status offense of Curfew Violation;

(e) Habitual Status Offender. Any juvenile who has been adjudicated for commission of two (2) status offenses within twelve (12) months may be charged, petitioned and adjudicated as an habitual status offender for the third status offense committed within that twelve (12) month period. **(previous subsection (e) deleted eff. 11/12/02).**

## JUVENILE RECORDS

### §2-4-23 Maintenance of Records/Confidentiality **(section amended 4/10/01)**

(a) A record of all hearings under this chapter shall be made and preserved. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. Other than name, docket number, specific charges and specific convictions, all court records and law enforcement records related to juveniles shall be confidential and shall not be open to inspection to any but the following:

(1) the child;

(2) the child's parent(s), guardian or custodian;

(3) the child's counsel;

(4) law enforcement, juvenile court, and social services personnel directly involved in the handling of the case;

(5) the tribal prosecutor;

(6) other prosecuting attorneys or courts of competent jurisdiction; and/or

(7) any other person by order of the court, upon a showing of extraordinary need.

(b) The victim of misconduct shall always be entitled to the name of the juvenile involved, the name of the juvenile's parents or guardian, and their addresses and telephone numbers, if available in the records of the court;

(c) Records or statistical information may be released for purposes of legitimate research or study upon order of the court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

**§2-4-24 Destruction of Records**

The court may destroy the records of any juvenile once such person reaches the age of twenty one (21).

# CHAPTER 2-5
# ADMINISTRATIVE PROCEDURES
**(amendments to chapter adopted by NPTEC 5/28-29/02)**

## §2-5-1 Definitions

(a) "Adjudication" means the process provided by this chapter for the formulation of an order through a hearing before the tribal agency.

(b) "Appellant" means a person who files an appeal under this chapter.

(c) "Commission" means any Nez Perce Tribal entity of appointed or elected members empowered with specific authority and duties in relation to particular subject matter such as the adoption of rules or regulations and conducting hearings on disputed matters.

(d) "Department" means a unit of Nez Perce tribal staff members established to implement the goals and objectives of the Nez Perce Tribe in a specific area and operating under the supervision and direction of NPTEC.

(e) "Ex Parte communication" means a communication between one party to a proceeding and the hearing officer, tribal agency staff or any other decision maker without notice to or participation by any other party to the proceeding.

(f) "Manager" means the highest ranking staff person in a department.

(g) "Order" means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of a tribal agency in a matter other than rulemaking but including licensing.

(h) "Rule" means the whole or part of a tribal agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of a tribal agency.

(i) "Tribal agency" or "agency" for purposes of this chapter includes a program, department, board, commission or other tribal entity authorized or mandated by this code or NPTEC to issue rules or hold hearings and issue orders.

## §2-5-2 Procedural Rules/Policies

A tribal agency may adopt procedural rules or policies such as deadlines, hearing procedures and commenting criteria to assist in implementation of the provisions of this chapter. To the extent that either a tribal agency or NPTEC through ordinance or resolution has enacted procedures for rulemaking or adjudications which specifically address hearing procedures and other such matters in a manner more detailed than that of this Code, those procedures control to the extent that such rules or policies do not conflict with the provisions of this chapter.

## RULE MAKING

### §2-5-3 Rule Making Procedure

(a) At least fifteen (15) business days prior to tribal agency action on a proposed rule, such agency shall post in a conspicuous place in Lapwai, Kamiah, and Orofino and if possible, publish in the NPTEC minutes to be mailed to tribal members:

(1) a statement of the purpose and effect of the proposed rule;

(2) the reason for proposing adoption of the rule;

(3) reference to the legal authority under which the rule is adopted;

(4) that written comments may be submitted over the next fifteen (15) business days to a designated representative of the tribal agency; and

(5) that any comments submitted after the close of the fifteen (15) day comment period will not be considered in tribal agency action on the proposed rule.

(b) Following completion of the written comment period, the tribal agency may hold a public hearing. A decision to hold a public hearing may be based upon the written public comment received on the proposed rule, the potential controversy related to the proposal or whenever the tribal agency otherwise determines that additional public input would be useful and constructive. If such a hearing is held, the tribal agency shall post in a conspicuous place in Lapwai, Kamiah and Orofino and publish in the local newspapers:

(1) a statement of the purpose and effect of the proposed rule;

(2) references to the legal authority under which the rule is proposed;

(3) notice that on a specified date not less than five (5) but no more than ten (10) business days from the time of posting, a hearing will take place at a specified location for the purpose of taking public comment; and

(4) notice that the comment period on the proposed rule will be extended until the end of the hearing.

(c) This section shall not apply so long as the rule does not substantially affect the legal rights of, or procedures available to, the public and when the tribal agency finds and determines that:

(1) a proposed amendment is an interpretive rule, general statement of policy, or rule which addresses the internal management of the tribal agency; or

(2) for good cause, notice and public procedures are impracticable, unnecessary, or contrary to the public interest.

(d) The notice and comment provisions of this section shall not apply when the agency determines that prompt action is necessary for the preservation of life, health, property, order or natural resources.

(e) Following a tribal agency's final action on a rule it shall submit the rule to the NPTEC for review. Within five (5) business days of NPTEC approval, if any, the agency shall post a copy of the final rule in a conspicuous place in Lapwai, Orofino and Kamiah. The rule shall also be included with the NPTEC minutes mailed to tribal members.

(f) Posting of emergency rule shall clearly provide that such rule is an emergency and include the rational for the emergency. An emergency rule shall be effective immediately upon approval by the NPTEC and for a period of not longer than ninety (90) business days thereafter unless, during that time, the agency provides for regular notice and comment under this chapter.

(g) The notice and comment provisions of this section do not apply to agency rulemaking necessary for the exercise, protection, and enhancement of treaty reserved rights and resources.

## ADJUDICATIONS

### §2-5-4 Timing

Each tribal agency shall conduct an adjudication whenever this Code or NPTEC requires that such agency issue an order after opportunity for hearing on the record, or when a tribal employee is aggrieved by an employment action or a denial of license and seeks a hearing before the Board or hearings officer of a tribal agency. Immediately thereafter, the tribal agency shall designate a Board or hearings officer to schedule a hearing and resolve the dispute in the manner prescribed by this Chapter.

### §2-5-5 Exhaustion of Other Remedies

Before seeking a hearing before the Board or hearings officer of a tribal agency, the party seeking a hearing must have exhausted all other available administrative remedies established by the tribal agency.

### §2-5-6 Notice

Within ten (10) business days after the Code requires a hearing on the record or an employee has sought a hearing before the tribal agency, the Board or hearings officer of a tribal agency assigned to hear the dispute shall inform all persons known to have an interest in the hearing of:

(a) the time, place, and nature of the hearing;

(b) the legal authority under which the hearing is to be held; and

(c) the matters of fact and law asserted by the party seeking a hearing.

**§2-5-7 Appearance by Parties**

A party may appear in person or by or with counsel in a tribal agency adjudicatory proceeding.

**§2-5-8 Submission of Evidence**

Prior to the hearing, each party may submit such relevant documentary evidence in support of their position as necessary to assist the Board or hearing officer in making their decision. This documentary evidence shall serve as the basis of the Board or hearings officer's decision.

**§2-5-9 Hearings (amended by NPTEC 8/12/03)**

(a) Each tribal agency may adopt their own hearing procedures provided that they conform with due process and applicable tribal or federal law. To the extent that a tribal agency fails to adopt specific hearing procedures, or those procedures are in conflict with this Code, the procedures of this Chapter shall apply.

(b) The Board or hearings officer presiding at the hearing may:

(1) administer oaths and affirmations;

(2) upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas authorized by law and when requested by a party;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conference for the settlement or simplification of issues by consent of the parties;

(7) dispose of procedural requests or similar matters;

(8) directly question the parties to a hearing; and

(9) take other action consistent with this chapter.

(c) The party seeking the hearing has the burden of proof.

(d) The parties may present any additional oral or documentary evidence, but irrelevant, immaterial or unduly repetitious evidence shall be excluded. The parties may also

submit rebuttal evidence, and conduct cross examination where the hearings officer determines such actions will produce evidence material to the resolution of the case.

(e) The Board or hearings officer shall issue a written opinion and order within ten (10) days of the hearing. The decision shall:

(1) be based solely on those issues properly raised to the hearings officer and on all oral and documentary evidence submitted by the parties that is supported by substantial evidence; and

(2) be in writing and include the findings and conclusions of law of the Board or hearings officer and the reason or basis for such conclusions on all material issues of fact, law or discretion as presented by the parties, and the appropriate rule, order, sanction, relief, or denial thereof.

(f) The decision of the Board or hearings officer shall be the final agency decision.

**§2-5-10 The Record**

(a) The exclusive record for hearings shall be compiled by the tribal agency and shall include:

(1) complete audio or written recorded transcripts of testimony provided at the hearing;

(2) all documents, papers, requests, and exhibits filed prior to and during hearing; and

(3) the written decision of the Board or hearings officer.

(b) The record shall provide the basis for any subsequent appeal of the Board or hearing officer's decision to Tribal Court.

(c) The record shall be provided to a party upon request and payment of costs by such party.

**§2-5-11 Ex Parte Contacts and Conflict of Interests**

(a) No interested person outside a tribal agency involved in an adjudication shall make or knowingly cause to be made to any person in such tribal agency, a hearing officer or other tribal employee who is or may reasonably be expected to be involved in the decision making process of the proceedings an ex parte communication relevant to the merits of the proceeding.

(b) No member of the tribal agency, the hearing officer or tribal employee who is or may reasonably be expected to be involved in the decisional process related to an adjudication, shall make or knowingly cause to be made to any interested person outside the tribal agency an ex parte communication relevant to the merits of the proceeding;

(c) A member of the tribal agency, a hearing officer or other tribal employee who is or may reasonably be expected to be involved in the decisional process related to an adjudication who receives or who makes or knowingly causes to be made a communication prohibited by this subsection shall place on the record of the proceedings:

(1) all such written communications or memoranda stating the substance of such communications; and

(2) all written responses or memoranda stating the substance of responses, to the materials described above.

(d) Upon a violation of this section by a party and absent good cause shown to the contrary, the hearing officer may dismiss, deny, disregard or make other appropriate determinations in relation to such parties claim.

(e) Any member of the Board or a hearings officer who has an actual or potential personal, financial, or propriety interest in the outcome of a hearing or has a personal, financial, or propriety relationship with the employee seeking a hearing must disclose such interests and, if unable to act in a non-biased manner, must recuse himself from the hearing.

(f) The prohibitions of this section apply to any Nez Perce Tribal Executive Committee member who may sit on the Board or Commission of a tribal agency.

**§2-5-12 Exclusion of Certain Employees From Decision**

An employee or agent engaged in investigative or prosecuting functions for a tribal agency in a case may not, in that or a factually related case, participate or advise in the decision except as witness or counsel at the hearing unless the case involves the determination of an application for initial licenses.

**JUDICIAL REVIEW**

**§2-5-13 Petition for Review**

(a) Any party to a hearing before a Board or hearings officer may petition for review from the Nez Perce Tribal Court of a final decision by an agency for which there is no other adequate remedy by filing a written petition with the Court within thirty (30) business days after such final decision. A written notice of appeal must provide the Court with sufficient information and argument to show why the order or rule should be changed or reversed. At a minimum, a Petition for Review must:

(1) state that the document is an appeal;

(2) list the name, address and telephone number of the appellant;

(3) identify the decision or portion of a decision being appealed;

(4) identify by title and date, the written notice or posting in which the decision is found;

(5) state the reason for appeal including issues of fact, law, regulation, or policy;

(6) identify the authority for the Tribal Court to modify or set aside the decision; and

(7) identify the specific substantive or procedural errors of law or fact in the decision of the Board or hearings officer and the remedy sought.

(b) Within ten (10) business days after the filing of a Petition for Review, the Board or hearings officer shall submit to the Tribal Court the Record as described in §2-5-9. Should the Board or hearings officer fail to do so, the Tribal Court may order the Board or Hearings Officer to comply.

(c) Tribal Court may grant or deny the Petition for Review. The failure to include any of the items described in § 2-5-12(a) may be grounds for denying the Petition for Review. Should the Tribal Court grant the Petition, the Court shall establish a briefing schedule and set a date for a hearing.

**§2-5-14 Appeal Record**

(a) The appeal record shall provide the sole evidentiary record for the Tribal Court to review the decision of the Board or hearings officer. The record on appeal shall include:

(1) the Record as described in §2-5-9; and

(2) all appeal related documents filed with Tribal Court and any additional information requests by the Tribal Court.

(b) If an appeal of an adjudication, the record established in conducting the adjudication. Should the record from the hearing fail to include a recorded transcript, the Tribal Court may refuse to hear the petition for lack of evidence or decide, based on other evidence in the record, to hear the petition without the transcript.

**§2-5-15 Scope and Standard of Review**

(a) In reviewing the decision of the Board or hearings officer, the Tribal Court shall decide only those issues raised in the Petition for Review and developed within the Record, including all relevant questions of law and fact.

(b) The Tribal Court shall have exclusive jurisdiction to affirm, modify or set aside the decision of the Board of hearings officer; issue prohibitory or mandatory injunctions; issue declaratory judgments; or remand the matter to the tribal agency.

(c) If the Petition seeks review of a tribal agency rulemaking the Tribal Court shall review the action and compel tribal agency action unlawfully withheld or unreasonably delayed or hold unlawful and set aside agency action, findings, and conclusions found to be contrary to tribal or federal law or issued without observance of procedure required by law.

(d) If the Petition seeks review of a decision of a Board or hearings officer reached after a hearing on the record, the Tribal Court shall review the decision and hold unlawful and set aside agency action, findings, and conclusions found to be:

(1) arbitrary, capricious and an abuse of discretion, unsupported by substantial evidence or otherwise not in accordance with Tribal or federal law;

(2) contrary to constitutional right, power, privilege or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law.

(e) The Tribal Court shall render a decision on a petition for review no later than twenty (20) business days after the appeal is filed and shall set a date and time for hearing on the petition for review within the twenty (20) day time limit. The decision of the Tribal Court shall be based solely on those issues properly raised to the Court in the Petition for Review and on the appeal record as a whole.

(f) The decision of the Tribal Court shall be final, subject only to review by the Nez Perce Tribal Court of Appeals.

**§2-5-16 Request for Stay**

(a) Where a project or activity would be implemented before an appeal decision could be reached, the Court shall consider a written request to stay implementation of the order or rule pending such decision. The party requesting the stay shall send a copy of the request to any other party to the proceeding. Such request must:

(1) provide a description of the specific project(s), activity(s), or action(s) to be stopped;

(2) include specific reasons why the stay should be granted in sufficient detail to permit the Court to evaluate and rule upon the stay request.

(b) Within ten (10) business days of receipt of the request, the Tribal Court shall issue a written decision on a stay to the party requesting the stay and any other appellants or intervenors party involved in the appeal. The decision shall state:

(1) if the stay is granted, the specific activity(s) to be stopped, duration of the stay and reasons for granting the stay; or

(2) if the stay is denied, in whole or in party, the reasons for the denial.

(c) Should the Court grant the stay, the Court may require the prevailing party to post a bond, the amount of which shall be established at the Court's discretion.

(d) This section shall not apply to employment related disputes.

# CHAPTER 2-6
# FORFEITURE

## §2-6-1 Definitions

(a) "Contraband" means any item which is unlawful to possess or produce.

(b) "Probable cause" exists under this chapter when the prosecutor has substantial objective basis for believing that a piece of property was used in association with an infraction or criminal offense as provided in this code. In determining whether probable cause exists, the prosecutor may take into account all information which a prudent prosecutor would deem relevant to the likelihood that the property was used in such a manner.

(c) "Proceeds" means any property obtained through the commission of a criminal offense under this code and includes any appreciation in value of such property or any secondary property obtained or gain realized by the sale or exchange of the original proceeds of a crime.

(d) "Instrumentality" means any item used in connection with an infraction or criminal offense under this code.

(e) "Real property instrumentality" means an interest in real property used in connection with a criminal offense under this code.

## §2-6-2 Forfeiture Actions

(a) In addition to any remedy or penalty imposed against any person found to have committed a criminal offense or a civil infraction other than a traffic infraction under this code, the Nez Perce Tribe may bring a forfeiture action against any:

(1) property which constitutes contraband, the proceeds, instrumentalities, or real property instrumentalities associated with a criminal offense; or

(2) contraband or instrumentality used in connection with a civil infraction, other than a traffic infraction.

(b) Any action under this chapter shall be civil, remedial and in rem in nature and shall not be deemed to be a penalty for any purpose.

## §2-6-3 Seizure

(a) If a tribal police officer finds or is made aware of evidence that a particular item other than a real property instrumentality or proceeds held in a checking, savings, or other account is subject to forfeiture under this chapter, he shall seize the item. Once seized, the tribal police shall notify the tribal prosecutor of the seizure and hold the item as evidence until forfeiture is declared or a release ordered.

(b) If a tribal police officer finds or is made aware of evidence that a real property instrumentality or proceeds held in a checking, savings, or other account are subject to forfeiture under this chapter, he shall notify the tribal prosecutor who shall determine whether probable cause exists to seize the item in question.

(c) The tribal prosecutor may file a notice of intention to institute forfeiture proceedings with the clerk of the Court. Within two (2) business days of receipt of the notice, the clerk shall:

(1) publish notice of the seizure and intent to institute forfeiture proceedings in a newspaper of general circulation in the area where the property is located or seized; and

(2) if the item to be seized constitutes real property, file a notice of seizure and intent to institute forfeiture proceedings with the appropriate county recorder's office and post a copy upon the property involved; or

(3) if the item to be seized constitutes proceeds held in a checking, savings or any other account, file a notice of seizure and intent to institute forfeiture proceedings with the bank or any other person having in his possession or control the proceeds to be seized directing such person or bank to freeze the account and requesting copies of the account records.

(d) The notice of seizure and intent to institute forfeiture proceedings shall provide that any interested parties with potential claims to the item in question are required to file a request for hearing within twenty (20) business days of publication of the notice and that failure to do so will be deemed forfeiture by default.

**§2-6-4 Forfeiture Determination (revised 6/22/99)**

(a) If the Tribal Court determines that an infraction or criminal offense has been committed in relation to an item seized, the prosecutor may file an action for forfeiture. Subject to this section, the proceedings governing forfeiture shall be the same as that prescribed for civil proceedings under this code.

(b) If any interested party with potential claims to the property involved has contacted the Tribal Court within twenty (20) business days after publication of notice of seizure, a forfeiture hearing shall be held before the Court no later than thirty (30) business days after the date of judgment on the underlying infraction or offense. Such party shall have the right at hearing to present evidence and produce witnesses as to why such property should not be forfeited.

(c) There shall be no right to a jury in forfeiture hearings and the burden of proof shall be a preponderance of the evidence. Following the hearing the Tribal Court shall determine whether the property in question shall be forfeited to the Tribal Law Enforcement.

(d) In the event that a forfeiture hearing is not requested by an interested party with potential claims to the property involved, such property shall be forfeited to the Tribal Law Enforcement.

(e) All property forfeited to Tribal Law Enforcement shall be placed into service, destroyed, or sold at auction as per Tribal Law Enforcement guidelines and policies.

# CHAPTER 2-7
# COLLECTION OF DEBTS

## §2-7-1 Definitions

(a) "Garnishee" means an employer, trustee, financial agency or institute, or other person found within the reservation boundaries who has in his possession or control any credits or other personal property belonging to the defendant, or owes any debt to the defendant.

(b) “Homestead” means a dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved; or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as a principal home for the owner. **(added 6/22/99)**

(c) “Owner” means, but is not limited to, a purchaser under a deed of trust, mortgage, or contract.

## §2-7-2 Writ of Attachment/Hearing

If within sixty (60) days after entry of a judgment awarding money damages and/or costs against a party or within sixty (60) days after final resolution of an appeal to the appellate court from such a judgment, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments owed to the creditor, the Court shall upon motion of the judgment creditor, issue an order to the debtor to show cause why a writ of attachment should not issue. Such order shall fix the date and time for hearing, which shall be no sooner than five (5) business days from the issuance of the order. The order shall inform the debtor he may file an affidavit on his behalf with the Court and may appear and present testimony on his behalf at the time of such hearing and if he fails to appear, the writ of attachment shall issue. Following the hearing, the Court may have the property of the judgment debtor attached as security for satisfaction of the judgment.

## §2-7-3 Intervening Creditors

Within two (2) business days after issuing the writ of attachment, the court clerk shall publish notice in a newspaper of general circulation in the area where the property is located or seized. Any creditor of the debtor, who, within twenty (20) business days after publication of the notice, shall commence and thereafter diligently prosecute to final judgment, his claim against the debtor, shall share with the attaching creditor in an amount as determined by the Court, the proceeds of debtor's property where there are not sufficient funds to pay all judgments in full against him.

## §2-7-4 Execution of Writ

(a) Upon issuing a writ of attachment, the Court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine what property of the judgment debtor is available for execution and order the tribal police to seize as much of such property as reasonably appears necessary to pay any judgment meeting the standards for payment under this chapter.

(b) Failure of the judgment debtor to appear may be deemed a contempt of court and the Court may proceed without such appearance. Any sale of seized property shall be at public auction conducted by the tribal police after giving at least ten (10) business days public notice posted in at least three conspicuous public places on the reservation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

(c) Proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of a judgment still owing and meeting the standards for payment under this chapter. Any amount remaining after the above has been paid shall be paid over to the debtor.

(d) The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the judgment debtor's immediate family.

(e) At any time within six (6) months after sale under this section, the judgment debtor may redeem his property from the purchaser by paying the amount such purchaser paid for the property plus eight (8) percent interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance to maintain the property.

**§2-7-5 Garnishment**

(a) Upon receiving information in writing from the creditor or his attorney of the existence of a garnishee, the tribal police shall serve upon the garnishee, a copy of the writ and notice that any credits or debts which the garnishee owes to the debtor or any property of the debtor which the garnishee has in his possession, are attached to the writ. Upon attachment, the garnishee shall pay or deliver to the police all debts he owes to the debtor or any of the debtor's money in his possession, or any portion thereof sufficient to discharge the claim of the creditor. The police shall issue the garnishee a receipt for any funds or property delivered.

(b) A person who is a garnishee at the time of service upon them of a copy of the writ and notices, shall be liable to the creditor for the amount of any credits or debts which the garnishee owes to the debtor or any property of the debtor which the garnishee has in his possession until the attachment is discharged or any judgment recovered by the creditor is satisfied unless such property is delivered or such debts paid to the Court.

**§2-7-6 Writ of Recovery**

(a) Whenever the Court has issued a judgment ordering the party to deliver possession of real or personal property to another party and such delivery has not taken place within the time limit prescribed in the judgment, the Court shall upon motion of the aggrieved party, issue an order to the debtor to show cause why a writ of attachment should not issue. Such order shall fix the date and time for hearing, which shall be no sooner than five (5) business days from the issuance of the order. The order shall inform the debtor he may file an affidavit on his behalf with the Court and may appear and present testimony on his behalf at the time of such hearing and if he fails to appear, the writ of attachment shall issue. Following the hearing, the Court may issue a writ of recovery for the property involved.

(b) The writ shall describe the real or personal property involved in enough detail to enable the Tribal Police to locate such property, and shall authorize a Tribal Police Officer to take possession of specified real or personal property from a wrongful holder and deliver possession to the party indicated on the writ. If real or personal property is within the jurisdiction of the Court, it may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law.

**§2-7-7 Specific Acts**

If a judgment directs a party to perform any specific act and the party fails to comply within the time specified, the Court may direct the act to be done at the cost of the disobedient party by some other person appointed by the Court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The Court may also in proper cases adjudge the party in contempt.

**§2-7-8 Service of Writ**

Service of a writ under this chapter shall be in accordance with service of process as provided in the Rules of Civil Procedure.

**§2-7-9 Exempt Property**

Any property, wages or other assets which are exempt from execution by federal law and any Indian regalia, relics and family heirlooms, as determined by the tribal court judge, are exempt from execution under this chapter.

**§2-7-10 Homestead Exemption**

A homestead is automatically protected by exemption, in addition to those exemptions set forth in § 2-7-9. If the homestead exemption is made by a married person from the community property, the property, on the death of either of the spouses, vests in the survivor, subject to no other liability; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the Tribal Court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner. **(added 6/22/99)**

# CHAPTER 2-8
# RULES OF EVIDENCE

## GENERAL PROVISIONS

### Rule 1 Scope

These rules govern proceedings in the courts of the Nez Perce Tribe to the extent and with the exceptions stated in rule 67.

### Rule 2 Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

### Rule 3 Rulings on Evidence

(a) Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the Court by offer or was apparent from the context within which questions were asked.

(b) Record of Offer and Ruling. The Court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of Jury. In jury cases, proceedings shall be conducted to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain Error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Court.

### Rule 4 Preliminary Questions

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Court, subject to the provisions of subsection (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon

the fulfillment of a condition of fact, the Court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

**Rule 5 Limited Admissibility**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the Court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

**Rule 6 Remainder of or Related Writings or Recorded Statements**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

**JUDICIAL NOTICE**

**Rule 7 Judicial Notice of Adjudicative Facts**

(a) Scope of Rule. The rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) generally known with the territorial jurisdiction of the Tribal Court or;

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the

proceeding.

(g) Instructing Jury. In a civil action or proceeding, the Court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the Court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

## PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

### Rule 8 Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.

## RELEVANCY AND ITS LIMITS

### Rule 9 Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

### Rule 10 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by these rules. Evidence which is not relevant is not admissible.

### Rule 11 Exclusion of Relevant evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

### Rule 12 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of Witness. Evidence of the character of a witness, as provided in rules 35, 36, and 37.

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the Court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

**Rule 13 Methods of Proving Character**

(a) Reputation or Opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(b) Specific Instances of Conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct.

**Rule 14 Habit: Routine Practice**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

**Rule 15 Subsequent Remedial Measures**

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

**Rule 16 Compromise and Offers to Compromise**

Evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Rule 17 Payment of Medical and Similar Expenses**

Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

**Rule 18 Inadmissibility of Pleas, Plea Discussions, and Related Statements**

(a) Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) any statement made in the course of any proceedings under rule 11 of the Rules of Criminal Procedure or comparable tribal, state or federal procedure regarding a guilty plea; or

(3) any statement made in the course of plea discussions with the tribal prosecutor which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(b) However, such a statement is admissible:

(1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it; or

(2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath and on the record.

**Rule 19 Liability Insurance**

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

**Rule 20 Sex Offense Cases; Relevance of Victim's Past Behavior**

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.

(b) Notwithstanding any other provision of law, in a criminal case in which a person is accused of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:

(1) admitted in accordance with subsections (c)(1) and (c)(2);

(2) admitted in accordance with subsection (c) and is evidence of:

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.

(c)

(1) If the person accused of committing rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent exposure intends to offer under subsection (b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than fifteen (15) days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the Court may allow the motion to be made at a later date, including during trial, if the Court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this subsection shall be served on all other parties and on the alleged victim.

(2) The motion described in subsection (c)(1) shall be accompanied by a written offer of proof. If the Court determines that the offer of proof contains evidence described in subsection (b), the Court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing the parties may call witnesses, including the alleged victim, if the relevancy of the evidence which the accused seeks to offer in the hearing in chambers or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the Court determines on the basis of the hearing described in subsection (c)(2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the Court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purposes of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which an offense of rape, forcible sexual penetration with a foreign object, unlawful sexual intercourse, sexual assault or indecent

exposure is alleged.

## PRIVILEGES

### Rule 21 Claim of Privilege

An objection that information is privilege must be made by the person seeking to have such information excluded from being presented as evidence. If both privileged and nonprivileged information is in the same testimony, the Court may exercise the privileged matter and allow presentation of the remaining information.

### Rule 22 Waiver of Privilege

Privilege can be waived voluntarily by disclosing information or consenting to disclosure of any part of privileged information to a nonprivileged source. This rule does not apply if the disclosure itself is a privileged communication.

### Rule 23 Self-Incrimination

Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the tribe or any government agency or division, any matter that will incriminate him.

### Rule 24 Advocate-Client Privilege

(a) A client has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made for the purpose of receiving professional or other legal services.

(b) The privilege provided by this rule is not available:

(1) if the services of the advocate were obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or a fraud;

(2) if the communications are relevant to an issue between parties who claim the same deceased client;

(3) if the communications are relevant to prove breach of duty by an advocate or client;

(4) if the documents at issue were attested to by the advocate; or

(5) when a communication relevant to the matter and of common interest between or among two or more clients is made by any of them to a lawyer

retained or consulted in common when offered in an action between or among any of the clients.

**Rule 25 Diagnosis or Treatment**

(a) A patient has a privilege to refuse to disclose and to prevent other persons from disclosing a confidential communication made for purposes of diagnosis or treatment of his physical, mental or emotional condition including alcohol or drug addiction among himself, his physician or psychotherapist and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist.

(b) No privilege shall be available under this rule:

(1) for proceedings to decide appointments of a guardian or conservator for a patient for mental illness or to hospitalize the patient for mental illness;

(2) if the Court orders an examination of the physical, mental or emotional condition of a patient and the communication is made in the course of such examination with respect to the particular purpose for which the examination is ordered unless the Court orders otherwise;

(3) if the physical, mental or emotional condition of the patient is an element of his claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of his claim or defense; or

(4) in a trial or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child.

**Rule 26 Husband-Wife Privilege**

(a) A party has a privilege to prevent testimony as to any confidential communication between the party and his or her spouse made during the marriage.

(b) No privilege shall be available under this rule:

(1) in a trial or proceeding as to a communication relevant to an issue concerning the physical, mental or emotional condition of or injury to a child, or concerning the welfare of a child including, but not limited to the abuse, abandonment or neglect of a child;

(2) in a criminal action or proceeding in which one spouse is charged with a crime against the person or property of:

(A) the other spouse;

(B) a person residing in the household of either spouse; or

(C) a third person committed in the course of committing a crime against the other spouse or a person residing in the household of either spouse.

**Rule 27 Religious Privilege**

A person has a privilege to refuse to disclose and prevent others from disclosing a confidential communication made by the person to a recognized religious or spiritual leader, counselor or advisor in the course of his capacity as such leader, counselor or advisor.

**Rule 28 Public Officer Privilege**

A public officer acting in his capacity as such may claim privilege limited to official information communicated to him in an official confidence.

**WITNESSES**

**Rule 29 General Rule of Competency**

Every person is competent to be a witness except as otherwise provided in these rules.

**Rule 30 Lack of Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 46, relating to opinion testimony by expert witnesses.

**Rule 31 Oath or Affirmation**

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

**Rule 32 Interpreters**

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

**Rule 33 Competency of Judge as Witness**

The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

**Rule 34 Competency of Juror as Witness**

(a) At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

(b) Inquiry into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

**Rule 35 Who May Impeach**

The credibility of a witness may be attacked by any party, including the party calling the witness.

**Rule 36 Evidence of Character and Conduct of Witness**

(a) Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

(b) Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 37, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness:

(1) concerning the witness' character for truthfulness or untruthfulness; or

(2) concerning the character for truthfulness or untruthfulness of another witness as to the character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

**Rule 37 Impeachment by Evidence of Conviction of Crime**

(a) General Rule. For the purpose of attacking the credibility of a witness:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to rule 11, if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect

to the accused; and evidence that an accused has been convicted of such a crime shall be admitted if the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; or

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this rule is not admissible if a period of more than ten (10) years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than ten (10) years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this rule if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of juvenile adjudication is generally not admissible under this rule. The Court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the Court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

**Rule 38 Religious Beliefs or Opinions**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

**Rule 39 Mode and Order of Interrogation and Presentation**

(a) Control by Court. The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The Court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

**Rule 40 Writing Used to Refresh Memory**

If a witness uses a writing to refresh memory for the purpose of testifying, either:

(a) while testifying; or

(b) before testifying, if the Court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the Court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the Court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the Court in its discretion determines that the interests of justice so require, declaring a mistrial.

**Rule 41 Prior Statements of Witnesses**

(a) Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 50(d)(2).

**Rule 42 Calling and Interrogation of Witnesses by Court**

(a) Calling by Court. The Court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

(b) Interrogation by Court. The Court may interrogate witnesses, whether called by itself or by a party.

(c) Objections. Objections to the calling of witnesses by the Court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

**Rule 43 Exclusion of Witnesses**

At the request of a party the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of:

(a) a party who is a natural person;

(b) an officer or employee of a party which is not a natural person designated as its representative by its attorney; or

(c) a person whose presence is shown by a party to be essential to the presentation of the party's cause.

## OPINIONS AND EXPERT TESTIMONY

**Rule 44 Opinion Testimony by Lay Witnesses**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

(a) rationally based on the perception of the witness; and

(b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

**Rule 45 Testimony by Experts**

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

**Rule 46 Bases of Opinion Testimony by Experts**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

**Rule 47 Opinion on Ultimate Issue**

(a) Except as provided in subsection (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

**Rule 48 Disclosure of Facts or Data Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

**Rule 49 Court Appointed Experts**

(a) Appointment. The Court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The Court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the Court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the Court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the Court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the Court may allow. The compensation thus fixed may be payable from any funds available to the Court for this purpose.

(c) Disclosure of Appointment. In the exercise of its discretion, the Court may authorize disclosure to the jury of the fact that the Court appointed the expert witness.

(d) Parties' Experts of Own Selection. Nothing in this rule limits the parties in calling expert witnesses of their own selection.

**HEARSAY**

**Rule 50 Definitions**

The following definitions apply under this article:

(a) "Statement" is:

(1) an oral or written assertion; or

(2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) "Declarant is a person who makes a statement.

(c) "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) "Statements Which Are Not Hearsay" - statement is not hearsay if:

(1) Prior Statements by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive;

(C) one of identification of a person made after perceiving the person.

(2) Admission by Party-Opponent. The statement is offered against a party and is:

(A) the party's own statement in either an individual or a representative capacity;

(B) a statement of which the party has manifested an adoption or belief in its truth;

(C) a statement by a person authorized by the party to make a statement concerning the subject;

(D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

**Rule 51 Hearsay Rule**

Hearsay is not admissible except as provided by these rules.

**Rule 52 Hearsay Exceptions; Availability of Declarant Immaterial**

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(a) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(b) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(c) Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(d) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(e) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(f) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this subsection included business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(g) Absence of Entry in Records Kept in Accordance With the Provisions of subsection (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of subsection (f), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(h) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(1) the activities of the office or agency;

(2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by tribal police officers and other law enforcement personnel; or

(3) in civil actions and proceedings and against the tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(i) Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(j) Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with rule 57, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(k) Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(l) Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(m) Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(n) Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(o) Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(p) Statements in Ancient Documents. Statements in a document in existence twenty (20) years or more the authenticity of which is established.

(q) Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(r) Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(s) Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(t) Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State, Indian reservation or nation in which located.

(u) Reputation as to Character. Reputation of a person's character among associates or in the community.

(v) Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of a crime, to prove any fact essential to sustain the judgment, but not including, when offered by the tribe in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(w) Judgment as to Personal, Family, or General History, or Boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

(x) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

(1) the statement is offered as evidence of a material fact;

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse

party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

**Rule 53 Hearsay Exceptions; Declarant Unavailable**

(a) Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the Court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the Court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement

unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History.

(A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the Court determines that:

(A) the statement is offered as evidence of a material fact;

(B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

**Rule 54 Hearsay Within Hearsay**

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules.

**Rule 55 Attacking and Supporting Credibility of Declarant**

When a hearsay statement, or a statement defined in rule 50(d)(2)(C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom

a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

## AUTHENTICATION AND IDENTIFICATION

### Rule 56 Requirement of Authentication or Identification

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what the proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(A) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(B) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilation. Evidence that a document or data compilation, in any form,

(A) is in such condition as to create no suspicion concerning its authenticity;

(B) was in a place where it, if authentic, would likely be; and

(C) has been in existence twenty (20) years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. Any method of authentication or identification provided by Act of Congress or by tribal law.

**Rule 57 Self-Authentication**

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(a) Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any State, district, Commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, of any federally recognized Indian Tribe, or of a political subsection, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(b) Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (a) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subsection of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(c) Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(1) of the executing or attesting person; or

(2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation.

A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been

given to all parties to investigate the authenticity and accuracy of official documents, the Court may for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(d) Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with subsection (a), (b), or (c) of this rule.

(e) Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

(f) Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

(g) Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels, purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(h) Acknowledged Documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgements.

(i) Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(j) Presumption Under Acts of Congress. Any signature, document, or other matter declared by Act of Congress to be presumptively or prima facie genuine or authentic.

**Rule 58 Subscribing Witness' Testimony Unnecessary**

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity of the writing.

## CONTENTS OF WRITINGS, RECORDINGS AND PHOTOGRAPHS

**Rule 59 Definitions**

For purposes of this article the following definitions are applicable:

(a) Writings and Recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(b) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(c) Original. An "original" of a writing or recording is the writing or recording itself

or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

(d) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

**Rule 60 Requirement of Original**

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules.

**Rule 61 Admissibility of Duplicates**

A duplicate is admissible to the same extent as an original unless:

(a) a genuine question is raised as to the authenticity of the original; or

(b) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

**Rule 62 Admissibility of Other Evidence of Contents**

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

(a) Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed the in bad faith;

(b) Original Not Obtainable. No original can be obtained by any available judicial process or procedure;

(c) Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at the hearing; or

(d) Collateral Matters. The writing, recording or photograph is not closely related to a controlling issue.

**Rule 63 Public Records**

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with rule 57 or testified to be correct by a

witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Rule 64 Summaries**

The contents of voluminous writings, records, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The Court may order that they be produced in court.

**Rule 65 Testimony or Written Admission of Party**

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

**Rule 66 Functions of Court and Jury**

When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the Court to determine in accordance with the provisions of rule 4. However, when an issue is raised (a) whether the asserted writing ever existed, or (b) whether another writing, recording or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

**MISCELLANEOUS RULES**

**Rule 67 Applicability of Rules**

(a) Courts. These rules apply to the Nez Perce Tribal Courts, in the actions, cases, and proceedings and to the extent hereinafter set forth.

(b) Proceedings Generally. These rules apply generally to civil actions and proceedings, to criminal cases and proceedings, and to contempt proceedings except those in which the Court may act summarily.

(c) Rule of Privilege. The rule with respect to privileges applies at all stages of all actions, cases, and proceedings.

(d) Rules Inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the Court under rule 4.

(2) Miscellaneous Proceedings. Proceedings for extradition or rendition;

preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; and in small claims proceedings.

# CHAPTER 2-9
# APPELLATE PROCEDURES
**(amendments to chapter adopted by NPTEC 5/28-29/02)**

## §2-9-1 Definitions

(a) "Habeas corpus" means the determination by the Court of the legality of a person's detention or imprisonment.

(b) "Injunction" means a court order prohibiting or allowing a particular action.

(c) "Interlocutory" means a court order deciding some point before the end of suit or prosecution that is not a final decision of the controversy.

(d) "Mandamus" means a court order to a lower court or tribal official to perform a particular act as part of his official duties or to restore a party's rights or privileges of which he has been illegally deprived.

(e) "Tribal official" means any officer, member of the Nez Perce Tribal Executive Committee, or employee of the tribe.

## §2-9-2 Notice of Appeal

(a) Any party wishing to appeal a decision of the Tribal Court shall within thirty (30) business days of entry of final judgment or final order, file a notice of appeal with the clerk of the Court. The notice of appeal shall specify the party taking the appeal and shall designate the final order, commitment, judgment, or part thereof appealed from, and shall contain a short statement of reasons for the appeal. Failure to properly file a notice of appeal under this section within the designated time lines shall result in a denial of the appeal by the trial court judge. Within five (5) business days of filing a notice of appeal, the appellant shall serve a copy of the notice of appeal on the respondent.

(b) The appellant shall file along with the notice of appeal a fee in an amount established on the fee schedule of the Court of Appeals. Upon motion of the respondent, the trial court may set a bond that will provide adequate assurance of the serving of the sentence or paying of the fine or judgment if the Court of Appeals affirms or modifies the action of the lower court. Such bond in no event shall exceed double the amount of the fine or judgment rendered.

(c) The appellant must certify to the Court of Appeals that a copy of the notice of appeal was served on the opposing party. Upon appointment of an appeals panel, the clerk of the Court will provide copies to the Court of Appeals justices.

## §2-9-3 Briefs

(a) Within twenty (20) business days of filing a notice of appeal, or in such other time as ordered by the Appeals Court, the appellant shall submit an original and two copies of his brief to the clerk of the Court. The content of briefs be as provided by rules established by the Court of Appeals shall concisely state the grounds for appeal pursuant to NPTC § 2-9-7(b). If for good cause, the appellant cannot meet the deadline for filing of briefs, the Appellate Court may grant an extension at its discretion.

(b) Each respondent shall file an original and two copies of his response brief with the clerk of the Court within twenty (20) business days from the date of receipt of the appellant's brief. The respondent shall serve one copy of his brief on the appellant.

(c) Within five (5) business days of receipt of the opposing parties' response, the clerk of the Court shall submit the briefs to the Court of Appeals.

(d) Should the appellant fail to file a brief within the time provided by this section, the appeal shall be dismissed. If the respondent fails to file a brief within the time provided, then the Appellate Court shall consider the case on its merits without the benefit of the respondents' brief. In addition, a respondent who has not filed a brief shall, in the discretion of the Court of **A**ppeals, waive his right to present an oral argument.

**§2-9-4 Record**

(a) At the time of filing its brief, the appellant shall also file with the clerk of the Court the relevant portion of the record from the Tribal Court and shall serve one copy on each respondent.

(b) At the time the respondent files his response brief he shall also file an original of any proposed amendments or additions to the record and shall serve one copy on each appellant.

(c) The clerk of the Court shall submit a certified copy of the record to the Court of Appeals when it submits the briefs.

**§2-9-5 Costs**

(a) During the appeal, the parties shall bear their own costs of an appeal.

(b) Costs associated with copying court files, tapes, documents, other evidence, and other portions of the record shall be paid by the party requesting such copies.

**§2-9-6 Stay**

(a) Any party to an appeal may move the trial court to stay the imposition of its judgment pending the review by the Court of Appeals. The motion must include the reasons for granting the relief requested and the facts relied upon.

(b) The moving party must give reasonable notice of the motion to all parties.

(c) The trial court may condition such relief on the filing of a bond or other appropriate security.

**§2-9-7 Standard of Review; Disposition**

(a) Upon written request by either party, the Court may allow oral argument of a duration to be specified by the Court. The Appellate Court will base its determination exclusively on the record of the trial court, briefs and oral argument if allowed. No new evidence or testimony shall be presented or considered by the Court that was not properly raised before the appeal and included in the record.

(b) The Appellate Court may only affirm, modify, reverse or remand the Tribal Court's decision. The Tribal Court's decision is inviolate absent a showing by the Appellant that there are no facts in the record to support the Tribal Courts determination or the law was misinterpreted or misapplied. Unless otherwise authorized by the Code, NPTEC resolution, or tribal ordinance, the Court of Appeals shall not grant equitable relief or monetary damages.

**§2-9-8 Opinion**

(a) Within three (3) months of the later of the date the last brief was submitted or the last day of oral arguments, the Appellate Court shall deliver its opinion in writing, stating the type of order appealed, the facts, the rules of law applied, all conclusions of law and fact, and the decision to the parties in the case.

(b) If no decision and opinion is issued by the Tribal Court of Appeals within the time designated, the clerk of court shall contact the presiding justice to determine the status of the decision and opinion if requested by any party. The clerk of court shall report the status of the decision and opinion in writing to all parties. If it appears from the clerk of court's report that no written decision and opinion is forthcoming, any party may apply to the chief judge or other designated judge of the Tribal Court to establish a time for a decision to be rendered or for a new panel to hear the appeal.

(c) The clerk of the Court shall keep a permanent record of the Appellate Court opinions which shall be available to the public upon request.

(d) A two justice majority is required to overturn, reverse, remand, or modify a lower court decision. Two justices may alone render an opinion if the third justice is unable to issue an opinion for any reason. In the event that no majority opinion can be reached, the lower court decision shall be affirmed.

(e) A justice may issue a dissenting opinion to the majority. This dissenting opinion shall be attached to the opinion.

**§2-9-9 Judgments**

All judgments and orders of the Appellate Court shall be enforceable through and by the Tribal Court. The clerk of the Court will notify the Appellate Court justices of compliance with and satisfaction of the judgment or order.

**§2-9-10 Immediate Appeals**

(a) A party may file a notice of appeal to the Appellate Court before a final order or decision of the trial court in the case of an immediate appeal which may include injunction, mandamus, interlocutory appeal or habeas corpus.

(b) The notice for an immediate appeal must be filed with the clerk of the Court. Any one member of the Appellate Court shall hear an immediate appeal. The hearing shall be held as soon as possible, but no later than ten (10) business days from the date of request. The appeals judge hearing the issue will respond, in writing stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision within three (3) business days of the hearing.

(c) The appealing party shall notify the opposing parties of an immediate appeal at, or prior to the time notice is filed. A violation of this provision shall result in dismissal of the appeal.

(d) Both parties may submit briefs on an immediate appeal. Information not submitted by the parties will not be considered by the judge in reaching a decision.

(e) The judge on an immediate appeal may affirm, modify, reverse, or remand the lower court's order. The order may be modified or reversed only if there was no evidence to support the order or the law was misinterpreted or misapplied.

**§2-9-11 Full Appeal**

Use of the immediate appeal under the above listed circumstances does not preclude an appeal of the final decision.

**§2-9-12 Clerical Mistakes**

(a) Any party may move for correction of any clerical mistakes in an order, decision, or opinion of the Appellate Court, provided that the Motion is made within ten (10) days of issuance of the order, decision, or opinion. Such a correction is limited to corrections of party names, descriptions of property, monetary figures, and other such errors resulting from an oversight or omission of the Appellate Court and may not be utilized to address errors of law. The moving party must specifically identify the matter to be corrected by the Court.

(b) Within thirty (30) days after receipt of the motion, the Court may grant or deny the motion for a correction. If granted, the Court shall issue a new or amended order, decision, or opinion correcting the matter identified by the moving party.

**§2-9-13 Reconsideration**

(a) The Court of Appeals shall entertain Motions for Reconsideration of any final order, decision, or opinion, issued by the Court, provided that the Motion is made within twenty (20) days of issuance of the order, decision, or opinion.

(b) A Motion for Reconsideration is an extraordinary remedy that can only be granted for compelling reasons. A motion for reconsider may be presented on the following grounds and no others: ***(Note: the four subsections below were incorrectly numbered (a), (b), (c), (d) and may have previously been cited as case law using those subsection numbers)***

(1) that some fact, material to the decision, or some question of law decisive of the case submitted by counsel, was overlooked by the Court;

(2) the presence of new and material facts (e.g. juror misconduct, etc.) which were fraudulently withheld or could not have been reasonably known to the aggrieved party during the pendency of the appeal proceedings;

(3) that the decision is in direct conflict with the Code, other tribal ordinances, regulations, resolution, controlling case law, or fundamental principles of

Indian law; or

(4) that the Court employed inappropriate procedures, considered facts outside the record on appeal in violation of NPTC § 2-9-7, or failed to issue an opinion in compliance with NPTC § 2-9-8(a).

(c) The grounds for reconsideration must be pled with specificity and be supported by facts or law in the appeal record and a supporting brief as provided in NPTC § 2-9-3.

(d) A party opposing reconsideration may file a brief in opposition within ten (10) days of the receipt of the movant's motion and brief.

(e) Oral argument on the issue of reconsideration is within the discretion of the Court.

(f) The Court of Appeals may hear additional argument and allow supplemental briefing if necessary. Within thirty (30) days of receipt of the motion or additional argument, the Court may grant or deny the motion for reconsideration and issue an opinion pursuant to NPTC § 2-9-8.

**§2-9-14 Finality of Decision / Motion to Reinstate Appeal**

Unless the Court grants a motion for clarification under NPTC § 2-9-12 or a motion for reconsideration under NPTC § 2-9-13, all decisions of the Tribal Court of Appeals shall be final. The Tribal Court of Appeals shall not entertain any motions to reinstate an appeal.

# TITLE 3
# NATURAL RESOURCES AND ENVIRONMENT
# CHAPTER 3-1
# FISH AND WILDLIFE

## INTRODUCTORY PROVISIONS

### §3-1-1 Definitions

(a) "Artificial light" means any light produced by other than natural sources, including but not limited to, spotlights, flashlights or vehicular headlights.

(b) "Barter" means the act of trading goods or services for other goods or services rather than money.

(c) "Bag limit" means the daily limit in the amount of each species of game or fish which may be taken by any one person.

(d) "Ceremonial fishing" means fishing by tribal members pursuant to treaty rights when such fishing is pursuant to a permit issued in advance by the Fish and Wildlife Commission for the purpose of taking fish for use in recognized traditional tribal ceremonies or religious occasions. Ceremonial Fishing is exclusive of fishing for subsistence or commercial purposes.

(e) "Closed season" means the period of time during which the taking and sale of specific fish or wildlife is prohibited.

(f) "Crossbow" means a weapon consisting of a bow fixed crosswise on a stock.

(g) "Commercial fishing" means fishing by tribal members with specified fishing gear and pursuant to treaty rights for the purpose of selling, trading, or bartering such fish to any person in return for money, property, or other consideration. Commercial fishing shall not include the sale or exchange of fish with other members of the Yakama, Warm Springs, Umatilla and Nez Perce Tribes for the personal use of such other members.

(h) "CRITFE" means the Columbia River Intertribal Fisheries Enforcement.

(i) "Endangered species" means any species so designated by this chapter and which the Fish and Wildlife Commission has determined is in danger of extinction throughout all or a significant portion of its range.

(j) "Firearm" means a weapon such as a pistol, shotgun or rifle capable of firing a bullet or other projectile.

(k) "Fish and wildlife commission" or "Commission" shall mean the Nez Perce Tribe Fish and Wildlife Commission as established by this chapter.

(l) "Fishing" means any effort to take fish in waters on the Nez Perce Reservation or

in off-Reservation waters in which the Nez Perce Tribe has treaty fishing rights, at usual and accustomed places.

(m) "Gill net" means a net of single web construction attached at the top by a float line and at the bottom by a weight line designed to entrap fish in the mesh.

(n) "Hunting" means shooting at, harassing, chasing, driving, flushing, attracting, brushing, pursuing, trapping, stalking or lying in wait for any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for or lying in wait for any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures or making sound recordings thereof. This definition shall apply to any such activities within the boundaries of the Nez Perce Reservation or on off-Reservation lands in which the Nez Perce Tribe has treaty hunting rights on open and unclaimed land.

(o) "Loaded firearm" means any such weapon having a round of ammunition in the chamber.

(p) "Member" means a person who is duly enrolled in the Nez Perce Tribe.

(q) "Non-member" means any person other than a Nez Perce tribal Member.

(r) "Nocturnal species" means those wildlife species which are most active during the night hours.

(s) "Open season" means the period of time during which the taking of certain fish and wildlife is permitted by this chapter or rules and regulations promulgated pursuant to this chapter.

(t) "Possession limit" means the amount of each species of game or fish which a person may possess.

(u) "Public highways" means all roadways open to the public for vehicular travel.

(v) "Rifle" means a shoulder weapon with a rifled bore.

(w) "Shotgun" means a smooth bore shoulder weapon for firing shots or slugs.

(x) "Subcommittee" means the Nez Perce Tribal Fish and Wildlife Subcommittee or any successor Subcommittee hereafter designated by the Nez Perce Tribal Executive Committee to perform the functions of the Fish and Wildlife Subcommittee.

(y) "Subsistence fishing" means fishing by tribal members pursuant to treaty rights for their personal use, including the sale or exchange with other members of the Yakama, Warm Springs, Umatilla and Nez Perce Tribes for the personal use of such other members. Subsistence fishing shall not include the sale or trade of harvested fish with non-Indians or non-members of the Yakama, Warm Springs, Umatilla and Nez Perce Tribes or fishing for

commercial or ceremonial purposes.

(z) "Take" shall mean any effort to kill, capture, catch, harm, shoot, wound, collect, hunt, pursue or trap fish or wildlife in the waters or on the lands of the Nez Perce Reservation, or in off-Reservation lands in which the Nez Perce Tribe has treaty hunting or fishing rights in usual and accustomed places or on open and unclaimed land.

(aa) "Threatened species" means any species designated as such by this chapter or which as determined by the Fish and Wildlife Commission is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(bb) "Trap" or "Trapping" shall mean any effort to take wildlife with a trap, net, snare or other device used for the purpose of capture in the waters or on the lands of the Nez Perce Reservation, or in off-Reservation water or on off-Reservation lands in which the Nez Perce tribe has treaty hunting or fishing rights.

(cc) "Treaty" shall mean the Treaty of June 11, 1855, between the Nez Perce Tribe and the United States as set forth in 12 Stat. 957, and any subsequent treaties and agreements between the tribe and the United States.

(dd) "Treaty hunting or fishing rights" shall mean any hunting or fishing right or privilege which is derived from the Treaty of June 11, 1855, 12 Stat. 957, or any subsequent treaties or agreements.

(ee) "Waste" means the abandonment of or deterioration of those portions of fish or game normally utilized for human consumption.

**§3-1-2 Purpose and Declaration of Policy**

The Nez Perce Tribal Executive Committee finds that:

(a) all wildlife now or in the future within the Nez Perce Reservation, not held by private ownership legally acquired, and which for the purpose of this chapter shall include any game animals, upland game, game birds, game fish, migratory birds, furbearers, threatened, endangered and protected species are hereby declared subject to the jurisdiction of the Nez Perce Tribe; and

(b) such wildlife shall be preserved, protected and perpetuated in accordance with this chapter and for use of members of the Nez Perce Tribe and their immediate families; and

(c) such wildlife resources may also be utilized for the sport and recreation of persons who are not members of the Nez Perce Tribe pursuant to rules, regulations and conditions established in accordance with this chapter; and

(d) by this chapter and the regulations adopted under it, the Nez Perce Tribe intends to exercise control over fishing and hunting activities to the fullest extent of tribal jurisdiction in order to properly regulate, manage and protect all of the fish and game resources available to the tribe and its members. Nothing in this chapter shall be construed as a relinquishment,

abrogation or abridgment of any treaty right of the Nez Perce Tribe.

### §3-1-3 CRITFE Authorization

Any officer of the CRITFE shall be authorized to enforce the provisions of this chapter that pertain to off reservation treaty fishing activity in the Columbia River area to the same extent as that of the tribal police.

### §3-1-4 Use of Wildlife for Scientific Purposes

(a) In accordance with this section and the terms and conditions established pursuant to the administrative procedures provided by this code by either the program head of Fisheries or Wildlife, whichever is applicable, a person may take, possess, inspect, sample, measure, count or collect data on fish and wildlife for scientific, management and/or enhancement purposes. This section shall apply to any person intending to conduct data collection or sampling within the boundaries of the Nez Perce Reservation and any Nez Perce tribal personnel intending to conduct data collection or sampling on any usual and accustomed fishing location or open and unclaimed lands.

(b) Any sampling or data collection activity conducted in violation of the policies and procedures established by the program heads of Fisheries and Wildlife shall constitute a violation of this chapter. In addition to any other remedy for a violation of this section, the Court may temporarily or permanently revoke the permit of the person in violation.

(c) The program heads of either Fishers or Wildlife, whichever is applicable, may suspend the permit of any person if he reasonably believes that at any time such person is in violation of this section or his actions threaten the fish and wildlife resources of the tribe and that immediate action is necessary to protect such resources. The suspension of a permit under this section shall be for no longer than ten (10) business days unless the applicable program head issues an order to revoke the permit following a hearing on the record in accordance with the administrative procedures provided in this code.

(d) Upon request, the program heads of either Fisheries or Wildlife, whichever is applicable, shall certify in writing that an animal has been taken in accordance with a valid permit issued under this section.

### §3-1-5 State Jurisdiction Preempted

It shall not be a defense to any civil infraction or criminal offense under this chapter that the alleged activity may be lawful under state law.

### §3-1-6 Consistency with CRITFE Code

Any rules or regulations adopted under this chapter shall be consistent with the Columbia River Intertribal Fisheries Enforcement (CRITFE) Code as duly adopted by the Nez Perce Tribe. Any violation of the CRITFE code shall be a violation of this chapter.

### §3-1-7 Road Closures

Tribal members shall at all times observe and obey all road closure policies and rules:

(a) on federal lands;

(b) within the boundaries of the Nez Perce Reservation; and

(c) otherwise established by NPTEC.

### §3-1-8 Tribal Member Identification

(a) Any person who is a member of the Nez Perce Tribe and who hunts, fishes or traps within the tribe's territorial jurisdiction shall have in his possession a Nez Perce Tribe Identification card issued by the tribe.

(b) A valid tribal identification card shall identify the holder as a duly enrolled member of the Nez Perce Tribe and, subject to the provisions of this chapter, entitle him to exercise all hunting, fishing and trapping rights and privileges reserved for the members of the Nez Perce Tribe by Treaty of June 11, 1855, 12 Stat. 957, and subsequent treaties and agreements.

## PROGRAM HEADS OF FISHERIES AND OF WILDLIFE DEPARTMENTS, FISH AND WILDLIFE COMMISSION

### §3-1-9 Program Heads of Fisheries and Wildlife Departments

(a) The Nez Perce Tribe shall employ program heads for both the Nez Perce Tribe Fisheries and Wildlife Programs subject to the personnel policies and procedures of the tribe. Subject to the provisions of this chapter, the program heads shall take such action necessary to protect, manage and enhance fish and wildlife.

(b) The program heads may promulgate rules to implement their duties and authorities under this chapter and pursuant to the administrative procedures provided by this code.

### §3-1-10 Fish and Wildlife Commission

(a) A Nez Perce Tribe Fish and Wildlife Commission is hereby established to administer the fish and wildlife resources of the tribe. The Commission shall consist of five (5) tribal members to be appointed by NPTEC. The heads of the Fisheries and Wildlife Departments may not serve as chairperson or vice chairperson of the Commission and may only vote to break a tie. One alternate shall also be appointed. The five appointed members of the Nez Perce Fish and Wildlife Commission and the one alternate member shall be elected by the Nez Perce Tribe, General Council. The elected members' and the alternate's names will be forwarded to NPTEC for consideration at the first NPTEC meeting following the General Council election.

(b) The selection and appointment of Commission members and alternate shall be made upon the consideration of the welfare and the best interest of the tribe and its fishery and wildlife resources. No person shall be appointed to the Commission unless he is well informed about and interested in the subject of treaty rights and wildlife or fisheries conservation and restoration. Commission members shall serve three (3) year terms which shall be staggered so that only two positions are subject to renewal in any one year. At the outset of the Commission, and in order to maintain the staggered terms of commission members, one (1) member shall serve for a term of one (1) year, two (2) members shall serve for a term of two (2) years, and two (2) members shall serve for a term of three (3) years. The members shall elect among themselves a chairperson and a vice chairperson. Until such time as members of the Fish and Wildlife Commission can be appointed, the Commission's duties and authority as provided by this chapter shall be retained by NPTEC.

(c) NPTEC shall remove any Commission member for cause. If a Commission member resigns or a position on the Commission otherwise becomes vacant before the term of that position expires, the alternate shall be appointed by NPTEC to fill the unexpired term.

(d) Commission decisions shall be by simple majority vote of the members present. Any members who disagree with the majority vote may make their dissent along with the reason for dissenting known to NPTEC. Three (3) Commission members shall make a quorum.

(e) The chairperson of the Commission shall be authorized to call meetings of the Commission. Meetings shall be called at the request of either NPTEC or any Commission member deems it necessary to implement the provisions of this chapter. The chairperson of the Commission shall be responsible for notifying Commission members of upcoming Commission meetings. No Commission meeting shall be held unless a good faith effort is made to contact each member.

(f) By-laws to govern the operation of the Commission in performing its duties shall be promulgated and ratified by NPTEC.

**§3-1-11 Duties and Powers of the Commission**

Subject to the provisions of this chapter, this code and the authority of NPTEC to reject or modify any action of the Commission at any time, and upon consideration of the recommendations of the program heads of the Fisheries and Wildlife departments, if any, the following duties and powers shall be exercised by the Fish and Wildlife Commission:

(a) to promulgate annual and seasonal hunting and fishing regulations and prescribe the manner and methods which may be used in taking fish and wildlife;

(b) to establish seasons for the taking of fish or wildlife, the amount of each wildlife species that may be taken in terms of sex, maturity and other physical distinction, and the areas or territorial limits for taking fish or wildlife;

(c) consistent with applicable federal law, to establish regulations for the issuance and use of fishing and hunting permits, licenses, tags or other related privileges within the tribe's

territorial jurisdiction;

(d) consistent with applicable federal law, to establish seasons, bag, limits, possession limits and other regulations pertaining to the taking of migratory birds;

(e) to meet periodically with tribal fisheries and wildlife department staff to review department programs, policies, performance, allocation of staff personnel and budget and to recommend needed improvements to the program head of the Fisheries and Wildlife departments and/or NPTEC;

(f) to meet with the Fish and Wildlife Subcommittee when requested by the Subcommittee;

(g) to recommend to NPTEC broad policies and long range programs for the management, preservation, and harvest of fish and wildlife;

(h) to provide for the assembly and distribution of information to the public relating to wildlife and the activities of Fisheries and Wildlife Department personnel;

(i) to perform such duties and exercise such powers as from time to time may be conferred by NPTEC;

(j) to perform such other duties and exercise other powers as set forth in this chapter; and

(k) to provide for the conservation, enhancement and management of the tribe's fish and wildlife resources.

**§3-1-12 Seasons Opened Until Closed**

(a) Unless and until the Fish and Wildlife Commission acts as provided by this chapter to close a fishing or hunting season for a particular species, then such season shall be open.

(b) No person shall hunt, trap or engage in recreational fishing on the Nez Perce Reservation during any closed season established by the Fish and Wildlife Commission for any game animals, upland game, game birds, game fish, migratory birds or furbearers as designated under this chapter. The length of such closed seasons and the fish or wildlife permitted to be taken during those seasons shall be subject to modification by the Commission at any time circumstances warrant such modification.

**§3-1-13 Report to NPTEC/NPTEC Review**

Absent NPTEC modification or rejection, the Commission's action or decision shall be binding. During the NPTEC meeting immediately following each Fish and Wildlife Commission meeting, the Commission shall submit a full report to NPTEC including a summary of:

(a) any regulatory actions taken and the rational for the action, the administrative process used and written public comments and public hearing records;

(b) other actions, decisions and recommendations.

## REMEDIES FOR VIOLATIONS

### §3-1-14 Civil Infractions

(a) Any person subject to the civil jurisdiction of the Nez Perce Tribe who is charged with an infraction violation under this chapter shall be subject to the procedures and remedies provided by this code.

(b) Any violation of this chapter and a violation of any regulation or policy adopted pursuant to this chapter is a civil infraction unless specifically identified as a criminal offense.

### §3-1-15 Criminal Offenses

Any person subject to the criminal jurisdiction of the Nez Perce Tribe who is charged with a criminal offense under this chapter shall be prosecuted under the Nez Perce Tribe Rules of Criminal Procedures and, if found guilty, penalized as a criminal offender.

### §3-1-16 Suspension/Revocation of Privileges

In addition to any other remedy or penalty provided for a violation of this chapter, the Tribal Court may suspend, confiscate or permanently revoke hunting, trapping or fishing licenses, permits, game tags, identity cards or other related privileges which were granted pursuant to this chapter. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt, trap, or fish, pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

## INFRACTIONS

### §3-1-17 Failure to Show Proof of Identification

(a) Any tribal person purporting to hunt, fish, sell, or transport fish or game under right of treaty who fails, upon reasonable demand by any federal, state, or tribal police officer or by a purchaser, transporter or warehouseman of fish, to show his Nez Perce Tribe identification card, commits the infraction of failure to show proof of identification.

(b) Refusal or failure to show proof of identification shall be prima facie evidence that such person is not a member of the Nez Perce Tribe.

### §3-1-18 Unauthorized Use of Rights or Privileges

A person commits the infraction of unauthorized use of rights or privileges if for the purpose of allowing a person other than the person to whom the right or privilege is issued to use such right or privilege he:

(a) loans a tribal identification card or fishing or hunting license, permit or game tag to another; or

(b) uses or alters any tribal identification card or fishing or hunting license, permit or game tag belonging or issued to another person.

**§3-1-19 Wasting Fish and Game**

A person commits the infraction of wasting fish and game if he permits any fish or game needlessly to go to waste after killing or wounding the same.

**§3-1-20 Destruction of Property**

A person commits the infraction of destruction of property if while hunting, fishing or trapping within the boundaries of the Nez Perce Reservation, or exercising off-reservation treaty rights, he damages the land, any crops or other property.

**§3-1-21 Hunting from a Motor Vehicle**

A person commits the infraction of hunting from a motor vehicle if he hunts, molests or takes any animal from any automobile, truck, motorcycle, snowmobile, three or four wheeled vehicle, airplane or any other vehicle driven by use of a motor or engine.

**§3-1-22 Hunting with Artificial Lights**

A person commits the infraction of hunting with artificial lights if he hunts an animal with any spotlight, headlights or other man made light source. The act of casting or throwing, after sunset, the beam or rays of any artificial lights capable of utilizing six (6) volts or more of electrical power in any place where game animals may reasonably be expected to be found while having in one's possession any uncased firearm shall be prima facie evidence of a violation of this section.

**§3-1-23 Unlawful Hunting**

A person commits the infraction of unlawful hunting if he utilizes explosive devices or poison on arrows, or violates any other regulations adopted by the Fish & Wildlife Commission. **(amended by NPTEC 11/8/11)**

**§3-1-24 Unlawful Hunting with Dogs**

A person commits the infraction of unlawful hunting with dogs if he:

(a) uses dogs to harass wildlife in any manner; or

(b) hunts or tracks any animal with dogs except as authorized by the Fish and Wildlife Commission.

**§3-1-25 Use of Unlawful Substances**

A person commits the infraction of use of unlawful substances if he uses any explosive compound, corrosive, toxic, narcotic, poison or other deleterious substance to take fish and wildlife except as authorized by the Fish and Wildlife Commission.

**§3-1-26 Hunting or Fishing Without Privileges**

A person commits the infraction of Hunting or Fishing Without Privileges if he exercises or attempts to exercise any hunting, fishing or trapping privileges during a time when his license, permit, tags, identification card or other related privileges have been suspended, revoked or otherwise limited, or if he has no license, permit, tag or other indication of authorization.

**§3-1-27 Unauthorized Fishing, Hunting and Trapping**

(a) A person commits the infraction of unauthorized fishing, hunting and trapping if:

(1) being a tribal member, he:

(A) engages or attempts to engage in the exercise of Nez Perce treaty fishing, hunting or trapping within the Nez Perce Reservation or upon any usual and accustomed fishing site in the company of any person who is not authorized to exercise such rights; or

(B) allows a person who is not authorized to exercise Nez Perce Treaty rights to fish or hunt for him, assist him in fishing or hunting or use any gear or fishing location identified as his gear or location; or

(2) being a nonmember of the Nez Perce Tribe, he:

(A) engages or attempts to engage in the exercise of Nez Perce treaty fishing, hunting or trapping within the Nez Perce Reservation or upon any usual and accustomed fishing site; or

(B) fishes or hunts for a tribal member, assists a tribal member in fishing or hunting or uses any gear or fishing location identified as the gear or location of a Nez Perce tribal Member.

(b) This section shall not apply when the non-member involved is:

(1) the member's spouse, child, grandchild, sibling or parent; (amended 12/14/99)

(2) a member of one of the other three Columbia River Treaty Tribes (Yakama, Warm Springs or Umatilla) who is authorized by treaty to be fishing at the same time and place.

(3) otherwise authorized by the tribe or the State of Idaho to be fishing or hunting at the same time and place.

This section shall not be construed as granting any privileges to persons not authorized to exercise Nez Perce Treaty rights other than the right of the persons specified to accompany members in the practice of such treaty rights.

**§3-1-28 Unauthorized Helpers**

A person commits the infraction of unauthorized helpers if he:

(a) being a non-member of the Nez Perce Tribe, operates or mans any boat used for Nez Perce treaty fishing purposes.

(b) being a Nez Perce tribal member who operates or maintains a boat for treaty fishing purposes and employs or uses any person on such boat who is not a member of one of the tribes having adjudicated treaty fishing rights upon the main stem of the Columbia River.

**§3-1-29 Liquor Infraction**

A person commits a liquor infraction if he fishes or hunts while under the influence of intoxicating liquor or controlled substances.

**§3-1-30 Boat Safety**

A person commits a boat safety infraction if while operating a boat and while engaged in fishing activities pursuant to this chapter he does not have:

(a) one (1) life preserver per person and one (1) fire extinguisher on board;

(b) running lights which shall be mounted to the hull of the boat and turned on during hours of darkness while being operated;

(c) portable boat lights placed in a conspicuous location, if running lights are not available.

**§3-1-31 Scaffolds** ***(This section was deleted by NPTEC action 11/10/98)***

**CRIMES**

**§3-1-32 Trafficking Fish and Game**

(a) A person is guilty of the criminal offense of trafficking fish and game if he:

(1) sells or barters, or has in his possession with intent to sell or barter;

(2) exposes or offers for sale or barter; or

(3) ships for commercial purposes or has in his possession with intent to ship for commercial purposes, any big or small game or fish or parts thereof.

(b) This section shall not apply to the sale or possession of fish lawfully taken during

commercial treaty fishing season, the possession or sale of hides or antlers of game animals lawfully taken or the sale or exchange between members of any federally recognized Indian Tribes for the personal use of such members.

### §3-1-33 Weapons Offense

A person is guilty of a criminal weapons offense if he, while exercising treaty fishing rights at a usual and accustomed fishing site, has in his immediate possession any firearm.

### §3-1-34 Eluding an Officer

A person is guilty of the criminal offense of eluding an officer if he knowingly flees or attempts to evade a tribal police or CRITFE officer following a visible or audible signal to stop. A visible or audible signal under this section may include the use of hands, voice, emergency lights or sirens.

### §3-1-35 Threat or Intimidation to a Tribal Police Officer

Any person who shall use unjustified force or violence or threaten the use thereof on a tribal police officer for the purpose of interfering or influencing the performance of an official duty shall be guilty of the criminal offense of threat or intimidation to a tribal police officer.

### §3-1-36 Interference with Hunting or Fishing Related Property

A person is guilty of the criminal offense of interference with the hunting or fishing related property of another if he, without the permission of the owner, uses, operates, occupies, moves, disturbs or otherwise tampers with fishing nets, fishing platforms, fishing poles, firearms, vehicles, boats or other hunting or fishing related personal property belonging to another.

## SUBSISTENCE FISHING

### §3-1-37 Season

The season for subsistence fishing shall be established by the Fish and Wildlife Commission.

### §3-1-38 Gear

All subsistence fishing gear must be permanently marked with the owner's name, enrollment number, and tribal affiliation prominently displayed in a visible area.

### §3-1-39 Reporting of Catch

Any tribal member engaging in subsistence fishing may be required by Fish and Wildlife Commission regulation to report his catch to a designated person or body. Failure to make such a report where required by rule or regulation shall constitute a violation of this chapter.

## COMMERCIAL FISHING

### §3-1-40 Commercial Fishing in General

Any Nez Perce tribal member shall be authorized to engage in commercial fishing in accordance with the terms and conditions provided in this chapter and by the Fish and Wildlife Commission.

### §3-1-41 Gear

All commercial fishing gear must be permanently marked with the owner's name, enrollment number, and tribal affiliation prominently displayed in a visible area.

### §3-1-42 Reporting Catch

(a) Any person engaging in commercial fishing under this chapter, or any person buying fish which were taken pursuant to any provision of this chapter or regulation adopted pursuant to this chapter shall be required to submit a complete record of his catch or purchase to the Fish and Wildlife Commission within twenty (20) business days after the close of each season. Failure to make such catch or purchase report shall constitute a violation of this chapter.

(b) In order to assist purchasers in record keeping and reporting, any member of the Nez Perce Tribe who sells, trades or barters fish taken pursuant to treaty rights shall, upon request, provide his tribal enrollment number to purchasers of such fish.

### §3-1-43 Fish Length **(amended 3/22/11)**

The Fish and Wildlife Commission is authorized to adopt regulations establishing the minimum or maximum size of fish that may be taken. Compliance with fish length requirements shall be determined as follows:

(a) for all fish except sturgeon size shall be measured measuring from the shortest distance between the extreme tip of the tail and extreme tip of the snout or jaw, whichever extends the farthest, while the fish is lying in a prone and normal position;

(b) for sturgeon size shall be measured from the shortest distance between the interior edge of the fork of the tail to the extreme tip of the snout, while fish is lying in a prone and normal position.

### §3-1-44 *Fishing Sites (12/13/16 NPTEC authorized deletion of this section)*

## CEREMONIAL FISHING

### §3-1-45 Ceremonial Permits

Any tribal member who is fishing for ceremonial purposes or who transports fish taken for ceremonial purposes shall have in his possession a copy of a ceremonial fishing permit issued by the Fish and Wildlife Commission. Such permit shall include the following:

(a) the name, place and time of the ceremony for which food fish will be used;

(b) the name of individuals and helpers who will be fishing and transporting fish;

(c) the exact location(s) of fishing and the amount of gear to be used at each location;

(d) the exact ceremonial fishing beginning and ending dates;

(e) the type of gear to be used;

(f) the estimated number of pounds of fish needed for the ceremony;

(g) whether fish are to be stored or not to be stored prior to a ceremony, and the location of storage, if applicable;

(h) the signature of the Chairman of the Fish and Wildlife Commission; and

(i) a requirement that a report on the exact amount of fish taken under the permit be made to the Fish and Wildlife Commission.

**§3-1-46 Gear**

All ceremonial fishing gear must be permanently marked with the owner's name, enrollment number, and tribal affiliation prominently displayed in a visible area.

**§3-1-47 Notice to States**

(a) The program head of Fisheries shall notify the States of Oregon, Washington or Idaho as appropriate in writing of the issuance of a ceremonial fishing permit at least one week prior to the start of such fishery.

(b) In the event of a bona fide emergency need for ceremonial fish, notice to State authorities by telephone will be allowed, so long as sufficient time is provided for the notification of all State agencies and agents.

**§3-1-48 Offenses**

(a) No person shall:

(1) fish for ceremonial purposes with commercial fishing gear except in those areas where such gear is authorized for commercial fishing;

(2) engage in ceremonial fishing during any portion of a week within a commercial fishing season which is open to commercial fishing;

(3) sell or barter, offer for sale or barter, or, being a commercially licensed fish buyer or wholesale fish dealer, have in his possession fish taken for ceremonial purposes;

(4) fish for ceremonial purposes without having in his possession a copy of the written notification to the appropriate state agency(s) of the ceremonial fishing activity issued by the program head of Fisheries in accordance with this chapter;

(5) fish for ceremonial purposes with commercial fishing gear which is not marked and identified in accordance with this chapter;

(6) continue to fish once the catch limit set out in the ceremonial permit has been achieved;

(7) fail to deliver to the person or entity designated in the ceremonial fishing permit as the receiver of fish taken for ceremonial purposes, all fish taken for such purposes;

(8) exceed the fishing duration (day and hour) limitations listed in the permit.

(b) In addition to any other remedies provided by this chapter, a violation of this section shall be grounds for banning the issuance of further permits for ceremonial fishing.

**ON RESERVATION HUNTING/RECREATIONAL FISHING**

**§3-1-49 Types of Animals Defined**

For the purposes of addressing wildlife and fishery resources under this Sub-title the following classification system will be used:

(a) GAME ANIMALS:

Mule deer - Odocoileus hemionus
White-tailed deer - Odocoileus virginianus
Elk - Cervus elaphus
Moose - Alces alces
Pronghorn antelope - Antilocapra americana
Rocky Mountain bighorn sheep - Ovis canadensis candensis
Californian bighorn sheep - Ovis canadensis californiana
Mountain goat - Oreamnos americanus
Black bear - Ursus americanus
Mountain lion - Felis concolor

(b) UPLAND GAME:

Cottontail rabbit - Sylvilagus nuttallii
Pygmy rabbit - Sylvilagus idahoensis
Snowshoe hare - Lepus americanus

(c) GAME BIRDS:

Game birds include both upland game birds and migratory game birds.

(1) Upland game birds:

(A) Pheasants: Chinese or ring-necked pheasant, Mongolian pheasant, mutant pheasant, Japanese green pheasant, or any hybrids thereof - Phasianus

(B) Partridge: gray (Hungarian) partridge, Perdix perdix; chukar partridge, Alectoris chukar; french red-legged partridge, Alectoris rufa.

(C) Quail: bobwhite quail, Colinus virginianus; California quail, Callipepla californicas; mountain quail, Oreortyx pictus; and Gambel's quail, Callipepla gambelli.

(D) Grouse: Blue grouse, Dedragapus obscurus; ruffed grouse, Bonasa umbellus; spruce grouse, Dendragapus canadensis; sage grouse, Centrocercus urophasianus; sharp-tailed grouse, Tympanuchus phasianellus; and wild turkey, Meleagris gallopavo intermedia, M.g. merriami and M.g silvestris.

(2) Migratory Game Birds:

(A) Coot: American, Fulica americana.

(B) Dove: mourning, Zenaida macroura.

(C) Ducks: black duck, Anas rubries; bufflehead, Bucephala albeola; canvasback, Aythya valisinera; gadwall, Anas strepera; Barrow's goldeneye, Bucephala islandica; common goldeneye, Bucephala clangula; harlequin duck, Histrionicus histrionicus; mallard, Anas platyrhynchos; common merganser, Mergus merganser; hooded merganser, Lophodytes cucullatus; red-breasted merganser, Mergus serrator; oldsquaw, Clangula hyemalis; northern pintail, Anas acuta; redhead, Aythya americana; ring-necked duck, Aythya collaris; ruddy duck, Oxyura jamaicensis; greater scaup, Aythya marila; lesser scaup, Aythya affinis; surf scoter, Melanitta perspicillata; white-winged scoter, Melanitta deglandi; northern shoveler, Anas clypeata; blue-winged teal, Anas discors; cinnamon teal, Anas cyanoptera; green-winged teal, Anas crecca; American wigeon, Anas americana; European wigeon, Anas penelope; and wood duck, Aix sponsa.

(D) Brant: black brant, Branta bernicula.

(E) Geese: Canada, Branta canadensis; emperor, Philacte canagica; Ross', Chen rossii; snow, Chen cacrulescens; and white-fronted,

Anser albifrons.

(F) Snipe: Common, Capella gallinago.

(d) GAME FISH: Game fish includes the following fish and amphibians:

White sturgeon - Acipenser transmonthanus
Lake whitefish - Coregonus clupeaformis
Bear Lake whitefish - Prosopium abyssicola
Pygmy whitefish - Prosopium coulteri
Bonneville cisco, peaknose - Prosopium gemmiferum
Bonneville whitefish - Prosopium spilonotus
Mountain whitefish - Prosopium williamsoni
Golden trout - Salmo aguabonita
Cutthroat trout - Salmo clarki
Rainbow trout - Salmo gairdneri
Steelhead - Salmo gairdneri
Atlantic salmon -Salmo salar
Brown trout - Salmo trutta
Arctic char - Salvelinus alpinus
Brook trout - Salvelinus fontinalis
Bull trout - Salvelinus confluentis
Mackinaw trout - Salvelinus namaycush
Artic grayling - Thymallus arcticus
American smelt - Osmerus mordax
Black bullhead - Ictalurus melas
Brown bullhead - Ictalurus nebulosus
Channel catfish - Ictalurus punctatus
Flathead catfish - pylodictis olivaris
Ling - Lota lota
Warmouth - Chaenobryttus gulosus
Green sunfish - Lepomis cyanellus
Pumpkinseed - Lepomis gibbosus
Bluegill - Lepomis macrochirus
Smallmouth bass - Micropterus dolomieui
Largemouth bass - Micropterus salmoides
White crappie - Pomoxis annularis
Black crappie - Pomoxix nigromaculatus
Yellow perch - Perca flavescens
Walleye - Stizostedion vitreum
Northern pike - Esox Lucius

(e) MIGRATORY BIRDS

Common American crow - Corvus brachyrhynchos

(f) FURBEARING ANIMALS

Marten - Martes americana
Fisher - Martes pennanti
Otter - Lutra canadensis
Beaver - Castor canadensis
Muskrat -Ondatra zibethicus
Bobcat - Felis rufus
Lynx - Felis lynx
Red Fox - Vulpes vulpes includes all color phases found in Idaho
Raccoon - Procyon lotor
Badger - Taxidea taxus
Coyote
Jackrabbit
Skunk
Weasel

(g) THREATENED OR ENDANGERED WILDLIFE

| | | |
|---|---|---|
| Chinook salmon - Oncorhynchus tshawytscha | Endangered | |
| Coho salmon - Oncorhynchus kisutch | Threatened | |
| Sockeye salmon, kokanee - Oncorhynchus | Endangered | tshawytscha |
| Grizzly bear - Ursus arctos | Endangered | |
| Wolf - Canis lupus | Endangered | |
| Peregrine falcon - falco perigrinus | Endangered | |
| Whooping crane - Grus americana | Endangered | |
| Caribou - Rangifer tarandus | Endangered | |
| Bald eagle - Haliaeetus leucocephalus | Endangered | |

(h) PROTECTED SPECIES

(1) Mammals:

Red squirrel - Tamiasciurus hudsonicus
Wolverine - Gulo gulo
Chipmunks - Eutamias
Golden mantled ground squirrel - Spermophilus lateralls
Pika - Ochotona princeps
Kit fox - Vulpes macrotis
Northern flying squirrel - Glaucomys sabrinus

(2) Birds: All species EXCEPT:

English sparrow
Feral pigeons
Game birds
Migratory birds
Threatened or Endangered Wildlife
Starling

(i) UNPROTECTED WILDLIFE

Unprotected wildlife includes all wildlife not classified in the preceding categories.

**§3-1-50 Transportation Permit**

(a) Any tribal member who harvest game on the Nez Perce Reservation and who intends to transport the animal beyond the reservation boundaries shall first obtain from the tribal police a permit that contains:

(1) the name of the person transporting;

(2) his tribal enrollment number;

(3) the type, sex and approximate size of the animal transported;

(4) the location and date the animal was taken; and

(5) the ultimate destination of the animal.

(b) Each permit shall be signed by a tribal police officer and shall be valid for no more than seventy two (72) hours from the time and date of issuance.

**§3-1-51 Permits, Licenses and Game Tags**

The Fish and Wildlife Commission shall be authorized to issue on reservation hunting and recreational fishing permits, licenses or game tags in accordance with this chapter and applicable federal law regulating the taking of or managing wildlife.

**§3-1-52 Protected/Threatened and Endangered Species**

Any person who takes a protected, threatened or endangered species, except as specifically authorized by the Fish and Wildlife Commission, shall be in violation of this chapter.

**§3-1-53 Taking of Wildlife Damaging Property, Real or Personal**

Any person who resides within the boundaries of the Nez Perce Reservation commits an infraction if he destroys any animal that is damaging property without first obtaining permission from the Fish and Wildlife Commission. The Commission may grant the request upon a reasonable investigation of the facts alleged, the implementation of appropriate safeguards and consideration of the impacts to any protected, threatened or endangered species.

**(§§ 3-1-54 - 3-1-60 adopted 7/24/01)**
**(§§ 3-1-54 -3-1-61 are criminal arrestable offenses authorized by NPTEC 7/8/03)**
**(§ 3-1-62 is a criminal arrestable offense adopted by NPTEC 7/22/08)**

**§3-1-54 Drug Promotion**

It shall be unlawful for any person to knowingly maintain, frequent or remain at a place:

(a) resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or

(b) which is used for the unlawful keeping or sale of narcotic or dangerous drugs.

**§3-1-55 Possession and/or Consumption of a Controlled Substance**

(a) It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, distribute, manufacture, or sell any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude:

(1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or

(2) any substances as prescribed by a duly licensed physician.

**§3-1-56 Abuse of Psychotoxic Chemical Solvents**

(a) It shall be unlawful for a person:

(1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, to intentionally;

(A) smell or inhale the fumes of any psychotoxic chemical solvent;

(B) possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or

(2) knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum either, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a

substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

### §3-1-57 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.

### §3-1-58 Possession of Alcohol by a Person Under Twenty-One

A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), he shall possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage.

### §3-1-59 Public Intoxication

It shall be unlawful for any person to create, any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug.

### §3-1-60 Disorderly Conduct

A person commits the infraction of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by:

(a) engaging in fighting or threatening, or in violent or tumultuous behavior;

(b) making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;

(c) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or

(d) threatening, quarreling, challenging to fight or fighting.

### §3-1-61 Resisting and Obstructing Officers **(adopted by NPTEC 7/8/03)**

(a) It shall be unlawful for any person to:

(1) wilfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of his office; or

(2) knowingly give a false report to any peace officer.

(b) "Resists" as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

### §3-1-62 Intoxicating Beverage/Controlled Substance Possession and/or Consumption in Usual and Accustomed Fishing Areas **(adopted by NPTEC 7/22/08) (amended 7/14/09)**

(a) It shall be unlawful for any Nez Perce tribal member to possess and/or consume alcoholic or other intoxicating beverages or substances within a distance of four hundred feet of the nearest waterway (river, creek, or lake) at Rapid River; South Fork Salmon River; Clear Creek; and the Dworshak fish ladders all sites from May 1st to August 31st each year.

(b) It shall be unlawful to own, possess, use, transport, distribute, buy sell, or be under the influence of any alcoholic beverage or controlled substance while on a Columbia River In-Lieu Fishing Site or Columbia River Treaty Fishing Access Site. It shall be unlawful to own, possess, use, distribute, manufacture, buy, sell, or be under the influence of any controlled substance(s) on a Columbia River In-Lieu Fishing Site or Columbia River Treaty Fishing Access Site. A person may possess and use drugs as prescribed for them by a licensed practitioner, but they must be contained in the original pharmaceutical container and have the valid prescription label attached. Controlled substances are those substances regulated by Title 21 USC The Controlled Substances Act, the Comprehensive Crime Control Act of 1984, and the Anti-Drug Abuse Act of 1986. Columbia River In-Lieu Site means federal property established by the US Congress under Public Law 79-14. Columbia River Treaty Fishing Access Site means federal property established by the US Congress under Public Law 100-581. **(subsection adopted by NPTEC 4/28/15)**

### §3-1-63 Littering at Fishing Sites **(adopted by NPTEC 8/10/11)**

A person commits the infraction of littering if he deposits upon any public or private property any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material or waste substances without authorization from the tribe or the owner of the property affected while fishing within usual and accustomed areas, Treaty Fishing Access sites, or in lieu sites.

## BUFFALO/BISON HUNTING **(adopted by NPTEC 4/11/06)**

### §3-1-80 Purpose

Pursuant to the Nez Perce Treaty of 1855 (12 Stat. 957) and the Nez Perce Tribe's sovereign authority, the Nez Perce Tribal Executive Committee (NPTEC), after consultation with the Fish and Wildlife Commission, will authorize an annual ceremonial and subsistence season for hunting and harvesting of buffalo/bison on open and unclaimed lands adjoining Yellowstone National Park.

**§3-1-81 Applicable Regulations**

(a) All provisions of the Nez Perce Tribal Code are applicable.

(b) Only enrolled members of the Nez Perce Tribe may participate in the hunt and harvest of buffalo/bison.

(c) NPTEC, after consultation with the Fish and Wildlife Commission, will specify the opening and closing dates for the bison/buffalo season for Nez Perce tribal members on open and unclaimed land adjoining Yellowstone National Park, and will specify the number of bison/buffalo that may be harvested by Nez Perce tribal members.

(d) Tribal members may hunt and harvest from ½ hour before sunrise to ½ hour after sunset; **(Amended by NPTEC 1/26/16)**

(e) Appropriate gauge (30 caliber and higher) firearms will be used.

(f) Nez Perce Conservation Enforcement Officers shall be present to enforce this regulation and the Nez Perce Tribal Code dependent on funds and officer availability. **(Amended by NPTEC 1/8/13)**

# CHAPTER 3-2
# SALMON AND STEELHEAD GUIDING AND OUTFITTING
**(Chapter adopted by NPTEC action effective 5/28-29/02)**

## §3-2-1 Findings

The purpose of this Chapter is to provide for the regulation of salmon and steelhead guiding and outfitting on lands and waters of the Nez Perce Tribe by any person who is a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe.

## §3-2-2 Definitions

(a) "Client" means a person utilizing the services of a guide or outfitter.

(b) "Commission" means the Fish and Wildlife Commission of the Nez Perce Tribe defined in § 3-1-10 of this Title.

(c) "Conservation Enforcement" means the Department of Fisheries Restoration Management Fisheries Conservation Enforcement.

(d) "First Aid Card" means valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Commission.

(e) Guide" means the taking of persons upon or over the land or waters of the Nez Perce Reservation for the purpose of fishing for salmon or steelhead in return for a fee in money, goods, or any other kind of compensation or consideration.

(f) "License" means a license to hunt or fish issued by the Tribe or other agency with jurisdiction to issue licenses recognized by the Nez Perce Tribe.

(g) "NPTEC" means the Nez Perce Tribal Executive Committee.

(h) "Open Area" means the place or location where by regulation it shall be made lawful to operate as a guide or outfitter.

(i) "Outfitter" includes any person who in return for a fee in money, goods, or any other kind of compensation or consideration provides equipment for salmon or steelhead fishing trips.

(j) "Permit" means a valid permit issued by Conservation Enforcement authorizing the holder to act as an outfitter or guide within the Reservation.

(k) "Reservation" means the Nez Perce Reservation.

(l) "Treaty-reserved rights" means hunting, fishing, gathering, grazing, and any other rights reserved by the Nez Perce Tribe in the Treaty of June 9, 1855, with the Nez Perce Tribe, 12 Stat. 957 (1859) and any other treaty or agreement between the Nez Perce Tribe and the United States.

(m) "Tribe" means the Nez Perce Tribe.

**§3-2-3 Applicability**

This Chapter applies to any person who is a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe who acts as a guide or outfitter for salmon and steelhead fishing within the exterior boundaries of the Nez Perce Reservation.

**§3-2-4 Exceptions**

(a) This Chapter does not apply to the exercise of any treaty-reserved rights by a member of the Nez Perce Tribe or any services provided by a member for a member of the Nez Perce Tribe exercising any treaty-reserved rights.

(b) This Chapter does not apply to a member of the Nez Perce Tribe or an enrolled member of any federally recognized Tribe, who acts as a guide or outfitter with a valid license or permit issued by the State of Idaho.

**§3-2-5 Prohibition**

(a) No person without a permit shall act as a guide or outfitter within the Reservation.

(b) Any person acting without a permit as a guide or outfitter within the Reservation shall be guilty of the civil infraction of unlawfully acting as a guide or outfitter.

(c) A permit must be in possession of the permittee while engaged in outfitting or guiding and must be produced upon the request of an authorized person. Upon request of Conservation Enforcement or other conservation enforcement, an outfitter or guide shall show proof of a permit. Refusal or failure to show proof of a permit shall be prima facie evidence that a person is acting without a permit.

(d) Any person acting as a guide while under the influence of alcohol or any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances defined in Chapter 13, 21 U.S.C. § 812, shall be guilty of a civil infraction of unlawfully acting as a guide.

(e) Except as otherwise authorized by NPTC § 3-1-27, no person shall exercise treaty fishing, hunting, or trapping rights while acting as a guide.

**§3-2-6 Qualifications for Permits**

(a) An applicant for an outfitter and/or guide permit must:

(1) Be at least eighteen (18) years of age;

(2) For a guide, have a First Aid Card and be aware of general emergency procedures;

(3) Have extensive, first-hand knowledge of the area and activities involved in the proposed guiding or outfitting operation;

(4) Thorough knowledge of the habits of the fish sought, fishing techniques that are successful in the area, be able to properly care for fish, be familiar with the necessary equipment, and have knowledge of licensing requirements, bag limits, seasons, and other applicable laws and regulations; and

(5) For outfitters or guides operating any boat, an applicant must demonstrate that he has adequate training and experience in reading water and correctly operating and handling the type of boat to be used.

(6) For outfitters or guides operating any boat, information regarding any vessels to be utilized shall be provided to Conservation Enforcement.

(b) Any person holding a current and valid outfitter's permit may act as a guide without a guide's permit if he possesses the qualifications of a guide as provided in this Chapter.

(c) Only members of the Nez Perce Tribe may be permitted to act as an outfitter under this Chapter. However, a member of a federally recognized Tribe, other than the Nez Perce Tribe, may obtain a permit to act as a guide for an outfitter permitted under this Chapter.

**§3-2-7 Applications for Permits**

(a) Any person wishing to serve as a guide or outfitter on the Reservation shall obtain a permit by submitting an application to Conservation Enforcement on forms to be provided by Conservation Enforcement.

(b) Conservation Enforcement may require an applicant for a permit to pay a reasonable filing fee to cover costs associated with the processing of an application. In addition, Conservation Enforcement may assess a reasonable yearly fee to cover monitoring and enforcement costs. These fees shall not exceed $20.00 per year.

(c) Applicants for permits shall submit to interviews as requested by Conservation Enforcement, and shall submit other proof of competence and knowledge to guide on the Reservation as requested by Conservation Enforcement.

(d) Conservation Enforcement shall review and grant or deny an application within thirty (30) days of the submission of a completed application.

**§3-2-8 Denial of Permit / Appeal**

(a) Conservation Enforcement may deny an application for a guiding or outfitting permit if:

(1) The applicant does not meet the qualification described in § 3-2-6 of this Chapter;

(2) The applicant failed to submit a complete application; or

(3) Issuance of additional guiding or outfitting permits could be harmful to natural resources, the environment, or the public interest of the Tribe.

(b) Conservation Enforcement shall provide in writing the reasons for the denial of an application within thirty (30) days of the submission of an application.

(c) An applicant whose application was deemed to be incomplete shall have an opportunity to complete the application and provide other necessary information and resubmit the application without an additional application fee.

(d) An applicant may appeal a decision of Conservation Enforcement to Nez Perce Tribal Court in a manner consistent with the judicial review provisions of Chapter 2-5 of the Nez Perce Tribal Code. The decision of the Tribal Court shall be final and no appeal shall be granted by the Nez Perce Tribal Court of Appeals.

**§3-2-9 Insurance**

An outfitter shall maintain and file with Conservation Enforcement a current certificate or proof of liability insurance in the amount as follows:

(a) Insurance coverage against loss resulting from liability for bodily injury, death, or damage to property suffered by any person caused by the outfitter's activities in the minimum amount of one hundred thousand dollars ($100,000) per accident, with an aggregate of three hundred thousand dollars ($300,000), because of bodily injury, death, or property damage occurring in an accident.

(b) Insurance coverage on vehicles carrying passengers (including boats) against loss resulting from liability for bodily injury, death, or damage to property suffered by any person caused by the outfitter's activities in the minimum amount of three hundred thousand dollars ($300,000).

**§3-2-10 Boating Equipment Requirement**

Every boat utilized for guided or outfitted salmon or steelhead fishing shall comply with NPTC § 3-1-30 and must have:

(a) A U.S. Coast Guard approved life jacket in good condition for each passenger, boat operator, and guide;

(b) A fire extinguisher in working condition; and

(c) A complete first aid kit.

**§3-2-11 Reporting**

(a) No later than January 30th of each year, guides shall provide Conservation Enforcement with a report of all guide activities which took place on the Reservation for the previous calendar year. Such report shall contain the following information:

(1) The total number of persons guided;

(2) The number and species of fish taken by each person guided;

(3) The total number of days a guide has guided on the Reservation;

(4) The area where a guide has guided;

(5) A copy of current First Aid Card; and

(6) Such other information as is reasonably requested by Conservation Enforcement.

(b) No later than January 30th of each year, outfitters shall provide Conservation Enforcement with a report of all outfitting activities which took place on the Reservation for the previous calendar year. Such report shall contain the following information:

(1) The type of services provided;

(2) A copy of a current certificate or proof of liability insurance; and

(3) The total number of person provided outfitting services.

(c) Failure to provide the reports described in subsection (a) and (b) of this section may result in the temporary or permanent suspension of the outfitting or guiding permit by Conservation Enforcement.

**§3-2-12 Regulations**

The Commission may promulgate other necessary rules and regulations which shall apply to guides and outfitters in a manner consistent with rule making requirements of NPTC Chapter 2-5. Upon adoption, the Commission shall provide a copy of any such regulations to all guides and outfitters.

**§3-2-13 Open Areas**

(a) The Commission shall recommend to NPTEC areas within the Reservation that shall be deemed open for outfitting and guiding activities.

(b) NPTEC shall review the recommendation of the Commission and shall designate areas open for outfitting and guiding activities.

(c) This designation shall include:

(1) A geographic description of the area deemed to be open;

(2) The type of guiding and outfitting activities allowed within the open area;

(3) The maximum number of guides and outfitters permitted to operate within the open area; and

(4) Any other restriction deemed necessary.

(d) A guide or outfitter may only operate in an open area in a manner consistent with the NPTEC designation. The Commission shall notify all guides and outfitters of areas deemed open for outfitting and guiding activities and any applicable regulations or restrictions.

(e) Regardless of any designation as an open area, if land is privately owned, a guide shall obtain permission from the land owner before guiding a client upon or across such lands.

**§3-2-14 Licenses / Other Regulations**

(a) Guides and outfitters shall verify that clients have all required licenses for the activity for which the services are being provided. Guides who are not enrolled members of the Nez Perce Tribe must have a salmon or steelhead license issued by the Tribe or the State.

(b) Guides shall ensure that clients comply with bag limits, seasons, area closures, and other applicable regulations.

**§3-2-15 Cultural Resources**

(a) Guides shall not guide clients to any archaeological resource site or other sensitive cultural resource sites.

(b) Guides and outfitters shall not disclose information about archaeological resource sites to any client.

**§3-2-16 Violations**

(a) Any person found violating any provision of this Chapter shall be guilty of a civil infraction.

(b) The penalty for a violation of this Chapter shall be a fine of not less than $100 and no more than $500 and may include the temporary or permanent suspension of a guide or outfitting permit and/or the temporary or permanent prohibition from acquiring a permit in the future.

(c) Any permitted guide or outfitter who commits any violation of NPTC Chapter 3-1 shall receive a temporary or permanent suspension of a guide or outfitting permit and/or the temporary or permanent prohibition from acquiring a permit in the future.

# TITLE 4
# OFFENSES
# CHAPTER 4-1
# CRIMINAL OFFENSES

## GENERAL PROVISIONS

### Introductory Provisions

### §4-1-1 Definitions (revised 6/22/99)

(a) "Adult household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

(b) "Adulterated" means varying from the standard of composition or quality prescribed by any applicable law or commercial usage.

(c) "Affirmative defense" means a new matter in the prosecution of an offense which assuming the complaint to be true constitutes a defense to it.

(d) "Agent" means any director, officer, servant, employee or other person authorized to act in behalf of a corporation or association and, in the case of an unincorporated association, a member of such association.

(e) " To appropriate" when used as a verb means:

(1) to exercise control over property, or to aid a third person to exercise control over it, permanently or for so extended a period or under such circumstances as to acquire the major portion of its economic value or benefit; or

(2) to dispose of the property for the benefit of oneself or a third person.

(f) "Corporation" means any entity incorporated under state or tribal law but does not include an entity organized as or by a governmental agency for the execution of a governmental program.

(g) "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of a forbidden act or omission, or to another.

(h) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. Constitutionally protect activity is not included, within the meaning of this definition.

(i) "Dangerous device" means any device capable of causing serious bodily injury to human beings.

(j) "Dangerous weapon" means any item that in the manner of its use or intended use

is capable of causing death or serious bodily injury. On the issue of whether an object not commonly known as a dangerous weapon is such a weapon, the character of the object, the character of the wound produced, if any, and the manner in which the object was used shall be determinative.

(k) “Domestic household member” means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time. For the purpose of this Title, “reside” shall mean one’s personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.

(l) “Domestic violence” means the occurrence of one or more of the following:

(1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;

(2) An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence in imminent;

(3) Willful and unlawful use of force or violence upon the person of another domestic household member;

(4) Actual, intentional and unlawful touching or striking of another domestic household member against their will;

(5) Unlawfully and intentionally causing bodily harm to another domestic household member; or

(6) Causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(m) "Drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this code.

(n) "Element of the offense" means:

(1) the conduct, attenuated circumstances or result of conduct included in the description of the forbidden act in the definition of the offense; and

(2) the establishment of the required mental state or culpability described in the offense, if any; but

(3) an "element of the offense" shall not relate exclusively to the statute of limitations, jurisdiction, venue or to any other matter similarly unconnected with the harm or evil, incident to the prohibited conduct, or the existence of justification or excuse for such conduct.

(o) "Embezzlement" means to wilfully take or convert to one's own use, another's money or property in which the wrongdoer lawfully acquired possession by reason of some office, employment or position of trust.

(p) "Enter" means an intrusion by any part of the body, or intrusion by any physical object under control of the actor.

(q) "Fiduciary" means a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization.

(r) “Harass” means a knowing and wilful course of conduct directed at a specific person which seriously alarms, annoys or harasses the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

(s) "High managerial agent" means an officer of a corporation or an unincorporated association or, in the case of a partnership, a partner, or any other agent of a corporation or association having duties of such responsibility that his conduct may fairly be assumed to represent the policy of the corporation or association.

(t) "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(u) "Knowingly" means the knowledge that the facts exist which bring an act or omission within the provisions of this chapter. A knowing mental state does not require any knowledge of the unlawfulness of such act or omission.

(v) "Malice aforethought" means an intent at the time of a killing, to willfully take the life of a human being, or an intent to willfully act in callous and wanton disregard of the consequences to human life.

(w) "Maliciously" or "malice" means a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

(x) "Minor or child" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(y) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by any applicable law or commercial usage.

(z) "Negligently", "neglect", "negligence," or "negligent" means a want of such attention to the nature of probable consequences of an act or omission as a prudent person ordinarily bestows in acting in his own concerns.

(aa) "Obtain" means:

(1) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(2) in relation to labor or services, to secure the performance thereof.

(bb) "Owner" means any person who has a right to possession of property superior to that of the taker, obtainer or withholder.

(cc) "Possession" means an act in which the possessor knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient period to have been able to terminate his possession.

(dd) "Public assistance" shall have the definition and meaning provided in Title 10, Section 56-201 of the Idaho State Public Assistance and Welfare Code existing as of the date of adoption of this chapter by NPTEC or hereafter amended.

(ee) "Public monies" means all bonds and evidences of indebtedness, and all monies belonging to the Tribe, and all monies, bonds and evidences of indebtedness received or held by Tribal officials in their official capacity.

(ff) "Self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know.

(gg) "Sexual contact" means any intentional touching of the genitals, anus, groin, breast, inner thigh or buttocks with intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desires of any person.

(hh) "Social game" means a game, other than a lottery, between players in a private home or private business where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

(ii) "Strict liability" means an element of an offense that exists only when the definition of the offense does not include or involve a culpable mental state.

(jj) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make, communicate or implement decisions regarding his person.

(kk) "Wilfully" implies a purpose or willingness to commit a forbidden act or make a forbidden omission. A wilful mental state does not require any intent to violate law, or to injure another or to acquire any advantage.

(ll) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks and other symbols of value, right, privilege, or identification.

**§4-1-2 Scope**

This chapter shall apply to all criminal provisions of this code.

**§4-1-3 Purpose and Construction**

The purpose of the criminal provisions of this code are to:

(a) forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;

(b) define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation;

(c) prescribe penalties which are proportionate to the seriousness of the offense; and

(d) prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons.

**§4-1-4 Civil Remedies Preserved**

This code shall not affect any civil remedy available under the Nez Perce Tribal Code which may arise from any act or omission which is punishable under this chapter. The fact that conduct is found to be an affirmative defense under this chapter does not abolish or impair any remedy for such conduct available in any civil action.

**Multiple Prosecutions and Double Jeopardy**

**§4-1-5 Prosecution for Multiple Offenses**

(a) When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless this code provides that specific periods of such conduct constitute separate offenses.

(b) Except as provided by Subsection (c) of this section, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal episode.

(c) Upon application of either party and when the defendant is charged with two or more offenses based on the same conduct or arising from the same criminal episode, the Court may order any such charge to be tried separately if it is satisfied that justice so requires.

(d) A defendant may be convicted of an offense included in an offense charged in the complaint. An included offense may be:

(1) established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(2) an attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(3) different from the offense charge only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(e) The Court shall charge the jury with respect to an included offense if there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

### §4-1-6 Double Jeopardy

If a defendant has been prosecuted in the Nez Perce Tribal Court for one or more offenses arising out of the same conduct as the original prosecution, a subsequent prosecution in the Nez Perce Tribal Court for the same or a different offense arising out of the same conduct is barred. The initial prosecution shall have been established in any proceeding in which the jury has been impaneled and sworn in, or, if the matter was to be tried without a jury, once the first witness is sworn.

## Burden of Proof

### §4-1-7 Burden and Presumption of Innocence

No person may be convicted of an offense unless each element of such offense is proven beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.

### §4-1-8 Negating Defenses

The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either party, or unless the defense is an affirmative defense and the defendant has presented evidence of it.

## GENERAL PRINCIPLES OF LIABILITY

### §4-1-9 Acts and Omissions to Act

(a) A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

(b) The following are not voluntary acts with the meaning of this section:

(1) a reflex or convulsion;

(2) a bodily movement during unconsciousness or sleep;

(3) conduct during hypnosis or resulting from hypnotic suggestion;

(4) a bodily movement that otherwise is not a product of the effort or determination of the actor.

(c) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(1) the omission is expressly made sufficient by the definition of the offense; or

(2) a duty to perform the omitted act is otherwise required by this code.

**§4-1-10 Culpability**

A person is not guilty of an offense unless he acted with the requisite mental state with respect to each material element of the offense or unless his act constitutes an offense involving strict liability.

**§4-1-11 Causal Relationships Between Conduct and Result**

(a) Conduct is the cause of a result when:

(1) the result in question would not have occurred but for the conduct; and

(2) the relationship between the conduct and result satisfies any additional causal requirements imposed by the code or the definition of the offense.

(b) When a particular mental state is an element of an offense the element is not established if the actual result is not within the purpose or contemplation of the actor or within the risk of which the actor is aware or should be aware unless:

(1) the actual result differs from that intended, contemplated or the probable result only in the respect that a different person or different property is injured or affected;

(2) the injury or harm intended or contemplated or probable would have been more serious or extensive than that caused; or

(3) the actual result involves the same kind of injury or harm as that designed, contemplated or probable and is not too remote or accidental in its

occurrence to have a just bearing on the actor's liability or the gravity of his offense.

**§4-1-12 Ignorance or Mistake**

(a) Ignorance or mistake as to a matter of fact or law is a defense if:

(1) it negates the mental state for the offense; or

(2) this code provides that the state of mind established by such ignorance or mistake constitutes a defense.

(b) Although ignorance or mistake would otherwise afford a defense to the offense charged, the defense is not available if the defendant would be guilty of another offense had the situation been as he supposed.

**§4-1-13 Accomplices**

(a) A person is an accomplice of another person in the commission of an offense if:

(1) with the purpose of promoting or facilitating the commission of the offense he:

(A) solicits such other person to commit it;

(B) aids or agrees or attempts to aid such other person in planning or committing it;

(C) having a legal duty to prevent the commission of the offense, fails to make proper effort to do so; or

(2) his conduct is expressly declared by the code or the definition of the crime to establish his complicity.

(b) When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability necessary for the commission of the offense.

(c) A person who is legally incapable of committing a particular offense may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable.

(d) A person is not an accomplice in an offense committed by another person if:

(1) he is a victim of that offense; or

(2) he terminates his complicity prior to the commission of the offense; and

(A) wholly deprives it of effectiveness; and

(B) gives timely warning to the Tribal Police or otherwise makes proper effort to prevent the commission of the offense.

(e) An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense or degree of offense, has an immunity to prosecution or conviction or has been acquitted.

**§4-1-14 Corporations, Unincorporated Associations and Persons Acting, or Under a Duty to Act, in Their Behalf**

(a) A corporation or unincorporated association may be convicted of the commission of an offense if:

(1) the offense is a violation or the offense is defined by law in which a legislative purpose to impose liability on such entity plainly appears and the conduct is performed by an agent of the corporation or association acting in behalf of the entity within the scope of his office or employment, unless the law defining the offense specifically designates the agents for whose conduct the entity is accountable or the circumstances under which it is accountable;

(2) the offense consists of an omission to discharge a specific duty to act imposed on such entities by the code or other law; or

(3) the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by the board of directors or by a high managerial agent acting in behalf of the entity within the scope of his office or employment.

(b) When absolute liability is imposed for the commission of an offense, a legislative purpose to impose liability on a corporation or association shall be assumed.

(c) In any prosecution of a corporation or an unincorporated association for the commission of an offense under Subsection (a) of this section, other than an offense for which absolute liability has been imposed, it shall be a defense if the defendant proves by a preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission. This paragraph shall not apply if it is plainly inconsistent with the legislative purpose in defining the particular offense.

(d) A person is legally accountable for any conduct he performs or causes to be performed in the name of the corporation or an unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.

(e) Whenever a duty to act is imposed by law upon a corporation or an unincorporated association, any agent of the corporation or association having primary

responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon him.

(f) When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the grade and the degree involved.

**§4-1-15 Intoxication**

(a) Except for intoxication which is not self-induced, intoxication of the actor is not a defense unless it negates any particular purpose, motive or intent which is a necessary element of the crime.

(b) Intoxication does not, in itself, constitute mental disease within the meaning of this code.

**§4-1-16 Duress**

(a) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced by the use of, or a threat to use, unlawful force against his person or the person of another, which a reasonable person in his situation would have been unable to resist.

(b) The defense provided by this section is unavailable if:

(1) the actor knowingly, willfully or negligently placed himself in a situation in which it was probable that he would be subjected to duress;

(2) the coerced conduct threatens to cause death or serious bodily harm to some person other than the actor.

**§4-1-17 Consent**

(a) The consent of the victim to conduct constituting an offense or to the result thereof is a defense if it precludes an element of the offense or the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) When conduct constitutes an offense because it causes or threatens bodily harm, consent to such conduct is a defense only if:

(1) the bodily harm consented to or threatened is not serious;

(2) the conduct and the harm are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

(3) the consent establishes a justification for the conduct.

(c) Assent does not constitute consent if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(2) it is given by a person who by reason of youth, mental disease, defect or intoxication is manifestly or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(3) it is given by a person whose consent is sought to be prevented by the law defining the offense; or

(4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

**§4-1-18 Entrapment**

(a) It shall be a defense if a Tribal Police Officer or a person acting in cooperation with such an official for the purpose of obtaining evidence of the commission of an offense, induces or encourages the defendant to engage in conduct constituting such offense by either:

(1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

(b) The defense afforded by this section is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(c) The defendant shall have the burden of proving by a preponderance of evidence the defense of entrapment under this section.

**§4-1-19 Mental Disease or Defect Excluding Responsibility**

(a) It shall be an affirmative defense to prosecution of an offense if the defendant at the time of the criminal conduct and as a result of mental disease or defect lacks substantial capacity either to appreciate the criminal nature of his conduct or to conform his conduct to the requirements of law. A mental disease or defect does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct, nor shall it preclude a finding that the defendant is guilty but insane if the possibility of intent is not completely eliminated by the mental disease or defect.

(b) Evidence of mental disease or defect is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten (10) business days thereafter or at such later time as the Court may for good cause permit, files a written notice of his intent to rely on such defense.

### §4-1-20 Medical Examination and Institutionalization

(a) Whenever there is reason to doubt the defendant's mental competency to stand trial the Court shall designate a licensed psychiatrist to conduct a competency determination. Upon completion of the evaluation a report shall be submitted to the Court and shall include the following:

(1) a description of the nature of the evaluation;

(2) a diagnosis or evaluation of the mental condition of the defendant; and

(3) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense.

(b) In the event that the Court determines that following trial the defendant's condition requires commitment to a mental institution or in the event the Court determines that the defendant lacks fitness to proceed, the Court shall direct that the defendant be committed to an appropriate facility for care and treatment.

## JUSTIFICATION AND DEFENSES

### §4-1-21 Justification Generally; Civil Remedies Unaffected

Justification is an affirmative defense to the prosecution of any offense based on such conduct and may be claimed:

(a) when the harm or evil sought to be avoided is greater than that sought to be prevented by the law defining the offense charged, no tribal law exists which excludes the justification claimed, and the actor does not knowingly, wilfully or negligently bring about the situation requiring his conduct; or

(b) if the conduct is required or authorized by law.

### §4-1-22 Force in Self-Protection or Protection of Others

(a) The use of reasonable force upon or toward another person is justifiable when the actor believes it is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force. The force used must be reasonably necessary to protect the actor or a third person.

(b) The use of force is not justifiable under this section:

(1) to resist or assist another in resisting arrest which the actor knows is being made by a peace officer, although the arrest is unlawful;

(2) if the actor uses deadly force unless the actor believes that such force is necessary to protect himself or a third person against death, serious bodily harm, kidnaping or sexual intercourse compelled by force or threat;

(3) if the actor, with the purpose of causing death or serious bodily harm,

provoked the use of force against himself or a third person in the same encounter; or

(4) if the actor was the aggressor or was engaged in combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and the other notwithstanding continues or threatens to continue the use of unlawful force.

**§4-1-23 Force for the Protection of Property**

(a) The use of reasonable force upon or toward another is justifiable when the actor believes that such force is immediately necessary to prevent unlawful entry into or interference with real or personal property which is, or is believed by the actor to be, in his possession or in the possession of another person for whose protection he acts.

(b) The use of deadly force is not justifiable under this section unless the actor reasonably believes that the person against whom the force is used attacks, enters or is attempting to enter the actor's place of habitation and manifestly:

(1) intends to commit an offense or other offense involving threat of serious bodily injury therein and the force is necessary to prevent the offense or such injury; or

(2) intends and attempts in a violent, riotous or tumultuous manner, to attack or enter the dwelling for the purpose of damaging or threatening to damage the dwelling or to any person and the force is necessary to prevent such assault or injury.

(c) The justification afforded by this section extends to the use of a device for the purpose of protecting property from entry or trespass only if:

(1) the device is not designed to cause or known to create a substantial risk of causing death or serious bodily harm;

(2) the use of the device is reasonable under the circumstances, as the actor believes them to be; and

(3) the device is one customarily used for such a purpose or reasonable care is taken to make known to probable intruders the fact that it is used.

**§4-1-24 Force in Law Enforcement**

(a) The use of force upon or toward the person of another is justifiable when the actor is making or assisting in making an arrest or preventing an escape and the actor believes that such force is immediately necessary to effect a lawful arrest, prevent an escape or defend himself or another from bodily harm while making an arrest or preventing an escape.

(b) The use of deadly force is justifiable if:

(1) the person effecting the arrest is authorized to act as a police officer or is

assisting a person whom he believes to be authorized to act as a police officer;

(2) the actor believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) the actor believes that there is a substantial risk that the person under arrest or to be arrested will cause death or serious bodily harm if his apprehension is delayed; or

(4) the actor believes such force is necessary to protect himself or another from death or serious bodily injury.

### §4-1-25 Force by Persons with Special Responsibility or Care, Discipline or Safety of Others

The use of force upon or toward the person of another is justifiable if:

(a) the force is used for the purpose of safeguarding or promoting the welfare of a minor, including the prevention or punishment of his misconduct; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain, or mental distress.

## SENTENCES AND PUNISHMENTS **(section amended 1/25/00)**

### §4-1-26 General Principles

In imposing a sentence for a violation of this chapter, the Court in each case shall consider the protection of the public, the gravity of the offense, the impact of the crime on the victim, and the results of any pre-sentencing reports.

### §4-1-27 Sentences and Combinations of Sentences; Civil Penalties

(a) A court may sentence a person adjudged guilty of an offense to any one of the following sentences or a combination of such sentences:

(1) to pay a fine not to exceed $5,000;

(2) imprisonment not to exceed 1 year;

(3) to probation and/or suspension of sentence on such terms and conditions as the Court may direct, including payment of probation program costs;

(4) to pay court costs;

(5) to pay restitution or perform any other act for the benefit of any person or party injured personally or in his property by the person adjudged guilty provided such injuries are fairly attributable to the act or failure to act constituting the offense for which guilt was adjudged;

(6) to treatment, counseling and/or rehabilitation;

(7) to perform community service or other work for the benefit of the Tribe, through the Tribal Community Services Program, and pay program costs.

(b) This section shall not deprive a court of authority to cite for contempt, cancel or suspend a license, forfeit property, or do any other act or make any other order authorized by law.

**§4-1-28 Payment of Fines and Other Monies**

Fines shall be paid in cash or certified check. The Court may allow that any fines or other required payments be paid in installments and on conditions tailored to the means of the defendant.

**§4-1-29 Decision to Impose a Fine**

In determining whether to impose a fine and its amount, the Court should consider:

(a) the nature of the offense committed and the impact of the offense on the victim and the community;

(b) the financial resources of the defendant.

**§4-1-30 Community Service**

The Court may require any person who has been convicted of an offense under this code to engage in community service for the benefit of the Tribe for any period it determines to be appropriate. Defendants receiving community service hours will be referred to the Tribal Community Services Program (CSP) by the Tribal Court and/or Probation Officers within five (5) days after being sentenced, and will follow all guidelines of the CSP. Status reports on the defendants will be given to the Court and/or Probation Officers by the CSP.

**§4-1-31 Sentencing Proceedings**

(a) Sentence shall be imposed without unnecessary delay unless the Court postpones the imposition of sentence in order to conduct a pre-sentencing determination or for a reasonable time to resolve factors important to the sentencing determination which cannot be immediately resolved.

(b) During sentencing and in relation to the appropriate sentence, the Court shall allow the counsel for either party to comment upon any matter including information in mitigation and may allow counsel to call witnesses. The defendant and any victim of the crime committed will be allowed to make a statement before sentence is imposed if he so desires.

(c) After imposing sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of the defendant's right to appeal. If the sentence is imposed after a plea of guilty, the Court shall advise the defendant of the right to appeal the

sentence.

### §4-1-32 Probation

The Court may suspend the defendant's sentence and allow probation upon the terms and conditions determined by the Court. No suspension of a restitution order will be allowed.

### §4-1-33 Violation of Terms of Probation

(a) Upon a report of a violation of probation from the Prosecutor or a tribal police officer, the Court may summon the defendant to appear before it or issue a warrant for his arrest. Upon a finding of a probation violation the Court may revoke the probation and shall impose the original sentence or another sentence which the Court deems appropriate.

(b) The Court shall not revoke suspensions or probation except after a hearing. The defendant shall have the right to hear and contest the evidence against him, to offer evidence in his defense and to be represented by counsel of his choice at his own expense.

(c) Whenever a defendant is taken into custody for a violation of probation conditions other than the alleged commission of an offense he shall be entitled to have his sentence considered by the Court within three (3) business days of his confinement, unless he requests further time to prepare his defense.

## INCHOATE OFFENSES

### §4-1-34 Attempt

(a) It shall be unlawful for any person acting with the kind of culpability otherwise required for commission of the crime to:

(1) wilfully engage in conduct which would constitute the crime if the attendant circumstances were as he believes them to be;

(2) do or omit to do anything with the purpose of causing or with the belief that it will cause such result without further conduct on his part when causing a particular result is an element of the crime; or

(3) wilfully do or omit to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course or conduct planned to culminate in his commission of the crime.

(b) Conduct shall not be held to constitute a substantial step under this section unless it is strongly corroborative of the actor's criminal purpose.

(c) No defense to the offense of attempt shall arise:

(1) because the offense attempted was actually committed;

(2) due to factual or legal impossibility of consummating the intended offense if the offense could have been committed had the facts been as the actor believed them to be; or

(3) that in attempting unsuccessfully to commit a crime, the person accused actually accomplished the commission of another and different crime.

**§4-1-35 Criminal Conspiracy**

If two (2) or more persons agree to engage in or cause conduct intending that a crime be committed, and one or more of such persons does any act to effect the object of the conduct each shall be punishable upon conviction as if the crime had been committed.

**§4-1-36 Solicitation**

(a) It shall be unlawful for any person to promote or facilitate the commission of an offense by enticing, advising, inciting, commanding, encouraging or requesting another person to engage in specific conduct which would constitute an offense.

(b) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime proposed due to:

(1) legal incapacity or other exemption;

(2) unawareness of the criminal nature of the conduct solicited or the defendant's criminal purpose;

(3) other factors precluding the mental state required for the commission of the crime in question.

**OFFENSES AGAINST THE PERSON**

**Assault and Related Offenses**

**§4-1-37 Simple Assault**

It shall be unlawful for any person:

(a) with apparent ability, to attempt unlawful contact with another; or

(b) to intentionally threaten unlawful contact upon another, coupled with an apparent ability to do so, and does some act which creates a well-founded fear in such other person that such contact is imminent.

**§4-1-38 Battery**

It shall be unlawful for any person to:

(a) willfully and unlawfully use force or violence to another;

(b) actually, intentionally and unlawfully touch or strike another person against their will; or

(c) unlawfully and intentionally causes bodily harm to an individual.

**§4-1-39 Aggravated Assault**

The act of assault is aggravated if while committing assault a person uses:

(a) a deadly weapon or instrument without intent to kill;

(b) any means or force likely to produce great bodily harm; or

(c) any corrosive acid or a caustic chemical of any kind.

**§4-1-40 Aggravated Battery**

The act of battery is aggravated if while committing battery a person:

(a) causes great bodily harm, permanent disability or permanent disfigurement to any person;

(b) uses a deadly weapon or instrument;

(c) uses any corrosive acid, or a caustic chemical of any nature; or

(d) uses any poison or other noxious or destructive substance or liquid.

**§4-1-41 Stalking**

It shall be unlawful for any person to wilfully, maliciously and repeatedly follow or harass another person or member of that person's immediate family.

**§4-1-42 Aggravated Stalking**

It shall be unlawful for any person to violate the provisions of § 4-1-41 when there is a temporary restraining order or an injunction, or both, in effect prohibiting the behavior described in § 4-1-41 against the same party.

**Murder and Related Offenses**

**§4-1-43 Murder**

It shall be unlawful for any person to kill a human being with malice aforethought.

**§4-1-44 Manslaughter**

It shall be unlawful for any person to kill a human being:

(a) voluntarily - upon a sudden quarrel or heat of passion; or

(b) involuntarily –

(1) in the perpetration of or attempt to perpetrate any unlawful act;

(2) in the commission of a lawful act which might produce death, in an unlawful manner;

(3) without due caution or care; or

(4) in the operation of any firearm or dangerous weapon in a reckless, careless or negligent manner which produces death.

## KIDNAPING AND RELATED OFFENSES

### §4-1-45 Kidnaping

It shall be unlawful for any person to unlawfully seize, confine, entice, deceive, abduct, or carry away any person for the purpose of holding such person for ransom, reward or otherwise.

### §4-1-46 False Imprisonment

It shall be unlawful for any person to wilfully and unlawfully restrain another so that he substantially interferes with their personal liberty.

### §4-1-47 Child Custodial Interference

(a) It shall be unlawful for any person to intentionally and without lawful authority take or entice away, keep or withhold any minor child from a parent or another having custody, joint custody, visitation or other parental rights, whether such rights arise from a temporary or permanent custody order, or from the equal custodial rights of each parent in the absence of such order.

(b) It shall be an affirmative defense to a violation of the provisions of this section that:

(1) the action is taken to protect the child from imminent physical harm; or

(2) the action is taken by a parent fleeing from imminent physical harm to himself.

## SEXUAL OFFENSES

### §4-1-48 Rape

(a) It shall be unlawful for any person to engage in sexual intercourse with another:

(1) who is incapable, through mental defect or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

(2) who is prevented from resistance by force or threats of immediate bodily harm, accompanied by an apparent ability to carry out such threats or by any intoxicating narcotic, or anesthetic substance administered by the accused;

(3) who is at the time, unconscious of the nature of the act and this is known to the accused; or

(4) against the will or consent of the other.

(b) Sexual intercourse occurs when any sexual penetration, however slight takes place.

**§4-1-49 Forcible Sexual Penetration with a Foreign Object**

It shall be unlawful for any person to intentionally cause the penetration, however slight, of the genitals or anal opening of another person, with any object, instrument or device, against the victim's will by use of force, violence, duress or threats of bodily harm, accompanied by an apparent power of execution.

**§4-1-50 Unlawful Sexual Intercourse**

It shall be unlawful for any person who is over the age of sixteen (16) to:

(a) solicit a minor under the age of sixteen (16) years to participate in a sexual act; or

(b) engage in sexual intercourse with a minor under the age of sixteen (16) years.

**§4-1-51 Sexual Assault**

It shall be unlawful for any person to have sexual contact with another or cause such other to have sexual contact with him, if:

(a) he knows that the contact is offensive to the other person;

(b) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;

(c) he knows that the other person is unaware that a sexual act is being committed;

(d) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means; or

(e) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

### §4-1-52 Sexual Molestation of Minor under Sixteen

It shall be unlawful for any person to engage in sexual contact with another who is under the age of sixteen (16); or involve such person in any act of bestiality, sado-masochistic abuse or exhibition with intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desires of any person.

### §4-1-53 Indecent Exposure

It shall be unlawful for any person to expose his genitals for the purpose of arousing or gratifying his own sexual desire or to any person under circumstances in which he knows his conduct is likely to cause affront or alarm. **(NPTEC authorized amendment 2/24/04)**

## OFFENSES AGAINST PROPERTY

### Property Destruction

### §4-1-54 Arson

It shall be unlawful for any person to wilfully and maliciously set fire to, burn or cause to be burned any building or structure.

### §4-1-55 Aggravated Arson

The act of arson is aggravated if while committing arson:

(a) any person knows or reasonably should know that one or more persons are present inside of the structure involved or any structure adjacent to the structure involved; or

(b) any person suffers death, great bodily harm, permanent disability or disfigurement as a result of the fire.

### §4-1-56 Causing a Catastrophe

It shall be unlawful for any person to knowingly or wilfully by explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means cause wide spread injury or damage.

### §4-1-57 Malicious Injury to Property

It shall be unlawful for any person to:

(a) maliciously injure or destroy any real or personal property not his own; or

(b) intentionally and unlawfully tamper with the property of another and thereby:

(1) endanger human life; or

(2) cause or threaten a substantial interruption or impairment of any public

utility service.

### §4-1-58 Aggravated Vandalism

It shall be unlawful for any person to wilfully and maliciously:

(a) cause or threaten a substantial interruption or impairment of any public utility service, including but not limited to transportation, water supply, gas, or power; or

(b) cause a substantial interruption or impairment in mass communications service, police, fire, other public service communications or in amateur or citizens band radio communications being used for public service or emergency communications.

## BURGLARY AND RELATED OFFENSES

### §4-1-59 Burglary

It shall be unlawful for any person to enter a building or occupied structure with intent to commit an offense therein.

### §4-1-60 Burglary of a Vehicle

It shall be unlawful for any person to enter any vehicle with intent to commit an offense therein.

### §4-1-61 Trespass

It shall be unlawful for any person to unlawfully:

(a) refuse to depart from the real property of another, except under a landlord-tenant relationship, after being notified in writing, or verbally by the owner, lawful occupant or authorized agent of the owner of such property, to immediately depart; or

(b) enter without permission of the owner or the owner's agent, upon the real property of another.

### §4-1-62 Aggravated Trespass

The act of trespass shall be aggravated if while committing trespass a person:

(a) accomplishes entry on the property by an act of force or violence or the use of a key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;

(b) intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;

(c) intends to commit or commits an offense thereon; or

(d) is in possession of a deadly or dangerous weapon.

**§4-1-63 Robbery**

(a) It shall be unlawful for any person to take personal property from the possession of another or from the immediate area of another by means of force or intimidation.

(b) As used in this section, the term "intimidation" means the fear of an immediate and unlawful injury to the person or property of the person robbed or of anyone in the company of such person at the time of the robbery.

**§4-1-64 Theft**

It shall be unlawful for any person if, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds such property from its owner.

**§4-1-65 Theft by Deception**

It shall be unlawful for any person if, with intent to deprive another of property or to appropriate the same to himself or to a third person, he wrongfully takes, obtains or withholds another's property by:

(a) creating or confirming another's impression which is false and which the offender does not believe to be true;

(b) failing to correct a false impression which the offender previously has created or confirmed;

(c) preventing another from acquiring information pertinent to the disposition of the property involved;

(d) selling or otherwise transferring or encumbering property while failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not valid, or is or is not a matter of official record.

**§4-1-66 Acquiring Lost Property**

It shall be unlawful for any person if with the intent to deprive another of such property or to appropriate such property to himself or a third person, he exercises control over property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or amount of the property, without taking reasonable measures to return such property to the owner.

**§4-1-67 Theft by a False Promise**

(a) It shall be unlawful for any person to obtain property of another by means of a representation, express or implied, that he or a third person will in the future engage in particular

conduct, and when he does not intend to engage in such conduct or, as the case may be, does not believe that the third person intends to engage in such conduct.

(b) In any prosecution for theft based upon a false promise, the defendant's intention or belief that the promise would not be performed may not be established by or inferred from the fact alone that such promise was not performed. Such a finding may be based only upon evidence establishing that the facts and circumstances of the case are consistent with guilty intent or belief and inconsistent with innocent intent or belief, and excluding every reasonable hypothesis except that of the defendant's intention or belief that the promise would not be performed.

**§4-1-68 Extortion**

It shall be unlawful for any person to compel or induce another person to deliver property to himself or to a third person by means of instilling in him a fear that, if the property is not so delivered, the actor or another will:

(a) cause physical injury to some person in the future;

(b) cause damage to property;

(c) engage in conduct constituting a crime;

(d) accuse some person of a crime or cause criminal charges to be instituted against him;

(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

(f) cause a strike, boycott or other collective labor group action injurious to some person's business; unless the property is demanded or received for the benefit of the group in whose interest the actor purports to act;

(g) testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

(h) use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(i) perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships.

**§4-1-69 Receiving Stolen Property**

It shall be unlawful for any person to knowingly receive, retain, obtain control over or

possess, stolen property, knowing the property to have been stolen by another or under such circumstances as would reasonably induce him to believe that the property was stolen; and

(a) he intends to deprive the owner permanently of the use or benefit of the property; or

(b) he knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit.

**§4-1-70 Theft of Services**

It shall be unlawful for any person to obtain for himself or another the labor or services of another which are available only for hire, by means of threat or deception.

**§4-1-71 Defenses to Theft and Related Offenses**

(a) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(b) In any prosecution for theft committed by trespassory taking or embezzlement, it is an affirmative defense that the property was appropriated openly and avowedly, and under a claim of right made in good faith.

**§4-1-72 Theft of Telephone Services**

It shall be unlawful for any person to knowingly, and without consent, use or receive another's telephone services in which a charge or fee is involved with the intent to withhold compensation for the use of such services.

**§4-1-73 Unauthorized Use of a Vehicle**

It shall be unlawful for any person:

(a) to knowingly take, operate, exercise control over, ride in or otherwise use another's vehicle, boat or aircraft without consent of the owner;

(b) having custody of a vehicle, boat or aircraft pursuant to an agreement to perform a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or aircraft, to intentionally use or operate thereof, without consent of the owner, for his own purpose in a manner constituting a gross deviation from the agreed purpose; or

(c) having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, to knowingly retain or withhold possession thereof without consent of the owner for so long of time as to render such retention or possession a gross deviation from the agreement.

**FORGERY**

**§4-1-74 Forgery**

It shall be unlawful for any person if with intent to defraud or injure anyone, he:

(a) alters any writing of another without such person's authority;

(b) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be:

(1) the act of another who did not authorize that act;

(2) to have been executed at a time or place or in numbered sequence other than was in fact the case;

(3) to be a copy of an original when no such original existed; or

(c) utters or attempts to circulate as genuine any writing which he knows to be forged in the manner specified in this section.

**FRAUD**

**§4-1-75 Criminal Simulation**

It shall be unlawful for any person if, with intent to defraud anyone or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he makes, alters or utters or attempts to circulate or sell as genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess.

**§4-1-76 Fraudulent Handling of Recordable Instruments**

It shall be unlawful for any person if, with intent to deceive or injure anyone, he destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording or knowingly records a false or forged instrument.

**§4-1-77 Tampering With Records**

It shall be unlawful for any person if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, with intent to deceive or injure anyone or to conceal any wrong doing.

**§4-1-78 Bad Checks**

(a) It shall be unlawful for any person to issue or pass a check or similar sight order for the payment of money, for the purpose of obtaining any money, property, or other thing of value or paying for any services, rent, wages or salary, knowing or believing that it will not be honored by the drawee.

(b) An issuer is presumed to know that the check or order would not be paid if:

(1) the issuer had no account with the drawee at the time the check or order was issued; or

(2) payment was refused by the drawee for lack of funds, upon presentation for payment within thirty (30) days of issue, and the issuer failed or was intentionally unavailable to make good within ten (10) days after such refusal and receipt of notice of refusal to pay.

**§4-1-79 Deceptive Business Practices**

(a) It shall be unlawful for any person in the course of business to:

(1) use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) sell, offer or expose for sale, or deliver less than the represented quality or quantity of any commodity or service;

(3) take or attempt to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure;

(4) sell, offer or expose for sale adulterated or mislabeled commodities;

(5) makes a false or misleading statement in any advertisement with the intent of promoting the purchase or sale of property or services;

(6) makes a false or misleading statement for the purpose of obtaining property or credit; or

(7) makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(b) It is an affirmative defense to prosecution under this section if the defendant proves by clear convincing evidence that his conduct was not intentionally, knowingly or wilfully deceptive.

**§4-1-80 Fraudulent Use of Credit Card**

It shall be unlawful for any person to use with the intention of obtaining money, goods, services or any other thing of value a credit card or credit card account which he knows is forged, expired, canceled, revoked, stolen, or retained without consent of the card or account holder.

**§4-1-81 Rigging a Contest**

It shall be unlawful for any person who:

(a) with a purpose to prevent a contest from being conducted in accordance with the rules and usages purporting to govern it, he:

(1) confers or offers or agrees to confer any benefit upon, or threatens any

injury to a participant, official or other person associated with the contest;

(2) tampers with any person, animal, or thing associated with the contest;

(3) knowingly solicits, accepts or agrees to accept any benefit from a participant, official or other person associated with the contest; or

(b) knowingly engages in, sponsors, produces, judges, or otherwise participates in a contest knowing that the contest is not being conducted in compliance with the rules and usages purporting to govern it, by reason of conduct unlawful under this section.

**§4-1-82 Defrauding Creditors**

It shall be unlawful for any person:

(a) to destroy, remove, conceal, encumber, transfer, or otherwise deal with property subject to a security interest with purpose to hinder enforcement of that interest;

(b) knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors, to:

(1) destroy, remove, encumber, transfer, or otherwise deal with any property with purpose to defeat or obstruct the operation of any law relating to administration of such property for the benefit of creditors;

(2) knowingly falsify any writing or record relating to the property; or

(3) knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor is legally required to furnish in relation to such administration.

**§4-1-83 Unlawful Dealing With Property By a Fiduciary**

It shall be unlawful for any person to deal with property that has been entrusted to him as a fiduciary, or property of the Tribe or government or of a financial institution, in a manner which he knows or should know is a violation of his duty and which involves a substantial loss or risk of loss to the owner or to a person for whose benefit the property was entrusted.

**§4-1-84 Making a False Credit Report**

It shall be unlawful for any person to knowingly make a materially false or misleading statement to obtain property or credit for himself or another or to keep some other person from obtaining credit.

## OFFENSES AGAINST THE FAMILY

### Marital Violations

**§4-1-85 Bigamy**

It shall be unlawful for any person if, knowing that he or she has a husband or wife or knowing the other person has a husband or wife, he purports to marry or cohabit with such other person. It shall be a defense to bigamy if the defendant proves by a preponderance of the evidence that he reasonably believed he and the other person were eligible to marry.

**§4-1-86 Incest**

(a) It shall be unlawful for any parent and child, ancestor and descendant of any degree, siblings of the half or whole blood, uncle and niece or nephew, aunt and niece or nephew, or first cousins to intermarry or to engage in sexual intercourse.

(b) Minors, incompetents or non-consenting parties may not be found guilty of incest.

**§4-1-87 Criminal Nonsupport**

(a) It shall be unlawful for any person:

(1) who is the parent, guardian or legal guardian of any minor dependent upon him or her for care, education or support, to desert such child in any manner whatever with intent to abandon him or her;

(2) to wilfully omit, without lawful excuse, to furnish necessary food, clothing, shelter, or medical attendance for his child, ward or spouse. The practice of a parent or guardian who chooses for his child or ward treatment by prayer or spiritual means alone shall not for that reason alone be construed to be a violation of duty of care to such child or ward.

(b) Proof of the desertion of a spouse, child or children in destitute or necessitous circumstances or of neglect to furnish such wife, child, or children necessary and proper food, clothing or shelter is prima facie evidence that such desertion or neglect is wilful.

**§4-1-88 Domestic Violence (revised 6/22/99)**

(a) It shall be unlawful for any domestic household member to commit:

(1) an assault as defined in § 4-1-37 of the Nez Perce Tribal Code, upon any other domestic household member;

(2) an aggravated assault as defined in § 4-1-39 of the Nez Perce Tribal Code, upon any other domestic household member;

(3) a battery as defined in § 4-1-38 of the Nez Perce Tribal Code, upon any other domestic household member;

(4) an aggravated battery as defined in § 4-1-40 of the Nez Perce Tribal Code, upon any other domestic household member;

(5) a rape as defined in § 4-1-48 of the Nez Perce Tribal Code, upon any other domestic household member.

(b) A conviction for domestic violence is punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars ($5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate.

(1) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, organization, or agency approved by the Court to determine whether the defendant should be required to obtain batterers treatment or other appropriate treatment. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling and/or treatment considered appropriate for the defendant, and shall recommend any other suitable alternative counseling or treatment programs.

(2) If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment, at the person's own expense, in addition to any other sentence which may be imposed. If the Court determines that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination on the record. The Court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation within the time allowed by the Court, at the person's own expense.

(c) In addition to any other penalty imposed for a violation of this section, the Tribal Court may grant any other civil or equitable remedy.

**§4-1-89 Abuse of Vulnerable Adults (amended 12/14/99)**

(a) It shall be unlawful for any person:

(1) to wilfully or negligently inflict physical or mental pain or injury on a vulnerable adult;

(2) to wilfully or negligently misuse the funds, property or resources of a vulnerable adult for profit or advantage; or

(3) who is responsible for the care of a vulnerable adult, to wilfully or negligently fail to provide food, clothing, shelter, medical care or other services reasonably necessary to sustain the life and health of a vulnerable adult.

(b) In addition to any other penalty imposed for a violation of this section, the Tribal Court may grant any other civil or equitable remedy.

## §4-1-90 Child Abuse **(revised 6/22/99)**

(a) It shall be unlawful for any person:

(1) to wilfully cause or permit any child to suffer or inflict thereon unjustifiable physical pain or mental suffering;

(2) having the care or custody of any child, to wilfully cause or permit the person or health of such child to be injured;

(3) to wilfully cause or permit any child to be placed in such situation that his person or health is seriously endangered; or

(4) to commit a crime involving domestic violence in the presence of a child. For the purpose of this subsection, "in the presence of a child" shall mean in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence.

(b) The practice of a parent or guardian who chooses for his child treatment solely by prayer or spiritual means shall not for that reason alone be construed to have violated the duty of care to such child.

(c) It shall be unlawful for any person to knowingly, recklessly, or intentionally cause or permit a child to be exposed to, illegal alcohol use, or to intentionally cause or permit a child to ingest or inhale, or have contact with any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, methamphetamines, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812(c). This section shall not preclude: **(Subsection c added per NPTEC 1/28/14)**

(1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or

(2) any controlled substances provided by lawful prescription for the child and administered to the child in accordance with the prescription instructions provided with the controlled substance.

## §4-1-91 Endangering the Welfare of a Minor

(a) It shall be unlawful for any person to knowingly:

(1) induce, cause or permit an unmarried person under eighteen (18) years of age to witness a sexual act;

(2) permit a person under eighteen (18) years of age to enter or remain in a place where unlawful narcotic or illicit drug activity is maintained or conducted;

(3) induce, cause or permit a person under eighteen (18) years of age to participate in gambling other than a social game;

(4) sell, cause to be sold or provide tobacco, alcohol or harmful drugs or narcotics in any form to a person under eighteen (18) years of age; or

(5) sell, cause to be sold or provide tobacco in any form to a person under eighteen (18) years of age.

(6) otherwise threaten serious harm to the physical, emotional or mental wellbeing of the minor.

(b) For the purposes of this section, traditional Indian games including, but not limited to, “Stick Games” shall be considered social games.

**§4-1-92 Contributing to the Delinquency of a Minor**

(a) It shall be unlawful for any person by any act or omission to wilfully aid, encourage or cause or attempt to aid, encourage or cause any child to:

(1) become or remain delinquent;

(2) do or perform any act or follow any course of conduct which would cause or manifestly tend to cause such child to become or remain delinquent; or

(3) cause a child to become or remain a runaway.

(b) In addition to any other penalties imposed for a violation of this section, the Court may require the juvenile and his parent or guardian to perform community service, participate in counseling, or issue such other orders designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision.

**OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT**

**Bribery and Corrupt Influences**

**§4-1-93 Definitions**

As used in this part:

(a) "Benefit" means a gain or advantage, or anything regarded by the beneficiary as a gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(b) "Government" includes any branch, subdivision or agency of the government of any state, the United States or any locality within such entities;

(c) "Harm" means loss, disadvantage or injury, or anything regarded as such by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

(d) "Official proceeding" means a proceeding heard or which may be heard before

any tribal legislative, judicial, administrative body or any tribal agency or official authorized to take evidence under oath;

(e) "Party official" means a person who holds an elective or appointive post in a political party by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(f) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else of which the primary significance of which is economic gain;

(g) "Public servant" means any officer or employee of the Tribe or government, including Executive Committee members and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a function for the Tribe or government; but the term does not include witnesses;

(h) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

**§4-1-94 Bribery in Official Matters**

(a) It is unlawful for any person to offer, confer or agree to confer upon another, or to solicit, accept or agree to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) any benefit as consideration for a violation of a known legal duty as public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way for any reason.

**§4-1-95 Threats and Other Improper Influence in Official Matters**

(a) It shall be unlawful for any person to:

(1) threaten unlawful harm to any person with intent to influence his decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter;

(2) threaten harm to any public servant or party official with intent to influence him to violate his known legal duty; or

(3) privately address to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument or other communication with intent to influence the outcome on the basis of considerations other than those authorized by law.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction or for any other reason.

**§4-1-96 Compensation for Past Official Behavior**

It shall be unlawful for any person to:

(a) solicit, accept, or agree to accept any pecuniary benefit as compensation for having as a public servant, given a decision, opinion, recommendation or vote favorable to another or for having otherwise exercised discretion in such other person's favor, or for having violated his duty; or

(b) offer, confer or agree to confer, compensation for the above purposes.

**§4-1-97 Retaliation for Past Official Action**

It shall be unlawful for any person to harm another by any unlawful acts in retaliation for anything lawfully done by the latter in the capacity of public servant.

**§4-1-98 Improper Gifts to Public Servants**

(a) It shall be unlawful for any person who:

(1) being a public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations or carrying on civil or criminal litigation on behalf of the Tribe or government, or having custody of prisoners, solicits, accepts or agrees to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated;

(2) being a public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the Tribe or government solicits, accepts or agrees to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction;

(3) being a public servant having judicial or administrative authority or employed by court or other tribunal having such authority, or participating in the enforcement of its decisions, solicits, accepts or agrees to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is association;

(4) being a Nez Perce Tribal Executive Committee member or public servant employed by the Executive Committee or by any subcommittee or agency

thereof solicits, accepts or agrees to accept any pecuniary benefit from any person known to be interested in a matter, transaction or proceeding, pending or contemplated before the Executive Committee or any sub-committee or agency thereof; or

(5) knowingly confers or agrees to confer any benefit prohibited by the above sections.

(b) This section shall not apply to:

(1) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled;

(2) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(3) trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

**ABUSE OF OFFICE**

**§4-1-99 Official Misconduct**

It shall be unlawful for any person who:

(a) being a public servant, and with intent to benefit himself or another or harm another, he wilfully commits an unauthorized act which purports to be an act of his office, or refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or

(b) being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(1) acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or

(2) speculates or wagers on the basis of such action or information; or knowingly aids another in doing any of the foregoing.

**§4-1-100 Interference with Tribal Court**

No officer of the General Council or member of NPTEC shall interfere with or attempt to influence, any decision of the Tribal Court or the investigation, prosecution, or settlement of any case.

**§4-1-101 Official Oppression**

It shall be unlawful for any person who, when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, and knowing that his conduct is illegal, he:

(a) subjects another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or

(b) denies or impedes another in the exercise or enjoyment of any right, power, or immunity.

**§4-1-102 Misuse of Public Money**

It shall be unlawful for any person who is a public servant or other person charged with the receipt, safe keeping, transfer or disbursement of public moneys:

(a) without authority of law, to appropriate such money or any portion thereof to his own use, or to the use of another;

(b) to loan such money or any portion thereof;

(c) having the possession or control of any public money, to make a profit out of, or use the same for any purpose not authorized by law;

(d) to fail to keep such money in his possession until disbursed or paid out by authority of law;

(e) to deposit such money or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law;

(f) to change or convert any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law;

(g) to knowingly keep any false account, or make any false entry or erasure in any account of or relating to the same;

(h) to fraudulently alter, falsify, conceal, destroy or obliterate any such account;

(i) to wilfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such moneys by competent authority;

(j) to wilfully omit to transfer or pay over any money when such transfer is required by law; or

(k) to misuse or misappropriate any contract or program monies.

**FALSIFICATION IN OFFICIAL MATTERS**

**§4-1-103 Perjury**

(a) It shall be unlawful for any person who, while under oath before any competent tribunal, officer, or person in any official proceeding, wilfully and contrary to such oath, states as true any material matter which he knows to be false.

(b) It is no defense to a prosecution under this section that:

(1) the oath or affirmation was administered or taken in an irregular manner;

(2) the accused was not competent to give the testimony, deposition, certificate or affirmation of which falsehood is alleged;

(3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

(1) in a manner showing a complete and voluntary retraction of the statement;

(2) during the course of the same proceeding in which it was made; and

(3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

**§4-1-104 False Swearing**

(a) It shall be unlawful for any person to make a false sworn statement, knowing it to be false.

(b) It is no defense to a prosecution under this section that:

(1) the oath or affirmation was administered or taken in an irregular manner;

(2) the accused was not competent to give the sworn statement of which falsehood is alleged;

(3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

(1) in a manner showing a complete and voluntary retraction of the statement;

(2) during the course of the same proceeding in which it was made; and

(3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

**§4-1-105 Unsworn Falsification**

(a) It shall be unlawful for any person to knowingly make any false written statement in an attempt to gain any benefit.

(b) It is no defense to a prosecution under this section that:

(1) the oath or affirmation was administered or taken in an irregular manner;

(2) the accused was not competent to give the written statement of which falsehood is alleged;

(3) the accused did not know the materiality of the false statement made by him; or that it did not, in fact, affect the proceeding in or for which it was made.

(c) It is a defense to prosecution under this section that the defendant retracted his false statement:

(1) in a manner showing a complete and voluntary retraction of the statement;

(2) during the course of the same proceeding in which it was made; and

(3) before the subject matter of the proceeding is submitted to the ultimate trier of fact or decision maker.

(d) As used in this section, the term "competent" shall refer to sufficient qualification for testifying on particular subject matter and not mental capacity or ability.

**§4-1-106 Tampering with Physical Evidence**

It is unlawful for any person to:

(a) present evidence as genuine or true which he knows has been forged or fraudulently altered;

(b) prepare any false or fraudulently altered physical evidence for any fraudulent or deceitful purpose; or

(c) knowingly destroy, alter or conceal the same.

**§4-1-107 Tampering with Public Records**

It shall be unlawful for any person, who does not have the authority, to wilfully destroy,

alter, falsify or remove any record kept as part of the official governmental records of the Tribe or government.

**§4-1-108 Tampering with a Witness**

(a) It shall be unlawful for any person to wilfully intimidate, influence, impede, deter, threaten, harass, obstruct or prevent a witness, or any person he believes has been or may be called as a witness in any proceeding from testifying freely, fully or truthfully in that proceeding.

(b) The fact that a witness was not actually prevented from testifying or influenced shall not be a defense to a charge brought under this section.

**§4-1-109 Bribing Witnesses**

It shall be unlawful for any person to offer, or promise to give, to a witness any bribe, or attempt by any other means fraudulently to induce any witness to give false or withhold true testimony.

**§4-1-110 Receiving Bribes in Exchange for Testimony**

It shall be unlawful for any person to receive or offer to receive any bribe in exchange for false or altered testimony.

**§4-1-111 Simulating Legal Process**

It shall be unlawful for any person to knowingly issue or deliver to another any document that in form and substance falsely purports to represent a civil or criminal process.

**§4-1-112 Criminal Impersonation**

It shall be unlawful for any person to unlawfully exercise or attempt to exercise the functions of, or hold himself out to anyone as a public servant.

**§4-1-113 Welfare Offense**

(a) It shall be unlawful for any person to:

(1) give false information to another for the purpose of obtaining or retaining public assistance;

(2) knowingly fail to correct misinformation which enables him to obtain or retain public assistance;

(3) continue to accept and use for his own benefit or the benefit of another, public assistance to which he knows he is not entitled;

(4) use or expend money or commodities granted him as public assistance in an improper manner or in a manner which does not proportionately benefit

each of those persons intended to benefit by the grant; or

(5) knowingly use public assistance in a manner contrary to the regulations relating thereto.

## OBSTRUCTING GOVERNMENT FUNCTION

### §4-1-114 Resisting and Obstructing Officers

(a) It shall be unlawful for any person to:

(1) wilfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of his office; or

(2) knowingly give a false report to any peace officer.

(b) "Resists" as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

### §4-1-115 Hindering Prosecution

It shall be unlawful for any person, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime or with the intent to assist a person who has committed a crime in profiting or benefitting from the commission of the crime to:

(a) harbor or conceal such person;

(b) warn such person of impending discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law;

(c) provide or aid in providing such person with money, transportation, any weapon, disguise or other means of avoiding discovery or apprehension;

(d) prevent or obstruct, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person;

(e) suppress by any act of concealment, alteration or destruction of physical evidence which might aid in the discovery, apprehension, prosecution or conviction of such person; or

(f) aid such person in securing or protecting the proceeds of the crime.

### §4-1-116 Escape

It shall be unlawful for any person:

(a) while being in the custody of any jail, prison, or officer, to escape or attempt to

escape from custody;

(b) to aid or attempt to aid another in escaping from jail, prison or from any officer; or

(c) with intent to facilitate such escape, to provide another with anything useful to aid in making his escape from jail, prison or from any officer.

**§4-1-117 Providing Contraband**

It is unlawful for any person to provide a person in official detention with any alcoholic beverage, drug, weapon, implement of escape or any other thing or substance which is unlawful for the detainee to possess.

**§4-1-118 Bail Jumping**

It is unlawful for any person having been released on bail or on his own recognizance upon condition that he subsequently appear, to fail to appear at the time and place which have been lawfully designated for his appearance.

**§4-1-119 Failure to Obey an Order of the Court (revised 6/22/99)**

(a) It shall be unlawful for any person to fail to obey an order, subpoena, or warrant issued by the Tribal Court.

(b) It shall be unlawful for any person to violate domestic protection orders issued in accordance with § 7-3-4 or § 7-3-5 of the Nez Perce Tribal Code.

**§4-1-120 Default on Fine**

It shall be unlawful for a person, who being convicted of any offense under this code, defaults in the payment of a fine imposed or any installment thereof.

**§4-1-121 Riot**

It is unlawful for any person acting together with two or more persons in the course of conducting any act in a violent, boisterous, tumultuous or threatening manner to:

(a) physically injure another person;

(b) damage or destroy public or private property; or

(c) disturb the public peace.

**§4-1-122 Obstructing the Administration of Justice (added 12/14/99)**

It shall be unlawful for any person to:

(a) by threat or force, or by any threatening letter or communication, endeavor to influence, intimidate, or impede any juror, officer of the Court, officer who may be serving at

any examination or other proceeding before the Court, or member or support staff of the Nez Perce Tribal Executive Committee in the discharge of his duty;

(b) injure any such juror, officer of the Court, officer who may be serving at any examination or other proceeding before the Court, or member or support staff of the Nez Perce Tribal Executive Committee in his person or property on account of any verdict or judgment assented to by him;

(c) injure any officer of the Court, officer who may be serving at any examination or other proceeding before the Court, or member or support staff of the Nez Perce Tribal Executive Committee in his person or property on account of the performance of his official duties; or

(d) corruptly or by threats or force, or by any threatening letter or communication, attempt to influence, obstruct, or impede the due administration of justice.

(e) As used in this section, "Officer of the Court" shall include all persons connected with the administration of the judicial process and/or whose duty it is to serve the process of the Court.

## OFFENSES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE

### §4-1-123 Prostitution

It shall be unlawful for any person to:

(a) engage in or offer or agree to engage in sexual intercourse or sexual contact with another person in return for a fee;

(b) pay or offer or agree to pay another person a fee for the purpose of engaging in an act of sexual intercourse or sexual contact;

(c) own, control or otherwise maintain any place or aid or abet in the same for the purpose of prostitution;

(d) induce or cause a person to engage in prostitution or remain in a place of prostitution or aid or assist another in such an act; or

(e) knowingly accept, receive or appropriate any money, property or other benefit from the proceeds or earnings of any person engaged in prostitution.

### §4-1-124 Spreading Sexually Transmitted Disease

It shall be unlawful for any person knowing or having reason to believe he is infected with a sexually transmitted disease, to infect another with such disease.

### §4-1-125 Setting a Dangerous Device

It shall be unlawful for any person to place or set any dangerous device with intent to frighten, confine, deter or injure any person in any place where it may be exploded, discharged or otherwise triggered by the contact or movement of any person.

### §4-1-126 Weapons Offense

(a) It shall be unlawful for any person:

(1) being convicted of a felony or an equivalent crime under this code or having been declared mentally incompetent, to own or have in his possession or under his custody or control a dangerous weapon;

(2) being intoxicated or otherwise under the influence of alcohol beverages or other intoxicating substance, drug, or medicine, to have a dangerous weapon in his possession;

(3) to have on his person a concealed dangerous weapon without proper authority;

(4) to bring a firearm, concealed or in plain view, into any Tribal Government or Tribal Enterprise Building, the NiMiiPuu Health Department, or the offices of the Nez Perce Tribal Housing Authority, unless authorized by the Nez Perce Tribal Executive Committee. **(Subsection added by NPTEC approval 3/11/14)**

(5) to point or aim any dangerous weapon at or toward any other person within range of the weapon except in self-defense;

(6) to discharge any kind of dangerous weapon from a motor vehicle, from, upon or across any public highway without lawful authority;

(7) to have in his possession any dangerous weapon with intent to assault another;

(8) to provide to any minor under the age of sixteen (16) a dangerous weapon without consent of parent or guardian; or

(9) subject to a domestic protection order, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. **(added 6/22/99)**

(b) As used in this section, proper authority to carry a concealed weapon shall include the authority granted to any law enforcement officer or a permit issued by a duly authorized tribal, federal or state entity. **(amended by NPTEC 3/11/14)**

### §4-1-127 Committing an Offense While Armed

It shall be unlawful for any person to commit or attempt to commit any offense while armed with any dangerous or deadly weapon.

### §4-1-128 Abuse of Corpse

It shall be unlawful for any person to intentionally and unlawfully desecrate, remove, destroy or molest in any way any part of human remains.

## DRUG AND ALCOHOL RELATED OFFENSES

### §4-1-129 Drug Promotion (amended by NPTEC 1/24/12)

It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away.

### §4-1-130 Possession and/or Consumption of a Controlled Substance (amended by NPTEC 2/11/14)

(a) It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, inhale, distribute, manufacture, or sell any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, synthetic drugs, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812. The controlled substances listed in 21 U.S.C. § 812 are included by whatever official, common, usual, chemical, or trade name designated.

(b) This section shall not preclude:

(1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or

(2) any substances as prescribed by a duly licensed physician.

### §4-1-131 Abuse of Psychotoxic Chemical Solvents (amended by NPTEC 2/11/14)

(a) It shall be unlawful for a person:

(1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, to intentionally;

(A) inject, ingest, inhale, or otherwise introduce into the human body any psychotoxic chemical solvent;

(B) possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or

(2) knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, mephedrone, MDPV, methylone, synthetic cannabinoids, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of consuming, ingesting, injecting, or inhaling them. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

### §4-1-132 Possession of Drug Paraphernalia **(amended by NPTEC 2/11/14)**

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, synthetic drugs, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.

### §4-1-133 Possession of Alcohol by a Person Under Twenty-One

(a) A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), he shall possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage. **(amended 6/22/99)**

(b) It shall be unlawful for a person under the age of twenty-one (21) years of age to provide false identification, or make any false statement regarding their age in an attempt to obtain any alcoholic beverage, including any distilled spirits, beer or wine. **(section added by NPTEC 1/24/12)**

### §4-1-134 Possession, Distribution or Use of Cigarettes or Other Tobacco Products by a Person under the Age of Eighteen (18) **(section approved by NPTEC 1/8/08)**

(a) Except as provided in paragraph (c), it shall be unlawful for a person under the age of eighteen (18) to possess, receive, purchase, sell, distribute, use or consume cigarettes or other tobacco products as defined in Section 6-7-1 of the Nez Perce Tribal Code or to attempt any of the foregoing.

(b) It shall be unlawful for a person under the age of eighteen (18) to provide false identification, or make any false statement regarding their age in an attempt to obtain cigarettes

or other tobacco products.

(c) This section shall not apply to possession or use of tobacco by enrolled members of a federally recognized Indian Tribe when used in connection with recognized ceremony or event.

### §4-1-135 Public Intoxication (amended 12/14/99)

It shall be unlawful for any person to create, any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug.

### §4-1-136 Dispensing of Alcohol to Person Under the Age of Twenty-one Years (section added by NPTEC 1/24/12)

It shall be unlawful for any person who is eighteen (18) years of age or older to sell, give, or furnish, or cause to be sold, given, or furnished any alcoholic beverage, including any distilled spirits, beer or wine, to a person under the age of twenty-one (21).

### §4-1-137 Open Container (section added by NPTEC 1/24/12)

No person may possess an open or unsealed container of any alcoholic beverage while operating or riding in or upon a motor vehicle upon a public highway, or in a public place within the exterior boundaries of the Reservation.

## SEX OFFENDER REGISTRATION

***Repealed - § 4-1-140 thru § 4-1-147 and § 4-1-149 thru §4-1-150 - repealed 5/24/11 by NPTEC - replaced by Chapter 4-6 Sex Offender Registration Code***

### §4-1-148 Penalty (amended by NPTEC 5/24/11)

(a) Any person who is required to register under the provisions of the Nez Perce Tribe Sex Offender Registration Code contained in Sections 4-6-1 through 4-6-39 of the Nez Perce Tribal Code and fails to do so pursuant to the provisions contained in the Nez Perce Tribe Sex Offender Registration Code shall be guilty of the offense of failure to register as a sex offender.

(b) Criminal penalty. Each violation of a provision of the Nez Perce Tribal Sex Offender Registration Code by a sex offender as defined in that act who is an Indian shall be considered a crime and subject to a period of imprisonment for a period not to exceed one (1) years and a fine not to exceed five thousand dollars ($5,000.00).

(c) Exclusion. Any person convicted under this section may also be subject to Exclusion pursuant to Chapter 4-4 of the Nez Perce Tribal Code

(d) Hindrance of sex offender registration

(1) A person is guilty of an offense if they:

(A) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of the Nez Perce Tribal Sex Offender Registration Code;

(B) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of the Nez Perce Tribal Sex Offender Registration Code; or

(C) Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

## FISH AND WILDLIFE OFFENSES **(adopted by NPTEC 7/8/03)**

### §4-1-151 Drug Promotion

It shall be unlawful for any person to knowingly maintain, frequent or remain at a place:

(a) resorted to by drug users for the purpose of unlawfully using narcotic or dangerous drugs; or

(b) which is used for the unlawful keeping or sale of narcotic or dangerous drugs.

### §4-1-152 Possession and/or Consumption of a Controlled Substance

(a) It shall be unlawful for any person to possess, purchase, consume, obtain, ingest, inject, distribute, manufacture, or sell any controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude:

(1) the possession, purchase, consumption, obtaining, ingestion, distribution or sale of peyote for bona fide Native American religious ceremonies; or

(2) any substances as prescribed by a duly licensed physician.

### §4-1-153 Abuse of Psychotoxic Chemical Solvents

(a) It shall be unlawful for a person:

(1) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, to intentionally;

(A) smell or inhale the fumes of any psychotoxic chemical solvent;

(B) possess, purchase or attempt to possess or purchase any psychotoxic chemical solvent; or

(2) knowing or believing that the purchaser of another intends to use a psychotoxic chemical solvent in violation of this section, to sell or offer to sell any psychotoxic chemical solvent.

(b) This section shall not apply to the inhalation of prescribed anesthesia for medical or dental purposes.

(c) As used in this section, "psychotoxic chemical solvents" includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl, petone, pentachlorophenol, petroleum either, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.

### §4-1-154 Possession of Drug Paraphernalia

(a) It shall be unlawful for any person to use, or possess with intent to use, drug paraphernalia to cultivate, grow, harvest, manufacture, compound, convert, produce, prepare, store, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance including, but not limited to, marijuana, barbiturates, amphetamines, hallucinogens, opiates, cocaine, and other substances as defined in Chapter 13, Title 21 U.S.C. § 812.

(b) This section shall not preclude the possession or purchase of any item/object traditionally used in bona fide Native American religious ceremonies or used as prescribed by a licensed physician.

### §4-1-155 Possession of Alcohol by a Person Under Twenty-One

A person commits the offense of possession of alcohol by a person under the age of twenty-one (21) if while being under the age of twenty-one (21), he shall possess, purchase, consume, obtain, or sell, or is found under the influence, of any beer, wine, ale, whiskey or any substance whatsoever which produces alcoholic intoxication, or misrepresents his age for the purpose of buying or otherwise obtaining an alcoholic beverage.

### §4-1-156 Public Intoxication

It shall be unlawful for any person to create, any disturbance in a public place while intoxicated or under the influence of an intoxicating drink or drug.

### §4-1-157 Disorderly Conduct

A person commits the offense of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by: **(clerical error corrected effective 10-25-05)**

(a) engaging in fighting or threatening, or in violent or tumultuous behavior;

(b) making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;

(c) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or

(d) threatening, quarreling, challenging to fight or fighting.

### §4-1-158 Resisting and Obstructing Officers

(a) It shall be unlawful for any person to:

(1) wilfully resist, delay, obstruct or otherwise endeavor to prevent with or without actual force any public officer, in the discharge, or attempt to discharge, of any duty of his office; or

(2) knowingly give a false report to any peace officer.

(b) "Resists" as used in this section means the use of or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person or that justifies or requires substantial force to overcome.

***§4-1-170 thru §4-1-199 reserved***

## PUBLIC ORDER

### §4-1-200 Disorderly Conduct (effective 10/25/05, replaces § 4-3-22)

A person commits the offense of disorderly conduct if he causes public inconvenience, annoyance or alarm or creates a risk thereof by:

(a) engaging in fighting or threatening, or in violent or tumultuous behavior;

(b) making unreasonable noise or an offensively coarse utterance, gesture or display, or addresses abusive language to any person present;

(c) creating a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor; or

(d) threatening, quarreling, challenging to fight or fighting.

### §4-1-201 Unreasonable Noise (NPTEC authorized addition 8/28/07)

(a) A person commits the violation of unreasonable noise by causing, creating, assisting, or permitting the continuance of any unreasonable noise.

(b) An unreasonable noise is any sound which would, because of volume level, duration, character or time of day, annoy, disturb, injure, or endanger the comfort, repose, health, safety, or peace of a reasonable person.

(c) Subject to 4-1-201(d), the following are declared to be violations of this section, but this enumeration shall not be construed to be exclusive:

(1) Common Firework. Noise caused or created by any common firework, as defined in 6-3-4, other than: between the hours of 9:00a.m. and 10:00p.m., or on July 4th and December 31st, or after fireworks season closes. **(NPTEC authorized amendment 10/23/12)**

(2) Amplification device or equipment. The use of any loud amplification device or equipment designed or used for sound production, reproduction, or amplification, including but not limited to: any speaker, radio, television, phonograph, musical instrument, stereo, amplifier, or other comparable sound broadcasting system, in a manner that causes or creates an unreasonable noise;

(3) Vehicle or engine. The use of any vehicle or engine, including but not limited to: any automobile, truck, motorcycle, snowmobile, three or four wheeled vehicle, airplane or any other vehicle driven by use of a motor or engine either stationary or moving, so operated as to cause or create an unreasonable noise; and

(d) The following shall be exempt from the noise regulations set forth in this chapter:

(1) Nez Perce Tribe, City, County, or Local Government authorized or sponsored activity or event. Any activity or event that is authorized or sponsored by the Nez Perce Tribe.

(2) In the interest of public welfare and safety. Any siren, whistle, bell, warning device, or other noise lawfully made by any law enforcement or emergency vehicle or personnel. Any warning devices required by any applicable local or federal safety regulations.

(3) School District event. Any local school sponsored event, other than between the hours of 11:30p.m. and 7:00a.m.

(4) Bell or chime. Any bell or chime from any building clock, school, or church.

### §4-1-202 Animal Fighting **(adopted 1/13/09) (number correction authorized 1/27/09)**

(a) Every person who knowingly owns, possesses, keeps, trains, buys or sells any animals for the purpose of a public or private display of combat between two (2) or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature is guilty of a criminal offense.

(b) Every person who knowingly advertises, promotes, organizes, participates or

knowingly has a monetary interest in a public or private display of combat between two (2) or more animals in which the fighting, killing, maiming or injuring of animals is a significant feature is guilty of a criminal offense.

(c) Every person who is knowingly present as a spectator at any place where preparations are being made for an exhibition of the fighting of animals with the intent to be present at such preparations or to be knowingly present at such exhibition shall be guilty of a criminal offense.

(d) Nothing in this section prohibits: demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection; the use of dogs in the management of livestock or the training, raising, breeding or keeping of animals for any purpose not prohibited by law. Animal fighting shall not be construed to mean the type of confrontation that happens unintentionally because of a chance encounter between two (2) or more uncontrolled dogs.

**§4-1-203 Cruelty to Animals (adopted 5/24/11)**

(a) A person commits the infraction of cruelty to animals if he:

(1) maliciously kills, maims or wounds any animal;

(2) overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, or mutilates or cruelly kills any animal;

(3) has custody of or is responsible for an animal and wilfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the same;

(4) transports or carries any animal in a cruel and inhumane manner;

(5) causes any animal to fight for his amusement or betting or waging permits the same to be done on any premises or is present at such fight; or

(6) negligently causes any of the above results.

(b) A person commits a violation under Criminal Offenses Chapter 4-1, §4-1-202 if he:

(1) causes any animal to fight for his amusement, betting or waging; or

(2) permits the same to be done on any premises or is present at such fight.

(c) It may be a defense to a prosecution under this section if the actor was:

(1) involved in an accepted veterinary practice or any scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university; or

(2) engaged in hunting or fishing in accordance with the provisions of this

code.

### §4-1-204 Persistent or Habitual Violations of the Dog Ordinance (adopted 5/24/11)

A person who persistently or habitually violates the provisions of Chapter 6-8, Dog Ordinance may be cited under this subsection for a criminal offense. As stated in § 6-8-9 any person or persons in violation of any section of the Dog Ordinance in excess of two (2) occasions shall be deemed a persistent or habitual violator.

# CHAPTER 4-2
# TRAFFIC

## GENERAL PROVISIONS

### §4-2-1 Definitions

(a) "Defendant" means the person against whom an action is filed, regardless of whether the action is civil or criminal.

(b) "The Department" means the Idaho State Department of Transportation.

(c) "Intoxicant" means liquor, a narcotic drug, or any other drug or substance which renders a person incapable of safely operating a motor vehicle.

(d) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing that a person has committed an infraction or a crime. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that an infraction or crime has been committed and that the person to be cited or arrested has committed it.

(e) "Traffic infraction" means a civil offense which is not a crime and the punishment imposed shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

### §4-2-2 Duties of Officers; Warrant not Required

It shall be the duty of tribal police officers to enforce the provisions of this chapter without the necessity of procuring a warrant.

### §4-2-3 License Suspension - Revocation

(a) Information regarding convictions for traffic infractions or crimes shall be forwarded to the Department in such form and at such times as may be requested.

(b) In addition to the penalties for traffic violations provided by this chapter, the Department is hereby authorized to maintain records and assess points based upon the records of traffic violations submitted by the Tribal Court and to make such records available through the interstate non-residential compact program to jurisdictions were traffic violators reside.

### §4-2-4 Disposition of Fines

All fines and penalties for violations of any of the provisions of this chapter shall be paid to the Clerk of the Court who shall issue a receipt and shall deliver daily the funds received and copies of receipts to the Finance Department of the Nez Perce Tribe.

### §4-2-5 Seizure of Stolen Vessels, Motor and Other Vehicles

A tribal police officer, with or without a warrant, may seize and take possession of any vehicle, trailer or vessel or any part thereof, which he has probable cause to believe is stolen.

Any tribal police officer so seizing a vehicle, vessel or parts thereof shall immediately notify the jurisdiction were the vehicle is registered and shall make every reasonable effort to determine ownership of the vehicle, vessel or equipment and to notify the rightful owner that the vehicle has been seized.

**§4-2-6 Severability**

If any provision of this chapter or its applicability to any person or circumstances is held invalid, the remainder of this chapter or its application to other persons or circumstances is not affected.

**OFFENSES**

**§4-2-7 Crimes**

(a) All laws defining and punishing criminal acts involving motor vehicles identified in Title 49 Sections 49-101 - 49-2446 and any other such criminal acts listed under the Idaho Code, and any amendments, are hereby adopted as the traffic laws of the Nez Perce Tribe. **(amended 8/14/07)**

(b) A violation of any provision of this section shall be treated as a criminal offense and shall be prosecuted under the Nez Perce Tribal Rules of Criminal Procedure. The penalty for a violation of this section shall be:

(1) a fine of up to $2500 and imprisonment up to six (6) months if the act is listed as a "misdemeanor" in the provisions of the Idaho Motor Vehicle Code incorporated herein; **(revised 6/22/99)**

(2) a fine of up to $5,000 and imprisonment for up to one (1) year if the act is listed as a "felony" in the provisions of the Idaho Motor Vehicle Code incorporated herein; or

(3) a fine of up to $1,000 and imprisonment for up to six (6) months for all other acts.

(c) The punishments provided by this section shall be the sole penalty provided for criminal traffic violations notwithstanding those provided by the provisions of the Idaho Motor Vehicle Code incorporated herein, except that the jurisdiction where a traffic violator resides is authorized to assess points and revoke or suspend driving privileges or assess fines or fees related to the revocation or suspension of driving privileges in accordance with local law.

**§4-2-8 Arrests for Serious Offenses; Appearance before Tribal Court**

(a) A tribal police officer shall arrest any person charged with:

(1) negligent homicide; or

(2) driving or being in actual physical control of a vehicle while under the influence of an intoxicant.

(b) A tribal police officer may in his discretion issue either a traffic citation as provided in this chapter or arrest any person who:

(1) fails to stop, fails to give information, or fails to render reasonable assistance, in the event of an accident resulting in death or personal injury, damage to a vehicle, to fixtures or other property legally upon or adjacent to a highway;

(2) is charged with fleeing or attempting to elude a peace officer; or

(3) is charged with reckless driving.

**§4-2-9 Infractions**

(a) All traffic infractions identified under Title 49 Sections 49-101 - 49-2446 and any amendments or other traffic infractions listed under the Idaho Code are hereby adopted as the traffic laws of the Nez Perce Tribe. **(amended 8/14/07)**

(b) The punishments provided by this code shall be the sole penalties provided for traffic infractions notwithstanding those provided by the provisions of the Idaho Motor Vehicle Code incorporated herein, except that the jurisdiction where a traffic violator resides is authorized to assess points and revoke or suspend driving privileges or assess fines or fees related to the revocation or suspension of driving privileges in accordance with local law. For purposes of identifying traffic infractions on citation forms and otherwise, citations shall be identical to those used in the Idaho State Code.

# CHAPTER 4-3
# CIVIL INFRACTIONS

## GENERAL PROVISIONS

### §4-3-1 Definitions

(a) "Infraction" means a civil offense which is not a crime and the remedy imposed therefor shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.

(b) "Probable cause" exists under this chapter when an officer has substantial objective basis for believing a fact or situation exists. In determining whether probable cause exists, the officer may take into account all information which a prudent officer would deem relevant to the likelihood that a fact or situation exists.

(c) "Defendant" means the person against whom an action is filed under this section.

(d) "Public" means a location to which the public or a substantial group has access or those individuals present in such location. A "public" place includes: highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

### §4-3-2 Duties of Officers; Warrant not Required

It shall be the duty of tribal police officers to enforce the provisions of this chapter without the necessity of procuring a warrant.

### §4-3-3 Disposition of Fines

All fines and penalties for violations of any of the provisions of this chapter shall be paid to the clerk of the court who shall issue a receipt and deliver the funds to the Nez Perce Finance Department.

### §4-3-4 Officers

(a) A tribal police officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge, or attempt to discharge, of any duty under this chapter or gives a false report to any peace officer.

(b) Any person arrested for a violation of this section who is subject to the criminal jurisdiction of the Nez Perce Tribe shall be prosecuted under the Nez Perce criminal laws as provided by this code. Any person arrested for a violation of this section who is not subject to the criminal jurisdiction of the tribe shall be delivered without unnecessary delay to the nearest authority for the state of Idaho.

## OFFENSES

### Property

### §4-3-5 Trespass (reinstated by NPTEC 6/10-11/03)

A person commits the infraction of trespass if he:

(a) refuses to depart from the real property of another, except under a landlord-tenant relationship, after being notified in writing, or verbally by the owner, lawful occupant or authorized agent of the owner of such property, to immediately depart; or

(b) enters without permission of the owner or the owner's agent, upon the real property of another.

### §4-3-6 Vandalism

A person commits the infraction of vandalism if he:

(a) injures, defaces, damages or destroys:

(1) private property in which any other person has an interest without the consent of such other person;

(2) tribal or other public property without the lawful consent of the appropriate governing body; or

(3) a recognized place of burial.

(b) deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or any vehicle while such vehicle is either in motion or stationary.

### §4-3-7 Shoplifting/Retail Theft

A person commits the infraction of shoplifting if he knowingly removes merchandise from a merchants premises without paying therefore, knowingly conceals merchandise to avoid paying therefore, and the sales price of such merchandise taken or concealed is under $50.00. The person shall further be civilly liable to the merchant for the sales price of any merchandise not recovered undamaged plus damages of not less than $50.00 nor more than $150.00.

### §4-3-8 Liability for Acts of Minors (section amended eff. 11/12/02)

The parent or legal guardian of a minor who commits the civil infraction/status offense shall be civilly liable to the merchant for the sales price of any merchandise not recovered undamaged plus damages of not less than $50.00 nor more than $150.00. Recovery under this section is not limited by any other provision of the Nez Perce Tribal Code which limits the liability of the parent or legal guardian for the tortious conduct of the minor. The liability of the parent or legal guardian and of the minor under this section is joint and several.

## §4-3-9 Nuisance Abatement (adopted by NPTEC 1/27/04)

(a) Definitions

(1) "Nuisance Abatement" the removal or termination or destruction of something that has been found to be a nuisance.

(2) "Owner"shall mean any person who, alone or jointly or severally with others:

(A) has a record of legal title to any dwelling or dwelling units, with or without accompanying actual possession thereof;

(B) acts as the agent of the person holding the record of legal title of any dwelling or dwelling unit; or

(C) is the personal representative or fiduciary of an estate through which the record of legal title to the real property is administered.

(3) "Public Nuisance" as defined under Nez Perce Tribal Code § 4-3-51.

(4) "Reservation Sanitarian" shall mean an Environmental Health Officer, or other appropriate designate, at the Department of Health & Human Services, Spokane District Office, Indian Health Service, 1919 E. Francis Avenue, Spokane, WA 99207.

(b) Statement of Purpose and Intent

(1) There currently exist within the Nez Perce Reservation unsanitary, unsafe, and uninhabitable dwellings, including eyesores as a result of abandoned materials or debris of any kind, including substances that have accumulated as the result of fires, vandalism, or similar causes, affecting the public health, comfort, safety, and welfare, which are hereby declared public nuisances. These nuisances are causing an increase in crime and constitute a menace to the health and safety of surrounding neighbors and residents. Therefore, a need exists for a nuisance abatement process and enforcement thereof on the Nez Perce Reservation.

(2) Any resident of the Nez Perce Reservation who believes that a nuisance exists, as defined in Section 1 above and/or NPTC § 4-3-51, may file a complaint to that effect with the Chairman of the Law & Order Subcommittee. The Law & Order Chairman shall bring such complaint before the next meeting of the Nez Perce Tribal Executive Committee, which shall determine whether the complaint warrants investigation. If the Nez Perce Tribal Executive Committee deems it necessary, they may then request an environmental health assessment inspection of the property. The environmental health assessment inspection of the property in question shall be made by the Reservation Sanitarian. If, after inspection and assessment of the property, a nuisance is found to exist, or the

property is deemed unsafe, unsanitary, or uninhabitable, the owner of the tract, his agent, or other persons having an interest therein, shall promptly be ordered by the Nez Perce Tribal Executive Committee to cause the nuisance to be abated, remedied, or removed, as may be necessary.

(3) The person or persons so notified shall be allowed until 12:00 Noon of the seventh (7th) day following the service of such notice to commence the abatement, remedy, or removal of the nuisance, and he or they shall employ sufficient labor to abate, remedy or remove such nuisance as expeditiously as possible.

(4) Any owner who has been served with a nuisance abatement order and who believes such order to have been unjustified may apply to the Nez Perce Tribal Court (within the 7 days mentioned in Section 3 above) for an order to cancel the nuisance abatement order. The Nez Perce Tribal Court may, after affording the opportunity for a hearing, affirm, modify, or vacate the nuisance abatement order and its decision shall be final.

(5) In a case where the public health, comfort, safety or welfare requires immediate action or where the owner, agent, or other persons having an interest in the tract on which the Nez Perce Tribal Executive Committee has determined there exists a nuisance, have failed to comply with an abatement order, the Nez Perce Tribal Executive Committee may enter upon the tract, with such workmen and assistance as may be necessary and cause the nuisance to be abated, remedied, or removed without delay.

(6) The Nez Perce Tribal Executive Committee shall determine the cost and expense of any work performed under the authority of subsection (b)(5) and shall assess such cost and expense on the owner of the tract upon which such nuisance existed. Any owner of a tract upon which such assessment has been made who is dissatisfied with such determination may apply to the Nez Perce Tribal Court for review of the determination. The Nez Perce Tribal Court may, after affording the opportunity for a hearing on the matter, affirm, modify, or vacate the determination and its decision shall be final.

## Public Order

### §4-3-20 Refusing Assistance to Officers

Any person neglecting or refusing to aid and assist a tribal police officer in the performance of his official duties after being requested to do so by such officer commits the infraction of refusing assistance to officers.

### §4-3-21 False Reporting

A person commits the infraction of false reporting if he initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

**§4-3-22** ***Disorderly Conduct*** ***(effective 10/25/05 replaced by §4-1-200)***

**§4-3-23 Loitering**

A person commits the infraction of loitering if he remains in a public place without apparent reason and under circumstances which warrant justifiable alarm for the safety of persons or property in the vicinity, and upon inquiry by a peace officer, refuses to identify himself and give a reasonable credible account of his presence and purposes.

**§4-3-24 Harassment**

A person commits the infraction of harassment if, with intent to annoy or alarm another he:

(a) subjects another to offensive physical contact;

(b) publicly insults another by abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or

(c) communicates with a person, anonymously or otherwise, by telephone, mail or other form of written communication in a manner likely to cause annoyance or alarm.

**§4-3-25 Abuse of Corpse**

A person commits the infraction of abuse of corpse if he unlawfully disinters, removes or carries away a corpse that has been buried or otherwise interred.

**§4-3-26 Cruelty to Animals**

(a) A person commits the infraction of cruelty to animals if he:

(1) maliciously kills, maims or wounds any animal;

(2) overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, or mutilates or cruelly kills any animal;

(3) has custody of or is responsible for an animal and wilfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the same;

(4) transports or carries any animal in a cruel and inhumane manner;

(5) causes any animal to fight for his amusement or betting or waging permits the same to be done on any premises or is present at such fight; or

(6) negligently causes any of the above results.

(b) A person commits a violation under Criminal Offenses Chapter 4-1, §4-1-202 if he:

(1) causes any animal to fight for his amusement, betting or waging; or

(2) permits the same to be done on any premises or is present at such fight. **(amended 1/13/09)**

(c) It may be a defense to a prosecution under this section if the actor was:

(1) involved in an accepted veterinary practice or any scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college or university; or

(2) engaged in hunting or fishing in accordance with the provisions of this code.

***Drugs and Alcohol***

***§ 4-3-40 Possession of Alcohol by a Person Under Twenty-One*** ***(offense changed to a crime 6/22/99)***

**Public Health, Safety and Welfare**

**§4-3-50 Waters Infraction**

(a) A person commits a waters infraction if he:

(1) uses, interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without any lawful authority to do so and in violation of any right held by the Nez Perce Tribe or another person;

(2) breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so;

(3) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the rights of the Nez Perce Tribe or any other person; or

(4) pollutes or befouls any water in any of the following ways:

(A) constructs or maintains a livestock enclosure, chicken coop, or other offensive yard or outhouse where the water or drainage therefrom shall flow directly into any source of water used for domestic purposes including any stream, well, spring, etc...;

(B) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into any source of water used for domestic purposes including any stream, well, spring, etc...;

(C) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water;

(D) knowingly causes or allows any substance harmful or potentially harmful to human health to enter into a source of water used for domestic purposes; or

(E) operates a point source or non-point source as defined in the Federal Clean Water Act 33 U.S.C. §§ 1251 - 1387, in a manner which interferes with any right of the Nez Perce Tribe or another person.

(5) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

**§4-3-51 Public Nuisance**

(a) A person commits a public nuisance infraction if without lawful authority to do so, he does any act or fails to do any duty, which act or omission either:

(1) unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

(2) offends public decency;

(3) unlawfully interferes with, obstructs, or tends to obstruct, or render dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or

(4) in any way unreasonably renders three or more persons insecure in life or the use of property.

(b) An act or omission to act which affects three (3) or more persons in the ways specified in this section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(c) The presence of a lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(d) The commission by act or omission of a public nuisance shall not be punished under this section if the same conduct constitutes another offense which has also been charged against a defendant.

**§4-3-52 Curfew Infraction - Persons Under Eighteen (18) Years**

(a) A person fourteen (14) years and under, commits a curfew infraction if he is on the streets, highways, or any place open to the public:

(1) between the weekday hours of 9:00 p.m. to 6:00 a.m.; and

(2) between the weekend hours of 10:00 p.m. to 6:00 a.m.

(b) A person fifteen (15) years to eighteen (18), commits a curfew infraction if he is on the streets, highways, or any place open to the public:

(1) between the weekday hours of 10:00 p.m. to 6:00 a.m.; and

(2) between weekend hours of 12:00 midnight to 6:00 a.m.

(c) Weekday hours are defined as beginning at 6:00 p.m. Sunday through Friday at 6:00 p.m.

(d) It may be a defense to a prosecution under this section upon a showing of good cause for the violation, including written parental consent to be out past the stated curfew for a specific reason and at a specific place.

(e) Beginning June 1 through August 31 of each year the weekday curfew hours will be extended one (1) hour at night for all minors. Under no circumstances, except those listed in (d), will minors be allowed on the streets, highways, or any place open to the public before 6:00 a.m.

**§4-3-53 Curfew Infraction - Parental Violation**

(a) A person commits a curfew infraction if he permits his minor child or a minor child under his care to be on the streets, highways or any place open to the public:

(1) between the weekday hours of 9:00 p.m. to 6:00 a.m. and weekend hours of 10:00 p.m. to 6:00 a.m. if the minor is under the age of fourteen (14); or

(2) between the weekday hours of 10:00 p.m. and 6:00 a.m. and weekend hours of 12:00 midnight to 6:00 a.m. if the minor is fourteen (14) to seventeen (17) years of age.

(b) It may be a defense to a prosecution under this section upon a showing of good cause for the violation.

**§4-3-53(a) Truancy - Persons Under Eighteen (18) Years (subsection added eff. 11/12/02)**

(a) A person under the age of eighteen (18) years commits a truancy infraction if he willfully and unjustifiably fails to attend school when he is required to attend.

Except as provided herein:

(1) All juveniles of school age are required to attend school unless excused from attendance for that day by school authorities. "School age" is defined as including all juveniles between the ages of five (5) and eighteen (18) years. For purposes of this section, the age of five (5) years shall be attained when the fifth anniversary of birth occurs on or before the first day of September of the school year in which the child is to enroll in kindergarten;

(2) The school attended may be a public school, an alternative school, an alternative course of instruction, or a private parochial school so long as the source of instruction is accredited by either the State or the Tribe.

**§4-3-53(b) Truancy Infraction - Parental Violation (subsection added eff. 11/12/02)**

(a) A person commits a truancy infraction if he permits his minor child or a minor child under his care to willfully and unjustifiably fail to attend school when he is required to attend.

(b) It may be a defense to prosecution under this section upon a showing of good cause for the violation.

**§4-3-53(c) Runaway - Persons Under Eighteen (18) Years (subsection added eff. 11/12/02)**

A person under eighteen (18) years commits a runaway infraction if he runs away from the control of his parent(s), guardian or custodian.

(a) It may be a defense to prosecution under this section upon a showing of good cause for the violation.

**§4-3-53(d) Runaway Infraction - Parental Violation (subsection added eff. 11/12/02)**

(a) A person commits a runaway infraction if he permits his minor child or a minor child under his care to run away from his control as the parent(s), guardian or custodian.

(b) It may be a defense to a prosecution under this section upon a showing of good cause for the violation.

**§4-3-54 Littering**

A person commits the infraction of littering if he deposits upon any public or private property within the Nez Perce Reservation any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material or waste substances on any place without authorization from the tribe or the owner of the property affected.

**§4-3-55 Livestock Infraction**

(a) A person commits a livestock infraction if he:

(1) wilfully refuses or fails to mark or brand his livestock when required in the interest of livestock identification or directed by tribal or government officials;

(2) alters, obliterates, or removes a brand or mark, or misbrands or mismarks livestock with a purpose to deceive another for any reason;

(3) knowingly permits his livestock to graze or trespass on the property of another or of the tribe without permission to do so or in excess of permitted time or amount;

(4) knowingly refuses to sell, dispose of, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;

(5) knowingly fails to treat or dispose of a sick animal where there is a substantial danger of infecting other animals;

(6) fails to dip, inoculate or otherwise treat livestock in the manner which the Tribal Executive Committee or its designated representative shall direct or required by law;

(7) makes a false report of livestock owned;

(8) purposely obstructs or interferes with a lawfully conducted roundup; or

(9) fails to pay a lease or other fee as provided in the lease or permit agreement for the use of tribal property or resources.

(b) Except in cases in which the owner or person having custody of livestock believed to be in violation of this section cannot be found after reasonable search, the owner or person having custody of the livestock involved shall be given forty eight (48) hours written notice of his alleged violation before a citation can be issued for the violation.

(c) Livestock may be impounded at or before the issuance of a citation without prior notice to the owner if probable cause exists that such animal(s) seriously threaten the property of the tribe or another or the health of other livestock on the Reservation and that immediate action is necessary to protect such interests from serious harm. Once an animal is so impounded, the owner shall be immediately notified of the impoundment and any potential violations of this section. A reasonable fee for the care of such animal(s) may be collected prior to their release.

**Immunity From Suit**

### §4-3-56 Immunity of Persons Giving First Aid From Damage Claim (added 6/22/99)

No action shall lie or be maintained for civil damages in the Nez Perce Tribal Court against any person or persons, or group of persons, who in good faith, being at, or stopping at the scene of an accident, offers and administers first aid or medical attention to any person or persons injured in such accident unless it can be shown that the person or persons offering or administering first aid is guilty of gross negligence in the care or treatment of said injured person

or persons or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons into custody of an ambulance attendant.

### §4-3-57 Immunity of Volunteer Ambulance Attendant (added 6/22/99)

No action shall lie or be maintained for civil damages in the Nez Perce Tribal Court against any person or persons, or group of persons, including volunteer ambulance attendants, who offers and administers first aid or emergency medical attention as a part of his volunteer service as an ambulance attendant to any person or persons utilizing the volunteer services and facilities, unless it can be shown that the person or persons offering or administering first aid or emergency medical attention is guilty of gross negligence in the care or treatment offered or administered, or has treated them in a grossly negligent manner. The immunity described herein shall cease upon delivery of the injured person to either a generally recognized hospital for treatment of ill or injured persons, or upon assumption of treatment in the office or facility of any person undertaking to treat said injured person or persons, or upon delivery of said injured person or persons.

## Administration of Government

### §4-3-70 Interference with Judicial Process

A person commits the infraction of interference with judicial process if he:

(a) interferes with or attempts to influence any decision of the Tribal court or investigation, prosecution, or settlement of any case; or

(b) unlawfully detains or otherwise interferes with a witness or party to an action while such person is going to or from a court proceeding or attending court.

### §4-3-71 Dog Ordinance (adopted 8/24/99)

A person commits the offense of violation of the Nez Perce Dog Ordinance by:

(a) Any person owning, harboring, or in any way responsible for any dog(s) not licensing said dog(s);

(b) Any person owning, harboring, or in any way responsible for any dog(s) not affixing a durable collar to said dog(s) with the license mentioned in (a) above;

(c) Any person owning, harboring, or in any way responsible for any dog(s) not keeping such animal(s) confined or on a leash and at all other times in complete control;

(d) Any person who hinders, molests, or interferes with the Dog Marshall;

(e) Any person owning, harboring, or in any way responsible for any female dog(s) not keeping such animal(s) shut up or fenced in when in heat;

(f) Any person owning, harboring, or in any way responsible for any vicious dog(s) or dog(s) having mange or any other apparent and contagious disease not keeping such animal(s) from running at large; or

(g) Any person owning, harboring, or in any way responsible for any vicious dog(s) keeping such animal(s) within the Nez Perce reservation after receiving either written or oral notice from the Dog Marshall that such dog has exhibited vicious tendencies. **(subsection amended by NPTEC 5/24/11)**

## §4-3-72 Firework Ordinance **(adopted 7/27/99, amended by NPTEC 12/8/15)**

A person commits the offense or violation of the Nez Perce Fireworks Ordinance if he:

(a) As a retail or wholesale operator, fails to obtain a firework's license;

(b) As a wholesaler attempts to or sells fireworks to an unlicensed person;

(c) As a retailer purchases, receives, or attempts to purchase or receive fireworks from an unlicensed wholesaler;

(d) Any person knowingly submitting a license application containing false information;

(e) As a retail or wholesale operator, stocks or sells any fireworks that are not authorized under the Ordinance;

(f) As a retailer attempts to or sells fireworks, other than "safe and sane" fireworks to any person under eighteen (18) years of age;

(g) As a retailer knowingly attempts to or sells fireworks to any intoxicated person;

(h) As a retailer attempts to or sells, distributes, or discharges fireworks while intoxicated or under the influence of drugs;

(i) As a retailer fails to stock two functioning fire extinguishers in the selling area;

(j) As a retailer fails to display "Notice of Unlawful Acts";

(k) As a retail operator, fails to remove all temporary structures, as well as any signs on and off the retail site, and debris and waste resulting from retailer's use of the retail site within five (5) days of the end of fireworks season; or

(l) As a retail operator, utilize more than four (4) signs or any sign in excess of thirty-two (32) square feet.

(m) As a retail operator, fails to affix Retail Operator's Permit number to signs used to advertise or identify a Fireworks Retail Outlet.

(n) Any person discharging fireworks after the Nez Perce Tribal Executive Committee imposes a ban as authorized under §6-3-8. **(Adopted by NPTEC 9/8/15)**

## §4-3-73 Fuel Tax Ordinance (addition authorized 10/9/01)

A person commits a violation of the Nez Perce Fuel Tax Ordinance by:

(a) As a retail operator or distributor, fails to obtain a distributor or retail license to buy or sell fuel;

(b) As a distributor attempts to or sells fuel to an unlicensed person;

(c) As a retailer purchases, receives, or attempts to purchase or receive fuel from an unlicensed distributor;

(d) Any person knowingly submitting a license application containing false information;

(e) As a retail operator or distributor fails to follow federal health and safety regulations with regard to fuel receipt, dispensing and distribution.

## §4-3-74 Tobacco and Liquor Ordinance Violations (adopted by NPTEC 12/9/03)

A person commits a violation of the Nez Perce Tobacco and Liquor Ordinance by:

(a) As an operator or distributor, fails to obtain a tobacco or liquor license;

(b) As an operator or distributor, attempts to or sells tobacco or liquor without a license;

(c) As an operator or distributor, fails to submit a report as required by the Tobacco and Liquor Ordinance.

(d) As a distributor, attempts to or sells tobacco or liquor to an unlicensed operator;

(e) As an operator, purchases, receives, or attempts to purchase or receive tobacco or liquor from an unlicensed distributor;

(f) As a tobacco distributor or tobacco outlet, sells unstamped cigarettes;

(g) Any person knowingly submitting a license application containing false information;

(h) As a tobacco operator, attempts to or sells tobacco products to any person under eighteen (18) years of age;

(i) As a liquor operator, attempts to or sells liquor products to any person under twenty-one (21) years of age;

(j) As a tobacco distributor or operator, attempts to sell more than 48 cartons of cigarettes to a non-licensed non-resident person/entity.

## §4-3-75 Official Nez Perce Tribal Executive Committee Actions Enforceable (adopted 9/12/06)

Any resolution officially adopted by the Nez Perce Tribal Executive Committee pertaining to the tribal judicial system is hereby recognized as the law of the land and fully enforceable by the Nez Perce Tribal Court.

## §4-3-76 Violation of Sex Offender Registration Code (section adopted 5/24/11)

Civil Penalty. Each violation of a provision of the Nez Perce Tribal Sex Offender Registration Code (Code) contained in Chapter 4-6 by a sex offender as defined in that Code who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

# CHAPTER 4-4

# EXCLUSION AND REMOVAL

## §4-4-1 Definitions

(a) "Exclusion and removal" means the temporary or permanent banishment or expulsion of an individual from within the boundaries of the Nez Perce Reservation.

(b) "Fraud" means a false representation of a matter of fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

## §4-4-2 Persons Subject to Exclusion and Removal

All persons except those authorized by federal law to be present on tribal land and persons with interests in real property on the reservation may be excluded or removed from the Nez Perce Reservation.

## §4-4-3 Grounds for Exclusion and Removal

In addition to any remedy or penalty provided by this code, a person subject to removal and exclusion under this chapter may be subject to a civil proceeding for exclusion or removal from the Nez Perce Reservation upon any one or more of the following grounds:

(a) doing or attempting to do any act upon the reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the tribe, its members, or other persons;

(b) any act causing serious physical loss or damage of any nature to the property of the tribe or any reservation resident;

(c) entering an area in violation of any order of the Nez Perce Tribal Executive Committee designating such area as closed;

(d) failing or refusing to pay any taxes, rents or other charges justly due the Nez Perce Tribe or any entity of the tribe, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;

(e) mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;

(f) committing a fraud;

(g) trading or conducting business within the reservation in violation of tribal law;

(h) hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law;

(i) disturbing or excavating items, sites or locations of religious, historic or scientific significance without the authority of the tribe or in violation of tribal or federal law; or

(j) failing to obey an order of the Tribal Court.

**§4-4-4 Proceedings for Exclusion**

The prosecutor may bring an exclusion action pursuant to this chapter on behalf of the tribe by filing a complaint in Tribal Court. Before filing a complaint, the prosecutor shall cause any proposed exclusion and removal under this chapter to be investigated sufficiently to determine whether, in his discretion, an exclusion action shall be filed on behalf of the tribe. The filing of a complaint under this chapter shall constitute a civil cause of action.

**§4-4-5 Hearing on Exclusion and Removal**

(a) Upon the filing of a complaint for exclusion, the tribal prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by registered mail upon the respondent. The notice shall state the time and place at which a tribal court hearing will be held on the complaint and that the respondent may appear with counsel, if he desires, and present evidence in his own behalf.

(b) The burden of proof shall be upon the tribal prosecutor to prove by a preponderance of the evidence that the respondent committed one or more of the acts set forth in this chapter. If the respondent is found to have committed such act(s), the Court shall issue an order of exclusion and removal which shall include the duration of the exclusion. If the respondent is not present at such hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the respondent in the manner provided above informing him of the action of the Tribal Court and such notice shall include a copy of any order or exclusion and/or removal.

**§4-4-6 Appeals**

Any person upon whom an order of exclusion and removal is issued under this chapter may appeal such order to the Nez Perce Court of Appeals as provided by this code.

**§4-4-7 Enforcement of Orders of Exclusion and Removal**

If any person ordered excluded from the Nez Perce Reservation under this title does not obey such order, the Tribal Court shall issue one or more of the following orders:

(a) direct any tribal police officer to remove the respondent from the reservation or portions of the reservation covered by the exclusion order at the respondent's expense;

(b) direct any tribal police officer to prevent the respondent from reentry onto any reservation lands covered by the exclusion order for so long as the order remains in effect;

(c) find the respondent in contempt.

**§4-4-8 Emergency Exclusion and Removal Without Prior Hearing (adopted 10/12-13/99)**

(a) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Nez Perce Reservation and that the granting of

notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the reservation, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(b) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at his own expense at the hearing and present evidence in his own defense, and shall inform him that his compliance with such order shall be enforced by Tribal Law Enforcement Officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(c) Upon receipt of a petition for a hearing as provided in § 4-4-8(b), the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within ten business days of receipt of the petition, provided , however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for the limited purpose of attending a hearing.

(d) The Tribal court shall, as a result of such hearing, cither affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice in § 4-4-8(b).

(e) Nothing in this Section shall in any way limit Tribal Law Enforcement's authority to detain and eject any non-Indian offender.

# CHAPTER 4-5
# DOMESTIC RELATIONS

## INTRODUCTORY PROVISIONS

### §4-5-1 Definitions (amended by NPTEC 7/8/03)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Annulment" or "nullity" means the act of declaring a marriage void.

(b) “Business day" means a day on which Nez Perce tribal offices are open for regular business

(c) “Child Support Enforcement Program (CSEP)” means the Nez Perce Tribe Child Support Enforcement Program.

(d) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

(e) "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.

(f) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

(g) "Dissolution" or "divorce" means the act of terminating a marriage not including annulment.

(h) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(i) “Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(j) "Employer" includes the Nez Perce Tribe and any person or entity who pays or owes income to the obligor.

(k) "Estate" means the total property of any kind owned by a deceased person prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the deceased.

(l) "Income" means any form of periodic payment to an individual, regardless of

source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(1) Unemployment compensation payments made under chapter 13, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;

(2) Worker's compensation payments made under chapter 8, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;

(3) Public assistance payments made under the Tribal TANF or General Assistance Program, or title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(m) “In-Kind Payments” as permitted by the trier of fact includes, but is not limited to, the provision of traditional foods and services.

(n) "Maintenance" means the furnishing by one person to another of support, for the means of living including food, clothing, shelter and other reasonable needs.

(o) "Marriage" means the civil status, condition or relation of a man and woman considered united in law as husband and wife.

(p) "Minor" or "Child" means any person under the age of eighteen (18).

(q) "Obligee" means any person, tribal agency, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(r) "Obligor" means any person obligated by order to pay child or spousal support.

(s) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(t) "Support order" means a judgment, decree, or order issued by the Nez Perce Tribal Court creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction of another tribe, state or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable by this tribe.

**§4-5-2 Scope**

(a) This chapter will apply to the creation and dissolution of a marriage of which at

least one party to the marriage is an Indian.

(b) Marriages performed under this chapter may be performed within or without the exterior boundaries of the Nez Perce reservation. **(amended 9/12/06)**

**§4-5-3 Enforcement**

(a) In addition to any other applicable remedy or penalty provided by this code, any person who violates the provisions of this chapter or misrepresents any fact required to be stated on a certificate form or marriage license may be subject to fine for a civil infraction. The Tribal Court may require reasonable security for a party's payments required under this chapter and may enforce such security by any applicable remedy.

(b) Child Support Enforcement Program Authorized to Act on Behalf of Tribe. Having properly received and processed an application by a custodial or non-custodial parent, Child Support Enforcement Program may enforce child support actions or orders, including temporary child support actions, on behalf of the Nez Perce Tribe, pursuant to any provisions or amendments provided for by the Nez Perce Tribal Code. **(section added by NPTEC 10/13/09)**

A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

**§4-5-4 Marriage License**

(a) The Clerk of Court may issue a marriage license form to parties:

(1) who reasonably appear eligible to marry; and

(2) upon payment of a fee to be established by the Court.

(b) No person shall conduct a marriage ceremony without first requesting that the parties submit a marriage license. Once the marriage ceremony is complete, such person shall properly endorse the license and return it to the court clerk for filing. Upon receipt and filing of the marriage license the clerk shall issue a marriage certificate to the parties involved.

**§4-5-5 Marriage Ceremony (amended by NPTEC 6/23/15)**

(a) The marriage ceremony may be conducted by:

(1) a certified member of the clergy having authority to marry;

(2) a current judge of the Nez Perce Tribal Court; or

(3) the current Chairman of NPTEC.

(4) a person recognized by the community as spiritual leader and whose status has been determined by the Nez Perce Tribal Executive Committee according to the Policy for Approving Officials to Conduct Marriage Ceremonies.

(b) The person conducting the marriage ceremony must be reasonably assured of:

(1) the identity of the parties;

(2) the real and full names and places of residence of the parties; and

(3) that the parties have a right to marry in accordance with this chapter.

(c) No particular form for the ceremony of a marriage is required, but the parties must declare, in the presence of at least two (2) witnesses and the person solemnizing the marriage that they take each other as husband and wife.

**ANNULMENT**

**§4-5-6 Void and Voidable Marriages**

A marriage is illegal and void from the beginning if:

(a) either party is less than eighteen (18) years old unless such party:

(1) has the written and properly notarized consent of his parent or guardian to marry; or

(2) if after obtaining the age of eighteen (18), freely cohabits with the other as husband or wife.

(b) either party was of unsound mind unless after coming to reason, such party freely cohabits with the other as husband or wife;

(c) the consent of either party is obtained by fraud or duress unless such party afterward, with full knowledge of the facts constituting the fraud or regardless of the duress used, freely cohabited with the other as husband or wife;

(d) the marriage is between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, or aunts and nephews or first cousins whether the relationship is legitimate or illegitimate;

(e) the marriage is contracted by a person during the time he is legally married to another unless the actor believes the original spouse to be dead at the time.

**§4-5-7 Annulment Actions/Judgment**

(a) An action to obtain a decree of nullity of marriage may be commenced if:

(1) the marriage is in violation of the age requirements of this chapter and the action is brought by the under aged party to the marriage within four (4) years after arriving at the age of eighteen (18), or by a parent, guardian, or other person having charge of such party, at any time before such party reaches the age of eighteen (18);

(2) either party is legally married to another and the action is brought by either party or by such original spouse;

(3) either party was of unsound mind and the action is brought by such party, or a relative or guardian of such party;

(4) the marriage is between relatives and the action is brought by another relative of the parties or the tribe;

(5) consent of either party was obtained by fraud and the action is brought by the party injured, within four (4) years after the discovery of the facts constituting the fraud; or

(6) consent of either party was obtained by force and the action is brought by the party injured, within four (4) years after the marriage.

### §4-5-8 Legitimacy of Children

It shall be a rebuttable presumption that children conceived during a marriage are legitimate and have rights to the estate of both parents. The Tribal Court may at any time issue necessary orders for the support of children as the circumstances require.

## DISSOLUTION

### §4-5-9 Dissolution of Marriage

A marriage is dissolved by:

(a) the death of one of the parties; or

(b) the judgment of the Tribal Court or any other court of competent jurisdiction decreeing a dissolution and restoring the parties to the state of unmarried persons.

### §4-5-10 Grounds for Dissolution

A dissolution may be granted if one or other of the parties alleges irreconcilable differences in the marriage.

### §4-5-11 Proceedings

(a) Dissolution proceedings shall be initiated by the filing of a petition. No decree of dissolution shall be granted except after hearing before the Court.

(b) Unless determined otherwise by the Court, or upon agreement by both parties, no hearing on the petition for dissolution shall be held until at least twenty (20) business days after the filing of the petition. At any time prior to hearing, the Court upon application of one of the parties, may require conference of the parties in order to determine whether or not reconciliation is practicable. The Court may allow additional parties to attend the meeting as it determines appropriate. If the Court determines that as a result of the meeting, reconciliation is practicable and it is in the best interest of the parties and children, if any, it may stay the proceedings for up to ninety (90) days.

**SEPARATE MAINTENANCE/CHILD SUPPORT** **(section amended by NPTEC 7/8/03 and moved to end of Chapter)**

**§4-5-12** ***Temporary Alimony/Child Support*** ***(now § 4-5-50)***

**§4-5-13** ***Maintenance/Child Support*** ***(now § 4-5-51)***

**PROPERTY RIGHTS**

**§4-5-14 Property Settlement Agreement**

This chapter shall govern the property rights of married persons, subject to a written property settlement agreement between such persons entered into prior to or during the marriage. Such an agreement must be recorded in the office of the recorder of every county and/or Bureau of Indian Affairs (BIA) for property held in trust by the BIA for the benefit of either of the parties in which any real estate affected by the agreement is located. The effect of recording or non-recording of such agreement shall be the same as if the agreement were a conveyance of real property.

**§4-5-15 Separate Property**

(a) The sole and separate property of married persons shall include all property of a husband or wife:

(1) owned by him or her before marriage or acquired after marriage by either gift, bequest, devise or descent; or

(2) acquired with the proceeds of his or her separate property.

(b) During the marriage, a party has the management, control and sole authority to dispose of his separate property and the separate property of one spouse shall not be liable for debts contracted to with the separate property of the other.

**§4-5-16 Community Property**

(a) All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

(b) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 4-5-17; provided, however, that the income from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

### §4-5-17 Management of Community Property

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal.

### §4-5-18 Disposition of Property

(a) Unless there are compelling reasons otherwise, in the event a dissolution is granted, the Court shall dispose of the community property of the parties in substantially equal division in value or assign the property in such proportions as it deems just. In making its determination, the Court shall consider all the facts of the case and the condition of the parties.

(b) If real property is involved in the disposition of property from a decree of dissolution, its disposition shall be consistent with the just apportionment of the property and may be assigned to either party either absolutely or for a limited period subject to future disposition by the Court or sold and the proceeds divided.

## CUSTODY OF CHILDREN

### §4-5-19 Care and Custody of Children **(amended by NPTEC 3/25/03)**

(a) Unless otherwise provided by this code or court order, the parents of an unmarried child(ren) are equally entitled to his custody and responsible for his care and support. If either the father or mother is deceased, or has been determined to have abandoned the family or to be unable or to have refused to take custody of the child(ren), his or her rights and responsibilities shall transfer to the other parent or grandparent(s) if neither parent is willing and able to care for the child(ren).

(b) In cases where the parents of a child(ren) are not married to each other, either parent may petition for an order of custody and child support.

(c) In cases where the parent(s) of a child(ren) are unable to provide a suitable home or for reasons proved to a court, in a separate Minor in Need of Care hearing or similar hearings in another jurisdiction are unfit to have custody of child(ren), the grandparent(s) may petition the court for the legal/physical custody of the child(ren).

(d) The judge shall consider, the child(ren)'s wishes as to with whom he should reside.

### §4-5-20 Emancipation

The rights of the parents shall be surrendered and their duties to provide care and support terminated upon the marriage or emancipation of the child. Emancipation shall be initiated by the filing of a petition with the Court by the child requesting emancipation who is over the age of sixteen (16). The Court may grant such status when the child proves that he is capable of functioning as an independent and responsible member of the community.

### §4-5-21 Proceedings (amended by NPTEC 3/25/03)

(a) The Court shall provide or remand physical/legal custody, care, and education, when it is deemed in the best interest of said child(ren).

(b) In reaching a decision on custody, and placement and visitation of a child(ren) the Court shall consider all relevant factors including:

(1) the wishes of the child(ren) as to his custody and the older the child(ren), the more weight shall be given by the trier of fact;

(2) the wishes of the biological/legal parent(s);

(3) the relationship between the child(ren) and his parent(s) and siblings;

(4) the child(ren)'s adjustment or lack of adjustment, to a new home, school, or community;

(5) the need to promote continuity and stability in the life of the child(ren).

## CHILD CUSTODY JURISDICTION

### §4-5-22 Purposes of this Sub-title - Construction of Provisions

Solely for purposes of this sub-title, the Nez Perce Reservation shall be considered a "state".

(a) The general purposes of this sub-title are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that

courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange in information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This sub-title shall be construed to promote the general purposes stated in this section.

**§4-5-23 Definitions**

As used in this sub-title:

(a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(c) "Custody proceeding" means proceedings in which a custody determination is one of several issues, and includes child neglect and dependency proceedings;

(d) "Decree" or "custody decree" means a custody determination contained in a judicial decree made in a custody proceeding, and includes an initial decree and a modification decree;

(e) "Home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(f) "Initial decree" means the first custody decree concerning a particular child;

(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the Court which rendered the prior decree or by another court;

(h) "Physical custody" means when a child resides with or is under the care and supervision of a parent or party;

(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(j) "State" means the Nez Perce Reservation, any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

**§4-5-24 Jurisdiction**

(a) The Tribal Court has jurisdiction to make a child custody determination by initial or modification decree if:

(1) the state:

(A) is the home state of the child at the time of commencement of the proceeding; or

(B) had been the child's home state within six (6) months before commencement of the proceeding and the child is sent from the state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it is in the best interest of the child that the Court assume jurisdiction because:

(A) the child and his parents, or the child and at least one contestant, have a significant connection with this state; and

(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationship;

(3) the child is physically present in this state and:

(A) the child has been abandoned; or

(B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(4)

(A) it appears that no other state would have jurisdiction under

prerequisites substantially in accordance with paragraphs (1), (2), or (3) of this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child; and

(B) it is in the best interest of the child that the Tribal Court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on the Court to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

**§4-5-25 Notice and Opportunity to be Heard**

Before making a decree under this sub-title, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to section 4-5-26.

**§4-5-26 Notice to Persons Outside this State -- Submission to Jurisdiction**

(a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(1) by personal delivery outside this state in a manner prescribed for service of process within this state;

(2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requesting a receipt; or

(4) as directed by the Court, including publication, if other means of notification are ineffective.

(b) Notice shall be served, mailed, delivered, or last published at least twenty (20) days before any hearing.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the Court.

**§4-5-27 Simultaneous Proceedings in other States**

(a) The Court shall not exercise its jurisdiction under this sub-title if at the time of filing the petition of proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subtitle, unless the proceeding is stayed by the Court of another state because the Tribal Court is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the Court shall examine the pleadings and other information supplied by the parties under section 4-5-30 and shall consult the child custody registry established under section 4-5-38, concerning the pendency of proceedings with respect to the child in other states. If the Court has reason to believe that proceedings may be pending in another state it shall direct any inquiry to the state court administrator or other appropriate official of the other state.

(c) If the Court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the Court assumed jurisdiction it shall stay the proceeding and communicate with the Court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 4-5-41 through 4-5-44. If the Court has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the Court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

**§4-5-28 Inconvenient Forum**

(a) If the Court has jurisdiction under this sub-title to make an initial or modification decree, it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the Court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(1) if another state is or recently was the child's home state;

(2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(4) if the parties have agreed on another forum which is no less appropriate; and

(5) if the exercise of jurisdiction by the Court would contravene any of the purposes stated in §4-5-22.

(d) Before determining whether to decline or retain jurisdiction the Court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

(e) If the Court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The Court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the Court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the Court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the Tribal Court shall inform the Court found to be the more appropriate forum of this fact, or if the Court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the Court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing the Tribal Court of a finding of inconvenient forum because the Court is the more appropriate forum shall be filed with the clerk of the Court. Upon assuming jurisdiction the Court shall inform the original court of this fact.

**§4-5-29 Jurisdiction Declined by Reason of Conduct**

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the Court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child and subject to subsection (a) of section 4-5-35, the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the Court subject to subsection (a) of section 4-5-35, may decline to exercise jurisdiction if this is just and proper under the

circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

**§4-5-30 Information Under Oath to be Submitted to the Court**

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath if:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

**§4-5-31 Additional Parties**

If the Court learns from information furnished by the parties pursuant to section 4-5-30, or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the reservation he shall be served with process or otherwise notified in accordance with section 4-5-26.

**§4-5-32 Appearance of Parties and the Child**

(a) The Court may order any party to the proceeding who is in this state to appear personally before the Court. If that party has physical custody of the child the Court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the Court is outside this

state with or without the child the Court may order that the notice given under section 4-5-26, include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the clerk of the Court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

### §4-5-33 Binding Force and Res Judicata Effect of Custody Decree

A custody decree rendered by the Court binds all parties who have been served or notified in accordance with section 4-5-26, or who have submitted to the jurisdiction of the Court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this sub-title.

### §4-5-34 Recognition of Out-of-State Custody Decrees

The Court shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

### §4-5-35 Modification of Custody Decree of Another State **(amended by NPTEC 7/8/03)**

(a) If a court of another state has made a custody decree, the Court shall not modify that decree unless:

(1) the decree concerns child support and is from the State of Idaho or the State of Washington and the terms of the inter-governmental child support agreements between those states and the Nez Perce Tribe apply, in which case such terms shall supersede the process set forth in this chapter.

### §4-5-36 Time and Standard for Modifying Custody Decree

(a) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health; except that nothing in this section shall be construed to prevent the Court from reconsidering a custody decree entered upon legal separation in the event of application before the expiration of two (2) years by either party for a decree terminating the marriage.

(b) No modification decree shall be entered except upon a showing that a permanent material change has occurred since the prior decree and that it is in the best interests of the child that the decree be modified.

**§4-5-37 Filing and Enforcement of Custody Decree of Another State**

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk. The clerk shall treat the decree in the same manner as a custody decree of the Tribal Court. A custody decree so filed has the same effect and shall be enforced in a like manner as a custody decree rendered by the Court.

**§4-5-38 Registry of Out-of-State Custody Decrees and Proceedings**

The clerk of the Court shall maintain a registry in which he shall enter the following:

(a) certified copies of custody decrees of other states received for filing;

(b) communications as to the pendency of custody proceedings in other states;

(c) communications concerning a finding of inconvenient forum by a court of another state; and

(d) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of the Court or the disposition to be made by it in a custody proceeding.

**§4-5-39 Certified Copies of Custody Decree**

The clerk of the Court, at the request of the Court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

**§4-5-40 Testimony by Deposition in Another State**

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The Court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

**§4-5-41 Hearings and Studies in Another State**

(a) The Court may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Court; and to forward to the Court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

(b) The Court may request the appropriate court of another state to order a party to custody proceedings pending in the Court to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

### §4-5-42 Assistance to Courts of Other States

(a) Upon request of the Court of another state the Court may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the Court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the Court of another state the Court may order a person in this state to appear alone or with the child in a custody proceeding in another state. The Court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

### §4-5-43 Preservation of Documents for use in Other States

In any custody proceeding the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen (18) years of age. Upon appropriate request of the Court of another state the Court shall forward to the other court certified copies of any or all of such documents.

### §4-5-44 Request for Court Records of Another State

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in the Tribal Court, the Court upon taking jurisdiction of the case shall request of the Court of the other state a certified copy of the transcript of any court record and other documents mentioned in section 4-5-43.

### §4-5-45 International Application

The general policies of this sub-title extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

### §4-5-46 Priority

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this sub-title the case shall be given calendar priority and handled expeditiously.

## SEPARATE MAINTENANCE/CHILD SUPPORT

### §4-5-50 Temporary Spousal/Child Support **(section was formerly § 4-1-12 renumbered and amended by NPTEC 7/8/03)(section amended 2/26/08)**

(a) While an action for dissolution is pending and upon consideration of the financial

status of the parties, the court may order the payment by one party to the other:

(1) of temporary maintenance in an amount and according to appropriate terms under the circumstances;

(2) of temporary support of a child based on the child support guidelines;

(3) of a reasonable amount for the cost of maintaining or defending any dissolution proceedings.

(b) In those instances where the Court deems it necessary, it may appoint a guardian ad litem to represent a minor or dependent child with respect to his support, custody and visitation. Any costs or fees for such representation shall be borne by either or both of the child's parents.

**§4-5-51 Maintenance/Child Support (formerly 4-5-13 renumbered and amended by NPTEC 7/8/03)**

(a) Action for separate maintenance and/or child support may be maintained by one spouse who is living separate from the other.

(b) Where a dissolution is granted and after considering all relevant factors, the Court may order separate maintenance for either spouse in such amounts and for such period of time the Court deems just. Separate maintenance may be awarded to a spouse only if such spouse:

(1) lacks sufficient property to provide for his or her reasonable needs; and

(2) is unable to support himself or herself through employment.

(c) The court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for such child's support. **(subsection amended 2/26/08)**

(1) The Tribe shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the Tribe, that application of the guidelines would be inappropriate or unjust in a particular case. The Tribe shall review the guidelines at least once every four (4) years to ensure that their application results in the determination of appropriate child support amounts. The Tribe shall base the guidelines and criteria for deviation from them on all relevant factors, including:

(A) The financial resources and needs of the child.

(B) The financial resources and needs of the custodial party.

(C) The standard of living the child would have enjoyed had the marriage not been dissolved.

(D) The physical and emotional condition of the child and the child's educational needs.

(E) The financial resources and needs of the noncustodial parent.

(2) The child support guidelines shall be used in determining the ability to pay child support and the amount of payments. The obligation to pay child support is primary and other financial obligations are secondary.

(A) There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of the child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate.

(B) If the court determines that the circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specified finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court

(C) In-kind payments may be permitted to satisfy a support obligation provided that the court order:

(i) states the specific dollar amount of the support obligation, and

(ii) describes the type of in-kind payment that is being allowed to satisfy the specific dollar amount of the support order, and

(iii) prohibits the in-kind payment from satisfying any assigned support obligations.

(3) The court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.

## MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT (§§ 4-5-52 - 4-5-66 adopted by NPTEC 7/8/03)

### §4-5-52 Remedies in Addition to Other Remedies

(a) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(b) The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents.

### §4-5-53 Income Withholding

(a) The CSEP may enforce a support order which is, or has been issued or modified against a noncustodial parent by withholding:

(1) as much of his/her income as is necessary to pay the current monthly support amount and if needed an additional amount to be applied toward any arrearage. The total amount may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673 (b));

(b) The CSEP will comply with all procedural due process requirements of the Nez Perce Tribe.

(c) Income Withholding does not apply to in-kind payments.

(d) Mistake of fact is the only basis for contesting income withholding.

**§4-5-54 Notice of Immediate Income Withholding**

(a) The court shall order income withholding in all support orders effective the date of the order unless an exception is granted by the court pursuant to subsection (b) of this section. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

(b) Immediate income withholding shall not be ordered if

(1) One of the parties demonstrates and the court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(A) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(B) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the obligor and obligee and the CSEP in cases where the CSEP is providing child support services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

(c) Failure to provide for income withholding does not affect the validity of the support order.

**§4-5-55 Income Withholding Upon a Delinquency**

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

**§4-5-56 Judicial Proceedings for Income Withholding**

(a) A proceeding to enforce a duty of support is commenced by:

(1) filing a petition or complaint for an original action; or

(2) motion in an existing action or under an existing case number.

(b) Venue for the action is in the tribal court or county district court where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the tribe or any agency providing care or support to the dependent child.

(c) A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

(d) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to § 4-5-54 or § 4-5-55, and:

(1) The name, address, and social security number of the obligor;

(2) A copy of the support order;

(3) The name and address of the obligor's employer;

(4) The amount of any delinquency; and

(5) Whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(e) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to § 4-5-54 or § 4-5-55 using the form prescribed by the U.S. Federal Office of Child Support Enforcement, to the employer. The court shall also order the employer to remit the amount withheld to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the obligor. The income withholding shall include: **(subsection amended 2/26/08)**

(1) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement;

(2) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, if any; and

(3) The amount of arrearage payment specified in the support order, if any.

(f) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the CSEP.

(g) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable.

(h) An order originating in or recognized by the Nez Perce Tribal Court for child support shall become unenforceable ten years after the eighteen birthday or emancipation of the youngest child named in the child support order, whichever last occurs. **(subsection added 1/13/15)**

(i) The statute of limitations for enforcement of child support may be tolled upon an evidentiary finding that fraud or willful concealment has taken place by a party to the case. **(subsection added 1/13/15)**

## §4-5-57 Service of Income Withholding Order in a Judicial Proceeding

(a) The following items and documents shall be served on the employer personally or by any form of mail requiring a return receipt

(1) two (2) conformed copies of the income withholding order, one (1) of which is for the employer, and one (1) for the obligor;

(2) four (4) answer forms in substantial compliance with § 4-5-60;

(3) Three (3) stamped envelopes provided by the obligee and addressed to, respectively, the person or entity designated in the income withholding order, the obligee' s attorney or the obligee, and the obligor.

## §4-5-58 Employer's Duties and Responsibilities - Fee for Employer

(a) Upon receiving an income withholding order from the court, the employer shall answer the income withholding order on forms supplied with the income withholding order within ten (10) days after the date of service. The employer shall deliver the original answer to the court, and shall mail one (1) copy to the obligee or obligee' s attorney, and shall deliver one (1) copy to the obligor as soon as is reasonably possible. The answer shall state whether the obligor is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the obligor. Upon receiving an income withholding order from the CSEP, the employer shall begin income withholding pursuant to this section.

(b) If the employer possesses any income due and owing to the obligor, the income subject to the income withholding order shall be withheld immediately upon receipt of the income withholding order. The withheld income shall be delivered to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the employee.

(c) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed forty percent (40%) of the disposable earnings of the obligor for that period. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent (50%) of the disposable earnings of the obligor for that period, whichever is less. (In no event shall the

amount to be withheld from the earnings of the obligor exceed the amount specified under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)).

(d) When an employer receives an income withholding order issued by another tribe or state, the employer shall apply the income withholding law of the jurisdiction of the obligor's principal place of employment in determining:

(1) The employer's fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income;

(3) The time periods within which the employer must implement the income withholding order and forward the child support payment;

(4) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(5) Any withholding terms or conditions not specified in the income withholding order.

(e) If an obligor is subject to two (2) or more income withholding orders for child support on behalf of more than one (1) obligee, the employer may send the entire amount withheld from that obligor to the Nez Perce Accounting Department . The Accounting Department shall apportion the amount of income withheld between all obligees of the obligor as follows: the support obligation for the current month shall be paid first. If the amount of nonexempt disposable income withheld is not sufficient to pay the total support obligation for the current month for each obligee for whom there is an income withholding order, the amount withheld shall be divided between each obligee for whom there is an income withholding order on a pro rata basis. If the amount of the nonexempt disposable earnings withheld is in excess of the total support obligation for the current month for each obligee for whom there is an income withholding order, the excess shall be divided between each obligee for whom there is an income withholding order which includes withholding for any delinquency on a pro rata basis unless otherwise ordered by the court. **(subsection amended 2/26/08)**

(f) The employer shall continue to withhold the ordered amounts from nonexempt income of the obligor until notified by the court or the CSEP that the income withholding order has been modified or terminated. The employer shall promptly notify the CSEP when the employee is no longer employed, and of the employee's last known address, and the name and address of his new employer, if known. **(subsection amended 2/26/08)**

(g) The employer may deduct a processing fee, not to exceed five dollars ($5.00), to cover the costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount withheld to satisfy the withholding order, but the total amount withheld, including the fee, shall not exceed forty percent (40%) of the obligor's disposable income.

(h) The employer may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion

thereof which is attributable to each individual employee is separately designated.

(i) An order for income withholding for support entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment, income withholding order, or garnishment for child support.

**§4-5-59 Penalties for Employers**

(a) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this chapter. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the obligor shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and other damages suffered as a result of the violation and for costs and reasonable attorney's fees, and may be subject to a civil penalty of up to three hundred dollars ($300) for each violation. In addition, the employer may also be ordered to hire, rehire, or reinstate the aggrieved obligor.

(b) An employer who knowingly fails to retain and remit to the Nez Perce Accounting Department an amount pursuant to the income withholding order shall be liable to the CSEP for the amount to be retained specified in the income withholding order and may be subject to a fine of up to one hundred dollars ($100), which is a debt due and owing to the CSEP unless: **(subsection amended 2/26/08)**

(1) The employer notifies the court or CSEP that the obligor is not in his employ and the CSEP verifies the obligor's nonemployment and withdraws its income withholding order; or

(2) The obligor's income is not sufficient and therefore the restrictions in section 303(b) of the Consumer Credit Production Act (15 U.S.C. 1673(b)), apply and a lesser amount must be withheld.

(c) No employer who complies with an income withholding order that is regular on its face shall be subject to civil liability to any individual or agency for conduct in compliance with the income withholding order.

**§4-5-60 Identifying Information -- Filing with Tribunal and Child Support Services**

Obligors and obligees shall file with the court or the CSEP, if the CSEP is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of the employer. Obligors and obligees shall provide written notification of any changes within ten (10) days after such changes. **(subsection amended 2/26/08)**

**§4-5-61 Order for Payment of Medical Expenses**

(a) A proceeding to enforce a support order directing the payment of medical expenses of a dependent child may be commenced as provided in § 4-5-56.

(b) The petition or motion may be filed by an obligee when medical expenses not otherwise provided without charge to the obligee by the Indian Health Service, or NiMiiPuu

Health, or Medicaid, or otherwise covered by insurance have been incurred in the amount of one hundred dollars ($100) or more, or when insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is claimed to be due from the obligor equal or exceed one hundred dollars ($100). The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the order, including **(amended by NPTEC 3/22/11)**

(c) Upon the filing of a petition or motion and affidavit containing the information required in subsection (2) of this section, the clerk of the court shall set a hearing thereon. The obligee shall serve a copy of the petition or motion, accompanying affidavit and notice of hearing on the obligor by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(d) After hearing, the court shall enter its order directing payment of the specific sums, if any, for which the obligor is found to be liable for previously incurred medical expenses. In addition, if the court determines that some or all of the medical expenses of the dependent child are of an ongoing or recurring nature and the anticipated amounts thereof are capable of determination to the satisfaction of the court, the court may order payment to the obligee of a specific sum per month toward such expenses.

(e) For purposes of this section "medical expenses" means any and all costs and expenses related to health care incurred on behalf of a dependent child, including insurance premiums and any deductible amounts, all or a portion of which are ordered to be paid by the obligor in addition to any amount awarded as child support, pursuant to a support order.

### §4-5-62 Termination of Income Withholding upon Obligor's Request

(a) An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(b) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(c) Mistake of fact is the only basis for contesting income withholding.

### §4-5-63 Health Insurance Coverage - Enforcement

(a) Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the CSEP or other obligee may seek enforcement of the coverage order as provided under this section provided that, where health care is available to a child based upon a parent's status as an American Indian/Alaskan Native, the federal health care exemption shall apply and CSEP shall not seek

enforcement. **(amended by NPTEC 3/22/11)**

(b)

(1) If the obligor's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, then the CSEP may, without further notice to the obligor, send a notice of intent to enroll to the obligor's employer by certified mail, return receipt requested. The notice which shall include a copy of the order shall require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(2) If the obligor's order to provide health insurance coverage does not order payments through, and has not been submitted to, the CSEP:

(A) The obligee may, without further notice to the obligor, send a certified copy of the order requiring health insurance coverage to the obligor's employer by certified mail, return receipt requested; and

(B) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court.

(c) Upon receipt of an order that provides for health insurance coverage, or a notice of intent to enroll:

(1) The obligor's employer shall answer the party who sent the order or notice within thirty (30) days and confirm that the child:

(A) Has been submitted in the health insurance plan;

(B) Cannot be covered, stating the reasons why such coverage cannot be provided.

(2) The employer shall withhold any required premium for the obligor's dependents from the obligor's income or wages;

(3) If more than one (1) plan is offered by the employer, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(4) The employer or insurer shall provide the name of the health insurance coverage provider or insurer, the extent of coverage available and other necessary information to the CSEP or other obligee and shall make available any necessary claim forms or enrollment membership cards.

(d) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the CSEP or other obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within thirty (30) days of service of the notice, or within thirty (30) days of coverage becoming available, the CSEP or other obligee may proceed to enforce the order directly as provided in subsection (b) of this section.

(e) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the CSEP or other obligee may serve a written notice of intent to enroll the child in a separate health insurance coverage plan on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(f) If the CSEP serves a notice under subsection (e) of this section, the obligor may, within thirty (30) days of the date of service:

(1) File a motion with the tribal court; or

(2) Provide written proof to the CSEP that the obligor has either applied for, or obtained coverage accessible to the child.

(g) If an obligee other than the CSEP serves a notice under subsection (5) of the section, within thirty (30) days of the date of service, the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(h) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may enroll the obligor's child in the health insurance coverage specified in the notice directly. The employer shall withhold the amount of the premium from the income of the obligor. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)). The employer shall forward the amount of premium withheld to the insurance provider.

(i) If the coverage is terminated or amended, the employer shall mail a notice of termination or amendment to the CSEP or other obligee at the obligee' s last known address within forty-five (45) days of the termination date.

(j) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in court at any time to enforce, modify or clarify the original support order.

(k) If the amount of the obligor's income or wages which are withheld under subsection (c)(2) of this section is insufficient to pay the premium for the dependents, the obligor shall, nevertheless, be responsible for payment of the premium.

(l) The employer shall not disenroll or eliminate coverage of any such child unless:

(1) The employer has been provided satisfactory written evidence that the

order requiring such health care coverage is no longer in effect; or

(2) The employer has received confirmation that the child is enrolled in other comparable health care coverage; or

(3) The employer has eliminated family health coverage for all of its employees; or

(4) The employee upon whose employment the health coverage is premised has ceased employment with the employer and reasonable measures have been taken to give notice to the parents or guardians of the child.

### §4-5-64 Termination or Modification of Income Withholding upon Obligee' s Request

The court may quash, modify or terminate an income withholding order upon written request therefor by the obligee, unless the court finds that the termination would not be in the best interests of the dependent child.

### §4-5-65 Termination of Income Withholding by the Court in a Judicial Proceeding

If the clerk is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the obligor.

### §4-5-66 Location of Noncustodial Parent

(a) The Nez Perce Tribe Child Support Enforcement Division (CSEP) maintains a service to locate noncustodial parents using:

(1) All sources of information and available records on the Nez Perce Reservation, in Idaho or other states; and

(2) The Federal Parent Locator Service (FPS) maintained by the federal Department of Health and Human Services.

### §4-5-67 Modification **(section added 2/26/08)**

(a) Any order for child support, in which the tribal court has original jurisdiction or to which both parties agree to a modification in tribal court, may be modified on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion to modify.

(1) If application of the guidelines results in an order that varies fifteen percent (15%) or more from the existing amount, the fifteen percent variation in the amount of the order will be considered evidence of a substantial and continuing change of circumstances.

(2) The addition of health insurance coverage as defined in section 4-5-51(c)(3) or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance.

(b) Modification is effective on the first day of the month following notice of the motion for modification unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the motion for modification. The order of modification may include an award of attorney fees and court costs to the prevailing party.

(c) In a case receiving CSEP services, a party or the CSEP, if there is an assignment of rights resulting from the custodial person receiving TANF benefits, may request every three years that an order for child support be reviewed and, if appropriate, adjusted.

(1) The request may be made without a specific showing of a changed circumstance that is substantial and continuing.

(2) The CSEP shall conduct the review in accordance with the tribal child support guidelines.

(3) If appropriate, the CSEP shall file a motion in the tribal court to adjust the support amount.

(4) Every three years the CSEP shall notify the parties of their right to request a review of the order for support. The CSEP shall notify the parties by first class mail at their last known address or by including the notice in an order.

(d) If a party in a case receiving CSEP services requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

(e) Children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered in determining a modified support obligation.

### §4-5-68 Income Withholding Orders from Foreign Jurisdictions **(section added 2/26/08)**

The CSEP shall receive and process income withholding orders from other Tribes, States and other entities as follows: Within five days of receiving an income withholding order from a foreign jurisdiction either directly or as forwarded from a Tribal employer, the CSEP shall request transmittal of the case from the initiating IV-D agency. Upon receipt of the foreign order, CSEP shall proceed pursuant to § 4-5-53 and the procedural rules for the Recognition and Enforcement of Foreign Judgments. **(amended by NPTEC 3/22/11)**

### §4-5-69 Termination of Income Withholding upon Satisfaction of Support Obligation **(section added 2/26/08)**

Notice terminating the income withholding will be promptly sent to the employer when the support obligation, including any arrears, has been satisfied.

## §4-5-70 Amounts Improperly Withheld (section added 2/26/08)

The Nez Perce Accounting Department will promptly refund to the obligor any amounts improperly withheld from the obligor's earnings.

# CHAPTER 4-6
# SEX OFFENDER REGISTRATION CODE
**(Adopted by NPTEC 5/24/11; Amended by NPTEC 5/28/13)**

## GENERAL MATTERS

### §4-6-1 Title

This Code shall be known as The Nez Perce Tribe Sex Offender Registration Code (Code).

### §4-6-2 Purpose

The intent of this Code is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

### §4-6-3 Need

The Nez Perce Tribe is disproportionately affected by violent crime and sex offenses in particular from both Indian and non-Indian perpetrators; consequently, the conduct and presence of convicted sex offenders within the Nez Perce Reservation threatens the political integrity, economic security, health and welfare of tribal nations.

### §4-6-4 Creation of Registries

(a) Sex Offender Registry. There is hereby established a sex offender registry, which the Nez Perce Tribal Police shall maintain and operate pursuant to the provisions of this Code, as amended.

(b) Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the Nez Perce Tribal Police or designee shall maintain and operate pursuant to the provisions of this Code, as amended.

## TERMINOLOGY AND COVERED OFFENSES

### §4-6-5 Definitions

The Definitions below apply to this Code only.

(a) Convicted. An adult sex offender is "convicted" for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is "convicted" for purposes of this Code if the juvenile offender is either:

(1) Prosecuted and found guilty as an adult for a sex offense; or

(2) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(b) Foreign Convictions. A foreign conviction is one obtained outside of the United States.

(c) Employee. The term "employee" as used in this Code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

(d) Immediate. "Immediate" and "immediately" mean within 3 business days.

(e) Imprisonment. The term "imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of "house arrest".

(f) In Person. The term "in person" as used in this Code means that the individual must physically be present at the location required by the Code.

(g) Jurisdiction. The term "jurisdiction" as used in this Code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.

(h) Minor. The term "minor" means an individual who has not attained the age of 18 years.

(i) Nez Perce Tribal Police. When the term "Nez Perce Tribal Police" is used as a location, it refers to the Lapwai office at 210 Bever Grade. For instance, to appear in person at Nez Perce Tribal Police, refers to the Lapwai office at 210 Bever Grade.

(j) Resides. The term "reside" or "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

(k) Sex Offense. The term "sex offense" as used in this code includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 4-6-6 of this Code or any other covered offense under the Nez Perce Tribal Code.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was

not more than 4 years older than the victim.

(l) Sex Offender. A person convicted of a sex offense is a "sex offender".

(m) Sexual Act. The term "sexual act" means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(n) Sexual Contact. The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

(o) Student. A "student" is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

(p) SORNA. The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq*., as amended.

(q) Sex Offender Registry. The term "sex offender registry" means the registry of sex offenders, and a notification program, maintained by Nez Perce Tribal Police or designee.

(r) National Sex Offender Registry (NSOR). The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

(s) SMART Office. The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.

(t) Dru Sjodin National Sex Offender Public Website (NSOPW). The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

**§4-6-6 Covered Offenses**

Except as otherwise noted in section 4-6-6(c) below, individuals who are or have been convicted in the Nez Perce Tribal Court of any of the offenses listed in this section and who reside on property owned by the Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, are subject to the requirements of this code.

Individuals who have been convicted of a sex offense in any other court are required to register pursuant to the requirements of the Idaho Code.

(a) A conviction under any of the following provisions of the Nez Perce Tribal Code:

(1) §4-1-48 (Rape),

(2) §4-1-49 (Forcible Sexual Penetration with a Foreign Object),

(3) §4-1-50 (Unlawful Sexual Intercourse),

(4) §4-1-51 (Sexual Assault),

(5) §4-1-52 (Sexual Molestation of a Minor under Sixteen), or

(6) §4-1-86 (Incest).

(b) Any criminal offense committed in this Tribe that involves:

(1) Any type or degree of genital, oral, or anal penetration,

(2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,

(3) Kidnapping of a minor,

(4) False imprisonment of a minor,

(5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,

(6) Use of a minor in a sexual performance,

(7) Solicitation of a minor to practice prostitution,

(8) Possession, production, or distribution of child pornography,

(9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This

includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,

(10) Any conduct that by its nature is a sex offense against a minor, or

(11) Any offense similar to those outlined in:

(A) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),

(B) 18 U.S.C. §1801 (video voyeurism of a minor),

(C) 18 U.S.C. §2241 (aggravated sexual abuse),

(D) 18 U.S.C. §2242 (sexual abuse),

(E) 18 U.S.C. §2244 (abusive sexual contact),

(F) 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution), or

(G) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

(c) Offenders Registered in Other Jurisdictions. Any sex offender who is registered as a sex offender by any other jurisdiction (including the State of Idaho) and who resides on property owned by the Tribe in fee or trust regardless of location, is employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attends school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, is subject to the following provisions:

(1) If said offender is employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, the offender shall provide and the Nez Perce Tribal Police Department shall collect the offender's employer address information and such employer address information shall be made available to the public upon request;

(2) If an offender is classified as a Tier III offender by the State of Idaho, the Nez Perce Tribal Police Department shall conduct at least one in-person verification check of the offender's provided registration information. Any information obtained from such a check shall be immediately provided to the Central Registry.

**§4-6-7** ***Section Reserved***

**§4-6-8** ***Section Reserved***

**§4-6-9** ***Section Reserved***

## REQUIRED INFORMATION

### §4-6-10 General Requirements

(a) Duties. A sex offender covered by this code who is required to register with the Tribe pursuant to Sections 4-6-31 to 4-6-35 shall provide all of the information detailed in Sections 4-6-11 through 4-6-28 of this Code to the Nez Perce Tribal Police or designee, and the Nez Perce Tribal Police or designee shall obtain all of the information detailed in Sections 4-6-11 through 4-6-28 of this Code from covered sex offenders who are required to register with the Tribe in accordance with this Code and shall implement any relevant policies and procedures.

(b) Digitization. All information obtained under this Code shall be, at a minimum, maintained by the Nez Perce Tribal Police or designee in a digitized format.

(c) Electronic Database. A sex offender registry shall be maintained in an electronic database by the Nez Perce Tribal Police or designee and shall be in a form capable of electronic transmission.

### §4-6-11 Criminal History

(a) Criminal History. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

(1) The date of all arrests,

(2) The date of all convictions,

(3) The sex offender's status of parole, probation, or supervised release,

(4) The sex offender's registration status, and

(5) Any outstanding arrest warrants.

### §4-6-12 Date of Birth

(a) Date of Birth. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

(1) The sex offender's actual date of birth, and

(2) Any other date of birth used by the sex offender.

### §4-6-13 DNA Sample

(a) DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Nez Perce Tribal Police or designee a sample of his DNA.

(b) CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate lab for analysis and entry of the resulting DNA profile in to CODIS.

**§4-6-14 Driver's Licenses, Identification Cards, Passports, and Immigration Documents**

(a) Driver's License. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of all of the sex offender's valid driver's licenses issued by any jurisdiction.

(b) Identification Cards. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any identification card including the sex offender's tribal enrollment card issued by any jurisdiction.

(c) Passports. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

(d) Immigration Documents. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a photocopy of any and all immigration documents.

**§4-6-15 Employment Information**

(a) Employment. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, to include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

(1) The name of the sex offender's employer,

(2) The address of the sex offender's employer, and

(3) Similar information related to any transient or day labor employment.

**§4-6-16 Finger and Palm Prints**

Finger and Palm Prints. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format.

**§4-6-17 Internet Identifiers**

(a) Internet Names. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

(1) Any and all email addresses used by the sex offender,

(2) Any and all Instant Message addresses and identifiers,

(3) Any and all other designations or monikers used for self-identification in

internet communications or postings, and

(4) Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

**§4-6-18 Name**

(a) Name. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

(1) The sex offender's full primary given name,

(2) Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and

(3) Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

**§4-6-19 Phone Numbers**

(a) Phone Numbers. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

(1) Any and all land line telephone numbers, and

(2) Any and all cellular telephone numbers.

**§4-6-20 Picture**

(a) Photograph. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.

(b) Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected every year.

**§4-6-21 Physical Description**

(a) Physical Description. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

(1) A physical description,

(2) A general description of the sex offender's physical appearance or characteristics, and

(3) Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

**§4-6-22 Professional Licensing Information**

Professional Licenses. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

**§4-6-23 Residence Address**

(a) Address. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

(1) The address of each residence at which the sex offender resides or will reside, and

(2) Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

**§4-6-24 School**

(a) School Location. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

(1) The address of each school where the sex offender is or will be a student, and

(2) The name of each school the sex offender is or will be a student.

**§4-6-25 Social Security Number**

(a) Social Security. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information:

(1) A valid social security number for the sex offender, and

(2) Any social security number the sex offender has used in the past, valid or otherwise.

**§4-6-26 Temporary Lodging**

(a) Lodging Information. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for 7 days or more:

(1) Identifying information of the temporary lodging locations including

addresses and names, and

(2) The dates the sex offender will be staying at each temporary lodging location,

(3) Travel Abroad. In the event the sex offender will be traveling outside of the United States for any period of time, the sex offender shall provide such travel information to the Nez Perce Tribal Police or designee at least 21 days prior to such international travel, and the Nez Perce Tribal Police or designee shall immediately provide this information to U.S. Marshal's Service.

**§4-6-27 Offense Information**

Offense Information. The Nez Perce Tribal Police or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

**§4-6-28 Vehicle Information**

(a) Detailed Information. The Nez Perce Tribal Police or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

(1) License plate numbers,

(2) Registration numbers or identifiers,

(3) General description of the vehicle to include color, make, model, and year, and

(4) Any permanent or frequent location where any covered vehicle is kept.

**§4-6-29 Frequency, Duration and Reduction**

(a) Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the Nez Perce Tribal Police or designee for purposes of verification and keeping their registration current once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

(b) Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

(1) An offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years,

(c) Clean Record. For purposes of Paragraph (b) of this section, a person has a clean record if:

(1) He or she has not been convicted of any offense, for which imprisonment for more than 1 year may be imposed. This exception shall not include conviction for any offense under the Nez Perce Tribal Code that results in a sentence of imprisonment for 1 year,

(2) He or she has not been convicted of any sex offense,

(3) He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and

(4) He or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

**§4-6-30 Requirements for in Person Appearances**

(a) Photographs. At each in person verification, the sex offender shall permit the Nez Perce Tribal Police or designee to take a photograph of the offender.

(b) Review of Information. At each in person verification the sex offender shall review existing information for accuracy.

(c) Notification. If any new information or change in information is obtained at an in person verification, the Nez Perce Tribal Police or designee shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

**REGISTRATION**

**§4-6-31 Where Registration Is Required**

(a) A sex offender must initially register with the Nez Perce Tribal Police if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency.

**§4-6-32 Timing of Registration**

(a) Timing. A sex offender required to register with the Tribe under this code shall do so in the following timeframe:

(1) If convicted by the Nez Perce Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration,

(2) If convicted by the Nez Perce Tribe but not incarcerated, within 3 business days of sentencing for the registration offense, and

(3) Within 3 business days of establishing a residence, commencing employment, or becoming a student within the exterior bounds of the Nez Perce Reservation or otherwise reside on property owned by the Tribe in

fee or trust regardless of location, a sex offender must appear in person to register with Nez Perce Tribal Police or designee.

(b) Duties of Nez Perce Tribal Police. The Nez Perce Tribal Police shall have policies and procedures in place to ensure the following:

(1) That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe,

(2) That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,

(3) That the sex offender is registered, and

(4) That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

**§4-6-33 Retroactive Registration**

(a) Retroactive Registration. The Nez Perce Tribal Police shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this code:

(1) Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime,

(2) Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribe's laws or the laws of the State of Idaho, and

(3) Sex offenders reentering the justice system due to conviction for any crime.

(b) Timing of Recapture. The Nez Perce Tribal Police shall ensure recapture of the sex offenders mentioned in Paragraph (a) of this Section within one year from the date of passage of this code.

**§4-6-34 Keeping Registration Current**

(a) All sex offenders required to register in this jurisdiction shall immediately appear in person at the Lapwai office of the Nez Perce Tribal Police to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform Nez Perce Tribal Police in person, or by phone if outside of the jurisdiction boundaries, of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and Nez Perce Tribal Police shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

(b) Duties of Nez Perce Tribal Police. With regard to changes in a sex offender's registration information, the Nez Perce Tribal Police or designee shall immediately notify:

(1) All jurisdictions where a sex offender intends to reside, work, or attend school,

(2) Any jurisdiction where the sex offender is either registered or required to register, and

(3) Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Tribal Police shall also ensure this information is immediately updated on NSOR.

**§4-6-35 Failure to Appear for Registration and Absconding**

(a) Failure to Appear. In the event a sex offender fails to register with the Tribe as required by this code, the Nez Perce Tribal Police or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration.

(b) Absconded Sex Offenders. If the Nez Perce Tribal Police or designee receives information that a sex offender has absconded the Nez Perce Tribal Police shall make an effort to determine if the sex offender has actually absconded.

(1) In the event no determination can be made, the Nez Perce Tribal Police or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.

(2) If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

(3) If an absconded sex offender cannot be located then the tribal police shall take the following steps:

(A) Update the registry/public website to reflect the sex offender has absconded or is otherwise not capable of being located,

(B) Notify the U.S. Marshals Service,

(C) Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,

(D) Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and

(E) Enter the sex offender into the National Crime Information Center Wanted Person File.

(c) Failure to Register. In the event a sex offender who is required to register due to their residence, employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the Nez Perce Tribal Police shall take all appropriate follow-up measures including those outlined in Section 4-6-32(b). The Nez Perce Tribal Police shall first make an effort to determine if the sex offender actually resides, is employed or attending school in lands subject to the Tribe's jurisdiction.

(d) Criminal penalty. Each violation of a provision of the Nez Perce Tribe Sex Offender Registration Code by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of up to one year and a fine of up to $500.

(e) Civil Penalty. Each violation of a provision of the Nez Perce Tribe Sex Offender Registration Code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

## PUBLIC SEX OFFENDER REGISTRY WEBSITE

### §4-6-36 Website

(a) Website. The Nez Perce Tribal Police or designee shall use and maintain a public sex offender registry website.

(b) Links. The registry website shall include links to sex offender safety and education resources.

(c) Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

(d) Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

(e) Search Capabilities. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.

(f) Dru Sjodin National Sex Offender Public Website. The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

### §4-6-37 Required and Prohibited Information

(a) Required Information. The following information shall be made available to the public on the sex offender registry website:

(1) Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,

(2) All sex offenses for which the sex offender has been convicted,

(3) The sex offense(s) for which the offender is currently registered,

(4) The address of the sex offender's employer(s),

(5) The name of the sex offender including all aliases,

(6) A current photograph of the sex offender,

(7) A physical description of the sex offender,

(8) The residential address and, if relevant, a description of a habitual residence of the sex offender,

(9) All addresses of schools attended by the sex offender, and

(10) The sex offender's vehicle license plate number along with a description of the vehicle.

(b) Prohibited Information. The following information shall not be available to the public on the sex offender registry website:

(1) Any arrest that did not result in conviction,

(2) The sex offender's social security number,

(3) Any travel and immigration documents,

(4) The identity of the victim, and

(5) Internet identifiers (as defined in 42 U.S.C. §16911).

(c) Witness Protection. For sex offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

**§4-6-38 Community Notification**

(a) Law Enforcement Notification. Whenever a sex offender registers or updates his or her information with the Tribe, the Nez Perce Tribal Police or designee shall:

(1) Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases,

(2) Immediately notify any agency, department, or program within the Tribe

that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation,

(3) Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment,

(4) Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993 (42 U.S.C. 5119a) when a sex offender registers or updates registration.

(b) Community Notification. The Nez Perce Tribal Police or designee shall ensure there is an automated community notification process in place that ensures the following:

(1) Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated,

(2) The Tribe's public sex offender registry has a function that enables the general public to request an email notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

**IMMUNITY**

**§4-6-39 Immunity**

(a) No waiver of immunity. Nothing under this Code shall be construed as a waiver of sovereign immunity for the Nez Perce Tribe, its departments, agencies, employees, or agents.

(b) Good faith. Any person acting under good faith of this Code shall be immune from any civil liability arising out of such actions.

# TITLE 5
# JUVENILES AND DEPENDENTS
# CHAPTER 5-1
# MINORS IN NEED OF CARE

## INTRODUCTORY PROVISIONS

### §5-1-1 Definitions **(amended by NPTEC 7/8/03)**

(a) "Abandon" means the failure of the parent(s), guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a normal parental relationship with the child without just cause for a period of one year shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not necessarily constitute abandonment.

(b) “Abuse” means the infliction of physical, emotional or mental injury on a child; sexual abuse or sexual exploitation of a child, including treatment, exploiting or overworking a child to such an extent that his health, or emotional well-being is endangered; committing acts of domestic violence in the physical presence of a child or knowing that a child is present and may see or heat an act of domestic violence. **(revised 6/22/99)**

(c) "Acknowledged father" means a man who has established a father-child relationship under the Voluntary Acknowledgment of Paternity section of this Chapter;

(d) "Adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child;

(e) "Adult" means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.

(f) "Alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:

(1) A presumed father;

(2) A man whose parental rights have been terminated or declared not to exist; or

(3) A male donor.

(g) “Case Plan” means a plan developed by the social services worker, the child(ren) and family to remedy the problem. **(added 6/22/99)**

(h) "Child or minor" means a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(i) “Child Protection Core Team” means a core team consisting of service providers from various agencies established to involve and coordinate child welfare and protection services for children. **(added 6/22/99)**

(j) "Commence" means to file the initial pleading seeking an adjudication of parentage in the Nez Perce Tribal Court;

(k) "Custodian" means a person, other than a parent or guardian, to whom custody of the child has been given.

(l) “Department” means the Tribal Social Services Department of the Nez Perce Tribe. **(added 6/22/99)**

(m) "Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under this Chapter or by adjudication by the court;

(n) "Domicile" means a person's residence in which they intend to remain indefinitely.

(o) "Emergency foster home" means a foster home which has been licensed to accept emergency placements of children at any hour of the day or night.

(p) "Extended family" means a person who has reached the age of eighteen (18) years and who is the minor's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, stepparent or is considered to be extended family under the laws and custom of the Nez Perce Tribe.

(q) "Foster home" means a home which has been licensed under this chapter.

(r) "Garnishee" means the person against whom an order of garnishment is entered.

(s) "Genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one (1) or a combination of the following:

(1) Deoxyribonucleic acid (DNA); and

(2) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes.

(t) "Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child.

(u) "Guardian Ad Litem" means a person appointed by the Court to represent the child's interests before the Court.

(v) "Incompetent" means a lack of ability, legal qualification or fitness to care for one’s child.

(w) "Man" means a male individual of any age.

(x) "Neglect" means the failure of the parent(s), guardian or custodian to provide

adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being.

(y) "Parent" includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(z) "Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

(aa) Paternity index" means the likelihood of paternity calculated by computing the ratio between:

(1) The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is the father of the child; and

(2) The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.

(bb) "Presumed father" means a man who, by operation of law under § 5-1 (Presumption of Paternity section) is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

(cc) "Probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability;

(dd) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(ee) "Signatory" means an individual who authenticates a record and is bound by its terms;

(ff) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(gg) "Support" means any means of living including housing, food, clothing, health, medical needs, proper recreation, transportation expenses and others.

**§5-1-2 Purpose**

This chapter shall be construed to provide for the welfare, care and protection of Indian children and families on the Nez Perce Reservation and wherever they reside.

**§5-1-3 Transfer of Jurisdiction**

(a) The Court may transfer any juvenile proceedings before it to an appropriate state court or another tribal court where the state or the other tribe has a significant interest in the child and the transfer would be in the best interest of the child.

(b) The Court may accept or decline transfers of minor in need of care cases from other federal, state or tribal courts.

**§5-1-4 Agent for Service of ICWA Notices**

The Nez Perce Tribal agent for service of notice of state court child custody proceedings, as defined by the Indian Child Welfare Act, shall be the child welfare program or its designees. **(revised 6/22/99)**

**§5-1-5 Comity**

State court orders and those issued by other tribal courts involving children over whom the Court could take jurisdiction may be recognized by the Court only after a full independent review of such state or tribal proceedings has determined:

(a) the Court had jurisdiction over the child;

(b) were applicable, the provisions of the Indian Child Welfare Act, 25 U.S.C. 1901 - *et seq*. were properly followed;

(c) due process was provided to all interested persons participating in the proceedings, and;

(d) the proceedings do not violate the public policies, or common law of the Nez Perce Tribe.

**§5-1-6 Core Team (revised 6/22/99)**

(a) The purpose of the core team shall be to coordinate the resources and services of social services, juvenile and other experts in the prevention of abuse or neglect of Indian children. The core team shall be advisory in nature. Confidentiality shall be maintained by all team members at all times.

(b) The core team shall:

(1) review and monitor all child abuse and neglect reports referred to the Department, within the last thirty (30) days, to ensure that adequate preventive, protective, and corrective services are provided and the best interests of the child are being met;

(2) identify available community resources, programs and services for the prevention of child abuse and neglect;

(3) provide a forum for consideration of and recommendations on care, treatment, placement and disposition to appropriate staff or the Tribal Court;

(4) promote cooperation, communication, and consistency among agencies;

(5) develop procedures to provide effective and efficient preventive, protective, and corrective child abuse and neglect services; and

(6) assist in the development and implementation of plans to promote the long-term well-being of children and their families.

(c) The core team shall meet as often as necessary and at least one time each month. The child caseworker shall be responsible for the coordination of core team meetings including but not limited to:

(1) scheduling;

(2) establishing the agenda with the participation of the other team members;

(3) oversight of meetings and recording of the minutes of meetings; and

(4) negotiating a memorandum of understanding with the appropriate federal and state agencies addressing participation, procedures, the purpose and function of the team and rules of order.

**§5-1-7 Minors in Need of Care Records**

(a) A record of all hearings under this chapter shall be made and preserved. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All records including law enforcement and social service reports shall be confidential and shall not be open to inspection to any but the following:

(1) the child;

(2) the child's parent(s), guardian or custodian;

(3) the prospective adoptive parent(s);

(4) the child's counsel or guardian ad litem;

(5) the Court, law enforcement and social service personnel directly involved in the handling of the case;

(6) any other person by order of the Court, upon a showing of extraordinary need.

(b) Records or statistical information may be released for the purpose of legitimate research or study upon order of the Court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

### §5-1-8 Notice

For purposes of this chapter, those persons entitled to be notified of minor in need of care proceedings, shall include the parent(s), guardian or custodian of the child involved. Notification shall be conducted as provided by the Rules of Civil Procedures.

## CHILD ABUSE REPORTS/INVESTIGATION/REMOVAL

### §5-1-9 Duty to Report Child Abuse and Neglect (revised 6/22/99)

(a) Any person who has reasonable cause to believe that a child has been abused, neglected or abandoned shall immediately report the abuse, neglect or abandonment to the Indian Department and/or tribal police.

(b) Any physician, nurse, dentist, optometrist, or any other medical or mental health professional; school principal, school teacher, or other school official; social worker; child day care center worker or other child care staff including foster parents, residential care or institutional personnel; counselor; peace officer or other law enforcement official; judge, attorney, court counselor, clerk of the Court, or other judicial system official who has a reasonable suspicion that a child has been abused, neglected or abandoned shall immediately make an oral report of the abuse, neglect or abandonment to the Indian child welfare worker and/or tribal police followed by a written report within five (5) business days.

(c) The following information, if known, shall be included in a written report required by this section:

(1) names, addresses, and tribal affiliation of the child and his parent(s), guardian, or custodian;

(2) the child's date of birth;

(3) the nature and content of the child's abuse or neglect;

(4) previous abuse or neglect of the child or his siblings, if known;

(5) the name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known;

(6) the name and address of the person or agency making the report; and

(7) the date, time and agency reported to, of the initial oral report.

(d) Any person mandated to report child abuse or neglect under this section who knowingly fails to do so or wilfully prevents someone else from doing so shall be subject to a civil cause of action. All persons or agencies who report, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution related to such reporting.

## §5-1-10 Investigation and Removal (revised 6/22/99)

(a) In non-emergency situations the Department case worker shall investigate reports of child abuse, neglect or abandonment within three (3) business days of receiving a report. The tribal police or case worker may remove a child provided that:

(1) a court order is obtained; and

(2) the person removing the child ensures the safety and well-being of the child.

(b) In the case of an emergency, the tribal police shall immediately investigate any report of child abuse, neglect or abandonment. A tribal police officer may immediately remove a child if the officer reasonably believes:

(1) failure to remove the child may result in a substantial risk of death, permanent injury, or serious physical or emotional harm to the child; or

(2) the parent(s), guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangements have been made by the parent(s), guardian or custodian to provide for such necessities.

(c) Upon removal of a minor child from their home by the tribal police, the officer will immediately place the child with a caseworker from the Department or the Department of Health and Welfare.

## §5-1-11 Notice of Removal

Within twenty four (24) hours of removing a child, the person responsible for such removal shall make all reasonable attempts to notify the parent(s), guardian or custodian of the removal and the reason therefor.

## §5-1-12 Restrictions on Placement of Children

(a) A child alleged to be neglected or abused may be placed in the following: **(revised 6/22/99):**

(1) a licensed foster home or a home otherwise authorized under tribal law to provide foster care, group care or protective residence;

(2) a facility operated by a child welfare services agency approved by the Court;

(3) with a relative of the child who certifies to the case worker that the child will not be returned to the alleged abusive or neglectful parent(s), guardian or custodian without the prior approval of the Court; or

(4) any other suitable place approved by the Court.

(b) A child alleged to be neglected or abused shall not be detained in a jail or other facility intended or used for the incarceration of adults charged with criminal offenses or for the detention of children alleged to be juvenile delinquents.

(c) No child shall remain in temporary custody for a period exceeding three business (3) days, unless a minor in need of care petition is filed.

**PROCEEDINGS**

**§5-1-13 Proceedings in General**

In addition to the other provisions of this chapter, in any juvenile proceedings:

(a) the Court shall advise the party(s) of the reason for the proceedings;

(b) parties may present evidence relating to the situation as authorized by the Court;

(c) evidence shall be admitted in accordance with the Rules of Evidence;

(d) the general public shall be excluded from the proceedings and the Court shall be authorized to further limit hearing attendance to only the parties, their counsel and witnesses; and

(e) the Court shall specify in writing the facts, grounds, and, if applicable, code sections upon which it relied in issuing its order.

**§5-1-14 Filing Minor in Need of Care Petition**

(a) minor in need of care proceedings shall be instituted by a petition filed by the tribal prosecutor with the Court on behalf of the tribe and in the best interests of the child. If a child has been removed from the home, then the petition shall be filed no later than 12:00 (noon) of the second business day following the removal.

(b) The minor in need of care petition shall set forth the following with specificity:

(1) the name, birth date, sex, residence and tribal affiliation of the child;

(2) the basis for the Court's jurisdiction;

(3) the specific allegations of abuse, neglect or abandonment;

(4) a plain and concise statement of the facts upon which the allegations of abuse, neglect or abandonment are based, including the date, time and location at which the alleged facts occurred;

(5) the names, residences and tribal affiliation of the child's parent(s), guardians or custodians, if known; and

(6) if the child is placed outside of the home, where the child is placed, the facts necessitating the placement and the date and time of the placement.

(c) The prosecutor may omit any petition information otherwise required by this

section if he has reason to believe that such information will threaten the health or safety of the child involved and he submits a written explanation to the Court.

**§5-1-15 Notice of Removal**

Within twelve (12) hours of the filing of a minor in need of care petition involving a child who has been removed from the home, the Tribal Court shall make all reasonable efforts to notify the parent(s), guardian or custodian of such filing.

**§5-1-16 Shelter Care Hearing**

(a) A shelter care hearing shall be held before the end of the second business day following the filing of the minor in need of care petition in order to determine whether:

(1) it is reasonable to believe that continuing absence from the home is necessary to protect the well-being of the child;

(2) the best interest of the child requires further action from the Court; and

(3) the Tribal Court has jurisdiction over the case.

(b) All parties shall be entitled to advance copies of court documents, including petitions and reports, unless otherwise ordered by the Court.

(c) During the hearing the Court shall advise all parties that they have a right to:

(1) be represented by an attorney at their own expense in all proceedings under this chapter;

(2) introduce evidence;

(3) be heard on their own behalf;

(4) examine witnesses; and

(5) be informed of possible consequences if the allegations of the petition are found to be true.

(d) Possible outcomes of the shelter care hearing may include:

(1) dismissal of the petition and the return of the child to the home of the parent(s), guardian or custodian;

(2) granting of the petition and;

(A) the return of the child to the home of the parent(s), guardian or custodian under the supervision of the Court;

(B) continue the child in out-of-home placement; or

(3) stipulation by the parent(s) that the child is in need of care and to

voluntary placement.

(e) If the minor in need of care petition is not dismissed or is stipulated to by the parent(s), and the child continues in out-of-home placement, the child shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. In any out-of-home placement, preference shall be given, in the absence of good cause to the contrary, to a placement with: **(subsection approved by NPTEC 6/8/10)**

(1) a fit and willing member of the child's extended family;

(2) a foster home licensed, approved, or specified by the tribe;

(3) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(4) an institution for children approved by the tribe or operated by a tribe or Indian organization which has a program suitable to meet the child's needs.

(f) If the minor in need of care petition is not dismissed or stipulated to at the shelter care hearing or within thirty (30) days thereafter, the Court will set a date for formal trial. Such date will be no later than ninety (90) days after the filing of the petition.

**§5-1-17 Trial**

(a) During a trial on a minor in need of care petition:

(1) if the Court determines that it is in the best interests of the child and does not violate the rights of any party it may allow the child to testify by means of a videotape deposition, closed circuit television or other appropriate method; or

(2) the burden of proof lies with the tribe to establish by clear and convincing evidence that the allegations raised in the minor in need of care petition are true and that the best interests of the child will be served by continued court jurisdiction.

(b) Following trial, the Court will either find the minor in need of care or dismiss the petition, unless the hearing shall be continued to a date certain to allow for the presentation of further evidence. If the Court finds the minor in need of care it may:

(1) find out of home placement unnecessary but continue court intervention and supervision as appropriate;

(2) provided that the grounds for continuing removal under this chapter are met, order that the child remain out of the home absent a specific court order; or

(3) find out-of-home placement necessary, but that with the accomplishment

of specified actions by the parent(s), guardian or custodian, order a subsequent review hearing to determine if the child should be returned to his home.

(4) issue any other order the Court deems appropriate including, but not limited to the parent(s)/guardian/custodian's responsibility for child support and/or drug/alcohol/psychological treatment costs. **(added 6/22/99)**

(c) In any case in which the Court determines that a child may be returned home either immediately or sometime in the future, it will specify appropriate actions, and the time frames for such actions, that the parent(s), guardians, or custodians must accomplish before the child is returned. The order will also specify the responsibilities of any support agency or personnel to be involved.

**§5-1-18 Default Judgment**

If the parent(s), guardian or custodian fails to appear for the trial, the Court may find such party in default, and enter an appropriate order. Prior to finding a party in default, the Court must be satisfied that reasonable steps have been taken to notify such party of the trial.

**§5-1-19 Review Hearings**

(a) In the event a minor is found to be in need of care, the Court shall hold a review hearing within six (6) months of the trial to determine if continued court intervention and supervision is necessary. As long as court intervention continues, the Court shall hold a review hearing every six (6) months.

(b) If continued court intervention is determined to be necessary, the Court shall set forth in a written order:

(1) certification that reasonable efforts have been made to reunite the family but sufficient grounds exist to continue out of home placement; and

(2) if applicable, appropriate placement, treatment, counseling or other requirements for the next review period.

**§5-1-20 Grounds for Continuing Removal**

Sufficient grounds for continuing removal from the home of a parent(s), guardian or custodian exists if there is a continued risk of harm because:

(a) a child has no parent(s), guardian or custodian available, willing and capable to care for him;

(b) the child has suffered, or is likely to suffer, a physical injury inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement or impairment of bodily functions;

(c) the child has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent(s), guardian or custodian;

(d) the child has been sexually abused, molested or exploited;

(e) the child has committed delinquent acts as a result of parental or caretaker pressure, guidance or approval; or

(f) the child has been emotionally abused or neglected.

(g) The child has witnessed or is aware of continuing acts of domestic violence in the home. **(added 6/22/99)**

## TERMINATION OF PARENTAL RIGHTS

### §5-1-21 Termination of Parental Rights

(a) The parent/child relationship may be terminated either voluntarily or involuntarily. No parental rights may be terminated unless a petition has first been filed, notice has been given, and a hearing held. Termination of the parent/child relationship shall be initiated by the filing of a petition by:

(1) the tribal prosecutor;

(2) a parent or other adoption petitioner, concurrent with an adoption petition;

(3) a parent, in accordance with the provisions for voluntary termination of his parental rights provided by this section.

(b) A petition seeking involuntary termination of the parent/child relationship must be based on the following grounds:

(1) the return of the child to the custody of the parent(s) is likely to result in serious physical or permanent emotional damage to the child;

(2) the party seeking termination of the parental rights will satisfy the Court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family and that these efforts have proved unsuccessful; and

(3) such efforts are unlikely to be successful in the future.

(c) Relinquishment of parental rights by voluntary termination shall be initiated by a petition signed by the parent(s) in the presence and with approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after birth of the child. The Court shall ensure that the parent(s) understand the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his parental rights shall be provided an interpreter if he does not understand English.

(d) A petition for termination of parental rights whether voluntary or involuntary shall include to the best information and belief of the petitioner:

(1) full name, sex, date and place of birth, residence and tribal affiliation of

the child;

(2) basis for the Court's jurisdiction;

(3) names, addresses, tribal affiliation, and dates of birth of the child's parents;

(4) the name and address of the person or agency having legal or temporary custody of the child;

(5) the grounds on which the termination is sought;

(6) the signature of the petitioner and the date signed.

(e) When any of the facts required by this section are unknown, the petition shall so state. After a petition for the involuntary termination of parental rights has been filed, the Court shall set the time and place for hearing.

(f) If the parental rights are terminated:

(1) all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control visitation or support existing between the child and parent shall be terminated unless otherwise directed by the Court or this section;

(2) the parent(s) shall have no standing to appear at any future legal proceeding concerning the child;

(3) any support obligation accrued prior to the effective date of the order terminating parental rights shall not be terminated;

(4) the rights of one parent may be terminated without affecting the rights of the other parent;

(5) a termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination;

(6) the child shall not be disentitled to any benefit due the child from any non-parental third person, agencies, state or the United States;

(7) any rights the child derives from the child's descent from a member of a federally recognized Indian tribe shall not be affected;

(8) if no person having parental rights remains, the child shall be committed to the custody of the Tribal Court for the purpose of placing the child for adoption. In the absence of an adoptive home, the child may be placed in a licensed foster home, with a relative or other suitable placement. The Court shall retain jurisdiction concerning the adoption of the child, the marriage of the child, the enlistment of the child in the armed forces of the

United States, and consent to such matters as might normally be required of the child's parent.

(g) If a child has not been adopted or placed as provided by this section, within six (6) months of the termination order, the Court will hold another six (6) month review hearing. Such hearings will continue every six (6) months thereafter until the child is adopted or placed.

## FOSTER HOMES

### §5-1-22 Foster Homes in General

(a) If a child cannot be returned home, the Court may use the following preferences in placing the child subject to the requirements of subsection (b):

(1) members of the child's or parents' extended family;

(2) persons recommended by the child's parents who qualify for foster home licensing;

(3) the licensed foster home of an Indian family of the same tribe as the child;

(4) the licensed foster home of an Indian family including that of a different tribe;

(5) the licensed foster home of any other family which can provide a suitable home for the child.

(b) The Court shall place the child in the least restrictive setting which most approximates a family, is within reasonable proximity to his home and in which his special needs, if any, are met. In addition, the placement of a child shall be conducted with the best interest of the child in mind including the consideration of:

(1) the wishes of the, child and/or the child's parent(s);

(2) the child's adjustment to a new home, school or community;

(3) the mental and physical health of the child; and

(4) the need to promote continuity and stability in the life of the child.

### §5-1-23 Foster Home Licensing Procedures

(a) The case worker shall accept applications for foster homes either on or off the Nez Perce Reservation. The case worker shall make or cause to be made a complete investigation and determine, within ninety (90) days of receiving the application, whether to issue a license to the foster home authorizing it to accept minors in need of care. In addition, the case worker may, upon twenty-four (24) hours' notice, inspect a licensed foster home at any time. The case worker may examine not only the potential applicants, but also any other person who is familiar with the applicants and is familiar with the type of care they provide to children in their care, if any. In order to obtain and retain a license, a foster home must meet the following conditions:

(1) the foster parent(s) must maintain the child's mental and physical health and the foster home must be constructed, arranged and maintained to this end;

(2) members of the household must be in such physical and mental health so as not to adversely affect either the health of the child or the quality of his care;

(3) a foster home shall not be licensed whenever any member of the household is on parole or probation or under house arrest;

(4) members of the household must never have been convicted of a sex offense and may not have any felony convictions. Exceptions concerning non-sexual felony convictions may be made upon a substantial showing of mitigating factors;

(5) the foster parent(s) must have an income sufficient to care for all individuals in the foster home. The case worker may take into account any foster care stipend when determining the financial ability of the foster care parent(s);

(6) the foster parent(s) shall not subject the child to verbal abuse, derogatory remarks or threats to expel the child from the foster home. No child shall be deprived of meals, mail or family visits as a method of discipline. When discipline or punishment must be administered, it shall be done with understanding and reason.

(b) Any license issued shall apply only to the residence(s) where the applicant is living at the time application for a license is made but shall include a provision allowing the licensee to conduct a permanent change of residence upon inspection and approval of the new residence in accordance with this section.

(c) The foster care licensee is required to notify the case worker:

(1) whenever a change of residence is contemplated;

(2) within 48 hours whenever a change in the household occurs such as one of the foster care parents is convicted or accused of a major crime or if one of the foster parents moves out of the residence, or if any other person moves into the residence.

(d) Following a hearing on the record in accordance with the administrative procedures provided by this code, an order to revoke a foster home license may be issued if the home at any time does not meet the conditions listed in this section or the foster care licensee is otherwise in violation of this chapter.

**§5-1-24 Medical Needs**

In case of sickness or accident to a foster child, immediate notice shall be given to the case worker. Foster parent(s) or other persons with whom a child is placed may consent to surgery or other treatment in a medical emergency unless otherwise ordered by the Court.

## PARENTAGE AND SUPPORT

### §5-1-25 *Establishment of Parentage and/or Support* *(Section renumbered now § 5-1-40)*

### §5-1-26 *Hearing* *(Section renumbered now § 5-1-41)*

### §5-1-27 Procedure for Support Payment

Unless otherwise ordered by the Court, all court ordered payments for child support shall be paid to the Clerk of Court who shall record and transfer the payments to the person(s) entitled to them.

## ADOPTIONS

### §5-1-28 Adoptions in General

The purpose of adoptions shall be to give the adoptee a permanent home. Adoptions may be "open" or "closed" as ordered by the Court upon stipulation by the parties or in the best interest of the child.

### §5-1-29 The Petition

(a) An adoption petition shall be filed with the juvenile court by the person proposing to adopt. A husband and wife, who live together, shall file a joint petition except that a person who is already the natural or adopted parent of the proposed adoptee shall not be required to join in the petition. Only one petition shall be required for the adoption of all or any combination of siblings, provided that each sibling to be adopted is named in the petition.

(b) The petition for adoption shall include the following, to the best information and belief of the petitioner:

(1) the full name, address, and tribal affiliation of the petitioner;

(2) the full name, sex, residence, date and place of birth, and tribal affiliation of the proposed adoptee(s);

(3) the name by which the proposed adoptee shall be known if the petition is granted;

(4) the basis for the Court's jurisdiction;

(5) if the proposed adoptee is a child, a full description and statement of value of all property owned, possessed or in which the child has an interest;

(6) the relationship of the petitioner to the proposed adoptee;

(7) the names and addresses of any person or agency whose consent to the adoption is necessary; and

(8) the signature of the petitioner, date of signing, and notarization or witness by the clerk of the Court.

(c) When a petition for the adoption of a child is filed, the Court shall immediately request that a case worker or qualified agency submit to the Court within ten (10) business days a home study on the petitioner and report which shall contain:

(1) the circumstance of the home and the petitioner and his ability, both physically and mentally, to assume the responsibilities of a parent of the child;

(2) other pertinent information designed to assist the Court in determining the best placement for the child; and

(3) whether or not the home most closely resembles that of the child's culture, identity, and where applicable, his tribal affiliation.

The Court may order additional home studies or reports as it deems necessary.

**§5-1-30 Hearing**

(a) An adoption hearing shall be held by the Court within ninety (90) days of receipt of an adoption petition to determine if it is in the best interests of the child to be adopted by the petitioners. To this end, the Court shall consider the:

(1) validity of written consent;

(2) termination of parental rights order;

(3) length of time of the child's wardship by the Court;

(4) special conditions of the child;

(5) the adoptive parents' ability to protect the health and welfare of the child; and

(6) required home studies or other reports.

(b) During an adoption hearing:

(1) the petitioner and the proposed adoptee shall appear personally;

(2) the judge shall examine all persons separately, and may:

(A) enter a final decree of adoption, or place the person to be adopted, if a child, in the legal custody of the petitioner for a period not to exceed six (6) months prior to entering a final decree of adoption;

(B) deny the petition and make any other order it deems necessary for the care and custody of the child not inconsistent with this chapter if it determines that the adoption will not be in the child's best interest, or that all of the requirements of this section have not been met.

(3) the proceedings for termination of the parent/child relationship and proceedings for adoption may be consolidated and determined together.

**§5-1-31 Consent**

(a) Written consent to an adoption which shall be orally acknowledged before the Court no earlier than ten (10) days after the child's birth is required of:

(1) the biological and adoptive mother;

(2) the biological and adoptive father;

(3) the custodian, if empowered by the Court to consent;

(4) the Court, if the custodian is not empowered to consent.

(b) Consent of the parent to an adoption is not required if the:

(1) parent has abandoned his child;

(2) parent's rights have been terminated;

(3) parent has relinquished his parental rights;

(4) parent has been declared incompetent.

(c) An interpreter shall be provided if the person consenting does not understand English. Oral consent of the child to be adopted shall be made either in open court, or in chambers with only the judge, any other person he deems necessary, and the child present.

(d) Without reason or the need for a hearing, consent under this section may be withdrawn in a writing notarized or witnessed by a clerk of the Court by the person consenting at any time prior to the entry of a final decree of adoption.

**§5-1-32 Decrees**

(a) If the Court finds that the requirements of this section have been met and that the child's best interests will be served, it shall enter a final decree of adoption containing the following:

(1) the adoptive parent(s) and adoptive child shall be treated under the law as if the relationship was that of a natural child and parent, except as set forth herein;

(A) in the case of open adoptions the adoptive child:

(i) shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his natural family and his tribal heritage;

(ii) members of the child's natural extended family (including parents) shall have a right of visitation subject to reasonable controls of the adoptive parents.

(B) in the case of closed adoptions, the adoptive child shall be denied access to identifying information and knowledge about his natural family except as agreed to by the parties or ordered by the Court.

(2) an adopted child shall not be considered an heir of his natural parent(s) unless the decree of adoption provides for the continuation of inheritance rights. An adoptive child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if natural parents and child. **(amended 11/28/06)**

**§5-1-33 Orders of Preference**

(a) The Court may place an adopted child in the following order of preference subject to the requirements of subsection (b):

(1) extended family member;

(2) a tribal member or person eligible for tribal membership;

(3) other Indian person(s); and

(4) any person who has significant knowledge of the child's tribal affiliation and his special needs.

(b) The placement of a child shall be conducted with the best interest of the child in mind including the consideration of:

(1) the wishes of the, child and/or the child's parent(s);

(2) the child's adjustment to a new home, school or community;

(3) the mental and physical health of the child; and

(4) the need to promote continuity and stability in the life of the child.

**§5-1-34 Vacating the Decree**

A decree of adoption may be vacated within two (2) years after entry upon the filing of a petition and a showing that consent making the adoption possible was obtained through fraud or duress. If the Court vacates the decree it shall return the adopted person to that status he had prior to entry of the decree.

## ESTABLISHING PATERNITY (§§ 5-1-42 - 5-1-63 adopted by NPTEC 7/8/03)

### §5-1-40 Establishment of Parentage and/or Support (formerly § 5-1-25, renumbering authorized by NPTEC 7/8/03)

(a) Unless determined otherwise by court order, a child's parents are jointly and severably liable for his support until he reaches eighteen (18) years of age or is emancipated notwithstanding the fact that the parents have never been married to each other.

(b) The parentage of a child may be established by:

(1) written acknowledgment by a parent filed with the Tribal Court that he is the father or she is the mother of the child; or

(2) a determination by the Tribal Court.

### §5-1-41 Hearing (formerly § 5-1-26, renumbering authorized by NPTEC 7/8/03)

(a) A hearing to establish parentage and/or support may be brought by a complaining parent, by the minor acting through a custodian or guardian if the complainant dies or becomes disabled, or by the tribe. The petition shall name the respondent as the father or mother of the minor and if a petition to compel support, demand that such person be compelled to support the minor.

(b) A hearing to establish parentage may be brought in Tribal Court at any time before the child is eighteen (18) years and may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least 15 days after the birth of the child. A hearing on whether to compel support from a parent may be brought in Tribal Court at any time until a child reaches the age of eighteen (18) or becomes an adult through emancipation or marriage.

(c) The Court shall enter its order determining the child's parentage and/or support at the conclusion of the hearing. If parentage is established, the child has the same rights of inheritance from the person who is established as a parent that a child born as a result of a lawful marriage has under tribal law.

### §5-1-42 Genetic Testing

(a) In any proceeding in which paternity is an issue, the court, upon motion of any party or the Tribe, may order the mother, her child, and the putative father or the husband of the mother to submit to one or more blood, buccal cells, human leukocyte antigen tests, DNA tests, or other court-recognized scientific testing, to be made by a qualified physician, accredited laboratory (as defined by the American Association of Blood Banks (AABB), the American Society for Histocompatibility and immunogenetics (ASHI) or by the federal Secretary of Health and Human Services), hospital, or other qualified person acceptable to the court, to determine whether the putative father or the husband of the mother can be excluded as being the father of

the child or whether paternity can be determined.

(b) The minimum percentage to identify a biological father shall be 99%.

(c) The court may order additional tests to be performed, as necessary, to determine whether the putative father or husband can be excluded or whether the putative father or husband is the father of the child.

(d) If a specimen from the mother of a child is not available for genetic testing, the court may order genetic testing to proceed without a specimen from the mother.

(e) The costs of the initial genetic testing shall be chargeable to:

(1) a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services. The support-enforcement agency may seek reimbursement from a man who is rebuttably identified as the father;

(2) by the individual who made the request;

(3) as agreed by the parties; or

(4) as ordered by the court.

**§5-1-43 Genetic Testing Results; Rebuttal**

(a) Under this Chapter, a man is rebuttably identified as the father of a child if the genetic testing complies with § 5-1-42 and the results disclose that:

(1) the man has at least a 99 percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and

(2) a combined paternity index of at least 100 to 1.

(b) A man identified under subsection (a) as the father of child may rebut the genetic testing results only by other genetic testing satisfying the requirements of § 5-1-42 which:

(1) excludes the man as a genetic father of the child; or

(2) identifies another man as the possible father of the child.

(c) Except as otherwise provided in § 5-1-45, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

**§5-1-44 Additional Genetic Testing**

The court or the support-enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic

testing identified a man as the father of the child under § 5-1-43, the court or agency may not order additional testing unless the party provides advance payment for the testing.

**§5-1-45 Identical Brothers**

(a) The court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(b) If each brother satisfies the requirements as the identified father of the child under § 5-1-43 without consideration of another identical brother being identified as the father of the child, the court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

**§5-1-46 Confidentiality of Genetic Testing**

(a) Release of the report of genetic testing for parentage is controlled by the applicable law.

(b) An individual who intentionally releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or written permission of the individual who furnished the specimen commits a civil infraction.

**§5-1-47 Presumption of Paternity**

A rebuttal presumption of paternity exists where one or more of the following factors is present:

(a) The child is born during the marriage of the parties or within 300 days of the termination of marriage;

(b) The child is born to parties who attempted to marry but whose marriage is or could be declared void;

(c) The child is born to parties who have married or attempted to marry after the child's birth and the putative father has acknowledged paternity in writing, consented to be named as father on the child's birth certificate, or been ordered to pay child support;

(d) The putative father has openly held out the child as his natural child; or

(e) The putative father has signed a written acknowledgment of paternity.

**§5-1-48 Judgment and Order of the Court**

(a) If the putative father is found to be the biological father of the child, or if the presumption of paternity cannot be rebutted, the court shall make an Order of Paternity.

(b) The court may order the father of the child to stand charged with the support and maintenance of such child, with the assistance of the mother is she is financially able.

## VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

The mother of a child and a man claiming to be the father of the child conceived as the result of his sexual intercourse with the mother may sign an acknowledgment of paternity with intent to establish the man's paternity.

### §5-1-49 Acknowledgment of Paternity

(a) In lieu of or in conclusion of a paternity proceeding, the written acknowledgment of paternity executed by the putative father of the child when accompanied by an attested waiver of the right to a hearing, and a written affirmation of paternity executed and sworn or affirmed to by the mother of the child and filed with the court, shall have the same force and effect as a judgment of the court. The written affirmation must state that the child whose paternity is being acknowledged:

(1) does not have a presumed father, or has a presumed father whose full name is stated; and

(2) does not have another acknowledged or adjudicated father;

(b) An acknowledgment of paternity must state:

(1) whether there has been genetic testing and , if so, that the acknowledging man's claim of paternity is consistent with the results of the testing;

(2) that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two (2) years.

### §5-1-50 Denial of Paternity

A presumed father may sign a denial of his paternity. The denial is valid only if:

(a) an acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to 5-1-51;

(b) the denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and

(c) the presumed father has not previously:

(1) acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to § 5-1-53 or successfully challenged pursuant to § 5-1-54; or

(2) been adjudicated to be the father of the child.

**§5-1-51 Rules for Acknowledgment and Denial of Paternity**

(a) An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

(b) An acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.

(c) Subject to subsection (a), an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the Idaho Bureau of Health Policy and Vital Statistics, whichever occurs later.

(d) An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Chapter.

**§5-1-52 Effect of Acknowledgment or Denial of Paternity**

(a) Except as otherwise provided in § 5-1-53 and § 5-1-54, a valid acknowledgment of paternity filed with the Idaho Bureau of Health Policy and Vital Statistics is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.

(b) Except as otherwise provided in § 5-1-53 and § 5-1-54, a valid denial of paternity by a presumed father filed with the Idaho Bureau of Health Policy and Vital Statistics in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father discharges the presumed father from all rights and duties of a parent.

**§5-1-53 Proceeding for Rescission**

A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

(a) 60 days after the effective date of the acknowledgment or denial, as provided in § 5-1-51; or

(b) the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

**§5-1-54 Challenge After Expiration of Period for Rescission**

(a) After the period for rescission under § 5-1-53 has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress, or material mistake of fact; and

(2) within two (2) years after the acknowledgment or denial is filed with the Idaho Bureau of Health Policy and Vital Statistics.

(b) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

**§5-1-55 Procedure for Rescission or Challenge**

(a) Every signatory to an acknowledgment of paternity and any related denial paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(b) For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of the Nez Perce Tribe by signing the acknowledgment or denial, effective upon the filing of the document with the Idaho Bureau of Health Policy and Vital Statistics.

(c) Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(d) A proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under this Chapter.

(e) At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall forward the order to the Idaho Bureau of Health Policy and Vital Statistics requesting to amend the birth record of the child, if appropriate.

**§5-1-56 Ratification Barred**

The court conducting a judicial proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.

**§5-1-57 Full Faith and Credit**

The Nez Perce Tribal Court shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another tribal or state court if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other tribe or state.

**§5-1-58 Forms for Acknowledgment and Denial of Paternity**

(a) To facilitate compliance with this Chapter, the CSEP shall prescribe forms for the acknowledgment paternity and the denial of paternity.

(b) A valid acknowledgment of paternity or denial of paternity is not affected by a

later modification of the prescribed form.

### §5-1-59 Release of Information

The CSEP may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and appropriate tribal, state or federal agencies.

### §5-1-60 Adoption of Rules

The CSEP may adopt rules to implement this Chapter, to be approved by the Nez Perce Tribal Executive Committee.

## SUPPORT

### §5-1-61 Procedure for Support Payment

Unless otherwise ordered by the Court, all court ordered payments for child support shall be paid to the Clerk of Court who shall record and transfer the payments to the person(s) entitled to them.

### §5-1-62 Voluntary Support Agreement

A voluntary agreement by the father to provide support and maintenance for the child, to reimburse any past due support, and to pay any reasonable expense of prosecution, shall have the same force and effect as an order of support by the Court.

### §5-1-63 Registration and Enforcement of Foreign Paternity Judgments

(a) Any party to an action in which a paternity or support judgment from the State of Idaho or the State of Washington was rendered may register the foreign paternity or support judgment in the Nez Perce Tribal Court without payment of a filing fee or other cost to the party and according to the terms of the inter-governmental agreements between the Nez Perce Tribe and such States.

# CHAPTER 5-2
# GUARDIANSHIPS

## INTRODUCTORY PROVISIONS

### §5-2-1 Definitions

(a) "Child or minor" means any person under the age of eighteen (18).

(b) "Competent" means any person who is not incapacitated.

(c) "Guardian ad litem" means a guardian who is appointed to represent a ward for the purpose of actual, threatened or contemplated litigation.

(d) "Estate" means the total property of any kind owned by a deceased person prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the deceased.

(e) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that he lacks sufficient understanding or ability to make or communicate responsible decisions concerning his person or property.

(f) "Ward" means a child or incapacitated person for whom a guardian is appointed or other protective order is made.

### §5-2-2 Guardianships in General

The Nez Perce Tribal Court may appoint guardians for the persons and/or the estates of either minors or incapacitated persons.

### §5-2-3 Appointment of Guardian in Connection With Probating an Estate

In the process of administering an estate for which there is a valid will containing a designation of a guardian for a child orphaned by the deceased, the Court may appoint such guardian without the necessity of a separate guardianship hearing. If the person so designated is unable or unwilling to serve, if such person's appointment is objected to by the orphaned child if he is over fourteen (14) years of age, or if the Court deems it to be in the minor's best interest, a separate guardianship hearing shall be held.

### §5-2-4 Who may Serve as Guardian

Any person twenty one (21) years of age or older may serve as a guardian. The Court shall determine the best interest of the proposed ward in appointing a guardian but preference may be given to:

(a) relatives of the proposed ward in order of their closeness of relationship;

(b) a person with whom the proposed ward is living at the time of the filing of the guardianship petition; or

(c) the person preferred by a proposed ward if such ward is over fourteen (14) years of age and competent.

**§5-2-5 Placement of Children (amended by NPTEC 3/25/03)**

If the child(ren) is a ward of the Court, the Court shall place him in the setting which most meets his/her needs (emotionally, physically, culturally specific, spiritually) and in which his special needs, if any, are most likely to be met. In addition, the placement of a child(ren) shall be based upon the best interest of the child(ren) including the consideration of:

(a) the wishes of the child(ren) and the child(ren)'s parent(s);

(b) the child(ren)'s adjustment to a new home, school or community;

(c) the mental and physical health of the child(ren);

(d) continuity and stability in the life of the child(ren); and

(e) a child(ren) shall not be placed in a home where individuals reside or may reside who are convicted sex offenders.

**§5-2-6 Powers and Duties of Guardian**

(a) A guardian:

(1) shall take or provide for the custody of the person of the ward and shall be required to care for the health, safety and welfare of such ward and provide for their education and medical care as needed or appropriate;

(2) may expend such portions of the ward's estate, income and the principle as he shall deem reasonably necessary for the support, care, including medical care and education, of the ward given the size and nature of the estate and the station in life or needs of the ward; and

(3) may invest, manage and dispose of specified portions or all of the property of the ward according to law and in a prudent and reasonable manner.

(b) If a guardian is uncertain as to his authority he may petition the Court for authority to do the act in question. The Court may grant such authority if it appears to be consistent with the best interest of the ward following such notice and hearing, if any, as the Court may direct.

(c) A guardian shall:

(1) have a fiduciary relationship towards the ward;

(2) exercise a high degree of care in managing the estate of his ward;

(3) derive no personal benefit of any kind from his management of the estate

of his ward; and

(4) be civilly liable to the ward for any losses to the estate attributable to a violation of this chapter. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after: the appointment of a new guardian; the removal of the ward's incapacity; or the ward attains the age of eighteen (18).

(d) A violation of this chapter by an appointed guardian may constitute contempt of court and/or result in the discharge of the guardian.

**§5-2-7 Powers and Duties of Guardian Ad Litem**

(a) A guardian ad litem shall have a fiduciary relationship towards the ward and shall have the power and authority to:

(1) represent a ward's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature or regarding a delinquent act); and

(2) employ counsel, and settle or compromise claims subject to the approval of the Court.

(b) The Court may appoint a guardian ad litem without the necessity of a petition or hearing.

**§5-2-8 Guardians Reimbursement**

The Court may order monthly reimbursement payments to the person appointed as a guardian, provided sufficient funds are available. Such disbursements shall be used for the sole purpose of covering expenses incurred in the care and custody of the ward.

**TYPES OF GUARDIANSHIPS**

**§5-2-9 Guardianship of Children**

After a hearing upon the filing of a guardianship petition, the Court may appoint a guardian for a child. Guardianship for a child may provide custody of a child to someone other than the parent(s), although there is no termination of the parental rights. The parent(s) and the child's extended family may be granted visitation rights during a guardianship.

**§5-2-10 Guardianship of Incapacitated Persons**

If after a guardianship hearing, the Court determines that the prospective ward is incapacitated, it shall appoint a guardian for such person. The proof at hearing shall include the certification by a qualified physician showing that a person is incapacitated, the anticipated duration of the incapacity and that the best interests of the incapacitated person will be served by the appointment of a guardian.

### §5-2-11 Guardianship of Property

The Court may require any guardian before taking and receiving into custody the money or funds of a ward, to provide security in the form of a bond in such sum as the Court shall order. Such bond shall be returned upon termination of the guardianship on the condition that the guardian:

(a) submits to the Court an accounting of:

(1) the property, estate and money of the ward and all the proceeds or interests derived therefor, at such times as the Court may order; and

(2) the management and disposition of the property, estate money, proceeds and interest of the ward within three (3) months of his appointment and every three (3) months thereafter.

(b) faithfully discharges his guardianship duties;

(c) at the expiration of his trust, justifies his accounts with the Court and the ward if the ward is of full age or regains competency, or the ward's legal representative, and pays over and delivers all the estate, monies and effects remaining in his possession.

### §5-2-12 Temporary Guardianship

Upon petition, the Court may appoint a temporary guardian when it determines such to be in the best interest of the ward and under such terms and conditions as it sets forth in a written order.

## PROCEEDINGS

### §5-2-13 Guardianship Petition

(a) A guardianship proceeding shall be initiated by the filing of a petition by the proposed guardian or the case worker. The Court may initiate proceedings to appoint a guardian itself if such appointment reasonably appears necessary and no other person has filed a petition.

(b) A petition shall include:

(1) the full name, sex, date and place of birth, residence and tribal affiliation if any, of the proposed ward and guardian;

(2) the basis for the Court's jurisdiction;

(3) the relationship, if any of the proposed guardian to the proposed ward;

(4) the name and address of the person or agency having legal or temporary custody of the proposed ward;

(5) whether the guardianship is a guardian ad litem, a temporary guardianship, a guardianship of a child or children, a guardianship of an incapacitated person or persons and/or a guardianship of property;

(6) the present conditions and circumstances which warrant the appointment of a guardian;

(7) a full description and statement of the value of all property owned, possessed, or in which the proposed ward has an interest, if known; and

(8) the signature of the petitioner.

**§5-2-14 Parties**

The parties to a guardianship proceeding shall include the:

(a) proposed guardian;

(b) proposed ward;

(c) guardian ad litem, if any;

(d) legal custodian of the ward, if any; and

(e) parents of a proposed minor ward.

**§5-2-15 Guardianship Report**

Upon the filing of a guardianship petition, the Court may request that a qualified individual produce a guardianship report. The report shall contain all pertinent information necessary to assist the Court in determining the best interests of the proposed ward.

**§5-2-16 Hearings**

During a guardianship hearing:

(a) the Court shall advise the parties of the reason for the proceedings and that each has a right to:

(1) be represented by an attorney at their own expense in all proceedings under this chapter;

(2) introduce evidence;

(3) be heard on their own behalf; and

(4) examine witnesses.

(b) the general public shall be excluded from the proceedings and the Court shall be authorized to further limit hearing attendance to only the parties, their counsel and witnesses during the time of their testimony; and

(c) the Court shall issue an order which may:

(1) appoint a guardian and:

(A) set forth the guardian's authority and the duration of the guardianship; and

(B) direct the Court clerk to issue to the appointed guardian a certified copy of a letter of guardianship which shall evidence such appointment and contain any limitations of the authority of the guardian.

(2) determine that the guardianship is not warranted and dismiss the petition or request for guardianship;

(3) issue other appropriate directives in accordance with this chapter.

**§5-2-17 Discharge of Guardianship**

(a) A guardian of a child or the child himself who is not otherwise incapacitated, may petition the Court on or after the date the child reaches the age of eighteen (18) to have the guardian discharged and the estate turned over to the child.

(b) A person who has been declared incapacitated, the guardian of such person, any relative of such person within the third degree or any friend, may petition the Court in which the person was declared incapacitated, to restore him to competency. At the hearing, witnesses shall be examined and a determination made as to whether the incapacitated person is of sound mind and capable of taking care of himself and his property. The proof at hearing shall include the certification by a qualified physician showing that the incapacitated person has been sufficiently restored to competency. If so, such person shall be restored to capacity and the guardianship of such person, if he is not a child, shall be discharged.

(c) A guardianship may be terminated at any time if the Court determines that it is in the best interests of the ward.

# TITLE 6
# INTERGOVERNMENTAL RULES AND REGULATIONS
# CHAPTER 6-1
# ENROLLMENT ORDINANCE

## §6-1-1 Definitions

(a) "NPTEC" means the Nez Perce Tribal Executive Committee.

(b) "Enrollment Committee" means that Committee or Sub-Committee of NPTEC assigned responsibility for overseeing Nez Perce Tribal membership procedures.

## §6-1-2 Enrollment Application Procedures

(a) Applications for enrollment of children who are at least one fourth (1/4) degree Nez Perce Indian ancestry born to a member of the Nez Perce Tribe, filed with the Enrollment Committee within eighteen (18) years after birth shall include all information required on attachments (A), (B), (C) and (D).

(b) Applications for enrollment through adoption of persons who are at least one-fourth (1/4) degree Nez Perce Indian ancestry, filed with the Enrollment Committee, shall include all information as required on attachments (A), (B), (C) and (D).

(c) No person shall be eligible for membership by adoption into the Nez Perce Tribe who:

(1) previously relinquished membership in the Nez Perce Tribe. Persons who were minors at time of relinquishment of their membership by their parents may be granted special consideration;

(2) is enrolled or an enrolled member of another tribe or band;

(3) applies for adoption for the sole purpose of obtaining financial benefits from the tribe;

(4) is less than one fourth (1/4) degree Nez Perce Blood. **(Corrected to reflect language which was adopted by Resolution NP 91-132 (Amended), May 28,29, 1991, correction authorized by NPTEC 4/14/2015)**

(d) Any person who has heretofore been a member of the Nez Perce Tribe and who relinquished his membership and is enrolled in another tribe under conditions that do not permit him to share in any benefits or any judgment claims recovered by that tribe shall be entitled to reenroll in the Nez Perce Tribe without regard to the limitations contained in (c) of this section. The application shall contain written documentation, submitted under oath, that the conditions are in fact true.

(e) Any person reenrolled under (d) of this section shall be reenrolled subsequent to the effective date of this chapter and shall not be entitled to any benefits distributed to members of the Nez Perce Tribe prior to that date.

(f) Applications may be submitted by the person requesting enrollment, his parents, guardian or next of kin.

(g) Enrollment into membership in the Nez Perce Tribe shall not be a matter of right but a matter of privilege and the determination of NPTEC of an applicant's qualifications for enrollment pursuant to this chapter shall be final.

**§6-1-3 Application Processing**

(a) The Enrollment Committee shall meet at regular intervals as designated by NPTEC to consider all applications for enrollment into membership of the Nez Perce Tribe. If at any time the Enrollment Committee feels that additional information is required, the applicant will be requested to provide such information and/or appear before the Enrollment Committee for a personal informal interview.

(b) After its consideration the Enrollment Committee shall prepare and submit a written recommendation to NPTEC recommending either accepting the applicant for enrollment or rejection of the application. The recommendation shall state when the application will be considered by NPTEC and describe the rights of the applicant and other interested tribal members to object to the recommendation of the Enrollment Committee. One copy shall be forwarded to the applicant by certified mail and copies shall be posted on the bulletin boards in front of the Tribal Office, the tribal community buildings in Lapwai and Kamiah, the Northern Idaho Agency and the North Idaho Indian Health Service Unit for a period of sixty (60) days.

(c) If no protest has been filed to the Enrollment Committees recommendation and NPTEC agrees with the recommendation, it shall at the designated meeting or at its next regularly scheduled meeting following the expiration of sixty (60) days from the date of posting, order the enrollment of the applicant.

(d) If the Enrollment Committee recommends the enrollment of a person, any member of the Nez Perce Tribe may, within forty-five (45) days from the date of posting, file an official protest with NPTEC stating the reasons for believing that the applicant is not entitled to enrollment.

(e) If the Enrollment Committee recommends against enrollment of a person, the applicant may, within forty-five (45) days of receipt of the notice, file a protest with NPTEC.

(f) If NPTEC, by a majority vote, rejects the recommendation of the Enrollment Committee or a protest has been filed, NPTEC shall schedule the case for a hearing as follows:

(1) provide the applicant and/or any other interested parties not less than twenty (20) days advance notice of the time, date and location of the scheduled hearing;

(2) allow all parties to the hearing a full opportunity to present any and all relevant evidence to the case;

(3) upon completion of the hearing NPTEC shall render its decision on the enrollment application and promptly notify all parties concerned with the

case;

(4) the decision of NPTEC shall be considered final.

**§6-1-4 Determination of Blood Quantum or Degree**

(a) Anytime a child or a person who applies for enrollment with the Nez Perce Tribe but was born out of wedlock, specifically meaning that the alleged father and mother were not legally married under the laws of a state or tribe, the applicant's eligibility for enrollment shall be determined only by the blood quantum or degree of Nez Perce blood of the applicant's mother. Provided however:

(1) that if the parents of such person applying for enrollment were domiciled outside the State of Idaho and were living in such a relationship that a valid common-law marriage would have formed in Idaho but for their domicile, then such common-law marriage shall be deemed to have existed for enrollment purposes and the blood quantum or degree of Nez Perce blood of the applicant's father shall also be used in determining the eligibility of the applicant;

(2) that if proceedings for filiation under the paternity or bastardy laws of the State of Idaho, another state, or other tribal laws of proper jurisdiction have adjudicated the putative father to be the natural father, then the blood quantum or degree of Nez Perce blood of the applicant's father shall also be used in determining the eligibility of the applicant;

(3) that if a child is born out of wedlock and the putative father submits to the Enrollment Committee a sworn written statement, duly acknowledged under oath, acknowledging such child as his own child, then the blood quantum or degree of Nez Perce blood of the applicant's father shall also be used in determining the eligibility of the applicant;

(4) if an applicant provides evidence of paternity through the use of a legal DNA test performed by a laboratory that has been accredited by the AABB (formerly known as the American Association of Blood Banks), the Enrollment Committee may use the blood quantum or degree of Nez Perce blood of the person identified as the father by the legal DNA test in determining the eligibility of the applicant. **(NPTEC added subsection 2/26/13)**

(5) that if the parents of an applicant for enrollment were not married either at the child's conception or at its birth, then a subsequent intermarriage of the parents will legitimize the child; **(formerly subsection (4) - changed 2/26/13)**

(6) that any child of a marriage which was valid or apparently valid in its inception which is subsequently found by a court of competent jurisdiction to be void or voidable shall be deemed legitimate; **(formerly subsection (5) - changed 2/26/13)**

(7) that any child conceived at a time when the natural mother was married in any of the ways hereinabove specified shall be presumed to be the natural

child of the mother's spouse, which presumption may be rebutted by a preponderance of evidence to the contrary. **(formerly subsection (6) - changed 2/26/13)**

## §6-1-5 Termination of Enrollment **(section amended by NPTEC 8/28/12)**

(a) If at any time the Enrollment Committee has reason to believe that a person was enrolled into membership in the Nez Perce Tribe upon false, fraudulent or erroneous evidence, and without meeting the eligibility requirements for enrollment, it shall file a written "Request for Determination of Eligibility" with NPTEC. The request shall:

(1) include the full name and address of the tribal member in question. If the tribal member is deceased, the request shall include the full name of the tribal member in question, as well as his or her dates of birth and death;

(2) state the reasons why the enrolled member's eligibility for membership in the Nez Perce Tribe is questioned;

(3) contain any other details deemed pertinent to the case; and

(4) call for a public hearing to determine whether or not the enrolled member's membership in the Nez Perce Tribe should be voided.

(b) Upon receipt of the "Request for Determination of Eligibility" NPTEC shall, at least thirty (30) days prior to such hearing, serve written notice entitled "Notice of Proceedings" upon the enrolled member whose eligibility for membership in the Nez Perce Tribe is questioned, or in the event the enrolled member is a minor, the notice shall be served upon his parents, guardian or next of kin. If the enrolled member is deceased, then NPTEC shall, at least thirty (30) days prior to such hearing, serve written notice entitled "Notice of Proceedings" upon the enrolled descendants of the enrolled member, and cause a brief summary of the notice to be published once in a local newspaper of general distribution and a tribal newspaper. The Notice of Proceedings shall:

(1) include a copy of the Enrollment Committees "Request for Determination of Eligibility";

(2) fix the time, date and location of the hearing;

(3) advise the member in question, or his descendants, that, although not required to do so, he may examine the evidence or witnesses offered in support of the "Request for Determination of Eligibility" or offer evidence and/or witnesses in his or his ancestor's behalf as to any matter alleged in the complaint; and

(4) be sent to all persons entitled thereto by certified mail, return receipt requested with postage thereon fully prepaid, addressed to such persons at their last known address. Evidence concerning the service of the notice shall be kept by NPTEC and become a part of the record of proceedings.

(c) At the appointed time, date and location as contained in the "Notice of

proceedings" NPTEC shall:

(1) provided a quorum is present, conduct the public hearing as called for. However, in the interest of justice, the hearing may be continued to a later date at the request of the member in question or his descendants;

(2) allow the enrolled member in question or his descendants to appear and testify, submit oral and documentary evidence, as well as present witnesses in his or his ancestor's behalf to support his or his ancestor's enrollment in the Nez Perce Tribe;

(3) consider all evidence pertaining to matters contained in the "Request for Determination of Eligibility" and determine the relevancy, weight and sufficiency of such evidence;

(4) determine whether or not the enrolled member whose membership in the Nez Perce Tribe is questioned, meets all of the qualifications for enrollment into membership in the Nez Perce Tribe; and

(5) prepare written findings of fact with regard to the issues determined.

(d) At the conclusion of the hearing NPTEC shall:

(1) if it finds from the evidence and testimony submitted that the enrollment was valid, issue a written order signed by the chairman and secretary setting forth its determination that the enrolled member whose eligibility for membership into the Nez Perce Tribe was questioned, was properly enrolled into membership;

(2) if it finds from the preponderance of the evidence submitted, that the enrollee was enrolled into membership in the Nez Perce Tribe upon false, fraudulent or erroneous evidence, and did not meet the requirements for enrollment, it shall issue a written order signed by the chairman and secretary declaring the enrolled member's membership in the Nez Perce Tribe null and void and of no effect;

(3) promptly after making its written findings and order, cause a written copy thereof to be served upon the enrolled member whose eligibility for membership in the Nez Perce Tribe was determined, or if deceased, then the enrolled member's enrolled descendants or other descendants who participated in the hearing;

(e) The decision of NPTEC on a Request for Determination of Eligibility shall be considered final.

**§6-1-6 Voluntary Relinquishment of Enrollment**

Enrolled tribal members who apply for relinquishment shall receive by certified mail notification of the following:

(a) that such application for relinquishment does not entitle them to re-enrollment with the Nez Perce Tribe. Persons who were minors at the time of relinquishment may be granted special consideration;

(b) the applicant must surrender all tribal membership card(s) issued to such person;

(c) the applicant, upon acceptance of relinquishment, is no longer entitled to exercise any of the treaty rights in hunting, fishing, gathering or use of usual and accustomed places as reserved under the treaties between the U.S. government and the Nez Perce Tribe. Notification of relinquishment shall be sent to the Nez Perce Tribal Police and tribal conservation officers; and

(d) the applicant must certify that they owe no debts to the Nez Perce Tribe or any of its programs, enterprises, or authorities. **(Amended by NPTEC 3/26/13)**

**§6-1-7 Enrollment Records**

(a) The proper administration of the official enrollment records of the Nez Perce Tribe shall be maintained by the Bureau of Indian Affairs as directed by the official actions of NPTEC.

(b) Anytime a correction to the records is deemed necessary due to an error of omission, misprint or other similar action not necessarily the fault of the enrollee the correction shall be ordered by the Enrollment Committee.

(c) Anytime a change to the records is deemed necessary due to a change in an enrollee's status the enrollee shall provide the Enrollment Committee with:

(1) a copy of the official document that effected the name change. (Marriage license, corrected birth certificate, court order, etc.);

(2) a copy of the official document that shows the correct birth date. (Birth certificate, baptismal record, etc.);

(3) a notarized copy of the official family tree record on file with the Bureau of Indian Affairs and any other document that will support the request;

(4) appropriate documentation that will support the request.

(d) Upon receipt of any change requests under (c) of this section the Enrollment Committee shall promptly review the request and submit its recommendation to NPTEC for official action.

**§6-1-8 Resolutions**

All official actions of NPTEC relating to enrollment shall be by resolution.

**§6-1-9 Enrollment Cards; Certification of Indian Blood**

(a) Any person who is an enrolled member of the Nez Perce Tribe may obtain an enrollment card certifying that such individual is a member of the tribe and is entitled to all the privileges guaranteed under the Nez Perce Treaty of 1855.

(b) All applications and other forms to be used in issuing an enrollment card shall be obtained at the Nez Perce Tribal Office in Lapwai. Any person wishing to obtain a tribal enrollment card may apply in person at the Tribal Office or, if feasible, by mail. The completed application form shall include the applicant's full name, address, date of birth, sex, height, weight, eye color, hair color and enrollment number. If the application is conducted by mail, the applicant shall submit the following to the Enrollment Card staff at the Tribal Office:

(1) a completed application;

(2) a 1&1/4 inch by 1&1/4 inch picture taken at the nearest BIA office; and

(3) a completed picture certification form obtained from the Nez Perce Tribal Office which contains:

(A) the applicant's current name and address; and

(B) a signature of an authorized staff person of the BIA office where the applicant's picture was taken certifying that:

(i) the applicant presented him with two pieces of reliable identification which include a picture and current name and address as proof of identity at the time the form was signed; and

(ii) to the best of his knowledge, the picture accurately represents the individual whose name and address is on the picture certification form; and

(iii) after development, he witnessed the placement of the picture taken at the BIA office into an envelope with the other application materials and the sealing of the envelope; and

(iv) the envelope was left with the BIA office to be mailed to the tribe.

(c) Once an application has been received by the Tribal Office, NPTEC staff shall check to see that all of the application materials have been submitted and if so, confirm that the applicant is actually an enrolled member by looking up the applicant's name on the enrollment lists. Applicants shall not receive an enrollment card until they have submitted all of the application materials and their enrollment has been verified.

(d) Once all application materials have been received and enrollment has been verified, NPTEC staff shall unless one has already been collected and produce an enrollment card for the applicant using the information provided in the application and the applicant's picture. The card shall be hand delivered to the applicant or mailed using the address provided by the applicant.

(e) If an applicant for a Nez Perce Tribe enrollment card does not live in the vicinity of the Nez Perce Tribal Office, a local BIA office is unavailable or the local BIA office for whatever reason is unable or unwilling to assist the applicant in certifying his picture, the applicant may obtain a written Certification of Indian Blood (C.I.B.) from the Nez Perce Tribal Office until such time as it is feasible to obtain picture certification. The C.I.B. form shall provide the name and address of the tribal member, that the individual is a member of the Nez Perce Tribe and the individual's amount of Nez Perce Tribe blood quantum.

(f) A C.I.B. shall be obtained by submitting a written request to the Nez Perce Tribal Office which shall include the reason a C.I.B is requested and the requester's current name and address. Once a request for a C.I.B. is received at the Tribal Office, the requester's enrollment status shall be verified. Upon verification, if the requester is an enrolled tribal member than he shall be sent a C.I.B. using the address provided.

# CHAPTER 6-2
# GAMING ORDINANCE
**(adopted by NPTEC 9/9/03 and approved by NIGC 2/27/04)**
**(chapter amendments adopted by NPTEC 3/22/11 and approved by NIGC 8/22/11)**

## §6-2-1 Definitions (amended by NPTEC 3/22/11)

Unless a different meaning is clearly indicated in this Ordinance, the terms used herein shall have the same meaning as defined in the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., and its regulations, 25 C.F.R. § 500 et seq.

(a) "Act" means the Federal Indian Gaming Regulatory Act, Pub. L. 100-497, 25 U.S.C. §§ 2701 et seq. and 18 U.S.C. §§ 1166-68.

(b) "Bingo" means a game, whether or not electronic, computer or other technological aids are used in connection therewith

(1) which is played for prizes, including monetary prizes with cards bearing numbers or other designations;

(2) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and

(3) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in same location) pull tabs, lotto, punch cards, tip jars, instant bingo, and other games similar to bingo.

(c) "Class I gaming" means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

(d) "Class II gaming" *see §6-2-8*

(e) "Class III gaming" means all forms of gaming that are not class I or class II gaming.

(f) "Commission" or "Gaming Commission" means the Nez Perce Tribal Gaming Commission, the single tribal agency primarily responsible for regulatory oversight and for monitoring compliance with Tribal, Federal and applicable State regulations.

(g) "Fishing Derby" means a fishing contest, with or without the payment or given of any entry fee or other consideration by some or all of the contestants wherein prizes are awarded for the species, size, weight or quality of fish caught in a bona fide fishing or recreational event.

(h) "Fund raising event" means a fund raising event sponsored by a bona fide religious, charitable or nonprofit organization at which gaming activities will be conducted under the regulation of the Nez Perce Tribal Gaming Commission. Gaming as authorized under this

section may be allowed provided that sixty percent of the net income from such events shall be devoted solely to a lawful purpose of the Nez Perce Tribe and provided that the tribal or BIA law enforcement agency shall be notified as to the time and place where such activity shall be conducted.

(i) "Gaming" means those activities defined in §6-2-7, §6-2-8 and § 6-2-9.

(j) "Gaming area" means the area where Class II or Class III gaming occurs. This does not include cage, soft count, showroom, food and beverage, parking lots, delivery areas, hotels, warehouses, money areas, gift shops or the Events Center when gaming is not being conducted.

(k) "Gaming code" means the laws, rules and regulations adopted by the Tribe as amended from time to time governing gaming activities at Tribal gaming facilities, and any other gaming operations conducted within the boundaries of the Nez Perce Reservation.

(l) "Gaming employee" means any natural person employed in the operation or management of the gaming operation, whether employed by the Tribe or by any enterprise providing onsite services to the Tribe within the gaming facility, excluding persons providing maintenance, janitorial or other such ancillary non-gaming services such as food service employees. For purposes of this chapter, "gaming employee" shall include any employee whose duties include the handling of cash generated from Class II or Class III gaming activities.

(m) "Gaming contractor" means persons or entities which engage in gaming related contracts that result in the purchase of supplies, services, or concessions in excess of $25,000.00 annually, except contracts for professional legal and accounting services.

(n) "Gaming facility" or "gaming facilities" means all buildings, improvements and facilities used or maintained in connection with the conduct of gaming whether or not authorized by the Nez Perce Tribe.

(o) "Gaming operation" means any gaming enterprise whether or not authorized by the Tribe on Indian lands for the conduct of gaming.

(p) "Indian lands" means Indian lands as defined in the Act, as well as lands within the State which meet the requirements of 25 U.S.C. §2719.

(q) "Key employee" means:

(1) a person who performs one or more of the following functions:

(A) All bingo personnel

(B) bingo caller; or

(C) bingo supervisor

(D) any cashier;

(E) all security personnel; or

(F) any shift manager; or

(G) any shift supervisor; or

(H) all vault personnel; or

(I) all surveillance personnel;

(J) counting room supervisor, personnel, drop team personnel;

(K) custodian of gaming supplies or cash; or

(L) floor manager; or

(M) pit boss; or

(N) croupier; or

(O) approver of credit, pay-outs or complimentary items;

(P) custodian of gaming devices (including persons with access to cash and accounting records within such devices) and/or financial records;

(Q) If not otherwise included, any other person whose total cash compensation is in excess of $50,000.00 per year; or

(R) If not otherwise included, the four (4) most highly compensated persons in the gaming operation.

(r) "License" and variations of that word such as licenses and licensed, unless otherwise defined herein and as indicated by the context, means either:

(1) an approval or certification issued by the Nez Perce Tribal Gaming Commission to any natural person or enterprise to be involved in the gaming operation or in the providing of gaming services to the gaming operation, or

(2) the formal document evidencing authority granted by the Nez Perce Tribe to engage in gaming under this Act.

(s) "Licensee" means any natural person or enterprise that has been approved and licensed by the Nez Perce Tribe Gaming Commission to be involved in the gaming operation or in the provision of gaming services to or in the gaming operations.

(t) "Management Contract" means a contract for the development and management of a Class III gaming operation, as provided in Article 9 of the Nez Perce 1995 Class III Gaming Compact with the State of Idaho, and approved pursuant to the Act.

(u) "Management Contractor" means any person, corporation or entity that enters into a development and management contract with the Tribe pursuant to Article 9 of the Nez Perce 1995 Class III Gaming Compact.

(v) "Net revenue" means gross gaming receipts of a gaming operation minus amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.

(w) "NIGC" means the National Indian Gaming Commission.

(x) "NPTEC" means the Nez Perce Tribal Executive Committee, which is the governing body of the Nez Perce Tribe.

(y) "Operator" means any person, organization or entity that operates any gaming activity that is subject to regulation under this Ordinance, on the Nez Perce Reservation.

(z) "Pari-mutual betting" means a system of wagering on a live race whereby the winners divide the total amount wagered, in proportion to the amount individually wagered after deducting commissions, fees and taxes. For purposes of this Ordinance wagering on live races is authorized if it occurs either at a racetrack or on Indian lands by means of a simulcast of a live race and is approved by the Commission.

(aa) "Primary management official" means:

(1) the person having management responsibility for a management contract; or

(2) any person who has authority to hire and fire employees or to set up working policy for the gaming operation; or

(3) the executive officer; or

(4) other person who has financial management responsibility; including

(A) accounting controller; or

(B) the general manager.

(bb) "Regulations" means the gaming regulations promulgated by the Nez Perce Tribe pursuant to this chapter.

(cc) "Simulcast" means a simultaneous telecast of a live race, including horses, dogs, mules and any other race contest of a species legal in this jurisdiction.

(dd) "State" means the State of Idaho, its authorized officials, agents and representatives.

(ee) "State gaming agency" means the Idaho State Lottery or any other agency designated by the State of Idaho to coordinate Class III gaming.

(ff) "State Lottery" means:

(1) Any type of game that the State hereafter conducts as a lottery game.

(gg) "Track" means an in-state or out-of-state facility licensed to operate horse or other racing where pari-mutuel wagering on races is conducted.

(hh) "Tribal law enforcement agency" means the police force of the Tribe, established and maintained by the Tribe, pursuant to the Tribe's powers of self-government to carry out law enforcement on Indian lands.

(ii) "Tribe" means the Nez Perce Tribe its authorized officials, agents and representatives.

**§6-2-2 Purpose**

This ordinance is enacted to:

(a) Regulate all forms of permissible and authorized gaming within the jurisdiction of the Nez Perce Tribe.

(b) Safeguard all persons from unscrupulous and illegal operations of any type of gaming.

(c) Protect all persons from any infiltration of organized crime into any gaming operation within the jurisdiction.

(d) Provide for tribal audit system on all gaming operations.

(e) Provide that the Tribe will have primary regulatory authority over all forms of gaming on the Nez Perce Reservation subject only to applicable federal law.

(f) Provide for system of investigations of all persons associated with gaming.

(g) Provide a system of licensing for any gaming activities subject to the provisions of this Act that occur within the Nez Perce Reservation.

(h) To provide revenues for the operation of the tribal government.

(i) To allow the tribal government to use the revenues generated for tribal self-determination, to generate value on the reservation, to provide additional tribal services, employment for tribal members and for general economic development and individual self-sufficiency of tribal members.

(j) To harmonize with and adhere to the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467-88. 25 U.S.C. §§ 2701 et seq. as enacted by the U.S. Congress on October 17, 1988.

(k) To cooperate and agree on a sovereign to sovereign basis with the State of Idaho and any other concerned or affected states to enter into compacts or other agreements for gaming

operation, regulation or coordination.

(l) To establish a commission within the tribal organization to oversee and regulate gaming consistent with this ordinance and within the precepts established by the Nez Perce Tribal Executive Committee.

**§6-2-3 Ownership of Gaming and Use of Gaming Revenue**

(a) The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance unless individually owned gaming is approved and licensed under this ordinance.

(1) In order to be licensed by the Nez Perce Tribe, individual owners, in addition to the requirements of this ordinance, shall also be required to:

(A) Pay to the Nez Perce Tribe not less than 60 percent of the individually owned operation's net revenues, to be used only for the purposes set forth below;

(B) Pay an assessment to the National Indian Gaming Commission as set forth in 25 CFR § 514.1;

(C) Comply with eligibility standards of a State license for the same activity, so that if the individual is ineligible to receive a State license to conduct the same activity within that jurisdiction, a tribal license shall be denied.

(b) Net revenues from tribal gaming or from individually owned games or State Lottery agreements shall be used only for one or more of the following purposes: **(subsection authorized by NPTEC 3/22/11)**

(1) To fund tribal government operations or programs;

(2) To provide for the general welfare of the tribe and its members;

(3) To promote tribal economic development;

(4) To donate to charitable organizations; or

(5) To help fund operations of local government agencies.

(c) If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3).

(d) The Nez Perce Tribe hereby specifically reserves, through its inherent power, the full right and authority to adopt or impose a uniform and comprehensive system of revenue, taxation and licensing relating to gaming allowed by this ordinance.

**§6-2-4 Severability (section amended by NPTEC 9/9/03)**

If any clause, provision or section of this ordinance shall be ruled invalid or unenforceable by any court of competent jurisdiction by final order after all appellate jurisdiction is exhausted, such holding shall not invalidate or render unenforceable any other remaining provisions of this ordinance. Until such final order is entered and review exhausted, the questioned provisions shall be valid absent an enforceable injunction to the contrary, in full force and effect.

**§6-2-5 Amendment**

Except as provided in § 6-2-13(m), all powers of amendment are retained by the Nez Perce Tribal Executive Committee.

**§6-2-6 Sovereignty**

The Nez Perce Tribal Executive Committee acting for the Nez Perce Tribe by this enactment, does expressly retain and does not in any way waive its right of sovereignty as expressed in treaties, laws or in any other manner.

**AUTHORIZED GAMBLING ACTIVITIES**

**§6-2-7 Class I Gaming**

Class I gaming is defined as social games solely for prize of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.

(a) Class I gaming may be engaged in by individuals and organizations without restriction and is not subject to the provisions of this Act.

**§6-2-8 Class II Gaming**

Class II gaming is defined as:

(a) The game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith)

(1) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations;

(2) in which the holder of the card covers such numbers or designations with objects, similarly numbered or designated, which are drawn or electronically determined; and

(3) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including, (if played in the same location) pull-tabs, lotto, punch boards,

tip jars, instant bingo, and other games similar to bingo; and

(b) Card games that:

(1) are explicitly authorized by the laws of the State of Idaho, or

(2) are not explicitly prohibited by the laws of the State of Idaho and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

(c) The Nez Perce Tribe has authorized Idaho State Lottery Terminals located on the Nez Perce Reservation, through the 2008 Class III Gaming Compact. **(subsection authorized by NPTEC 3/22/11)**

(d) The Nez Perce Tribe may engage in Class II gaming as an operator without the necessity of a license under this Act but shall comply with other applicable provisions of this Act.

(e) Until this Act is amended by appropriate action of the Nez Perce Tribal Executive Committee in a manner consistent with the relevant provisions of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701et seq., the Nez Perce Tribe shall be the only entity or organization authorized to engage in gaming activities on the Nez Perce Reservation for profit to the exclusion of any other entity, organization or person. The Nez Perce Tribe may conduct or license gaming activities on behalf of bona fide charitable, religious and non-profit organizations subject to regulations promulgated by the Commission on this topic and the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq.

**§6-2-9 Class III Gaming**

(a) Class III gaming means all forms of gaming that are not Class I or Class II gaming.

(b) No person, entity, corporation, organization or government, except the Nez Perce Tribe, shall authorize or conduct any form of Class III gaming within the Nez Perce Reservation unless such gaming is consistent with:

(1) the Indian Gaming Regulatory Act;

(2) a Tribal-State compact for Class III gaming; and

(3) is licensed by the Nez Perce Tribe.

(c) The Nez Perce Tribe has authorized Idaho State Lottery Terminals located on the Nez Perce Reservation, through the 2008 Class III Gaming Compact. **(language added by NPTEC 3/22/11)**

(d) The Nez Perce Tribe shall enact rules and regulations regarding licensing of Class III games which shall be consistent with the provisions of the Indian Gaming Regulatory Act and the laws of the Nez Perce Tribe.

(e) Any person, entity, corporation, organization or government that conducts Class III gaming within the Nez Perce Reservation or that purports to authorize such gaming in violation of the laws or regulations of the Nez Perce Tribe commits a civil infraction.

(f) Any person, entity, corporation, organization or government found to have committed a civil infraction by failing to comply with the laws of the Nez Perce Tribe shall be subject to a civil fine in addition to other legal and equitable remedies available in civil cases.

(g) The Nez Perce Tribal Executive Committee hereby reserves the right to later enact authorization of Class III gaming as defined herein upon proper compliance with the Class III gaming requirements of the National Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701et seq..

**§6-2-10 Gaming Prohibited (section amended 3/22/11)**

All gaming activities not authorized by this Act are unlawful and prohibited.

**§6-2-11 Nez Perce Tribe Gaming Commission Established (section amended 3/22/11)**

(a) The Nez Perce Tribe Gaming Commission (the "Commission") shall consist of three individuals appointed by the Nez Perce Tribal Executive Committee. Commission members shall meet the qualifications of a primary management official licensing standards, as set forth in this Ordinance.

(1) NPTEC shall establish such application procedures as it deems appropriate for members of the Tribe interested in serving on the Commission.

(b) The following persons are not allowed to serve on the Commission:

(1) Current members of the Nez Perce Tribe's Enterprise Board (not applicable to any designated NPTEC representative);

(2) Persons having a direct or indirect financial interest in a management contract, gaming contractors (including any principal or member of a management or other contracting company);

(3) Persons directly related to or sharing a residence with any parties listed in criteria 2;

(4) Current Key Employee/Primary Management officials;

(5) Persons previously convicted of a felony, or embezzlement, of theft, or of any other money-related crimes or honesty-related crime (such as fraud).

(c) Each Commissioner shall serve for a term of three (3) years, with the term

beginning on January 1 of the year of the appointment and ending on December 31 of the third year; except that for the initial group of Commissioners, one position will be for a term of three (3) years, one position will be for a term of two (2) years and one position will be for a term of one (1) year allowing for a staggered term process thereafter.

(d) Commission members shall serve beyond their term only in the event that NPTEC fails to promptly make appointments for the subsequent year. Upon the appointments for the following year, the prior year's appointments shall expire.

(e) Commission positions vacated prior to the end of the term shall be promptly filled by NPTEC so that a full Commission may serve on a continual basis. However, a temporary vacancy on the Commission shall not mean the Commission will be non-functional, since business can be conducted with a minimum of two members being present.

(f) The Commission shall elect among themselves a President, Vice President and Secretary-Treasurer. Elections shall be conducted each year, within two weeks after NPTEC appointments are made.

**§6-2-12 Powers and Duties of the Commission and of the Nez Perce Tribal Executive Committee with Regard to the Commission Hours, Compensation and Removal** **(section amended by NPTEC 9/9/03) amended by NPTEC 3/22/11)**

(a) Duties shall include: **(subsection amended by NPTEC 3/22/11)**

(1) Such power includes the power to inspect premises.

(2) Safeguard and regulate by civil fines and other actions as specified in § 6-2-25 of this chapter.

(3) Issue licenses when such are required by this chapter, and in accordance with § 6-2-16 through § 6-2-22 of this chapter.

(4) Deny or revoke such license when the results of a thorough and objective investigation by the NPTGC indicates that such action is appropriate and/or in accordance with § 6-2-23 through § 6-2-25 of this chapter.

(5) Formulate and promulgate rules and regulations which shall govern in detail the issuance of licenses, the amount of the license fee, and the revocation of licenses.

(6) Insure the proper record keeping of gambling proceeds of the Nez Perce Tribe Gaming Enterprise, gaming licenses and anyone whose gambling activities subject him to the provisions of the Bank Secrecy Act, CFR Title 12, Banks and Banking or CFR Title 31, Money and Finance, or any other applicable requirement of the Internal Revenue Service.

(7) Insure a review of the appropriate records of gaming licensees of the Nez Perce Tribe at least every three years. Appropriate records are those directly related to determining a licensee's suitability to hold a gaming license.

(8) Cause annual outside audits as required by the Indian Gaming Regulatory Act, of all gaming activities on the Nez Perce Reservation to be conducted and submitted to the National Indian Gaming Commission specifically including all gaming-related contracts for supplies, services or concessions having a contract amount in excess of $25,000.00 per annum or in any 12 month period.

(9) Insure that facilities where gaming occurs are properly constructed and maintained and that the operation of the game is conducted in a manner which adequately protects the environment and the public health and safety.

(10) Cause to be conducted background investigation and suitability determinations of potential gaming employees as required by the National Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.

(b) The Commission Director shall be supervised by the Law and Order Executive Officer. **(subsection amended by NPTEC 4/8/14)**

(1) The role of the Commission Director will be to oversee and manage the day to day operations and employees of the Commission, and will serve as a full time employee.

(c) It shall be the responsibility of the NPTEC to set the maximum hours (not to exceed 40 hours per week) and hourly compensation for the Gaming Commission.

(d) Any Gaming Commission member may be removed by NPTEC for cause, including neglect of duty, failure to recuse oneself in cases of conflicts of interest as set forth in § 6-2-12(d), gross misconduct or failure to attend more than one half of the regular commission meetings, or for any offense listed in § 4-1-93 through § 4-1-111, inclusive of the Nez Perce Tribal Code.

(e) The Chairman or Vice-Chairman of Law & Order Subcommittee shall be appointed by NPTEC to act as the Gaming Commission for purposes of making the suitability determination for a gaming license applicant in the event that a Gaming Commissioner has a conflict, or the appearance of a conflict, and a quorum cannot be met including the following: **(subsection amended by NPTEC 3/22/11)**

(1) Any member of the Gaming Commission has applied for the same position held by a particular gaming license applicant; or

(2) Any member of the Gaming Commission has participated in the background investigation of a license applicant; or

(3) Any member of the Gaming Commission is considered "immediate family" as defined in the Gaming Enterprise Human Resources Manual, of a gaming license applicant.

## GAMING OPERATIONS

### §6-2-13 General Gaming Operations Requirements (section amended by NPTEC 9/9/03; section amended by NPTEC 3/22/11)

(a) Each gaming employee or operator including owners of an operating entity as defined in (o) of this section, prior to beginning work, shall be required to be licensed, at least on a temporary or conditional basis as provided for in this chapter, by the Nez Perce Tribe Gaming Commission and shall be required to apply to the Commission for a determination that he:

(1) has not been convicted of an offense related to gambling, fraud, misrepresentation or deception, drugs or a felony; for the past ten (10) years;

(2) has no prior activities, reputation, habits, or associations affecting his present conduct that would pose a threat to the effective regulation and control of gaming, or enhance the dangers of unsuitable, unfair or illegal practices, methods or activities, in the conduct of gaming; and

(3) has no present interest in the conduct of any gaming business.

(b) The determination shall be confidential unless otherwise required for purposes of the tribal Human Resources Manual or the requirements of federal law or regulation

(c) The Gaming Commission is also subject to periodic background investigations, at the discretion of NPTEC, and by the full NPTEC, based on any findings brought to the attention of NPTEC by the Internal Auditor or Background Investigator.

(d) The employee or contractor shall follow the application procedure for licenses described herein, provided that, no notice shall be published, and no public hearing shall be held. No employee may accept any gift or thing of value from a gaming contractor.

(e) In addition to any provisions of the tribal Human Resources Manual which may be applicable, any employee or operator shall be required to comply with the provisions of this ordinance, the provisions of his contract with the Tribe, if any, and the provisions of applicable federal law.

(f) Any entity which contracts with a tribal gaming operation, shall be required to submit to a determination as required in (a) of this section. No such contract will be valid until it is approved by the Commission and the Secretary of the Interior as is necessary under federal law.

(g) Tribally operated gaming shall be held in compliance with this ordinance, and any other applicable laws, rules and regulations.

(h) Operators or employees in charge of tribally operated gaming shall provide required reports, audits and the results of any contract for service or supplies at least quarterly or when required.

(i) Any operator or employee of the tribal gaming operation shall deposit the

proceeds of the gaming operation according to applicable federal and tribal law.

(j) Any operator or employee may request the assistance of the Commission in obtaining training or instruction for the benefit of the tribal gaming operation as well as in determining the proper meaning of this ordinance.

(k) The Commission may require that any operator or employee of a tribal gaming operation be bonded in a particular amount. The Gaming Enterprise will pay for the bonds of the Tribe's gaming employees; independent contractors are responsible for the cost of their own bonds.

(l) The Commission may recommend to the Nez Perce Tribal Executive Committee that a particular type of tribal gaming be operated through a management contract. The management contract must be in compliance with applicable federal law. The Commission shall require that the proposed operator comply with the requirements for licenses under this section of the ordinance. A proposed manager need not be a tribal member. Sole tribal approval of all management contracts shall remain with the Nez Perce Tribal Executive Committee.

(m) All tribal gaming operations are subject to monitoring and inspection by the Commission or agents of the Commission.

(n) The Commission shall issue regulations, which will control:

(1) The possession of firearms by operators or employees. No firearms or weapons of any kind shall be allowed on gaming premises with the exception of armed armored car personnel and on duty law enforcement officers.

(2) The security requirements for the operations.

(3) The posting of rules of play.

(4) Rules for the conduct of the games, should the Commission deem that such rules are necessary for the proper conduct of gaming.

(5) Any other regulations controlling the operation which are deemed necessary in writing by Nez Perce Tribal Executive Committee. NPTEC shall provide written notice to the Commission, in a reasonably timely manner before additional regulations take effect by means of amendments or revisions to the Tribe's gaming compact.

(o) Any person authorized by the Commission, an employee or independent contractor, who has a financial interest other than salary or wages or management responsibility in the conduct of tribal gaming activities must be licensed by the Commission including those persons who may serve on the Board of Directors or other governing body of a corporation, trust, partnership or other entity or who own ten (10%) or more of the stock of a corporation or like interest in profits or capital of any other business entity.

(p) The Commission may charge a fee not in excess of that approved by NPTEC for each application of renewal.

(q) NPTEC has the sole authority to approve the Commission budget.

(r) Members of the Commission and its staff are prohibited from participating in bingo games.

(s) Members of the Commission and its staff are prohibited from participating in any gaming sponsored by the Nez Perce Tribal Gaming Enterprise. This prohibition on participation shall not include gaming sponsored by the Nez Perce Tribal Gaming Enterprise that is Class I. **(amended by NPTEC 12/22/09)**

### §6-2-14 Inspection of Premises (section amended by NPTEC 3/22/11)

(a) The premises where authorized gambling activities are being held shall be subject to inspection and audit at any reasonable time by persons designated by the Commission.

(b) The Commission shall be provided, at such reasonable intervals as the Commission shall determine, with a report, under oath, detailing all receipts and disbursements in connection with such gambling activities together with such other reasonable information as required in order to determine whether such activities comply with this chapter or other applicable laws, rules or regulations.

## KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

### §6-2-15 Applications for Key Employee and Primary Management Official Positions (section amended by NPTEC 9/9/03)

(a) Applications for individuals that have been offered employment by the Nez Perce Tribe's gaming enterprises for key employee and primary management official positions with the Nez Perce Tribe's gaming enterprises shall be submitted to the Commission for licensing and background checks.

(b) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

*In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the issuance, denial or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to license you for a primary management official or key employee position.* ***(language amended by NPTEC 3/22/11)***

*The disclosure of a Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.*

(c) Existing key employees and primary management officials shall be notified in writing that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(d) The following notice shall be placed on the application form for a key employee or primary management official before that form is filled out by an applicant.

*A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation of a license. Also, you may be punished by fine or imprisonment. See 18 U.S.C. § 1001.* ***(language added by NPTEC 3/22/11)***

(e) The Commission shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

## BACKGROUND INVESTIGATIONS

### §6-2-16 Applications - Required Information (section amended by NPTEC 9/9/03)

(a) The Tribe shall require, in its initial investigation of each key employee and from each primary management official all of the following information:

(1) Full name, other names used (oral or written), social security numbers, birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous five (5) years: Business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence addresses, and driver’s license numbers;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with any Indian tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name or address of the Court involved, and the date and disposition if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the Court involved and the date and disposition;

(10) For each criminal charge (excluding minor traffic charges), whether or not there was a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (8) or (9) of this section, the criminal charge, the name and address of the Court involved and the date and disposition;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A current photograph;

(13) Any other information the Tribe deems relevant;

(14) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. 522.2(h).

(b) The Human Resources Director shall provide a written statement to the Background Investigator stating that three personal references and three employment checks were performed, stating that no problems were discovered, or details of any problems discovered.

(c) The Human Resources Director shall provide the Gaming Commission with Employee Action Reports for key employees and primary management officials, including Employee Action Reports for new hires, terminations, and transfers. Such Employee Action reports shall include the employee's name, new position, and shall be sent to the Gaming Commission within one week of the employee action.

(d) The Tribe shall conduct an investigation sufficient to make a determination under § 6-2-19. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(e) Unless extraordinary circumstances apply, the Tribe shall require, for a tri-annual background investigation of an employee already issued a gaming license, information regarding only the past 36-month period after the issuance of the gaming license.

**§6-2-17 Investigative Procedures for Background Checks (section amended by NPTEC 9/9/03)**

(a) A Background Investigator shall not conduct the background investigation for a gaming license applicant if that Background Investigator has a conflict, or the appearance of a conflict, including the following:

(1) The Background Investigator has applied for the same position held by a particular gaming license applicant; or

(2) The Background Investigator is considered "immediate family" as defined in the Gaming Enterprise Human Resources Manual, of a gaming license applicant.

(b) The Nez Perce Tribe's Investigative Officer shall conduct the initial investigation by:

(1) Verifying written or oral information submitted by the applicant;

(2) Inquiring into the applicant's prior activities, criminal record, if any, and reputation, habits and associations;

(3) Interviewing a sufficient number of knowledgeable people such as former employers, personal references, and others to whom referred; and

(4) Documenting the disposition of all potential problem areas noted and disqualifying information obtained.

(c) The Investigative Officer shall utilize the employment and personal reference checks conducted by Human Resources.

(d) The Investigative Officer shall then prepare and submit to the Commission an investigative report detailing:

(1) Steps taken in conducting the background investigation; and

(2) Results obtained;

(e) The Background Investigator shall use NIGC's Notification of Results/Eligibility Determination electronic form, or the shortest form approved by NIGC, to report the details of the background investigation.

(f) Fingerprints of all applicants shall also be taken by the Nez Perce Tribal Police. Completed fingerprint cards will be returned to the Commission and placed in the applicant's background file.

(1) The Commission shall send to the NIGC, at the Regional Office, Portland Area or to the Washington, D.C. office, whichever is designated, the names and fingerprint cards for those licensees who require an FBI criminal background check, with the appropriate funds to cover the costs of such inquiry.

(2) Information obtained from NIGC as a result of the FBI fingerprint check shall be reviewed only by the Commission and the Tribe's Investigative Officer. No further dissemination of this information is authorized; and in fact, the Tribe is subject to the restrictions set forth in an MOU with NIGC forbidding use of such information for any other purpose. See NP 95-102.

**§6-2-18 Eligibility Determination**

(a) The Commission shall meet with the Investigative Officer, make a suitability determination based on all the information gathered from the various sources set forth above, including prior activities, criminal record, reputation, habits and associations, and the information received from NIGC resulting from the FBI fingerprint check; and submit this determination in written form to the National Indian Gaming Commission (NIGC) for review. If the Commission determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management position. (If the applicant is not hired and issued a license by the Tribe, NIGC shall be notified, but submittal of the determination and report shall be at the discretion of the Commission.) The report to NIGC shall also contain the information documenting investigative steps taken by the Investigative Officer, including those set forth above.

(b) The report to NIGC shall be sent within 60 days after an employee begins work with the Tribe. A response from NIGC shall be requested by the Commission within 30 days of receipt of the Commission's report.

(c) If the Chairman of NIGC requests additional information from the Commission regarding any employee who is a subject of a report, such information, if available shall be forwarded as soon as possible.

(d) When NIGC notifies the Commission that it has no objections to the issuance of a license to a particular applicant, the Commission may proceed with annual licensing of the applicant.

(e) If NIGC provides the Commission with a statement itemizing objections to the issuance of a license to a particular applicant, the Commission must reconsider the application, taking into account the objections itemized by NIGC. The Commission may then make a final licensing decision as to such applicant.

**§6-2-19 Procedure for Submission of Applications and Reports for National Indian Gaming Commission Approval**

(a) The Commission shall follow the following procedures when forwarding reports for key employees and primary management officials to the National Indian Gaming Commission (NIGC): **(subsection amended by NPTEC 3/22/11)**

(1) The Commission shall forward the report referred to in (b) of this section to the NIGC within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the NIGC.

(2) The gaming operation shall not employ as a key employee or a primary management official a person who does not have a license after 90 days.

(b) Pursuant to the procedures set forth in paragraph (a) above, the Commission shall forward to NIGC an investigative report on each background investigation.

(1) An investigative report shall include all of the following:

(A) Steps taken in conducting a background investigation;

(B) Results obtained;

(C) Conclusions reached; and

(D) The basis for those conclusions.

(2) The Commission shall submit, with the report, a copy of the eligibility determination made under § 6-2-18.

(3) If a license is not issued to the applicant, by the Tribe, the Commission:

(A) Shall notify NIGC; and

(B) May forward copies of its eligibility determination and investigative report (if any) to NIGC for inclusion in the Indian Gaming Individuals Records System.

(4) With respect to key employees and primary management officials, the Commission shall retain application for employment and reports (if any) of background investigations for inspection by the Chairman of the NIGC or his or her designee no less than three (3) years from the date of termination of employment.

**§6-2-20 Gaming Licenses (section amended by NPTEC 3/22/11)**

(a) The Commission shall issue a ninety (90) day temporary license based on Human Resources' review and approval of a completed employee application. If granted, the employee will work under the temporary licensing agreement pending receipt of a response from the National Indian Gaming Commission pursuant to § 6-2-18 of this chapter.

(1) The Commission Director has the authority to sign and approve temporary gaming licenses if Commission members are not available.

(b) Commission members shall determine whether or not to issue a three-year license within ninety (90) days after application.

(c) A conditional license may be issued when an applicant does not meet the standards required of licensees outlined in the Nez Perce Tribal Code, Gaming Ordinance, the Nez Perce Tribe/State of Idaho Gaming Compact or the rules and regulations promulgated by the NPTGC. A conditional license shall not exceed one (1) year.

(1) Commission members have exclusive authority to sign and approve a conditional license.

(d) A license shall be valid for not more than three years and shall be renewed following a satisfactory criminal background check for the preceding three years. Only when extraordinary circumstances warrant an additional background investigation shall the Commissioner's investigation inquire into an applicant's activities earlier than the past licensing period. This section does not relieve a licensee of the obligation and responsibility of providing required updated information to the Background Investigator, such as:

(1) criminal charges, convictions; or

(2) status changes, new addresses.

(e) Response from National Indian Gaming Commission (NIGC)

(1) If, within a thirty (30) day period after the NIGC receives a report, the NIGC notifies that Tribe that it has no objection to the issuance of a license by the Commission to the individual for whom the Commission has provided an application and investigative report to the NIGC, the Commission may issue a license to such applicant.

(2) The Commission shall respond to a request for additional information from the Chairman of the NIGC concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under the preceding paragraph until the Chairman of NIGC receives the additional information.

(3) If, within the thirty (30) day period described above, the NIGC provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the NIGC, the Tribe shall reconsider the application, taking into account the objections itemized by the NIGC. The Tribe shall make the final decision whether to issue a license to such applicant.

**§6-2-21 Facility Licenses (subsection title changed and language amended by NPTEC 3/22/11)**

(a) The Commission shall issue a separate license to each place, facility, or location on Indian lands where any gaming is conducted under this ordinance.

(1) The Tribe hereby designates the NPTEC Chairman as agent for service of process.

**§6-2-22 License Suspension**

(a) If, after the issuance of a gaming license by the Commission, the NIGC receives reliable information indicating that a key employee or a primary management official is not eligible for employment, NIGC shall notify the Gaming Commission. **(subsection amended by NPTEC 3/22/11)**

(b) Upon receipt of such notification, the Commission shall suspend such license and shall notify in writing the licensee of the suspension, proposed revocation, and their right to request a hearing.

(c) No less than fourteen (14) days before the time of the hearing, the Commission shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) The Commission shall provide, to the licensee, upon his written request, full disclosure of all information and evidence which has been the basis for the Commission's decision to suspend such license.

(e) After a revocation hearing, the Commission shall decide to revoke or to reinstate a gaming license. The Commission shall notify NIGC of its decision and shall notify the person in writing of its decision within fourteen (14) business days following the hearing as described in § 6-2-24(a) of this chapter.

(f) If the person does not receive written notice of decision by registered mail, return receipt requested or other carrier as evidenced by a return receipt, as outlined in this chapter within fourteen (14) business days of the hearing, the person may immediately file notice in the Nez Perce Tribal Court for an order requiring the Gaming Commission to issue a temporary license to work pending a rehearing on this matter.

**§6-2-23 Dispute Resolution Process**

(a) The Nez Perce Tribal Gaming Commission, as established in § 6-2-11 is authorized to oversee and regulate all gambling activities authorized by this ordinance, including decision-making authority in regard to any disputes that may arise by the gaming public.

(b) Any person having a dispute with the Gaming Operator or Management Company licensed by the Tribe may request that the Gaming Manager resolve the dispute. If dissatisfied with the result, the person may request a hearing with the Nez Perce Tribal Gaming Commission. Such a hearing shall be held within thirty (30) business days of receipt of a written request from the grievant. A decision shall be issued at the hearing or within fourteen (14) business days of the hearing. **(subsection amended by NPTEC 3/22/11)**

**§6-2-24 Appeal from Decisions of the Commission**

(a) If the Commission denies a person a license, or if the Commission revokes a license which was previously granted, the Commission shall do so in writing, outlining the reasons for such decision, and deliver such writing to the person by certified mail, return receipt requested. If a person considers himself or herself aggrieved by such a decision, he or she may appeal to the Nez Perce Tribal Court within thirty (30) business days of the date of the mailing was received by the U.S. Postal Service or other carrier as evidenced by a dated receipt for same. The appeal shall be only on the record, and shall not be heard de novo. If the Court finds that the order of the Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Constitution of the Nez Perce Tribe or the constitutional rights of Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure or some other clear error of law, the Court shall vacate the same and remand the issuance or re-issuance of a license. Otherwise, the denial

shall be upheld.

(b) If the grievant is dissatisfied with the decision issued by the Nez Perce Tribal Gaming Commission, he or she may appeal to the Nez Perce Tribal Court within thirty (30) business days of the issuance of the written decision from the Nez Perce Tribe Gaming Commission. The appeal shall be only on the record and shall not be heard de novo. If the Court finds that the order of the Nez Perce Tribe Gaming Commission was issued arbitrarily and capriciously, clearly erroneously, or in violation of the Constitution of the Nez Perce Tribe of Indians or the constitutional rights of Indians (25 U.S.C. §§ 1301-1303), made upon unlawful procedure or some other clear error of law, the Court shall vacate the same and remand. Otherwise, the decision of the Nez Perce Tribe Gaming Commission shall be upheld.

(c) If the grievant is dissatisfied with the decision issued by the Nez Perce Tribal Court under either (a) or (b) above, he or she may appeal to the Nez Perce Court of Appeals in accordance with chapter 2-9 of the Nez Perce Tribal Code.

**§6-2-25 Penalties for Violations**

(a) Any person, or gaming operation, who shall violate provisions of this ordinance; or shall conduct gambling operations without a required license; or commits acts of fraud or deceit; or shall engage in professional gambling is subject to one or more of the following:**(subsection amended by NPTEC 3/22/11)**

(1) A letter of warning;

(2) A letter of reprimand;

(3) A civil fine of up to a maximum of $500.00 per occurrence per day;

(4) And/or revocation of gaming license.

(b) The Commission may refer violations under this chapter to the Tribal Prosecutor for possible civil or criminal prosecution in conformance with the Nez Perce Tribal Code.

**§6-2-26 Exclusion of Individuals from Gaming Activities**

(a) Any person may be excluded from the premises for good cause at any time at the discretion of the operator. This may include but not be limited to: **(subsection amended by NPTEC 3/22/11)**

(1) Appears to be violating rules or regulations governing gaming activities as established by the Commission or operator;

(2) By virtue of his condition or activities, disturbs the peaceful participation of other individuals in gaming activities or disrupts the orderly conduct of the gaming activity;

(3) To either intentionally or negligently cause injury or harm to any patron or employee or threaten to do so;

(4) To possess any illegal narcotics or controlled substances on any Licensed Gaming Facility.

(b) An operator may make reasonable inquiries of individuals in the course of determining whether any of the activities defined in paragraph (a) above are occurring;

(c) An operator who excludes any individual pursuant to this section shall not incur any liability, criminal or civil, as a result of doing so.

(d) Any person who is excluded from gaming by an operator pursuant to this section may petition the Commission for an order lifting the exclusion. The Commission shall have full discretion in determining whether to hear any such petition. The Commission shall further have discretion to impose such conditions as they deem appropriate in issuing any order lifting an exclusion.

# CHAPTER 6-3
# FIREWORKS ORDINANCE

## §6-3-1 Title

This Ordinance may be cited or referred to as "The Fireworks Regulatory Act."

## §6-3-2 Purpose

The purpose of this ordinance is to regulate the sale of fireworks upon the Nez Perce Reservation and provide for the safety of persons and property by such regulation.

## §6-3-3 Jurisdiction

This Ordinance applies to all Indians within the exterior boundaries of the Nez Perce Reservation.

## §6-3-4 Definitions

(a) "Common Fireworks" is defined as devices designed to produce a visible or audible effect by combustion, deflagration, explosion, or detonation.

(b) "Fireworks outlet" means each individual fireworks stand operated on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation.

(c) "Indian-Owned Lands" shall mean Nez Perce Indian-owned property, both tribal and individual.

(d) "License" is a permit issued by the Nez Perce Tribe to each fireworks outlet authorizing the sale of fireworks on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation.

(e) "NPTEC" shall mean the Nez Perce Tribal Executive Committee.

(f) "Permit" is a permit issued by the Nez Perce Tribe to each fireworks outlet authorizing the sale of fireworks on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation, and to each wholesale operator authorizing transport and sale of fireworks for the purpose of resale. **(amended by NPTEC 12/8/15)**

(g) "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business, receiver, syndicate, or any groups or combination acting as a unit.

(h) "Operator" is the person responsible for a fireworks business whether the operation is on the wholesale or retail level.

(i) "Quitclaim Deed" is a deed that passes on to the buyer all those rights or as much of a title as a seller actually has. A quitclaim deed does not warrant (promise) that the seller actually has full title pass on.

(j) "Safe and Sane Fireworks" shall mean any nonaerial common fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products. **(NPTEC authorized correction of a clerical error in last sentence 6/25/02).**

(k) "Trust Property" shall mean all real property held in trust by the United States for the Nez Perce Tribe or its individual members.

(l) "Wholesaler" is a person or business that transports fireworks to the Nez Perce reservation for sale to retailers for re-sale. **(amended by NPTEC 12/8/15)**

## §6-3-5 Wholesale Permit

(a) No person shall transport or sell on the reservation for the purposes of resale on the reservation or sell on the reservation any fireworks of any nature unless they are a valid holder of a wholesale permit. The fee for the wholesale permit shall be $500.00. Wholesale permit applications must be submitted by the first Friday of June of the year the permit is requested.

(b) The wholesale permit is valid from the date of issuance and shall expire at the close of the fireworks season, as established heretofore, in the same calendar year, except that the wholesaler can sell fireworks seven (7) days prior to the established fireworks selling period of the retailers.

(c) No sales of fireworks shall be made pursuant to a wholesale permit, except to a holder of a valid Nez Perce Tribal Fireworks retail permit.

(d) Any person holding a wholesale permit shall display the same upon request to any Tribal or BIA Law Enforcement officer and/ or tribal safety officer and shall allow such officers to examine and inspect all merchandise transported for or offered for sale to ascertain conformance with this ordinance.

(e) Any individual making application for a wholesale permit who has had a previous permit revoked or suspended may be denied a permit absent written, documented and verifiable assurances that he/she can demonstrate legal responsibility and protect the safety of the public.

## §6-3-6 Firework Retail Permit

No person shall sell fireworks without applying for a permit to sell fireworks at a fireworks outlet on trust property or Indian owned lands within the exterior boundaries of the Nez Perce Reservation. Applicants must be Nez Perce Tribal members and at least 18 years of age. Each fireworks outlet must be separately permitted. A firework permit will not be issued for property conveyed through quitclaim deeds.

## §6-3-7 Right to Deny Permit

The Nez Perce Tribe reserves the right to deny applications for permits for any reason.

**§6-3-8 Right to Close Fireworks Season**

(a) The Nez Perce Tribe reserves the right to close the season at any time for safety purposes. The fireworks season shall automatically close when the firework sales cease as set out in §6-3-13 (a) and (b). The discharge of fireworks will not be permitted after permits are suspended for sales at the end of each season. **(NPTEC authorized amendment 10/23/12)**

**§6-3-9 Application**

An application shall be accompanied by a permit fee of $200.00 for the first firework outlet, and $100.00 for each additional outlet. Temporary permits for single days or short periods not exceeding five (5) days shall be issued for $50.00 for each application.

**§6-3-10 Application Form**

(a) Full name

(b) Enrollment number

(c) Address

(d) Telephone number

(e) Location of the fireworks outlet including the allotment or unit number.

(f) A list of the types of fireworks to be sold.

(g) Proof of ownership, or a valid lease agreement in accordance with federal law if fireworks outlet is located on property other than that of applicant. Application will require the Superintendent of the BIA-NIA to certify that such agreement has been negotiated and that such agreement meets the requirements of the BIA.

**§6-3-11 Permit Suspension or Revocation**

Any wholesale or retail permit issued shall be subject to revocation and/or suspension by the Nez Perce Tribe for any violation of the ordinance in addition to the civil infractions set forth herein or any criminal penalties that may apply. Wholesalers and Retailers may also be deemed ineligible for a fireworks permit in subsequent years.

**§6-3-12 Permit Non-Transferrable**

All fireworks permits issued to an enrolled member of the Nez Perce Tribe, retail or wholesale, shall be non-transferrable between Nez Perce Tribal members and between fireworks outlets. The permit cannot be sold, assigned, leased or transferred in any manner whatsoever.

**§6-3-13 Duration of Permit (amended by NPTEC 12/8/15)**

(a) A retail permit shall permit the sale of fireworks to the general public no sooner than June 9th and no later than July 9th of that calendar year. Furthermore, the operator shall remove all unsold fireworks from his or her shop or store premises not later than July 9th of the

calendar year.

(b) A retail permit shall permit the sale of fireworks to the general public for a New Year's Eve fireworks season from December 24th, of that calendar year, to January 2nd of the following year.

**§6-3-14 Operator**

The specific Tribal member so authorized and permitted as provided for above, must be the owner, operator, and beneficiary of said business. The operator shall be held jointly responsible for the payment of any fines resulting from violations of this ordinance by any of his employees.

**§6-3-15 Employees of Operator**

All fireworks operators shall use good faith efforts to hire tribal members and other Indians. Any person under the age of 18 years employed for the sale of fireworks pursuant to the fireworks permit shall be supervised by an adult.

**§6-3-16 Sale to Minors**

It shall be unlawful to sell fireworks to anyone under the age of eighteen (18) unless such fireworks are of a nature that has been designated as "safe and sane" fireworks as defined herein. "Safe and sane" fireworks may be sold regardless of age.

**§6-3-17 Intoxication**

It shall be unlawful to sell fireworks to any intoxicated person, or for any operator or employee to sell, discharge or distribute fireworks while under the influence of alcohol or drugs while engaged in the distribution or sale of fireworks.

**§6-3-18 Permitted Fireworks - Conformity with Federal Law**

An operator shall conform in all respects, to the laws of the United States, pertaining to the sale of fireworks. The operator shall not stock or sell any fireworks which are in violation of the Hazardous Substance Act of the United States Code, 15 U.S. Code 1261 et seq. and regulations promulgated thereunder.

**§6-3-19 Discharge of Fireworks in Selling Area**

It shall be unlawful for an operator to discharge or to allow his employee or customers to discharge fireworks within one hundred (100) feet of a fireworks outlet.

**§6-3-20 Fire Safety**

(a) All operators shall have at least two (2) ten (10) pound ABC Type approved (inspected within one year) fire extinguishers in the selling area.

(b) All operators shall construct and maintain a fire line around the perimeter of the fireworks outlet.

**§6-3-21 Notice**

Each operator shall display at a prominent place in each fireworks outlet a notice listing those acts declared unlawful by this Ordinance. **(amended by NPTEC 12/8/15)**

**§6-3-22 Repeal**

This ordinance repeals prior ordinances concerning fireworks.

**§6-3-23 Non-Liability**

The issuing of fireworks permits by the Tribe shall not be construed as a waiver of sovereign immunity or as the assumption of any liability on the part of the Tribe.

**§6-3-24 Severability**

In the event that any provision of this act shall be found or declared invalid, the remaining provision of this act shall be unaffected thereby and shall remain in full force and effect.

**§6-3-25 Requirements for Retail Operators (amended by NPTEC 12/8/15)**

All retail operators must:

(a) Remove all temporary structures within five (5) days of the end of the fireworks season. If retail operator owns the property on which his outlet is located and can demonstrate absence of fire hazard, he may be granted an exemption of this requirement.

(b) Remove and cleanup of signs on and off the retail site, and debris and waste resulting from retailer's use of retail site within five (5) days of the fireworks season. If retail operator owns the property on which his outlet is located and can demonstrate absence of a fire hazard, he may be granted an exemption from this requirement, except for off-site signs.

(c) Provide a designated area for fireworks displays at least 100 feet away from the fireworks outlet or retail structure or existing buildings.

(d) Utilize not more than four (4) signs not to exceed 32 square feet to advertise their business, so long as such signs do not violate applicable billboard or zoning ordinances, do not create a safety hazard, as determined by the Safety Officer; and that the operator obtain permission of the owner on where property the sign is located.

(1) Retail Operator's Permit Number must be affixed to all signs used to advertise or identify a Fireworks Retail Outlet.

(e) The operator shall be held responsible in the event of fire, personal or physical injury as a result of negligent acts of the operator or their employees.

**§6-3-26 Violations/Sanctions**

(a) Any violation of this Ordinance shall be considered a civil infraction under §4-3-

72 and may subject the offender to a fine.

(b) In addition to any fine ordered under §4-3-72, Tribal Law Enforcement may close any offending business and seize all illegal fireworks and or proceeds from same.

(c) This section does not preclude any other civil or criminal remedies which may apply to activities governed by this Ordinance, including immediate police action necessary to protect the health and safety of the community.

# CHAPTER 6-4
# NEZ PERCE TRIBAL COMMERCIAL BUILDING CODE
**(adopted 10/26/99)**

## §6-4-1 Title

This ordinance shall be known and cited as the Nez Perce Tribal Commercial Building Code.

## §6-4-2 Jurisdiction

The provisions of this ordinance shall apply to all structures wholly or partially used for commercial purposes which are located on land owned by any member of a federally recognized tribe and which are within the Nez Perce Reservation.

## §6-4-3 Adoption of Code

The following code and its amendments, including subsequent revisions and supplements, hereby adopted by reference and made a part of this ordinance as though fully set forth herein:

(a) Uniform Building Code (U.B.C.), 1991 edition, as compiled and published by the International Conference of Building Officials (I.C.B.O.), including all of the appendices.

## §6-4-4 Commercial Building Permits When Required

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, substantially alter or repair, move, improve, remove, convert or demolish any building structure or mobile or pre-manufactured structure or any part or mechanical system thereof; or to cause any of the foregoing to be done; without first obtaining a separate building permit from the Building Official for each such building or structure. The required permit shall be obtained before work is initiated, unless other arrangements are approved in advance by the Building Official.

## §6-4-5 Fees

All buildings valued at $3,000 or less shall be charged a permit fee of twenty-five ($25) dollars. Buildings valued at $3,000 or more shall be based on those fees as specified in the attached fee schedule.

## §6-4-6 Issue of Permits

Permits required under the provisions of this ordinance shall be issued by the Nez Perce Tribal Building Official, or his designee, in accordance with applicable provisions of this ordinance, utilizing for the purpose suitable forms to be provided by the Nez Perce Tribe. The Nez Perce Tribal Executive Committee shall employ or contract with a qualified inspector who shall be the Nez Perce Tribal Building Official. Fees shall be paid to the Nez Perce Tribe Finance Department.

**§6-4-7 Inspection and Enforcement**

All of the inspection and enforcement required under this ordinance shall be provided by the Nez Perce Tribe, under authority of the Nez Perce Tribal Executive Committee. Costs of inspections, or of plan reviews shall be paid from permit fees collected by the Tribe

**§6-4-8 Public Access to Code**

One (1) copy of the code adopted by this ordinance, and its supplements and later revisions, shall be provided and made available to the public at the office of the Nez Perce Tribal Executive Committee Office of Legal Counsel, and shall be available for inspection to the public during normal business hours, upon request.

**§6-4-9 Noncompliance**

In the event that any person, firm or corporation shall willfully fail to secure a permit before initiation of construction, as required by § 6-4-4 of this ordinance, such person may be found to have committed a civil infraction and upon such a finding by the Nez Perce Tribal Court may be fined not more than three hundred dollars ($300.00), for each violation, and in addition shall be required to pay all costs and expenses involved in the case. Nothing contained herein shall prevent the Nez Perce Tribe from taking such other action as is necessary to prevent or to remedy any violation before or instead of a civil infraction proceeding, including in particular the collection of Investigation fees as provided in the Uniform Building Code.

**§6-4-10 Appeals**

The Uniform Building Code adopted by § 6-4-3 of this ordinance:

(a) The Appeals section is amended to read: "In order to hear and decide appeals of orders, decisions or determinations made by the Building Inspector relative to the application and interpretation of the code, any affected person may appeal to the Nez Perce Tribal Court, in writing, within fifteen (15) days of the decision by the Building Inspector. The court may appoint an Appeals Committee to review said appeal who shall, in turn, make recommendations to the court. The Appeals Committee shall consist of persons who are qualified by experience to pass upon matters pertaining to building construction. The Housing Director shall be an ex-officio member and shall act as secretary to the Committee. The court shall issue its decision within 60 days of the filing of the appeal. All decisions of the Tribal Court in such matters shall be final and not subject to further appeal."

**§6-4-11 Severability**

If any section, subsection, clause, phrase, or portion of this ordinance shall, for any reason be held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect, invalidate or nullify the remaining portions of this ordinance.

# Nez Perce Tribal
# Commercial Building Code

| Total Valuation | Fee |
|---|---|
| $3,001.00 to $25,000.00 | $35.00 for the first $5,000.00 plus $5.00 for each additional $5,000.00 or fraction thereof, to and including $25,000.00 |
| $25,001.00 to $50,000.00 | $55.00 for the first $25,000.00 plus $3.50 for each additional $5,000.00 or fraction thereof, to and including $50,000.00 |
| $50,001.00 to $100,000.00 | $75.00 for the first $50,000 plus $2.50 for each additional $5,000.00 or fraction thereof, to and including $100,000.00. |
| $100,001.00 to $500,000.00 | $95.00 for the first $100,000.00 plus $2.00 for each additional $5,000.00 or fraction thereof to and including $500,000.00. |
| $500,001.00 to $1,000,000.00 | $500.00 for the first $500,000.00 plus $1.50 for each additional $5,000.00 or fraction thereof, to and including $1,000,000.00. |
| $1,000,001.00 and up | $1,000.00 for the first $1,000,000.00 plus $1.00 for each additional $1,000.00 or fraction thereof. |

Other Inspections and Fees:

(a) Inspections outside of normal business hours . . . . . $30.00 per hour*
(minimum charge-two hours)

(b) Reinspection fees assessed under provisions of Section 305(g). . . . . $30.00 per hour*

(c) Inspections for which no fee is specifically indicated . . . . . $30.00 per hour*
(minimum charge – one-half hour)

(d) Additional plan review required by changes, additions or revisions to approved plans . . . . . $30.00 per hour*
(minimum charge – one-half hour)

*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

# CHAPTER 6-5
# FOREST PROTECTION FIRE ORDINANCE
**(chapter adopted 9/14/99)**

## §6-5-1 Definitions

(a) "Campfire" means a fire, not within any building, mobile home or living accommodation mounted on a motor vehicle, which is used for cooking, personal warmth, lighting, ceremonial, or esthetic purposes.

## §6-5-2 Fire

The following are prohibited:

(a) Carelessly or negligently throwing or placing any ignited substance or other substance that may cause a fire.

(b) Firing any tracer bullet or incendiary; ammunition.

(c) Causing timber, trees, slash, brush or grass to bum except as authorized by permit.

(d) Leaving a fire without completely extinguishing it.

(e) Allowing a fire to escape from control.

(f) Building, attending, maintaining, or using a campfire without removing all flammable material from around the campfire adequate to prevent its escape.

## §6-5-3 Spark Arresters

(a) Requirements. The steam or internal combustion engines be equipped with properly installed, maintained, and effectively working spark arresters as categorized below:

(1) Portable power saws. The spark arrester shall meet the standards set forth in the Society of Automotive Engineers (SAE) Recommended Practice J335b, "Multi-position Small Engine Exhaust System Fire Ignition Suppression", and be listed in the most recent "Spark arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at the Tribal Fire Office.

(2) Other engines. The spark arrester shall meet the standards set forth in the publication of the USDA Forest Service, entitled "Standard 5100la for Spark Arresters of Internal Combustion Engines" as amended under date of July 1970, and be listed in the most recent " Spark Arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at the Tribal Fire Office.)

(b) Exceptions. The following are exempt from the requirements of the rule:

(1) Turbo-charged internal combustion engines in which one hundred percent

(100%) of the exhaust gases pass through the turbo-charger.

(2) Engines of passenger-carrying vehicles and light trucks, equipped with baffle-type muffler and tailpipe through which all exhaust gasses pass, that are kept in good repair.

(3) Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle.

(4) Engines of water pumping equipment used in firefighting.

(5) Engines of helicopters and other aircraft.

**§6-5-4 Cost of Fire Suppression and Protection**

Whenever the Tribe incurs costs in controlling or extinguishing a fire that any person willfully or is negligently responsible for, such cost shall include all actual cost to the Tribe including wages and use of equipment.

# CHAPTER 6-6
# FUEL TAX ORDINANCE
**(Chapter adopted 10/9/01)**

## §6-6-1 Definitions

(a) "Administrator" shall mean the person, program or body authorized by NPTEC to administer the Fuel Tax Ordinance.

(b) "Distributor" shall mean those businesses, entities or individuals that receive fuel, store it, and/or sell fuel to Retailers on a wholesale basis for resale at the Retail level.

(c) "Fuel" shall mean any mixture of hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats.

(d) "Indian" shall mean any person who is enrolled or is eligible for enrollment in a federally recognized Tribe or who is at least 1/4 degree Indian blood. BIA or tribal certification may be required.

(e) "Retailer" shall mean any business, entity or individual engaged in the retail sale of fuel to the public.

## §6-6-2 Purpose

The purpose of this Ordinance is to govern the transactions involving the receipt and sale of fuels by Distributors and Indian-owned Retailers within the confines of the Nez Perce Reservation.

## §6-6-3 Imposition of Tax **(Amended by NPTEC 6/23/15)**

A tax is imposed on all fuel received within the confines of the Nez Perce Reservation and designated for sale at the retail level to consumers. This amount is established by NPTEC resolution. The Nez Perce Tribal Executive Committee may adjust the amount of the tax by resolution. The tax is to be paid by the licensed Retailer and remitted with the monthly Retailer report as required in §6-6-5(c).

## §6-6-4 Distributor Licenses

(a) No Distributor shall receive or sell fuel to a Retailer or to any person or entity for resale unless that Distributor has a valid Distributor's license duly issued by the Nez Perce Tribe.

(b) A Distributor may obtain a Distributor's license on an annual basis from the Nez Perce Tribe by submitting a completed application form provided by the Nez Perce Tribe upon request and paying an annual license fee of $100.00. After the first year this ordinance is effective, the amount of annual license fees shall be established annually by resolution of the Nez Perce Tribal Executive Committee. Licensed Distributors shall be advised in writing no later than the last business day of September of the amount of the license fee for the next calendar year. Fees for an application submitted during the calendar year shall be prorated. The Nez Perce Tribe may require posting of a bond, in addition to the license fee, or any other requirement deemed necessary in administering the Ordinance and is under no obligation to issue

any Distributor's license.

(c) A Distributor, regardless of whether he obtains a Distributor's License shall submit, not later than the tenth day of the calendar month following the month in which fuel was received, monthly reports of amounts of fuel received and any other information reasonably requested by the Administrator. If the tenth of the month falls on a holiday or week-end, such report shall be due on the next business day following the week-end or holiday.

(d) All Distributors will be required to comply with federal requirements for health and safety in regard to construction, placement and operation of fuel storage tanks, trucks and other related equipment. Such compliance shall be demonstrated to the satisfaction of the Administrator prior to obtaining a license. Notwithstanding additional enforcement tools as set forth herein and in the Nez Perce Tribal Code, a license may be revoked for non-compliance.

**§6-6-5 Retailer Licenses**

(a) No Indian shall operate a Retail Fuel Station within the boundaries of the Nez Perce Reservation unless that Retailer has a valid license duly issued by the Nez Perce Tribe. Nor shall a Retail Fuel Station purchase fuel from any entity other than a duly licensed Distributor of the Nez Perce Tribe.

(b) A Retailer may obtain a Retailer's license on an annual basis from the Nez Perce Tribe by submitting a completed application form provided by the Nez Perce Tribe upon request and paying an annual license fee of $100.00. After the first year this ordinance is effective, the amount of annual license fees shall be established annually by resolution of the Nez Perce Tribal Executive Committee. Licensed Retailers shall be advised in writing no later than the last business day of September of the amount of the license fee for the next calendar year. Fees for an application submitted during the calendar year shall be prorated. The Nez Perce Tribe may require posting of a bond, in addition to the license fee, or any other requirement deemed necessary in administering the Ordinance and is under no obligation to issue any Retailer's license.

(c) A Retailer, regardless of whether he obtains a Retailer's License shall submit, not later than the tenth day of the calendar month following the month in which fuel was received/sold, monthly reports of amounts of fuel received and sold and any other information reasonably requested by the Administrator. If the tenth of the month falls on a holiday or week-end, such report shall be due on the next business day following the week-end or holiday.

(d) A Retailer shall also, with the report, remit the amount of taxes imposed on fuel received the preceding month, as set forth in subsection (c) of this section. **(correction to subsection: replaced word distributor with correct word retailer effective 3/26/02)**

(e) All Fuel Retailer Stations will be required to comply with federal requirements for health and safety in regard to construction, placement and operation of fuel storage tanks and other related equipment. Such compliance shall be demonstrated to the satisfaction of the Administrator prior to obtaining a license. Notwithstanding additional enforcement tools as set forth herein and in the Nez Perce Tribal Code, a license may be revoked for non-compliance.

**§6-6-6 Enforcement**

(a) Any Indian person, corporation or entity that receives or sells fuel within the Nez Perce Reservation, with or without a license, is deemed to be doing business within the Nez Perce Reservation and shall be subject to the jurisdiction of the Nez Perce Tribe and the terms of this Ordinance. Any Indian person, corporation or entity doing business within the Nez Perce Reservation shall be subject to the service of process issued by the Nez Perce Tribal Court as though that person, corporation or entity was a resident of the Nez Perce Reservation.

(b) Any person, corporation or entity who engages in the business as a fuel Distributor or fuel Retailer without being the holder of a valid license shall be guilty of a civil infraction. Each day of business without a valid license shall constitute a separate offense.

(c) A Distributor or Retailer whose monthly reports are not received within seven days of the date it is due may be subject to a daily fine of $100 for each day the report is late. Such report will be presumed to be late on the eighth day after the date is due. Such fine may be assessed by the Administrator as an administrative procedure and shall accrue interest at the highest legal rate allowed under federal law. If such report is received by the Nez Perce Tribe after the seven day late period and the postmark date on the envelope is found to have a date within the allowable time period, no penalty will be assessed. An appeal of any penalty assessment shall be available through the Nez Perce Tribal Court and the sole basis for review shall be whether the report was postmarked before the required date and received by the Nez Perce Tribe before or within the seven day late period.

(1) Enactment of this provision as law and delivery to all existing licensees and new applicants shall be deemed full and fair notice of them of their reporting obligations and no further notice shall be required. The failure to provide the required monthly report within twenty days after the seven day late period, when it will be presumed late or an indication by the Distributor or Retailer that he/she will not comply with the reporting requirements, shall be deemed a violation of this ordinance and be subject to such additional penalties as provided herein.

(d) In the event that a Distributor or Retailer fails to provide the monthly reports as required herein, the Administrator may assess the fines authorized in section VI.B. above. The Administrator shall serve written notice by regular mail addressed to the licensee of the amount of the fine then due, request the monthly report, demand payment of the fine then due in full immediately and advise the licensee that if the report and payment are not received by that deadline, the license will be suspended on that date. Unless a licensee pays the total fine due and submits the required report within twenty days of the date due, their license shall be suspended by the Administrator. Once suspended for failure to pay the fine assessed or to provide the report within twenty days of the date due, the license shall not be reinstated unless and until the licensee provides a cash performance bond to the Tribe in the amount of $50,000 to ensure compliance with the provisions of this ordinance.

(e) In all other instances where the Administrator reasonably believes that a violation of the Fuel Tax Ordinance has occurred, the Administrator shall, on a timely basis, conduct such investigation into relevant facts as is necessary and provide such information to the Nez Perce Tribal Executive Committee, Office of Legal Counsel who shall take such legal steps as are

necessary to ensure compliance with the provisions of the Code. If warranted, the legal steps could include a referral to the Tribal Prosecutor for criminal charges to be filed.

(f) Upon a determination by the Court that a violation of any provision of this Ordinance has occurred, sanctions, including any or all of the following, may be imposed:

(1) Revocation of Distributor or Retail license;

(2) Civil fine in an amount established by the Court unless the violation for which it is imposed resulted in the loss of revenue to the Nez Perce Tribe in which case, the amount of the fine shall be equal to three times the amount of revenue lost to the Nez Perce Tribe;

(3) Forfeiture of property belonging to Distributor or Retailer within the boundaries of the Nez Perce Reservation of a value sufficient to pay in full any fine, assessment or amount due pursuant to this Ordinance;

(4) Posting of a cash bond with Nez Perce Tribe before license is reissued or restored.

(g) The Nez Perce Tribe may file a complaint with the Nez Perce Tribal Court alleging a violation of the Fuel Tax Ordinance. If the complaint seeks preliminary relief, including but not limited to, the closure of the Distributor or Retailers business pending final disposition of the complaint, the Nez Perce Tribal Court may be requested to issue an order granting the preliminary relief on an ex parte basis upon a showing by the Nez Perce Tribe that reasonable efforts were made to advise the named defendant of the filing of the complaint and the request for preliminary relief. Upon presentation of prima facie evidence that a Distributor or Retailer failed to provide the reports or pay the taxes required by the Fuel Tax Ordinance, the court shall grant the preliminary relief. Regardless of whether the preliminary relief is granted, the court shall schedule the cause notice to be served upon the defendant and hold a full hearing on the matter of the preliminary relief no later than three business days from the date of the complaint.

(h) Any order of the Nez Perce Tribal Court granting preliminary relief may include authorization or direction to appropriate enforcement agencies to secure premises or property to avoid transfer or concealment of property that may be subject to forfeiture.

(i) Any transfer or concealment of property subject to forfeiture by a Distributor or Retailer to avoid or attempt to avoid forfeiture pursuant to, or enforcement of, this ordinance shall be a criminal offense subject to criminal penalties.

**§6-6-7 Distribution of Tax Revenues**

Tax revenues shall be distributed as determined by the Nez Perce Tribal Executive Committee.

**§6-6-8 Violations/Sanctions**

(a) Any violation of this Ordinance shall be considered a civil infraction under §4-3-

73 and may subject the offender to a fine.

(b) In addition to any fine ordered under §4-3-73, Tribal Law Enforcement may close any offending business and seize all fuel or fuel proceeds from same.

(c) This section does not preclude any other civil or criminal remedies which may apply to activities governed by this Ordinance, including immediate police action necessary to protect the health and safety of the community.

# CHAPTER 6-7
# TOBACCO AND LIQUOR ORDINANCE
**(adopted by NPTEC 10/28/03)**

## §6-7-1 Definitions

(a) Carton of Cigarettes - A unit made up of packages of cigarettes per industry standard.

(b) Distributor - Those businesses that sell tobacco products to Operators on a wholesale basis for resale at tobacco or liquor outlets.

(c) Licensee - Any person or operator who holds either a Distributor's license or an Outlet license issued pursuant to this Ordinance.

(d) Operator - shall mean an enrolled member of the Nez Perce Tribe licensed by the Tribe to operate a tobacco or liquor outlet.

(e) Other Tobacco Products - shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco or any substitute other than cigarettes. **(definition amended by NPTEC 9/27/11)**

(f) Outlet - shall mean a tribally licensed retail or wholesale business selling tobacco or liquor products on the Nez Perce Reservation.

(g) Package of Cigarettes - One single, factory sealed package containing a number of cigarettes per industry standard.

(h) Tribe - shall mean the Nez Perce Tribe.

## §6-7-2 Distributor Licenses

(a) In order to maintain an accurate record of tobacco products coming in and going out of the Nez Perce Reservation all tobacco wholesalers and retailers, whether licensed or non-licensed, shall be required to report every transaction involving tobacco products occurring within the boundaries of the Nez Perce Reservation, including the name and address of each purchaser and contact information. Sales to non-licensed or non-resident persons or entities is hereby prohibited.

(b) A distributor may obtain a Distributor's License on an annual basis from the Nez Perce Tribe by submitting a completed application form provided by the Nez Perce Tribe upon request and paying an annual license fee of $300. The amount of annual license fees shall be established annually by resolution of the Nez Perce Tribal Executive Committee. Licensed Distributors shall be advised in writing no later than the last business day of November of the amount of the license fee for the next calendar year. Fees for an application submitted during the Calendar year shall be prorated. The Nez Perce Tribe is under no obligation to issue any Distributor's licenses.

(c) A Distributor who obtains a Distributor's License shall submit monthly reports of sales made to Operators or tobacco outlets. Such reports shall indicate the number of cartons of cigarettes and other tobacco products delivered to or for each Operator or Tobacco Outlet and the names and addresses of those operators, tobacco outlets and any other personal entity to which cigarettes/tobacco products have been delivered. If no sales are made in a particular month, the report shall be submitted reflecting no sales. The report of sales for a particular month must be postmarked before the 15th of the following month, otherwise the Distributor shall be subject to the penalties described below. **(amended by NPTEC 9/27/11)**

(d) A Distributor who obtains a Distributor's License shall provide full and accurate information in all license application forms and monthly reports of sales to Operators or Tobacco Outlets in addition to any other information reasonably requested by the Nez Perce Tribe.

(e) A Distributor whose monthly sales report is not received within seven days of the date it is required to be postmarked shall be subject to a daily fine of $100 for each day the report is late. Such report will be presumed to be late on the eighth day after the date it is required to be postmarked. Such a fine shall be assessed beginning on the eighth day and collected as an administrative procedure and such fines shall accrue interest at the highest legal rate allowed under federal law until paid. If such report is received by the Nez Perce Tribe after the seven day mailing period, and the postmark date on the envelope is later than the required postmark date, the $100 daily fine shall also be assessed for the number of days beyond the required postmarked date that it was actually mailed. If the report is found to be mailed on or before the required postmark date, no penalty shall be assessed. An appeal of any penalty assessment shall be available through the Nez Perce Tribal Court and the sole basis for review shall be whether the report was postmarked before the required date and received by the Nez Perce Tribe within the seven day mail period.

Enactment of this provision as law and delivery to all existing licensees and new applicants shall be deemed full and fair notice of them of their reporting obligations and no further notice shall be required. The failure to provide the required monthly report within twenty days after the seven day mailing period, when it will be presumed late or an indication by a Distributor, verbal or otherwise, that the Distributor will not comply with the reporting requirements, shall be deemed a violation of this ordinance and be subject to such additional penalties as are provided herein.

(f) There is levied and there shall be collected, a tax upon the distribution of all cigarettes and other tobacco products sold or distributed to a Tobacco or Liquor Outlet in an amount to be established by NPTEC resolution. Such amount may be adjusted by NPTEC resolution with thirty (30) days written notice prior to the adjustment to the licensed Tobacco or Liquor Outlet Operators and the Licensed Distributors. The tax on other tobacco products besides cigarettes shall equal a percentage of the wholesale sales prices of such tobacco products. The percentage of the levy shall be set by NPTEC resolution. The tax shall be imposed at the time the Licensed Distributor (a) brings, or causes to be brought tobacco products for sale to licensed Operators or tobacco outlets, (b) makes, manufactures, or fabricates tobacco products for sale to licensed Operators or tobacco outlets, or (c) ships or transports tobacco products to licensed Operators or tobacco outlets to be sold by those licensed Operators or tobacco outlets. **(amended by NPTEC 9/27/11)**

The excise tax levied hereunder shall be added to the selling price, whether the product is sold at wholesale or at retail, of tobacco products sold by the person required to be licensed by this Chapter.

All cigarette packages sold by a tobacco distributor licensed by this chapter must bear a tax stamp indicating that the tribal tax on the cigarettes has been paid. A $500.00 fine will be imposed for each package found to be sold by a licensed tobacco distributor without the required stamp.

(g) Upon a determination by the Nez Perce Tribal Court that a Distributor has violated any provision of this section, any or all of the following sanctions may be imposed:

(1) Suspension of the Distributor's license;

(2) (Revocation of the Distributor's license;

(3) A civil fine in an amount established by the Court unless the violation for which it is imposed resulted in a loss of revenue to the Nez Perce Tribe in which case, the amount of the fine shall be equal to three times the amount of revenue lost to the Nez Perce Tribe.

(4) Forfeiture of any property belonging to the Distributor within the boundaries of the Nez Perce Reservation of a value sufficient to pay in full any fine, assessment or any other amount due pursuant to this Ordinance;

(5) Posting of a cash performance bond with the Nez Perce Tribe before a license is restored or reissued.

**§6-7-3 Tobacco Outlet Licenses**

(a) No Indian shall operate a Tobacco Outlet within the boundaries of the Nez Perce Reservation unless that Tobacco Outlet has a valid license duly issued by the Nez Perce Tribe.

(b) A Tobacco Outlet may obtain a Tobacco Outlet license on an annual basis from the Nez Perce Tribe by submitting a completed application form provided by the Nez Perce Tribe upon request and paying an annual license fee of $200. The amount of the annual license fee shall be established by resolution by the Nez Perce Tribal Executive Committee. Licensed outlets shall be advised in writing no later than the last business day of November of the amount of the annual license fee for the next year. The fee for any application submitted during the calendar year shall be prorated. The Nez Perce Tribe is under no obligation to issue any Tobacco Outlet license.

(c) A Tobacco Outlet shall purchase tobacco products only from those distributors that have a valid Distributor's License duly issued by the Nez Perce Tribe. Sales of cigarettes by Tobacco Outlets shall not exceed 48 cartons for each individual transaction.

(d) Each Tobacco Outlet shall provide to the Nez Perce Tribe a report on the volume of cigarettes and other tobacco products purchased from distributors the preceding month, to be postmarked by the tenth day of each month. If such a report is not received by the Nez Perce Tribe within seven days of the required postmark date, it shall create a presumption that a

violation has occurred and shall subject the tobacco outlet to the sanctions provided herein. Such sanctions shall begin to be assessed on the eighth day after the date the report is required to be postmarked. If the report is received after the seven day mailing period and the postmark date on the envelope is found to be after the date it is required to be postmarked, sanctions will be assessed as to the number of days it was postmarked late. If the report is received and found to be mailed on or before the required postmark date, no penalty will be assessed. **(amended by NPTEC 9/27/11)**

(e) There is levied and there shall be collected, a tax upon the distribution of all cigarettes and other tobacco products purchased by a Tobacco or Liquor Outlet in an amount to be established by NPTEC resolution. Such amount may be adjusted by NPTEC resolution with thirty (30) days written notice prior to the adjustment to the licensed Tobacco or Liquor Outlet Operators and the Licensed Distributors. The tax on other tobacco products besides cigarettes shall equal a percentage of the wholesale sales prices of such tobacco products. The percentage of the levy shall be set by NPTEC resolution. The tax shall be imposed at the time the Licensed Distributor (a) brings, or causes to be brought tobacco products for sale to licensed Operators or tobacco outlets, (b) makes, manufactures, or fabricates tobacco products for sale to licensed Operators or tobacco outlets, or (c) ships or transports tobacco products to licensed Operators or tobacco outlets to be sold by those licensed Operators or tobacco outlets. **(amended by NTPEC 9/27/11)**

The excise tax levied hereunder shall be added to the selling price, whether the product is sold at wholesale or at retail, of tobacco products sold by the person required to be licensed by this Chapter.

All cigarette packages sold by a tobacco outlet licensed by this chapter must bear a tax stamp indicating that the tribal tax on the cigarettes and other tobacco products has been paid. A $500.00 fine will be imposed for each package found to be sold by a licensed tobacco outlet without the required stamp.

(f) The Operator of a Tobacco Outlet shall provide full and accurate information on all license application forms and monthly reports of purchases of cigarettes and other tobacco products in addition to any other information reasonably requested by the Nez Perce Tribe. **(amended by NPTEC 9/27/11)**

(g) In addition to any other penalties that may be assessed, an Operator who fails to mail a monthly report of purchases by the required postmark date or to pay the taxes assessed in full by the date due shall be subject to a daily fine of $100 for each day the report is found to be late as stated in § 6-7-3(d)or payment of taxes is past due as stated in § 6-7-3(e). Such a fine shall be assessed and collected as an administrative procedure and such fines shall accrue interest at the highest legal rate allowed under federal law until paid. An appeal of such assessment shall be available through the Nez Perce Tribal Court and the sole basis for review shall be whether the report was postmarked on or before the required date and received by the Nez Perce Tribe within the seven day mailing period or whether taxes were paid to the Nez Perce Tribe by the due date.

Enactment of this provision as law and delivery of copies to all existing licensees and new applicants shall be deemed full and fair notice to them of their obligations to report and pay taxes and not further notice shall be required. The failure to provide the required monthly report within twenty days after the seven day mailing period following the postmark date, or an

indication by an Operator of a Tobacco Outlet, verbal or otherwise, that the Operator will not comply with the reporting requirements, shall be deemed a violation of this ordinance and be subject to such additional penalties as are provided herein.

(h) Upon a determination by the Nez Perce Tribal Court that an Operator or Tobacco Outlet has violated any provision of this section, any or all of the following sanctions may be imposed:

(1) Suspension of Tobacco Outlet license;

(2) Revocation of Tobacco Outlet license;

(3) Civil fine in an amount established by the Court unless the violation for which it is imposed resulted in the loss of revenue to the Nez Perce Tribe in which case, the amount of the fine shall be equal to three times the amount of the revenue lost to the Nez Perce Tribe.

(4) Forfeiture of property belonging to Operator within boundaries of Nez Perce Reservation of a value sufficient to pay in full any fine, assessment or amount due pursuant to this Ordinance;

(5) Posting of a cash bond with Nez Perce Tribe before license is reissued or restored.

**§6-7-4 Liquor Distributor and Outlet Licenses**

(a) No Indian shall distribute or sell liquor within the boundaries of the Nez Perce Reservation unless the liquor distributor or outlet has a valid license duly issued by the Nez Perce Tribe.

(b) A liquor distributor or outlet may obtain a liquor distributor or outlet license on an annual basis from the Nez Perce Tribe by submitting a completed application form provided by the Nez Perce Tribe upon request and paying an annual license fee. The annual license fee is $300.00. The Nez Perce Tribal Executive Committee may establish adjusted license fees by resolution, so long as a liquor distributor or outlet outlets are notified 30 days prior to the effective date of the adjustment. Fees for an application submitted during the calendar year shall be prorated. The Nez Perce Tribe is under no obligation to issue any liquor distributor or outlet license.

(c) A liquor distributor or outlet shall purchase liquor products only from those distributors that have a valid distributor's license duly issued by the Nez Perce Tribe or the State of Idaho.

(d) Each liquor distributor or outlet shall provide to the Nez Perce Tribe a report on the volume of liquor purchased from distributors the preceding month, to be postmarked by the tenth day of each month. If such a report is not received by the Nez Perce Tribe within seven days of the required postmark date, it shall create a presumption that a violation has occurred and shall subject the liquor distributor or outlet to the sanctions provided herein. Such sanctions shall begin to be assessed on the eighth day after the date the report is required to be postmarked.

If the report is received after the seven day mailing period and the postmark date on the envelope is found to be after the date it is required to be postmarked, sanctions will be assessed as to the number of days it was postmarked late. If the report is received and found to be mailed on or before the required postmark date, no penalty will be assessed.

(e) Each liquor distributor or outlet shall pay to the Nez Perce Tribe by the close of business on the last day of each month or the next business day if the last day falls upon a weekend or tribal holiday, a tax in the amount of 5¢ for every dollar of liquor products sold during the preceding month. The Nez Perce Tribal Executive Committee may adjust the amount of tax by resolution and with proper notice provided to liquor distributor or outlets thirty (30) days prior to the effective date of adjustment The excise tax levied hereunder shall be added to the retail selling price of liquor products paid by the ultimate consumer.

(f) The operator of a liquor distributor or outlet shall provide full and accurate information on all license application forms and monthly reports of purchases of liquor products in addition to any other information reasonably requested by the Nez Perce Tribe.

(g) In addition to any other penalties that may be assessed, an operator who fails to mail a monthly report of purchases by the required postmark date or to pay the taxes assessed in full by the date due shall be subject to a daily fine of $100 for each day the report is found to be late as stated in § 6-7-4 (d) or payment of taxes is past due as stated in § 6-7-4(e). Such a fine shall be assessed and collected as an administrative procedure and such fines shall accrue interest at the highest rate allowed under federal law until paid. An appeal of such assessment shall be available through the Nez Perce Tribal Court and the sole basis for review shall be whether the report was postmarked on or before the required date and received by the Nez Perce Tribe within the seven day mailing period or whether taxes were paid to the Nez Perce Tribe by the due date.

Enactment of this provision as law and delivery of copies to all existing licensees and new applicants shall be deemed full and fair notice to them of their obligations to report within twenty days after the seven day mailing period following the postmark date, or an indication by an operator of an liquor distributor or outlet, verbal or otherwise, that the operation will not comply with the reporting requirements, shall be deemed a violation of this ordinance and be subject to such additional penalties as are provided herein.

(h) Upon a determination by the Nez Perce Tribal Court that an operator or liquor distributor or outlet has violated any provision of this section, any or all of the following sanctions may be imposed:

(1) Suspension of liquor distributor or outlet license;

(2) Revocation of liquor distributor or outlet license;

(3) Civil fine in an amount established by the Court unless the violation for which it is imposed resulted in the loss of revenue to the Nez Perce Tribe in which case, the amount of the fine shall be equal to three times the amount of the revenue lost to the Nez Perce Tribe;

(4) Forfeiture of property belonging to operator within boundaries of the Nez Perce Reservation of a value sufficient to pay in full any fine, assessment

or amount due pursuant to this ordinance;

(5) Posting of a cash bond with Nez Perce Tribe before license is reissued or restored.

**§6-7-5 Sales to Minors Prohibited**

(a) A tobacco operator is prohibited from selling any tobacco products to any person under the age of 18 years.

(b) A liquor distributor or outlet is prohibited from selling liquor products to any person under the age of 21 years.

**§6-7-6 Other Business by Operator**

An operator may conduct other business simultaneously with managing a tobacco outlet or liquor outlet. The other business may be conducted on the same premises and the operator shall not be required to maintain separate books of account for the other business.

**§6-7-7 Tribal Liability and Credit**

(a) An operator is forbidden to represent or give the impression to any supplier or any other person with whom he does business that he is a representative of the Tribe, authorized to pledge tribal credit or financial responsibility for any of the expenses of is business operation. The operator shall hold the Nez Perce Tribe harmless from all claims and liability of whatever nature.

**§6-7-8 Severability**

If any provision of this ordinance or its application to any person or circumstances is held invalid, the remainder of this ordinance, or the application of the provisions to other persons or circumstances is not affected.

**§6-7-9 Assignment, Transfer, Sublease or Amendment of Outlet Licenses**

Unless otherwise provided herein, an assignment, transfer, sublease or amendment of an outlet license may be made only with the prior approval of NPTEC and the written consent of all parties, including the surety or sureties.

**§6-7-10 Enforcement Procedures (*originally misnumbered as §6-7-20)***

(a) The Nez Perce Tribal Executive Committee shall authorize such person, persons, program or body as they deem appropriate to administer the Tobacco Ordinance. For purposes of this section, that person shall be referred to as the administrator. Until modified by appropriate action of the Nez Perce Tribal Executive Committee, the Administrative Manager of the Nez Perce Tribe shall be the administrator of the Tobacco Ordinance.

(b) Any person, corporation or entity that sells tobacco or liquor products to a Tobacco or Liquor Outlet; sells tobacco or liquor products to a person or business that are resold or intended for resale at a Tobacco or Liquor Outlet; delivers tobacco or liquor products

to a Tobacco or Liquor Outlet or a person representing a Tobacco or Liquor Outlet; and regardless of whether any of the foregoing acts are done with or without a Distributor's license as required herein, is deemed to be doing business within the Nez Perce Reservation and is thereby subject to the jurisdiction of the Nez Perce Tribe and the terms of this Ordinance. A person, corporation or entity that is doing business within the Nez Perce Reservation shall be subject to the service of process issued by the Nez Perce Tribal Court as though that person, corporation or entity was a resident on the Nez Perce Reservation.

(c) In the event that a Distributor or Tobacco or Liquor Outlet fails to provide the monthly reports as required herein, the administrator shall assess the fines authorized in sections 6-7-2(f) and 6-7-3(g) above. If the reports have not been received within ten days after the date it is to be postmarked, the administrator shall serve written notice by regular mail addressed to the licensee of the amount of the fine then due, request the monthly report, demand payment of the fine then due in full immediately and advise the licensee that if the report and payment are not received by that deadline, the license will be suspended on that date. Unless a licensee pays the total fine due and submits the required report within twenty days of the date due, their license shall be suspended by the administrator. Once suspended for failure to pay the fine assessed or to provide a report within twenty days of the date due, the license shall not be reinstated unless and until the licensee provides a cash performance bond to the Tribe in the amount of $50,000.00 to insure compliance with the provisions of this ordinance.

(d) The administrator may meet with the various licensees who are in arrears with the Tribe due to nonpayment of taxes and/or incurred fines on a case by case basis to review delinquencies and resolve disputes. In all other instances where the administrator reasonably believes that a violation of the Tobacco and Liquor Ordinance has occurred, the administrator shall, on a timely basis, conduct such investigation into relevant facts as is necessary and provide such information to the Nez Perce Tribal Executive Committee, Office of Legal Counsel who shall take such legal steps as are necessary to insure compliance with the provisions of the Tobacco and Liquor Ordinance.

(e) The Nez Perce Tribe may file a complaint with the Nez Perce Tribal Court alleging a violation of the Tobacco and Liquor Ordinance. If the complaint seeks preliminary relief, including but not limited to, the closure of a Tobacco or Liquor Outlet pending final disposition of the complaint, the Nez Perce Tribal Court may issue an order granting the preliminary relief on an ex parte basis upon a showing by the Nez Perce Tribe that reasonable efforts were made to advise the named defendant of the filing of the complaint and the request for preliminary relief. Upon presentation of prima facie evidence that a Tobacco or Liquor Outlet has failed to provide the reports or pay the taxes required by the Tobacco and Liquor Ordinance the court shall grant the request for preliminary relief. Regardless of whether the preliminary relief is granted or not, the court shall cause notice to be served upon the defendant and hold a full hearing on the matter of the preliminary relief no later than three business days from the date of the complaint.

(f) Any order of the Nez Perce Tribal Court granting preliminary relief may include authorization or direction to appropriate enforcement agencies to secure premises or property to avoid transfer or concealment of property that may be subject to forfeiture.

(g) Any transfer or concealment of property subject to forfeiture by an Operator to avoid or attempt to avoid forfeiture pursuant to, or enforcement of, this ordinance shall be a

criminal offense subject to criminal penalties.

# CHAPTER 6-8
# DOG ORDINANCE
**(Ordinance codified & amended 4/24/04; Ordinance amended 5/14/14)**

AN ORDINANCE PROVIDING FOR REGULATION OF DOGS WITHIN THE RESERVATION AREAS DESCRIBED HEREIN; DEFINING THE PURPOSE OF THE ORDINANCE; PROVIDING FOR DEFINITIONS; PROVIDING FOR LICENSING; PROVIDING FOR RABIES CONTROL; PROVIDING FOR IMPOUNDING; PROVIDING FOR IMPOUND FEES; PROVIDING FOR PROHIBITION OF DOGS RUNNING AT LARGE; PROVIDING FOR PENALTIES FOR VIOLATION; PROVIDING FOR DOG MARSHAL; PROVIDING FOR THE REGULATION OF FEMALE DOGS IN HEAT AND SICK DOGS; ESTABLISHING EFFECTIVE DATE AND REPEAL OF CONFLICTING ORDINANCES.

## §6-8-1 Purpose

The Nez Perce Tribe is concerned about the welfare of dogs owned, harbored and possessed within the confines of the Nez Perce Reservation and the responsibility of the owners, harborers and other persons possessing such dogs. The Nez Perce Tribe is also concerned with the welfare of the community, especially children, in relation to dogs running at large, particularly Vicious Dogs. This ordinance will address those concerns.

## §6-8-2 Definitions

(a) The term "Owner" as used in this section shall mean any person harboring or keeping a dog within the Nez Perce reservation.

(b) The term "Dog" as used in this section shall mean and include either male or female dog.

(c) The term "Dog Marshal or his designated assistant" shall mean and include any law enforcement officer authorized to uphold the laws of the Nez Perce Tribe or a designated assistant authorized by a Nez Perce Tribe Law Enforcement Officer.

(d) The term "Domestic Animal" shall mean and include any equine or bovine animal, goat, sheep, swine, dog, cat, poultry, or other domesticated beast or bird.

(e) The term "Vicious Dog" shall mean and include any dog that has bitten or otherwise attacked any person or domestic animal in the past two years, or has threatened to bite or otherwise attack any person within the past two years, or any dog previously designated as a “Vicious Dog” by an authorized tribal entity.

(f) The term “Dog at Large” means a dog not confined on the property of the owner or not on a leash and muzzled or caged when off the owner’s property as required herein.

## §6-8-3 License Required

(a) It shall be unlawful for any person to own, harbor, keep or possess a dog within the Nez Perce reservation without first procuring a license as provided by this section, provided

however, that the provisions of this section shall not apply to any person visiting in the Nez Perce reservation for a period not exceeding thirty (30) days and owning or possessing a dog currently licensed and bearing the license issued by another licensing authority.

(b) It is unlawful for any person to own more than four (4) dogs older than five (5) months or to maintain or operate a kennel facility unless such person has obtained the applicable license as provided hereinafter. If there is a change in the ownership of any such facility, the new owner shall have the license transferred to his name upon receipt of new updated application and payment of a thirty-five dollar ($35) transfer fee.

(c) This section shall not apply to any person owning or possessing a dog currently licensed and bearing a current license issued by the City of Lapwai or any other city or county within the Nez Perce reservation who resides in that city or county.

**§6-8-4 Collar and Tag**

Every dog shall at all times wear a substantial, durable collar to which shall be securely attached the required license.

**§6-8-5 Licensing**

(a) All dog licenses shall be issued for the calendar year January 1 through December 31 of each and every year. The owner or person in charge of any dog within the Nez Perce reservation shall make application to the Nez Perce Tribal Police (NPTP) and submit proof of rabies vaccination and pay an annual license fee in the sum of ten dollars ($10.00) for each and every spayed /neutered dog; twenty-five dollars ($25.00) for each unaltered dog; and seventy-five dollars ($75.00) for a kennel license. Kennel licenses shall be in addition to individual dog license fees. Upon receipt of such application and payment of fees, the Tribal Police Department shall issue a receipt stating the owner's name and the number of the license, the sex of the dog, the amount paid by him, together with a metal tag bearing the number corresponding to that upon the receipt. It shall be unlawful for anyone to make a false statement in such application for said license. Upon satisfactory proof that a license tag has been lost, a new tag of a different number may be issued and the transaction shall be noted upon the NPTP file for the number originally issued.

(b) At the first renewal of the annual license, with proof of current rabies vaccination, the license will be effective for 3 years and at every renewal thereafter.

(c) Replacement tags will cost three dollars ($3.00), proof of previous license required.

(d) The annual license for any dog of an owner who has been found by the Nez Perce Tribe to allow a Vicious Dog, as that term is herein defined, to run at large, shall be increased by the amount of one hundred dollars ($100.00) in addition to the fees required under §6-8-5 herein.

**§6-8-6 Imitation License Tags Prohibited**

It shall be unlawful for any person to allow any dog, kept or harbored by him to wear a license tag received on account of a former license, or to wear any imitation of the license tag

issued by the Tribe for that year, or any tag marked on plate or collar similar to that required by the Tribe at that time, and calculated to deceive, and it shall be unlawful for any person to put on a female dog a tag received with a license issued for a male dog, or to allow any female owned by him or within his care or custody to wear a tag issued with a license for a male dog.

**§6-8-7 Rabies**

The Dog Marshal shall have authority to order the owner of any dog showing symptoms of rabies or of any dog which has bitten any person, so as to cause an abrasion of the skin, to subject such dog to a temporary Dog Shelter for quarantine for a period not to exceed fifteen (15) days unless the owner or harborer of such dog can show proof of current rabies vaccination; and if such dog shall be determined to be free of rabies the dog shall be returned to the owner upon payment of the regular fee for keeping dogs impounded. No other fee shall be charged. If such fee is not paid, the dog shall be subject to disposal as provided hereinafter. Provided, however, that, in lieu of submitting such dog to a temporary Dog Shelter the owner may, at his expense, admit such dog to a veterinarian for examination. Any dog afflicted with rabies shall be disposed of immediately, either by the owner or by the Dog Marshal or his designated assistant with shelter and other costs to be borne by owner.

**§6-8-8 Impounding**

(a) All dogs found running at large within the Nez Perce Tribal reservation contrary to the provisions of this section, may be impounded by the Dog Marshal or his designated assistant, whether such dog so running at large is owned or harbored by a person residing within the Nez Perce reservation or elsewhere; the Dog Marshal or his designated assistant may impound any and all dogs without collars bearing licenses as required herein, provided, when a dog wearing a collar bearing a license tag of the preceding year is taken up, the Dog Marshal or his assistant shall notify the owner or representative of the owner, if such owner or representative can be found. The owner or representative of the owner of any dog which may be taken up and impounded under the provisions of this section, may recover possession of such dog upon payment to the Tribe or to the Animal Shelter receiving the dog the license fee, impoundment fees, and any other fees and costs provided by this ordinance. Dogs may be disposed of, if, within ten (10) business days of its owner/harborer receiving written notice of impoundment, or for dogs whose owner is unknown, within forty-eight hours of the Dog Marshal's posting of public notice of the impoundment, the owner/harborer does not recover possession of the dog by paying impoundment fees and any other fines and costs provided by this ordinance.

(b) Any person or persons in violation of any section of this ordinance in excess of two (2) occasions shall be deemed a persistent or habitual violator and in addition to other remedies available under this ordinance, for each impound shall pay a penalty of not less than $50.00 for each such dog or dogs plus any and all care/boarding and other expenses charged under the NPTC by the Animal Shelter. In addition to any penalties incurred under this section, any person or persons may be cited under Chapter 4-1, Criminal Offenses, § 4-1-204 Repeat Violations of the Dog Ordinance.

(c) If the owner or harborer of any impounded dog is unknown, it shall be the duty of the Dog Marshal or his designated assistant to post at least two (2) written or printed notices in public places within the Nez Perce Tribal reservation, describing the dog or dogs by sex, color and markings and breed, if it can be determined. The notices shall be posted for a period of

forty-eight hours, and if the unknown owner or harborer fails to recover his dog by paying the license or other fees imposed by the provisions of this ordinance, the dog shall be disposed of in the manner provided above.

**§6-8-9 Impounding Fees**

(a) Any dog(s) impounded under the provisions of this ordinance shall not be released until the owner of the dog or dogs, or his representative, shall pay to the Animal Shelter receiving the dog whatever sums are charged for each such licensed dog or dogs, and the sum charged for the impounding of each such unlicensed dog or dogs, plus any care/boarding and expenses charged by the Animal Shelter.

(b) Any person or persons in violation of any section of this ordinance in excess of two (2) occasions shall be deemed a persistent or habitual violator and in addition to other remedies available under this ordinance, for each impound shall pay a penalty of not less than $50.00 for each such dog or dogs plus any and all care/boarding and other expenses charged under the NPTC by the Animal Shelter. In addition to any penalties incurred under this section, any person or persons may be cited under Chapter 4-1, Criminal Offenses.

**§6-8-10 Miscellaneous Prohibited Acts**

(a) No person owning, harboring, controlling, or keeping any dog shall permit the dog to do any of the following acts:

(1) Scatter garbage, refuse or debris;

(2) Deposit fecal material on any property not that of its owner or custodian without the owner or custodian immediately removing it;

(3) Bark, howl or otherwise cause noise which disturbs or is likely to disturb the peace and quiet of any person;

(4) Trespass upon the property of another person.

(b) Any such owner or harborer shall be entitled to one written notice from the Dog Marshal or his designated assistant that the owner's or harborer's dog is or has been reported for any of the provisions of this section before such owner shall be deemed to be in violation of this section. If after receiving such notice, the owner fails or refuses to remedy the problem, as provided for herein, he shall be in violation of this section.

(c) It is unlawful for the owner or person responsible to cause, allow, permit, either willfully or by failure to exercise due care or participate in any of the following:

(1) Interfere with, obstruct, torture, beat, kick, strike, mutilate, disable, shoot, poison, kill or in any other way abuse or harass any dog; or

(2) Harass a police dog while said police dog is confined in its quarters, an automobile, kennel fenced area, training area, or while it is under the control of a dog handler; or

(3) Interfere with a police dog or dog handler while said police dog or dog handler is engaged in lawful police activities.

**§6-8-11 Running at Large Prohibited**

(a) It shall be unlawful for any owner or harborer or anyone in any way responsible for the control of a dog on the Nez Perce Reservation to fail to keep such dog from Running at Large as that term is defined herein.

(b) All persons owning, harboring, or in any way responsible for any dog(s) kept within the corporate limits of Nez Perce reservation shall keep such animal confined or on a leash, and at all other times such animal shall be in complete control of owner or harborer. The owner of any Vicious Dog as that term is herein defined shall at all times confine the dog within a building or secure enclosure on the owner's premises, or when not confined on the premises, shall keep the dog on a leash or caged whenever off the premises of its owner.

(c) The owner or harborer of a dog-at-large, unless the dog is a Vicious Dog as that term is herein defined, shall be entitled to one written notice from the Dog Marshal or his designated assistant that the owner's or harborer's dog is or has been running at large and in violation of the provisions of this ordinance before such owner shall be deemed to be in violation of this section. If after receiving such notice, the owner fails or refuses to take up and confine his dog(s), and keep it confined, as provided for herein, he shall be in violation of this section. However, if the dog running at large has attacked a person or domestic animal or threatened to attack a person at any time in the past, or while running at large, or is a Vicious Dog as that term is herein defined, it shall be impounded immediately and the owner shall be in violation of this section.

(d) If, after receiving written notice that a dog which is not a Vicious Dog as that term is herein defined, has been running at large, the owner refuses to take up and confine his dog(s) and keep it/them confined, as required herein, the dog shall be impounded immediately upon a second determination that the dog is running at large, and the applicable provisions for impounded dogs running at large shall be followed.

**§6-8-12 Interference with Officer**

It shall be unlawful for any person to hinder, molest or interfere with the Dog Marshal or with his designated assistant in the discharge of any of his duties under this ordinance, or who shall attempt to remove, or does remove any dog or dogs from the Dog Shelter or take from the possession of the Dog Marshal or the possession of his properly designated assistant, in any manner than that provided for in this ordinance. Any person who violates this provision may also be cited for Assault upon a Police Officer under this Code.

**§6-8-13 Penalty for Violations**

Any person keeping or harboring a dog within the Nez Perce reservation and refusing to pay the license or other fees herein provided for, or who shall permit a dog owned or harbored by him, whether licensed or unlicensed, to run at large, after given notice if required by this Chapter, or who shall violate any of the other provisions of this Chapter shall be guilty of a civil infraction and subject to fines and other penalties, including paying restitution to victims, at

the discretion of the Nez Perce Tribal court. In addition, if the Nez Perce Tribal Court determines, by a preponderance of the evidence, that any dog found running at large is a Vicious Dog (that is, a dog which has, on one or more occasions within the past two years, bitten or otherwise attacked a person or domestic animal, or threatened to bite or otherwise attack a person), the Court may order the disposal of the dog and the dog shall be disposed of with the costs of such disposal to be paid by the owner or harborer of the dog, in addition to any other fines or penalties ordered by the Court.

**§6-8-14 Dog Marshal and Designated Assistant**

The Nez Perce Tribe shall assign and authorize their law enforcement personnel as their Dog Marshall or as assistants to the Dog Marshall, for the purpose of enforcing the provisions of this ordinance, and are responsible for the enforcement of all dog regulations as well as those pertaining to other animals.

**§6-8-15 Female Dogs in Heat**

All persons owning or in charge of any female dog shall keep the same shut up or fenced in when in heat. Any female dog running at large at such time may be impounded by the Dog Marshal or his assistant whether such animal be licensed or not.

**§6-8-16 Sick Dogs Prohibited from Public Places**

No owner or person in charge of any dog having mange or any other apparent and contagious disease shall permit such animal, whether running at large or on a leash, to be on any street, highway or public grounds, designated Tribal Housing areas or other tribal public places within the exterior boundaries of the Nez Perce Reservation. Additionally, an owner or person responsible for the control of any dog having mange or any other apparent and contagious disease shall not take or allow the dog to be on any private premises without the express consent of the owner of such premises. In addition to other penalties provided in this ordinance, such dog may be immediately disposed of wherever found by the Dog Marshal or his assistant, without the notice otherwise prescribed by § 6-8-8 of this ordinance.

**§6-8-17 Removal of Vicious Dogs from Nez Perce Reservation**

In addition to, or in lieu of, one of more of the penalties herein, the owner of a dog found to be running at large which is a Vicious Dog as that term is herein defined, may be ordered by the Nez Perce Tribal court to permanently remove the dog from the exterior boundaries of the Nez Perce Reservation. If such an order is issued, the owner or harborer must, within the time specified by the Order, remove the dog to a place outside the Nez Perce Reservation and provide a written statement signed by a person residing in that off-reservation location warranting that this person agrees to take and maintain possession of the dog. If, after such order is issued, the dog is found to be within the boundaries of the Nez Perce Reservation, whether at large or not, the dog shall be impounded and may be disposed of by Order of the Tribal Court.

**§6-8-18 Citations, Prosecutions, Penalties**

Citations issued or charges filed under this chapter, if these allege that a dog has attacked or threatened to attack any person, or killed or wounded a domestic animal, shall be prosecuted

by the Nez Perce Tribal Prosecutor and heard by the Nez Perce Tribal Court and penalties imposed as allowed by this Chapter. The court may establish a fine schedule for violations of this Chapter and impose other penalties as deemed reasonable and necessary to protect the public, and may order the disposal of any dog which has attacked or threatened to attack a person or killed or seriously wounded a domestic animal.

### §6-8-19 Civil Liability **(NPTEC authorized amendment 4/28/15)**

The owner of any dog which shall bite any person or attack and seriously wound another person's domestic animal, while such person is in control of his or her domestic animal in or on a public place or such domestic animal is not "at large" as that term is defined herein, or while such person or domestic animal is lawfully in or on private property, shall be liable for such damages as may be suffered by the person bitten or owner of the domestic animal attacked and wounded or killed, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness. This section does not apply to the lawful use of a police dog.

### §6-8-20 Conflicting Ordinances

All ordinances or parts of ordinances in conflict herewith are hereby repealed, except those provisions that provide for additional remedies for violations of this ordinance. For example, a criminal assault charge could be made, in addition to the charge of harboring a vicious dog, if the dog bites an individual.

### §6-8-21 Jurisdiction

Nothing in this ordinance shall be construed to diminish the political or governmental power or authority already vested with the Nez Perce Tribe.

# CHAPTER 6-9
# NEZ PERCE TRIBAL ATHLETIC COMMISSION

**(Adopted by NPTEC 6/28/05)**

**(NPTEC authorized Boxing Commission name changed to Athletic Commission on 7/8/14)**

## §6-9-1 Establishment of Commission

There is hereby established the Nez Perce Tribal Athletic Commission (herein, the "Athletic Commission" or "Commission").

## §6-9-2 Purpose and Authorities of Commission

(a) The Nez Perce Tribal Athletic Commission shall regulate, by licensure, permitting, and rules and regulations, all professional boxing, sparring, wrestling, and other unarmed combat events held within the boundaries of the Nez Perce Reservation; provided, however, that all rules and regulations promulgated by the Commission shall not be in effect unless and until approved by Resolution of the Nez Perce Tribal Executive Committee.

(b) For the purposes of this Chapter, a "professional" event means a contest between individuals for financial compensation.

(c) The Commission shall also have the authority to regulate, at its discretion, amateur boxing, sparring and wrestling events held within the boundaries of the Nez Perce Reservation.

(d) The Commission shall regulate its own operations through development of by-laws consistent with the provisions of this Chapter.

## §6-9-3 Membership of Commission

The Nez Perce Tribal Athletic Commission shall be comprised of five members. Commission members shall be appointed by resolution of the Nez Perce Tribal Executive Committee. The NPTEC reserves the right at any time and for any reason to remove members of the Commission by NPTEC Resolution. Such action shall be final.

## §6-9-4 Term of Membership

Upon adoption of this Chapter by the Nez Perce Tribal Executive Committee (NPTEC), the NPTEC shall by Resolution appoint the Commission members. These initial terms of the Commission members, shall be for one year for two of the representatives, for two years for two of the representatives, and for three years for one of the representatives. At the expiration of these terms, the NPTEC shall appoint successors for a two-year term. Members of the Commission shall not receive compensation for their services.

## §6-9-5 Meetings

The Commission shall meet at least quarterly, with public notice of regular quarterly notice provided as such notice is provided by other Tribal Commissions. The Commission may

hold emergency meetings at the call of the Chair, or pursuant to a written request to the Chair for a meeting signed by a majority of the Commission members.

**§6-9-6 Officers and Responsibilities**

(a) At its first meeting, the Commission shall elect the following officers: Chair, Vice-Chair, Secretary-Treasurer.

(b) The Chair shall be responsible for the operation of the meetings, for calling meetings, for the day-to-day operation of the Commission, and for other duties as assigned by the Commission's by-laws.

(c) The Vice-Chair shall be responsible for the Chair's duties in the absence of the Chair.

(d) The Secretary-Treasurer shall be responsible for taking and keeping minutes of the proceedings at Commission meetings, for the accounting of all monies held by or for the Commission, and for other duties as assigned by the Commission's by-laws. Written reports of all public meetings shall be timely compiled by the Secretary-Treasurer, and published as are reports of other Tribal Commission public meetings.

**§6-9-7 Open Meetings and Public Records**

(a) All meetings of the Commission shall be open to the public unless the Commission agrees, by majority vote, to convene an executive session for the purpose of discussing personnel matters, contract negotiations, or other matters which are deemed by the Commission to involve potential litigation or to discuss information which is deemed confidential by the Commission or the Nez Perce Tribal Executive Committee.

(b) All reports of public meetings of the Commission shall be available to the public.

(c) All rules and regulations issued by the Commission and approved by NPTEC shall be published pursuant to its by-laws, and shall be available upon request to any member of the public.

**§6-9-8 Event Permits**

(a) No person or entity may provide a location for, organize, advertise, sponsor, or participate in a professional boxing, wrestling, or sparring event within the boundaries of the Nez Perce Reservation unless the event has received an Event Permit from the Nez Perce Tribal Athletic Commission.

(b) No permit shall be granted unless the person or authorized representative of the entity seeking such a permit provides adequate assurances for limitation of liability of the Nez Perce Tribe and the Commission with regard to claims by which might arise out of a permitted event.

(c) No such permit shall be granted unless the person or authorized representative of the entity seeking such a permit consents in writing to the jurisdiction of the Nez Perce Tribal Court.

(d) Anyone found in violation of this provision is subject to the penalties described herein.

(e) Subject to the limitations of § 6-9-2(a) herein, the Commission shall have the authority to promulgate and publish rules and regulations for the issuance, denial, suspension and revocation of such permits, and to hear appeals of its denials, suspensions, or revocations of such permits.

**§6-9-9 Licensure of Event Participants**

(a) No person or entity may participate as a combatant, judge, referee, timekeeper, trainer, physician, promoter, manager, or matchmaker in any event required to be permitted by this Chapter without being duly licensed by the Commission.

(b) The Commission may, at its discretion, require licensure for other persons or entities who participate in any way in any event required to be permitted by this Chapter.

(c) Licensing requirements for combatants shall include, but not be limited to, physical examinations, drug and HIV testing, and criminal background checks.

(d) Licensing requirements shall include adequate assurances for limitation of liability of the Nez Perce Tribe and the Commission with regard to claims by a licensee which might otherwise arise out of a permitted event.

(e) No license shall be issued pursuant to this Chapter unless the person seeking licensure consents in writing to the jurisdiction of the Nez Perce Tribal Court.

(f) Anyone found in violation of this provision is subject to the penalties described herein.

(g) Subject to the limitations of § 6-9-2(a) herein, the Commission shall have the authority to promulgate and publish rules and regulations for the issuance, denial, suspension and revocation of such licenses, and to hear appeals of its denials, suspensions, or revocations of such licenses.

**§6-9-10 Other Commission Rules and Regulations**

Subject to the limitations of § 6-9-2(a) herein, the Commission shall promulgate and publish any other rules and regulations which it deems in its discretion necessary, or which NPTEC deems necessary, to assure the lawful, safe, and orderly operation of all professional boxing, wrestling, sparring and other unarmed combat events held within the boundaries of the Nez Perce Reservation.

**§6-9-11 Penalties**

The Nez Perce Tribal Court, upon petition by an attorney duly authorized to represent the Commission, and following a hearing on the matter, may levy a civil penalty of up to one thousand dollars ($1000.00) for each violation of the event permitting, licensing, or other rules and regulations of the Commission. A decision of the Nez Perce Tribal Court on such petition may be appealed pursuant to Chapter 2-9 of this Code.

# CHAPTER 6-10
# ELECTION ORDINANCE
**(adopted 12/28/04, implemented 7/12/05)**

## §6-10-1 Definitions

(a) "Acceptable Ballot" means a ballot that is properly marked and/or color coded. **(amended 11/13/07)**

(b) "Business Day" means Monday through Friday, except for Federal or Tribal holidays.

(c) "Candidate" means any eligible enrolled member of the Nez Perce Tribe who is running for office.

(d) "Constitution" means the revised Nez Perce Tribe Constitution and By-laws.

(e) "Election Judges" means Nez Perce Tribe General Council Election Judges.

(f) "General Council Officers" means General Council Chairperson, General Council Secretary, Special Committee members, Standing Committee members, and Resolutions Committee members.

(g) “Incumbent” means any eligible enrolled member of the Nez Perce Tribe who currently holds a NPTEC office. **(added 4/3/08)**

(h) "NPTEC" means the Nez Perce Tribal Executive Committee.

(i) "Office" means any elected NPTEC office.

(j) "Polling Places" means the three recognized polling places of Lapwai, Kamiah, and Orofino.

(k) "Poll Watcher" means an eligible voter designated in writing by a candidate to monitor the polling places during the election.

(l) "Public Notice" means posted in prominent places in the three recognized polling places, public announcements in the Tribe's newspaper and local newspapers.

(m) “Residency” means living within the Treaty of 1863 reservation boundaries and being physically present there for the required length of time in order to be a candidate for office.

(n) "Secretary" means Executive Secretary of the Nez Perce Tribal Executive Committee.

(o) "Tellers" means Tellers appointed by the Election Judges to assist during elections.

(p) "Sergeant-At-Arms" means the Sergeant-At-Arms appointed by the Election Judges to maintain order during elections.

(q) "Tribe" means Nez Perce Tribe.

**§6-10-2 Types of Elections (amended 11/13/07)**

A Non-Partisan Primary election provisions would be held for the purpose of reducing the field of candidates for each position to only two candidates for the General election. Such election would be held for each position for which more than two candidates declare their candidacy and are declared to be qualified for office.

(a) Non-Partisan Primary election will be held annually the first Saturday in April.

(b) General Elections shall be held annually on the Saturday of the General Council meeting in the month of May, in accordance with Article VI, Section 2 of the Constitution.

(c) Recall elections are held on a date set by the NPTEC in accordance with Article VI, Section 6 of the Constitution.

(d) If the Primary and/or Election Day is a legal holiday, the election shall be held on the first subsequent day which is not a legal holiday.

**§6-10-3 Qualifications for Office**

(a) Prior to being declared a candidate, the individual must meet the minimum qualifications pursuant to Article VI, Section 3 of the Constitution. The candidate must also pay the required one time filing fee pursuant to Chapter 6-10-3(b) of this ordinance.

(b) A non-refundable filing fee of one hundred dollars ($100) shall be paid in cash, cashier's check or money order to the Tribe. These fees shall be used only for election expenses.

**§6-10-4 Filing for Office**

(a) On January 15, the Election Judges shall give public notice and shall make available the candidacy forms through the NPTEC Executive Assistant of the three regular NPTEC positions to be elected and any special NPTEC positions created by vacancies. Any candidacy forms received prior to January 15 shall be ineligible. **(amended 3/14/06)**

(b) Candidates must file their completed candidacy forms with the NPTEC Executive Assistant between January 15 and 4:30 pm on February 15. Any candidacy forms received after February 15 shall be ineligible. No nominations will be taken on the floor of the General Council or at any other time AFTER February 15. **(amended 3/14/06)**

(c) No person may be a candidate for more than one position during any election.

(d) A valid candidacy form properly filed and subsequently approved by the Election Judges is necessary for a candidate's name to be placed on the ballot.

(e) The candidacy form shall contain: 1)name of the candidate; 2) candidate's address and enrollment number; 3) the position the candidate is seeking; and 4) verification that the person is eligible.

(f) The candidacy form shall be as follows: (the candidacy form is attached at the back of this chapter).

**§6-10-5 Certification of Candidates**

(a) Within ten (10) business days of a candidate's filing, the Election Judges shall meet to certify the eligibility of the candidate based on the candidacy form submitted. **(amended 3/14/06)**

(b) The Election Judges shall verify the enrollment and physical address of each candidate. If further investigation is necessary, then the process will be completed by the Office of Legal Counsel.

(c) A final candidate listing shall be compiled. The Election Judges determination is final. No further nominations will be allowed.

(d) Any candidacy form which does not contain the required information or which is not on the official form shall be disqualified and invalidated by the Election Judges.

(e) The Election Judges shall notify all nominees as their status by certified mail within ten (10) business days of receiving the candidacy form.

(f) Candidates who fail to comply with the foregoing requirements and deadlines will be ineligible to run for any office.

**§6-10-6 Notice of Election**

(a) The Election Judges shall issue a public notice of the election indicating date, time, type of election, polling places, and voter eligibility requirements by March 1. The notice shall also include a final listing of candidates and the office they are seeking.

(b) The Election Judges shall post and have readily available for distribution to eligible voters sample ballots and instructions describing the manner of casting a vote for the Primary Election by March 15. **(amended 11/13/07)**

(c) The Election Judges shall issue a public notice of the General election candidates within 72 hours following the Primary election. **(amended 11/13/07)**

(d) The Election Judges shall post and have readily available for distribution to eligible voters sample ballots and instructions describing the manner of casting a vote for General Election by April 15. **(amended 11/13/07)**

**§6-10-7 Polling Places and Times**

(a) The designated polling places for all Elections shall be the Tribal Community Buildings in Kamiah, Orofino, and Lapwai.

(b) If one of the Tribal community buildings is unavailable, the Election Judges will designate an alternate public building that is not a private home or business.

(c) The polling places shall open at 7:00 am (Pacific Standard Time (PST)) on each Primary Election Day and they shall be closed by 6:00 pm (PST). **(amended 4/3/08)**

(d) The polling places shall open at 7:00 am (PST) on each General Council Election Day and they shall be closed by 3:00 pm (PST). **(added 4/3/08)**

(e) Qualified voters may vote at any of the three locations regardless of actual county of residence. Each voter shall represent that they have not voted at any other location. Voting more than once shall be considered a violation of the Nez Perce Tribal Code.

**§6-10-8 Terms of Office**

(a) The terms of office for the NPTEC shall be pursuant to Article VI, Section 2A.

(b) Vacancies on the NPTEC shall be pursuant to Article VI, Section 2B.

**§6-10-9 Ballots**

(a) The Election Judges shall have the duty and responsibility to have the ballots printed with only the names of the eligible candidates who have been listed on the Final Candidate listing. The names of the candidates shall appear in the order which their candidacy forms were received.

(b) The printer of the ballots shall sign an affidavit indicating the number of ballots printed and/or color coded for each polling place. This affidavit will be kept in a safe and secure place. **(amended 11/13/07)**

(c) The Election Judges shall have the duty and responsibility of making available sample ballots in the polling places prior to the election.

**§6-10-10 Ballot Boxes**

(a) The Election Judges shall certify and determine an adequate number of ballot boxes per polling place **(amended 3/14/06) (second amendment 4/3/08)**

(b) The Election Judges shall keep the ballot boxes safe and secure at all times prior to the election. **(amended 11/13/07)**

(c) Prior to the election, the Election Judges will deliver each ballot box to the polling places.

(d) Prior to the opening of the polls, the Election Judge shall open the ballot box in view of other General Council officers and the general public, to show there are no ballots contained therein and will lock the box. The ballot boxes shall remain locked through the close of voting.

**§6-10-11 Voting Booths**

(a) The Election Judges shall be responsible for providing, at least, two (2) voting booths at each polling place.

(b) The voting booths shall ensure privacy of the voter.

(c) With the exception of physically challenged individuals, visually challenged individuals and non-reading/non-speaking English persons, only one person will be allowed in a voting booth at a time.

**§6-10-12 Poll Watcher**

(a) A candidate shall be entitled to have one (1) poll watcher for each of the polling places. The candidate shall submit the names of his/her poll watcher(s) in writing to the Election Judges by 5:00 pm (Pacific Standard Time) five (5) business days prior to the Election.

(b) The Poll Watcher(s) will not be compensated by the Tribe for his/her time or mileage.

(c) A Poll Watcher is limited to observing the election and the tallying of ballots. The Poll Watcher is not allowed to leave the polling place until the polls close. If the Poll Watcher does leave, he/she will not be allowed to return until after the polls are closed.

(d) No candidate shall be able to designate himself or herself as a poll watcher.

(e) A Poll Watcher will be required to sign the Poll Watcher Registry and wear a badge or other appropriate identification designating him/her as a Poll Watcher.

(f) A Poll Watcher may not attempt to influence any eligible voter or Election Judge or any other person appointed by the Election Judges in the polling place. A Poll Watcher who influences or attempts to influence will be removed from the polling place by the Sergeant-At-Arms.

(g) A Poll Watcher may not interfere or attempt to interfere with the marking of the ballot or casting of the ballot by any eligible voter. A Poll Watcher who interferes or attempts to interfere with the marking or casting of a ballot by any eligible voter will be removed from the polling place by the Sergeant-At-Arms.

(h) Only one (1) Poll Watcher will be allowed per candidate to observe the tallying of the ballots. The Poll Watcher is not allowed to leave the premises until the tallying is complete. If the Poll Watcher does leave, he/she will not be allowed to return until after the tallying is complete. **(amended 3/14/06)**

**§6-10-13 Electioneering and Loitering**

(a) There shall be no electioneering, loitering, or campaigning within one hundred (100) yards of the polling places by any person. The Election Judges shall authorize the Sergeant-At-Arms to remove such persons.

**§6-10-14 Voting Procedures**

(a) Voting shall be by secret ballot at polling places. Voters shall be allowed to vote once in any election.

(b) After the opening of the polls, the Election Judge shall issue ballots to those eligible voters. A person seeking to vote shall identify themselves to the Election Judges at the polling place. Identity as a tribal member eligible to vote shall be confirmed by either a valid picture identification or by tribal enrollment records assembled and verified for this purpose.

(c) Any picture identification card that is damaged or has been visibly altered or is otherwise suspicious may be rejected as a means of identification and other picture identification may be required by the Election Judge.

(d) Upon confirmation that a person is an eligible voter, the person shall sign the poll book as having appeared in person to vote and one official ballot shall be issued. The Election judge shall stamp each ballot with the words, "Official Ballot" prior to issuance.

(e) The voter will enter the voting booth and vote by placing a mark by the name of the candidate(s) supported by the voter. The voter will place their ballot in the ballot box.

(f) The Election Judge shall issue a new ballot if the voter mutilates a ballot. The Election Judge shall issue an envelope to the voter and have the voter seal the envelope. The Election judge shall write "VOID" across the envelope and sign his/her name. The mutilated ballots shall be kept in an envelope. The envelopes containing mutilated ballots will be placed in the ballot box at the end of voting.

(g) Write-in votes shall not be allowed and will deem the ballot "INVALID."

(h) There is no proxy voting.

(i) An Election Judge may allow a voter to have a person of their preference to assist them in the marking of their ballot or in casting their ballot if the voter requests assistance.

(j) The Election Judge may designate a teller to assist a voter in the marking of their ballot or casting of their ballot if the voter requests assistance. The teller shall not influence the voter in any manner while assisting him/her. If the teller influences or attempts to influence the voter, the teller shall be dismissed and removed from the area.

(k) The unused ballots shall be collected and tied together in a bundle that shall be labeled "unused" in ink, signed by one (1) Election Judge and one witness. The unused ballots shall be stored in a safe and secure place for a period of six months.

(l) An Election Judge, Security/Law Enforcement Officer, and Sergeant-At-Arms shall transport the locked ballot boxes to the designated Election Judge at the General Council meeting place for the counting of the ballots.

**§6-10-15 Tallying the Votes (amended 6/9/09)**

(a) When all ballot boxes have returned to the General Council meeting place, the counting of the ballots shall commence.

(b) The three (3) Election Judges, and Election Tellers shall conduct the counting and tribal members shall be allowed to be present at the counting.

(c) Upon the unlocking of the ballot boxes, the Election Judges shall remove the ballots and count them publically. All ballots must be reviewed to ensure that they are the official ballot printed for the election with the official stamp. All ballots that are not official ballots or do not have the official stamp must be marked "ILLEGAL" and signed by two (2) Election Judges.

(d) Ballots that have more than one mark per NPTEC position will be deemed "INVALID" for that position.

(e) Ballots that have write-in votes per NPTEC position shall be deemed "INVALID" for that position.

(f) A tally sheet prepared by the Election Judges shall give the total count of the marked ballots, the invalid ballots, the mutilated ballots, and the unused ballots. A total count of the illegal ballots shall also be included in a separate section.

(g) When the tally is complete, the marked ballots, the invalid ballots, the mutilated ballots, the illegal ballots, the unused ballots, and the tally sheets shall be placed in a locked ballot box.

**§6-10-16 Declaring the Winners**

(a) The two candidates receiving the highest number of votes for a particular position shall be declared the winners of that Non-Partisan Primary position. This would be a plurality vote, rather than a majority vote. **(amended 11/13/07)**

(b) The candidate receiving the highest number of votes for a particular position shall be declared the winner of that General Election position. This would be by majority vote. **(amended 11/13/07)**

(c) In the event of a tie, an automatic recount will be conducted immediately by the Election Judges.

(d) In the event of a tie following the re-count, a public coin toss by the Chief Election Judge shall determine the outcome. The person whose name appears last on the ballot shall make the call prior to the toss. Such determination, upon certification by the General Council Chairperson, shall be final.

**§6-10-17 Recount**

(a) The Election Judges shall be authorized to recount the ballots as many times as they deem necessary to insure an accurate count of votes.

(b) No candidate may request a re-count of the ballots except a candidate who lost a position by a margin of less than 5% of the votes cast for that position. The request must be made within one half hour of the completion of the counting and must be accompanied with a personal check, or cash, in the amount of <u>one hundred</u> dollars ($100.00). The request must be made in writing and delivered to the Election Judge Chairperson within that time.

(c) Upon receiving a valid request, the Chairperson shall summon the Election Judges and a recount shall be conducted immediately.

(d) The decision of the Election Judges is final and may not be appealed in any court or other forum.

**§6-10-18 Certification of Results**

(a) The Election Judges shall prepare a Certification of Results of the Primary and General election which shall be signed by each member of the Election Judges and attested to by the General Council Chairperson. **(amended 11/13/07)**

(b) The Certification of Results shall be made public after all recounts have been completed and there has been an official decision(s) on a challenge(s).

(c) The certification shall, at a minimum, reflect the number of valid votes cast for each candidate and shall identify which candidate was elected to the positions up for election.

**§6-10-19 Incumbents**

(a) Incumbents remain in office until the Certification of Results has been posted and newly elected candidates have taken the oath of office, in accordance with Article VI, Section 2(A).

**§6-10-20 Date of Taking Office**

(a) Newly elected members who have been certified will be installed immediately.

(b) The elected members shall take the oath of office prior to assuming duties.

**§6-10-21 NPTEC Vacancies Arising After February 15 Filing Deadline (adopted 5/23-24/06**

For those NPTEC vacancies that arise after the February 15 filing deadline, the following special expedited procedures shall apply:

(a) The Election Judges shall issue immediate public notice of any additional NPTEC vacancies, and make available candidacy forms as set forth in § 6-10-4.

(b) The open period for submission of completed candidacy forms for any newly opened position, shall be set forth in the public notice, which shall allow adequate response time, but be completed in time for the new set of candidates'' names to be included on the original ballot or on a supplemental ballot to be available for the first Saturday of May.

(c) Candidacy forms submitted after the open period dates set forth in the special public notice above shall be ineligible. No nominations will be taken on the floor of the General Council.

(d) The Election Judges shall expedite their certification of candidates, following the general provisions set forth in § 6-10-5, so that the candidates' eligibility will be determined before the date that ballots must be printed.

(e) The Election Judges shall issue a public notice of the final list of candidates and the office they are seeking upon completion of the certification process.

(f) No person may be a candidate for more than one position during any election.

**NEZ PERCE TRIBE**
**CANDIDACY FORM**

I, _____, am submitting my name as a candidate for
(Insert Full Legal Name)
the regular position number _____ or the special position number _____ on the Nez Perce Tribal Executive Committee (NPTEC). I submit my filing fee of $_____ on this date of
_____.
(Insert Date)

I certify that I am, at least, 18 years old and I am enrolled with the Nez Perce Tribe. My enrollment number is NP _____.
(Insert Enrollment Number)

My Social Security Number is _____. **(added 3/14/06)**

I have attached a copy of my CDIB or Tribal Identification Card as issued by the Bureau of Indian Affairs or Nez Perce Tribe Enrollment Officer.

My physical address is: _____

I attest that I have resided at the above address since: _____
(Insert Month, Day, Year)

I attest that I have not:

(a) within the last three years been convicted by any court of competent jurisdiction of any criminal offense, other than a minor traffic, hunting or fishing violation; for which I was sentenced to imprisonment or payment of a fine in lieu thereof; and/or

(b) been convicted of a felony by a court of competent jurisdiction in the past ten years; and/or

(c) been removed from NPTEC according to Article VII, Section 2, of the Nez Perce Constitution.

I attest that all the facts stated herein to be true. I understand that I will be subject to prosecution for any misrepresentation under the Nez Perce Law & Order Code, if I sign this document knowing the contents to be untrue.

Signed: _____ Dated: _____

Witness Signature: _____ Dated: _____

# CHAPTER 6-11
# SALES TAX ORDINANCE
**(Chapter adopted by NPTEC 9/27/11)**

## §6-11-1 Purpose

The purpose of this Ordinance is to impose a tax on certain retail sales by enterprises owned and operated by the Nez Perce Tribe and shall be referred to as the Nez Perce Tribe Sales Tax Ordinance.

## §6-11-2 Imposition of Tax

(a) Except as provided in paragraph (b) of this section, a tax in the amount of six percent (6%) of all retail sales of goods or merchandise, and on all sales of food and/or beverages sold for consumption on or off the premises of the enterprise, by all retail enterprises owned and operated by Nez Perce Tribe, including its gaming enterprises, is hereby imposed. The tax shall be paid to the Tribe by the enterprise and remitted with the monthly retailer report as required in §6-11-4.

(b) A tax in the amount of 8% of sales to an individual for the renting of a place to sleep by a hotel, motel or campground owned and operated by the Tribe is hereby imposed. The tax shall be paid to the Tribe by the enterprise and remitted with the monthly retailer report as required in Section §6-11-4.

## §6-11-3 Exemptions from Sales Tax **(amended by NPTEC 12/13/11)**

(a) The sales of gasoline and other motor fuels otherwise taxed by the Nez Perce Tribe shall not be subject to the tax imposed by Section §6-11-2 of this ordinance.

(b) Enrolled members of any federally recognized Tribe shall be exempt from the tax imposed in Section §6-11-2 of this ordinance. **(Amended by NPTEC 3/26/13)**

## §6-11-4 Reporting

Each tribally owned and operated retail enterprise shall submit, not later than the tenth day of the calendar month following the month in which goods and/or merchandise taxed herein were sold, monthly reports of sales of such goods and merchandise to the Nez Perce Tribe Department of Finance. If the tenth of the month falls on a holiday or week-end, such report shall be due on the next business day following the weekend or holiday.

## §6-11-5 Deposit of Sales Tax Revenue

Sales tax revenues herein described shall be deposited by the Tribe's Finance Department into the Nez Perce Tribe General Fund.

## §6-11-6 Penalties

(a) Any enterprise which fails to file any report or pay the tax as required by this Chapter on or before the due date thereof shall be liable for an additional penalty of two percent (2%) of the gross amount of the tax due and payable with that report plus interest at the statutory

rate until paid.

(b) The Nez Perce Tribal Executive Committee (NPTEC) shall authorize such person, persons, program or body as they deem appropriate to administer this Sales Tax Ordinance. For purposes of this section, that person shall be referred to as the administrator. Until modified by the appropriate action of the Nez Perce Tribal Executive Committee, the Administrative Manager of the Nez Perce Tribal shall be the administrator of the Sales Tax Ordinance.

(c) The administrator may meet with authorized representatives of the enterprise which is in arrears due to the nonpayment of the sales tax as required herein, on a case by case basis and with NPTEC's authorization, to review delinquencies and resolve disputes. In all other instances where the administrator reasonably believes that a violation of the Sales Tax Ordinance has occurred, the administrator shall, on a timely basis, conduct such investigation into relevant facts as is necessary and provide such information to the Nez Perce Tribal Executive Committee.

# TITLE 7
# DOMESTIC VIOLENCE
# CHAPTER 7-1
# GENERAL PROVISIONS

## §7-1-1 Purpose.

The purpose of this Title is to recognize domestic violence as a serious crime against the Nez Perce Tribe, the family, and society; and to provide the victim of domestic violence the maximum protection from further violence which the law and those who enforce the law can provide.

It is further the purpose of this Title to recognize that the strength of the Nez Perce Tribe is founded on healthy families, and that families damaged by domestic violence must be healed by immediate intervention of law enforcement, prosecution, education, counseling, and any other appropriate service.

It is the intent of the Nez Perce Tribe to expand the ability of the Courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent further incidents of violence.

It is the intent of the Nez Perce Tribe that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be excused or tolerated.

## §7-1-2 Jurisdiction.

The Nez Perce Tribal Court shall have criminal and civil jurisdiction as defined in the Nez Perce Tribal Code.

## §7-1-3 Definitions.

Unless the context otherwise requires, as used in the Nez Perce Tribal Code:

(a) "Domestic violence" means the occurrence of one or more of the following:

(1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;

(2) An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence in imminent;

(3) Willful and unlawful use of force or violence upon the person of another domestic household member;

(4) Actual, intentional and unlawful touching or striking of another domestic

household member against their will;

(5) Unlawfully and intentionally causing bodily harm to another domestic household member; or

(6) Causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(7) "Domestic violence" shall not include acts of self-defense.

(b) "Domestic household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time. For the purpose of this Title, "reside" shall mean one's personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.

(c) "Domestic protection order" means a court order granted for the protection of victims of domestic violence and may contain specific orders:

(1) Enjoining the respondent from threatening or commit or committing acts of domestic violence against the petitioner and/or any other person named in the petition;

(2) Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly;

(3) Removing and excluding the respondent from the residence of the petitioner;

(4) Requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and/or any other person named in the petition; or

(5) Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

(6) Suspending or revoking the privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

(d) "Program of Intervention for Perpetrators" means a specialized program that:

(1) Accepts perpetrators of domestic violence into treatment or educational classes to satisfy court orders;

(2) Offers assessment and treatment to perpetrators of domestic violence; or

(3) Offers classes or instruction to perpetrators of domestic violence.

## CHAPTER 7-2 CRIMINAL PENALTIES AND PROCEDURES

### §7-2-1 Crime involving domestic violence

Crimes involving domestic violence may be accompanied by other criminal acts. A crime of domestic violence occurs when a domestic household member commits one or more of the following crimes against another domestic household member:

(a) Arson;

(b) Assault Offenses (Simple Assault, Aggravated Assault);

(c) Battery Offenses (Simple Battery, Aggravated Battery);

(d) Burglary;

(e) Destruction, Damage, Malicious Injury to or Vandalism of Property;

(f) Disorderly Conduct;

(g) Family Offenses, Non-Violent (Harassment, Child Custodial Interference);

(h) Homicide Offenses (Murder, Manslaughter);

(i) Kidnaping, False Imprisonment;

(j) Sex Offenses, Forcible;

(k) Weapon Law Violations;

(l) Stalking Offenses (Stalking, Aggravated Stalking); and

(m) Tampering with a Witness

### §7-2-2 Domestic Violence.

(a) Any domestic household member who commits an assault as defined in § 4-1-37 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic assault.

(b) Any domestic household member who commits an aggravated assault as defined in § 4-1-39 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of aggravated domestic assault.

(c) Any domestic household member who commits a battery as defined in § 4-1-38 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic battery.

(d) Any domestic household member who commits an aggravated battery as defined in § 4-1-40 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of aggravated domestic battery.

(e) Any domestic household member who commits a rape as defined in § 4-1-48 of the Nez Perce Tribal Code, upon any other domestic household member is guilty of the crime of domestic rape.

(f) A conviction for domestic violence is punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars ($5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate.

(1) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, organization, or agency approved by the Court to determine whether the defendant should be required to obtain batterers treatment or other appropriate treatment. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling and/or treatment considered appropriate for the defendant, and shall recommend any other suitable alternative counseling or treatment programs.

(2) If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment, at the person's own expense, in addition to any other sentence which may be imposed. If the Court determines that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination on the record. The Court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation within the time allowed by the Court, at the person's own expense.

**§7-2-3 Child Abuse.**

Anyone who commits a crime involving domestic violence in the presence of a child shall be guilty of the crime of child abuse as describe in § 4-1-90 of the Nez Perce Tribal Code. For the purpose of this section, "in the presence of a child" shall mean in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence.

**§7-2-4 Violation of domestic protection orders is a crime.**

Violation of one of the following orders issued in accordance with § 7-3-4 or § 7-3-5 of the Nez Perce Tribal Code, respectively, is a crime and punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars ($5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate:

(a) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other domestic household member.

(b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner or other domestic household member.

(c) An order removing and excluding the respondent from the residence of the petitioner.

(d) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named domestic household member.

(e) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

(f) An order suspending or revoking the respondent's privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

**§7-2-5 Duties of law enforcement officer to victim of domestic violence; required notice to victim.**

(a) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Taking the action necessary to provide for the safety of the victim and any family or household member.

(2) Confiscating any weapon involved in the alleged domestic violence.

(3) Transporting or obtaining transportation for the victim and any child to a shelter.

(4) Assisting the victim in removing essential personal effects.

(5) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.

(6) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence.

(b) As part of the notice required by paragraph "6" of subsection "a", the law enforcement officer shall give a written notice to the victim as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety. You have the right to request that the

officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or friend's home, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report from the law enforcement department.

You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in the Nez Perce Tribal Court requesting a domestic protection order which could include any of the following orders:

(1) An order enjoining your abuser from committing or threatening to commit further acts of domestic violence;

(2) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;

(3) An order removing your abuser from your residence;

(4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another domestic household member;

(5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court.

(6) An order suspending or revoking your abuser's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements.

(7) An order granting you possession and use of the automobile and other essential personal effects;

(8) An order granting you temporary custody of your children;

(9) An order denying your abuser visitation temporarily; and

(10) An order specifying arrangements for visitation, including requiring supervised visitation;

The forms you need to obtain a domestic protection order are available from the Tribal court clerk. The resources available in this community for information concerning domestic violence, treatment of injuries, and places of safety and shelters are:

***Insert community resources here***

You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support,

and other expenses for injuries sustained and damage to your property. This can be done through small claims court or through the Victim's Compensation Program."

(c) Written notice:

(1) must not include the addresses of shelters; and

(2) must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

**§7-2-6 Mandatory Arrest for crimes involving domestic violence; determination of primary aggressor; required report.**

(a) A law enforcement officer shall, without a warrant, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic violence, whether the offense is committed in or outside the presence of the officer.

(b) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic violence. In determining whether a person is the primary aggressor the officer shall consider the following:

(1) Prior history of domestic violence between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury to each person;

(4) Threats creating fear of serious injury;

(5) Whether one of the persons acted in self-defense; and

(6) Other relevant factors.

(c) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; nor shall the officer attempt to reconcile the parties or mediate.

(d) In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a detailed, written report within one business day, setting forth the grounds for not arresting or for arresting both parties.

**§7-2-7 Mandatory arrest for violations of domestic protection orders.**

When a law enforcement officer has probable cause to believe that a respondent has violated one or more of the orders contained in an existing domestic protection order and verifies the existence of the order, the officer shall, without warrant, arrest the apparent violator whether or not the violation was committed in or outside the presence of the officer, if the orders are issued in accordance with §7-3-2; §7-3-4; and §7-3-5 of the Nez Perce Tribal Code.

**§7-2-8 Pre-arraignment release.**

Notwithstanding Nez Perce Tribal Code Rules of Criminal Procedure, Rule 21, any person arrested for a crime involving domestic violence or a violation of a domestic protection order shall not be released on bond or on his/her own recognizance prior to being arraigned. Such arraignment shall not occur less than 2 business days or more than 3 business days following arrest.

**§7-2-9 Conditions of release.**

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall review the facts of the arrest and detention of the person and determine whether the person:

(1) is a threat to the alleged victim;

(2) is a threat to public safety; and

(3) is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall make findings on the record if possible concerning the determination made in accordance with subsection (a) and may impose conditions of release on bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

(1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;

(2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;

(3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the Court;

(5) An order prohibiting the person from possession or consumption of alcohol or controlled substances.

(6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.

(c) The Court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

**§7-2-10 Mandatory arrest for violation of conditions of release.**

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with § 7-2-9 of the Nez Perce Tribal Code, and verifies that the alleged violator has notice of the conditions, the officer shall, without warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

**§7-2-11 Written procedures for prosecution of domestic violence; purpose.**

The Nez Perce Tribal prosecuting attorney shall develop or adopt and put into effect written procedures for attorneys who prosecute domestic violence concerning:

(a) Effective prosecution of such crimes; and

(b) The protection and safety of victims of domestic violence.

**§7-2-12 Duty of prosecutor to notify victim.**

(a) The prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to:

(1) decline the prosecution of the crime;

(2) withdraw the criminal charges filed against the defendant; or

(3) enter into a plea agreement.

(b) Release of a defendant from custody must not be delayed because of the requirements of subsection “(a)”.

**§7-2-13 Record of dismissal required in court file.**

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the case cannot or will not be prosecuted.

**§7-2-14 Dismissal of criminal case prohibited because civil compromise reached.**

A court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached.

**§7-2-15 Rights of victims of domestic violence; duty of prosecutor to inform victim of rights.**

(a) A victim of domestic violence is entitled to all rights granted to victims of crime including but not limited to the right to:

(1) Be informed of all hearing dates and continuances;

(2) Provide the Court with a victim impact statement, victim opinion statement, and an assessment of the risk of further harm;

(3) Be present at sentencing and address the Court;

(4) Advise the Court of conditions of probation required to ensure the safety of the victim;

(5) Restitution for losses sustained as a direct consequence of any criminal conduct;

(6) Apply for victims' compensation and to be informed of procedures for applying; and

(7) Receive notice from the prosecutor in accordance with § 7-2-12 of the Nez Perce Tribal Code.

(b) The prosecuting attorney shall notify the victim of domestic violence of that victim's rights as set forth in this section.

**§7-2-16 Advocate-victim privilege applicable in cases involving domestic violence.**

(a) Except as otherwise provided in subsection "b", a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

(1) The victim; or

(2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim privilege if there is no victim in existence or if the privilege has been waived by the victim.

(b) The privilege does not relieve a person from any duty imposed pursuant to § 5-1-9 of the Nez Perce Tribal Code. Person may not claim the privilege when providing evidence in proceedings concerning child violence.

(c) As used in this subsection, “advocate’ means an employee of or volunteer for a program for victims of domestic violence who:

(1) Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;

(2) Has undergone 30 hours of training; and

(3) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

**§7-2-17 Diversion prohibited; deferred sentencing permitted.**

(a) A court shall not approve diversion for a perpetrator of domestic violence.

(b) The Court may defer sentencing of a perpetrator of domestic violence if:

(1) The perpetrator meets the eligibility criteria which may include any of the following:

(A) the perpetrator’s history and pattern of violence,

(B) the severity of injuries to the victim,

(C) the criminal history of the perpetrator,

(D) the nature of the crime (simple or aggravated),

(E) prior participation in deferred sentencing; and

(2) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available; and

(3) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and

(4) The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

(c) The Court shall establish:

(1) Criteria for determination of a perpetrator’s successful completion of the conditions imposed by the Court; and

(2) Penalties for violation of the conditions imposed by the Court.

(d) The case against a perpetrator of domestic violence may be dismissed if the

perpetrator successfully completes all conditions imposed by the Court.

**§7-2-18 Conditions of probation for perpetrator convicted of a crime involving domestic violence; required reports by probation department.**

(a) Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the Court shall consider the safety and protection of the victim of domestic violence and any member of the victim's family or household.

(b) The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:

(1) Enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim and/or other domestic partner;

(2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;

(3) Requiring the perpetrator to stay away from the residence, school, place of employment, or specified place frequented regularly by the victim and any designated family member;

(4) Prohibiting the perpetrator from possessing and/or consuming alcohol or controlled substances;

(5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;

(6) Suspending or revoking the perpetrator's privilege to hunt with a firearm for the term of the probation. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;

(7) Directing the perpetrator to surrender any firearms and/or other specified weapons owned or possessed by the perpetrator;

(8) Directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;

(9) Directing the perpetrator to pay restitution and or fines as ordered by the Court;

(10) Directing the perpetrator to participate in any electronic or satellite monitoring; and/or

(11) Imposing any other condition necessary to protect the victim of domestic violence and any other designated domestic partner or to rehabilitate the

perpetrator.

(c) The perpetrator shall pay the costs of any condition of probation according to their ability.

(d) The Court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection “b”.

(e) The probation department shall immediately report to the Court any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

**§7-2-19 Required written policies and procedures.**

The Nez Perce Tribal Law Enforcement shall develop or adopt and put into effect written policies and procedures concerning:

(a) The effective response of the agency to cases involving domestic violence;

(b) Enforcement of the Nez Perce Tribal Code concerning domestic violence;

(c) Protection and safety of the victim of domestic violence and other domestic household members; and

(d) Coordination with hospitals and programs for victims of domestic violence.

## CHAPTER 7-3 CIVIL DOMESTIC PROTECTION ORDERS

**§7-3-1 Eligible petitioners for order.**

(a) A person who is or has been a victim of domestic violence may file a petition for a domestic protection order against a domestic partner who commits an act of domestic violence.

(b) A parent, guardian, or other legal representative may file a petition for a domestic protection order on behalf of a child against a domestic partner who commits an act of domestic violence.

**§7-3-2 Action for protection.**

(a) There shall exist an action known as a “petition for a domestic protection order” in cases of domestic violence.

(b) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the Nez Perce Tribal Court, alleging that they are a victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter.

(c) A person’s right to petition for relief under this chapter shall not be affected by that person’s having left the residence or household to avoid abuse.

(d) The petition shall disclose the existence of any custody or any marital annulment, dissolution, or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection, or adoption proceedings affecting the children of any of the parties.

(e) When the petitioner requests custody of any child, the petition shall disclose:

(1) The county and state where the child has resided for six months immediately prior to filing of the petition;

(2) The party or other responsible person with whom the child is presently residing; and

(3) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(f) A petition shall be filed:

(1) Where the petitioner currently or temporarily resides;

(2) Where the respondent resides; or

(3) Where the act of domestic violence occurred.

(g) There is no minimum requirement of residency to petition for a domestic protection order.

(h) The petition shall not be a matter of public record.

**§7-3-3 Fees waived.**

No filing fee, hearing fee, or bond shall be charged for proceedings seeking only the relief under this chapter.

**§7-3-4 Ex parte temporary domestic protection order.**

(a) The Court may grant an ex parte temporary protection order pending a full hearing, granting such relief as the Court deems proper, where a petition under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. The temporary order may include an order:

(1) Restraining the respondent from contacting the petitioner, either directly or indirectly;

(2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(3) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner until further ordered by the Court;

(4) Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children;

(5) Restraining any party from interfering with the other's custody of the children or from removing the children from the jurisdiction of the Court;

(6) Ordering other relief as the Court deems necessary for the protection of a domestic partner, including orders or directives to peace officers as allowed under this code;

(7) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(8) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner.

(b) An ex parte temporary domestic protection order shall remain in effect for 10 days from the date of issuance.

(c) A full hearing shall be held no more than 10 days from the date of issuance of an ex parte temporary domestic protection order. The respondent shall be personally served with a copy of the temporary order and notice of hearing, in accordance with the Rules of Civil Procedure of the Nez Perce Tribal Code.

(d) If the respondent is not personally served with a copy of the temporary order and notice of hearing, the existing temporary order may be extended for 10 days from the date originally set for hearing, and a new hearing date set. The respondent must be personally served with the new notice of hearing.

**§7-3-5 Domestic protection order.**

(a) A Court may grant the following relief, if requested, in a domestic protection order after notice and hearing, whether or not the respondent appears:

(1) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if the exercise of such jurisdiction is consistent with the provisions of this code, or consistent with prior custody orders entered by a Court of competent jurisdiction.

(2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(3) Restraining the respondent from contacting, harassing, telephoning, or otherwise communicating with the petitioner, either directly or indirectly;

(4) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner;

(5) Other relief as the Court deems necessary for the protection of the petitioner, including orders or directives to peace officers as allowed under this code;

(6) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(7) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(8) Prohibiting the respondent from having in their possession any firearm and/or ammunition whether working or not.

(9) Suspending or revoking the respondent's privilege to hunt with a firearm for as long as the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements

(b) No protection order under this section shall in any manner affect title to real property.

(c) Relief shall not be denied because the petitioner used reasonable force in self-defense against the respondent, or because the petitioner or respondent was a minor at the time of the incident of domestic violence.

(d) Any relief granted by the domestic protection order shall be for a fixed period not to exceed 90 days; provided that an order obtained pursuant to this chapter may, upon written motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order is entered.

(e) In providing relief under this chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

**§7-3-6 Full Faith and Credit Given to Domestic Protection Orders.**

(a) Any domestic protection order issued that is consistent with subsection (b) of this section by one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the Nez Perce Tribe and enforced as if it were the order of the Nez Perce Tribe.

(b) A domestic protection order issued by a State or Tribal Court is consistent with this subsection if:

(1) such Court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be

heard must be provided within the time required by State or Tribal law, and in any event within a reasonable time after the order is issued.

(c) A domestic protection order issued by a State or Tribal Court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a domestic household member is not entitled to full faith and credit if:

(1) no cross or counter petition, complaint or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the Court did not make specific findings that each party was entitled to such an order.

**§7-3-7 Continuing duty to inform the Court of other proceedings; effect of other proceedings; delay of relief; omission of petitioner's address.**

(a) At any hearing in a proceeding to obtain a domestic protection order, each party has a continuing duty to inform the Court of each proceeding for a domestic protection order, any civil litigation, and each proceeding concerning family or juvenile matters.

(b) A domestic protection order is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court shall not delay granting relief because of the existence of a pending action between the parties.

(c) A petitioner may omit his or her address from all documents filed with the Court. If a petitioner omits his or her address, the petitioner must provide the Court with a mailing address. If disclosure of the petitioner's address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

(1) After the petitioner's consent;

(2) Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or

(3) After a hearing, if the Court takes into consideration the safety of the petitioner and finds that such disclosure is in the best interest of justice.

**§7-3-8 Effect of action by petitioner or respondent on order.**

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify a domestic protection order.

**§7-3-9 Mutual orders prohibited.**

The Court shall not grant a mutual domestic protection order to opposing parties.

## CHAPTER 7-4 FAMILY AND CHILDREN

**§7-4-1 Presumption concerning custody.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in the sole custody, joint custody, or joint physical custody with the perpetrator of domestic violence.

**§7-4-2 Factors in determining custody and visitation.**

(a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic violence:

(1) The Court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.

(2) The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing the fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

**§7-4-3 Presumption concerning residence of child.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption by a court that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, within or outside the boundaries of the Nez Perce Reservation.

**§7-4-4 Conditions of visitation in cases involving domestic violence.**

(a) A court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order visitation supervised by another person or agency;

(3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of domestic violence or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of domestic violence to abstain from the possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;

(5) Prohibit overnight visitation; and/or

(6) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other domestic household member.

(c) Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.

(d) If the Court allows a family member to supervise visitation, the Court shall establish conditions to be followed during visitation.

**§7-4-5 Duties of children's protective services.**

(a) The Nez Perce Tribal Social Service Department shall develop written procedures for screening each referral for abuse or neglect of a child to assess whether domestic violence is also occurring. The assessment must include but is not limited to:

(1) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, of not a parent of the child; and

(2) Inquiry concerning the existence of domestic protection orders issued to either parent.

(b) If it is determined in an investigation of abuse or neglect of a child:

(1) That the child or other domestic household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, the Nez Perce Tribal Prosecutor shall seek the removal of the alleged perpetrator of domestic violence whenever possible.

(2) That a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provisions of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

# CHAPTER 7-5
# NEZ PERCE TRIBE
# ELDER AND ADULT PROTECTION ACT (adopted by NPTEC 4/24/12)

## §7-5-1 Title

This act shall be known and may be cited as the “Nez Perce Tribe Elder and Adult Protection Act”.

## §7-5-2 Purpose

The purpose of this Act is to protect the elders and vulnerable adults within the jurisdiction of the Nez Perce Tribe from abuse or neglect as defined by this Act.

## §7-5-3 Definitions

In this Act, unless the context otherwise requires:

(a) "Abuse" means:

(1) Infliction of physical injury, emotional harm or mental injury, or

(2) Injury or harm caused by negligent acts or omissions, or

(3) Unreasonable confinement, or

(4) Sexual abuse or sexual assault;

(b) "Caretaker" shall mean any individual, group of individuals, or institution that is permanently or temporarily responsible by relationship, contract (actual or implied), assumption of duties, or court order to provide food, shelter, clothing, medical or other life-sustaining necessities to an elder or vulnerable adult;

(c) "Elder" shall mean any person who has reached the age of fifty-five (55) years or older;

(d) "Emergency" shall mean an exigent circumstance in which an elder or vulnerable adult's health and safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention;

(e) “Exploitation” means an action which may include, but is not limited to, the misuse of the funds, property, or resources of a vulnerable adult or elder by another person for profit or advantage;

(f) "Neglect" means a willful or unwillful pattern of conduct resulting in deprivation of services necessary to maintain minimum physical or mental health, including, but not limited to, the deprivation of food, shelter, clothing or services necessary to maintain physical or mental health;

(g) “Officer” shall mean any Nez Perce Tribal Police Officer;

(h) “Protective Services” means a program of identifiable and specialized social services that offers services appropriate to attempt to resolve problems which have produced visible signs of self-neglect, abuse, exploitation or neglect;

(i) "Relative" shall mean any biological, legal or traditional relationship to the second degree (i.e. grandparent, grandchild, great nephew, etc.), including step, half and in-law relationships;

(j) "Self-neglect" shall mean a willful or unwillful pattern of depriving oneself of services necessary to maintain minimum physical or mental health, including, but not limited to, the deprivation of food, shelter, clothing or services necessary to maintain physical or mental health;

(k) "Sexual Abuse" or "Sexual Assault" shall mean any physical contact for sexual gratification of the person making such contact, or any other illegal sex act, which is not consented to by the elder or vulnerable adult or for which the consent was obtained by intimidation, fraud or other forms of duress or force;

(l) "Tribe" shall mean the Nez Perce Tribe; and

(m) "Vulnerable" means a permanent or temporary impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person and/or is unable to protect himself/herself from abuse, neglect, or exploitation. A presumptive finding of vulnerability may be at the scene of the investigation or by court order, but any determination of mental illness, mental deficiency or mental disorder shall be made by a mental health professional.

**§7-5-4 Scope**

(a) In the process of carrying out the responsibilities and duties in this Act, the Nez Perce Tribe Social Services Program may inquire into the availability and subsequently request the assistance of the staffs and resources of all appropriate tribal departments, agencies, commissions, or health directors, and may utilize any other appropriate and available tribal, state, public or private agencies, groups or individuals. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, state personnel and any other person or entity deemed necessary due to their specialized training in providing services to elders or vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to elders or vulnerable adults. Interagency staffing and sharing of client and facility information shall be used, upon completion of the proper paperwork regarding privacy of information or issuance of court order or subpoena when necessary, to provide services to elders and vulnerable adults.

(b) Nothing in this Act shall be construed to mean that a vulnerable adult or elder is abused, neglected or in need of protective services for the sole reason that he/she relies on treatment from a recognized religious method of healing in lieu of medical treatment, nor shall the provisions of this Act be construed to require any medical care or treatment in contravention of the stated or implied objection of an elder or vulnerable adult, except as noted.

**§7-5-5 Powers and Duties**

(a) The duties of the Nez Perce Tribe Social Services Program shall include, but not be limited to, the following:

(1) Receiving reports of abused, exploited, self-neglected or neglected vulnerable adults and elders;

(2) Receiving from any source oral or written information regarding a vulnerable adult or elder who may be in need of protective services;

(3) Upon receipt of such information, make an evaluation to determine if the vulnerable adult or elder is in need of protective services and what services, if any, are needed;

(4) If the allegations in a report indicate that an emergency exists, an investigation shall be immediately initiated as well as contact with the affected elder or vulnerable adult within twenty-four (24) hours. All other investigations must be initiated within seventy-two (72) hours;

(5) In an emergency, or if the elder or vulnerable adult is in imminent danger or a life threatening situation (See §7-5-6), the assistance of an Officer and/or Emergency Medical Services to ensure the safety of the elder or vulnerable adult may be enlisted. In an emergency a Nez Perce Tribe Social Services Program worker, Officer or Emergency Medical Services personnel may enter on private or public property where an elder or vulnerable adult is allegedly subject to abuse, neglect, self-neglect or exploitation, and may remove and/or transport the elder or vulnerable adult to a medical facility, care-providing facility, or other appropriate, safe environment;

(6) Offer a vulnerable adult or elder in need of protective services, or his/her guardian, whatever services appear appropriate in view of the evaluation; and

(7) Work with the Tribal prosecutor or other appropriate authority for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator, as provided for in the Nez Perce Tribal Code or other duly enacted Tribal law or ordinance. The caseworker may not be appointed as guardian, conservator, temporary guardian or temporary conservator. The caseworker shall be immune from liability for applying for or filing a petition for guardianship or conservatorship, unless the application or filing is done in bad faith.

(b) The investigation that is conducted shall include a determination of the nature, extent, and cause of the abuse, neglect, self-neglect, or exploitation, an examination of evidence and consultations with persons thought to have knowledge of the circumstances and identification, if possible, of the persons alleged to be responsible for any abuse, neglect, or

exploitation of the elder or vulnerable adult.

(c) The investigation may include:

(1) Personal interviews of the abused, the immediate family and caretaker, suspected abuser, employees of any involved agencies, and any other person who may have pertinent information;

(2) Medical records and other evidence of abuse if applicable;

(3) Assessments of the elder or vulnerable adult's living conditions using Tribal standards for housing; and

(4) Any other observations, assessments, documents or information including photos, audio tapes or video tapes that may aid in completing an accurate report.

(d) Upon completion of the investigation, a written report of the investigation shall be prepared. The name of the person making the original report or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request to law enforcement for emergency access, a court order or hearing.

(e) If, as a result of any investigation initiated under this Act, it appears that the abuse, neglect or exploitation has caused injury or a serious imposition on the rights of the elder or vulnerable adult, an officer and/or a tribal prosecutor shall be immediately contacted, which shall initiate an investigation and determine whether criminal proceedings shall be initiated against a Caretaker or other persons liable under this Act.

**§7-5-6 Imminent Danger**

(a) If the vulnerable adult is believed to be in imminent danger and the social worker cannot gain access, then the social worker will enlist the assistance of a law enforcement officer to ensure the safety of the vulnerable adult.

(b) The law enforcement officer can also assist in the following ways:

(1) Help with the judicial process necessary to ensure the safety of the vulnerable adult;

(2) Help ensure the safety of the adult protection worker by accompanying the worker when there is a potentially dangerous situation;

(3) Help establish probable cause for a search and assist in obtaining a search warrant;

(4) Identify any other criminal activity that may be occurring; or

(5) Conduct "welfare checks" on individuals at the request of the social worker.

**§7-5-7 Access to Investigate**

A Nez Perce Tribe Social Service Program worker may gain emergency access to the residence of the client for the purpose of conducting a protective investigation if:

(1) The client is unable to consent to entry because he/she is medically unable; or

(2) The client is unwilling to consent to entry; or

(3) The care giver is unwilling to consent to entry; and

(4) The social worker has reason to believe that a client is in an abusive and/or neglectful situation in which death or severe bodily harm could reasonably be expected to occur without intervention; and

(5) The social worker has requested and has received the assistance of law enforcement.

**§7-5-8 Law Enforcement Responsibilities**

(a) Law enforcement officers have a duty to report immediately to Nez Perce Tribe Social Service Program, based on reasonable cause, the abuse or neglect of a vulnerable adult or elder.

(b) If known, the report shall contain the name and address of the vulnerable adult or elder; the caretaker; the alleged perpetrator; the nature and extent of suspected abuse or neglect; and any other information that will be of assistance.

(c) The cooperation of officers may be requested by Nez Perce Tribe Social Service Program to assist in an investigation where a vulnerable adult or elder is alleged to be abused, neglected, or exploited.

(d) Officers shall serve search warrants on any private or public property where authorized tribal employees or their representatives were unable to obtain a consent, and where a vulnerable adult or elder allegedly is subject to abuse or neglect.

(e) The law enforcement authority in the appropriate jurisdiction will be notified by the Nez Perce Tribe Social Service Program immediately upon a finding that the abuse or neglect appears to have caused injury or a serious imposition to the rights of the vulnerable adult or elder. Law Enforcement shall immediately initiate an investigation and will determine whether criminal proceedings should be initiated.

**§7-5-9 Nez Perce Tribe Prosecutor Responsibilities**

(a) Upon request by a law enforcement officer and a showing of probable cause to believe that abuse or neglect has occurred, the tribal prosecutor shall assist in securing a search

warrant that would allow the inspection and search of the premises where the alleged abuse or neglect has occurred. The search warrant shall indicate that is has been issued pursuant to Section 7-5-9 of the Elder and Adult Protection Act.

(b) If, based upon the investigation of the Nez Perce Tribe Social Service Program, Officers determine that criminal action is warranted, then the case shall be referred to the tribal prosecutor for further action. The tribal prosecutor shall ultimately determine what action should be filed in tribal court pursuant to the Nez Perce Tribal Code and shall inform the Nez Perce Tribe Social Service Program of the action taken. The prosecutor's office is to respond within two (2) to fourteen (14) days as to whether or not the case will be prosecuted.

(c) The Nez Perce Tribal Prosecutor will consider the Nez Perce Tribal Code § 4-1-89 and any other relevant criminal or civil provisions in determining whether criminal charges for abuse or neglect can or should be filed.

**§7-5-10 Special Powers and Duties in Cases of Self -Neglect**

(a) If a report issued pursuant to Subsection (d) of § 7-5-5 contains a finding of self-neglect involving an elder or vulnerable adult, the Nez Perce Tribe Social Services Program shall work with the Tribal prosecutor or other appropriate authority to petition the court for the appointment of a temporary or permanent guardian or conservator as provided for in the Nez Perce Tribal Code or other duly-enacted Tribal law or ordinance.

(b) In an emergency, an elder or vulnerable adult suffering from self-neglect shall be transported to an appropriate medical facility. A presumptive finding of self-neglect may be made at the scene.

**§7-5-11 Immunity of Participants: Non-Privileged Communication**

(a) Any person making a complaint, furnishing a report, information or records required or authorized by this Act, or participating in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this Act is immune from any civil, criminal, or licensing sanction liability by reason of such action, unless the person acted with malice, bad faith, gross negligence, conducted perjury or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the vulnerable adult or elder in question.

(b) The physician-patient privilege, therapist-patient, husband-wife privilege or any other privilege, except the attorney-client privilege, provided for by the Nez Perce Tribal Code shall not pertain in any civil or criminal litigation in which a vulnerable adult's or elder's exploitation, abuse or neglect is an issue, nor shall they pertain in any investigation of a vulnerable adult's or elder's exploitation, abuse or neglect.

**§7-5-12 Duty to Report Abuse, Neglect, Self-Neglect or Exploitation of Vulnerable Adults or Elder; Confidentiality; Violation**

(a) Any professional, including but not limited to physicians, dentists, psychologists, social workers, emergency response personnel, or other person who has responsibility for the care of a vulnerable adult or elder and whose examination or observation of the vulnerable adult or elder yields a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of

the vulnerable adult, elder, or the property of the vulnerable adult or elder has occurred, shall immediately report or cause reports to be made of such to an Officer or the Nez Perce Tribal Social Services Program.

(b) Any guardian or conservator of a vulnerable adult or elder who becomes aware or suspects abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder to which they act as guardian or conservator has occurred, shall immediately report or cause reports to be made of such reasonable basis to an Officer or the Nez Perce Tribal Social Services Program.

(c) Any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax or other financial records of a vulnerable adult or elder, or a person who has responsibility for any other action concerning the use or preservation of a vulnerable adult's or elder's property and who, in the course of fulfilling that responsibility, discovers cause to believe that abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or vulnerable adult's or elder's property has occurred, shall immediately report or cause reports to be made of such to an Officer or the Nez Perce Tribal Social Services Program.

(d) Any member of the Nez Perce Tribal Executive Committee who becomes aware or suspects abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder, or the property of the vulnerable adult or elder shall immediately report or cause reports to be made of such reasonable basis to an Officer or the Nez Perce Tribal Social Services Program.

(e) All of the reports required in subsections (a), (b) or (c) of this section, shall be made immediately in person or by telephone to an Officer or the Nez Perce Tribal Social Services Program.

(f) Reports pursuant to this section should contain:

(1) The names and addresses of the vulnerable adult or elder and any persons having responsibility, control or custody of the vulnerable adult or elder, if known;

(2) The vulnerable adult's or elder's age and the nature and extent, if any, of his/her vulnerability;

(3) The nature and extent of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property;

(4) The name and contact information, if available, of the person or, persons who is/are alleged to have abused, neglected; or exploited the vulnerable adult or elder;

(5) The name and contact information of the person reporting the alleged abuse, neglect, self-neglect or exploitation;

(6) Any other information that the person reporting believes might be helpful in establishing the cause of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or

elder's property.

(g) Any person, including any caretaker, other than one required to report or cause reports to be made in accordance with this section, who has a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder or the property of a vulnerable adult or elder has occurred, has a duty to report the information to an Officer or the Nez Perce Tribal Social Services Program as soon as possible.

(h) The name of the reporting party who reports any abuse, neglect, self-neglect or exploitation as required by this Act shall remain confidential and shall not be released to any person unless the reporting party consents to such release or such release is ordered by the Nez Perce Tribal Court.

**§7-5-13 Mandatory Arrest**

(a) Any officer shall arrest and take into custody persons whom the officer has probable cause to believe abused or neglected an elder or vulnerable adult. No warrant is required to make such arrest. This mandatory arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under this provision an Officer shall arrest under probable cause even though it may be against the express wishes of the victim. An officer shall arrest and take into custody, a person whom the officer has probable cause to believe has violated a court order for protection, restraining the person from contact with the victim or excluding the person from the residence, if the existence of the court order can be verified. Regardless of whether the person violating the court order was invited back into the home, an arrest shall be made.

(b) Arrest of a person exploiting an elder, vulnerable adult or the property of an elder or vulnerable adult is not mandatory, but is discretionary. If no arrest is made, the investigating Officer shall file a written report in accordance with subsections (e) of § 7-5-12.

(c) Any person arrested under this Act shall be held without bail in the custody of the Nez Perce Tribal Police Department for a period of at least twelve (12) hours, as a mandatory "cooling-off' period.

(d) Any Officer taking action to arrest a suspect under authority of this section shall be immune from any civil, criminal, or other liability by reason of such action, unless the Officer acted with malice, bad faith, gross negligence, conducted perjury or unless such Officer has been charged with or is suspected of abusing, exploiting or neglecting the vulnerable adult or elder in question.

**§7-5-14 Duty to Make Medical Records Available; Violation**

(a) A person having custody or control of medical or financial records of a vulnerable adult or elder, from whom a report is required or authorized under this section, shall make such records, or a copy of such records, available to an Officer or the Nez Perce Tribal Social Services Program investigating the abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder or the property of the vulnerable adult or elder, upon written request for the records signed by the Officer or Nez Perce Tribal Social Services Program. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation required or authorized under this Act.

(b) If records, required or authorized by this section, are received by an Officer, he/she shall notify the designated Nez Perce Tribal Social Services Program as soon as possible and make such information available.

(c) A person required to prepare reports pursuant to this Act may take or cause to be taken photographs of the vulnerable adult or elder and the vicinity involved. Medical examinations, including radiological examinations of the vulnerable adult or elder may also be performed. Accounts, inventories or audits of the exploited vulnerable adult's or elder's property may be performed. The department, agency, or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of a vulnerable adult or elder in a criminal or civil action, the Nez Perce Tribal Court may order the person to make restitution as the court deems appropriate.

(d) If psychiatric, substance abuse or other mental health records are requested pursuant to this section, the custodian of the records shall notify the attending clinician, who may, before the records are made available, excise the following:

(1) Personal information about individuals other than the patient; and

(2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending clinician certifies in writing that release of the information would be detrimental to the patient's health or treatment.

(e) If any portion of a psychiatric record is excised pursuant to subsection (d) of this section, the Nez Perce Tribal Court may, upon application of an Officer or Nez Perce Tribal Social Services Program, order that the entire record or any portion of such record containing information relevant to the reported abuse, neglect, self-neglect or exploitation be made available to the Officer or Nez Perce Tribal Social Services Program investigating the abuse, neglect, self-neglect or exploitation.

**§7-5-15 Permitting Life or Health of a Vulnerable Adult or Elder to be Imperiled by Abuse Neglect or Exploitation: Legal Remedies: Registry**

(a) Any Caretaker, Relative, or other person or institution who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to a vulnerable adult or elder and who causes or permits the life of the vulnerable adult or elder to be endangered, his/her health to be injured or to be imperiled by abuse, neglect or exploitation is guilty of a criminal offense, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed $5,000.00, or both.

(b) Any Caretaker, Relative, or other person or institution who aids, abets or otherwise assists or condones the acts or omissions of another person who abuses, neglects or exploits a vulnerable adult or elder shall be treated as if such person committed the offenses himself or herself.

(c) A vulnerable adult or elder whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may cause to be filed a civil action in tribal court, either by themselves, their guardian, conservator, or any other interested party, against any Caretaker, Relative, or other person or institution that has been employed to provide care, that

has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult or elder for having caused or permitted such conduct.

(d) The Tribe, through the Tribal Prosecutors' Office, may file an action pursuant to this Act on behalf of those vulnerable adults or elders who have been abused, neglected or exploited and in such action may seek to prevent, restrain, or remedy the conduct prohibited in this Act.

(e) The Nez Perce Tribal Court has jurisdiction to prevent, restrain and remedy the conduct prohibited in this Act.

(f) Prior to a determination of liability in any civil action authorized by this Act, the Nez Perce Tribal Court may issue orders that include, but are not limited to, the following relief.

(1) Restraining or protection orders;

(2) Temporary injunctions;

(3) Setting satisfactory performance bonds;

(4) Creating receiverships;

(5) Appointing qualified receivers; or

(6) Enforcement of constructive trusts.

(g) After a determination of liability in any civil action authorized by this Act, such court orders may include, but are not limited to:

(1) Ordering the payment of actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those vulnerable adults or elders injured by the conduct prohibited in this Act; and

(2) Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct prohibited in this Act incurred by the Tribe, as appropriate; such payment shall be made to the general fund of the Tribe.

(h) A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he/she was convicted in any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.

(i) The initiation of civil proceedings pursuant to this Act shall be commenced within three years after actual discovery of the cause of action.

(j) The standard of proof in actions brought pursuant to this Act is the preponderance of the evidence.

(k) The tribal prosecutor may, upon timely application, intervene in any civil action or proceeding brought under this Act if the tribal prosecutor certifies that, in his/her opinion, the

action is of special public importance. Upon intervention, the tribal prosecutor may assert any available claim and is entitled to the same relief as if the tribal prosecutor had instituted a separate action.

(l) In addition to the Tribes' right to intervene as a party in any action under this Act, the tribal prosecutor may appear as a friend of the court in any proceeding in which a claim under this Act has been asserted or in which the court is interpreting this Act.

(m) A civil action authorized by this Act is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law; civil remedies provided under this title are supplemental and not mutually exclusive.

(n) The cause of action or the right to bring a cause of action pursuant to this Act shall not be limited or affected by death of the neglected, abused or exploited elder or vulnerable person.

**§7-5-16 Severability**

If any of the provisions of this Act are ruled, by a court of competent jurisdiction, to be unconstitutional, illegal, or otherwise unenforceable, the remaining provisions of this Act shall remain in full force and effect to the extent that the purpose of this Act shall remain

# TITLE 8
# WATER AND SEWER UTILITY AUTHORITY

## CHAPTER 8-1 GENERAL PROVISION (adopted October 8, 2002)

### §8-1-1 Title

This Title shall be known as the Water and Sewer Utility Authority.

### §8-1-2 Purpose

The purpose of this Title is to define the policies, establish an organization, and identify the necessary rules and regulations for:

(a) the operation, maintenance, and management of the various tribal water and sewer utilities located on the Nez Perce Reservation; and

(b) management for the provision of essential environmental services within the tribal community.

### §8-1-3 Policy

It shall be the policy of the Nez Perce Tribe to operate, maintain, and manage water and sewer utilities and essential environmental services on the Nez Perce Reservation so that community residents are provided with a high level of environmental services designed to minimize exposure to adverse conditions which could negatively impact the physical and environmental health of any individual or the community. It shall also be the policy of the Nez Perce Tribe that the operation, maintenance, and management of the public utilities and environmental maintenance services shall be carried out through an efficient program and in a financially responsible cost effective and self-sufficient manner.

### §8-1-4 Validity / Severability

The invalidity of any section, clause, sentence, or provision of this Title shall not affect the validity of any part of this Title, which can be given effect without such invalid part or parts.

### §8-1-5 Suspension of Title

No employee, officer, contractor, or agent of the Nez Perce Tribe is authorized to suspend or alter any of the provisions of this Title without the formal approval of NPTEC.

### §8-1-6 Definitions

Unless the context specifically indicates otherwise, the following definitions shall apply to this Title:

(a) “Appurtenances” are the real and personal property owned by the Nez Perce Tribe located on, near, or under the roadways and streets, such as fire hydrants and valves.

(b) “Customer” means a person, business, agency, or other organization that uses, is

entitled to use, or is obligated to pay for the use or receipt of services from the Nez Perce Tribe.

(c) "Customer lines" are the potable waterlines located immediately adjacent to, inside of, or under a customer's residence or other building or property, which are either connected to utility service lines or are maintained by the customer separately from utility service lines.

(d) "Garbage" shall mean all degradable and non-degradable refuse and solid waste without economic value that is generated through the course of normal living by the residents and organizations in the community.

(e) "Distribution system lines" are those potable water lines maintained by the Tribe by which water utility services are provided to customers.

(f) "Meter" is a device, owned by the Tribe, for measuring the amount of water utility services provided to a particular customer.

(g) "Manager" shall mean an individual hired by or appointed by the Tribe to oversee and manage the operation of the Utility Department.

(h) "Operator" shall mean an individual hired by or appointed by the Tribe or manager to provide direct day to day preventive maintenance and operational service for the public water and sanitary sewer utilities.

(i) "On-site sewage treatment and disposal systems" shall mean individual or community septic tanks and subsurface drain fields and associated appurtenances that collect, treat and dispose of liquid waste generated by customers, which are maintained and operated by the Utility Department.

(j) "Off-reservation" is any area located outside of the exterior boundaries of the Nez Perce Reservation.

(k) "Regulation" is a rule or regulation adopted by the Tribe pursuant to Chapter 2-5 of the Nez Perce Tribal Code for purposes of implementing the requirements of this Title.

(l) "Septic System Contractor" shall mean any individual, firm, contractor, or organization who the Tribe contracts with, to pump out on-site sewage treatment and disposal systems and dispose of the waste material and/or to repair the on-site sewage treatment and disposal systems located on the Nez Perce Reservation.

(m) "Service Area" means the communities and areas served by tribal water and/or sewer services.

(n) "Tribal Community," for purposes of this Title, shall include, but not necessarily be limited to, enrolled members of the Nez Perce Tribe and all residents of tribally-owned housing.

(o) "Contractor" shall mean any individual firm contractor or organization who contracts with the Tribe to provide environmental services utility repairs, design, inspection, reconstruction, or operation.

(p) "Utility Services" are those basic services necessary for supporting residential and commercial development, including, but not limited to, water and sewer services.

(q) "Utility Board" is the board responsible for oversight of the Utility Department and the implementation of this Title.

(r) "Utility Department" is a governmental department of the Nez Perce Tribe authorized to operate the water and sewer utility services provided by the Tribe.

(s) "Department" shall mean the Utility Department of the Nez Perce Tribe.

(t) "Vendor" is any individual firm, contractor, or organization who regularly supplies parts, equipment, supplies and services to the Utility Department used in the operation maintenance and management of the Tribe's water and sewer utilities.

(u) "Collection Lines" are those sanitary sewerage lines maintained by the Utility Department by which sanitary sewer collection and disposal services are provided to customers.

## CHAPTER 8-2 UTILITY DEPARTMENT AND BOARD ESTABLISHMENT AND AUTHORITY (adopted October 8, 2002)

### §8-2-1 Utility Established

There is hereby established the Nez Perce Tribe Water and Sewer Utility Department having the responsibility for operating and maintaining the tribal public water and sewer utilities and providing essential community environmental services directly or by contract.

### §8-2-2 Board Established

There is hereby established the Nez Perce Tribe Sewer and Water Utility Board to serve as the advisory, administrative, and management oversight authority for the Utility Department.

### §8-2-3 Board Authority

The Board shall operate as a subordinate unit of tribal government, independent in its daily operation, but responsible to NPTEC for its actions. The methods of appointment, terms of office, and operating procedures of the Board shall be set forth in this Title and in bylaws adopted by the Board and approved by NPTEC.

### §8-2-4 Board Powers and Responsibilities

The Board shall manage the water and sewer utilities of the Tribe, and obtain and disburse funds as required for operation, maintenance and expansion of the water and sewer utilities. To fulfill these responsibilities, the Board shall have the power to:

(a) Levy and collect necessary and reasonable fees required for the operation of utility services;

(b) Provide for the hiring and compensation of appropriate management and maintenance personnel subject to the Nez Perce Tribe Human Resources Manual;

(c) Adopt appropriate rules and regulations to implement the requirements of this Title pursuant to Chapter 2-5 of the Nez Perce Tribal Code;

(d) Authorize disbursement of funds for operation, maintenance and repair of utility services; and

(e) Contract with vendors and contractors to assure that safe and reliable environmental services are available to and utilized by the tribal community.

**§8-2-5 Utility Board Membership**

(a) The Utility Board shall be composed of five persons appointed by NPTEC from the general tribal community.

(b) NPTEC shall appoint the five members of the Utility Board from among tribal members living within the reservation boundaries. **(amended by NPTEC 6/26/07)**

**§8-2-6 Term of Office**

(a) Except for the initial Board membership, all Board members will serve two-year terms. Initial Board members shall serve terms as follows:

Community Representative (Position 1) - 1 year

Community Representative (Position 2) - 2 years

Community Representative (Position 3) - 1 year

Community Representative (Position 4) - 2 years

Community Representative (Position 5) - 1 year

(b) Terms shall expire upon the swearing in of newly appointed Board members.

**§8-2-7 Method of Appointment / Vacancies**

(a) NPTEC shall annually appoint persons to fill any Utility Board vacancies. For all Board positions, NPTEC shall choose persons capable and willing to perform the duties of the Board.

(b) If a Board member resigns, dies, becomes incapacitated, or is found guilty of a felony or major crime in any court of law, NPTEC shall declare the Board position vacant. If any Board member misses two consecutive Utility Board meetings without a valid excuse, NPTEC, upon petition of the remaining Board, may declare the position vacant. All vacancies shall be filled as soon as possible in accordance with this Section.

(c) In the event that the number of unfilled Board vacancies prevents gathering of a quorum for purposes of conducting business, NPTEC shall act as the interim Utility Board until such time as the filling of the Board vacancies allows for a quorum.

**§8-2-8 Board Officers**

(a) Within ten days after the appointment of the initial Board members, there shall be an organizational meeting of the Utility Board to elect a Chair, Vice Chair, and a Secretary-Treasurer from among the Utility Board members. The Officers shall be elected annually thereafter, immediately following the appointment by NPTEC of the new Board members.

(b) Officers of the Utility Board shall assume the following duties:

(1) Chair - Shall preside at all meetings; call and arrange all meetings; be responsible for all general management of the Utility Board affairs; and perform all duties incidental to the office.

(2) Vice-Chair - Shall perform all of the Chair's duties in in the absence of the Chair and shall assist the Chair as required in handling the Utility Board's affairs.

(3) Secretary-Treasurer - Shall keep or cause to be kept a complete and accurate record of all meetings and shall maintain all correspondence, notices and records of the Utility Board; shall be responsible for maintaining financial records of the Utility Department; shall report the Department's financial status at each regularly scheduled Utility Board meeting and shall present to the Board members for their action all requests for funds to meet the Department's financial obligations; shall prepare an annual financial statement for submission to NPTEC for General Council.

**§8-2-9 Board Meetings**

(a) The Utility Board shall meet when business demands and requires attention. Regular and special meetings shall be called by the Chair.

(b) Any two Board members may request the Chair, in writing, to schedule a special meeting of the Utility Board.

(1) If the Chair fails to schedule a meeting within five days after receipt of a written request, any other two Board members may call such a meeting.

(c) Meetings shall be held in public places, and the Utility Board shall provide at least five (5) days public notice of Board meetings. Emergency meetings may be convened with less than five days' notice, in cases of emergency where loss of life, limb or property is threatened, or where the continued operation or fiscal capability of the Tribal public utilities may be in jeopardy.

(d) Meetings shall be open to members of the tribal community and to users of the Tribal Utilities. Meetings may be closed only to discuss personnel matters.

### §8-2-10 Quorum and Voting

(a) A minimum of three Board members is required to establish a quorum and conduct Utility Board business. Any action taken by the Utility Board must be approved by a majority vote of those Board members present at a Utility Board meeting.

(b) Each Board member, except the Chair, shall be entitled to vote on each matter coming properly before the Utility Board. The Chair shall vote only in the event of a tie.

### §8-2-11 Compensation of Board Members

(a) Board members shall serve without monetary compensation, except as determined by NPTEC.

(b) NPTEC shall establish prevailing government rates for mileage, per diem, or other costs, consistent with tribal policy, and shall direct the Finance Manager to approve such expenditures; provided that funds are available within the Utility Department budget approved by the Utility Board and ratified by NPTEC.

### §8-2-12 Public Hearings

(a) The Utility Board shall convene public hearings to discuss changes in utility rates assessed to users of tribal public utilities.

(b) All users of tribal public utilities shall be afforded seven (7) days written notice of such hearings, and adequate notices shall be posted at appropriate places within the community.

## CHAPTER 8-3 MANAGEMENT AND FINANCES **(adopted October 8, 2002)**

### §8-3-1 Management Personnel

(a) The Utility Board shall oversee the business and operating affairs of the Utility Department.

(b) Consistent with tribal personnel and financial policies, the Utility Board may provide for hiring and contracting personnel for the care and maintenance of the Tribal Utilities, and shall establish compensation rates consistent with the Utility Department approved budget.

(c) The Utility Board may delegate only those management duties that are not specifically designated as duties to be performed exclusively by the Utility Board.

### §8-3-2 Annual Budget

The Utility Board shall establish an annual budget enumerating the necessary costs of Utilities Department operation, maintenance, administration, personnel, liability and other insurance, replacement, and a reserve for major repairs and replacements.

### §8-3-3 User Fee Schedule

(a) The annual budget shall be used to determine a fee schedule to be assessed to the

users of Tribal Utilities.

(b) The budget and fee schedule shall be approved by the Utility Board and ratified by NPTEC.

**§8-3-4 Records and Accounts**

(a) Suitable financial records shall be maintained for all expenditures, receipts from payments for services, investments and returns on investments, and any other financial matters necessary for operation of the Utility Department.

(b) The records of accounts shall be made available to NPTEC.

**§8-3-5 Exclusive Use of Funds**

(a) The funds accrued by the Utility Board and kept on deposit are for the exclusive use of the Utility Department for the necessary operation, maintenance, and management of the Tribal Utilities.

(b) Utility Board funds, required for the operation, maintenance, and management of the Tribal Utilities or funds otherwise committed by contract or other legal obligation, shall not be transferred or loaned to the Tribal General Fund or any other accounts of the Tribe or other Tribal departments, except to pay for services provided to the Utility Board or Department by other Tribal Departments.

**§8-3-6 Regulations, Policies, and Code Amendments**

(a) Consistent with Chapter 2-5 of the Nez Perce Tribal Code, the Utility Board shall have the authority to adopt appropriate regulations and policies as needed to implement the provisions contained in this Title.

(b) No regulation duly adopted by the Utility Board may be suspended or altered by any person without prior written authorization of the Utility Board.

(c) The Utility Board shall recommend amendments to this Title that it believes necessary to promote the efficient, cost effective, and self-sufficient operation of the Utility Department and shall present such amendments to NPTEC for approval in a manner consistent with Chapter 1-4 of the Nez Perce Tribal Code.

**§8-3-7 Grievances**

(a) Any owner, contractor, or any applicant for utility services, who is aggrieved by any action of the Utility Department or the Utility Board, may file a grievance with the Utility Board. **(amended 11/10/15)**

(b) The Utility Board shall conduct a hearing to hear grievances and shall abide by the regulation set forth in this Title. Grievance hearings shall be conducted in a manner consistent with Chapter 2-5 of the Nez Perce Tribal Code.

(c) All decisions by the Utility Board on matters that have been submitted for

grievance under the Department's grievance procedures shall be considered final. Final decisions of the Utility Board may be appealed by an aggrieved party only on the basis that the Department's grievance procedures were not followed, or that due process was denied.

### §8-3-8 Sovereign Immunity

The Utility Department and the Utility Board are agencies of the Nez Perce Tribe, and thereby retains all rights of sovereign immunity of the Tribe. By providing services and entering into service agreements, the Board and the Department shall not waive the sovereign immunity of the Nez Perce Tribe or any of its officers, agents, attorneys or employees, or anyone else acting at the direction of and on behalf of the Nez Perce Tribe.

## CHAPTER 8-4 UTILITY DEPARTMENT OPERATIONS (adopted October 8, 2002)

### §8-4-1 Services Provided

The services provided by the Utility Department shall include domestic water and sewer services.

### §8-4-2 Water Services

(a) The Utility Board is responsible to provide safe, adequate water for a fee to those houses, businesses, and institutions connected to the mainlines of tribal community water systems.

(b) Responsibility for maintenance will include water sources, storage tanks, controls, mainlines, valves and hydrants, and service lines to the meter.

(c) The service line from the meter to the house and the interior house plumbing are the responsibility of the customer.

(d) The individual household water meters are owned by the Tribe and it is the responsibility of the Department to maintain the meters.

(e) Tribal community water systems shall be managed such that applicable federal and tribal regulatory requirements are satisfied.

### §8-4-3 Sewer Services

(a) The Utility Board is responsible to provide sanitary disposal of domestic liquid waste for a fee to those houses, businesses, and institutions connected to the mainlines of tribal community sewerage systems.

(b) The Utility Board is responsible for the maintenance and repair of community sanitary sewage disposal systems and storm sewer systems.

(c) Responsibility for maintenance includes treatment facilities, pumping stations, mainlines, manholes, and service lines to the individual property lines.

(d) The service line from the property line to the house or the septic tank inlet to the

house and interior house plumbing are the responsibility of the customer.

(e) Tribal sewage collection, treatment, and disposal systems shall be managed such that applicable tribal and federal regulations are satisfied.

(f) In the event that the Utility provides sewer services to entities that are not connected to tribal water systems, that entity will be required to sign a contract for sewage services outlining the Utility's and owner's responsibilities.

**§8-4-4** ***This section number was inadvertently omitted when Water and Sewer Utility Authority was drafted***

**§8-4-5 Maintenance Schedule**

(a) The Utility Department shall develop and follow a regular schedule of maintenance service for each water and sewer system and components thereof.

(b) All utilities equipment shall be maintained according to the established maintenance schedule and quickly repaired when necessary so that disruption in service is minimized.

**§8-4-6 Emergency Notification**

An emergency notification plan will be developed by the Utility Department and reviewed annually for notifying residents and visitors of:

(a) Discontinued service for more than eight (8) hours;

(b) Substandard conditions in water quality.

(c) Any other conditions which may adversely affect the health of the community residents or visitors.

**§8-4-7 Limits of Responsibility**

(a) The Department shall not be responsible for, nor shall it maintain or repair, any private or domestic water or sewer system except by specific agreement establishing fair rates of compensation to the Department, and that is approved and signed by the Utility Board and owner of such facilities.

(b) The Department shall not be liable for any loss or damage beyond its control resulting from any defect in, or damage to, a customer's water or sewer lines or fixtures.

**§8-4-8 Right of Entry / Inspections**

(a) The Department, or its authorized representative, is authorized to make limited, reasonable inspections, at reasonable times, of any grounds, building, or residence served by the Utility Department to the extent necessary to insure that customer utility fixtures, lines, and equipment are not being operated or constructed in a manner that would likely disrupt, interfere with, damage, or degrade utility services. **(amended 11/10/15)**

(b) Except in cases of emergency where life, limb, or property are threatened, or in cases of immediate water shortages, the Department shall give the customer at least 24 hours' notice prior to requesting permission to enter and inspect.

(c) If permission to enter and inspect is denied or impeded in any way, the Department shall obtain a court order authorizing such entry and inspection.

(1) Where the permission to enter and inspect is unreasonably withheld, the Department may assess court costs and related expenses and add them to the affected customer's bill.

**§8-4-9 Disruption of Service**

(a) The Department may shut off water or sewer service, provided that advance notice has been given to affected customers.

(b) In cases of emergencies where loss of life, limb or property is threatened, or in cases of immediate water shortage, service may be disrupted without advance notice.

(c) The Department shall not be responsible for consequent damage as a result of lack of water or sewer during authorized disruptions of service.

**§8-4-10 Permits**

(a) No connection, re connection with, disconnections from, or other private use of any Department water or sewer system, appurtenance of other utility service, or facility shall be made without a written permit and inspection by the Utility Board. **(amended 11/10/15)**

(b) No construction of any private water or sewer system is authorized within the service area of the Utility Board without a written permit from and inspection by the Utility Board. **(amended 11/10/15)**

(c) The Utility Board may require such plans from the permit applicant as it determines are necessary to decide whether or not a permit should be issued.

(d) The Utility Board may engage in any inspections that it deems necessary to decide whether a permit should be issued. **(amended 11/10/15)**

**§8-4-11 Water Shortage / Service Preference**

(a) In cases of a water shortage proclaimed by the Utility Board, the Department shall regulate the amount of water any customer may be allocated.

(b) The Utility Board may give preference to the customers and/or amounts of water to be allocated, provided the Utility Board allocates water according to public necessity of convenience, and provides for fair allocations between customers.

(c) Any customer violating a legal allocation may have his water service discontinued. Service shall be resumed only upon payment of the approved reconnection fee and any penalties.

**§8-4-12 Unnecessary Waste of Water**

(a) The Utility Board reserves the right to terminate customer's service when the customer has repeatedly, unduly wasted water.

(b) Such undue waste is evidenced by the fact that hydrants, taps, hoses and other fixtures are permitted to run continuously when not in productive use.

(c) Where such conditions have been observed, the Utility Board having been notified of the condition may terminate water to the premise if the condition is not corrected within 48 hours after receipt of the notice.

(d) Service shall be resumed only after correction of the condition causing wastage of water and payment by the customer of the approved reconnection fee, penalties and any other accounts in arrears to the Utility Board.

**§8-4-13 Conservation of Water Resources**

(a) The Department shall conduct operation, maintenance, and repair services in a manner that will maximize the conservation of natural, financial, and property resources.

(b) Customers of the Department shall be encouraged to conserve water resources and to limit water use as necessary to provide a comfortable, healthy, and aesthetically pleasing life style.

(c) The Department may offer assistance and service to customers for water conservation and other material resources conservation and recovery as determined to be feasible by the Utility Board.

**§8-4-14 New Customer Services**

(a) Any dwelling within the service area of the Utilities shall be eligible for services, provided all of the following conditions are met:

(1) Facilities are adequate to meet additional load;

(2) The new customer agrees to adhere to this Title; and

(3) Approval by the Utility Board.

(b) New customers shall pay the cost of any required extensions, expansions, or upgrades necessary to make the new connection.

(c) The additional of a new customer shall not increase the monthly operations and maintenance charges to existing customers.

## CHAPTER 8-5 CUSTOMER OBLIGATIONS **(adopted October 8, 2002)**

### §8-5-1 Conditions for Payment / Service

As a condition for receiving utility services from the Utility Department, the customer agrees to comply with all provisions of this Title, and any regulations duly adopted by the Utility Board, as well as any other applicable codes or regulations, including being current in the payment of all fees, penalties, costs, damages, or other charges assessed by the Department.

### §8-5-2 Maintenance / Repairs / Liability **(amended 11/10/15)**

(a) The customer shall be responsible for maintaining and repairing water and sewer lines located on or in the customer's grounds, building, or residence in compliance with applicable regulations.

(b) The owner and/or contractor shall obtain a written permit from the Department in advance of major maintenance or repairs planned for water or sewer lines. "Owner" in this statute means owner of the relevant structure, not the owner of the land on which it is situated. **(amended 11/10/15)**

(c) The owner and/or contractor shall permit the Department to inspect the work for compliance with applicable regulations before and/or after repairs are made. **(amended 11/10/15)**

(d) The owner and/or contractor shall be liable for any damage to the Department's lines, equipment, or other property caused by the owner's and/or contractor's family, guests, tenants, agents, employees, contractors, licensees, or other persons under the customer's control or authority. The Department shall bill the owner and/or contractor for any damage caused under the owner's and/or contractor's control or authority. **(amended 11/10/15)**

### §8-5-3 Customer Termination of Service / Abandonment

(a) A customer planning to vacate any grounds, building, or residence served by the Department shall notify the Department in writing one week prior to the date the customer plans to either vacate or terminate service, whichever is later.

(b) A customer who fails to give notice is responsible for all charges accrued up to one week after notice is received by the Department, or up until service is terminated, whichever comes first.

### §8-5-4 Water Shortages

During water shortages declared by the Utility Board, the customer shall limit his use of water according to allocations established by the Utility Board.

### §8-5-5 Inspections **(amended 11/10/15)**

(a) The customer shall not unreasonably withhold permission for the Department to enter and inspect the Department's and customer fixtures, lines, and equipment when necessary to insure that they are operating or being constructed in a manner that would not likely disrupt or interfere with utility services. **(amended 11/10/15)**

(b) The customer shall be liable for any costs or related expenses caused by his unreasonable withholding of permission.

(c) The Utility Board shall inspect the site(s) and/or plan(s) for any permit requested for construction or repair under this statute. **(amended 11/10/15)**

**§8-5-6 Permits (amended 11/10/15)**

(a) The owner and/or contractor shall obtain a written permit from and inspection by the Utility Board prior to making any connection, re connection with, disconnection from, or other private use of any Department water or sewer system, appurtenance, or other utility service or facility.

(b) The owner and/or contractor shall obtain a written permit from and inspection by the Utility Board prior to constructing any private water or sewer system, or other private utility.

**§8-5-7 Cross-Connections**

(a) The owner and/or contractor shall not make a cross connection with the Tribal Public Water supply. **(amended 11/10/15)**

(1) A cross-connection is defined as any physical connection between the Tribal Public Water system and another piping system, either water or waste.

(b) Any individual source must be totally disconnected from the household plumbing prior to connection to the Tribal Public Water Supply.

(c) "Disconnection" done solely by a valve shall not be allowed.

(d) In the event that an individual does not disconnect the cross-connection, the Utility Department may either take action to disconnect the cross-connection and charge the individual for any costs associated with the disconnection or may obtain an order from the Nez Perce Tribal Court requiring disconnection of the cross-connection. **(amended 11/10/15)**

**§8-5-8 Use of Sewer System**

(a) The customer shall use the sewerage collection, treatment, and disposal system only for the disposal of normal household liquid waste including waste from toilet facilities, shower and bathing facilities, and kitchen facilities.

(b) The customer shall not dispose of any material into the sanitary sewer which may cause the collection lines or subsurface drain field to become blocked or excessively loaded with solids, including but not limited to garbage, disposable diapers, sanitary napkins, paper material other than toilet paper, cigarette waste, and cat litter.

(c) No customer shall dispose of any toxic, radioactive, or otherwise hazardous waste into any Utility Department or private sanitary or storm sewerage system. Toxic and hazardous waste include but are not limited to: oil, pesticides, gasoline, organic solvents, paint, poisons, and other manufactured chemical compounds.

(d) The Department may collect any costs associated with the repair of a water or sewer system, appurtenance, or other utility service or facility due to a violation of this section. In addition, the Department may assess a penalty for any such violation.

## CHAPTER 8-6 FEE SCHEDULES AND BILLING (adopted October 8, 2002)

### §8-6-1 Fee Schedule Establishment

(a) The schedule of fees for utility services shall be set annually by the Utility Board and approved by the NPTEC.

(b) The fee schedule shall be based on the estimated average annual costs for operation of all utility services. The fee schedule shall include a basic rate for all services, payment of which shall be required of each customer regardless of whether, or the extent to which, the customer uses any of the services and other fees, charges, penalties and assessments which the Utility Board is authorized to levy as provided under various sections of this Title.

(c) The fee schedule may be adjusted as needed to meet utility operating expenses.

### §8-6-2 Public Hearing

(a) The Utility Board shall hold a public hearing whenever a new fee schedule is proposed for adoption.

(b) At least five (5) days in advance of the hearing, the proposed fee schedule shall be sent to each customer and shall be posted in appropriate places.

(c) Following the public hearing the Utility Board shall set a fee schedule, taking into consideration comments received at the hearing.

(d) A copy of the fee schedule adopted by the Utility Board shall be sent to each customer at least thirty (30) days prior to the date the established fees take effect.

### §8-6-3 Monthly Statement

(a) Each month, the Department shall mail to all utility customers a statement detailing the following information:

(1) The customer's name and account number;

(2) The types and levels of service used in the current month;

(3) The billed cost of the current month's service, plus an accounting of bills or charges past due, if any;

(4) The date that payment is due; and

(5) The location to mail or deliver payment.

(b) Payments not received within ten (10) days after the established due date are

considered past due. The Department shall issue a notice of payment past due to the customer, detailing the payment owed and the consequences for failure to pay. The notice shall be sent no later than the date the next billing is sent out.

### §8-6-4 Delinquent Account

(a) If the payment past due is not paid within ten (10) days after the next regular monthly due date, the account shall be declared delinquent.

(b) The Department shall immediately notify the customer in writing once his account has been declared delinquent, and list the sanctions that may be imposed without further notice.

(1) Notice of delinquency shall be personally served to the residence of the delinquent customer, sent via certified mail, or such other means to provide proof of receipt by the customer.

### §8-6-5 Advance Deposits

The Utility Board may require each new customer to pay an advance deposit equal in amount to the basic monthly rate fees for the first month of service prior to receiving services.

## CHAPTER 8-7 ENFORCEMENT; PENALTIES; SANCTIONS **(adopted October 8, 2002)**

### §8-7-1 Enforcement Responsibilities

(a) The Utility Board is authorized by NPTEC to collect established fees for service and to impose sanctions and penalties for non-payment.

(b) The Utility Board shall enforce its regulations, fee collections and provisions of this Title by imposing any or all penalties and sanctions as authorized in this Chapter and as approved by majority vote of the Utility Board. **(amended by NPTEC 7/12/11)**

### §8-7-2 Penalty Schedule

(a) The Utility Board shall develop and adopt a penalty schedule which outlines specific penalties, fines and assessments for violation and non-compliance with the provisions of this Title.

(b) The penalty schedule shall be reviewed for appropriateness annually by the Utility Board.

### §8-7-3 Sanctions Authorized

Any and all of the following sanctions may be imposed by the Utility Board for failure of a customer, owner or contractor to comply with any provisions of this Title or with any duly adopted regulation of the Utility Board: **(amended 11/10/15)**

(a) Termination of service(s);

(b) Assessment of penalties based on a penalty schedule adopted by regulation of the Utility Board;

(c) Assessment of late charges based on a schedule adopted by regulation of the Utility Board;

(d) Assessment of damages resulting from the customer's non-compliance;

(e) Any person or business violating any provisions of this statute shall become liable to the Utility Board for any expense, loss, or damage occasioned by reason of such violation; **(amended 11/10/15)**

(f) Filing of a lien against the customer's property after the account is declared delinquent;

(g) Enforcing a lien by seeking judgment, and satisfaction from the customer's property from a court of competent jurisdiction;

(h) Filing suit for damages in a court of competent jurisdiction;

(i) Referring violations that may involve criminal conduct to the tribal police or prosecutor.

(j) The Utility Board may recover from the owner and/or contractor for costs of bringing a project up to regulations if the owner and/or contractor failed to complete the permitting and inspection procedures required by this statute. **(amended 11/10/15)**

(k) The Utility Board has the authority to issue a stop work order against an owner and/or contractor who is not in compliance with this statute. **(amended 11/10/15)**

(l) If an owner and/or contractor fails to comply with the permitting and inspection requirements of this statute, the Utility Board may apply for an injunction against the owner and/or contractor from the Nez Perce Tribal Court. **(amended 11/10/15)**

### §8-7-4 Sanctions Guidelines

The Utility Board shall use the following guidelines when considering the appropriate sanctions to be imposed in any given case: **(amended 11/10/15)**

(a) Whether the sanction is required by this Title or other applicable law, or whether imposition is discretionary;

(b) The minimum sanction needed to effect compliance;

(c) The irreparable harm to the customer and/or family, owner or contractor if the sanction is imposed; **(amended 11/10/15)**

(d) The irreparable harm to operation of the Department, and to the Tribe, if the sanction is not imposed;

(e) The customer, owner or contractor's past record of compliance or non-compliance, or good faith efforts to achieve compliance; **(amended 11/10/15)**

(f) The customer, owner or contractor's statements or behavior indicating the likely success of a given sanction securing compliance; **(amended 11/10/15)**

(g) The irreparable harm to other persons or property if the sanction is not imposed; and

(h) The effectiveness of similar sanctions in securing compliance in other cases.

# TITLE 9
# INDIAN PREFERENCE IN EMPLOYMENT AND CONTRACTING
**(adopted by NPTEC 1/24/06)**

## CHAPTER 9-1 GENERAL PROVISIONS

### §9-1-1 Declaration

The members of the Nez Perce Tribe suffer from economic underdevelopment, unemployment, and poverty. Employment and contracting opportunities for members of the Nez Perce Tribe and their business enterprises within the exterior boundaries of the Nez Perce Reservation directly affect the health and welfare of the Tribe because these opportunities provide the means for members of the Tribe to gain employment, skills, and the dignity that comes with employment and economic well-being.

It is the public policy of the Nez Perce Tribe to promote the economic health and welfare of its members and other Native Americans.

### §9-1-2 Purpose

The purpose of this Title is to ensure that economic opportunities for employment and for contracting within lands subject to the jurisdiction of the Nez Perce Tribe are provided to members of the Nez Perce Tribe and other Native Americans and to businesses owned by members of the Nez Perce Tribe or other Native Americans.

### §9-1-3 Scope

The Nez Perce Tribe has authority to apply this Title to every contractor and employer within its jurisdiction. The TERO Office shall apply this Title to construction and forestry-related contractors, and, with the approval of NPTEC, the Office may apply this Title to other employers and contractors within the jurisdiction of the Tribe, taking into consideration the size of the employer or contract and the resources available to the Office. **(amended 6/13/06)**

### §9-1-4 Rule of Construction

The provisions of this Title shall be construed to further the stated purpose.

### §9-1-5 Definitions

(a) Aggrieved person - An individual or entity of any sort, other than the Director or a member of the Commission, who likely will suffer substantial and particularized injury to a personal or property interest.

(b) Bid shopping - Any practice involving the provision of information to a prospective contractor or subcontractor that a competitor has submitted a lower price than that of the prospective contractor or subcontractor and the offer to such contractor or subcontractor of an opportunity to underbid the competitor.

(c) Business days - Working days, not including Saturdays, Sundays, or federal, state, or tribal holidays.

(d) Business necessity - Essential to proper functioning of an employer's business.

(e) Certified Indian business - An Indian-owned firm that is certified according to the criteria and procedures in Chapter 9-4.

(f) Commission - The Tribal Employment Rights Commission of the Nez Perce Tribe, as described in §9-1-6 and §9-1-7.

(g) Construction - Excavation for, building of, and finishing out of, structures for public works, commercial, or governmental purposes, including the construction of roads and bridges.

(h) Contracting Entity - The entity, including any person, corporation, business, or governmental entity of any sort, offering a prime contract or a subcontract for construction or for forestry-related services within the Reservation. A contractor offering a subcontract is a "contracting entity."

(i) Contractor - A firm, joint venture or entity of any sort that bids for or obtains a contract from a contracting entity to perform construction or forestry-related services within the Nez Perce Reservation.

(j) Core crew - Owners, officers, and directors of private employers or contracting entities who are listed in such positions on the annual payroll for a minimum of one year continuously. An employee who is hired on a project by project basis is not considered within the core crew.

(k) Director - The Director of the Tribal Employments Rights Office, as described in §9-1-15.

(l) Employer - Any contracting entity, contractor or subcontractor. **(amended 6/13/06)**

(m) Indian or Native American - An enrolled member of any federally recognized Indian Tribe. Upon request, applicant will be required to provide certification/identification from the Tribe or BIA Agency Superintendent for the Tribe for which enrollment is claimed.

(n) Indian Tribe - A federally recognized Tribe, band, nation or other organized group or community including any Alaska Native village or regional or village corporations as defined in or established according to the Alaska Native Claims Act.

(o) Joint Venture - An association of two or more persons or firms to carry out a single or limited number of business enterprises for profit, for which purpose they combine their property, money, effects, skills and knowledge.

(p) Key employee - An employee who occupies a supervisory position or one who possesses a specialized skill and who performs a critical function, such that an employer would likely risk financial damage or loss if unable to employ that person.

(q) Near reservation - Within reasonable daily commuting distance of the Reservation.

(r) Nez Perce tribal member - An enrolled member of the Nez Perce Tribe. Upon request, applicant will be required to provide identification from the Nez Perce Tribe or Certification of Indian blood from the BIA Agency Superintendent of the Northern Idaho Agency

(s) Non-Indian business - A bidder for a contract or subcontract that is not a certified Indian business.

(t) NPTEC - The Nez Perce Tribal Executive Committee.

(u) Office - The Tribal Employment Rights Office as described in ' 9-1-15 of this Title.

(v) Reasonable Price - Any bid from a Certified Indian Business that is within 10% of the lowest bid is deemed a reasonably priced bid.

(w) Reservation - Land within the exterior boundaries of the Nez Perce Reservation established by the Treaty of June 11, 1863 (14 Stats. 647).

(x) Subcontractor - A firm, joint venture or entity of any sort that bids for or obtains a subcontract from a contractor to perform construction or forestry-related services within the Nez Perce Reservation.

(y) Technically Qualified - A potential contractor or subcontractor that possesses the technical qualifications to perform a contract or a subcontract or a discrete part of a contract or subcontract.

(z) Tribal Court - The Nez Perce Tribal Court.

(aa) Tribal enterprise - Any enterprise wholly owned and managed by the Nez Perce Tribe.

(bb) Tribal government - The governmental departments of the Nez Perce Tribe.

**§9-1-6 Tribal Employment Rights Commission**

The Tribal Employment Rights Commission of the Nez Perce Tribe is established as an administrative agency of the Nez Perce Tribe and shall consist of five (5) members. In the event that a conflict of interest concerning a sitting Commissioner is brought to the Commission's attention or in the event a sitting Commissioner is unable to participate, the NPTEC liaison shall serve for that Commissioner. Commissioners shall serve for a staggered terms of three (3) years. They may be removed for cause by majority vote of the NPTEC.

**§9-1-7 Duties and Powers of the Commission**

Subject to the provisions of this Title, this code and the Constitution and laws of the Nez Perce Tribe, the following duties and powers shall be exercised by the Commission:

(a) to promulgate regulations necessary to implement this Title consistent with applicable federal law and with Chapter 2-5 of this Code;

(b) to meet periodically with the Director to review the Compliance Program policies, performance, allocation of staff personnel and budget and to recommend needed improvements to the Director and/or NPTEC;

(c) to meet with the Law and Order Subcommittee as necessary as deemed by the Subcommittee or TERC;

(d) to recommend to NPTEC broad policies and long range programs for the advancement of tribal employment contracting and subcontracting goals;

(e) to provide for the assembly and distribution of information to the public relating to tribal employment training and opportunities;

(f) to perform such duties and exercise such powers as from time to time may be conferred by NPTEC;

(g) to hold hearings, consistent with Chapter 2-5, and issue subpoenas for the appearance of witnesses and the production of documents with respect to such hearings; and

(h) to perform such other duties and exercise other powers as set forth in this Title.

**§9-1-8 Term of Office**

(a) Except for the initial Commission members, all regular Commission members will serve three-year terms. Of the initial Commission members, NPTEC shall appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years.

(b) Terms shall expire upon the swearing in of newly appointed members.

**§9-1-9 Method of Appointment / Vacancies**

(a) NPTEC shall annually appoint persons to fill any Commission vacancies. For all Commission positions, NPTEC shall choose persons capable and willing to perform the duties of the Commission.

(b) If a Commission member resigns, dies, becomes incapacitated, or is found guilty of a felony or major crime in any court of law, NPTEC shall declare the Commission position vacant. If any Commission member misses two consecutive Commission meetings without a valid excuse, NPTEC, upon petition of the remaining Commissioners, may declare the position vacant. All vacancies shall be filled as soon as possible in accordance with this Section.

(c) In the event that the number of unfilled Commission vacancies prevents gathering of a quorum for purposes of conducting business or the Commission, NPTEC shall act as the interim Commission until such time as the filling of the Commission vacancies allows for a quorum.

**§9-1-10 Commission Officers**

(a) Within ten days after the appointment of the initial Commission members, there

shall be an organizational meeting of the Commission to select a Chair. The Chair shall be elected annually thereafter, immediately following the appointment by NPTEC of the new or reappointed Commission members. The Commission shall assign treasurer and secretary duties amongst its members.

**§9-1-11 Commission Meetings**

(a) The Commission shall meet when business demands and requires attention. Regular and special meetings shall be called by the Chair.

(b) Any two Commission members may request the Chair, in writing, to schedule a special meeting of the Commission.

(1) If the Chair fails to schedule a meeting within five days after receipt of a written request, any other two Commission members may call such a meeting.

(c) Meetings shall be held in public places and open to the public unless they involve deliberations concerning decisions on alleged violations of this Title or communications with legal counsel.

(d) The Commission shall keep written minutes of its meetings (other than deliberations concerning decisions on alleged violations of this Title) and written or audio transcripts of its hearings.

(e) Public notice of the Commission meetings shall be given three (3) days in advance of the meeting.

**§9-1-12 Quorum and Voting**

(a) A minimum of three Commission members is required to establish a quorum and conduct Commission business. Any action taken by the Commission must be approved by a majority vote of those Commission members present at a Commission meeting.

(b) Each Commission member shall be entitled to vote on each matter coming properly before the Commission.

**§9-1-13 Compensation of Commission Members**

(a) Commission members shall serve at the NPTEC established standard wage rates.

(b) NPTEC shall establish prevailing government rates for mileage, per diem, or other costs, consistent with tribal policy, and shall direct the Finance Manager to approve such expenditures; provided that funds are available within the Commissions budget approved by the Commission and ratified by NPTEC.

**§9-1-14 Commission Bylaws**

The Commission shall adopt bylaws consistent with this Title and subject to the approval of NPTEC.

**§9-1-15 Tribal Employment Rights Office and Director**

The Tribal Employment Rights Office of the Nez Perce Tribe is established to administer the employment and contracting preferences under this Title and regulations promulgated by the Commission and such programs as the Office may develop in cooperation with the United States Equal Employment Opportunity Commission to promote, education, training, and employment opportunities for Native Americans within businesses on or near the Nez Perce Reservation, consistent with the laws of the Nez Perce Tribe. The Director shall be in charge of the administration of the Office.

**§9-1-16 Notification and Responsibility for Compliance**

(a) The Tribal Employment Rights Office shall provide a copy of this Title and any regulations promulgated by the Commission to employers, contracting entities, contractors, and subcontractors operating within the Nez Perce Reservation. The Office shall also provide copies of any amendments to this Title or any regulations promulgated by the Commission to employers and contracting entities operating within the Nez Perce Reservation.

(b) Programs, departments, and enterprises of the Nez Perce Tribe that enter into construction contracts within the Nez Perce Reservation shall, in addition to any notification provided by the Office, provide copies of this Title to any contractor or subcontractor.

(c) It is the obligation of every employer, contracting entity, contractor, and subcontractor operating with the Nez Perce Reservation to comply with the provisions of this Title, and any employer, contracting entity, contractor, or subcontractor found to have violated the provisions of this Title shall be subject to sanctions as provided herein.

(d) Prime contractors have an obligation to inform all subcontractors of the requirements of this Title and shall be jointly and severally liable for violations of this Title by their subcontractors.

**§9-1-17 Unions**

Before any employer subject to a collective bargaining agreement conducts business within the Reservation, it shall obtain a written agreement (in a form substantially similar to a form agreement developed by the Office), stating that the Union will comply with this Title and any regulations promulgated by the Commission. Such agreements shall be registered with the Office. The Offices participation in a written agreement with a union shall not be deemed to constitute official tribal recognition of a union or tribal endorsement of any recruiting activities conducted by a union.

**§9-1-18 Announcement of Compliance in Bids and Employment Advertisements**

(a) All bid announcements by contracting entities (for prime contracts or for subcontracts) for work within the Reservation shall include a statement that preference will be given to reasonably priced bids from technically qualified certified Indian businesses.

(b) All employment announcements by employers for employment within the

Reservation shall include a statement that the employer complies with the tribal employment preference laws of the Nez Perce Tribe and thereby gives hiring preference to members of the Nez Perce Tribe and other Native Americans who meet the minimum qualification for the position.

(c) Every employer within the Reservation shall post a notice in a prominent place that is regularly frequented by employees, stating that the employer complies with the tribal employment preference laws of the Nez Perce Tribe and thereby gives preference with respect to hiring, training, promotions, and reductions in force to members of the Nez Perce Tribe and other Native Americans who meet the minimum qualifications for a job. The notice shall state the name, address and phone number of the Tribal Employment Rights Office for further information.

**§9-1-19 Fee and Fee Administration**

(a) Entities Required to Pay Fee. Every contractor with a contract of $15,000 or more shall pay a one-time fee of 3.5% of the total amount of the contract. **(amended by NPTEC 11/8/16)**

(b) Payment terms; Adjustments for Work Order Changes. Fees under this section shall be paid to the Nez Perce Tribal government and shall be placed in a special account to be used to meet the operating costs of the Office. For contracts totaling $350,000 or less, full payment of the fee is due from the contractor or subcontractor prior to commencement of work activity or as agreed to in a Compliance Plan entered into with the Office. For contracts totaling more than $350,000, no less than 1/2 of the fee must be paid prior to the commencement of the work activity. Work order changes that increase or decrease the value of a contract shall be reported to the Office and the Office will adjust the fee.

(c) Handling fees. Fees under this section that are paid by installment (more than one payment) will incur a reasonable handling fee for each such transaction. The handling fee is non-negotiable.

(d) Rebates. At the discretion of the TERO Director, up to a full rebate of the TERO fee may be given to employers who hire 100% Indian crews.

(e) Revolving Fund. All funds received from TERO fee payments shall go into a revolving fund to be used by the TERO Office to pay for the implementation of this Ordinance.

(f) Sanctions for Failure to Comply. An employer or contractor who fails to pay the required fee shall be subject to the sanctions under this Title.

**§9-1-20 Reports and Inspections**

All employers, contractors, and subcontractors engaged in any business activity on the Reservation shall submit such reports to the Director or other staff of the Office as requested. The Director or Office staff is authorized to make on-site inspections of employers, contractors and subcontractors during regular business hours in order to monitor compliance with this Title, and may interview any employee on-site so long as such interviews do not interfere with the operations of the business and concern compliance with this Title.

### §9-1-21 Compliance Plans and Agreements

Contractors and subcontractors shall enter into written compliance plans and agreements with the Office to ensure compliance with the requirements of this Title.

## CHAPTER 9-2 EMPLOYMENT PREFERENCE PROVISIONS

### §9-2-1 Employment Preference Requirements

(a) General Requirement. It shall be a violation of this Title for an employer to fail to hire a member of the Nez Perce Tribe or other Native American residing within or near the Nez Perce Reservation if such individual meets the minimum qualifications of the job.

(b) Preference. Members of the Nez Perce Tribe, who meet the minimum qualifications for a position, shall be hired in preference to any non-members. If no member of the Nez Perce Tribe who meets the minimum qualifications for a position applies for the position, other Native Americans who meet the minimum qualifications for the position shall be hired in preference to any non-Indians.

(c) Exemptions. It shall not be a violation of this Title for an employer to hire non-members or non-Indians for positions to be held by key employees or core crew or to hire non-members or non-Indians for positions when the Office has granted the employer a waiver on a form approved by the Office.

### §9-2-2 Job Qualification Review by the Tribal Employment Rights Office; Burden on Employer to Justify Job Criteria that Serve as Barriers to the Employment of Indians

Prior to posting, announcing, or advertising to fill a position, every employer shall submit a position description with listed minimum job qualifications to the Office for review and approval. Upon submission, the Office shall complete its review, in consultation with the employer, within five (5) business days of receipt. Should the Office disagree with the employers list of minimum qualifications for the position, the Office and the employer shall endeavor to resolve the disagreement.

Should the employer refuse to change the listed minimum requirements for the position and should a listed criterion for the job serve as a barrier to the employment of a member of the Nez Perce Tribe or other Native American, the employer may be subject to liability and sanctions under this Title if the employer cannot prove, by a preponderance of the evidence, that such a criterion is required by business necessity.

### §9-2-3 Hiring Hall

(a) General Requirements.

The Office shall maintain a hiring hall, consisting of a data base of all known members of the Nez Perce Tribe and other Native Americans residing within or near the Reservation, who wish to be considered for employment positions within the Reservation. The Office shall use reasonable means to identify such individuals, their job qualifications, and contact information and shall keep such information up-to-date.

Employers may not hire non-Indians (other than key employees or core crew) for any positions without first exhausting the hiring hall maintained by the Office. To exhaust the hiring hall, the employer shall allow the Office a reasonable time to locate Indians with the minimum qualifications so that they may apply for the position.

For the purposes of this section, A reasonable time means three (3) business days for construction jobs and five (5) business days for other jobs, provided however, that the Office may shorten these times upon finding that they may impose an undue burden upon the employer.

(b) Consequences of Failure to Exhaust Hiring Hall.

The Nez Perce Tribe supports tribal members in taking independent initiative to attain employment without over-dependence upon the Office. The Office, however, shall have the authority to remove any individual from a job if: (1) such individual is not a member of the Nez Perce Tribe and a member of the Nez Perce Tribe with the minimum qualifications for the job is available for the position through the hiring hall or (2) such individual is not an enrolled member or any Indian tribe and a Nez Perce tribal or other Native American with the minimum qualifications for the job is available for the position through the hiring hall. The Office has authority to require every Native American employed within the reservation to file a skills bank application with the office and to provide proof of enrollment in an Indian tribe.

**§9-2-4 Layoffs**

In all layoffs or reductions in force, employers shall preserve the employment of members of the Nez Perce Tribe (as first priority) and members of other Indian tribes (as second priority) over the employment of non-Indians so long as the individual Nez Perce tribal member or Indian in question holds the minimum qualifications for the position at issue. Employers shall transfer members of the Nez Perce Tribe (as first priority) and members of other Indian tribes (as second priority) to positions that are not being eliminated in a reduction in force if such positions are held by non-Indians and the individual Nez Perce tribal member or Indian in question holds the minimum qualifications for the position at issue.

**§9-2-5 Promotions**

Employers shall give members of the Nez Perce Tribe (as first priority) and other Native Americans (as second priority) preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities.

**§9-2-6 Training, Counseling and Support**

All employers, as requested by the Office, shall participate in training programs to assist Indians to become qualified in the various job classifications used by the employer. Employers shall cooperate with the Office in providing or accommodating the use of employment

counseling or employment support provided by the Nez Perce Tribal government to assist Indians in attaining and retaining employment so long as such cooperation does not interfere with the employers reasonable job requirements.

**§9-2-7 Investigations and Complaint Procedures (Employers Other than Tribal Government and Tribal Enterprises)**

(a) Application. The section applies to employers other than tribal enterprises and tribal government.

(b) Investigations and Informal Resolutions. The Director shall conduct an investigation of an employer if the Director has reason to believe that the employer has failed to comply with any of the requirements of this Title, the Commission's regulations, or any compliance plan negotiated with the TERO Office; or receives a written complaint from an individual alleging that the employer has violated this Title or said regulations. The investigation may include interviewing witnesses or collecting documents in such manner as the Director sees fit.

The Director shall inform the employer of any charge of violations of this Title or the Commission's regulations and seek to resolve the matter by informal resolution.

(c) Formal Complaints to Commission. Should the Director fail to informally resolve a dispute concerning an employer's compliance with this Title or the Commission's regulations, the Director may file a written complaint with the Commission, setting forth the alleged violations of the employer with sufficient specificity to allow the employer to respond. If the Director has proceeded upon a complaint by an individual and decides not to proceed further, the individual may file a written complaint with the Commission.

(d) Commission Hearings. Upon the filing of a written complaint by the Director or an individual, the Commission shall schedule a hearing with notice to the employer and all interested persons, including any individuals whose jobs may be affected by the outcome of the Commissions proceedings on the Complaint. Unless otherwise provided herein, hearings shall be conducted in compliance with Chapter 2-5. The Commission shall first hear from the Director or the individual proceeding with the Complaint and any witnesses the Director or the individual may choose to present with respect to the Complaint. The Commission shall afford the employer and such interested persons an opportunity to be heard, and may ask the parties to submit proposed findings of fact and conclusions of law.

(e) Written Decisions. After hearing, the Commission shall issue to the parties a written decision with findings of fact and conclusions of law with respect to the allegations. The Commission may deny or dismiss the complaint, but upon finding a violation of this Title or of the Commission's regulations, the Commission may impose sanctions upon the employer, including:

(1) Monetary penalties, not to exceed $500 per violation;

(2) Suspension of the employer's continued operation until corrective action is

taken or a plan for corrective action is developed;

(3) Termination of the employer's operation;

(4) Prohibition of the employer from engaging in any future operations on the Reservation.

(5) A requirement that the employer remove certain workers and/or hire certain workers;

(6) An award of back pay, employment, promotion, training and/or other relief to Indians who were harmed by the employer's non-compliance;

(7) A requirement that the employer make such changes in its procedures or policies as is necessary to comply with this Title and the regulations of the Commission.

(f) Judicial Review. Any aggrieved person, including a complaining individual or the employer, shall have the right to seek judicial review of any decision of the Commission to the Tribal Court. Unless otherwise provided herein, such judicial review shall proceed in accordance with Chapter 2-5. The Tribal Court shall give deference to the Commission's findings of facts. The Tribal Court may affirm the decision, or it may reverse, vacate, or modify the Commission's decision if the Court determines that the decision involved an abuse of discretion, was unsupported by substantial evidence, was beyond the authority of the Commission, or was otherwise not in accordance with the laws of the Nez Perce Tribe.

(g) Unions. Unions may be subject to investigation and complaint procedures under this section to the same extent as employers covered herein.

### §9-2-8 Tribal Preference in Hiring for Tribal Government and Tribal Enterprises
**(NPTEC authorized addition of section 6/13/06)**

Tribal preference in hiring for tribal government and for tribal enterprises will be applied pursuant to the respective Human Resource Manuals for each entity.

## CHAPTER 9-3 CONTRACTING PREFERENCE PROVISIONS

### §9-3-1 Preference Requirements for Contracting Entities

(a) General Requirement and Burden Upon Contracting Entity. It shall be a violation of this Title for a contracting entity to award a contract or a subcontract to a non-Indian business unless the contracting entity can demonstrate that for each contract or subcontract it proposes to award to a non-Indian business there is no certified Indian business that is technically qualified and available to perform the work at a reasonable price.

(b) Showing Required for Issuance of Contract or Subcontract to Non-Indian Business. To make such a demonstration, the contracting entity must show, at a minimum that it notified all certified Indian businesses (listed in the register maintained by the Office as performing work of the kind sought to be contracted for by the contracting entity) via certified mail, with sufficient time and sufficient information to make a reasonable bid, and subsequently

made reasonable efforts to contact those businesses and that:

(1) There was no Certified Indian Business performing work of the kind sought by the contracting entity; or

(2) The Certified Indian Businesses that were available were rejected because they lacked the necessary technical qualifications; or

(3) Those Certified Indian Businesses that were technically qualified were unreasonable as to price.

(4) No Certified Indian Businesses were interested in or responded to the solicitation.

(c) Plan Compliance. No contracting entity shall deviate from its written plan in a manner that will diminish the percentage of contracting or subcontracting of certified Indian businesses without obtaining the prior written approval of the Director.

(d) Director Access to Information. Upon demand, any contracting entity shall allow the Director to inspect its records, including pricing and bidding information to allow the Director to confirm that

(1) the written plan is complied with and

(2) no contracting entity has engaged in bid shopping.

**§9-3-2 Contracting Procedures and Oversight**

(a) Contracting entities shall give preference to certified Indian businesses in the award of all contracts and subcontracts.

(b) Contracting entities shall confer with the Office prior to commencing any negotiation of contracts or subcontracts for work within the Reservation and

(1) Review, in consultation with the Office, the register of certified Indian businesses and

(2) Issue notifications of contracting or subcontracting opportunities to certified Indian businesses on a form provided by the Office.

(c) A contracting entity may select its contractors in any manner or procedure it chooses, provided that it must consult with the Office and restrict bidding as follows:

(1) if more than one technically qualified certified Indian business is available to bid, the contracting entity must accept bids from those business, and if a reasonable price cannot be arrived at, the contracting entity may then solicit bids in the ordinary course and

(2) if there is only one technically qualified certified Indian business available to bid, the contracting entity must, unless otherwise prohibited by federal

law, negotiate (in the presence of the Director) with that firm to see if a reasonable bid can be arrived at, and if a reasonable price cannot be arrived at, the contracting entity may solicit bids in the ordinary course.

(d) The contracting entity shall have the sole discretion to determine whether a firm meets the necessary technical qualifications, provided however, that in every instance in which it rejects a certified Indian business as not technically qualified, it must provide the rejected firm with a written explanation for the rejection. The contracting entity shall also have sole discretion to determine what constitutes a reasonable price, provided that it may not reject a certified Indian business on the basis of an unreasonable price and subsequently contract with a non-Indian business at the same or at a higher price.

(e) It shall be unlawful for any contractor or bidder to engage in bid shopping, and any contractor found to have engaged in bid shopping shall be prohibited from engaging in work on the Reservation or, if engaged in work, shall be liable for up to treble damages for any losses suffered by a certified Indian business as a result of the contractors bid shopping practices.

**§9-3-3 Investigations and Complaint Procedures**

(a) Investigations and Informal Resolutions. The Director shall conduct an investigation of a contracting entity if the Director has reason to believe that it has failed to comply with any of the requirements of this Title or the Commission's regulations or receives a written complaint from a certified Indian business alleging that the contracting entity has violated this Title or said regulations. The investigation may include interviewing witnesses or collecting documents in such manner as the Director sees fit.

The Director shall inform the contracting entity of any charge of violations of this Title or the Commission's regulations and seek to resolve the matter by informal resolution.

(b) Formal Complaints to Commission. Should the Director fail to informally resolve a dispute concerning a contracting entity's compliance with this Title or the Commission's regulations, the Director may file a written complaint with the Commission, setting forth the alleged violations of the contracting entity with sufficient specificity to allow the employer to respond. If the Director has proceeded upon a complaint by a certified Indian business and decides not to proceed further, the certified Indian business may file a written complaint with the Commission.

(c) Commission Hearings. Upon the filing of a written complaint by the Director or a certified Indian business, the Commission shall schedule a hearing with notice to the contracting entity and all interested parties, including other contractors or subcontractors that may be affected by the outcome of the Commission's proceedings on the Complaint. Unless otherwise provided herein, hearings shall be conducted in compliance with Chapter 2-5. The Commission shall first hear from the Director or the certified Indian business making the Complaint and any witnesses the Director or the certified Indian business may choose to present with respect to the Complaint. The Commission shall afford the contracting entity and such interested parties an opportunity to be heard, and may ask the parties to submit proposed findings of fact and conclusions of law.

(d) Written Decisions. After hearing, the Commission shall issue to the parties a written decision with findings of fact and conclusions of law with respect to the allegations. The Commission may deny or dismiss the complaint, but upon finding a violation of this Title or of the Commission's regulations, the Commission may impose sanctions upon the employer, including:

(1) A civil monetary sanction not to exceed $500.00 per violation. Each day a party is found to be out of compliance with this Title may be considered as a separate violation.

(2) Suspension or termination of a contracting entity's authorization to engage in business activity on the Reservation; Provided that, the contracting entity shall be given a reasonable time to remove its equipment and other property it may have on the Reservation and to arrange with another firm for assumption of any contractual obligation it has.

(3) Prohibit the contracting entity from engaging in future business activity on the Reservation for a specified period or permanently.

(4) Provide monetary or other compensatory relief to the Tribe or certified Indian business or other entity which was harmed by the contracting entity's noncompliance with this Title.

(e) Judicial Review. The Director, the contracting entity, or other party shall have the right to seek judicial review of any decision of the Commission to the Tribal Court. Unless otherwise provided herein, such judicial review shall proceed in accordance with Chapter 2-5. The Tribal Court shall give deference to the Commission's findings of facts. The Tribal Court may affirm the decision, or it may reverse, vacate, or modify the Commission's decision if the Court determines that the decision involved an abuse of discretion, was unsupported by substantial evidence, was beyond the authority of the Commission, or was otherwise not in accordance with the law of the Nez Perce Tribe.

(f) Exemption. The Nez Perce Tribe and tribal enterprises shall be exempt from investigations and complaint procedures under this section.

## CHAPTER 9-4 CERTIFICATION PROCEDURES FOR CERTIFIED INDIAN BUSINESSES

### §9-4-1 Criteria for Certification

A business may be certified as a certified Indian business by satisfying the criteria set forth in this section.

(a) Ownership. The firm must be 51% or more Indian-owned. The applicant must demonstrate the following:

(1) Formal Ownership. That an Indian or Indians own(s) 51% or more of the partnership, corporation, or other arrangement for which the application is

being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes (i) financial ownership i.e., the Indian(s) own(s) 51% or more of the firm's assets upon dissolution, and will receive 51% or more of the profits; and (ii) control i.e., the Indian(s)' 51% or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

(2) Value. The Indian owner(s) provided real value for his or her 51% or more ownership by providing capital, equipment, real property, or similar assets commensurate with the value of his or her ownership share. It will not be considered "real value" if the Indian(s) purchased his or her ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, of any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian preference program in existence.

Where the Indian participant can demonstrate that he or she could not pay good value for his or her 51% or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian, that person may satisfy this requirement by demonstrating further that he or she expended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

(3) Profit. The Indian owner(s) will receive 51% or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive 51% or more of the profits.

(b) Management Control. The firm must be under significant Indian management and control. The firm must be able to demonstrate that:

(1) Unitary firms (Non-joint Ventures). One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his or her primary employment activity. The Indian owner does not have to be Chief Executive Officer. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he or she: (i) is qualified to serve in the senior level position; and (ii)

is sufficiently knowledgeable about the firms activities to be accountable to the tribe for the firms activities.

This provision may be waived when (i) the firm is 100% Indian owned and the Chief Executive Officer is the spouse and/or parent of the owner(s) the family lives on or near the Reservation, and the majority of employees are Indian: or (ii) the firm is modeled on a publicly-held corporation such that it is owned, the Chief Executive Officer and the highest salaried employee in the firm is/are Indian and a majority of the employees are Indian.

(2) Joint Ventures**.** No joint ventures will be certified. However, an Indian/non-Indian joint venture that otherwise satisfies the requirements of these criteria shall be given preference over wholly non- Indian business when no certified Indian business is available.

(c) Integrity of Structure. There must be good reason to believe that the firm was not established solely or primarily to take advantage of this Title. In evaluating an applicant under this criterion the Director will consider the factors set out below. The Director shall exercise broad discretion in applying these criteria in order to preserve the integrity of this Title and, in questionable cases, shall deny certification.

(1) History of the firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of this Title, and in particular whether the firm, or key factors in the firm originally were associated with a non-Indian business that gained little business value in terms of capital, expertise, equipment, etc., by adding ownership or by merging with an Certified Indian business.

(2) Employees:

(A) Whether key non-Indian employees of the applicant are former employees of a non- Indian business with which the certified Indian business is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian business is controlling the applicant.

(B) Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians.

(C) Relative Experience and Resources

Whether the experience, expertise, resources, etc., of the non-Indian partner(s) that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of this Title.

**§9-4-2 Certification Procedures (4/8/08)**

(a) Application for Certification. A firm seeking certification as a certified Indian business shall submit a completed application to the TERO Office on a form provided by the Office. Office staff shall be available to assist a firm in filling out the application.

(b) Director Assessment and Recommendation. Utilizing the criteria set forth in §9-4-1, the Director shall provide a written analysis and recommendation to the Tribal Employment Rights Commission (TERC). The Director shall provide the analysis and recommendation within 21 days of receiving a complete application and shall have discretion to request additional information from the applicant. The Director's analysis and recommendation shall be made available to the applicant, and TERC, but shall otherwise be kept confidential.

(c) Commission Disposition. The Commission shall review the Director's analysis and recommendation and allow the applicant to submit additional information or explanation with respect to the governing criteria for certification. The Commission may grant or deny the certification or request further information prior to making a disposition.

(d) Commission Re-Hearing of Denial. Any application for certification that is denied by the TERC may be re-heard by TERC at the applicant's request. Upon such request in writing, the TERC shall direct the TERO Director and Applicant to submit any new information and shall conduct a re-hearing.

(e) Judicial Review. The Commission's decision under subsection (d) shall be considered final agency action, and subject to review by the Tribal Court by an aggrieved person pursuant to Chapter 2-5.

**§9-4-3 Certification Grades**

(a) Probationary Certification. An applicant granted certification shall be issued a one year probationary certificate. During that period the Director shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, the firm shall provide the Director information and documents upon request.

(b) Final Certification. At the end of the probationary period the Director shall either:

(1) Grant full certification

(2) Continue the probationary period for up to six (6) months;

(3) Deny certification

**§9-4-4 Withdrawal of Certification**

(a) Director Decision. The Director may withdraw or suspend the certification of any firm if, upon investigation, the Director has probable cause to believe that the criteria set forth in section §9-1-26 no longer are being met by a firm. The Director shall provide the firm

with a written notification of any such withdraw, setting forth the facts are reasons for the withdrawal.

(b) Commission Review. Any firm subject to a withdrawal of certification by the Director may seek review of the Director's decision by the Commission. The Commission shall review the Director's decision and allow the firm to submit additional information or explanation with respect to the governing criteria for certification. The Commission may affirm the decision of the Director, reverse the Director's decision, or vacate the Director's decision and order further investigation, or issue other orders as it may deem appropriate, including suspension of the certificate for up to one year, putting the firm on probation, or ordering that corrective action be taken within a fixed period.

(c) Judicial Review. The Commission's decision under subsection (b) shall be considered final agency action, and subject to review by the Tribal Court by an aggrieved person pursuant to Chapter 2-5.

(d) Consequences of Certification Withdrawal. A firm that has had its certification withdrawn may not reapply for a period of one year.

**§9-4-5 Annual and Other Reports**

Each certified Indian business shall report to the Office in writing any changes in its ownership or control status within 60 days after such changes have occurred. Each certified Indian business, on the anniversary of its receipt of permanent certification, shall update the information provided to the Office. Failure to provide such information shall constitute ground for withdrawal of certification.

# CHAPTER 9-5
# TRIBAL OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (TOSHA)
**(Chapter adopted by NPTEC 4/8/14)**

## §9-5-1 Purpose and Definitions

(a) The purpose of Chapter 9-5 is to assure as far as possible safe and healthful working conditions for every working person on the Nez Perce Reservation, to preserve human resources and reduce lost production, wage loss, medical expenses and human suffering that is created by occupational injury and disease. To accomplish this purpose the TOSHA was enacted to:

(1) encourage employers and employees to reduce the number of occupational safety and health hazards;

(2) authorize the establishment of occupational and safety standards for all employments;

(3) provide a program under the TOSHA Compliance and Safety Inspection Office to enforce all laws, regulations and standards adopted for the protection of life, safety and health of employees, and in doing so provide for inspections and enforcement actions upon places of employment that the TOSHA Office reasonably believes to be unsafe; and

(4) establish appropriate reporting procedures, and

(5) provide for training and education of employers, contractors and employees to assist in preventing occupational injury and disease.

Given the importance of worker safety in the work place, it is the purpose of this part to provide a means for the adequate administration of working conditions, safety and health matters, complaints, investigations, enforcement, settlement reconciliation and appeals.

(b) As used in this part:

(1) "Owner" means every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment;

(2) "Place of employment" includes every place, whether fixed or movable or moving, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work; and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including labor site, wherever located, provided by an employer for employees or by another person engaged in providing living quarters or shelters for employees;

(3) "Employer" is defined at § 9-1-5(l).

**§9-5-2 Scope**

The Nez Perce Tribe has the authority to apply this Part to every contractor and employer (hereinafter collectively referred to as "employer") within its jurisdiction. The TERO office shall apply this Chapter to construction and forestry-related contractors, and, with the permission of NPTEC, TERO may apply this Chapter to other employers and contractors within the jurisdiction of the Nez Perce Tribe. This Part shall not apply to any of the Nez Perce Tribal entities, with the exception of the Nez Perce Construction Management Group and any Tribal or Tribal Enterprise Executive Director when the Executive Director is responsible for the management of a construction or remodeling project costing more than fifteen thousand dollars ($15,000.00).

**§9-5-3 Employers to Provide Safe Workplace**

(a) Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees.

(b) No employer or owner shall construct or cause to be constructed or maintained any place of employment that is unsafe or detrimental to health.

(c) No person shall remove, displace, damage, destroy or carry off any safety device or safeguard furnished, except for repair or replacement, and provide for use in any employment of place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment.

**§9-5-4 Duty to Comply**

Every employer, owner, employee and other person conducting work within the jurisdiction of the Nez Perce Tribe Reservation and subject to this Chapter shall obey and comply with every requirement of every order, decision, direction, standard, rule or regulation made or prescribed by the TOSHA Office relating to or affecting safety and health in employment or place of employment, and shall do everything necessary or proper in order to secure compliance with and observance of such order, decision, direction, standard, rule or regulation.

**§9-5-5 Jurisdiction of TOSHA Office**

(a) The TOSHA Safety Inspection Officer is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment on the Nez Perce Tribe Reservation as provided in this Chapter and as may be necessary to enforce and

administer all laws, regulations, rules, standards and order requiring such employment and place of employment to be safe and healthful. The TOSHA shall not apply to those employees and employers exempted in the Nez Perce Tribe Law & Order Code.

(b) The TERO Director, as supervisor of the TOSHA Safety Inspection Officer, may assist and assume the duties of the TOSHA Officer in the event that the position is vacant, the Officer is absent, or a situation exists that requires assistance from the TERO Director.

**§9-5-6 Federal Standards as Guidance**

(a) The TOSHA Officer may adopt by reference and use certain federal standards as guidance to assist it in fulfilling the duties and responsibilities and implementing the intent of this Part to protect safety and health in employment.

(b) The following federal standards are adopted by reference for use and guidance by the TOSHA Office as minimum requirements, provided however, that nothing in this Part shall be construed as providing any jurisdiction over these matters by the United States Department of Labor, and the standards are as follows:

(1) 29 C.F.R. Part 1910;

(2) 29 C.F.R. Part 1926 Construction Industry;

(3) 29 C.F.R. Part 1928 Agricultural;

(4) Federal Safety Plan

**§9-5-7 Safety Plans**

(a) All employers subject to this Chapter engaged in construction activities shall have a safety plan in place before construction activities begin, are responsible for assuring that its employees comply with its provisions. Supervisors and employees must be aware of their responsibilities under the applicable safety plans. This may be accomplished by distributing the safety plan to supervisors and employees and/or holding safety meetings that address the responsibilities of each supervisor and employee.

(b) The TOSHA Officer shall notify all employers actively engaged in construction activities that they are required to develop Safety Plans for each construction site consistent with the Tribal safety standards.

(c) Safety Plans must be submitted to the TOSHA Officer prior to commencement of construction activities and no later than ten (10) business days of issuance of a work permit. A copy of the Safety Plan will be maintained by the TOSHA Officer.

**§9-5-8 Citation and Order to Correct Unsafe Conditions**

(a) Under the Nez Perce Tribal Law & Order Code the TOSHA Officer is responsible for ensuring compliance with applicable Tribal and federal laws, codes and regulations and protect the safety of the workplace, and exercise authority necessary to perform the duties assigned in the Nez Perce Tribal Law & Order Code. The Officer shall investigate and issue

necessary directives and orders to enforce the Nez Perce Tribal Law & Order Code.

(b) In addition to the complaints and enforcement alternatives in the Nez Perce Tribal Law & Order Code, whenever the TOSHA Officer has reason to believe, after an inspection or investigation, that any employer or place of employment is unsafe or detrimental to health or that the practices, means, methods, operations or processes employed or used in connection therewith are unsafe or detrimental to health, or do not afford adequate protection to life, safety and health of employee, the TOSHA Officer shall issue such citation and order as may be necessary to render such employment or place of employment safe and protect the life, safety and health of employees therein. The TOSHA Officer may direct that such additions, repairs, improvements or changes be made, and such devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or place of employment safe and healthful, in the manner and within the time specified in the order.

**§9-5-9 Rulemaking and Enforcement Authority**

The TOSHA Officer may, by general or special orders, or by regulations, rules or otherwise:

(a) Declare and prescribe what devices, safeguards, or other means of protection and what methods, processes, or work practices will be adapted to render every employment and place of employment safe and healthful.

(b) Fix reasonable standards and prescribe and enforce reasonable orders for the adoption, installation, use and maintenance of devices, safeguards and other means of protection, and other methods, processes and work practices, including, but not limited to, work practices qualifications for equipment, materials and activities requiring special competence, to be as nearly uniform as possible, as may be necessary to carry out all laws and regulations relative to the protection of the life, safety and health of employees.

(c) Fix and order reasonable standards for the construction, repair and maintenance of places of employment and equipment that will render them safe and healthful.

(d) Require the performance of any other act that the protection of the life, safety and health of employees in employments and places of employment may demand.

**§9-5-10 Notice of Violation to Employer, Complaints to TOSHA Officer, Protection of Complaining Employee**

(a) Every employee of an employer subject to this Chapter should notify the employer of any violation of law, regulation or standard relating to safety and health in the place of employment when the violation comes to the attention of the employee.

(b) However, any employee of an employer subject to this Chapter may notice or file a complaint with the TOSHA Office of any violation of law, regulation or standard relating to safety and health in the place of employment, whether or not the employee also notifies the employer.

(c) Upon receiving any employee complaint in writing, the TOSHA Officer shall

make inquiries, inspection and investigations that the Officer considers reasonable and appropriate. When an employee has complained in writing of an alleged violation and no resulting citation is issued to the employer by the TOSHA Officer, the Officer shall furnish to the employee a statement of reasons for the decision.

(d) The TOSHA Officer shall provide a copy of the notice or complaint to the employer no later than the time of inspection, provided that the TOSHA Officer shall keep confidential the identity of any employee who requests protection in writing. When a request has been made neither the written complaint from the employee or any memorandum or documents containing the identity of a complainant may be disclosed. The TOSHA Officer shall establish procedures for keeping confidential the identity of the complaining employee.

(e) It is an unlawful employment practice for any person to bar or discharge from employment or otherwise discriminate against any employee or prospective employee because the employee or prospective employee has:

(1) Opposed any practice forbidden by law, regulations or standards; or

(2) Made any complaint or instituted any proceeding under the Nez Perce Tribal Law & Order Code, its regulations and standards or any law providing for the safety and health of employees, or has testified or is about to testify in any such proceeding.

**§9-5-11 Inspection of Places of Employment; Denial of Access, Warrants**

(a) In order to carry out the purposes of the Worker Protection Ordinance, its regulations and standards or other laws enacted for the protection of health and safety of employees, the TOSHA Officer, upon appropriate credentials to the owner, employer or agent in charge, is authorized:

(1) To enter without delay and at reasonable times any place of employment subject to the provisions of this Chapter; and

(2) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place or employment and all related conditions, structures, machines, devices, equipment and materials therein, and to question privately the owner, employer, agents or employees.

(b) No person shall give an owner, employer, agent or employee advance notice of any inspection to be conducted under the Nez Perce Tribal Law & Order Code of any place of employment without authority from the TOSHA Officer.

(c) Except in the case of any emergency, or of a place of employment subject to the provisions of this Chapter and open to the public, if the TOSHA Officer is denied access to any place of employment for the purpose of an inspection or investigation, such inspection or investigation shall not be conducted without an inspection warrant or without such other authority as a court may grant in an appropriate civil proceeding.

(d) A representative of the employer and a representative authorized by the employee of the employer shall be given an opportunity to accompany the TOSHA Director during the inspection of any place of employment for the purpose of aiding such inspection. When there is no employee representative, the TOSHA Officer may consult with a reasonable number of employees concerning matters of safety and health in the work place.

**§9-5-12 Citation for Safety or Health Standard Violation; Effect of Failure to Correct**

(a) If the TOSHA Officer, TERO Director or authorized representative has reason to believe, after inspection or investigation of a place of employment, that an employer subject to the provisions of this Chapter has violated any Tribal or federal occupational safety or health law, regulation, standard or order, the Officer or TERO Director shall with reasonable promptness issue to such employer a citation, and notice of proposed civil penalty, if any, to be assessed under the this Chapter, and fix a reasonable time for correction of the alleged violation.

(b) Each citation and notice required under subsection (a) of this section shall be in writing, shall be mailed to or served upon the employer or registered agent of the employer, and shall contain:

(1) The date and place of the alleged violations;

(2) A plain statement of the facts upon which the citation is based;

(3) A reference to the law, regulation, rule, standard or order relied upon;

(4) The amount, if any, of the proposed civil penalty;

(5) The time, if any, fixed for the correction of the alleged violation;

(6) Notice of the employer's right to contest the citation, the proposed civil penalty and the period of time fixed for correction of the alleged violation;

(7) Notice of any affected employer's right to contest the period of time for correction of the alleged violation; and

(8) Notice of any affected employee's right to contest the period of time fixed for correction of the alleged violation.

(c) If the TOSHA Officer has reason to believe that an employer subject to the provisions of this Chapter has failed to correct a violation within the period of time fixed for correction, or within the time fixed in a subsequent order granting an extension of time to correct the violation, the Officer shall consider such failure as a separate and continuing violation and shall issue a citation and notice of proposed civil penalty, if any, to be assessed.

(d) Each citation and notice, or copies thereof, issued under the Nez Perce Tribal Law & Order Code shall be posted by the employer, immediately upon receipt in a conspicuous manner in a sufficient number of locations in the place or places of employment to reasonably inform employees of such citation and notice.

(e) No citation or notice of proposed civil penalty may be issued under this section after the expiration of 180 days following start of the inspection or investigation, but this shall not prevent the issuance, at any time, of an order to correct that violation or the issuance of a citation for a subsequent violation.

**§9-5-13 Conciliation; Contesting Violations; Hearing**

(a) Upon issuance of a citation, civil penalty or correction order, the employer and TOSHA Officer may attempt to achieve voluntary compliance and remedy the violation by settlement conference or conciliation. Mitigation may include, but is not limited to:

(1) agreement to change its procedures;

(2) where possible, reversing the action that is the subject of the complaint;

(3) recommending disciplinary action against employees responsible for the causing the violation; or

(4) correct safety or health hazard or violation.

Conciliation conferences shall be considered confidential, and the contents of these discussions shall not be used as evidence in any hearing unless the parties agree. If settlement is reached, the agreement shall be reduced to writing and signed by the parties. Any conciliation agreement may be made public if the parties agree.

(b) If the employer and TOSHA Officer cannot mitigate the violation, the TOSHA Officer shall issue a formal noncompliance order, which shall advise the employer or noncompliant entity of all rights to appeal the order. An employer may contest a citation, a proposed assessment of civil penalty and the period of time fixed for correction of a violation, or any of these, by filing with the TOSHA Office, within twenty (20) days after receipt of the noncompliance order, a written request for a hearing before the TERO Commission. Such a request need not be in any particular form, but shall specify the alleged violation that is contested and the grounds upon which the employer considers the citation or proposed penalty or correction period unjust or unlawful.

(c) An affected employee may contest the time fixed for correction of a violation by filing with the TOSHA Office, within twenty (20) days after the receipt by the employer of the citation, notice or offer which fixes such time for correction, a written request for a hearing before the TERO Commission. Such a request need not be in any particular form, but shall specify the violation in question and the grounds upon which the employee considers the correction period to be unreasonable.

(d) The hearing before the TERO Commission shall be set within ten (10) business days from the date of receipt of the request of a hearing and not later than thirty (30) calendar days after the date for compliance set forth in the citation notice, unless an expedited hearing is deemed necessary by the TERO Commission to avoid irreparable harm.

(e) If a request for hearing is not filed, the citation, penalty assessed and time fixed for correction of the violation shall be a final order of the TOSHA Office and shall not be subject

to review by any agency or court, and such order shall be immediately enforceable.

(f) Where an employer contests, in good faith and not solely for delay or avoidance of penalties, the period of time fixed for correction of a non-serious violation, such period of time shall not run between the date the request for the hearing is filed and the date the order of the TOSHA office becomes final by operation of law or on appeal.

(g) Service. Service of any documents under this part shall be sufficient if accomplished by personal delivery or electronic mail with a return receipt to any Tribal entity or the complainant, and by regular mail to any non-Tribal entity or individuals.

# TITLE 10
# PROBATE ORDINANCE
**(effective 5/29/07)**

## CHAPTER 10-1 GENERAL PROVISIONS

### §10-1-1 Legislative Findings

The Nez Perce Tribal Executive Committee (NPTEC), the governing body of the Nez Perce Tribe hereby finds that the loss of lands from Indian ownership, and the increase in fractionated ownership of many lands held by tribal members threatens the long term viability of the Nez Perce Reservation as a homeland for the exclusive use of the Tribe and its members; the NPTEC further finds that authorizing and directing the Nez Perce Tribal Court to hear and determine probate proceedings will simplify the probate process for surviving family members, will encourage tribal members to plan for the transfer of their property upon their deaths, and further strengthen the Tribe's powers of self-governance.

### §10-1-2 Declaration of Policy

The Nez Perce Tribal Executive Committee (NPTEC) hereby declares that the policy of the Nez Perce Tribe is to prevent further deterioration of the land base of the Tribe, to prevent as far as possible the further fractionation of ownership of tribal members' property, to encourage tribal members to plan for the transfer of their property upon their deaths by making wills, and to strengthen the Tribe's self-governance by providing a means for probating estates in Nez Perce Tribal Court.

The enactment of the Nez Perce Tribal Probate Code preempts the present usage of the Idaho Uniform Probate Code except as hereinafter specifically provided to the contrary and places jurisdiction of any and all probate matters concerning any person who is a member of, or eligible for enrollment in a federally recognized Indian tribe, or who does not otherwise meet the definition of “Indian” in the Indian Land Consolidation Act, as amended, and any non-Indians who may elect coverage with the Nez Perce Tribal Court.

### §10-1-3 Effective Date

This title shall take effect thirty days after the date of its enactment by NPTEC Resolution subject to applicable federal law. This title shall not affect the validity or terms of wills executed before the effective date, except that the restrictions on transfer of trust and restricted property in § 10-1-12 shall apply to all persons and property subject to this Title on its effective date.

### §10-1-4 Severability

If any section, clause, or provision of this code, or its application to any person or circumstance, is declared invalid for any reason by a court of competent jurisdiction, the remaining provisions of the code or application to any other person or circumstance shall still be valid and in effect.

**§10-1-5 Reference to Foreign Law**

The tribal court is encouraged to refer to foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, for assistance is resolving issues of probate and inheritance law on which this Title is silent.

**§10-1-6 Duties of Land Services Department**

Land Services Department will perform former federal functions pursuant to an annual compact agreement with the U.S. Department of the Interior and any other duties assigned by the Nez Perce Tribal Executive Committee which are related to management and probate of real and personal property located on the Nez Perce Reservation or owned by an enrolled Nez Perce tribal member.

**§10-1-7 Definitions and Interpretive Rules**

For the purposes of this Title, words used in the present tense include the future, the singular number include the plural, the masculine form includes the feminine; the word "shall" is mandatory and not permissive; and the term "this Title" shall be deemed to include all amendments hereafter made to this Title. Unless specifically defined below, words or phrases used in this Title shall be interpreted so as to give them the meaning they have in common usage and to give the Title it's most reasonable application.

When used in this Title, unless otherwise required from the context:

(a) "Codicil" shall mean a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(b) "Community property" shall mean all property acquired during a marriage by either husband or wife, including the rents and profits of the separate property of the husband and wife, unless, by the instrument by which any such property is acquired by the spouse, it is provided that the rents and profits thereof shall be applied to his/her sole and separate use. Real property conveyed by one (1) spouse to the other shall be presumed to be the sole and separate estate of the grantee.

(c) "Custom and Tradition" shall mean:

(1) "Custom" means a range of practice that by common adoption and long, unvarying habit by the Nez Perce people, has come to have the force of law.

(2) "Tradition" means past Nez Perce customs and usages that influence or govern present acts or practices.

(d) "Decedent" shall mean a deceased person.

(e) "Descendant" of an individual means all of the individual's descendants of all generations, with relationship of parent and child at each generation, being determined by the definition of child and parent contained in this section.

(f) "Degree of kinship" shall mean the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(g) “Devise” means a testamentary disposition of real or personal property or means to dispose of real or personal property by will.

(h) “Distribution” means the judicially-determined apportionment and division after the payments of debt and charges of the assets of an estate, among those legally entitled to share.

(i) “Eligible to be enrolled” means a person who in fact meets the criteria for enrollment in the Nez Perce Tribe, under Tribal law, whether or not such person is an enrolled member.

(j) "Estate" shall mean all of the assets and liabilities of a deceased person.

(k) “Exempt property” means a decedent’s holdings and possessions that, by law, a creditor cannot attach to satisfy a debt.

(l) "Heirs" shall mean those persons, including the surviving spouse, who are entitled under the rules of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(m) “Indian Finery and Indian Artifacts” shall mean:

(1) Indian Finery shall mean items of personal adornment, made in the Indian tradition, by human craft.

(2) Indian Artifacts shall mean an object, irrespective of age, made by human craft and in the Indian tradition.

(n) "Intestate" shall mean that a person has died without making a valid will as to some or all of his assets. Such property will pass to other persons under the intestate succession rules of this Title.

(o) “Inventory and Appraisement” shall mean a detailed list of assets and their just and true value, typically provided by an executor or administrator of a decedent’s estate and submitted to the Probate Court.

(p) "Issue" shall mean all the lineal descendants of the ancestor including all lawfully adopted children. Children who have been cared for or considered adopted by custom shall not be considered issue of the ancestor unless lawfully adopted. Posthumous children are considered as living at the death of their parent.

(q) “Marriage” means the civil status, condition or relations of a man and woman considered united in law as husband and wife. (See Chapter 3-4, §4-5-1 (o) of NPTC)

(r) "Net community estate" shall mean the real and personal property of a decedent the community exclusive of exempt property, the family allowance and enforceable claims

against, and debts of, the decedent or the estate.

(s) “Net separate estate” shall mean the real and personal property of a decedent exclusive of exempt property, the family allowance and enforceable claims against, and debts of, the decedent or the estate.

(t) "Nonprobate asset" shall mean those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or similar document.

(u) "Parent" shall mean the biological or lawful adoptive mother or father of a person. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

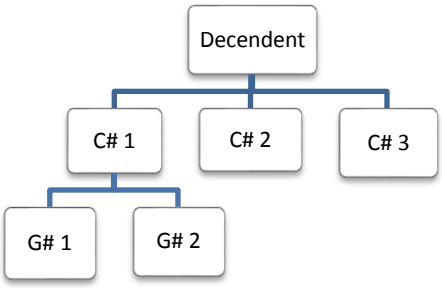
(v) "Personal property" shall mean any property that is not included in the definition of real estate excluding Indian finery and Indian artifacts.

(w) "Personal representative" shall mean that person appointed by the court to carry out the powers and duties conferred by this Title on behalf of the estate.

(x) "Public Administrator" shall mean the employee of the Nez Perce Tribe appointed by the Nez Perce Tribal Executive Committee as personal representative to administer estates where appointment of another personal representative is not sought, or where no other suitable person is willing and available to serve.

(y) "Real estate" shall mean all interests and estates in land, including leasehold interests and improvements to land such as houses or other buildings which have been lawfully affixed to the land. A mobile or modular home which is lawfully located on individual trust property and subject to a security interest, mortgage, promissory note or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this title. All other mobile and modular homes shall be considered real estate for purposes of this title.

(z) "Representation" shall mean a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the deceased as follows:




After determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the deceased– who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the deceased-but who left issue surviving the deceased (See chart for "C" = children); each share of a deceased person in the nearest degree shall be divided among those of the deceased's issue who survive the deceased and have no ancestor then living who is in the line of relationship between them and the deceased, those more remote in degree (See chart for "G" = grandchildren) taking together the one share which their ancestor would have taken had he or she survived the deceased.

If C#1 died prior to the "Deceased" the children of C#1 would share equally in the one share the decedent left to their parent. So, the grandchildren each take one-half of C#1's one-third share.

(aa) "Separate property" shall mean all property of either the husband or the wife owned by him/her before marriage, and that acquired afterward either by gift, devise, bequest or descent, or that which either spouse acquires with proceeds of his/her separate property, by way of moneys or other property.

(bb) "Spouse" shall mean a party to a marriage recognized by any jurisdiction, including the Nez Perce Tribe. It shall not include a party to a common law marriage unless the marriage is recognized by the jurisdiction in which the arrangement was entered.

(cc) "Testator" means a person who has made a will or dies leaving a will.

(dd) "Trust or restricted property" shall mean any property, title to which is held in trust or restricted fee status by the United States for the benefit of a member of a federally recognized Indian tribe or a tribe.

(ee) "Will" shall mean an instrument validly executed as required by this Title that disposes of an individual's estate at death.

**§10-1-8 Persons and Property Subject to Title - Domicile Presumed**

This Title applies to all enrolled members of a federally recognized Indian tribe and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of "Indian" under the American Indian Probate Reform Act of 2004 with regard to all real and personal property of such persons to the extent they are domiciled on the Nez Perce Reservation. For purposes of this title, an enrolled member of the Nez Perce Tribe shall be

presumed to be domiciled within the Reservation, regardless of residence elsewhere, in the absence of proof of domicile in another location.

**§10-1-9 Jurisdiction of Tribal Court**

The Nez Perce Tribe Tribal Court shall have all authority necessary to take evidence on and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent's estate under this Title. The court shall have the broadest possible authority to execute its duties and responsibilities under this Title. It shall have authority to probate all estate interests subject to this Title which do not come within the exclusive jurisdiction of the United States.

**§10-1-10 Application to Probate of Trust and Restricted Property by the United States Department of the Interior**

United States Department of the Interior Administrative Law Judges or others hearing probates of trust and restricted property subject to this Title shall apply the provisions of this Title to the maximum extent permitted by law.

**§10-1-11 Custom and Tradition - Distribution of Indian Finery and Indian Artifacts**

(a) Notwithstanding the provisions of this Title relating to descent and distribution, Indian artifacts and Indian finery belonging to the decedent shall be distributed in accordance with the customs and traditions of the Nez Perce Tribe. To the extent that the family disagrees as to what that custom and tradition is, the tribal court will make a determination based on hearing of evidence in accordance with the Nez Perce Rules of Evidence, Chapter 2-8 of the Nez Perce Tribal Code.

(b) Distribution under this section shall be in accordance with the directions left by the decedent, if any, or if the decedent leaves no directions, personal and other family items will be distributed according to the customs and traditions of the family or the Nez Perce Tribe. To the extent that the family disagrees as to what that custom and tradition is, the tribal court will make a determination based on hearing of evidence in accordance with the Nez Perce Rules of Evidence, Chapter 2-8 of the Nez Perce Tribal Code.

**§10-1-12 Restrictions on Testation and Inheritance of Trust or Restricted Property**

(a) Trust or Restricted Property Limitations.

After the effective date of this Title, only persons enrolled or eligible for enrollment in a federally recognized Indian tribe or who otherwise meet the definition of "Indian" or "eligible heir" in the Indian Land Consolidation Act, as amended, shall take by intestate succession or by will any interest in the restricted or trust property of a deceased member of the Nez Perce Tribe, or which consists of any interest in the rents, issues, or profits from an allotment or assignment of trust or restricted property within the Nez Perce Reservation, except that a surviving spouse or issue who is not a member of, or eligible for enrollment in a federally recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, may receive by inheritance or devise the use for life of the restricted or trust lands of

the deceased. Any testamentary gift or devise purporting to transfer an interest in the decedent's trust or restricted property to a person who is not a member of, or eligible for enrollment in a federally-recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, may receive by inheritance or devise the use for life of the restricted or trust lands of the deceased.

(b) Prohibited Transfers Shall Fail

Any testamentary bequest or devise purporting to transfer an interest in the decedent's trust or restricted property to a person who is not a member of, or eligible for enrollment in a federally-recognized Indian tribe, or who does not otherwise meet the definition of "Indian" in the Indian Land Consolidation Act, as amended, shall fail, except that a gift or devise of such property to such a person who is a surviving spouse or issue of the decedent shall be interpreted as a gift or devise of a life estate without regard to waste in such property. Any failed bequest shall be treated as part of the decedent's residue of the estate.

## CHAPTER 10-2 INTESTATE SUCCESSION

### §10-2-1 Succession Rules

The net estate of a person dying intestate shall descend subject to the restrictions of § 10-1-12 of this Title and shall be distributed as follows:

(a) The surviving spouse shall receive the following share:

(1) all of the decedent's share of the net community estate; and

(2) one-half (1/2) of the net separate estate if the intestate is survived by issue; or three quarters (3/4) of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or all of the net separate estate, if there is no surviving issue nor parent nor issue of the parent.

(b) The share of the net estate not distributed to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:

(1) to the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(2) If the intestate not be survived by issue, then to the decedent's parent or parents who survive the intestate, in equal shares.

(3) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(4) If the intestate not be survived by issue or by either parent, or by any issue

of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparents or grandparents shall take one-half.

(5) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be unequal degree, then those of more remote degree shall take by representation.

### §10-2-2 Inheritance by Child

For the purposes of inheritance by, through, and from any child, the effects and treatment of the parent-child relationship shall not depend on whether or not the parents have been married.

### §10-2-3 Inheritance by Adopted Child

The lawfully adopted child shall not be considered an heir of his biological parent unless the decree of adoption provides for the continuation of inheritance rights. This provision shall not prevent a biological parent from giving or devising property to his adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his biological parent.

### §10-2-4 Escheat for Want of Heirs

Whenever any person dies, leaving property subject to the jurisdiction of the Nez Perce Tribe, and not being survived by any person entitled to the same under the laws of the Nez Perce Tribe, such property shall be designated as escheat property and shall pass to the Nez Perce Tribe.

## CHAPTER 10-3 WILLS

### §10-3-1 Who May Make a Will

Any person of sound mind who is eighteen years of age or older, or a minor who is emancipated or the parent of a child, may, by last will, devise all of his estate, both real and personal, subject to the provisions of this title.

### §10-3-2 Requirements of Wills

Every will shall be in writing and signed by the testator or some other person under his direction in the presence of the testator. The will shall be attested by two or more competent witnesses, not having an interest in the testator's estate or in the will, signing their names to the

will in the presence of the testator by his direction or request: Provided, that a last will and testament, executed outside the Nez Perce Reservation, in the mode prescribed by law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of the Nez Perce Tribe; Provided further, however, that any will purporting to devise an interest in trust or restricted lands shall in addition to the provisions of this section meet all the lawful requirements of the Bureau of Indian Affairs found in Title 25 of the United States Code and Title 25 of the Code of Federal Regulations as presently enacted or hereafter amended.

**§10-3-3 Revocation of Will**

A will, or any part thereof, can be revoked by:

(a) a subsequent valid written will; or

(b) by being burned, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the will, by the testator himself or by another person in his presence and by his direction in the presence of two competent witnesses not having an interest in the outcome. The facts of such injury or destruction, including the direction of the testator where the action is done by another, must be proved by two competent witnesses, not having an interest in the outcome.

(c) If a will has been revoked, the testator shall notify the Land Services Department of its revocation, using a form designated for that purpose. Failure to notify the Land Services Department of a will's revocation does not affect the validity of the revocation or any subsequent will.

**§10-3-4 Subsequent Divorce of Testator**

A divorce, subsequent to the making of a will, shall revoke the will as to the divorced spouse.

**§10-3-5 Revival**

If, after making any will, the testator shall duly make and execute a second will, the destruction, cancellation or revocation of the second will shall not revive the first will. If the subsequent will is determined invalid, the first will shall not be deemed revoked.

**§10-3-6 Death of Related Devisee or Legatee Before Testator**

When any estate shall be devised or bequeathed to any child, grandchild, or other relative of the testator, and such devisee or legatee shall die before the testator, having lineal descendants who survive the testator, such descendants shall take the estate, real and personal, as such devisee or legatee would have done in the case he had survived the testator; if such descendants are all in the same degree of kinship to the predeceased devisee or legatee they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such predeceased devisee or legatee. A spouse is not a relative under the provisions of this section.

**§10-3-7 Lapsed Bequest or Devise**

(a) If a will makes a bequest to a person on the condition that the person survive the testator and the person does not survive the testator, then, unless otherwise provided, the bequest lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

(b) If the will gives the residue to two or more persons, the share of a person who does not survive the testator passes, unless otherwise provided, to the other person or persons receiving the residue, in proportion to the interest of each in the remaining part of the residue.

(c) If the will makes a bequest or devise which fails the bequest lapses and falls into the residue of the estate to be distributed under the residuary clause of the will, if any, but otherwise according to the laws of descent and distribution.

**§10-3-8 Estate for Life – Remainders**

If any person, by last will, or by the operation of tribal law, shall devise any real estate to any person for the term of such person's life, such devise vests in the devisee an estate for life, and unless the remainder is specially devised, it shall revert to the heirs at law of the testator.

**§10-3-9 Will to Operate On After Acquired Property**

Any estate, right, or interest in property acquired by the testator after the making of his will shall pass as if title thereto was vested in him at the time of making the will, unless the language of the will makes clear the testator's intention was otherwise.

**§10-3-10 Contribution Among Devisees and Legatees**

When any testator in his last will shall give any personal property or real estate to any person and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

**§10-3-11 Intent of Testator Controlling**

All courts and others concerned in the execution of last wills shall have due regard to the direction of the will, and the true intent and meaning of the testator in all matters brought before them shall control unless prohibited by law.

**§10-3-12 Omitted Child Born or Adopted After Execution of Will**

(a) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (c) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(b) In determining whether an omitted child has been named or provided for, the

following rules apply:

(1) A child identified in a will by name is considered named whether identified as a child or in any other manner.

(2) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(3) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(c) The omitted child must receive an amount equal in value to that which the child would have received if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(d) In satisfying a share provided by this section, the bequests made by the will abate as provided in § 10-8-7.

**§10-3-13 Omitted Spouse Married After Execution of Will**

(a) If a will fails to name or provide for a spouse of the decedent whom the decedent marries after the will's execution and who survives the decedent, referred to in this section as an "omitted spouse," the spouse must receive a portion of the decedent's estate as provided in subsection (c) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.

(b) In determining whether an omitted spouse has been named or provided for, the following rules apply:

(1) A spouse identified in a will by name is considered named whether identified as a spouse or in any other manner.

(2) A reference in a will to the decedent's future spouse or spouses, or words of similar import, constitutes a naming of a spouse whom the decedent later marries. A reference to another class such as the decedent's heirs or family does not constitute a naming of a spouse who falls within the class.

(3) A nominal interest in an estate does not constitute a provision for a spouse receiving the interest.

(c) The omitted spouse must receive an amount equal in value to that which the

spouse would have received if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination the court may consider, among other things, the spouse's property interests under applicable community property or quasi-community property laws, the various elements of the decedent's dispositive scheme, and a marriage settlement or other provision and provisions for the omitted spouse outside the decedent's will.

(d) In satisfying a share provided by this section, the bequests made by the will abate as provided in § 10-8-7.

### §10-3-14 Omission of Spouse or Child Living at Execution of a Will

If a will fails to provide for a spouse to whom the decedent was married at the time of the execution of a will, or a child born or adopted and living at the time of the execution of the will, the spouse or child so excluded shall receive that portion of the estate to which he would have been entitled under the rules of intestate succession unless the decedent's will specifically and clearly states the intent to exclude the named spouse or child.

### §10-3-15 Duty of Custodian of Will

Any person having made a will shall provide a copy of the will under seal to Land Services Department, and shall notify Land Services Department of the location of the original will. Any person having custody or control of a will shall, within 30 days after receiving knowledge of the death of the testator, deliver said will to the Land Services Department. The Land Services Department shall provide the tribal court with a copy of the will, or the original where there is no trust or restricted property to probate, upon receiving knowledge of the death of the testator.

## CHAPTER 10-4 PROBATE PROCEEDINGS

### §10-4-1 Initiation of Probate Proceedings

(a) Probate proceedings shall be initiated by a Petition For Probate filed with the Nez Perce Tribal Court containing:

(1) The name of the decedent.

(2) The decedent's enrollment status with the Nez Perce Tribe. (Enrolled, eligible for enrollment, enrolled in another federally recognized Indian tribe). [versus otherwise meeting the definition under AIRPA]

(3) The date of death of the decedent.

(4) The names and addresses of the decedent's surviving family so far as such information is known to the petitioner.

(5) Whether the decedent left a will, and, if so, the names and addresses of the beneficiaries under the will.

(6) A general description of the decedent's estate subject to probate in the Nez Perce Tribal Court, and a general description those portions of the decedent's estate, if any, that are not subject to probate in the Nez Perce Tribal Court, including, but not limited to any interests in trust or restricted property.

(7) A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and address of the Personal Representative appointed in such proceedings.

(8) A request for appointment of a Personal Representative and a statement of the qualifications of the proposed Personal Representative.

(9) A request for approval of the last will and testament of the decedent, or a request that the court find that the decedent died without a valid will, if applicable.

(10) A verification under oath or penalty of perjury signed by the petitioner that the contents of the petition are true and correct.

(b) The petitioner shall file with the petition, or as soon after filing as such documents can be obtained:

(1) A certified copy of the decedent's death certificate.

(2) The original or a true and correct copy of any will found or document alleged to be the last will and testament of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence or insure that a true and correct copy is provided by the Land Services Department.

(c) The Court shall set a date for hearing not less than sixty (60) days following submission of all required documents and mail notice of such hearing and publish notice in local newspaper at the Court’s discretion.

**§10-4-2 Qualifications of Personal Representative; Priority**

Powers and responsibilities for administration of an estate as Personal Representative shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(a) The person or persons named to serve as Personal Representative in the decedent's last will and testament.

(b) The surviving spouse or such person as the surviving spouse may request to have appointed.

(c) The next of kin in the following order 1) Child or children; 2) father or mother; 3) brothers or sisters; 4) grandchildren; 5) nephews or nieces.

(d) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(e) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, or they waive their right, or if no suitable person is available and willing, then the court may appoint the Public Administrator to administer such estate.

**§10-4-3 Parties Disqualified - Result of Disqualification After Appointment**

The following persons are not qualified to act as personal representatives: Corporations, minors, persons of unsound mind, or persons who have been convicted of any felony or of a misdemeanor involving moral turpitude, or convicted of any criminal offense of the Nez Perce Tribal Code, which would be equivalent to any felony or misdemeanor involving moral turpitude under state or federal law. When any person to whom Letters of Administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of any felony or of a misdemeanor involving moral turpitude or convicted of any criminal offense of the Nez Perce Tribal Code which would be equivalent to any felony or misdemeanor involving moral turpitude under state or federal law, the court shall revoke his or her letters. A nonresident of the Nez Perce Reservation may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the Reservation or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate. No person shall be disqualified from serving as a Personal Representative by virtue of the fact that he may be beneficiary of the estate, but such person shall always be mindful of the fact that he serves the estate in a fiduciary capacity and must put the interests of the estate ahead of his personal interest.

**§10-4-4 Powers and Duties of Personal Representative**

The Personal Representative shall have the power and duty to:

(a) Take possession and control of all the decedent's assets subject to the probate jurisdiction of the court, and to preserve such assets for the benefit of the estate;

(b) Give all notices to family members, heirs, beneficiaries, government agencies or creditors as required or allowed by this Title;

(c) Act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, to settle any claim against the estate, collect any debts owed to the estate, and initiate or defend any litigation involving the estate;

(d) Administer, in a fiduciary capacity, the affairs of the estate to ensure that the estate is preserved and distributed in accordance with the decedent's directions expressed in his or her last will and testament, or in the absence of such a will, in accordance with the rules of intestate succession set out in this Title;

(e) Exercise any power granted by the decedent's last will and testament or by order of the court; and

(f) Avoid any conflict of interest between his personal interests and the interests of the estate by always placing the interests of the estate ahead of his personal interest.

(g) The personal representative shall serve without bond, unless a bond is required by the court, or by the terms of decedent's will.

**§10-4-5 Hearing; Order Initiating Probate; Appointment of Personal Representative and Letters of Administration**

(a) Within 30 days of the filing of a petition for probate, the tribal court shall hold a hearing during which the court shall review the sufficiency of the petition and examine the petitioner under oath and determine whether the decedent died having left a valid will or intestate.

The court shall take evidence as to the validity of any will, and as to the qualifications of the petitioner or other person to be the personal representative. In the absence of an original, the court may permit a true and correct copy of a will to be probated.

Upon findings by a preponderance of the evidence that:

(1) The petitioner or another person is qualified and entitled to be appointed Personal Representative;

(2) That the decedent died having left a valid will or intestate, and

(3) The petition and other evidence before the court are sufficient to support the jurisdiction of the court, the court shall enter an order initiating probate of the decedent's estate. Such order shall either establish and initiate probate of decedent's will, or shall conclude that the decedent died intestate and identify the decedent's heirs at law. Except in the event of a contest of a will pursuant to Chapter 10-6, such order shall be conclusive.

Absent such findings, the petition shall be dismissed.

(b) Following the conclusion of the hearing and order initiating probate the court shall issue Letters of Administration conferring the powers and duties of the Personal Representative on the petitioner or another person. The term "Letters of Administration" shall apply to the authority granted to a Personal Representative under this Title, regardless of whether decedent died testate or intestate.

**§10-4-6 Form of Letters of Administration**

Letters of Administration shall be signed by the court under the seal of the court, and shall be substantially in the following form:

> Whereas (decedent) late of (address) on or about the ___ day of ___ A.D., ___ died leaving at the time of his death, property in this jurisdiction subject to administration: Now, therefore, know all persons by these presents, that this court hereby appoints _____ administrator of said estate, and whereas said

administrator has duly qualified, the court hereby authorizes him to administer the estate according to law.

Witness my hand and the seal of said court this ___ day of _____ 20___.

**§10-4-7 Oath of Personal Representative**

Before Letters of Administration are issued, the appointed Personal Representative must take and subscribe an oath, before the clerk of the court or some other person authorized to administer oaths, that the duties and responsibilities as Personal Representative will be performed according to law. The oath must be filed with the court.

**§10-4-8 Notice of Appointment as Personal Representative, Pendency of Probate - Proof by Affidavit**

Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him, and proof of such mailing or service shall be made by affidavit or declaration under penalty of perjury and filed with the court. Such notice shall include a copy of the court's order determining whether the decedent died testate or intestate.

**§10-4-9 Cancellation of Letters of Administration**

The court appointing any Personal Representative shall have authority for any cause deemed sufficient, to cancel and annul such letters and appoint other Personal Representatives in the place of those removed. If after letters of administration are granted, a will of the deceased is found and probate thereof be granted, the letters may be revoked or amended.

**§10-4-10 Successor Personal Representative**

If a personal representative of an estate dies or resigns or the letters are revoked before the settlement of the estate, successor Letters of Administration shall be granted to a person to whom the letters would have been granted if the original letters had not been obtained, and the successor personal representative shall perform like duties and incur like liabilities as the preceding personal representative, unless the decedent provided otherwise in a duly probated will or unless the court orders otherwise.

**§10-4-11 Inventory and Appraisement - Filing - Copy Distribution**

(a) Within ninety (90) days after appointment, unless a longer time shall be granted by the court, the personal representative shall make and verify by affidavit a true inventory and appraisement of all of the property of the estate passing under the will or by laws of intestacy and which shall have come to the personal representative's possession or knowledge, including a statement of all encumbrances, liens, or other secured charges against any item. The personal representative shall determine the fair net value, as of the date of the decedent's death, of each item contained in the inventory after deducting the encumbrances, liens, and other secured charges on the item. Such property shall be classified as follows:

(1) Real property, by legal description;

(2) Stocks and bonds;

(3) Mortgages, notes, and other written evidences of debt;

(4) Bank accounts and money;

(5) Furniture and household goods;

(6) All other personal property accurately identified, including the decedent's nonprobate assets, and proportionate share in any partnership, but no inventory of the partnership property shall be required of the personal representative.

(b) The inventory and appraisement shall be filed with the tribal court and notice of its filing shall be served on any heir, legatee, devisee, unpaid creditor who has filed a claim, or beneficiary of a nonprobate asset.

(c) The personal representative shall have the duty to amend the inventory and appraisal within 30 days of acquiring knowledge of any additional property of the estate. Notice of the amendment shall be served as notice of the original inventory was served.

(d) Within fifteen (15) days of the end of the period set forth above, one or more of the interested parties may file an objection with the Court and request a hearing. A hearing may be held at the Court's discretion.

**§10-4-12 Summary Probate of Exempt Estates**

(a) Exempt Estates. An estate having an appraised value which does not exceed $25,000 and which is to be inherited, through the rules of intestacy or by devise, by a surviving spouse and/or minor children of the deceased shall be exempt from the claims of all general creditors and the probate thereof may be summarily concluded as provided in this section. Reasonable funeral expenses shall not be subject to this exemption.

(b) Notice of Hearing to Determine Whether the Estate is an Exempt Estate. Upon petition of the Personal Representative, the Court shall enter an order stating that it appears, from the inventory and appraisal filed with the Court, that the appraised value of the whole estate does not exceed $25,000 and that such estate is to be inherited by the surviving spouse and/or minor children of the decedent and shall set a date and hour for hearing objections of any interested persons, if any, why the whole estate should not be declared to be exempt from the claims of all general creditors and distributed to the surviving spouse and/or minor children of the decedent. Notice of such hearing shall be given by posting a true copy of such order in the offices of the Nez Perce Tribal Executive Committee, and by sending a true copy of such order by certified mail to all persons known to the Personal Representative to be an heir, devisee or legatee of the decedent. Such notice shall be posted or mailed not less than ten days before the time set for such hearing. On or before the time set for such hearing, the Personal Representative shall file his affidavit with the Court indicating compliance with this requirement of giving notice.

(c) Hearing to Determine Whether the Estate is an Exempt Estate. If, upon such

hearing, the Court finds that such estate is an exempt estate, the Court shall enter an order directing the Personal Representative to pay any reasonable funeral expenses as determined by the Court, to distribute such estate to the surviving spouse and/or the minor children of the deceased as set forth in the order and provide that no further proceedings are necessary and that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the court, the estate shall be closed, and the Personal Representative discharged.

**§10-4-13 Interim Reports of Personal Representative**

(a) The personal representative shall make, verify by his oath, and file with the clerk of the court reports of the affairs of the estate at least annually, and more frequently if necessary or required by the court. Such report shall contain:

(1) a statement of the claims against the estate filed and allowed and all those rejected;

(2) a statement whether it is necessary to sell, mortgage, lease or exchange any property for the purpose of paying debts or settling any obligations against the estate or expenses of administration or allowance to the family. Such report shall set out the facts showing such necessity and ask for such sale, mortgage, lease or exchange;

(3) a statement of the amount of property, real and personal, which has come into his hands, and give a detailed statement of all sums collected by him, and of all sums paid out, and it shall state such other things and matters as may be proper or necessary to give the court full information regarding any transactions by him done or which should be done.

(b) The personal representative will shall provide notice, in person or by mail, to all heirs at law, legatees, devisees, and claimants against the estate of the filing of the report.

(c) Within fifteen (15) days of the end of the period set forth above, one or more of the interested parties may file an objection with the Court and request a hearing. A hearing may be held at the Court's discretion.

**§10-4-14 Final Report of the Personal Representative - Petition for Decree of Distribution**

(a) Upon the filing of a full and complete inventory, payment of all claims, and upon conclusion of any contested matter, or upon order of the Court, the personal representative shall make, verify and file with the court his final report and petition for distribution. Such final report and petition shall, among other things, show:

(1) that the estate is ready to be settled and any moneys collected since the previous report; and

(2) any property which may have come into the hands of the personal representative since his previous report; and

(3) debts paid; and

(4) generally the condition of the estate at that time; and

(5) the names and addresses, as nearly as may be, of all the legatees and devisees in the event there shall have been a will; and

(6) the names and addresses, as nearly as may be, of all the heirs who may be entitled to share in such estate; and

(7) a particular description of all the property of the estate remaining undisposed of.

(b) Other matters as may tend to inform the court of the condition of the estate, and it may ask the court for a settlement of the estate and distribution of property and the discharge of the personal representative.

(c) If the personal representative has been discharged without having legally closed the estate, without having legally obtained an adjudication as to the heirs, or without having legally procured a decree of distribution or final settlement, the court may in its discretion upon petition of any person interested, cause all such steps to be taken in such estate as were omitted or defective.

**§10-4-15 Time and Place of Hearing on Final Report and Petition for Distribution – Notice**

When such final report and petition for distribution has been filed, the court shall fix a day for hearing ~~it~~ which must be at least thirty (30) days after the report was filed. The personal representative shall, not less than twenty (20) days before the hearing, mail a copy of the notice of the time and place fixed for hearing to each heir, legatee, devisee and distributee whose name and address are known to him, and proof of such mailing shall be made by affidavit and filed at or before the hearing.

**§10-4-16 Hearing on Final Report and Petition for Distribution - Decree of Distribution**

Any person interested may file objections to the final report and petition for distribution, or may appear at the hearing and present his objections thereto. The court may take such testimony it deems proper or necessary to determine whether the estate is ready to be settled, and whether the transactions of the personal representative should be approved, and to determine who are the legatees or heirs or persons entitled to have the property distributed to them. The court shall, if it approves such report, and finds the estate ready to be closed, enter a decree approving such report, find and adjudge the persons entitled to the remainder of the estate, and that all debts have been paid, and by such decree shall distribute the real and personal property to those entitled to it. Upon the production of receipts from the beneficiaries or distributees for their portions of the estate, the court shall, if satisfied with the correctness thereof, adjudge the estate closed and discharge the personal representative.

The court may, upon such final hearing, partition among the persons entitled thereto, the estate held in common and undivided, and designate and distribute their respective shares; or assign the whole or any part of said estate to one or more of the persons entitled to share therein. The person or persons to whom said estate is assigned shall pay or secure to the other parties interested in said estate their just proportion of the value thereof as determined by the court from the appraisement, or from any other evidence which the court may require.

If it shall appear to the court at or prior to any final hearing that the estate cannot be fairly divided, then the whole or any part of said estate may be sold or mortgaged by the personal representative and the proceeds thereof distributed to the persons entitled thereto as provided in the final decree.

The court shall have the authority to make partition, distribution and settlement of all estates in any manner which to the court seems right and proper, to the end that such estates may be administered and distributed to the persons entitled thereto. No estate shall be partitioned, nor sold where partition is impracticable, except upon a hearing before the court. The court shall fix the values of the several pieces or parcels to be partitioned at the time of making such order of partition or sale, and may order the property sold and the proceeds distributed, or may order partition and distribute the several pieces or parcels, subject to such charges or burdens as shall be proper and equitable.

**§10-4-17 Distributions to Minors**

When a decree of distribution orders distribution of an estate or interest therein to a person under the age of eighteen years, it shall be required that:

(a) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depositary; or

(b) A general guardian shall be appointed and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding.

**§10-4-18 Letters After Final Settlement**

A final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or if it should become necessary and proper from any cause that letters should be again issued.

**§10-4-19 Receipts for Expenses from Personal Representative**

The personal representative shall produce receipts or canceled checks for the expenses and charges which he shall have paid, which receipts shall be filed and remain in court until the probate has been completed and the personal representative has been discharged; however, he may be allowed any item of expenditure, not exceeding fifty (50) dollars, for which no receipt is produced, if such item be supported by his own oath, but such allowances without receipts shall not exceed the sum of five hundred (500) dollars in any one estate.

## CHAPTER 10-5 CLAIMS AGAINST ESTATE

### §10-5-1 Notice to Creditors

The personal representative shall give notice to the creditors of the decedent, announcing the personal representative's appointment and requiring that persons having claims against the decedent present their claims within sixty (60) days from the notice or be forever barred as to claims against the decedent's probate and nonprobate assets. The personal representative shall file with the court proof by affidavit of the giving and publication of the notice.

(a) The personal representative shall first file the original of the notice with the court;

(b) The personal representative shall then cause the notice to be published once each week for three successive weeks in a newspaper of general distribution published at least weekly serving the Nez Perce Reservation.

### §10-5-2 Form of Notice

Notice under notice to creditors § 10-5-1 must contain the following elements in substantially the following form:

The personal representative named below has been appointed as personal representative of this estate. Any person having a claim against the decedent must present the claim in the manner as provided in this Chapter by serving on or mailing to the personal representative or the personal representative's attorney at the address stated below a copy of the claim and filing the original of the claim with the court. The claim must be presented within sixty days after the date of first publication of the notice as provided § 10-5-4. If the claim is not presented within this time frame, the claim is forever barred, except as otherwise provided in § 10-5-3. This bar is effective as to claims against both the decedent's probate and nonprobate assets.

Date of First Publication:

Personal Representative:

Attorney for the Personal Representative:

Address for Mailing or Service:

### §10-5-3 Claims Barred

(a) All claims against the decedent or his estate are barred unless presented within sixty days of the first publication of the notice required by §10-5-1 or receipt of actual notice of decedent's death, whichever is sooner, except that the time limitations for presenting claims under this chapter do not accrue to the benefit of any liability or casualty insurer.

(b) Claims against the decedent or the decedent's marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within sixty days of the date of first publication of the notice to creditors, but the amount of recovery on any

claim not so presented cannot exceed the amount of the insurance.

(c) The claims may at any time be presented, subject to the otherwise relevant statutes of limitations, and do not constitute a cloud, lien, or encumbrance upon the title to the decedent's probate or nonprobate assets nor delay or prevent the conclusion of probate proceedings or the transfer or distribution of assets of the estate.

(d) This section does not serve to extend any otherwise relevant statutes of limitations.

**§10-5-4 Claims - Form - Manner of Presentation**

(a) The claimant, the claimant's attorney, or the claimant's agent shall sign the claim and include in the claim the following information:

(1) The name and address of the claimant;

(2) The name, address, if different from that of the claimant, and nature of authority of an agent signing the claim on behalf of the claimant;

(3) A statement of the facts or circumstances constituting the basis of the claim, attaching any documents evidencing the claim;

(4) The amount of the claim; and

(5) If the claim is secured, unliquidated, contingent, or not yet due, the nature of the security, the nature of the uncertainty, or the date when it will become due.

(b) A claim does not need to be supported by affidavit.

(c) A claim must be presented within sixty days of the date of first publication of the notice required by § 10-5-1 by:

(1) Serving on or mailing to, by regular first class mail, the personal representative or the personal representative's attorney a copy of the signed claim; and

(2) filing the original of the signed claim with the court.

(3) A claim is deemed presented upon the later of the date of postmark or service on the personal representative, or the personal representative's attorney, and filing with the court.

**§10-5-5 Allowance or Rejection of Claims**

The personal representative shall allow or reject all claims timely presented. The personal representative may allow or reject a claim in whole or in part. If the personal representative fails to notify the claimant of the allowance or rejection of the claim within thirty days after the personal representative's receipt of the claimant's notice, the claimant may petition

the court for a hearing to determine whether the claim should be allowed or rejected, in whole or in part.

**§10-5-6 Allowance of Claims – Notice**

If the personal representative allows a claim, the personal representative shall notify the claimant of the allowance by personal service or regular first class mail to the address stated on the claim. Allowed claims must be ranked among the acknowledged debts of the estate to be paid expeditiously in the course of administration.

**§10-5-7 Rejection of Claims - Notice – Remedy**

(a) If the personal representative rejects a claim, in whole or in part, the claimant must bring a petition for allowance of the claim in the probate action within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring a petition for allowance of the claim in the probate action within thirty days after notification of rejection or the claim will be forever barred.

(b) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.

**§10-5-8 Judgment Against Decedent - Execution Barred Upon Decedent's Death – Presentation**

If a judgment was entered against the decedent during the decedent's lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a creditor's claim as provided §10-5-4.

**§10-5-9 Secured Claim - Creditor's Right**

If a creditor's claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor's security, whether or not the creditor presented the claim in the manner provided in §10-5-4.

**§10-5-10 Order of Payment of Debts**

(a) After payment of costs of administration the debts of the estate shall be paid in the following order:

(1) Funeral expenses in such amount as the court shall order, including a reasonable amount for the cost of a monument;

(2) Expenses of the last illness, in such amount as the court shall order;

(3) Wages due for labor performed within sixty (60) days immediately preceding the death of decedent;

(4) Debts having preference by the laws of the United States; **[citations]**

(5) Taxes, or any debts or fees owing to the Nez Perce Tribe;

(6) Judgments rendered against the deceased in his lifetime which are liens upon real estate on which executions might have been issued at the time of his death, and debts secured by mortgages in the order of their priority; and

(7) All other approved claims against the estate.

## CHAPTER 10-6 WILL CONTESTS

### §10-6-1 Contest of Probate or Rejection - Limitation of Action - Issues

Any person interested in any will who wishes to contest the validity of or rejecting of the will as per §10-4-5, shall petition the tribal court within thirty (30) days immediately following the notice of approval or rejection of the will. The petition shall contain his objections and exceptions to said will, or to the rejection thereof. Issues respecting the competency of the deceased to make a last will and testament, or respecting the execution by a deceased of the last will and testament under restraint or undue influence or fraudulent representations, or for any other cause affecting the validity of the will or a part of it, shall be tried and determined by the court.

If no person shall appear within the time under this section, the approval for probate or rejection of such will shall be binding and final.

### §10-6-2 Notice of Contest

Upon the filing of the petition referred to in §10-6-1, a notice shall be issued to the personal representative of the decedent's estate, and to all heirs at law, legatees named in the will or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court, on a day therein specified, to show cause why the petition should not be granted.

### §10-6-3 Burden of Proof

In any such contest proceedings, the previous order of the court probating, or refusing to probate a will, or finding that the decedent dies intestate, shall be sufficient evidence of the findings and conclusions contained in the court's order. The burden of proof shall rest upon the person contesting the court's previous order. The court's previous order shall stand unless the person contesting it provides clear and convincing evidence to the contrary.

### §10-6-4 Orders Following Hearing on Contest

If a petitioner proves with clear and convincing evidence that the previous order of the court accepting or rejecting a will, in whole or in part, or a finding that the decedent died intestate was in error, the court shall issue a new order reflecting the evidentiary findings made following the contest proceedings. The new order may accept or reject a will, in whole or in part, may find that the decedent dies intestate, and may amend the letters of appointment of the Personal Representative for the estate.

### §10-6-5 Costs

In any contest proceeding, assessment of costs shall be in the discretion of the court. If the contestant is not successful, the court may assess the costs against the contestant, including, unless it appears that the contestant acted with probable cause and in good faith, such reasonable attorney's fees as the court may deem proper.

## CHAPTER 10-7 FAMILY SUPPORT PENDING PROBATE

### §10-7-1 Support of Surviving Spouse and Children Pending Probate

During the pendency of a probate proceeding, the surviving spouse of a decedent may petition the court for an award from the property of the decedent to provide basic maintenance and support. If the decedent is survived by minor or dependent children of the decedent who are not also the children of the surviving spouse, on petition of such a minor or dependent child the court may divide the award between the surviving spouse and all or any of such minor or dependent children as it deems appropriate. If there is not a surviving spouse, the minor or dependent children of the decedent may petition for an award.

### §10-7-2 Award Discretionary

Any award made and the amount of such award to the surviving spouse and decedent's minor or dependent children is in the court's discretion. The court may consider, in addition to any other relevant factors:

(a) the claimant's present and reasonably anticipated future needs during the pendency of any probate proceedings in tribal court with respect to basic maintenance and support;

(b) the resources available to the claimant and the claimant's dependents, and the resources reasonably expected to be available to the claimant and the claimant's dependents during the pendency of the probate, including income related to present or future employment and benefits flowing from the decedent's probate and nonprobate estate;

(c) the intentions of the decedent, as reflected in the provisions made for the claimant by the decedent under the terms of the decedent's will or otherwise, as well as provisions made for third parties or other entities under the decedent's will or otherwise that would be affected by an award;

(d) If the claimant is the surviving spouse, the duration and status of the marriage of

the decedent to the claimant at the time of the decedent's death;

(e) The effect of any award on the availability of any other resources or benefits to the claimant;

(f) The size and nature of the decedent's estate; and

(g) Oral or written statements made by the decedent that are otherwise admissible as evidence.

### §10-7-3 Priority of Award

The award has priority over all other claims made in the estate. In determining which assets must be made available to satisfy the award, the claimant is to be treated as a general creditor of the estate, and unless otherwise ordered by the court the assets shall abate in satisfaction of the award in accordance with the § 10-8-7.

### §10-7-4 Immunity of Award from Debts and Claims of Creditors

(a) If any property awarded under this chapter is being purchased on contract or is subject to any encumbrance, it will continue to be subject to any such contract or encumbrance. All other property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(b) Both the decedent's and the surviving spouse's interests in any community property awarded to the spouse under this chapter are immune from the claims of creditors.

### §10-7-5 Exhaustion of Estate - Closure of Estate - Discharge of Personal Representative

If an award provided by this chapter will exhaust the estate, the court in the order of award or allowance shall order the estate closed, discharge the personal representative, and exonerate the personal representative's bond, if any.

## CHAPTER 10-8 UNIFORM SIMULTANEOUS DEATH ACT

### §10-8-1 Devolution of Property in Case of Simultaneous Death of Owners

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

### §10-8-2 Procedure when Beneficiaries Die Simultaneously

Where two or more beneficiaries are designated to take successively or alternately by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously the property thus disposed of shall be divided into as many equal portions as there are successive or alternate

beneficiaries and the portion allocated to each beneficiary shall be distributed as if he had survived all the other beneficiaries.

**§10-8-3 Joint Tenants - Simultaneous Death**

Where there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

**§10-8-4 Distribution of Insurance Policy when Insured and Beneficiary Die Simultaneously**

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

**§10-8-5 Scope of Chapter Limited**

This chapter shall not apply in the case of wills, living trusts, deeds, or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

**§10-8-6 Construction of Chapter**

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those jurisdictions which enact it.

**§10-8-7 Abatement Generally**

(a) Except as provided in subsection (b) of this section, property of a decedent abates, without preference as between real and personal property, in the following order:

(1) Intestate property;

(2) Residuary gifts;

(3) General gifts;

(4) Specific gifts.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1) of this section, a gift abates as may be found necessary to give effect to the intention of the testator. The personal representative may petition the court for an order requiring adjustments in, or contributions from, interests in the estate assets as necessary to give effect to the intent of the testator.

## CHAPTER 10-9 INHERITANCE RIGHTS OF SLAYER

### §10-9-1 Slayer Defined

For purposes of this chapter "slayer" shall mean any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

### §10-9-2 Slayer Not to Benefit from Death

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent. The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or under any agreement made with the decedent, or as to any property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent.

### §10-9-3 Insurance Proceeds

Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or his estate as secondary beneficiary to him and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

### §10-9-4 Payment by Insurance Company, Bank, etc. - No Additional Liability

Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its office or at an individual's home or business address, of the killing by a slayer.

### §10-9-5 Rights of Persons Without Notice Dealing with Slayer

The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases or has agreed to purchase, from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this chapter, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

### §10-9-6 Record of Conviction as Evidence Against Claimant of Property

The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

**§10-9-7 Chapter to be Construed Broadly**

This chapter shall be construed broadly to affect the policy of this Tribe that no person shall be allowed to profit by his own wrong

# TITLE 11
# WORKERS' COMPENSATION CODE
**(adopted by NPTEC 2/27/07, amended 1/11/2011)**

## CHAPTER 11-1 – GENERAL PROVISIONS

**§11-1-1 PURPOSE.** The purpose of this Title, which shall be known as the Nez Perce Tribe Workers' Compensation Code, is to provide sure and certain relief for employees of the Nez Perce Tribe who are injured in the course and scope of their employment with the Tribe, regardless of questions of fault. The relief provided in this Title is, therefore, to the exclusion of every other remedy, proceeding, or compensation, except those specifically provided in this Title.

**§11-1-2 LIMITED WAIVER OF SOVEREIGN IMMUNITY**. The Tribe hereby agrees to waive its sovereign immunity for the sole and limited purpose of enforcement of the terms of this Title. This waiver is expressly limited to enforcement of the provisions of this Title, including the dollar amounts set forth herein. This limited waiver is not, and should not be construed as, a blanket waiver of the Tribe's sovereign immunity.

**§11-1-3 ADMINISTRATION**. This Title shall be administered by the Nez Perce Tribe Workers' Compensation Advisory Council ("Advisory Council") or its successor.

**§11-1-4 TIME CALCULATIONS** . Unless otherwise stated in specific sections of this Title, all time limits shall be calculated using calendar days.

**§11-1-5 DEFINITIONS**.

A. The definitions in this section govern the construction and meaning of terms used in this Title. Pronouns of one gender include the other gender, and singular terms include the plural.

1. " Advisory Council" means the entity organized in accordance with Chapter 11-2 of this Title to administer the Nez Perce Tribe Workers' Compensation Benefits System.

2. " Arbitrator" means the person who hears appeals from final decisions of the Claim Administrator in accordance with the provisions contained in Chapter 11-9 of this Title.

3. "Attending Physician" means the physician, or other medical care provider, who is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.

4. "Average Weekly Wage" means the following:

   a. For a covered worker hired to a regular full-time or part-time position expected to last at least 13 weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings from a covered employer. In the case of a worker who has not worked for

a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.

b. For a covered worker hired on a temporary, on-call, emergency, or special-project basis who has continuously worked for a minimum of 13 weeks, the Average Weekly Wage shall be calculated as provided in subparagraph a., above.

c. For a covered worker hired on a temporary, emergency, or special-project basis who has not continuously worked for the preceding 13 weeks, the Average Weekly Wage shall be calculated by taking the worker's expected total gross wages and dividing by the expected number of work weeks.

d. For purposes of this definition, the work week shall be as defined by the human resource manual or personnel policy applicable to the covered worker at the time of injury.

5. "Benefits" means the indemnity and medical payments provided by this Title. "Indemnity benefits" shall mean total disability and partial disability income benefits and impairment payments. "Medical benefits" shall mean medical expenses, mileage, and other expenses associated with medical treatment.

6. "Child" or "Children" means dependent natural legitimate children, dependent stepchildren, and adopted children, but does not include married children unless they are shown to be dependents.

7. "Claim Administrator" or "Workers' Compensation Claim Administrator" means the third-party administrator appointed pursuant to NPTEC resolution and authorized to administer claims under this Title.

8. "Claimant" means the injured covered worker or, in the event of death of the covered worker, dependents of the deceased covered worker.

9. "Consulting Physician" means the physician, other health care provider, or other health care expert that is retained by the Claim Administrator to assist the Claim Administrator in carrying out the Claim Administrator's duties and responsibilities under this Title. Such activities may include, but are not limited to: determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; and determination of impairment rating. At the discretion and expense of the Claim Administrator, an injured worker may be required to be seen by the Consulting Physician to assist in making any required recommendations to the Claim Administrator.

10. "Course and Scope of Employment" means the Employer's employment of the covered worker at the time the injury occurred. An injury must arise

from the course and scope of the covered worker's employment in order for a claim to be compensable. An employee is in the course and scope of his/her employment while entering or leaving the employer's buildings and parking areas within thirty (30) minutes of the employees's assigned work schedule.

11. "Covered Employer" and " Employer" shall mean the Tribe, its agencies, and any Tribal enterprises.

12. "Covered Worker" and " Worker" means any person who has entered into the employment of the employer and who is compensated by the employer, regardless of where they work, unless otherwise excepted by this Title.

    a. The terms "Covered Worker" and "Worker" shall include Tribal officials whether elected or appointed.

    b. The terms "Covered Worker" and "Worker" shall not include independent contractors working under contract for the Employer, whether that contract is express or implied.

13. "Death" means any fatality of the covered worker proximately and directly caused by an injury received during the course and scope of employment or by an occupational disease.

14. "Dependents" means any of the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Title.

    a. The widow or widower of a deceased worker, if married to the deceased worker at the time of the deceased worker's death.

    b. A child under 18 years of age, an unmarried child under 23 years of age enrolled as a full-time student in an accredited educational institution at the time of the covered worker's injury, or a child of any age if the child is incapable of self-support and would have been considered a dependent of the deceased worker for income tax purposes.

    c. Any of the following persons who were wholly dependent on the earnings of the covered worker for support at the time of the covered worker's injury, if the relation of dependency existed at the time of injury, and the person would have been considered a dependent of the deceased worker for income tax purposes:

        i. a grandchild under 18 years of age, or an unmarried grandchild under 23 years of age enrolled as a full-time student in an accredited educational institution at the time of the covered worker's injury, or a grandchild of any age if the grandchild is

incapable of self-support;

ii. a parent or grandparent;

iii. brother or sister, niece or nephew only if under 18 years of age, or unmarried and under 23 years of age and enrolled as a full-time student in an accredited educational institution at the time of the covered worker's injury, or said relatives of any age if incapable of self-support.

15. "Disability" means the inability of the covered worker to obtain and/or retain wages equivalent to the worker's pre-injury wages as a result of a direct loss of functional capacity compromising that worker's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the Claim Administrator, the Consulting Physician. "Partial Disability" refers to the amount by which the covered worker's ability to obtain and/or retain pre-injury wages is reduced as a result of a direct loss of functional capacity compromising that worker's ability to perform the necessary duties of the job.

16. "Idiopathic Injury" means an injury which is either peculiar to the individual or arising spontaneously from an obscure or unknown cause. This includes epileptic attacks, diabetic seizures, heart disease, cardiovascular or respiratory conditions, heart attack, the failure or occlusion of any coronary blood vessels, stroke, thrombosis, allergic disorders, auto-immune diseases, etc.

17. "Impairment" means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

18. "Injury" shall mean any physical or mental impairment, including, without limitation, death and/or occupational disease, arising in the course and scope of the covered worker's employment.

    a. The term "injury" does not include an injury sustained while a covered worker is at home or preparing for work unless the activity was undertaken at the direction of the employer.

    b. The term "injury" does not include an injury resulting primarily from the natural aging process, or normal daily activities, or an injury sustained during voluntary recreational or social activities.

19. " Intoxication" means a blood alcohol content in excess of .02 percent or the loss of the normal use of one's mental and/or physical faculties

resulting from the voluntary introduction into the body of: an alcoholic beverage; a controlled substance; a mind-altering drug and/or hallucinogenic substance; glue, aerosol paint, or any other inhalant; a prescribed drug in excess of, or in violation of, the prescribed amount; or any other similar substance. This definition does not apply to Nez Perce Tribal Police officers whose consumption of such substances is consistent with the Nez Perce Tribal Police Department's policy and procedures for undercover assignments.

20. "Maximum Medical Improvement."

    a. "Maximum Medical Improvement" ("MMI") means the earlier of:

        i. the point after which no further material recovery from an injury, or the last improvement to an injury, can be anticipated based on reasonable medical probability; or

        ii. the expiration of 36 months from the date disability income benefits begin to accrue.

    b. MMI can be determined without regard to subjective complaints of pain by the patient. Once the date of MMI has been determined (except cases in which a covered worker is medically unable to continue working) no further determinations of other dates of MMI for that personal injury are permitted. A determination of MMI is not rendered ineffective by the worsening of the covered worker's medical condition and recovery thereafter.

21. "Nez Perce Tribe Workers' Compensation Benefit System" shall mean this Title, any and all rules and regulations promulgated hereunder, as well as the functions of the Claim Administrator, the Advisory Council, and the arbitrator selected to adjudicate disputes under Chapter 11-9 of this Title.

22. "Occupational Disease" means only those diseases which arise out of and in the course and scope of the worker's employment. To be compensable, such diseases must have a direct causal connection with the worker's employment and must result from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

23. "Parent or Grandparent" means the natural or adoptive father, mother, grandfather, or grandmother of the covered worker.

24. “Policy” means any workers’ compensation policy of insurance issued to the Tribe, or any other covered employer.

25. “Scheduled Weeks” means 156 weeks and is the maximum number of weeks that a covered worker shall be entitled to disability benefits under this Title.

26. “Settlement” means the date the release of all claims is executed and the monetary terms of the agreement met.

27. “Spouse” means the person married to the covered worker at the time of the death or injury to the covered worker.

28. “Tribal Court” means the Nez Perce Tribal Court.

29. “Tribe” and " Tribal" mean, or refer to, the Nez Perce Tribe, a federally-recognized American Indian tribe, its agencies, and any Tribal enterprises.

30. “Volunteer” means a person who gives his or her services to the Tribe without any express or implied promise of remuneration including unpaid interns. A volunteer who suffers an Injury, as defined in this Title, that arises from the course and scope of that person’s voluntary service to the Tribe may receive Medical Benefits, but will not receive Indemnity Benefits.

**§11-1-6 WORKERS’ COMPENSATION INSURANCE REQUIRED**. Every Employer must insure for the benefits provided under this Title, but are allowed self-insured retention levels in accordance with the rules of the Advisory Council. Any insurance company issuing a policy insuring benefits hereunder shall: (a) require a loss prevention/control program sufficient to enable the Tribe to provide a safe workplace for all tribal workers; and (b) assist the Employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

**§11-1-7 ACKNOWLEDGMENT OF PROVISIONS IN THIS TITLE**. All covered workers and/or persons asserting a claim under this Title shall be conclusively presumed to have elected to take workers’ compensation benefits in accordance with the provisions of this Title by virtue of their employment by the Tribe or other covered employer. All covered workers and/or persons asserting a claim under this Title acknowledge that the Tribe is a federally-recognized American Indian tribe and is exercising its inherent sovereign authority in providing workers’ compensation benefits under this Title.

**§11-1-8 POSTING OF NOTICE**. Each covered employer shall post the following notice in a conspicuous location in each of the employer’s offices or work areas:

# NOTICE TO TRIBAL EMPLOYEES

**➜All on-the-job injuries must be reported within one (1) business day.**

**➜All claims for Workers' Compensation benefits must be filed within 30 (thirty) calendar days.**

As employees of the tribe or its enterprises, you are insured for on-the-job injuries under the Nez Perce Tribe Workers' Compensation Code which is contained in Title 11 of the Nez Perce Tribal Code. If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Nez Perce Tribe Workers' Compensation Code.

**Notify your employer immediately of any injuries, no matter how slight.** If you fail to do so, you may lose your benefits under the Nez Perce Tribe Workers' Compensation Code. In no event shall benefits be paid to a worker who failed to notify their employer within one (1) business day after sustaining such work-related injury, except in cases where an extraordinary reason prevented the worker from reporting the injury or occupational disease to the employer in a timely manner.

**It is your responsibility to file a claim for benefits with the Claim Administrator.** You are required to file a claim for any injury or occupational disease no more than thirty (30) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Nez Perce Tribe Workers' Compensation Claim Administrator at:

**Your exclusive remedy for any work-related injury or disease is through the Nez Perce Tribe Workers' Compensation Code.** The Workers' Compensation system of any State cannot accept a claim from you under the Nez Perce Tribe Workers' Compensation Code as you are employed by the Nez Perce Tribe, a sovereign Indian nation employer.

**§11-1-9 NOTIFICATION TO EMPLOYER OF INJURY BY WORKER**.

A. All covered workers must immediately notify their supervisor, department director, or the human resources office of any and all injuries, and in no event no later than the next business day after the date of occurrence. Failure to timely report an on-the-job injury shall result in a forfeiture of benefits under this Title, unless the claimant can demonstrate an extraordinary reason that prevented the reporting of the injury or occupational disease in a timely manner.

B. When a supervisor or department director receives a report of an on-the-job injury, the supervisor or department director must submit the report to their human resources office no later than the next business day after receiving the report.

C. The human resources office must submit reports of on-the-job injuries to the Claim Administrator no later than two (2) business days after receiving a report.

D. Within the time set by the Claim Administrator, the worker's supervisor or department director shall prepare and submit to the human resources office an incident report on the circumstances surrounding the on-the-job injury, including the identification of people who may have witnessed the incident or accident.

**§11-1-10 TIME LIMIT FOR REPORTING INCIDENTS AND FILING CLAIMS**.

A. Claims for injury shall be made by the covered worker to the Claim Administrator within thirty (30) days of the date of occurrence. For purposes of this Title, filing a claim for benefits under this Title with the human resources office shall constitute filing a claim with the Claim Administrator.

B. Claims for occupational disease shall be made by the covered worker to the Claim Administrator within thirty (30) days from date of first notice to the worker by a physician.

C. Failure to give notice of injury to the employer, or to file a claim with the Claim Administrator, within the time limits set forth in this chapter shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under this Title.

**§11-1-11 BURDEN OF PROOF**. The burden of proof shall rest upon the claimant to prove that any injury arose in the course and scope of the covered worker's employment.

**§11-1-12 RIGHT TO WAIVE DEFENSES**. The Claim Administrator and/or the worker's compensation insurer shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Title.

**§11-1-13 GUARDIAN FOR MINOR OR INCOMPETENT**. Any person who is mentally incompetent and/or under the age of 18 and is entitled to receive compensation under this Title, shall be appointed a guardian or other representative by the Tribal Court if a guardian has not been appointed in a prior action.

## CHAPTER 11-2 – WORKERS' COMPENSATION ADVISORY COUNCIL

**§11-2-1 ESTABLISHMENT**. There is hereby established a Nez Perce Tribe Workers' Compensation Benefit Advisory Council ("Advisory Council") whose purpose is to administer the Nez Perce Tribe Workers' Compensation Benefit System. The Advisory Council will also cooperate in the prevention of injuries and occupational diseases to workers and, in the event of injury or occupational disease, their rehabilitation or restoration to health and vocational opportunity.

**§11-2-2 MEMBERSHIP**.

A. The Advisory Council shall be comprised of seven (7) members holding the following positions:

1. the Human Resources Manager for the government of the Tribe, or a designee from that department;

2. the Human Resources Manager for Tribal Enterprises, or a designee from that department;

3. the Human Resources Manager for Nimiipuu Health, or a designee from that department;

4. the Human Resources Manager for the Tribal Housing Authority, or a designee from that department;

5. the Tribal Finance Manager, or a designee from that department;

6. the Tribal Executive Director, or a designee from that department; and

7. the Managing Attorney of the Office of Legal Counsel, or a designee from that department.

**§11-2-3 POWERS OF THE ADVISORY COUNCIL**. The Advisory Council shall have the following duties and powers:

A. to meet on a quarterly basis unless the Advisory Council determines that additional, or more frequent, meetings are necessary to fulfill its duties under this Title;

B. to recommend rules and regulations to the Nez Perce Tribal Executive Committee for the implementation and administration of this Title;

C. to review quarterly the benefits provided under this Title and to make recommendations to the Nez Perce Tribal Executive Committee for amendments to benefit levels or any other needed revisions to this Title deemed advisable by the Advisory Council;

D. to develop programs and to cooperate with the Claim Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers;

E. to take any and all other actions deemed reasonable and necessary for the implementation of this Title including, but not limited to, recommending rates and reserve levels to the Nez Perce Tribal Executive Committee;

F. to make recommendations to the Nez Perce Tribal Executive Committee regarding selection of consultants deemed necessary to carry out the provisions of this Title;

G. to make recommendations to the Nez Perce Tribal Executive Committee regarding appointment of the Claim Administrator; and

H. to make recommendation to the Nez Perce Tribal Executive Committee regarding the selection of the insurance company to provide the workers' compensation benefits that are set forth in this Title.

## CHAPTER 11-3 – DUTIES AND POWERS OF THE CLAIM ADMINISTRATOR

**§11-3-1 CUSTODIAL DUTIES**. The Claim Administrator or its designee shall be the payor of the workers' compensation benefits and all authorized disbursements therefore shall be paid by the Claim Administrator or a representative with its stated authority. The Claim Administrator also shall be the custodian of all claim files and related documents.

**§11-3-2 PAYMENT AND DISTRIBUTION OF BENEFITS**. The Claim Administrator shall administer this Title in accordance with the terms and conditions described herein, and any rules adopted by the Nez Perce Tribal Executive Committee, shall remit all benefit payments as provided for in this Title, and shall have the authority to determine the distribution of benefit checks.

**§11-3-3 ADDITIONAL GUIDELINES**. If necessary, and to the extent they are not contrary to any provisions of this Title, the workers' compensation provisions contained in Title 72 of the Idaho Code may be utilized as guidelines by the Claim Administrator.

**§11-3-4 ADMINISTRATIVE POWERS AND DUTIES**.

A. The Claim Administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this Title.

B. In the case of death of a covered worker, the Claim Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Claim Administrator.

C. The Claim Administrator shall have the power to retain a consulting physician for purposes of assisting the Claim Administrator in carrying out its duties and powers under this Title.

D. The Claim Administrator shall have the duty to maintain complete and accurate

administrative records and claim files on all activities relating to the claims made under the Policy. The Claim Administrator shall retain and preserve all closed files for not less than six (6) years.

**§11-3-5 ACCEPTANCE/DENIAL OF CLAIM**. Upon receiving a claim for benefits, the Claim Administrator shall promptly investigate the claim and begin payment of compensation within 21 days of receipt of the claim if the Claim Administrator determines that the claim is valid.

A. If the Claim Administrator cannot complete its investigation within 21 days, the Claim Administrator shall send the claimant written notice that further investigation is needed and the reasons for further investigation. The written notice must be sent within 21 days of receipt of the claim.

B. The Claim Administrator shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

## CHAPTER 11-4 – COVERAGE AND COMPENSABILITY

**§11-4-1 ENTITLEMENT TO BENEFITS**. Claimants seeking benefits under this Title shall be responsible for filing a timely claim with the Claim Administrator.

**§11-4-2 MENTAL TRAUMA**.

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Title, except those that result from accidental injury traceable to a definite time, place, and cause (rather than from repetitive mental trauma), or from an unusual traumatic event as established by a licensed psychiatrist or psychologist, and the mental injury was caused by or occurs subsequent to or simultaneous with such accidental injury or unusual traumatic event.

B. Regardless of section §11-4-2 A, a mental trauma or emotional injury that arises principally from a personnel action is not a compensable injury under this Title. Personnel actions include, but are not necessarily limited to transfers, promotions, demotion, disciplinary actions, work performance evaluations, and terminations.

C. Treatment for mental injury determined compensable under this Title shall be limited to six (6) months after the covered worker's physical injury has healed to maximum medical improvement.

**§11-4-3 GOING TO AND RETURNING FROM WORK**. An accident and/or incident occurring while a worker is on the way to or from work, including lunch break, is not within the course and scope of employment except when such travel is directly connected with the worker's employment and in furtherance of the employer's interest. Travel is not directly connected with the worker's employment and in furtherance of the employer's interest: if the worker deviates from a reasonably direct route of travel; or if the worker is not acting in the interests of the employer.

**§11-4-4 BENEFITS PRECLUDED BY NEGLECT AND/OR REFUSAL OF WORKER TO SUBMIT TO TREATMENT**.

A. No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal and/or neglect to submit to and/or follow reasonable surgical or medical treatment, medical aid, or advice. A worker who has refused and/or neglected to submit to and/or follow medical and/or therapeutic treatment, or to take medications as prescribed, will be presumed to have reached Maximum Medical Improvement. Any disability that could have been treated with a reasonable medical probability of success will be discounted in determining the appropriate impairment rating under this Title.

B. Any covered worker otherwise entitled to benefits under this Title shall be presumed to have reached Maximum Medical Improvement if such worker has refused and/or neglected to seek appropriate medical treatment within six (6) months from: the date the injury or occupational disease occurred; or the date on which the worker last received medical treatment for the injury or occupational disease.

C. If an injured covered worker undertakes activities on or off the job which exceed recommendations of the treating physician, and cause the condition to worsen, the covered worker may not receive benefits for the aggravation. However, the covered worker may receive compensation for the aggravated condition if the employer demanded the covered worker to do things in excess of the treatment recommendations.

**§11-4-5 INJURY OR DEATH FROM CONSUMPTION AND/OR APPLICATION OF DRUGS AND/OR CHEMICALS**. No benefits of any nature shall be payable for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntary poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication. However, no benefits under this Title shall be payable in the event the worker's injury or death was caused by the intentional abuse of prescribed drugs in excess of the prescribed therapeutic amounts.

**§11-4-6 INTOXICATION**. No benefits of any nature shall be payable for, or on behalf of, any covered worker who is injured or killed while intoxicated or if the covered worker has any controlled substance in his/her body at the time of the injury or death, regardless of whether the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Title. All covered workers agree: to submit to post-incident/post-accident drug and alcohol screening as authorized in the applicable Tribal personnel policies; and to waive any confidentiality or other privilege associated with the results of said tests. This provision does not apply to Nez Perce Tribal Police officers whose consumption of such substances is consistent with the Nez Perce Tribal Police Department's policy and procedures for undercover assignments.

**§11-4-7 PENALTIES FOR FALSE STATEMENT OR REPRESENTATION TO OBTAIN COMPENSATION**. If, in order to obtain any benefits under the provisions of this Title, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payment.

A. The employer is entitled to take any action permitted by law to recover any payment or benefits paid under this Title to a covered worker where the payment or benefit was based upon the fraudulent or false statements or misrepresentation by the covered worker.

B. The employer's recovery of all, or a portion of, benefits paid based upon the fraudulent or false statements or misrepresentation by the covered worker will not preclude prosecution of the covered worker under any applicable criminal statutes.

**§11-4-8 INJURIES RESULTING FROM SELF-INFLICTED INJURIES OR WILLFUL MISCONDUCT**. No benefits of any nature shall be payable for a worker's injury or death caused by the worker's willful intention to injure himself or another. The willful disregard of an order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefit, or payment upon proof that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself.

**§11-4-9 RECREATIONAL, SOCIAL OR ATHLETIC ACTIVITIES**.

A. No benefits shall be payable under this Title if the injury, occupational disease, or death occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where such activities are expressly required by the employer.

B. No benefits shall be payable under this Title if the injury, occupational disease, or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the covered worker is compensated for the time in which the physical fitness activities take place.

**§11-4-10 INJURIES CAUSED BY THIRD PARTIES**. No benefits shall be payable under this Title for any covered worker injured or killed as the result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not because of reasons related to his/her employment. Payment of benefits by the Claims Administrator when the injuries were caused by a third party shall not constitute a waiver of rights as contained in Section 5.4 of this code. **(section amended by NPTEC 6/23/15)**

**§11-4-11 IDIOPATHIC CLAIMS**. Injury or death resulting from a natural cause such as a heart attack, stroke or other natural function failure, which does not arise in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest, is not compensable.

A. Respiratory, heart, and cardiovascular conditions and related injuries are not compensable unless the work being performed was extraordinary and unusual compared with the covered worker's regular work, and the work being performed is found to be the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

B. An injury resulting directly from idiopathic causes is not compensable unless the employment places the covered worker in a position of increased danger. This would include falls from unprotected heights (ladders, scaffolds, roofs), falls involving the hazardous attributes

of industrial machinery or equipment, or episodes occurring while driving during the course and scope of employment.

C. In the event of a claim that the worker's employment was a contributing cause of the idiopathic injury, the work being performed would have had to have been extraordinary and unusual compared with the covered worker's regular work in order to be considered compensable. In addition, medical evidence must establish that the extraordinary and unusual work was the primary cause of the condition. "Primary cause" means that the work being performed was responsible for more than 50% of the resulting injury or condition.

**§11-4-12 OTHER LIMITATIONS ON BENEFITS**.

A. No benefits shall be payable under this Title for secondhand smoke claims.

B. Benefits will be paid for a maximum of twelve (12) visits for physical therapy, chiropractic, or any other treatment for any injury caused by repetitive motion or any other condition that does not have a clear physical manifestation including, but not limited to: soft tissue damage; carpal tunnel syndrome; tennis elbow; and lower back pain.

## CHAPTER 11-5 – GENERAL PROVISIONS REGARDING BENEFITS

**§11-5-1 RIGHT TO COMPENSATION AND MEDICAL TREATMENT BENEFITS.** Every covered worker who is injured, and in the event of a worker's death, the dependents of every covered worker who is killed, in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Title, is entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, the benefits provided under this Title.

**§11-5-2 EXCLUSIVE REMEDY**. The rights and remedies provided to workers in this Title are the exclusive and only rights and remedies of such workers, their personal or legal representative(s) or dependent(s), on account of injuries arising out of and in the course and scope of employment. Workers have no other remedies against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of an injury or payment for any injury covered under this Title, including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from the covered employer.

**§11-5-3 EFFECT OF WORKERS' COMPENSATION PAID IN OTHER JURISDICTIONS**. A covered worker who pursues and recovers compensation under the workers' compensation laws of another jurisdiction, in violation of §11-5-2, is barred from recovering under this Title.

**§11-5-4 LIABILITY OF THIRD PARTIES – SUBROGATION**.

A. A covered worker may pursue a complaint against a third party for damages resulting from a work-related injury caused by the negligence of the third party or by negligence attributable to the third party, but the employer and/or its insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue such complaint. Therefore, a covered worker may not bring such a suit without first notifying the employer and/or its insurer,

guarantor, or surety.

B. In case of a recovery against a third party, the Claim Administrator or arbitrator selected under Chapter 9 of this Title shall distribute of the proceeds such recovery as follows:

1. to the employer, a sum sufficient to repay the employer for the benefits actually paid to the worker under this Title up to that time;

2. to the employer, a sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is likely to be liable to the worker, even though that sum is not the final adjudication of the future payments which the worker is entitled to receive, and if the sum received by the employer is in excess of the amount the employer is actually required to pay in compensation to the worker, the excess shall be paid to the worker; and

3. the balance, if any, shall be distributed to the worker or, in the case of death, to the worker's dependents, if any.

4. NPTEC retains the right to make decisions in respect to the Claimant's obligation to repay the benefits paid under this Code. **(subsection amended by NPTEC 6/23/15)**

C. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, dependent, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

**§11-5-5 ASSIGNABILITY OF BENEFITS – ATTACHMENT OF LIENS**. Benefits received under this Title are not assignable, except that a legal beneficiary may assign the right to death benefits. Benefits are subject only to the following liens or claims, to the extent any income or death benefits are unpaid on the date the Claim Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

A. court-ordered child support issued or recognized by the Tribal Court;

B. a subrogation interest established under this Title; and

C. debts owed to the Tribe.

**§11-5-6 AGGRAVATION OF PRE-EXISTING DISEASE OR CONDITION**. If a covered worker is suffering from a pre-existing injury or disease at the time of an injury or occupational disease which arises in the course and scope of the worker's employment and while the worker was acting in furtherance of the employer's interest, and the pre-existing injury or disease is aggravated thereby, the aggravation is subject to the provisions of this Title. The amount of the disability award under this Title may be reduced or denied in its entirety by the Claim Administrator in consideration of the following:

A. a prior settlement from any source for the same impairment;

B. the difference between the degree of impairment of the worker before the covered injury or occupational disease and the degree of impairment after the covered injury or occupational disease; and

C. the benefits to be paid for impairments and/or disabilities would be in excess of 100% of the whole person. For purposes of this subsection, benefits include those benefits or payments made under this Title, benefits from the workers' compensation laws of any other jurisdiction, and payments from third parties.

**§11-5-7 PRESUMPTIONS REGARDING OCCUPATIONAL ILLNESS AND DISEASE**. Full-time firefighters and law enforcement officials, after five (5) years of continuous employment with the Tribe, shall receive the benefit of a rebuttable presumption that the following occupational illnesses or diseases are caused by their employment and are therefore compensable injuries/illnesses pursuant to this Title: heart trouble, pneumonia, hernia, tuberculosis, hepatitis, acquired immune deficiency syndrome (AIDS), and cancer. The presumption is controlling absent any evidence that the illnesses or disease is caused other than by the worker's employment with the Tribe. The Tribe shall require firefighters and law enforcement officers to have an annual physical to be eligible for this presumption. The presumption will be nullified if a firefighter or law enforcement officer uses tobacco products.

**§11-5-8 TERMINATION OF BENEFITS UPON DEATH**. Where a worker is entitled to compensation under this Title, and death ensues from any cause not resulting from the injury for which the worker was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

## CHAPTER 11-6 – VOCATIONAL REHABILITATION, DISABILITY, AND IMPAIRMENT BENEFITS

**§11-6-1 WAITING PERIOD**. An initial waiting period of seven (7) consecutive calendar days will accrue before the covered worker shall be entitled to benefits under this chapter.

**§11-6-2 VOCATIONAL REHABILITATION**. Vocational rehabilitation benefits or training are not mandatory under this Title, but the ordering of such benefits is within the discretion of the Claim Administrator, in accordance with Chapter 3 of this Title, or may be required under rules promulgated by the Nez Perce Tribal Executive Committee.

**§11-6-3 DISABILITY BENEFITS**.

A. When a worker is disabled from work as determined by the consulting physician, or in the Claim Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, disability benefits shall be payable as follows:

1. if the covered worker is 100% disabled, disability benefits are payable at 70% of the worker's pre-injury average weekly wage; or

2. if the covered worker is less than 100% disabled, disability benefits are payable at 70% of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of

earning in his/her partially disabled condition.

B. Except as provided in this Title, disability benefits will continue to be paid in accordance with the terms of this Title until the time at which the earliest of the following occurs:

1. the expiration of 156 weeks from the date of the occurrence, or in the case of an occupational disease, 156 weeks from the earlier of either the first manifestation of the symptoms or notification from a physician that the illness is inherent in or related to the worker's occupation;

2. the consulting physician, or in the discretion of the Claim Administrator, the attending physician, declares that the worker has reached Maximum Medical Improvement;

3. the covered worker is incarcerated;

4. the attending physician provides a full, unrestricted release;

5. The attending physician provides a modified or light duty release, and the worker rejects a bona fide job offer of suitable work consistent with the worker's disability;

6. a new or intervening incident is the proximate cause of disability;

7. the worker refuses benefits;

8. a presumption of MMI based on neglect or refusal to submit to medical treatment as set forth in §11-4-5 of this Title;

9. a suspension of benefits by the Claim Administrator for reasons authorized in this Title or by the authority of the arbitrator selected under Chapter 9 of this Title;

10. a reduction of the worker's earning capacity for reasons other than the disability from the work-related injury; or

11. the covered worker dies from any cause not resulting from the injury for which the worker was entitled to compensation under this section, and the worker's estate is not entitled to any further benefits as defined in this Title.

**§11-6-4 IMPAIRMENT BENEFITS**.

A. At the expiration of 156 weeks from the date of the injury, the worker is presumed to have reached MMI regardless of disability and/or current medical status. At that time, the attending physician is to provide**:** an impairment rating based on reasonable medical probability and in accordance with the most current edition of the *Guides to the Evaluation of Permanent Impairment* published by the American Medical Association (the "*AMA Guidelines*"); and a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment plan may be subject to review and revision by the consulting

physician at the discretion of the Claim Administrator.

B. Impairment ratings are to be converted to the covered worker as a whole, and impairment ratings assigned to a specific body part are to be converted in accordance with the *AMA Guidelines*.

C. A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Claim Administrator may reserve issuance of payment under the following conditions:

1. contribution for prior impairment ratings;

2. clarification by the Claim Administrator as to the validity of the date for MMI;

3. similar impairment rating issues or MMI issues remain to be resolved by the consulting physician or, if necessary, the arbitrator selected under Chapter 9 of this Title.

D. The rating recognized by the arbitrator selected under Chapter 9 of this Title is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by $300,000.

F. A lump sum settlement for impairments will be given for those covered workers who receive an impairment rating of 15% or less of the covered worker as a whole.

**§11-6-5 BENEFIT ISSUANCE PERIOD**. Except as provided herein:

A. Disability and impairment benefits under this Chapter are to be issued bi-weekly and shall not exceed 100% of the worker' s pre-injury average weekly wage.

B. Except as otherwise provided in this Title, there shall be no acceleration of disability or impairment benefits**.**

## CHAPTER 11-7 – DEATH BENEFITS

**§11-7-1 ENTITLEMENT TO DEATH BENEFITS**. When a covered worker dies as a result of a compensable injury, the worker's dependents are entitled to death benefits.

A. Death benefits shall be payable to the worker's dependents based on 70% of the worker's average weekly wage per week for a maximum of $300,000.00 commencing from the date of death.

1. If there are no children entitled to death benefits, then all to the surviving spouse for the life of the surviving spouse, or until the spouse remarries, whichever occurs first.

2. If there are surviving dependent children and a surviving spouse, the surviving spouse shall be entitled to one-half of death benefits for the life of the surviving spouse, or until the spouse remarries, whichever occurs first, and the other half of the death benefits shall be paid to each dependent child in equal shares.

3. If there is no surviving spouse, then the death benefits shall be paid to the worker's surviving dependent children in equal shares.

4. If there is no surviving spouse or surviving dependent child, death benefits shall be paid to any surviving dependent grandchildren in equal shares until the grandchild is no longer a dependent, or until the grandchild dies, whichever occurs first.

5. If there is no surviving spouse, dependent child, or dependent grandchild, the death benefits shall be paid in equal shares to any other surviving dependent(s).

6. If a deceased worker is not survived by any eligible dependents, the Employer's duty to pay death benefits under this chapter, except burial benefits, shall cease immediately.

B. Where a worker is entitled to compensation under this Title for an injury, and death ensues from any cause not resulting from the injury for which the worker was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability of the employer shall terminate.

C. In the event a covered worker's death occurs after a period of disability, any disability benefits paid to the worker shall be deducted from the death benefits to which the worker's dependents may be entitled.

**§11-7-2 REDISTRIBUTION OF DEATH BENEFITS**.

A. If an eligible dependent dies or otherwise becomes ineligible for death benefits, those benefits shall be redistributed to the remaining legal beneficiaries in accordance with section §11-7-1A.

B. If all eligible dependents cease to be eligible, any duty to pay the remaining death benefits payable under section §11-7-1A shall cease immediately.

**§11-7-3 VERIFICATION OF ELIGIBILITY FOR DEATH BENEFITS**. Upon request from the Claim Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary documentation to support their claim of eligibility.

**§11-7-4 BURIAL BENEFITS**. If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid $5,000.00 to cover burial expenses. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

## CHAPTER 11-8 – MEDICAL BENEFITS

**§11-8-1 ENTITLEMENT TO MEDICAL BENEFITS**. All covered workers are entitled to reasonable health care, supplies, and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

**§11-8-2 EMPLOYER'S RIGHT TO SELECT DOCTOR**.

A. Except in an emergency where the employer or Claim Administrator agent cannot be reached immediately, the employer retains the right to approve and/or recommend all health care treatment. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, the worker should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the arbitrator selected under Chapter 9 of this Title may allow and order such alternate care upon application and reasonable proof of the necessity thereof. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Employer retains the right to approve all chiropractic, osteopathic, naturopathic, acupuncture, or other non-traditional forms of treatment and to have such forms of treatment approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to the approval of the Claim Administrator, who may rely upon the advice of the consulting or attending physician.

C. After notice and opportunity for a hearing, the arbitrator selected under Chapter 9 of this Title may issue a decision relieving the Claim Administrator of the duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

**§11-8-3 RELEASE OF MEDICAL-RELATED INFORMATION**. Any worker, employer, or insurance carrier or their agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, insurance carrier, or their agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, including any third-party health care providers. Any institution or person releasing such information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information.

**§11-8-4 MEDICAL EXPENSES**. Medical expenses shall be limited to the usual and customary amounts charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Claim Administrator.

**§11-8-5 SETTLEMENT OF BENEFIT AMOUNTS**. The covered employer and the claimant may negotiate settlement of future medical expenses, income loss, impairment, death benefit and other benefits under this Title that are owed to the covered worker or to the worker's estate. For purposes of settling future medical expenses, the basis for settlement will be the value

of the current and future medical treatment plan, but will not to exceed $100,000 unless approved by the Advisory Council.

**§11-8-6 PETITION TO REOPEN CLAIM.** Once a claim for medical benefits or disability benefits under this Act has been closed, the worker may petition the administrator to re-open the claim for benefits within one (1) year after the date of claim closure based upon an objective material worsening of the underlying condition. The administrator will investigate and accept or deny the petition to re-open in the same manner as new claims submitted**. (Added by NPTEC 6/23/15)**

## CHAPTER 11-9 – ADJUDICATION OF DISPUTES

### §11-9-1 APPEALS FROM DECISIONS OF THE CLAIM ADMINISTRATOR.

A. The Claim Administrator shall administer this Title in accordance with its terms and conditions and specifically in accordance with Chapter 11-3. Any appeals from final decisions of the Claim Administrator shall follow the procedures set forth in this Title, Chapter 2-5 of the Tribal Code, and any other applicable rules and regulations adopted by the Nez Perce Tribal Executive Committee. If necessary, and to the extent they are not contrary to any provisions of this Title, the workers' compensation provisions contained in Title 72 of the Idaho Code may be utilized as guidelines by the arbitrator or by the trier of fact in a Tribal Court proceeding.

B. This code shall be interpreted neither in favor of the claimant or the Tribe. This code shall be interpreted neutrally. **(Subsection added by NPTEC 6/23/15)**

C. Consulting physicians and treating physicians' opinions shall be given equal weight. **(Subsection added by NPTEC 6/23/15)**

D. During any administration of claims under this code, or during the pendency of any appeal of a claims decision, the claimant is prohibited from contacting NPTEC regarding the administration of the claim. **(Subsection added by NPTEC 6/23/15)**

### §11-9-2 APPEAL PROCESS.

A. First Level – Binding Arbitration.

1. Any claimant shall appeal a final decision of the Claim Administrator by filing a contested claim within thirty (30) calendar days with the arbitrator or with Human Resources, and, if requested in writing, an administrative hearing shall be held. The Claim Administrator may seek a declaratory decision that the actions of the Claim Administrator are in compliance with this Title, and may request a hearing in writing. Any claimant appealing a decision of the Claim Administrator shall bear the burden of proof that the Claim Administrator's decision was not in compliance with, or was in violation of, this Title. The Claims Administrator's decision shall not be disturbed on appeal so long as the decision is supported by substantial evidence. Claimant's burden of proof shall be by a preponderance of the evidence. **(Subsection amended by NPTEC 6/23/16)**

2. The arbitrator will conduct all hearings and render a written decision in the dispute in accordance with the Administrative Procedures set forth in Chapter 2-5 of the Nez Perce Tribal Code. The decision of the arbitrator shall be final and binding on all parties except for an appeal to the Tribal Court as provided in this section.

3. The arbitrator for appeals from decisions of the Claim Administrator shall be a hearing officer under contract with a Tribal entity for the purpose of hearing employment grievances that arise under the Human Resource Manual, so long as that person is experienced with workers' compensation claims and appeals. If that person does not have experience with workers' compensation claims and appeals, the arbitrator shall be selected in accordance with the rules of the American Arbitration Association, or its successor.

B. Second Level – Tribal Court.

1. Any and all appeals from a decision of the arbitrator shall be submitted to and heard by the Tribal Court in accordance with the Administrative Procedures set forth in Chapter 2-5 of the Nez Perce Tribal Code.

2. The decision of the Tribal Court shall be final, and there shall be no further appeal of the Tribal Court's decision.

**§11-9-3 RIGHT TO REPRESENTATION**.

A. Claimants and the Claim Administrator shall have the right to be represented by an attorney in all matters presented before an arbitrator and/or the Tribal Court, and to cross-examine all witnesses and to review all evidence of any nature that may be related to the matter under consideration.

B. In the event either party chooses to be represented by an attorney during the arbitration, that party must provide notice of the representation at least five (5) business days before any hearing or other proceeding before the arbitrator. The notice must be given in writing to the involved Human Resources Office, and to the other party's attorney if the other party is known to be represented by an attorney.

C. An arbitrator who hears appeals under this Title shall not be bound by formal rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as, in the arbitrator's judgment, is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Nez Perce Tribe Workers' Compensation Benefit System. A full and complete record shall be kept of all proceedings before the arbitrator including all of the documentary evidence submitted and a tape recording of the proceedings.

**§11-9-4 ATTORNEY FEES AND OTHER ARBITRATION COSTS**.

A. If the arbitrator awards benefits to the claimant in excess of the Claim Administrator's original benefit determination (as communicated to the claimant), the claimant's attorney's fees will be approved with a maximum limit of 10% of the total benefit award, or

$5,000.00 (five thousand dollars), whichever is less. An award of attorney's fees to the claimant shall be over and above any benefits paid or provided to the claimant pursuant to this Title. Disputes over attorney fees must be filed with the arbitrator in accordance with Rule 51 of the Tribal Rules of Civil Procedure contained in Chapter 2-2 of the Nez Perce Tribal Code.

B. The claimant and the Claim Administrator may engage the services of physicians or experts for hearing purposes at the respective party's expense. The Claimant's costs for such physicians or experts may be reimbursable, in the discretion of the arbitrator, if the arbitrator awards benefits to the claimant in excess of the Claim Administrator's original benefit determination (as communicated to the claimant). The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Title authorizing the employer to approve and/or recommend all health care treatment.

# TITLE 12
# BUSINESS CODE
# CHAPTER 12-1
# LIMITED LIABILITY COMPANIES
**(adopted 3/27/07)**

## §12-1-1 Short Title

This Code shall be known and may be cited as the Nez Perce Tribe Limited Liability Companies Act.

## §12-1-2 Authority

(a) Article VIII, Section 2(c) of the Nez Perce Tribe Constitution gives the Nez Perce Tribal Executive Committee the power to make laws, including codes, ordinances, resolutions, and statutes.

## §12-1-3 Purposes

Limited Liability Companies may be organized under this Act for any lawful purpose or purposes.

## §12-1-4 Applicability

The provisions of this Act shall apply to all limited liability companies (LLC) organized hereunder or which elect to accept the provisions of this Act. Pre-existing LLC's shall be deemed to be in valid existence and allowed a ninety (90) day grace period from the date of the adoption of this Act to amend or conform their articles of organization in order to comply with the provisions herein.

## §12-1-5 Rules of Construction

(a) It is the policy of this Act to give maximum effect to the principle of freedom of contract and to the enforceability of articles of operation and other agreements.

(b) Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

## §12-1-6 Definitions

Terms used in this Act have the following meaning:

(a) "Articles of Operation" means an agreement in writing among all of the members as to the conduct of the business of a limited liability company and its relationships with its members.

(b) "Articles of Organization" means the articles filed under §12-1-14 and those articles as amended or restated.

(c) "Corporation" means a "domestic corporation" for profit organized under the laws

and ordinances of the Nez Perce Tribe and a foreign corporation formed under the laws of any other jurisdiction.

(d) "Court" means the Nez Perce Tribal Court.

(e) "Distribution" means a direct or indirect transfer by a limited liability company of money or other property to or for the benefit of its members in respect of their interests.

(f) "Entity" includes an individual, a general partnership, limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity and the Tribe.

(g) "Foreign" refers to limited liability companies and limited partnerships organized under the laws of a jurisdiction other than the Nez Perce Tribe.

(h) "NPTEC" means the Nez Perce Tribal Executive Committee.

(i) "Limited Liability Company" or "Domestic Limited Liability Company" means an organization formed under this Act, except as provided for in §12-1-53(a).

(j) "Limited Liability Company Interest" or "Interest in the Limited Liability Company" or "Member's Interest" means a member's rights in the limited liability company, including rights to distributions, profits and losses, and to participate in management, as specified in the Articles of Operation.

(k) "LLC" means a limited liability company.

(l) "Majority in Interest" means members contributing more than fifty percent (50%) of the value of total capital contributions to the limited liability company excluding any interest which is not to be counted as voting on a matter as described elsewhere in this Act.

(m) "Manager" or "Managers" means the entity or entities designated to manage the company and this is not necessarily determined by percentage of ownership in the company.

(n) "Member" means a person who has been admitted to membership in a limited liability company and who has not dissociated from the limited liability company.

(o) "Organizer(s)" means the entity(ies) which signs and delivers the articles of organization for filing to the Tribe.

(p) "State" includes a state, territory, or possession of the United States and the District of Columbia.

(q) "Tribe" means the Nez Perce Tribe.

(r) "Trust Land" means land held in trust by the United States for the benefit of the Nez Perce Tribe or its members.

**§12-1-7 Name**

(a) The name of a limited liability company as set forth in its articles of organization must contain the words "limited liability company" or end with the abbreviation “L.L.C.” or “LLC.” The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under §12-1-10, below.

(b) The name of a domestic LLC shall be distinguishable from any LLC or corporation previously organized under the laws of the Tribe.

**§12-1-8 Registered Office and Registered Agent**

A limited liability company's registered agent is the company's agent for service of process, notice, or demand required or permitted by law to be served on the company under the laws of the Tribe.

(a) Each LLC shall continuously maintain a registered office and a registered agent. The registered office may, but need not, be the same as any of its places of business. The agent may be the same person then serving in a designated office of the Tribe, rather than a specified person, if the Tribe is a Member in the LLC of which the Tribe's officer is the appointed agent.

(b) An LLC may change its registered office or registered agent, or both, by including the name of its registered agent and the street address of its registered office, as changed, in articles of amendment to its articles of organization or in articles of merger.

(c) The registered agent of a LLC may resign as registered agent by delivering to the Tribe for filing a written statement of resignation and the appointment by the LLC of another registered agent.

**§12-1-9 Tribe as Member**

(a) The Tribe shall form or become a member of a LLC formed under this Act only upon approval of such action by resolution of NPTEC.

(b) In no event shall any manager not a member of a LLC in which the Tribe is a member, bind the Tribe in any manner; provided that the Tribe's interest as a member may be bound by manager or member actions as stated in this Act and the Articles of Operation of the LLC.

(c) Nothing contained in this Act shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any manner; provided that the assets of the LLC in which the Tribe holds an interest may be subject to liabilities and claims unless otherwise provided herein. In no event shall any action taken by the Tribe concerning the exercise of any right or privilege or discharge of any duty with respect to an interest in a LLC be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as a member of the LLC.

(d) If the Tribe is the sole member of a LLC formed under this Act, that LLC shall possess the Tribe's sovereign immunity from suit except to the extent otherwise provided in its Articles of Operation.

**§12-1-10 Nature of Business**

A limited liability company may be organized under this Act for any lawful purpose. Unless otherwise provided in the articles of operation, a LLC organized and existing under this Act has the same powers as an individual to do all things necessary and convenient to carry out its business, including but not limited to all of the following:

(a) Sue and be sued, complain, and defend in its name, provided that if a LLC is wholly owned by the Tribe, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless the articles of organization otherwise provide.

(b) Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real, or personal property or any legal or equitable interest in real or personal property, wherever situated.

(c) Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property.

(d) Lend money, property, and services to, and otherwise assist, its members and managers, if any.

(e) Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other enterprise or entity.

(f) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or part of its property, franchises, and income.

(g) Lend money, invest and reinvest its funds, and receive and hold real or personal property as security for repayment.

(h) Conduct its business, locate offices, and exercise the powers granted by this Act inside or outside of the boundaries of the Nez Perce Reservation, including the Tribe's trust lands.

(i) Be a promoter, incorporator, partner, member, associate, or manager of any enterprise or entity.

(j) Elect or appoint managers, agents, and employees, define their duties, and fix their compensation.

(k) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, and benefit or incentive plans for any or all of its current or former members, managers, employees, and agents.

(l) Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes.

(m) Indemnify a member, manager, employee, officer or agent, or any other person.

(n) Transact any lawful business that the members or the managers find to be in aid of governmental policy.

(o) Make payments or donations, or do any other act not prohibited by law, that furthers the business of the LLC.

(p) Provide benefits or payments to members, managers, employees, and agents of the LLC, and to their estates, families, dependents or beneficiaries in recognition of the past services of the members, managers, employees, and agents of the LLC.

(q) Create, form, partner, or establish subsidiary or other entities, teaming agreements, joint ventures, and other arrangements to further any legally entitled business opportunity or available business development program.

**§12-1-11 Documents**

(a) Execution of Documents

(1) Except as otherwise provided in this Act, any document required or permitted by this Act to be delivered for filing to the Tribe shall be executed by any of the following:

(A) Any manager, if management of the LLC is vested in a manager or managers, or by a member, if management of the LLC is reserved to the members.

(B) All organizers of the LLC if the LLC has not been organized. Name and address of each organizer shall be provided.

(C) The name of the drafter of the document.

(2) The person executing the document shall sign it and state beneath or opposite the signature the person's name and capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the executing of the document need not be shown to nor filed with the Tribe.

(b) Filing

(1) Upon receipt of a document for filing under this Act, the Tribe shall ensure it meets the requirements herein and then shall stamp or otherwise endorse the date and time of receipt of the original, the duplicate copy, and, upon request, any additional copy received.

(2) If the Tribe refuses to file a request, the Tribe shall return it to the person tendering the document for filing within five (5) business days after the date on which the document is received by the Tribe for filing, together with a brief written explanation of the reason for refusal.

(3) Any document accepted by the Tribe shall be effective at the time of receipt unless a delayed effective date and/or time not more than ninety (90) days after receipt by the Tribe is specified in the document.

(4) Fees. The Tribe shall impose a $100.00 filing fee for each document filed and an annual $100.00 renewal fee during the life of the LLC.

(c) Certificate of Status

Any person may obtain from the Tribe, upon request, a certificate of status for either a domestic or a foreign LLC.

**§12-1-12 Execution by Judicial Act**

Any person who is adversely affected by the failure or refusal of any person to execute and file any articles or other document to be filed under this Act may petition the Nez Perce Tribal Court to direct the execution and filing of the articles or other document.

**§12-1-13 Interstate Application**

A LLC may conduct its business, carry on its operations and have and exercise the powers granted by this Act, in any sovereign Indian Nation, any state, territory, district or possession of the United States, or in any foreign jurisdiction.

**§12-1-14 Articles of Organization**

(a) One or more persons may organize a limited liability company by signing and delivering articles of organization to the Tribe for filing. The organizer(s) need not be members of the LLC at the time of organization or thereafter.

(b) A limited liability company shall have one or more members.

(c) The articles of organization shall contain all of and only the following information:

(1) A statement that the LLC is organized under this Act.

(2) A name for the LLC that satisfies the provisions of this Act.

(3) The street address of the registered office and the name of the registered agent at that office.

(4) If management of the LLC is vested in one or more managers, a statement to that effect.

(5) The name and address of each person organizing the LLC.

(6) Whether the LLC is wholly or partially owned by the Tribe.

(7) If owned in whole or in part by the Tribe, whether the LLC is to enjoy the

Tribe's sovereign immunity and the scope of any waiver of that immunity.

(8) If owned in whole or in part by the Tribe, the name of the person(s) duly appointed by the Tribe to exercise authority on behalf of the Tribe for purposes of the LLC.

(d) The Tribe shall assign each article of organization an identification number.

(e) Amendment. An LLC may amend its articles of organization at any time by delivering an amendment, with the fee filing fee, for filing to the Tribe.

(f) Effect of Delivery or Filing

(1) An LLC is formed when the articles of organization become effective under §12-1-11(b).

(2) The Tribe's filing of the articles of organization is conclusive proof that the LLC is organized and formed under this Act.

**§12-1-15 Agency Power of Members and Managers**

(a) Except as provided in paragraph (b), below:

(1) Each member is an agent of the LLC for the purpose of its business, but is not an agent of the other members.

(2) The act of any member, including the execution in the name of the LLC of any instrument for apparently carrying on in the ordinary course of business, the business of the LLC, binds the LLC in the particular matter, unless the person with whom the member is dealing has knowledge that the member has no authority to act in this matter.

(3) If the Tribe is a Member, the Tribe's authority shall be exercised only by the person(s) duly appointed in the Articles of Organization to exercise such authority on behalf of the Tribe for purposes of the LLC.

(b) If management of the LLC is vested in one or more managers:

(1) No member, solely by being a member, is an agent of the LLC or of the other members.

(2) Each manager is an agent of the LLC, but not of the members, for the purpose of its business. The act of any manager, including the execution in the name of the LLC of any instrument for apparently carrying on the ordinary course of business of the LLC, binds the LLC unless the manager has, in fact, no authority to act for the LLC in the particular matter, and the person with whom the manager is dealing has knowledge that the manager has no authority to act in the matter.

(c) No act of a member or, if management of the LLC is vested in one or more

managers, of a manager that is not apparently for the carrying on in the ordinary course of business, the business of the LLC shall bind the LLC unless in fact the act is authorized at the time of the transaction or at any other time.

**§12-1-16 Admissions of Members and Managers**

(a) Except as provided in paragraph (b), below, an admission or representation made by any member concerning the business of a LLC within the scope of the member's actual authority as provided in §12-1-15 may be used as evidence against the LLC in any legal proceeding.

(b) If management of the LLC is vested in one or more managers:

(1) An admission or representation made by a manager concerning the business of a LLC within the scope of the manager's authority as provided under §12-1-15 may be used as evidence against the LLC in any legal proceeding.

(2) The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the LLC in any legal proceeding.

**§12-1-17 Knowledge of or Notice to Member or Manager**

(a) Except as provided in paragraph (b) below, notice to any member of any matter relating to the business of a LLC, and the knowledge of a member acting in the particular matter, acquired while a member or known by the person at the time of becoming a member, and the knowledge of any member who reasonably could and should have communicated it to the acting member, operate as notice to or knowledge of the LLC.

(b) If management of the LLC is vested in one or more managers:

(1) Notice to any manager of any matter relating to the business of the LLC, and the knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the LLC.

(2) Notice to or knowledge of any member while the member is acting solely in the capacity of a member is not notice to or knowledge of the LLC.

**§12-1-18 Liability of Members to Third Parties**

The debts, obligations, and liabilities of a LLC, whether arising in contract, tort, or otherwise, shall be solely the debts, obligations, and liabilities of the LLC. Except as otherwise specifically provided in this Act, a member or manager of a LLC is not personally liable for any debt, obligation, or liability of a LLC, as defined in the Articles of Operation.

**§12-1-19 Parties to Action**

A member of a LLC is not a proper party to a proceeding by or against a LLC solely by reason of being a member of the LLC, except if any of the following exist.

(a) The object of the proceeding is to enforce a member's right against or liability to the LLC.

(b) The action is brought by a member under §12-1-20.

**§12-1-20 Authority to Sue**

Unless otherwise provided in the articles of operation, an action on behalf of a LLC may be brought in the name of the LLC by:

(a) One or more members of the LLC, if authorized by a majority in interest of members, excluding the vote of any member who has an interest in the outcome of the action that is adverse to the interest of the LLC.

(b) One or more managers of a LLC if the management of the LLC is vested in one or more managers, or if the managers are authorized to sue by a majority in interest if members.

**§12-1-21 Management**

(a) Unless the articles of organization vest management in one or more managers, management of the LLC shall be vested in the members subject to any provision in articles of operation or this Act restricting or enlarging the management rights and duties of any member or group of members.

(b) If the articles of organization vest management in one or more managers, management of the business or affairs of the LLC shall be invested in the manager or managers subject to any provisions in articles of operation or this Act restricting or enlarging the management rights and duties of any manager or group of managers. Unless otherwise provided in articles of operation, the manager or managers:

(1) Shall be designated, appointed, elected, removed, or replaced by a vote of a majority in interest of the members.

(2) Need not be members of the LLC nor individuals.

(3) Unless earlier removed or earlier resigned, shall not hold office until a successor is elected and qualified.

**§12-1-22 Duties**

Unless otherwise provided in articles of operation:

(a) No member or manager shall act or fail to act in a manner that constitutes any of the following:

(1) A willful failure to deal fairly with the LLC or its members in connection with a matter in which the member or manager has a material conflict of

interest.

(2) A violation of criminal law, unless the member or manager had reasonable cause to believe that the person's conduct was lawful or no reasonable cause to believe that the conduct was unlawful.

(3) A transaction from which the member or manager derived an improper personal profit.

(4) Willful misconduct.

(b) Every member and manager shall account to the LLC and hold as trustee for it any improper personal profit derived by that member or manager without the consent of a majority of the disinterested members or managers, or other persons participating in the management of the LLC, from any of the following:

(1) A transaction connected with the organization, conduct, or winding up of the LLC.

(2) A use by a member or manager of the property of a LLC, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as member or manager.

(3) Articles of operation may impose duties on its members and managers that are in addition to, but not in abrogation of, those provided in paragraph (a), above.

**§12-1-23 Limitation of Liability and Indemnification**

In this Section, "expenses" mean expenses of defending a lawsuit, including attorney's fees, and any civil judgment or penalty, or settlement payment in lieu thereof, paid in connection with a lawsuit against a member or manager in such capacity.

(a) A LLC shall indemnify or allow expenses to each member and each manager for all reasonable expenses incurred with respect to a proceeding if that member or manager was a party to the proceeding in the capacity of a member or manager.

(b) Articles of Operation may alter or provide additional rights to indemnification or allowance of expenses to members and managers.

(c) Notwithstanding paragraphs (a) and (b), above, a LLC may not indemnify a member or manager unless it is determined that the member or manager did not breach or fail to perform a duty to the LLC as provided in §12-1-22.

(d) Unless otherwise provided in articles of operation:

(1) A member or manager shall be conclusively presumed not to have breached or failed to perform a duty to the LLC to the extent that the member or manager has been successful on the merits or otherwise in the defense of the proceeding.

(2) In situations not described in paragraph (1), above, the determination of whether member or manager has breached or failed to perform a duty to the LLC shall be made by the vote of a majority in interest of the members, excluding any member who is a party to the same or related proceeding unless all members are parties.

**§12-1-24 Voting**

(a) Unless otherwise provided in articles of operation or this Section, and subject to paragraph (b), below, an affirmative vote, approval, or consent as follows shall be required to decide any matter connected with the business of a LLC.

(1) If management of a LLC is reserved to the members, an affirmative vote, approval, or consent by majority in interest of members.

(2) If the management of a LLC is vested in one or more managers, the affirmative, vote, consent, or approval of more than fifty percent (50%) of the managers.

(b) Unless otherwise provided in articles of operation or this Act, the affirmative vote, approval, or consent of all members shall be required to do any of the following:

(1) Amend the articles of organization.

(2) Issue an interest in a LLC to any person.

(3) Adopt, amend, or revoke articles of operation.

(4) Allow a LLC to accept any additional contribution from a member.

(5) Allow a partial redemption of an interest in a LLC under §12-1-33.

(6) Value contributions of members under §12-1-28.

(7) Authorize a manager, member, or other person to do any act on behalf of the LLC that contravenes the articles of operation.

(c) Unless otherwise provided in articles of operation if any member is precluded from voting with respect to a given matter, the value of the contribution represented by the interest in the LLC with respect to which the member would otherwise have been entitled to vote shall be excluded from the total contributions made to the LLC for purposes of determining the fifty percent (50%) threshold under §12-1-6(j) for that matter.

(d) Unless otherwise provided in articles of operation or this Section, if all or part of an interest in the LLC is assigned under §12-1-42, the assigning member shall be considered the owner of the assigned interest for purposes of determining the 50% threshold under §12-1-6(j) until the assignee of the interest in the LLC becomes a member under §12-1-44.

**§12-1-25 Records and Information**

(a) A LLC shall keep at its principal place of business all of the following:

(1) A list, in alphabetical order, of each past and present member and, if applicable, manager.

(2) A copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney under which any articles were executed.

(3) A record of all matters referred to in this Act as maintained in such records which are not otherwise specified in the articles of operation.

(b) Upon reasonable request, a member may, at the member's own expense, inspect and copy during ordinary business hours any LLC record unless otherwise provided in articles of operation.

(c) Members or, if the management of the LLC is vested in one or more managers, managers shall provide true and full information of all things affecting the members to any member or to the legal representative of any member upon reasonable request of the member or the legal representative.

(d) Failure of a LLC to keep or maintain any of the records of information required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the LLC.

**§12-1-26 Admission of Members**

(a) In connection with the formation of a LLC, a person acquiring LLC interest is admitted as a member upon formation unless the articles of operation otherwise provides.

(b) After the formation of a LLC, a person acquiring a LLC interest is admitted as a member of the LLC as specified in the articles of operation or, if not so specified, by a majority in interest of members.

**§12-1-27 Dissociation**

(a) A person ceases to be a member of a LLC upon the occurrence of and at the same time of any of the following events:

(1) The member withdraws by voluntary act.

(2) The member is removed as a member in accordance with articles of operation or this Act.

(3) Unless otherwise provided in articles of organization or by the written consent of all members at the time of the event, the member does any of the following:

(A) Makes an assignment for the benefit of the creditors.

(B) Files a voluntary petition in bankruptcy.

(C) Becomes the subject of an order for relief under the federal bankruptcy laws or state or Tribe insolvency laws.

(D) Fails to gain dismissal of any federal bankruptcy or state or Tribe insolvency proceeding within 120 days of commencement of an involuntary proceeding.

(4) Unless provided in articles of operation or by the written consent of all members, if the member is an individual:

(A) The member's death.

(B) The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate.

(5) Unless otherwise provided in articles of operation or by written agreement or by the written consent of all members at the time, if the member is a trust, corporation, partnership, or limited liability company upon liquidation, dissolution, or termination.

(b) The members may provide in articles of operation for other events the occurrence of which result in a person ceasing to be a member of the LLC.

(c) Unless articles of operation provide that a member does not have the power to withdraw by voluntary act from a LLC, the member may do so at any time by giving written notice to the other members or as provided in articles of operation. If the member has the power to withdraw but the withdrawal is a breach of the articles of operation, the LLC may offset the damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in articles of operation or otherwise available under applicable law.

**§12-1-28 Contributions**

(a) A member's contributions to a LLC may consist of cash, property, or services rendered, or promissory notes or other written obligations to provide cash or property or to perform services.

(b) The value of a member's contribution shall be determined in the manner provided in articles of operation. If the articles of operation do not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the members, shall be properly reflected in the records and information kept by the LLC under §12-1-25(a). The value of contributions so determined shall be binding and conclusive on the LLC and its members.

**§12-1-29 Liability for Contribution**

(a) An obligation of a member to provide cash or property or to perform services as a contribution to a LLC is not enforceable unless specified in a writing signed by the member.

(b) Unless otherwise provided in articles of operation, a member is obligated to a LLC to perform any enforceable promise to provide cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not provide cash, property, or services as promised, the member is obligated at the option of the LLC to provide cash equal to that portion of the value of the stated contribution that has not been fulfilled.

(c) Unless otherwise provided in articles of operation, a member's obligation to provide cash or property or perform services as a contribution to the LLC may be compromised only by the written consent of all of the members.

**§12-1-30 Allocation of Profits and Losses**

The profits and losses of a LLC shall be allocated among the members in the manner provided in the articles of operation. If the members do not enter into articles of operation or the articles of operation do not so provide, profits and losses shall be allocated on the basis of the value of the contributions made by each member.

**§12-1-31 Interim Distributions**

Except as provided in this Act, a member is entitled to receive distributions from a LLC before the member's dissociation from the LLC and before its dissolution and winding up to the extent and at the times or upon the events specified in articles of organization, or to the extent and at the times determined by the members or managers.

**§12-1-32 Allocation of Distributions**

Distributions of cash or other assets of a LLC shall be allocated among the members as provided in articles of operation, or if the articles of operation do not provide, on the basis of the value of the contributions made by each member.

**§12-1-33 Distribution Upon Partial Redemption**

Except as provided in this Act, upon the distribution in partial liquidation of a member's interest, the redeeming member is entitled to receive the amount to which the member is entitled under articles of operation and, if not otherwise provided in articles of operation, the fair value of the redeemed interest based on the member's right to share in distributions from the LLC.

**§12-1-34 Distribution Upon Dissociation**

Except as otherwise provided in this Act, upon an event of dissociation under §12-1-27 that does not cause dissolution of the LLC, a dissociating member is entitled to receive any distribution to which a member is entitled under articles of operation and, if not otherwise provided in articles of operation the fair value of the member's interest in the LLC based on the member's rights to share in distributions from the LLC.

**§12-1-35 Distribution in Kind**

Unless otherwise provided in articles of operation:

(a) A member may not demand and receive any distribution from a LLC in any form other than cash.

(b) A member may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

**§12-1-36 Right to Distribution**

At the time that a member becomes entitled to receive a distribution from a LLC, the member has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution.

**§12-1-37 Limitations of Distributions**

(a) A LLC may not declare or make a distribution to any of its members, if after giving effect to the distribution, any of the following would occur.

(1) The LLC would be unable to pay its debts as they become due in the usual course of business.

(2) The fair market value of the LLC's total assets would be less than the sum of its total liabilities plus the amount that would be needed for the preferential rights upon dissolution of members, if any, unless articles of operation provides otherwise.

(b) An LLC may base a determination that a distribution is not prohibited by paragraph (a), above, on any of the following:

(1) Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable under the circumstances.

(2) A fair market valuation or other method that is reasonable under the circumstances.

(c) An LLC's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is at parity with the LLC's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This Section does not affect the validity or priority of a security interest in a LLC's property that is created to secure the indebtedness to the member.

**§12-1-38 Liability for Wrongful Distribution**

(a) Except as provided in paragraph (b), below, other than the Tribe, a manager who votes or assents to a distribution in violation of §12-1-37 or of articles of operation is personally liable to the LLC for the amount of the excess distribution, subject to contribution from all other managers or members participating in such action.

(b) A proceeding under this Section is barred unless it is brought within two (2) years after the date on which the effect of the distribution was measured under §12-1-31.

**§12-1-39 Ownership of LLC Property**

(a) All property originally transferred to or acquired by a LLC is property of the LLC and not the members individually.

(b) Property acquired with LLC funds is presumed to be LLC property.

(c) Property may be acquired, held, and conveyed in the name of the LLC.

**§12-1-40 Transfer of Property**

The property of a LLC may be transferred by an instrument of transfer executed by any member in the name of the LLC, unless management is vested in managers, in which case the document of transfer shall be executed by a manager, subject to any limitation that may be imposed by the articles of operation.

**§12-1-41 Nature of Interest**

A LLC interest is personal property.

**§12-1-42 Assignment of LLC Interest**

(a) Unless otherwise provided in articles of operation:

(1) A LLC interest is assignable in whole or in part.

(2) An assignment of a LLC interest entitles the assignee to receive only the distributions and to share in the allocations of profits and losses to which the assignee would be entitled with respect to the assigned interest.

(3) An assignment or a LLC interest does not dissolve the LLC.

(4) Unless and until the assignee becomes a member of the LLC under §12-1-44, the assignment of a LLC interest does not entitle the assignee to participate in the management or exercise rights of a member.

(5) Unless and until the assignee of a LLC interest becomes a member of the LLC under §12-1-44, the assignor continues to be a member.

(6) The assignor of a LLC interest is not released from any personal liability arising under this Act as a member of the LLC solely as a result of the assignment.

(b) Unless otherwise provided in articles of operation, the granting of a security interest, lien, or other encumbrance in or against any or all of a member's LLC interest is not assignable and shall not cause the member to cease to have the power to exercise any rights or powers of a member.

**§12-1-43 Rights of Judgment Creditor**

On application to a court of competent jurisdiction, including a court other than the Nez Perce Tribal Court, having valid jurisdiction over the member by any judgment creditor of a member, the court may charge the LLC interest of any member other than the Tribe with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's LLC interest. This Section does not deprive any member of the benefit of any exemption laws applicable to the LLC interest. In no event shall the Tribe's interest be attachable in abrogation of its sovereign immunity.

**§12-1-44 Right of Assignee to Become a Member**

(a) Unless otherwise provided in articles of operation, an assignee of a LLC interest may become a member only if the other members unanimously consent.

(b) An assignee of a LLC interest who becomes a member has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under articles of operation and this Act.

(c) Unless otherwise provided in articles of operation, an assignor of a LLC interest is not released from any liability to the LLC without the written consent of all the members, whether or not the assignee becomes a member.

**§12-1-45 Powers of Legal Representative**

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his or her person or property, the member's personal representative, administrator, guardian, conservator, trustee, or other legal representative shall have all the rights of an assignee of the member's interest. If a member is a corporation, trust, partnership, limited liability company, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

**§12-1-46 Dissolution**

A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first of the following:

(a) The occurrence of events specified in articles of operation.

(b) The written consent of all members.

(c) An event of dissociation of a member, unless otherwise provided in articles of operation or continuation is consented to by all remaining members.

(d) Entry of a decree of judicial dissolution under §12-1-47.

**§12-1-47 Judicial Dissolution**

In a proceeding by or for a member, the Court may order dissolution of a LLC if any of the following is established.

(a) That it is not reasonably practicable to carry on the business of the LLC.

(b) That the LLC is not acting in conformity with articles of operation.

(c) That one or more managers are acting or will act in a manner that is illegal, oppressive, or fraudulent.

(d) That one or more members in control of the LLC are acting or will act in a manner that is illegal, oppressive, or fraudulent.

(e) That LLC assets are being misapplied or wasted.

**§12-1-48 Winding Up**

A dissolved LLC continues its legal existence but may not carry on any business except that which is appropriate to wind up and liquidate its business.

(a) Unless otherwise provided in articles of operation:

(1) The business of the LLC may be wound up by any of the following:

(A) The members or managers who have authority to manage the LLC before dissolution.

(B) In a judicial dissolution, the person(s) designated by the Court.

(2) The persons winding up the business of the LLC may do all of the following in the name of and on behalf of the LLC:

(A) Collect its assets.

(B) Prosecute and defend suits.

(C) Take any action necessary to settle and close the business of the LLC.

(D) Dispose of and transfer the property of the LLC.

(E) Discharge or make provision for discharging the liabilities of the LLC.

(F) Distribute to the members any remaining assets of the LLC.

(b) Dissolution of a LLC does not do any of the following:

(1) Transfer title to the LLC's property.

(2) Prevent transfer of all or part of a member's interest.

(3) Prevent commencement of a civil, criminal, executive, or investigatory proceeding by or against the LLC.

(4) Abate or suspend a civil, criminal, executive, or investigatory proceeding pending by or against the LLC at the time of dissolution.

(5) Terminate the authority of the registered agent of the LLC.

(6) Alter the limited liability of a member.

**§12-1-49 Distribution of Assets**

Upon the winding up a LLC, the assets shall be distributed in the following order:

(a) To creditors, including to the extent permitted by law, members, and former members in satisfaction of liabilities of the LLC.

(b) Unless otherwise provided in articles of operation, to members and former members in satisfaction of liabilities for distributions under §§s 12-1-31, 12-1-33, and 12-1-34.

(c) Unless otherwise provided in articles of operation, to members and former members first for the return of their contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the LLC before dissolution.

**§12-1-50 Articles of Dissolution**

After the dissolution of a LLC under §12-1-46, the LLC may file articles of dissolution with the Tribe that includes the following:

(a) The name of the LLC.

(b) The date of filing of its articles of organization.

(c) The statutory grounds under Section 12-1-46 for dissolution.

(d) The delayed effective date of the articles of dissolution under §12-1-11(b), if applicable.

**§12-1-51 Known Claims Against Dissolved LLC**

(a) A dissolved LLC may notify its known claimants in writing of the dissolution and specify a procedure for making claims.

(b) A claim against the LLC is barred if:

(1) A claimant who was given written notice under paragraph (a), above, does not deliver the claim, in writing, to the LLC by the deadline specified in the notice.

(2) A claimant whose claim is rejected by the LLC does not commence a proceeding to enforce the claim within ninety (90) days after receipt of the rejection notice.

**§12-1-52 Unknown or Contingent Claims**

A claim not barred under §12-1-51 may be enforced:

(a) Against the dissolved LLC, to the extent of its undistributed assets.

(b) If the dissolved LLC's assets have been distributed in liquidation, against a member of the LLC, other than the Tribe, to the extent of the member's proportionate share of the claim or of the assets of the LLC distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this Section may not exceed the total value of assets at the time distributed to the member.

**§12-1-53 Merger**

(a) Unless the context required otherwise, in this Act, LLC includes a domestic LLC and a foreign LLC.

(b) Unless otherwise provided in articles of operation one or more LLC's may merge with or into one or more LLC's or one or more other foreign LLC's provided in the plan of merger.

(c) Interests in a LLC that is a party to a merger may be exchanged for or converted into cash, property, obligations, or interest in the surviving LLC.

**§12-1-54 Approval of Merger**

(a) Unless otherwise provided in articles of operation a LLC that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of a majority in interest of members.

(b) Unless otherwise provided in articles of operation the manager or managers of a LLC may not approve a merger without also obtaining the approval of the LLC's members under paragraph (a), above.

(c) Each foreign LLC that is a party to a proposed merger shall approve the merger in the manner and by the vote required by the laws applicable to the foreign LLC.

(d) Each LLC that is a party to the merger shall have any rights to abandon the merger that are provided for in the plan of merger or in the laws applicable to the LLC.

(e) Upon approval of a merger, the LLC shall notify each member of the approval and of the effective date of the merger.

**§12-1-55 Plan of Merger**

Each LLC that is a party to a proposed merger shall enter into a written plan of merger to be approved under §12-1-54.

**§12-1-56 Articles of Merger**

(a) The surviving LLC shall deliver to the Tribe articles of merger, executed by each party to the plan of merger, that include all of the following:

(1) The name and state or jurisdiction of organization for each LLC that is to merge.

(2) The plan of merger.

(3) The name of the surviving or resulting LLC.

(4) A statement as to whether the management of the surviving LLC will be reserved to its members or vested in one or more managers.

(5) The delayed effective date of the merger under §12-1-11(b), if applicable.

(6) A statement whether the Tribe is the sole member.

(7) If the Tribe is sole member, a statement as to whether the LLC enjoys the Tribe's sovereign immunity.

(8) A statement that the plan of merger was approved under §12-1-54.

(b) A merger takes effect upon the effective date of the articles of merger.

**§12-1-57 Effects of Merger**

A merger has the following effects:

(a) The LLC's that are parties to the plan of merger become a single entity, which shall be the entity designated in the plan of merger as the surviving LLC.

(b) Each party to the plan of merger, except the surviving LLC, ceases to exist.

(c) The surviving LLC possesses all of the rights, privileges, immunities, and powers of each merged LLC and is subject to all of the restrictions, disabilities, and duties of each merged LLC.

(d) All property and all debts, including contributions, and each interest belonging to or owed to each of the parties to the merger are vested in the surviving LLC without further act.

(e) Title to all real estate and any interest in real estate, vested in any party to the merger, does not revert and is not in any way impaired because of the merger.

(f) The surviving LLC has all the liabilities and obligations of each of the parties to

the plan of merger and any claim existing or action or proceedings pending by or against any merged LLC may be prosecuted as if the merger had not taken place, or the surviving LLC may be substituted in the action.

(g) The rights of creditors and any liens on the property of any party to the plan of merger survive the merger.

(h) The interests in a LLC that are to be converted or exchanged into interest, cash, obligations, or other property under the terms of the plan of merger are converted and the former interest holders are entitled only to the rights provided in the plan of merger of the rights otherwise provided by law.

(i) The articles of organization of the surviving LLC are amended to the extent provided in the articles of merger.

**§12-1-58 Right to Object**

Unless otherwise provided in the articles of operation, upon receipt of the notice required by §12-1-54(e), a member who did not vote in favor of the merger may, within twenty (20) days after the date of the notice, voluntarily disassociate from the LLC under §12-1-27(c) and receive fair value for such member's LLC interest under §12-1-34.

# CHAPTER 12-2
# NEZ PERCE TRIBE NONPROFIT CORPORATIONS CODE
**(adopted 5/26/09)**

## §12-2-1 Title

This Code shall be known as the Nez Perce Tribe Nonprofit Corporations Code.

## §12-2-2 Purpose

The purpose of this Code is to enable the Nez Perce Tribe to form a nonprofit corporation and/or nonprofit corporations for the purpose of performing certain exclusive functions for the benefit of Nez Perce Tribal members, and other residents of the Nez Perce Reservation, and enabling such nonprofit corporations to achieve tax-exempt status pursuant to the Internal Revenue Code, 26 U.S.C. § 501(c)(3).

## §12-2-3 Definitions

For the purpose of this Code, unless the context otherwise requires, the terms defined in this section of this Code shall have the meanings ascribed to them as follows:

(a) "Articles" means the original Articles of Incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.

(b) "Bylaws" means the rules adopted for the regulations or management of the internal affairs of the Nonprofit Corporation, regardless of how designated.

(c) "Directors" means the persons vested with the general management of the affairs of the Nonprofit Corporation, regardless of how they are designated.

(d) "Member" means an entity, either corporate or natural, having any membership shareholder rights in a Nonprofit Corporation in accordance with its accordance with its articles, bylaws, or both.

(e) "Nez Perce Tribe Nonprofit Corporation" or "Nonprofit Corporation" means a nonprofit corporation formed by those elected officials of the Nez Perce Tribe Executive Committee specified in Section 12-2-5 herein for a tribal purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration directly or indirectly, to its shareholders or members as such, and having no capital stock.

(f) “NPTEC” means the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe.

(g) "Secretary" means the Secretary of the NTPEC.

## §12-2-4 Purposes of a Nonprofit Corporation

A Nonprofit Corporation may be formed under this Code for exclusive operations for one or more of the following purposes: charitable, educational, scientific, literary, or any other

purpose allowed for organizations subject to federal income tax exemptions under Section 501(c)(3) of Title 26 of the United States Code.

**§12-2-5 Incorporators**

The Chairman, Vice-Chairman and Treasurer of the NPTEC shall serve as the three incorporators of each Nez Perce Tribe Nonprofit Corporation established under this Code.

**§12-2-6 Articles of Incorporation**

(a) Execution and Approval. Each Nonprofit Corporation authorized under this Code shall be established by Articles of Incorporation signed and acknowledged by each of the incorporators and shall be approved by resolution of the NPTEC.

(b) Contents. The articles of the Nonprofit Corporation organized under this Code shall state:

(1) The name of the Nonprofit Corporation;

(2) The purpose of the Nonprofit Corporation;

(3) That the Nonprofit Corporation does not afford pecuniary gain, incidentally or otherwise, to its members;

(4) The period of the duration of corporate existence, which may be perpetual;

(5) The location, by city, town, or other community, of the Nonprofit Corporation's principal office, which shall be located within the Nez Perce Reservation, and its registered office(s);

(6) The name and address of its registered agent;

(7) The name and address of each incorporator;

(8) The number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors, in accordance with Section 12-2-11of this Code, and setting forth the authority of the NPTEC to appoint and remove such directors and to fill director vacancies.

(9) Any other provision, consistent with the Nez Perce Tribal Code for regulating the business of the Nonprofit Corporation or the conduct of the corporate affairs.

**§12-2-7 Corporate Name**

A Nonprofit Corporation organized pursuant to this Code may use any corporate name authorized by the NPTEC, provided, that it shall not be necessary for a Nonprofit Corporation to use the word "corporation", "company", "incorporated," or "limited" or an abbreviation of one of those words in its corporate name.

**§12-2-8 Corporate Capacity and Powers**

A Nonprofit Corporation incorporated under this Code shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation.

**§12-2-9 Filing of Articles**

The Articles of Incorporation shall be filed in the Office of the NPTEC Secretary, with a copy to the Nez Perce Tribe Office of Legal Counsel. If the articles conform to law, the Office of the Secretary shall record the Articles and issue and record a certificate of incorporation. The certificate shall state the name of the Nonprofit Corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Secretary of the certificate of incorporation.

**§12-2-10 Amendment of Articles**

(a) Every Nonprofit Corporation wishing to change its name or otherwise amend its Articles of Incorporation shall make such change or Amendment subject to the approval of the NPTEC which approval shall be granted so long as the amendment conforms to the requirements of this Code and is consistent with the purpose for which the Nonprofit Corporation was established.

(b) The Articles of Incorporation shall be deemed effective upon issuance of the certificate of incorporation, and shall be deemed amended upon issuance of the certificate of amendment by the NPTEC Secretary.

**§12-2-11 Organizational Meeting**

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, performing other acts in the internal organization of the Nonprofit Corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a certificate of incorporation by the Secretary. The initial bylaws adopted by the board of directors shall remain effective until legally amended or repealed at a board of directors meeting duly called for the specific purpose of amending or repealing the bylaws.

**§12-2-12 Disposition of Assets**

Notwithstanding any other provision of the Nez Perce Tribal Code, or the Articles of Incorporation of a Nonprofit Corporation established pursuant to this Code, the Articles of Incorporation of each Nonprofit Corporation which is an exempt charitable, literary, educational, or scientific organization as described in Section 501(c)(3) of the Federal Revenue Code of 1954, as amended, shall be conclusively deemed to contain the following provision: Upon the dissolution of the Nonprofit Corporation, the board of directors shall, after paying or making provision for the payment of all of the liabilities of the Nonprofit Corporation, dispose of all of the assets of the Nonprofit Corporation exclusively for the purposes of the Nonprofit Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, literary or scientific purposes as shall at the time qualify as an exempt

organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law, as the board of directors shall determine. Any such assets not so disposed of shall be disposed of by the courts of the Nez Perce Tribe, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

### §12-2-13 General Corporate Laws Applicable

The provisions of the Nez Perce Tribal Code law to corporations shall generally apply to Nonprofit Corporations organized pursuant to this Code except where a different rule is provided in this Code. Absent such applicable law, the general corporate law of the state of Idaho may be used as a guideline. Provided, that Nonprofit Corporations formed exclusively for charitable, literary, educational, or scientific purposes which qualify as a Nonprofit Corporation exempt from federal taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, as amended, or any successor provision to this section, shall be exempt from payment of any filing fees, franchise fees or license fees.

### §12-2-14 Report to Board of Trustees

Each Nonprofit Corporation shall file an annual report with the Secretary of the NPTEC, with a copy to the Treasurer of the NPTEC, within 90 days following the end of each calendar year, which shall be subject to review of the NPTEC. Such report shall incorporate information that meets or exceeds the reporting requirements imposed by the Internal Revenue Service on nonprofit corporations exempt from federal taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code, as amended or any success or provision to this section. The annual report shall be made available to the public upon request.

### §12-2-15 Revocation

The NPTEC retains the authority to revoke any Articles of Incorporation issued pursuant to this Code. Revocation shall only be for cause, which shall require a finding by the NPTEC that the Nonprofit Corporation has engaged in conduct, operations or activities that violate this Nonprofit Corporations Code, the Articles of Incorporation of the Nonprofit Corporation, the law or regulations relevant to the 501 (c)(3) status of such Nonprofit Corporation, or that involve financial impropriety by or on behalf of the Nonprofit Corporation. Revocation of the Articles of Incorporation of a Nonprofit Corporation by the Board of Trustees shall be by resolution approved by at least six (6) members of the NPTEC.

### §12-2-16 Effective Date

This Code shall be in full force and effect according to its terms from and after the date of enactment by the NPTEC.

### §12-2-17 Provisions as Cumulative

The provisions of this Code shall be cumulative to existing law.

**§12-2-18 Severability**

The provisions of this Code are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Code.

# TITLE 13
# NEZ PERCE TRIBE SOLID WASTE MANAGEMENT CODE
**(adopted by NPTEC 2/26/08)**

## CHAPTER 13-1 AUTHORITY, PURPOSE, TITLE AND SCOPE

### §13-1-1 Authority and Purpose

The purpose of this code is to establish an affordable, economical and environmentally safe solid waste disposal system for Nez Perce Tribal lands, people, home sites, businesses, churches and government facilities with proper and affordable disposal as a main goal.

### §13-1-2 Short Title

This ordinance shall be known as and may be cited as "The Nez Perce Tribe Solid Waste Management Code" (herein "the code"). Definitions of words used herein are provided in Chapter 13-2.

### §13-1-3 Scope of Code

(a) This ordinance shall apply to all tribally owned lands, structures, home sites, businesses, persons and facilities within the boundaries of the reservation area.

(b) This Code is enacted pursuant to the sovereign tribal powers expressly delegated to the Nez Perce Tribal Executive Committee (NPTEC) in Article III of the Tribe's Constitution, which authorizes the NPTEC to manage and otherwise deal with Tribal lands, natural resources and property; to promulgate and enforce ordinances providing for the health, safety, and welfare of the Tribe and its members and to protect the environment.

### §13-1-4 Solid Waste Policies

(a) The Tribe desires to manage and regulate collection, storage, transportation, and disposal of its solid waste on the Reservation in order to protect the tribal environment and the health and welfare of tribal members living on or visiting the reservation.

(b) The Tribe and certain Federal agencies may be required by Federal law to comply with the disposal of solid wastes on the Reservation under the Federal Solid Waste Disposal Act (herein "the SWDA"), as amended by the Resource Conservation and Recovery act (herein "RCRA"), 42 U.S.C.A Sects. 6901-6992; and more specifically, subchapter IV, "State or Regional Solid Waste Plans", 42 U.S.C.A. Sects. 6941-6949(a) or SEDA Sects. 4001-4010.

(c) These Federal laws also include the various solid waste regulations promulgated there under by the U.S. Environmental Protection Agency (herein "EPA"), including the comprehensive final rules and regulations contained inn 40 CFR Part 285, (herein "the part 258 Criteria"), for the location, design, operation, closure, post-closure, and financial assurance requirements for municipal solid waste landfills.

(d) The Tribe intends by the adoption of this Code, to comply with the SWDA, and the Part 258 Criteria. Once the Tribe's Solid Waste Management Plan is adopted by the NPTEC, the Tribe shall apply to EPA for its approval of the Tribe's solid waste program as

required under this Code, pursuant to the requirements of 40 CFR Part 258 Criteria. The Code prohibits the disposal of any solid waste except in MSWLFs which comply with the Part 258 Criteria. Disposal of solid waste at "open dumps" is prohibited under this Code.

### §13-1-5 Sovereign Immunity

Neither the Code, nor any action or agreement of the Tribe regarding this Code shall be construed as, or is intended to be a, waiver or modification of any sovereign immunity now enjoyed by the Tribe, or a consent by the Tribe to jurisdiction or suit against it.

## CHAPTER 13-2 DEFINITIONS

### §13-2-1 Definitions

The following definitions apply generally to the provisions of this Code.

(a) Ashes: The residue from the burning of wood, coal, coke or other combustible materials;

(b) Bulky Waste: Items weighing over sixty pounds and any materials over four feet in length, including but not limited to, stoves, refrigerators, water tanks, washing machines, furniture, appliances, bedsprings and mattresses, motor vehicle bodies, dirt, wood, wire, tires, rock, loose branches and large dead animals (over ten pounds).

(c) Bundle: Small trees, shrub and brush trimmings or newspapers and magazines securely tied together forming an easily handled package not exceeding four feet in length or thirty-five pounds in weight.

(d) Business: An individual, partnership, association, corporation, company, trust, firm, estate, joint venture, unit, agent, public agency, industry, or other legal entity operating as a self contained independent enterprise, such as a beauty shop, retail shop, professional office, etc.

(e) CFC Appliance: Appliance that contains chlorofluorocarbons.

(f) Claimant: Person who has filed a claim under tribal solid waste code §13-7-1 (i) for an exemption to fees.

(g) Collection Unit: A tribal resident and/or agent who generates waste and requires collection and disposal of that waste from a place of residence or place of business located within the reservation boundaries.

(1) Residential Unit: A dwelling within the reservation boundaries occupied by a person or group of persons. A residential unit shall be deemed occupied when either occupied or producing solid waste. Each unit with in an apartment, condominium or mobile home park dwelling shall be treated as an individual residential unit.

(2) Business Unit: Each space occupied by an individual business. A business shall be deemed occupied when either occupied or producing solid waste.

(h) *inadvertently missed in original*

(i) Collection Vehicle: A mobile collection vehicle having the capacity sufficient to receive and dispose of all household waste deposited at rural container sites or at individual collection units for disposal at a disposal site.

(j) Collector: The person holding a license, franchise or contract with the Tribe, and/or employed by the Tribe and thereby authorized or designated by the Tribe to collect, handle, transport and dispose of solid waste.

(k) Composting: The biological decomposition of organic waste under controlled conditions.

(l) Containers:

(1) Bags: Plastic sacks designed to store solid waste with sufficient wall strength to maintain physical integrity when lifted by the top. Total weight of bag and its contents shall not exceed thirty-five pounds for collection services.

(2) Manual Container (Garbage Can): A receptacle with a capacity of greater than twenty gallons, but not more than thirty-six gallons tapered so that it is larger at the top than at the bottom, made of metal, plastic, or fiberglass having a tight fitting lid which completely covers the top to the container, rodent proof and not exceeding sixty pounds of gross loaded weight and having handles of adequate strength for lifting.

(3) Mechanical Container: A receptacle designed for loose solid waste to be lifted by mechanical means so that its contents can be emptied.

(4) Compactor Container: A receptacle designed to compact solid waste and to be moved by mechanical means so that its contents can be emptied.

(m) Disposal: Disposing of solid waste in a disposal site; disposal of solid waste for resource recovery or transportation to another site or facility.

(n) Disposal Site: A waste facility of site where solid waste is disposed of, reduced or recovered, such as sanitary landfills, transfer stations, incinerators and resource recovery facilities which are licensed or approved to receive for processing or final disposal of solid waste by all governmental bodies and agencies having jurisdiction.

(o) Generator: Any person, business or other entity, which produces solid waste within the collection area.

(p) Hazardous Waste: Any chemical, compound, mixture, substance, or article which is designated by the United States Environmental Protection Agency or other appropriate agency of the federal government or State of Idaho, to be "hazardous" as that term is defined by or pursuant to law.

(q) Hazardous Waste, Conditionally Exempt: Small quantities of hazardous waste

generated in the household waste stream, acceptable by EPA standards for disposal in MSW landfills because of its quantity, concentration and characteristics.

(r) Hazardous Waste Generator: Any resident of a residential or business unit in the Nez Perce Reservation collection area.

(s) Heavy Waste: Heavy waste and materials resulting from excavations, construction, remodeling, repair or demolition operations, including, but not limited to, rocks, tree trunks, logs, cement, concrete and sod.

(t) Household Hazardous Waste Day: A periodically designated day for households, conditionally exempt small business generators, farmers, etc., for the proper disposal of hazardous waste.

(u) Household Waste: That waste produced by an ordinary residential unit fitting into a bag, manual container or bundle less than four feet in length. Does not include bulky, infectious or hazardous waste.

(v) Infectious Waste: Any material, chemical, compound, mixture, substance or article known to be infectious by the producer or which is designated by the United States Environmental Protection Agency or other appropriate agency of the federal government to be "infectious" as that term is commonly defined or defined by or pursuant to law.

(w) Landfill: An area of land or excavation in which solid wastes are placed for permanent disposal and that is not a land application unit, surface impoundment, injection well or waste pile.

(x) Landlord: A person or organization that owns and leases apartments, houses, mobile homes, buildings and land to others.

(y) Liquid Waste: Any waste material that is determined to contain free liquids as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, Method 9095 (EPA Pub. No. SW-846).

(z) Loose Yardage (Overflow): Any solid waste placed beside, in the area of or over the top of a container.

(aa) Mobile Home Park: Two or more mobile homes or trailers located in a confined area and permitted as a mobile home park.

(bb) MSW Waste: Means all putrescible and non-putrescible solid and semisolid wastes, including, but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof and discarded commodities.

(cc) Non-MSW Waste: Means solid waste, largely inert waste, resulting from the demolition or razing of buildings, roads and other man-made structures.

(dd) Parcel: A distinct, contiguous tract of land.

(ee) Premises: Land and all buildings and structures thereon, but not excluding by

terms of enumeration, single or multiple family dwellings, rooming houses, apartment houses, hospitals, convalescent and nursing homes, hotels and motels, restaurants, drive-in establishments, schools (kindergartens, academic, trade, or industrial), mobile home parks, and any other place of habitation, office, shop or establishment or place of conducting a business, trade or occupation.

(ff) Producer: Residential unit or business unit as defined herein.

(gg) Putrescible Waste: Solid waste which has the capacity to become rotten or foul.

(hh) Recycling: The reclamation of solid waste and its subsequent introduction into and industrial process by which the material is transformed into a new product in such a manner that the original identity as a product is lost.

(ii) Reservation: Nez Perce Reservation located in what is now North Central Idaho.

(jj) Resident: Every person in possession, charge, custody or control of any premises where solid waste is created or accumulated, whether the property owner or lessee.

(kk) Resource Recovery: The process, including recycling, of obtaining useful material or energy resources from solid waste.

(ll) Roadway: That portion of right-of-way or private property adjacent to the traveled portion of the county road or State highway right-of-way used for the placement of all solid waste containers on collection days.

(mm) Rubbish: Any material thrown away as worthless: trash.

(nn) Collection System:

(1) Individual Collection Services: The collection of household solid waste and/or bulky waste, which has been delivered by the generator to a rural container site.

(2) Container Service: The collection of household solid waste and/or bulky waste, which has been delivered by the generator to a container site.

(3) Special Collection Services: The collection of solid waste services at collection units, which are not located on individual collection routes.

(oo) Sludge: Semisolid material such as the type precipitated by sewage treatment.

(pp) Solid Waste: Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from household, business or community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under federal law, or source, special nuclear, or by-product material as defined in the atomic energy act of 1954, as amended.

(qq) Transfer Station: A facility or building or location where solid waste is transferred from one container to another for hauling to another location.

(rr) Tribe: Nez Perce Tribal government.

(ss) Tribal persons: Person of Native American ancestry.

(tt) Tribal Solid Waste Fund: Financial fund designated specifically for payment of solid waste collection services on the reservation.

(uu) Waste Reduction: The diversion of any portion of the waste stream for recycling, energy recovery, composting, or any other lawful process for the purpose of reducing the volume of the waste stream.

## CHAPTER 13-3 SOLID WASTE CONTAINER SITES

### §13-3-1 Container Sites

The Tribe shall designate places for the location of mechanical containers for the purpose of the dumping and depositing of its solid waste. Any such place shall be known as a solid waste disposal site.

### §13-3-2 Container Site Requirements

At each site designated by the Tribe, there shall be located and maintained mechanical containers, which shall be sufficient in size or number to receive and contain the accumulation of solid waste deposited therein between collection dates.

### §13-3-3 Maintenance of Containers

(a) Each disposal site shall be maintained in a clean and sanitary manner by the collector serving said site.

(b) Each tribal persons depositing solid waste at such sites shall deposit all such waste in the containers provided therefor and shall be responsible for cleaning up any spillage and/or any loose yardage (overflow) of waste caused by such person at such sites.

### §13-3-4 Container System Collection Schedule

The Tribe and the service contractor(s) shall establish regular container collection schedules for the collection, transportation and disposal of solid waste accumulated therein. Such schedules shall be sufficiently frequent to prevent the unlawful accumulation of solid waste.

### §13-3-5 Limitation of Use of Container Sites

(a) No tribal persons shall deposit industrial waste, hazardous material or any waste materials that are not from their own sources on the reservation at the container sites, except that such wastes that may be disposed of at the container sites which have been specifically

designated for that purpose. Failure to follow the guidelines of this section could result in the loss of solid waste container site privileges.

(b) No tribal persons owning or occupying premises on and/or off the Reservation shall deposit any solid waste from such premises at a container sites unless they have an active and current solid waste account that financially supports the solid waste management system that the container site they are using is part of.

(c) Tribal employees may not use tribal government solid waste containers for the disposal of waste materials generated from non-governmental sources such as their home or business.

## CHAPTER 13-4 SOLID WASTE COLLECTION SYSTEM

### §13-4-1 Collection of Solid Waste

(a) There is hereby established a system for the collection of solid waste from Tribal interests.

(b) The Tribe and the service contractor(s) may establish regular collection schedules for the collection, transportation and disposal of solid waste from all Tribal premises on the Reservation, provided that the owners/occupiers of such premises comply with the provisions of this Ordinance and all rules and regulations adopted by the Tribe.

(c) It shall be the duty of the persons served by the collector at all times to keep, or cause to be kept, containers, as defined herein, and to deposit or cause to be deposited therein all solid waste, except as otherwise herein provided.

(d) All containers shall be (1) equipped with close-fitting covers, or (2) securely tied, or (3) otherwise closed to prevent the contents from being blown by the wind, scattered by animals, or otherwise littered.

(e) Solid waste or recyclable materials shall not be compacted in a container to the extent of obstructing free and easy removal from the container.

(f) All tribal persons shall restrain their animals from spreading solid waste or recyclable materials left for collection or from interfering with pick-up personnel during collection. Owners of animals shall be held responsible for any clean-up required from the actions of their animals. For more information please see Nez Perce Tribe Dog Ordinance, Nez Perce Tribal Codes, Chapter 6-8.

(g) All solid waste, before being placed or deposited in sanitary containers for collection, shall have been drained from it all free liquids and may be wrapped and placed in paper or plastic bags.

(h) Tree trimmings, hedge clippings and similar materials shall be cut to a length not to exceed four feet or thirty -five pounds in weight before being deposited for collection where applicable.

(i) Grass Clippings, leaves, and garden debris, except sod, soil, and rocks, may not

be placed in plastic bags, cardboard boxes or any other container when deposited in a designated yard waste bin at a container site.

(j) At premises wherein large accumulations of solid waste occur, the resident or owner of such premises may place bags in mechanical containers, provided either by such person or the collector. All such containers shall be water tight, cleaned on a regular basis, closed at all times and so constructed as to have lids or covers easily managed and operated.

### §13-4-2 Placement of Containers for Driveway to Driveway And/or Alley Collection Services

(a) All containers shall be placed for collection outside of all buildings and shall be placed as close as reasonably possible to public street curb or alley travel way without obstructing traffic, parking areas or pedestrian travel. When construction work is being performed in the right-of-way, containers, bags or bundles shall be placed as close as possible to an access point for the collection vehicle.

(b) All containers shall be replaced, upright where found, with lids on them. Containers and lids shall not be placed or thrown on streets, alleys, highways, or on adjoining property. The collector shall not permit receptacles to be thrown from the truck to the pavement or parkway nor in any other way permit damage to occur by rough or improper handling thereof. Private property, public streets, alleys, or ways about the containers and the collection truck shall be the responsibility of the collector to keep clean, and the collector shall be responsible for the removal of such spillage, but shall not be responsible for cleaning up conditions created by the residents around such containers.

(c) If containers are stored in unlocked, fenced yards, such containers will be collected only if the containers are clearly visible to the collector and not in excess of ten feet from the side of the street or alley from which collection is made. The producer may contract with the collector for carry out collection services for other locations upon payment of additional fees as determined by mutual agreement with the collector.

(d) If there is an animal which appears to be unfriendly within a fenced area, the collector shall not be required to enter the area, and the resident or owner shall place the container outside the fence, clearly visible to the collector and not in excess of ten feet from the side of the street or alley from which collection is made.

(e) At other than commercial and alley pickup, all containers shall be removed from public ways within

## CHAPTER 13-5 LANDFILLS AND OTHER SOLID WASTE DISPOSAL FACILITIES/OPTIONS

### §13-5-1 Designated Landfills, Inert and Municipal

(a) For the protection and preservation of the safety, health and general welfare of the tribal inhabitants of the reservation, all waste materials from tribal sources shall be sent to designated landfills.

(b) Designated landfills must be maintained and operated in accordance with applicable Federal landfill sighting criteria, state code and local laws.

### §13-5-2 Land Spreading Disposal and Storage Pile

Seasonal or temporary storage of agricultural or other solid wastes in piles can be an acceptable practice provided that the pile is adequately protected from surface run off, appropriate measures are taken to prevent odors, control vermin, illegal access and insects, and other measures are taken as may be specified by the Tribe.

### §13-5-3 Junkyard/Auto Wrecking/Salvage Yard

(a) Any open area, lot, land, or parcel where waste and scrap material are bought, sold, exchanged, stored, baled, packed, disassembled, handled, stripped, or dumped, and also including more than two (2) motor vehicles not currently licensed and/or in running condition or parts thereof for every 90' x 100' (9,000 square feet) of property area up to a maximum of five (5) inoperable vehicles or parts thereof is considered a junkyard/auto wrecking/salvage yard.

(b) A permit for the siting of a new and/or operation of an existing junkyard/auto wrecking/salvage yard must be obtained by the landowner(s) from the Tribe. Permit approval or denial shall be at the sole discretion of the Nez Perce Tribal Executive Committee.

(c) Consideration for a new and/or operation of an existing junkyard/auto wrecking/salvage yard permit may be obtained by making a written request directly to the Nez Perce Tribal Executive Committee.

### §13-5-4 Burning

The burning of natural material is the only burning allowed on the reservation. A permit must be obtained from the appropriate Forest Protection District and the Tribal Air Quality program (FARR). It is unlawful for any person to burn the following materials in the open: garbage, wastes at mills, demolition debris, oil, grease or asphalt, railroad ties, plastics, junk motor vehicles, telephone poles, asphalt materials, commercial or industrial waste, and rubber materials. For more information on open burning on the Nez Perce Reservation please contact the Nez Perce Tribe Air Quality Department at 208-843-9381.

### §13-5-5 Other Facilities

Other solid waste facilities, including transfer stations, container sites, incinerators, commercial or community composting facilities, recycling, processing or other designated treatment facilities for tribal wastes must meet applicable regulations promulgated by the federal government, state, North Central Health District, and the County.

## CHAPTER 13-6 ACCUMULATION OF SOLID WASTE AND OTHER ISSUES

### §13-6-1 Unlawful Accumulation of Solid Waste

It shall be unlawful for any tribal person to accumulate or to permit or to cause the accumulation in or about any premises or upon any road, street, alley, or public way adjacent to such premises owned or occupied by such tribal person, any solid waste in any amount or that

will contribute to or result in danger to public health, or the creation or existence of a nuisance or safety hazard, or the pollution of water or air or excessive land abuse. Please see the public nuisance section (4-3-51, 4-3-9 and 4-2-76) of the Nez Perce Tribal Code for more information on the tribe's policy and practices on "Nuisance Abatement".

**§13-6-2 Accumulation of Garbage (Putrescible Waste)**

(a) All garbage shall at all times be kept in a watertight sanitary container which is not easily corrodible and is rodent and fly proof. Sanitary containers may include any of the following:

(1) Metal, plastic or fiberglass receptacles.

(2) Disposable bags with gauge of not less than one and five-tenths mills.

(b) It shall be the duty of the tribal person or owner of any premises at all times to keep, or cause to be kept, containers, as defined above, and to deposit or cause to be deposited therein all garbage.

(c) All containers shall be (1) equipped with close fitting covers, or (2) securely tied, or (3) otherwise closed to prevent the contents from being blown by the wind, scattered by animals or otherwise littered.

(d) All containers shall be kept in a reasonably clean condition with the inside and outside thereof washed at such times as to keep the same free and clean of accumulating grease and decomposing material.

**§13-6-3 Accumulation of Other Solid Waste**

(a) All household waste shall at all times be kept in sanitary containers or other containers.

(b) Such containers shall have lids and shall be maintained in a clean and sanitary condition.

(c) Household Waste consisting only of cardboard, or wooden boxes, brush, leaves, weeds, and cuttings from trees, lawns, shrubs, and gardens, may be kept separately, provided that the same shall not be subject to being blown by the wind or otherwise littered and provided further that the same shall not cause or create an offensive odor, or a rodent harborage, or a public nuisance.

**§13-6-4 Hazardous Materials**

The collector shall not collect or transport hazardous or infectious materials, as defined herein, to the disposal site, except as provided herein. All requests for collection of such materials shall be referred directly to a collector, who shall obtain such permits and licenses for such transportation, collection and disposal as may be required by law. Certain hazardous wastes may be disposed of during a Household Hazardous Waste Collection day(s), when such day(s) are announced by the Tribe.

**§13-6-5 Recycling, Composting, and Waste Reduction**

(a) The Tribe reserves the right to, and may at its option, provide for a voluntary collection system for recyclables, which may include the separation of recyclables from other solid waste and require the deposit thereof in separate containers. The Tribe may also issue further regulations for the placement and disposal of recyclables materials.

(b) The hauling of recyclables in or out of the Nez Perce Reservation is permissible provided that the same shall not be subject to being blown by the wind or otherwise littered and provided further that the same shall not cause an offensive odor, a rodent harborage or a nuisance.

(c) Green waste materials collected at the Nez Perce Tribe/City of Lapwai solid waste container site shall be composted by the Tribe or a designated contractor.

(d) Composted green waste materials from the Lapwai container site may be mixed with sewer sludge, animal manure, sawdust or other materials, as necessary.

(e) Private, or individual, household composting is acceptable and encouraged on private property provided that the same shall not cause an offensive odor, a rodent harborage or a public nuisance.

(f) Waste reduction: Maximum reduction of the volume of the waste stream is encouraged by the Tribe provided that the portion of the waste stream being diverted shall not be subject to being blown by the wind or otherwise littered and provided further that the same shall not cause an offensive odor, a rodent harborage or a public nuisance.

**§13-6-6 Animal and Game Waste**

Animal and game waste from tribal sources on the reservation is not classified as MSW waste by the Tribe. Unused animal parts should be returned to nature in a location that does not bother (sight or smell) others.

**§13-6-7 Junk Cars And/or Abandoned Vehicles**

(a) No more than two (2) junk cars are allowed per every 90' x 100' (9,000 square feet) lot area up to a maximum of ten (10).

(b) Unused vehicles interiors and trunks must be inaccessible to unauthorized persons at all times. Vehicles whose interiors and trunks that cannot be made inaccessible must be removed immediately.

(c) Vehicles must not be allowed to become dilapidated looking or storage sites for other waste items.

(d) Vehicles may not be left or abandon in the public right-of -way or on tribal and/or private property.

(e) Vehicles found to be abandoned or in violation of these ordinances may be removed by tribal government or the land owner.

**§13-6-8 Street Sanitation (Cleaning)**

(a) Streets and roads under the responsibility of the Tribe shall be kept clean and free of mud, dirt, gravel, weeds, grass, volunteer vegetation, dead animals, grain, sawdust, hay, litter, wood, bags of garbage, tire parts, excessive snow build up, ice or any other items that would inhibit/impact the collection of solid waste.

(b) Tribal vehicles and tires with extensive accumulations of mud and dirt will be washed as soon as practically possible after such accumulations.

(c) Equipment necessary for proper street cleaning and maintenance should be obtained and maintained by the Tribe.

**§13-6-9 Waste Tire Disposal**

(a) The Tribe finds that the accumulation of large amounts of waste tires constitutes a hazard to property, the environment and the health of the citizens of the reservation area. The open incineration of waste tires is prohibited except as permitted by law (FARR). No person shall store or dispose of waste tires except at a solid waste transfer station or authorized solid waste disposal site or by another approved method as follows:

(1) Retreading.

(2) Construction of Collision barriers.

(3) Soil Erosion Control.

(4) Chopping or shredding prior to reuse.

(5) Grinding for use in asphalt or as a raw material for other products.

(6) Using as playground equipment.

(7) Incinerating for use as fuel, if permitted by law.

(8) Hauling to lawful out-of-state collection or processing sites.

(b) The Tribe may authorize other methods of management and/or disposal and end-uses of waste tires.

**§13-6-10 Enforcement**

(a) Enforcement of the provisions of this Article pertaining to waste tire facilities shall be provided by the Tribe.

(b) Enforcement of all other provisions of this ordinance shall be the responsibility of

the Tribe.

### §13-6-11 Illegal Tire Piles

(a) Owners of property on which unapproved or unauthorized tire piles are located shall dispose of the waste tires by an approved method upon notification by the Tribe. This requirement shall apply to all illegal tire piles which exist as of the date of passage of this ordinance or which may thereafter come into existence. The clean-up of said sites shall be accomplished at the property owner's expense within the time frame established by the Tribe.

(b) Temporary registration of all tire piles containing from 1,000 to 5,000 tires with the Tribe is required. Any Tribal person or business owing a tire pile with in these limits must register and state the long-term plans for the pile.

(c) In order to obtain temporary registered status the owner must provide a statement of the property owner's long-term plans for the tire pile and end-use of the waste tires. The property owner must comply with the current edition of the Uniform Fire Code and conditions supporting the increase in numbers and attraction of potential vectors of disease shall not be permitted.

(d) Owners of property where registered tire piles are located shall limit access to these tire piles to prevent further disposal of tires or other wastes.

## CHAPTER 13-7 FUNDING OF MAINTENANCE AND OPERATION

### §13-7-1 Solid Waste Accounts

(a) All tribally owned/controlled facilities, parcels, home sites, churches, and businesses within the reservation boundaries are required to have and maintain in good standings a solid waste disposal account.

(b) Accounts must be for the full annual funding of proper solid waste disposal collection, transportation, temporary storage and final disposal of all annually produced solid waste materials.

(c) Account may be with a local service provider, county government, city government, tribal government or any combination thereof.

(d) Proof of account and good standing must be provided upon request from the Tribe.

(e) All fees collected by the Tribe in the name of solid waste disposal must be used for the maintenance and operation of the solid waste collection system that services the entity or individual that the fee was collected from.

(f) The amount of the fees shall be determined by the Tribe. Fees will be directly

related to the actual cost of services and fee collection. Payment of said fees may be made annually, quarterly or monthly by arrangement with the Tribe.

(g) All fees collected shall be placed in a special fund to be known as the Tribal Solid Waste Fund. Solid waste expenses will be paid there from so long as funds are available therein. Any funds from fees collected for solid waste service remaining therein at the end of each fiscal year shall be retained in the Solid Waste Fund.

(h) Tribal members/businesses whose solid waste account is more than two (2) months in arrears may be required to complete a consumer credit counseling course.

(i) The Tribe shall have authority to grant exemptions to persons who apply therefor, exempting such persons from payment of all or a part of the fees imposed to fund the maintenance and operation of the system(s), upon satisfactory proof that, because of unusual circumstances (hardship) which affect their ability to pay. Such persons may be relieved from paying such fees in order to avoid undue hardship, which undue hardship must be determined by the Tribe. Such exemption shall be for the current fee month/year only and premises exempt hereunder shall be billed and assessed for the ensuing fee months/years as other premises. Claimants seeking exemption under this provision must apply each month/year directly to the Tribe. The Tribe shall have authority to grant exemptions permits to persons who apply therefor, exempting such persons from payment of all or a part of the fees imposed to fund the maintenance and operation of the system upon satisfactory proof that because of unusual circumstances, such persons do not create or accumulate solid waste upon the premises. Such exemption shall be for the current fee month/year only and premises exempt hereunder shall be billed and assessed for the ensuing fee months/years as other premises. Claimants seeking exemption under this provision must apply each month/year. The criteria for such exemptions shall be established by resolution of the Tribe. Exemptions are for accounts held with tribal government only.

The following are the criteria for solid waste fee exemptions and adjustments:

(1) Hardship: Limited applications are available for hardship exemptions. These will be granted at the sole discretion of the Tribe.

(2) Circuit Breaker: A sliding scale will be used for adjustment of fees for persons qualifying for the Circuit Breaker Property Tax Exemption comparable to that as set forth by the Tribe. Said scale will be established by the Tribe in SECTION 7.3 of this Code.

(3) Non-livable: Home may have no sewer, water and/or electricity and must be vacant for at least the current solid waste fee period. Verification by the Tribe will be required. No building permit requested in the last six months.

(4) Vacant but Livable: Requests must be made in writing and a solid waste exemption form must be completed. The Tribe may or may not grant the exemption and if it is denied you may appeal the exemption with the Nez Perce Tribal Executive Committee. The home must be vacant for at least

three months.

(5) Gone from Property: Home has been moved, burned or destroyed. Verification by the Tribe will be required.

(6) As General Policy: No Refunds Will Be Granted. Any exceptions to this policy will be at the sole discretion of the Tribe. Operations and maintenance annual funding reductions from granted fee exemptions for financial hardship or circuit breaker will be reallocated through the Tribe.

**§13-7-2 Qualifications for Circuit Breaker Program**

(a) Over the age of sixty-five (65) years old at the time of application; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandon by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United states Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administer by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because they are known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

**§13-7-3 Sliding Scale for Circuit Breaker Program**

| Lower Income Amount | Higher Income Amount | Percent Reduction |
|---|---|---|
| $0 | $11,270 | 50% |
| $11,271 | $15,080 | 25% |

**§13-7-4 Billing Procedures**

(a) All tribal persons of the Nez Perce Reservation are required to pay solid waste fees, except those granted exemption therefrom pursuant to the criteria set forth in the preceding section. Failure to timely pay such fees may result in discontinuance of collection services until such fees are paid, at the discretion of the Tribe.

(b) Tribal members who do not have an active and current account with a local service provider will be billed by the Tribe and the funds distributed to the affected parties local service provider.

(c) A service fee may be added to each billing that is based upon the actual cost to the Tribe for billing activities.

(d) Late fees may be added to billings each month if delinquent 30 days or longer. Delinquent fees shall include all associated costs such as certified mailing costs.

(e) Tribal members whose solid waste accounts are more than two (2) months in arrears may be required to complete a consumer credit counseling course.

## CHAPTER 13-8 CONTRACTS, MEMORANDUM OF AGREEMENTS, SEVERABILITY, ENFORCEMENT, AND EFFECTIVE DATE

### §13-8-1 Contract Authorization

(a) The Tribe may contract for the collection, removal and disposal of solid waste and recyclable materials, the operations and maintenance of Tribal container sites, designated landfill sites or any combination thereof. No contract shall exceed ten years' duration.

(b) The Tribe may contract with cities on the reservation for the purpose of establishing a solid waste collection and/or disposal system hereby established or any combination of the same.

(c) An MOA exists between the Tribe and Clearwater County that addresses the billing of Tribal members and facilities in Clearwater County. The MOA outlines Tribal role in Clearwater County in ensuring that Tribal facilities have an active and current solid waste account and that the Tribe will help to educate Tribal persons who live in Clearwater County that the billings for solid waste from the County are a fee for service and not a property tax.

(d) An MOA exists between the Tribe and the City of Lapwai for the joint operations of the Lapwai Valley solid waste container site. Contractual costs associated with this MOA are allocated to each participating party based upon the current estimated number of residential units each entity is responsible for and what percent of each residents weekly solid waste is disposed of through the container site facility. At this time the percentage allocation is 60% Tribe and 40% City. This percentage allocation is based upon there being approximately 506 residential units in the Lapwai valley area utilizing the container sites services and the Tribe being responsible for 198 (98 who use the site on a part-time basis and 100 on a full-time basis) and the City of Lapwai being responsible for 308 residential units who use the site on a part-time basis only. Percentage may be adjusted up or down depending upon changes in the number of residential units each entity is responsible for and/or percentage weekly use of the container site.

### §13-8-2 Severability

Should any section, subsection, paragraph, sentence, or clause of this Ordinance be held, for any reason, by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be deemed severable and valid, notwithstanding such partial invalidity.

**§13-8-3 Violation of Ordinance**

Violation of any provision of this Ordinance shall be a misdemeanor, punishable by a fine of not more than $300.00 or imprisonment in jail for not more than six months, or both such fine and imprisonment, in addition to restitution for the costs of recovery and proper disposal of any wastes unlawfully disposed of. Community Service shall be the preferred alternative punishment, in lieu of incarceration, for first offenders. Repeat offenders may be prohibited from using the solid waste collection site(s). A continuing violation of any such provision is hereby declared to be a public nuisance. Tribe reserves the right to bring an action in Tribal court enjoin any acts or practices prohibited by this ordinance and to enforce compliance with this ordinance, pursuant to Tribal Code or its successor.