

OMB Control Number: 1076-0114.

Type of Review: Extension.

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

Total Number of Respondents: 4,000.

Total Number of Annual Responses: 4,000.

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

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

Dated: December 17, 2008

Sanjeev Bhagowalia,

Chief Information Officer—Indian Affairs.

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

BILLING CODE 4310-6W-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Navajo Nation Liquor Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

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

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

FOR FURTHER INFORMATION CONTACT:

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

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

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

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

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

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

Dated: December 19, 2008.

George T. Skibine

Acting Deputy Assistant Secretary for Policy and Economic Development.

The Navajo Nation's Liquor Regulations read as follows:

Navajo Nation Liquor Regulations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. "Navajo Nation" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.105. Powers of Enforcement.

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

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

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

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

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

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

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

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

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

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

1.106. Limitations.

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

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

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

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

1.107. Inspection Rights.

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

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

1.108. Authorized Liquor Sales and Practices.

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

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

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

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

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

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

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

1.109. Prohibited Liquor Sales and Practices.

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

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

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

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

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

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

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

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

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

1.110. Reserved.

1.111. Reserved.

1.112. Licensing.

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

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

1. Retailer License—Restaurant.
2. Retailer License—Hotel/Motel.
3. Retailer License—Special Events.
4. Retailer License—Other.

The Office shall have the authority to issue policies and procedures regarding the issuance of other types of licenses, subject to the Commission's approval of such policies and procedures.

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

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

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

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

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

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

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

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

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

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

G. Licenses or letter of denial.

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

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

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

decision either granting or denying the application for a License.

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

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

1.113. Wholesaler License.

A. Term.

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

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

B. Fee.

1. Beer/Wine.

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

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

2. Spirits.

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

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

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

1.114. Retailer License—Restaurant.

A. Term.

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

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

B. Fee.

1. Beer/Wine.

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

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

2. Spirits.

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

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

C. Conditions.

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

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

location designated in the Retailer License.

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

1.115. Retailer License—Hotel/Motel.

A. Term.

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

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

B. Fee.

1. Beer/Wine.

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

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

2. Spirits.

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

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

C. Conditions.

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

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

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

1.116. Retailer License—Special Event.

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

B. Fee.

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

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

C. Conditions.

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

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

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

1.117 License Renewal.

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

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

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

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

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

1.118. Recordkeeping and Reporting.

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

1.119. Violations.

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

A. Violating any term or condition of the License;

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

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

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

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

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

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

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

I. Failing to display License;

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

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

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

M. Violating any applicable Navajo Nation or federal law.

1.120. Penalties.

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

1.121. Appeals.

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

B. Appeals shall follow the following process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

viii. Reasonable continuances may be granted for good cause.

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

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

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

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

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

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

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

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

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

1.122. Revenue.

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

1.123. Certified Servers.

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

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

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

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

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

1.124. Transportation Through the Navajo Nation.

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

1.125. Sovereign Immunity.

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

1.126. Jurisdiction.

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

1.127. Severability.

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

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

1.128. Effective Date.

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

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

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

AGENCY: Bureau of Reclamation, Interior.

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

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Background Information

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

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

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