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**TITLE 2. ADMINISTRATION**

**ARTICLE I**

**[RESERVED]**

**TITLE 2. ADMINISTRATION****ARTICLE II****HOLIDAYS**

[NOTE: Except as otherwise noted, the provisions of Article II, Title 2 were enacted on February 22, 2002 by Ord. No. 2002-3, § 3, adopted by Res. No. 7-2002.]

**CHAPTER 1. HOLIDAYS ENUMERATED****Sec. 2-2101. Legal Holidays.**

The Tribal Council may designate various days throughout the year as legal holidays and when tribal government shall be closed in their observance. Legal holidays for employees of Tribal Government or Tribal Enterprises shall be outlined and listed in employee handbooks approved by the Tribal Council. When any holiday falls on a Sunday, the following Monday shall be observed as a holiday and when any holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

[NOTE: Except as otherwise noted, the provisions of Title 2 Article II, Chapter 1 (Holidays Enumerated) Section 2-2101 (Legal Holidays), were enacted on January 15, 2014 by Res. No. 2-2014.]

**Sec. 2-2102. Authority of Chairman.**

(a) The Chairman of the Tribal Council shall have the authority to declare a particular day or portion of a day, from time to time, an administrative leave day, *provided* the Chairman shall not have the authority to unilaterally declare administrative leave days or legal holidays that reoccur on an annual basis.

(b) In the event the Chairman declares a day or portion of a day to be an administrative leave day, the time covered by the administrative leave day shall operate as a legal holiday.

**CHAPTER 2. EFFECT OF LEGAL HOLIDAYS****Sec. 2-2201. Closure of Offices and Tribunals.**

(a) Except as expressly provided elsewhere by the laws of the Tribe, offices, departments and agencies of the Tribe shall not be open, and no court or tribunal of the Tribe shall be open on a legal holiday.

(b) The following entities of the Tribe shall not be subject to this Section:

- (1) Sac & Fox Tribe of the Mississippi in Iowa Gaming Commission;
- (2) Sac & Fox Tribe of the Mississippi in Iowa Police Department;
- (3) Sac & Fox Tribe of the Mississippi in Iowa Fish and Game Commission;

- (4) Any other law enforcement offices, agencies, and departments of the Tribe;
- and
- (5) All economic enterprises of the Tribe.

**Sec. 2-2202. Last Day for Performance of Event Holiday.**

When anything is provided or agreed to be done upon a day named or within a time named, and the day or the last day thereof falls on a legal holiday, it may be performed on the next ensuing business day with effect as though performed on the appointed day.

**TITLE 2. ADMINISTRATION**

**ARTICLE III**

**ADMINISTRATIVE DEPARTMENTS**

**[RESERVED]**

## TITLE 2. ADMINISTRATION

## ARTICLE IV

## ADMINISTRATIVE PROCEDURE

[NOTE: Except as otherwise noted, the provisions of Article IV, Title 2 were enacted on February 22, 2002 by Ord. No. 2002-3, § 4, adopted by Res. No. 7-2002.]

## CHAPTER 1. GENERALLY

## Sec. 2-4101. Definitions.

Unless the context requires otherwise, as used in this Article:

(a) “Agency” means any board, commission, department, officer or other administrative unit of the Tribe, whether created under the Constitution or by enactment of the Tribal Council, but does not include the Tribal Council, the Chairman, Vice-Chairman, Treasurer, or Secretary of the Tribal Council, the dispute resolution tribunals of the Tribe, or the economic enterprises of the Tribe.

(b) “Agency action” means any whole or part of a regulation, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act by an agency, but does not include:

(1) Regulations, standards, or statements of policy of general application issued by an agency to implement, interpret, or make specific the legislation enforced or administered by it unless the rule, standard, or statement of policy is involved in a proceeding before the agency and its applicability or validity is in issue in the proceeding; or

(2) Regulations, orders, sanctions, relief, or other actions concerning the internal management of the agency and not affecting private rights or interests; or

(3) Personnel matters of an agency.

(c) “Appealable agency action” means an agency action that is not preceded by an opportunity for a hearing, but which can be appealed within the agency.

(d) “Contested case” means any proceeding initiated by an agency against a party in which the legal rights, duties, or privileges of the party are required or permitted by law to be determined by an agency after an opportunity for a hearing.

(e) “Emergency regulation” means a regulation that is made pursuant to Section 2-4404.

(f) “Executive Director” means the Executive Director of the Tribe.

(g) “Fee” means a charge prescribed by an agency for an inspection or for obtaining a license.

(h) “Final agency action” means an agency action subject to review in the Tribal Court pursuant to Chapter 6 of this Article.

(i) “Final regulation” means any regulation issued pursuant to this Article once it is filed with the Executive Director.

(j) “License” includes the whole or part of any form of permission required by law, including a permit, certificate, approval, registration, charter or similar grant of a privilege to be involved in or conduct an activity, but it does not include a license required solely for revenue purposes.

(k) “Order” means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency, including a license, in a matter other than regulation-making.

(l) “Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(m) “Regulation” means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Regulation includes actions prescribing fees or the amendment or repeal of a prior regulation but does not include interagency memoranda.

(n) “Regulation-making” means the process for formulation and finalization of a regulation.

(o) “Relief” means:

(1) The grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(2) The recognition of a claim, right, immunity, privilege, exemption, or exception; or

(3) The taking of other action on the application or petition of, and beneficial to, a person.

(p) “Sanction” means:

(1) A prohibition, requirement, limitation, or other condition affecting the legal rights of a person;

(2) A withholding of relief;

- (3) The imposition of a fine;
- (4) The destruction, taking, seizure, or withholding of property;
- (5) The assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;
- (6) The requirement, revocation, or suspension of a license; or
- (7) The taking other compulsory or restrictive action against a person.

(q) “Substantive policy statement” means a written expression which informs the general public of an agency’s current approach to, or opinion of, the requirements of the laws of the Tribe or final judgment of a court of competent jurisdiction, including, where appropriate, the agency’s current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or regulations made in accordance with this Article.

(r) “Trial Court” means the Trial Court of the Sac & Fox Tribe of the Mississippi in Iowa.

(s) “Tribal Court” means the Sac & Fox Tribe of the Mississippi in Iowa Tribal Court.

**Sec. 2-4102. Statement of Purpose.**

The purpose of this Article is:

- (a) To simplify government by assuring a uniform minimum procedure to which all agencies will be held in the conduct of their most important functions; and
- (b) To increase public access to governmental information.

**Sec. 2-4103. Applicability and Relation to Other Law.**

(a) This Article applies to all agencies not expressly exempted herein unless a more specific law governs the actions of an agency.

(b) This Article creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other laws of the Tribe.

(c) An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any other law of the Tribe are not substantially prejudiced.

**Sec. 2-4104. Waiver.**

Except to the extent precluded by other laws of the Tribe, a person may waive any right conferred on that person by this Article.

**Sec. 2-4105. Exemptions.**

- (a) Chapter 4 of this Article does not apply to any:
  - (1) Regulations of the Sac & Fox Tribe of the Mississippi in Iowa Fish and Game Commission promulgated pursuant to Section 14-3208 of the Code;
  - (2) Regulations of the Sac & Fox Tribe of the Mississippi in Iowa Gaming Commission;
  - (3) Regulations of the Executive Director promulgated pursuant to this Article;
  - (4) Regulations that only establishes specific prices to be charged for particular goods or services sold by an agency;
  - (5) Regulations or substantive policy statements concerning inmates or committed youth of a correctional or detention facility or patients admitted to a hospital, if made by the Sac & Fox Tribe of the Mississippi in Iowa Police Department or other agency of the Tribe with the authority to incarcerate or commit individuals;
  - (6) Forms whose contents or substantive requirements are prescribed by regulation or other law of the Tribe, and instructions for the execution or use of such forms; and
  - (7) Regulations or other matters relating to agency contracts.
- (b) Chapter 3 and Chapter 4 of this Article do not apply to any:
  - (1) Regulations concerning only the internal management of an agency which does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public; and
  - (2) Regulations concerning only the physical servicing, maintenance or care of agency facilities or property.

**Sec. 2-4106. Regulations of the Executive Director.**

The Executive Director is authorized to issue such rules and regulations as he deems necessary to carry out the provisions of this Article, subject to the approval of the Chairman of the Tribal Council.

**Sec. 2-4107. Sovereign Immunity.**

Nothing in this Article shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Sac & Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, enterprises, agents, officials or employees.

**CHAPTER 2. INSPECTIONS****Sec. 2-4201. Disclosure of Information.**

(a) An agency inspector or regulator who enters any premises of a regulated person for the purpose of conducting an inspection shall:

- (1) Present identification on entry of the premises;
- (2) On initiation of the inspection, state the purpose of the inspection and the legal authority for conducting the inspection;
- (3) Disclose any applicable inspection fees;
- (4) Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector or regulator on the premises, except during confidential interviews;
- (5) Provide notice of the right to have:
  - (i) Copies of any original documents taken by the agency during the inspection if the agency is permitted by law to take original documents;
  - (ii) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive; and
  - (iii) Copies of any analysis performed on samples taken during the inspection;
- (6) Inform each person whose conversation with the agency inspector or regulator during the inspection is tape recorded that the conversation is being tape recorded; and
- (7) Inform each person interviewed during the inspection that statements made by the person may be included in the inspection report.

(b) On initiation of an inspection of any premises of a regulated person, an agency inspector or regulator shall provide the following in writing:

- (1) The rights described in subsection (a) of this Section; and
- (2) The name and telephone number of a contact person available to answer questions regarding the inspection.
- (c) An agency inspector or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection (b) of this Section indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection (b) of this Section. The agency shall maintain a copy of this signature with the inspection report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection (b) of this Section, the agency inspector or regulator shall note that fact on the writing prescribed in subsection (b) of this section.

**Sec. 2-4202. Inspection Reports.**

- (a) An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:
  - (1) At the time of the inspection;
  - (2) Within thirty working days after the inspection; or
  - (3) As otherwise required by the laws of the Tribe.
- (b) The inspection report shall contain any deficiencies or violations of applicable laws identified during an inspection.

**Sec. 2-4203. Scope of Chapter.**

- (a) This Chapter does not authorize an inspection or any other act that is not otherwise authorized by law.
- (b) This Chapter applies only to inspections necessary for the issuance of a license or to determine compliance with licensure requirements. This section does not apply to:
  - (1) Criminal investigations and undercover investigations that are generally or specifically authorized by law;
  - (2) Investigations of violations of the laws of the Tribe; or
  - (3) If the inspector or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.

(c) Nothing in this Chapter shall be used to exclude evidence in a civil or criminal proceeding.

### CHAPTER 3. PUBLICATION OF REGULATIONS

#### Sec. 2-4301. Designation.

(a) There is hereby established the official Regulations of the Sac & Fox Tribe of the Mississippi in Iowa which shall be composed of all regulations not exempted from this Chapter promulgated by agencies and all amendments and supplements thereto.

(b) The matter set forth in the official edition of the Regulations of the Sac & Fox Tribe of the Mississippi in Iowa current at any time shall, together with any then current supplement, if any, establish prima facie the regulations of the agencies of the Tribe.

(c) The official Regulations of the Sac & Fox Tribe of the Mississippi in Iowa and all copies thereof shall bear a printed reproduction of the official insignia of the Tribe on the cover, a facsimile signature of the Executive Director of the Tribe on the title page, and be divided by thumb inserts or other devices into the following parts which shall correspond to the titles of the Code:

- (1) Part 1. General Provisions;
- (2) Part 2. Tribal Administration;
- (3) Part 3. Business and Professions;
- (4) Part 4. Commercial;
- (5) Part 5. Judicial and Dispute Administration;
- (6) Part 6. Domestic Relations and Children;
- (7) Part 7. Education;
- (8) Part 8. Elections and Voting;
- (9) Part 9. Employment and Labor;
- (10) Part 10. Enrollment;
- (11) Part 11. Gaming;
- (12) Part 12. Health and Safety;

- (13) Part 13. Law and Order;
- (14) Part 14. Natural Resources;
- (15) Part 15. Probate and Trusts;
- (16) Part 16. Property;
- (17) Part 17. Taxation;
- (18) Part 18. Transportation;
- (19) Part 19. Welfare and Institutions; and
- (20) such other parts as may be necessary when the Tribal Council designates additional titles from time to time in the Code.

**Sec. 2-4302. Citation.**

The Regulations of the Sac & Fox Tribe of the Mississippi in Iowa shall be known as the Sac & Fox Tribe of the Mississippi in Iowa Regulations and shall be cited as “SAC & FOX TR. OF MISS. REGS.” followed by the section symbol and the number of the section.

**Sec. 2-4303. Publication and Availability.**

(a) The Executive Director or his designee is responsible for the publication and distribution of the Regulations of the Sac & Fox Tribe of the Mississippi in Iowa.

(b) The Executive Director shall, by regulation, prescribe a uniform numbering system, form and style for all regulations filed with and published by his office which shall be published in the Regulations of the Sac & Fox Tribe of the Mississippi in Iowa. The Executive Director shall reject regulations if they are not in compliance with the prescribed numbering system, form and style.

(c) The Executive Director or his designee shall prepare, arrange and correlate all regulations and other text as necessary for the publication of the Regulations of the Sac & Fox Tribe of the Mississippi in Iowa.

(d) The Executive Director or his designee may not alter the sense, meaning or effect of any regulation but may:

- (1) Renumber regulations and parts of regulations;
- (2) Rearrange regulations;

- (3) Change reference numbers to agree with renumbered regulations and parts of regulations;
- (4) Substitute the proper regulation number for “the preceding regulation” and similar terms;
- (5) Delete figures if they are merely a repetition of written words;
- (6) Change capitalization for the purpose of uniformity; and
- (7) Correct manifest clerical or typographical errors.

#### **CHAPTER 4. REGULATION-MAKING**

##### **Sec. 2-4401. Notice of Proposed Regulations.**

Before adopting a regulation, or amendment or repeal thereof, the agency shall send the exact wording of the proposed regulation to the Executive Director or his designee, who shall publish the following in a newspaper of general circulation within the Settlement and post it at the Tribal offices:

- (a) A notice of the proposed regulation;
- (b) The exact wording of the proposed regulation; and
- (c) A description of where the public may send comments on the proposed regulations and for how long.

##### **Sec. 2-4402. Public Comments.**

(a) For at least thirty days after publication of the notice of the proposed regulation-making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed regulation.

(b) In addition to written statements, arguments, data and views, an agency may hold formal or informal meetings and consultations with interested and affected parties regarding any proposed regulation.

##### **Sec. 2-4403. Approval of Regulations.**

(a) After close of the period for public comments on the proposed regulation-making, an agency shall take one of the following actions:

- (1) Submit the proposed regulation for approval to the committee of the Tribal Council with jurisdiction over the agency’s actions, or, in the absence of such a committee, the Chairman of the Tribal Council; or

(2) Terminate the proceeding by publication of a notice to that effect in a newspaper of general circulation within the Settlement and by posting the same notice at the Tribal offices.

(b) Before submitting a rule to its committee or the Chairman, an agency shall consider the written submissions and any oral submissions resulting from the public comment period.

(c) Once a proposed regulation has been approved pursuant to this Section, the agency shall submit the final regulation to the Executive Director for publication in accordance with Chapter 3 of this Article.

**Sec. 2-4404. Emergency Regulation-Making.**

(a) If an agency finds that a regulation is necessary as an emergency measure, the regulation may be made, amended or repealed as an emergency measure, without the notice prescribed by this Chapter, if the regulation is first approved by the committee of the Tribal Council with jurisdiction over the agency's actions or the Chairman and filed with the Executive Director.

(b) Neither a committee of the Tribal Council nor the Chairman may approve the making, amendment or repeal of a regulation as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the notice and public participation provisions of this Chapter, unless the agency submits substantial evidence that the regulation is necessary as an emergency measure to:

- (1) Protect the public health, safety or welfare;
- (2) Comply with deadlines in amendments to an agency's governing law or federal program;
- (3) Avoid violation of federal law or regulation or other law of the Tribe; or
- (4) Avoid serious prejudice to the public interest or the interest of the parties concerned.

(c) After the emergency regulation is filed with the Executive Director, the Executive Director shall publish the emergency regulation in a newspaper of general circulation within the Settlement and post the emergency regulation at the Tribal offices. Such publication and posting shall include the time period for which the emergency regulation shall be valid.

(d) An emergency regulation made, amended or repealed pursuant to this Section is valid for one hundred eighty (180) days after the filing of the emergency regulation with the Executive Director, but may be renewed for two more one hundred eighty (180) day periods if all of the following occur:

- (1) The agency determines that the emergency situation still exists;
- (2) The agency follows the procedures prescribed in this Section;
- (3) The agency has issued the emergency regulation as a proposed regulation; and
- (4) The agency seeks approval of the renewal before the expiration of the preceding one hundred eighty (180) day period.

(e) A final regulation that is made pursuant to this Chapter that replaces an emergency regulation made, amended or repealed pursuant to this Section shall repeal the emergency regulation replaced if it has not expired.

**Sec. 2-4405. Agency Regulation-Making Records.**

(a) An agency shall maintain an official regulation-making record for each regulation it proposes by publication of a notice of proposed regulation-making and each final regulation filed with the Executive Director which shall contain:

- (1) A copy of the notice initially filed with the Executive Director;
- (2) Copies of all publications with respect to the regulation;
- (3) All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the regulation;
- (4) Any official transcript of oral presentations or, if not transcribed, any tape recording or stenographic record of those presentations;
- (5) A copy of all materials submitted to the committee of the Tribal Council with jurisdiction over the agency's actions or the Chairman of the Tribal Council; and
- (6) A copy of the final regulation.

(b) The record maintained pursuant to this Section must be available for public inspection.

**Sec. 2-4406. Invalidity of Regulations.**

(a) A regulation is invalid unless it is made and approved in substantial compliance with this Chapter, unless otherwise provided by law.

(b) An agency shall not make a regulation under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific ordinance authorizing the rule.

**CHAPTER 5. AGENCY PROCEEDINGS****Sec. 2-4501. Applicability.**

(a) This Chapter applies to and governs all agency actions, appealable agency actions, and contested cases, except where the procedure governing a particular agency's actions, appeals, and contested cases is governed by other laws of the Tribe.

(b) Unless a law of the Tribe expressly exempts an agency from the provisions of this Chapter, where a specific law of the Tribe provides a different procedure for the conduct of an agency's actions, appeals, and contested cases, the provisions of this Chapter shall supplement such specific law of the Tribe where not otherwise inconsistent with that specific law.

**Sec. 2-4502. Declaratory Orders.**

(a) Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a law of the Tribe, for which the primary jurisdiction for enforcement of such law of the Tribe has been granted to the agency.

(b) An agency shall issue a declaratory order in response to a petition for that order unless the agency finds that issuance of such declaratory order would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(c) Within fifteen days after receipt of a petition for a declaratory order, an agency shall give notice of the petition to all persons to whom notice is required by the laws of the Tribe and may give notice to any other interested persons.

(d) Persons who would be adversely effected by a declaratory order, and who file timely petitions for intervention, may intervene in a declaratory order proceeding.

(e) Within thirty days after receipt of a petition for a declaratory order, an agency, in writing, shall do one of the following:

- (1) Issue an order declaring the applicability of the law of the Tribe in question to the specified circumstances;
- (2) Set the matter for specified proceedings;
- (3) Agree to issue a declaratory order by a specified time; or
- (4) Decline to issue a declaratory order, stating the reasons for its action.

(f) A copy of all orders issued in response to a petition for a declaratory order must be mailed promptly to the petitioner and any other parties.

(g) A declaratory order has the same status and binding effect as any final agency action issued in a hearing or contested case proceeding. A declaratory order must contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

(h) If an agency has not issued a declaratory order within sixty days after receipt of a petition therefore, or such later time as agreed by the parties, the petition is deemed to have been denied. Once a petition for a declaratory order is deemed denied or if the agency declines to issue a declaratory order, a party to that proceeding may seek review in accordance with this Article or await further agency action with respect to its petition for a declaratory order.

#### **Sec. 2-4503. Informal Settlement.**

(a) Unless precluded by the laws of the Tribe, informal settlements of controversies that may culminate in appeals or contested case proceedings according to the provisions of this Chapter are encouraged.

(b) The parties to an appeal or contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of this Chapter relating to such proceedings. In addition to consenting to such a waiver in individual cases, an agency may, by regulation, express its consent to such a waiver as to an entire class of cases.

#### **Sec. 2-4504. Notice of Appealable Agency Action; Reconsideration.**

(a) An agency shall serve notice of an appealable agency action pursuant to Section 2-4505. The notice shall identify the law of the Tribe or rule that is alleged to have been violated or upon which the agency action is based, and shall include a description of the party's right to request reconsideration or a hearing on an appealable agency action and to request an informal settlement conference pursuant to this Chapter.

(b) A party may obtain a reconsideration of an agency action by filing a request for reconsideration with the agency within thirty days after receiving the notice of agency action pursuant to subsection (a) of this section. The notice may be filed by any party suffering legal wrong because of the agency action, or who is adversely affected or aggrieved by the agency action. The request for reconsideration shall identify the party, the party's address, the agency, and the agency action to be reconsidered and shall contain a concise statement of the grounds supporting reconsideration.

(c) Within fifteen days of receipt of a request for reconsideration, the officer of the agency who took the agency action shall issue a decision on reconsideration upholding, modifying, or reversing the agency action. The agency shall serve its decision pursuant to Section 2-4505. The decision shall identify the original agency action, the law of the Tribe or rule that is alleged to have been violated or on which the agency action is based, and shall include a description of the party's right to request a hearing on the reconsideration decision and to request an informal settlement conference pursuant to this Chapter.

(d) A party is not required to file a request for reconsideration of an agency action in order to obtain a hearing on an appealable agency action, but when a request for reconsideration is filed, it shall prevent any hearing of an appealable agency action until the reconsideration is decided.

(e) A party may obtain a hearing on an appealable agency action or on a decision on a reconsideration request by filing a notice of appeal with the agency within thirty days after receiving the notice of an appealable agency action pursuant to subsection (a) of this Section or notice of decision on reconsideration pursuant to subsection (c) of this Section. The notice may be filed by any party suffering legal wrong because of the agency action, or adversely affected or aggrieved by the agency action. The notice of appeal shall identify the party, the party's address, the agency, and the action being appealed and shall contain a concise statement of the reasons for the appeal.

(f) An agency may accept a reconsideration or appeal that is not filed in a timely manner if the party appealing the agency action shows good cause.

**Sec. 2-4505. Service.**

Unless otherwise provided by this Chapter, every notice or decision under this Chapter shall be served by personal delivery or mail to the party's last address of record with the agency, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action. Each party shall inform the agency of any change of address within five days of the change.

**Sec. 2-4506. Presiding Officer.**

(a) Except where the laws of the Tribe specific to an agency provide otherwise, the presiding officer over any appeal of an agency action or contested case may be, in the discretion of the agency, the commission, board, or individual head of the agency or any other qualified person or group of persons designated as a presiding officer by the agency.

(b) Any person serving or designated to serve alone or with others as a presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this Chapter or for which a judge or justice of the Tribal Court is or may be disqualified.

(c) Any person who took part in the agency action being appealed shall not serve as a presiding officer either alone or with others in an appeal of that agency action.

(d) The commission, board, or individual head of the agency shall not take any disciplinary or other retaliatory action against any person or group of persons under their supervision or control for decisions made by such person or group of persons while acting as a presiding officer.

**Sec. 2-4507. Time for Hearings.**

(a) Hearings for appealable agency actions shall be held within sixty days after the notice of appeal is filed.

(b) Hearings for contested cases shall be held within sixty days after the agency's notice or request for a hearing.

(c) The date scheduled for any hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

**Sec. 2-4508. Notice of Hearing.**

The presiding officer shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

- (a) A statement of the time, place and nature of the hearing;
- (b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (c) A citation to the particular sections of the Code or regulations involved;
- (d) A short and plain statement of the matters at issue. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved.

**Sec. 2-4509. Prehearing Conference.**

Upon the request of the agency or party to an appeal or contested case or the presiding officer's own motion, the presiding officer shall hold a prehearing conference to:

- (a) Clarify or limit procedural, legal or factual issues;
- (b) Consider amendments to any pleadings;
- (c) Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing;
- (d) Obtain stipulations or rulings regarding testimony, exhibits, facts or law;
- (e) Schedule deadlines, hearing dates and locations, if not previously set;
- (f) Allow the parties opportunity to discuss settlement.

**Sec. 2-4510. Informal Settlement Conference.**

(a) Upon receipt of a written request filed by the party appealing an appealable agency action or a party to a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be

filed with the agency no less than twenty days before the date set for hearing the matter. If an informal settlement conference is requested, the agency shall notify the presiding officer of the request and the outcome of the conference. The request for an informal settlement conference does not toll the sixty day period within which the administrative hearing is to be held pursuant to section 2-4509.

(b) If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any administrative hearing.

### **Sec. 2-4511. Hearings.**

(a) The parties to a contested case or appealable agency action have the right to be represented by any individual, including an attorney, or to proceed without representation, to submit evidence, and to cross-examine witnesses.

(b) The presiding officer shall have the authority to issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the Tribal Court, enforced in the manner provided by the laws of the Tribe for the service and enforcement of subpoenas in civil matters. The presiding officer shall have the authority to administer oaths and affirmations to witnesses.

(c) All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the presiding officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time, and protecting witnesses from harassment or undue embarrassment.

(d) All hearings shall be recorded. The presiding officer shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

(e) Unless otherwise provided by the laws of the Tribe, the following apply:

(1) A hearing may be conducted in an informal manner and without adherence to technical rules of evidence. Neither the informal manner of conducting the hearing nor the failure to adhere to technical rules of evidence is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

(2) Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the facts subject to judicial notice, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be used in the evaluation of the evidence.

(4) On application of a party or the agency and for use as evidence, the presiding officer may permit a deposition to be taken, in the manner and on the terms designated by the presiding officer, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the presiding officer if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. Except where permitted by regulations of the agency, subpoenas, depositions or other discovery shall not be permitted other than as provided in this Section.

(5) Informal disposition may be made by stipulation, agreed settlement, consent order, or default.

(6) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(7) A final administrative action shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

**Sec. 2-4512. Final Agency Action.**

(a) The presiding officer shall issue a written decision within twenty days after a hearing in an appeal or contested case is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The presiding officer shall serve a copy of the decision on the agency and all parties. Upon request of the agency, the presiding officer shall also transmit to the agency the record of the hearing as described in section 2-4605.

(b) The written decision of the presiding officer is the final agency action.

(c) A party may appeal a final agency action to the Tribal Court pursuant to Chapter 6 of this Article, except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to this Chapter, the appealable agency action is not subject to judicial review.

**Sec. 2-4513. Rehearing.**

(a) A party may file a motion for rehearing with the presiding officer within thirty days after service of a final agency action. Service is complete on personal service or five days after the date that the final agency action is mailed to the party's last known address.

(b) The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

(c) A party is not required to file a motion for rehearing of the decision in order to exhaust the party's administrative remedies.

(d) Except as provided in this subsection, the presiding officer shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period.

**Sec. 2-4514. Compulsory Testimony.**

A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding, or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person which would be privileged pursuant to the laws of the Tribe and the person claims the privilege prior to the production of the testimony or papers.

**Sec. 2-4515. Special Provisions for Licenses.**

(a) Revocation, annulment, or withdrawal of any license by an agency is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this Chapter.

(b) An agency may order summary suspension of a license pending proceedings for revocation or other action. Proceedings for revocation or other action after suspension shall be promptly instituted and determined.

**Sec. 2-4516. Agency Regulations.**

An agency may promulgate regulations supplementing the provisions of this Chapter for agency actions, appeals, and contested cases before that agency.

**CHAPTER 6. REVIEW OF ADMINISTRATIVE DETERMINATIONS****Sec. 2-4601. Applicability.**

(a) This Chapter applies to and governs every action to review a final decision of an agency in the adjudicatory tribunals of the Tribe, except where the laws of the Tribe specifically provides otherwise for review of an agency's actions and prescribes a definite procedure for that review.

(b) Unless review is sought of a final agency action within the time and in the manner provided in this Chapter, the parties to the proceeding before the agency shall be barred from obtaining review of the agency action. If under the terms of the law governing procedure before an agency, an agency action becomes final because of failure to file any document in the nature of an objection, protest, petition for hearing, or application for administrative review within the time allowed by the law, the decision is not subject to review under the provisions of this Chapter, except for the purpose of questioning the jurisdiction of the agency over the person or subject matter.

**Sec. 2-4602. Right of Review.**

A person suffering aggrieved or adversely affected by any final agency action shall be entitled to judicial review of the final agency action.

**Sec. 2-4603. Jurisdiction of Tribal Court.**

(a) The Trial Court shall have jurisdiction over all reviews of final agency actions under this Chapter.

(b) The Trial Court shall not have jurisdiction to review any agency action unless and until such agency action is final for the agency. In all cases in which a law of the Tribe or a regulation of the agency requires or permits an application for a rehearing or other method of agency review, and an application for rehearing is made, no decision of such agency is final as to the party applying for the rehearing until the rehearing is denied or the decision on rehearing is rendered.

**Sec. 2-4604. Rules of Tribal Court.**

The Tribal Court may make rules of pleading, practice, and procedure supplementary to but not inconsistent with the provisions of this Chapter, and to amend such rules, as it makes other rules in accordance with the laws of the Tribe, for the purpose of making this Chapter effective for the convenient administration of justice, and simplifying procedure so far as it affects review of agency actions.

**Sec. 2-4605. Commencement of Action.**

(a) An action to review a final agency action shall be commenced by filing a complaint in the Trial Court within thirty days from the date when a copy of the final agency action sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by the laws of the Tribe governing procedure before the agency or by a regulation of the agency made pursuant to the laws of the Tribe, but if no method is provided, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business. Service shall be deemed complete on personal service or five days after the date that the final agency action is mailed to the party's last known address.

(b) Within ten days after filing a complaint pursuant to this Chapter, the party seeking review shall serve a notice of the action, together with a copy of the complaint, with the Executive Director and the agency that issued the final agency action, and the agency that issued the final agency action shall transmit the record to the Tribal Court. The record shall consist of the following:

- (1) The original agency action from which review is sought;
- (2) Any motions, memoranda or other documents submitted by the parties to the appeal;
- (3) Any exhibits admitted as evidence at the agency hearing;
- (4) The final agency action and any revisions or modifications to the decision;  
and
- (5) A copy of the transcript of the hearing, if any party desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense.

**Sec. 2-4606. Parties.**

In an action to review a final agency action, the agency and all persons, other than the plaintiff, who are parties of record in the proceedings shall be made defendants. The Tribe shall not be made a defendant unless the Tribe is a party of record.

**Sec. 2-4607. Service of Process.**

In an action to review a final agency action, a copy of the summons and complaint shall be served as provided in the laws of the Tribe governing service of process in Tribal Court proceedings upon the agency at its principal office and upon all other defendants.

**Sec. 2-4608. Appearance of Defendants.**

The defendant agency and all other defendants to the review shall answer the complaint within twenty days after service of the summons and complaint.

**Sec. 2-4609. Pleadings and Record on Review.**

(a) The complaint shall contain a statement of the agency action or part thereof sought to be reviewed, and shall clearly specify the grounds upon which review is sought.

(b) Except as otherwise provided, the defendant shall file an answer.

(c) If the cause is remanded to the agency and a review thereafter is sought of the agency action, the original and supplemental record, or so much thereof as is determined by order of the Tribal Court or stipulation of all the parties, shall constitute the record on review.

**Sec. 2-4610. Scope of Review.**

(a) An action to review a final agency action shall be heard and determined with convenient speed.

(b) In proceedings for review of a final agency action, the Trial Court may hear and consider such evidence as it deems appropriate. In proceedings for review of a final agency action in an appeal of an appealable agency action or contested case, however, the Trial Court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by the laws of the Tribe to the agency in that appeal or contested case proceeding. Before the date set for hearing an action for review of a final agency action in an appeal of an appealable agency action or contested case, application may be made to the Trial Court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the Trial Court that the additional evidence is material and that there were good reasons for failure to present it in the hearing before the agency, the Trial Court may order that the additional evidence be taken before the agency upon conditions determined by the Trial Court. The agency may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the Trial Court and mail copies of the new findings or decisions to all parties.

(c) The Trial Court shall review a final agency action de novo if:

(1) Trial de novo is demanded in the complaint or answer of a defendant other than the agency; and

(2) A hearing was not held by the agency or the proceedings before the agency were not reported or recorded so that a transcript might be made.

(d) The record in the Tribal Court shall consist of the record of the agency's proceeding, the record of any evidentiary hearing, and the record of the trial de novo, if any.

(e) The Tribal Court may affirm, reverse, modify or vacate and remand the final agency action. The Tribal Court shall affirm the final agency action unless after reviewing the record and supplementing evidence presented at any evidentiary hearing, the Tribal Court concludes that the final agency action is:

- (1) Beyond the authority delegated to the agency;
- (2) Contrary to law;
- (3) Not supported by substantial evidence in the record in the Trial Court when that record is viewed as a whole;
- (4) Based upon a procedure or decision-making process prohibited by the laws of the Tribe or not in accordance with the laws of the Tribe; or
- (5) Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

(f) Technical errors in the proceedings before the agency or its failure to observe technical rules of evidence shall not constitute grounds for reversal of the final agency action, unless it appears to the Tribal Court that the error or failure affected the rights of a party and resulted in injustice to him.

(g) In reviewing a final agency action, the Trial Court shall:

- (1) Not give any deference to the agency with respect to particular matters that have not been vested by the laws of the Tribe in the discretion of the agency;
- (2) Give appropriate deference to the agency with respect to particular matters that have been vested by the laws of the Tribe in the discretion of the agency; and
- (3) Not give any deference to the agency with respect to whether a particular matter has been vested by the laws of the Tribe in the discretion of the agency.

**Sec. 2-4611. Costs.**

Costs may be awarded a defendant agency if a judgment adverse to the plaintiff is rendered. Such costs may be awarded in an amount deemed reasonable by the Tribal Court, based upon the expense the defendant agency has incurred in preparing the record of the proceedings before trial.

**Sec. 2-4612. Appellate Review.**

The final decision, order, judgment, or decree of the Trial Court entered in an action to review a final agency action may be appealed to the Court of Appeals.

**Sec. 2-4613. Rules of Procedure.**

Except where provided otherwise in this Chapter, the laws of the Tribe governing matters relating to the conduct of Tribal Court proceedings, including the laws of the Tribe governing appeals to the Court of Appeals, shall apply to any review of a final agency action under this Chapter.