Shoshone and Arapaho Law and Order Code
Title X
Tribal Employment Rights Code

Title X, Tribal Employment Rights Code, is currently under review. For more information, please contact:

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TITLE X
TRIBAL EMPLOYMENT RIGHTS CODE

CHAPTER 1 GENERAL PROVISIONS

Section 10-1-1 Name and Purpose

(1) Name. This code shall be known as the "Shoshone and Arapaho Employment Rights Code."

(2) Purpose. The purpose of this code is to assist in and require the fair employment of Indians on the Wind River Indian Reservation and to prevent discrimination against Indians in the employment practices of reservation employers.

Section 10-1-2 Definition of Important Terms and Words

(1) "Chairman" shall mean the chairman of the Shoshone and Arapaho Employment Rights Commission.

(2) "Commission" shall mean the Shoshone and Arapaho Employment Rights Commission which, until changed by the Tribal Business Council, will be comprised of the Tribal Business Council.

(3) "Council" shall mean the Business Council of the Shoshone and Arapaho Tribes.

(4) "Commissioner" shall mean a commissioner of the Shoshone and Arapaho Employment Rights Commission.

(5) "EEOC" shall mean the Equal Employment Opportunity Commission of the United States.

(6) "Employer" shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the reservation, employing two (2) or more persons. The term "Employer" excludes federal, state or county government agencies, but includes agencies, contractors, and subcontractors of all other agencies.

(7) "Engaged in work on the reservation." An employer is "engaged in work on the reservation" if, during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends a majority of his time performing work within the exterior boundaries of the reservation on a continuing basis.

(8) "HRC" shall mean Human Rights Commission of the State of Wyoming.

(9) "Indian" shall mean any person recognized as an Indian by the United States pursuant to its trust responsibility to American Indians, or recognized by the Shoshone and Arapaho Tribes as such.

(10) "Indian-owned business" shall mean a business entity of which at least eighty-five percent (85%) is owned by Indians. The percentage limitations used in determining whether an entity is Indian-owned for applicable Shoshone and Arapaho Indian preference purposes shall be reduced to fifty-one percent (51%) for federal programs which require a fifty-one percent (51%) limitation.

(11) "Joint ventures" shall mean an association of two (2) or more persons or firms to carry out a single or limited number of business enterprises for profit, for which purpose they combine their property, money, effects, skills and knowledge.

(12) "Located on the reservation." An employer is "located on the reservation" if, during any portion of a business enterprise or specific project, contract or subcontract he maintains a temporary or permanent office or facility within the exterior boundaries of the reservation. "Near the reservation" means if a person lives within reasonable daily commuting distance of the reservation.

(13) "OFCCP" shall mean the Office of Federal Contract Compliance Programs of the United States.

(14) "Reservation" shall mean the Wind River Indian Reservation, Wyoming (State).

(15) "Tribal member; member" shall mean any person who is a duly enrolled member of the Shoshone and Arapaho Indian Tribe, unless the context clearly indicates otherwise.

(16) "Tribe" shall mean the Shoshone and Arapaho Indian Tribes, or a tribe or entity federally recognized as defined by the Indian Self-Determination Act, Title 25, U.S.C.S., 4506(b).

Section 10-1-3 Employment Rights Commission

(1) Duties of the Commission. The commission shall administer the Employment Rights Program of the Shoshone and Arapaho Indian Tribes in accordance with this code.

(2) Powers of the Commission. The Commission shall have the power:

a) To hire and fire Commission employees and to pay salaries pursuant to a salary schedule established by the council;

b) To establish rules and regulations governing all activities of the Commission;

c) To expend funds appropriated by the Council for the Shoshone and Arapaho Tribal Rights Program;

d) To obtain funding from federal, state or other sources to supplement Council appropriations;

e) To establish numerical hiring goals and timetables specifying the minimum number of Indians an employer must hire by craft or skill level;

f) To require employers to establish or participate in job training programs as the Commission deems necessary to increase the pool of Indians eligible for employment on the reservation, not in a manner that would result in any increased costs to any federal programs through which funding is obtained;

g) To establish and administer a tribal hiring hall and require employers to use it;

h) To prohibit employers from using job qualifications criteria or personnel requirements that may bar Indians from employment unless such criteria or requirements are required by business necessity. Commission regulations may adopt EEOC guidelines or may adopt additional requirements to eliminate employment barriers unique to Indians and the reservation;

i) To enter into agreements with the unions to insure union compliance with this code;

j) To require employers to give preference to tribal and other Indian-owned businesses in the award of contracts and subcontracts;

k) To establish counseling programs to assist Indians in obtaining and retaining employment;

l) To hold hearings and to subpoena witnesses and documents in accordance with this code;

m) To require employers to submit reports and take all action deemed necessary by the Commission for the fair and vigorous implementation of this code;

n) To enter into cooperative agreements with federal employment rights agencies such as EEOC and OFCCP to eliminate discrimination against Indians both on and off the reservation; and

o) To take such other actions as are necessary to achieve the purposes and objectives of the Shoshone and Arapaho Employment Rights Program established in this code.

In exercising the above specified power, the Commission shall have the discretion to implement certain powers only or to apply one or more such powers to limited classes or number of employers.

Section 10-1-4Employment Rights Program

(1) Coverage. All employers are required to give preference to Shoshone, Arapaho and other local Indians in hiring, promotion, training, and all other aspects of employment, contracting or subcontracting, and must comply with this code and the rules, regulations and orders of the Commission. Local Indians shall be defined as those Indians residing within the exterior boundaries of the Wind River Reservation.

The above requirements shall apply to facilities of an employer, including a subcontractor located or engaged in work on the reservation.

(2) Contractors and Subcontractors. The Indian preference requirements contained in this code shall be binding on all contractors and subcontractors of employers, regardless of tier, and shall be deemed a part of all contract and subcontract specifications. The employer shall be subject to penalties provided herein for violation of this code if the contractor or subcontractor fails to comply.

(3) Minimum Numerical Goals and Timetables for Indian Employment. The Commission may establish the minimum number of Indians each employer must employ on his workforce during any year that he or any of his employees are located or engaged in work on the reservation. Numerical goals may be set for each craft, skill, job classification, etc., used by the employer and shall include, but not be limited to, administrative, supervisor and professional categories. The goals shall be expressed in terms of man hours or Indian employment as a percentage of the total man hours worked by the employer's workforce in the job classification involved.

For both new and existing employers, the goals shall be reviewed by the Commission at least annually and shall be revised as necessary to reflect changes in the number of Indians available or changes in employer hiring plans. Each employer shall submit a monthly report to the Commission on a form provided by the Commission, indicating the number of Indians in his workforce, how close he is to meeting his goals, all persons hired or fired during the month, the job positions involved, and other information required by the Commission.

(4) Training. Employers may be required by the Commission to participate in training programs to assist Indians to become qualified in the various job classifications used by

the employer. The ratio of Indian trainees to fully qualified workers shall be set by the Commission after consultation with the employer.

(5) Job Qualifications and Personnel Requirements. Employers are prohibited from using job qualification criteria or personnel requirements which bar Indians from employment, unless such criteria or requirements are required by business necessity.

(6) Tribal Hiring Hall. The Commission shall establish and administer a tribal hiring hall to assist the Commission and employers in placing Indians in job positions. An employer may recruit and hire workers from whatever sources are available to him and by whatever process he chooses, as long as he complies with this code and Indians job preference regulations and agreements pertaining to his operation.

(7) Counseling and Support Programs. The Commission will establish counseling and other support programs to assist Indians to obtain and retain employment. Every employer shall be required to cooperate with the Commission regarding such counseling and support programs.

(8) Preference in Contracting and Subcontracting. Employers shall give preference in the award of contacts or subcontracts to tribally owned and Indian-owned businesses which shall be supplied to the employers for their use.

(9) Lay-offs. In all lay-offs and reductions in force, employers shall maintain required ratios of Indian employees.

(10) Promotion. Every employer shall, in accordance with required ratios, give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities.

(11) Summer Students. Employers shall give Indian students preferential consideration for summer student employment. The employer shall make every effort to promote after-school, summer and vacation employment for Indian students.

(12) Burden of Proof. In any hearing before the Commission where the issue is compliance by an employer of any of the requirements and provisions of the foregoing subsections of Section 4, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

Section 10-1-5 Compliance by Unions

Every union with a collective bargain agreement with an employer must file a written agreement stating that the union will comply with this code and the rules, regulations and orders of the Commission. Until such agreement is filed with the Commission, the employer may not commence work on the reservation.

(1) Contents of Union Agreements. Every union agreement with an employer or filed with the Commission must provide:

a) Indian Preference. The union will give preference to Indians in job referrals regardless of which union referral list they are on;

b) Cooperation with the Commission. The union will cooperate with the Commission in all respects and assist in the compliance with, and enforcement of this code and related regulations and agreements;

c) Registration. The union will establish a mechanism allowing Indians to register for job referrals lists by telephone or mail;

d) Training Programs. The union will establish a journeyman upgrade and advanced apprenticeship program; and

e) Temporary Work Permits. The union will grant temporary work permits to Indians who do not wish to join the union.

(2) Model Union Agreement. The Commission will provide a model union agreement for use by all unions who have collective bargaining agreements with any employer.

(3) Recognition of Unions. Nothing herein or any activity by the Commission authorized hereby shall constitute official tribal recognition of any union or tribal endorsement of any union activities on the reservation.

(4) Burden of Proof. In any hearing before the Commission where the issue is compliance by an employer of any of the requirements and provisions of the foregoing subsections of Section 4, the burden of proof shall be on the employer rather than on the employee or other complainant to show said compliance.

Section 10-1-6Hearings

(1) Notice. If a hearing is requested by the Commission, an individual, an employer, or union pursuant to this section, a written notice of hearing shall be given to all concerned parties stating the nature of the hearing and the evidence to be presented. The notice shall advise such parties of their right to be present at the hearing, to present testimony of witnesses and other evidence, and to be represented by counsel at their own expense.

(2) Commission Complaint Procedure. If the Commission has cause to believe that an employer, contractor, subcontractor, or union has failed to comply with this code or any rules, regulations or orders of the Commission, it may file a complaint and notify such party of the alleged violations. The Commission will attempt to achieve an informal settlement of the matter,

but if an informal settlement cannot be achieved, the Commission may request a hearing upon the matter pursuant to Section 6.1.

If any employer fires, lays off, or penalizes in any manner, any Indian employee for utilizing the individual complaint procedure, or any other right provided herein, the employer shall be subject to the penalties provided in Section 7 of this code.

(4) Employer or Union Complaint Procedure. If an employer or union believes that any provision of this code or any rule, regulation or order of the Commission is illegal or erroneous, it may file a complaint with the Commission specifying the alleged illegality or error. Upon receipt of the complaint, the Commission shall investigate and attempt to achieve an informal settlement of the matter. If an informal settlement cannot be achieved, the employer, union or Commission may request a hearing upon the matter pursuant to Section 6.1.

(5) Hearing Procedure. Hearings shall be governed by the following rules or procedure:

a) All parties may present testimony of witnesses and other evidence and may be represented by counsel at their expense;

b) The Commission may have the advice and assistance at the hearing of counsel provided by the tribe;

c) The chairman of the Commission or the vice-chairman shall preside and the Commission shall proceed to ascertain the facts in a reasonable and orderly fashion;

d) The hearing may be adjourned, postponed and continued at the discretion of the Commission;

e) At the final close of the hearings, the Commission may take immediate action or take the matter under advisement; and

f) The Commission shall notify all parties thirty (30) days after the last hearing of its decision in the matter.

Section 10-1-7 Penalties for Violation

Any employer, contractor, subcontractor or union who violates this code or rules, regulation or orders of the Commission shall be subject to penalties for such violations, including, but not limited to:

a) Denial of right to commence or continue business inside the reservation;

b) Suspension of operations inside the reservation;

c) Payment of back pay and damages to compensate any injured party;

d) An order to summarily remove employees hired in violation of this code or rules, regulations and orders of the Commission;

e) Imposition of monetary civil penalties;

f) Prohibition from engaging in future operations on the reservation;

g) An order requiring employment, promotion and training of Indians injured by the violation;

h) An order requiring changes in procedures and policies necessary to eliminate the violations; and

i) An order making any other provision deemed by the Commission necessary to alleviate, eliminate or compensate for any violation.

The maximum penalty which may be imposed is $500.00 for each violation. Each day during which a violation exists shall constitute a separate violation.

Section 10-1-8 Appeals

Any party to a hearing shall have the right to appeal any decision of the Commission to the Shoshone and Arapaho Tribal Court pursuant to the Law and Order Code of the Shoshone and Arapaho Indian Tribes.

Section 10-1-9 Publication of Code

The Commission shall notify all employers of this code and their obligations to comply. All bid announcements issued by any tribal, federal, state or other private or public entity shall contain a statement that the successful bidder will be obligated to comply with this code and all rules, regulations and orders of the Commission.

All Tribal agencies responsible for issuing business permits for reservation activities or otherwise engaged in activities involving contact with prospective employers on the reservation shall be responsible for advising such prospective employers of their obligations under this code and rules, regulations and orders of the Commission.

The Commission shall send a copy of this code to every employer operating on the reservation.

Section 10-1-10 Compliance Plan

As of the effective date of this code, no new employer may commence work on the reservation until it has consulted with the Commission for meeting obligations under this code.

Section 10-1-11 Reporting and On-Site Inspection

Employers shall submit reports and other information requested by the Commission. The Commission and its representative shall have the right to make on-site inspections during regular working hours in order to monitor any employer's compliance with this code and rules, regulations and orders of the Commission. The Commission shall have the right to inspect and

copy all relevant records of any employer, of any signatory union or subcontractor and shall have right to speak to workers and conduct investigations on job sites.

Section 10-1-12 Severability

If any provision of this code or its application to any person or circumstances is held invalid, the remainder of the code or the application of the provision to other persons or circumstances is not affected.

Section 10-1-13 Rules and Regulations

The purpose of this code is to establish the Commission and general requirements, policies and guidelines to govern it and its work. When the Commission is appointed and organized, it shall with all reasonable speed adopt, with the final approval of the Council, more detailed rules, regulations, policies and guidelines to fully implement this code and the purposes and responsibilities of the Commission.

Section 10-1-14 Commission Funds

All funds from employer fees and other sources collected by the Commission, although under the management control of the Commission, shall be tribal funds subject to the final control and disposition by the council.

Section 10-1-15 Effective Date

This code shall be effective from the date of its approval by the Shoshone and Arapaho Joint Business Council.

CHAPTER 2 ESTABLISHMENT OF A SHOSHONE AND ARAPAHO TRIBAL EMPLOYMENT RIGHTS OFFICE (TERO)

Section 10-2-1 Office; Director

The Shoshone and Arapaho Tribes does hereby establish the Shoshone and Arapaho Tribal Employment Rights Office (hereinafter called "Office") as an independent office of the tribe, reporting directly to the tribal chairmen.

The Director of the Office shall be appointed by the tribal chairmen subject to the approval of the tribal council. The director shall have the authority to hire staff, expend funds appropriated by the tribal council, and to obtain and expend funds from federal, state or other sources to carry out the purposes of the office. The Office shall have the authority to issue rules, regulations, and guidelines to implement the employment rights requirements imposed by this code, to hold hearings, to subpoena witnesses and documents, to require employers to submit reports and to take such other actions as are necessary for the fair and vigorous implementation of this code.

Section 10-2-2 Indian Preference

All employers operating within the exterior boundaries of the Wind River Reservation are hereby required to give preference to Indians in hiring, promotion, training, and all other

aspects of employment, and in subcontracting. Said employers shall comply with the rules, regulations, and guidelines of the employment rights office that set out the specific obligations of the employer in regard to Indian preference.

Section 10-2-3 Agreement Regarding Indian Preference

Any covered employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from said union(s) stating that the union shall comply with the Indian preference laws, rules, regulations, and guidelines of the Shoshone and Arapaho Tribes. Such agreement shall be subject to the approval of the employment rights office. Such agreement does not constitute official tribal recognition or sanction of any union.

Section 10-2-4 Sanctions

Any employer who fails to comply with the laws, rules, regulations, or guidelines on employment rights of the Shoshone and Arapaho Tribes or who fails to obtain the necessary agreements from its signatory unions shall be subject to sanctions which shall include, but are not limited to: denial of the right to commence business on the Wind River Reservation, civil fines, suspension of the employer's operation, termination of the employer's operation, denial of the right to conduct any further business on the Wind River Reservation, payment of back pay or other relief to correct any harm done to the aggrieved Indians, and to the summary removal of employees hired in violation of the Shoshone and Arapaho Tribes' employments rights requirements.

Sanctions shall be imposed by the Director, after allowing the employer an opportunity to present evidence showing why it does not violate the requirements or why it should not be sanctioned. An employer shall have the right to appeal to the Shoshone and Arapaho Tribal Court of Appeals decisions by the Director that imposes sanctions on him.

Section 10-2-5 Implementation

In implementing the requirements of this code, the Employment Rights Office is authorized to:

(1) Impose numerical hiring goals and timetables that specify the minimum number of Indians an employer must hire, by craft or skill level.

(2) Require covered employers to establish or participate in such training programs as the Office determines necessary in order to increase the pool of qualified Indians on the Wind River Reservation as quickly as possible.

(3) Establish, in conjunction with the Tribal Employment and Training Program, a tribal hiring hall and impose a requirement that no covered employer may hire a non-Indian until the tribal hiring hall has certified that no qualified Indian is available to fill the vacancy.

(4) Prohibit any covered employer from using qualification criteria or other personnel requirements that serve as barriers to Indian employment, unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this requirement, the Office shall adopt the EEOC guidelines on these matters to the extent that they are appropriate. However, the Office shall have the right to impose

additional requirements, beyond those established by EEOC, in order to address employment barriers that are unique to Indians.

(5) To enter into agreement with unions to insure union compliance with this code.

(6) To require employers to give preference to the award of contracts and subcontracts to tribal and other Indian-owned firms and entities.

(7) To establish programs, in conjunction with other tribal and federal offices, to provide counseling and support to Indian workers to assist them to retain employment. Employers shall be required to participate in and/or cooperate with such support and counseling programs.

(8) Take such other actions as are necessary to achieve the purposes and objectives of this resolution. However, the implementation of any activities or requirements that constitute a significant new component to this program beyond those listed in subparagraphs (1) through (4) shall be subject to the prior approval of the Shoshone and Arapaho Joint Business Council. In implementing these components, the Office shall have the discretion to begin by implementing certain of these components or by applying all of the components to limited kinds of employer (e.g., construction, mining).

Whichever approach to phasing in the program the TERO decides to use, it shall develop at a gradual pace in order to insure a stable and effective program.

Section 10-2-6 Cooperation with Other Agency

The Office is authorized to enter into a cooperative relationship with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Wind River Reservation.

Section 10-2-7 Fee

An employment rights fee, to raise revenue for the operation of the office, is hereby imposed as follows:

(1) Every covered construction contractor with a contract of $100,000.00 or more shall pay a one-time fee of one-half of one percent (.5%) of the total amount of the contract. The fee may be paid in installments over the length of the contract.

(2) Every covered employer, other than construction contractors, with twenty (20) or more employees or gross sales of $100,000.00 or more shall pay an annual fee of one-half of one percent (.5%) of the annual payroll of that employer. This fee shall not apply to educational, health, governmental, tribal or non-profit employers.

Such fees shall be paid to the tribal government and shall be placed in a special account to be used to meet the operating costs of the Office. The Office shall be responsible for collecting said fees and is authorized to establish such rules and regulations as are necessary to insure a fair and timely fee collection process. An employer or contractor who fails to pay the required fee shall be subject to the sanctions provided for in paragraph 4 of this code. The Office is authorized to develop a program to rebate some or all of the fees paid by an employer if

that employer is found to be in compliance with the requirements imposed by this resolution and is making a substantial effort to employ, train, and promote Indians.

Section 10-2-8. Employment and Training Programs

The tribal employment and training program (CETA) and the BIA Employment Assistance Program shall devote such amount of their resources as is necessary to preparing Indians for the job opportunities to be opened up by the employment rights program. Also, the Tribal Employment and Training Program is hereby mandated to establish a construction worker trainee program and to obtain certification for that program from the Department of Labor. The directors of the Tribal Employment and Training Programs, the BIA Employment Assistance Program, and the tribal education program shall coordinate with the director of the Employment Rights Office in the development of their training plans.

Section 10-2-9 Financial Plan

There is hereby appropriated from the tribal treasury $10,000.00 for the first year of operation of the Office. In addition, the Tribal CETA Program shall make available to the Office up to five (5) public employment slots to pay the salaries of Office employees. Within six (6) months after the appointment of the Office director, he shall present to the tribal council a plan for the financing of the Office out of monies other than from the tribal treasury. The plan shall indicate the expected amount of revenue from the employment rights fees and other potential sources of funding for the Office, including but not limited to new funds or reallocations of existing funds from such sources as CETA, ONAP, EEOC, BIA Employment Assistance, HUD, and EDA.

Section 10-2-10 Retaliation by Employers

Any covered employer or union or person which retaliates against any worker, employer, union or other person or other entity because of this person or entity's exercise of its rights under this code shall be subject to sanction by the TERO. Further, the TERO is authorized to issue a temporary injunction to prevent any harm caused by an employer, union or person's retaliatory actions.

CHAPTER 3 INDIAN PREFERENCE POLICIES AND PROCEDURES ON THE WIND RIVER RESERVATION

Section 10-3-1 Indian Preference on the Reservation

Every entity engaged in on the Wind River Reservation shall give preference to firms certified by the Tribe under Chapter 4 of this Code in all contracts and subcontracts to be performed on the Reservation. An entity in such development may not enter into a contract or subcontract with a firm not so certified unless it has contacted every certified firm in the relevant field and has determined that there is no certified firm available that is technically qualified to perform the work required at a reasonable price. So long as a certified firm meets minimum threshold qualifications, no other firm may be selected for any contract or subcontract. If the entity determines that a certified firm lacks the qualifications to perform all the work required under a contract or subcontract, the entity shall make a good faith effort to divide the work required into small portions so that the certified firm can qualify for a portion of the work. As used in this section, the terms "contract and subcontract" apply to all contracts, including, but not

(2) No entity authorized to develop a business on the Reservation shall deviate from its plan in a manner that will diminish the percentage of Indian subcontracting without obtaining the prior written approval of the TERO.

(3) The TERO shall have the right to inspect the records of any entity to ensure that a plan is complied with.

(4) No entity shall circumvent the requirements of this Code by hiring non-Indians and designating them as employees rather than a subcontractor.

Section 10-3-4 Operation of the Contract or Subcontract

Once an entity enters into a contract with a certified firm, the TERO will not intervene in any way in the relationship between the parties unless a certified firm demonstrates that action taken against it is intended primarily to circumvent the requirements of this Code.

Section 10-3-5 Placement of Non-Indian Firms by Certified Firms After a Project is Under Way

When an entity hires a non-certified firm (it is not sufficient that the certified firm was in existence but not available) and if a qualified certified firm subsequently comes into existence, the entity must replace the non-certified firm with the certified firm; but only if the contract or relationship between the entity and the non-Indian firm will extend for more than one (1) year beyond the date the entity is notified by the TERO of the existence of a certified firm.

(1) If the legal relationship between the entity and the non-certified firm is through a year-to-year contract, the non-certified shall be replaced only when the contract expires; provided that, in no case shall an entity have less than two hundred seventy (270) days from the official notification that a certified firm is available to make a transition from use of the non-certified firm to use of the certified firm. That is, if the contract expires within two hundred seventy (270) days following notification that a certified firm is available, the entity shall have the right to extend the contract with the non-certified firm to a date not to exceed two hundred seventy (270) days from that notice. At the end of that period, the entity shall employ the Indian firm if it is qualified.

(2) If there is no written contract and/or an ongoing working relationship, the entity will have two hundred seventy (270) days to make the transition.

(3) The transition period may be waived completely or extended by the TERO in individual cases upon a showing of hardship upon the entity.

Section 10-3-6 Reports and Monitoring

All entities engaged in any aspect of business development on the Wind River Reservation shall submit such reports to the TERO as it requests, provided that the entity may refuse to submit any information which it can demonstrate must remain confidential for valid business purposes. The employees of the TERO shall have the right of on-site inspections during regular business hours in order to monitor compliance with this Code and shall have the right to talk to any employee on-site so long as it does not interfere with the operations of the business.

Section 10-3-7 Individual Complaints

Any certified firm, group of certified firms or other person or entity which believes that any entity covered by this Code has failed to comply with its requirements may file a complaint with the TERO, whether or not the complaining party can demonstrate it is personally harmed by the alleged non-compliance.

Section 10-3-8 Compliance and Hearing Procedures

If the TERO has reason to believe that an entity covered by this Code has failed to comply with any of its requirements, the TERO shall so notify the entity in writing specifying the alleged violation(s). If the party being so notified is a contractor or subcontractor, notice shall be provided to the entity holding the permit or authorization under which the contractor or subcontractor is operating and such entity may be a party to all further negotiations, hearings and appeals. The entity cited and the TERO shall have twenty (20) days to pursue a voluntary, informal resolution of the problem. If no such resolution can be reached by the end of twenty (20) days, the TERO shall notify the Review Board (Joint Business Council) and request that is set up a formal meeting on the problem within twenty (20) days of such notice. The TERO shall prosecute complaints it determines to have merit on the basis of their authority from the Shoshone and Arapaho Tribes. If the Review Board shall decide that an entity has failed to comply with the Code, the Board shall impose one or more of the sanctions provided for in this Code and may order the party to take such corrective actions as are necessary to remedy any harm done to the Tribe or to certified firms by the non-compliance.

Section 10-3-9 Sanctions

Any or all of the following sanctions may be imposed for violation of the Code:

(1) Civil monetary fines not to exceed $500.00 per violation. Each day a party is found to be out of compliance with this Code may be considered as a separate violation.

(2) Suspension or termination of an entity's authorization to develop a business on the Wind River Reservation; provided that the party shall be given a reasonable time to remove its equipment and other property it may have on the Reservation and to arrange with another party for assumption or any contractual obligations it has.

(3) Prohibit the party from engaging in future development on the Wind River Reservation for a specified period or indefinitely.

(4) Provide monetary or other relief to any certified firm or other entity which was harmed by the party's non-compliance with this Code.

CHAPTER 4 CERTIFICATION POLICIES AND PROCEDURES

Section 10-4-1 Criteria for Indian Contract Preference Certification

To receive certification as a firm eligible for Indian preference, an applicant must satisfy all of the following criteria:

Section 10-4-2 Ownership

The firm or joint venture must be eighty-five percent (85%) or more Indian-owned. The applicant must demonstrate the following:

(1) Formal Ownership. That an Indian or Indians own(s) eighty-five percent (85%) or more of the partnership corporation, joint venture, or other arrangement for which the application is being submitted. Such ownership must be embodied in the firm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

a) Financial ownership - i.e., the Indian(s) own eighty-five percent (85%) or more of the assets and equipment, will receive eighty-five percent (85%) or more of the firm's assets upon dissolution, and received eighty-five percent (85%) or more of the profits; and

b) Control - i.e., the Indian's eighty-five percent (85%) or more ownership provides him with a majority of voting rights or other decision mechanism and that all decisions of the firm are to be made by a majority vote except where otherwise required by law.

(2) Value. The Indian owner(s) provided real value for his eighty-five percent (85%) or more ownership providing capital, equipment, real property or similar assets commensurate with the value of his ownership share directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian preference program in existence.

(3) Profit. The Indian owner(s) receives eighty-five percent (85%) or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fee, equipment rental fees, bonus tied to profits or other vehicles, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive eighty-five percent (85%) or more of the profits.

Section 10-4-3 Management Control

The firm must be under significant Indian management and control. The firm must be able to demonstrate that:

(1) Unitary Firms (Non-Joint Ventures). One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm as his primary employment activity. The Indian owner does not have to be the "Chief Executive Officer." However, he must, through prior experience or training, have substantial occupational ties to the area of business in which the firm is engaged such that he:

a) Is qualified to serve in the senior level position; and

b) Is sufficiently knowledgeable about the firm's activities to be accountable to the Shoshone and Arapaho Tribes for the firm's activities. This provision may be waived when:

i) the firm is one hundred percent (100%) Indian-owned and the Chief Executive Officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation and the majority of employees are Indian; or

ii) the firm is modeled on a publicly held corporation such that it is owned by ten (10) or more persons, is at least eighty-five percent (85%) Indian-owned, the Chief Executive Officer and the highest salaried employee in the firm is/are Indian, and a majority of the employees are Indian.

(2) Joint Ventures. In addition to the above requirement on management and control, a joint venture will be required to demonstrate that the Indian firm is, in fact, the controlling partner in the joint venture. The venture will be required to demonstrate that the Indian partner has the experience and expertise to manage the entire operation and that the non-Indian partner is providing specialized or limited resources or expertise to the venture and is not the manager in fact.

Section 10-4-4 Integrity of Structure

There must be good reason to believe that the firm was not established solely or primarily to take advantage of the Indian preference program. In evaluating an applicant under this criterion, the TERO will consider the factors set out below. The TERO shall exercise broad discretion in applying these criteria in order to preserve the integrity of the Indian preference program and in questionable cases shall deny certification.

(1) History of the Firm. Whether the history of the firm provides reason to believe it was established primarily to take advantage of the Indian preference program, particularly whether the firm, a portion of the firm, or key factors in the firm originally associated with a non- Indian owned business gained little or business value in terms of capital, expertise, equipment, etc., by adding Indian ownership or by merging with an Indian firm.

(2) Employees.

a) Whether key non-Indian employees of the applicant are former employees of a non-Indian firm with which the Indian firm is or has been affiliated, through a joint venture or other arrangement, such that there is reason to believe the non-Indian firm is controlling the applicant;

b) Whether Indians are employed in all or most of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe the firm was established primarily to benefit non-Indians; and

c) Whether any certified Indian owned firm with ten (10) or more employees will be required to employ eighty-five percent (85%) Indian employees, if it is impossible for various reasons it will be negotiable.

(3) Relative Experience and Resources. Whether the experience, expertise, resources, etc., of the non-Indian partner(s) is so much greater than that of the Indians that there is little sound business reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian preference program.

CHAPTER 5 CERTIFICATION PROCEDURES

Section 10-5-1 Application for Certification

A firm seeking certification as a firm eligible for Indian preference shall submit a completed application to the Shoshone and Arapaho Tribes TERO on a form provided by the TERO (application forms may be obtained at the TERO office). TERO staff will be available to assist a firm to fill out the application. Within twenty-one (21) days after receipt of a completed application, the TERO shall review the application, request such additional information as it believes appropriate (computation of the 21-day period shall be stayed during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate, and submit an analysis and recommended disposition to the Review Board. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, the TERO may extend the processing period by an applicant by registered mail. Within fifteen (15) days of receipt of the TERO's analysis and recommended disposition, the Review Board shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, the agency and the TERO Office at least five (5) days prior to the hearing. All principals of the firm shall be present at the hearing. In addition, any other party wishing to present information to the Review Board shall be entitled to do so, by requesting, no less than one (1) day prior to the hearing, an opportunity to participate and such party may be represented by counsel. The hearing shall be conducted as provided in Chapter 6.

Section 10-5-2 Probationary Certification

An applicant granted certification shall be issued a six (6) month probationary certification. During that period, the TERO and the Review Board shall monitor the firm's activities to ensure that the firm is operating in the manner described in its application. During the probationary period, the TERO and the Review Board shall have the right to request and receive such information and documents as they deem appropriate.

Section 10-5-3 Final Certification

At the end of the probationary period, the Review Board, after receiving recommendations from the TERO, shall either:

(1) Grant full certification;

(2) Continue the probationary period for up to six (6) months; or

(3) Deny certification.

Section 10-5-4 Withdrawal of Certification

From information provided in the change notices or Annual Reports, on the basis of written grievance filed by any other firm or person, or on its own initiative, the TERO may initiate proceedings to withdraw or suspend certification for any firm. The TERO shall prepare an analysis and recommended disposition for the Review Board and shall send the firm notice by registered mail that its certification is being examined, along with the grounds thereof. The Review Board shall then set a date for a hearing, which shall be held within twenty-one (21) days after it receives the analysis and recommended disposition from the TERO. At the hearing the TERO staff shall present the case for suspension or withdrawal and the hearing shall be conducted as in Chapter 4. After the hearing the Board may:

(1) Withdraw certification;

(2) Suspend certification for up to one (1) year;

(3) Put the firm on probation; and/or

(4) Order the corrective action be taken within a fixed period. A firm that has had certification withdrawn may not reapply for a period of one (1) year.

Section 10-5-5 Firms Certified Prior to the Adoption of these Criteria

Each firm holding Indian preference certification from the Tribe at the effective date of this Code shall submit an application required under these criteria to the TERO within thirty (30) days after the effective date of these criteria. If the TERO determines the firm qualifies under these new criteria, it shall, within twenty-one (21) days of receipt of the application, so recommend to the Review Board, which, unless it has grounds to act to the contrary, shall issue a new certificate within thirty (30) days of receipt of the TERO's recommendation without the need for public hearing. If the TERO has reason to believe the firm does not qualify, it shall prepare an analysis of the reasons therefor along with its recommended disposition. The analysis shall be submitted to the Review Board within twenty-one (21) days after receipt of the application. Should the TERO require additional information from the firm, computation of the 21-day period shall be stayed by the Board for a reasonable time to permit such information to be provided. The Review Board, after providing the firm an opportunity for a hearing as provided in Chapter 6 which shall be held within thirty (30) days after receipt of the TERO's findings, shall:

(1) Grant the firm a new certification; or

(2) Determine that the firm is not in compliance. If the Review Board determines that the firm is not in compliance, it shall provide the reasons therefor and the firm shall have fifteen (15) days from the date of the decision to demonstrate to the Review Board that it has made such changes as are necessary to come into compliance. If at the end of the 15-day period the firm has failed to come into compliance, its certificate shall be withdrawn. A copy of the withdrawal notice shall be sent by registered mail to the firm.

Section 10-5-6 Annual and Other Reports

Each certified firm shall report to the TERO, in writing, any changes in its ownership or control status with sixty (60) days after such changes have occurred. Each certified firm, on the

anniversary of its receipts of permanent certification, shall update the information provided in its initial application on an Annual Report form provided by TERO. Failure to provide information pursuant to these requirements shall constitute grounds for withdrawal of certification.

CHAPTER 6 HEARING AND APPEAL PROCEDURES

Section 10-6-1 Hearing Procedures

At all hearings before the Review Board, all participants shall have the following rights:

(1) To be represented by counsel at their own expense;

(2) To be present at the hearing;

(3) To present relevant sworn testimony and documentary evidence; and

(4) To call witnesses and to ask questions of witnesses or other participants.

All hearings before the Review Board shall be conducted in an orderly manner, but formal rules of evidence need not be observed.

Section 10-6-2 Decisions after Hearing

After the hearing, the Review Board shall issue its written decision. All decisions shall state the grounds therefor. A copy of the decision shall be sent to all participants by registered mail.

Section 10-6-3 Appeals

A party shall have the right to appeal any decision of the Review Board to the Tribal Court. An appeal shall be filed within thirty (30) days after receipt of notice of the Review Board's decision. The TERO Director shall represent the interests of the Tribe on an appeal. The Court shall reverse the decision of the Review Board only where it finds that decision to be arbitrary and capricious or unsupported by substantial evidence.

CHAPTER 7 APPLICATION FORM

APPLICATION FOR CERTIFICATION AS AN INDIAN PREFERENCE FIRM IN THE BUSINESS DEVELOPMENT AREA

I. Firm Identification

Name of Firm (exactly as you want it to appear on all documents):

_____

Address: _____

_____ Telephone: _____

Date of Submission: _____

Single Business: _____ Joint Venture: _____

Contact Person: _____

Address: _____

Telephone Business: _____ Home: _____

Type of Business (list all areas of business in which firm intends to engage):

_____

_____

Federal Identification Number: _____

Number of Employees: _____ Number of Indian Employees: _____

Year Business was Established: _____

II. Ownership

A. Type of Ownership (check one):

___ Sole Proprietorship

___ Partnership (attach copy of any partnership agreement with amendments since creation of partnership)

___ Corporation (attach copy of the Certificate of Incorporation, Articles of Incorporation and By-Laws, including all amendments since creation of the corporation)

B. Percent of Indian Ownership: _____

C. For each Indian owner, provide name, address, tribal affiliation, enrollment number, percent of ownership, amount of investment in the firm, method of investment (cash, equipment, loan or promissory note indicating who the loan is from), percent of voting control, and position in the firm.

D. For each non-Indian owner, list name, address, percent of ownership, amount of investment in firm, method of investment (cash, equipment, loan or promissory note indicating who the loan or note is from), percent of voting control, position in firm, name of all other firms owner holds or has within the past year held an ownership interest in other than publicly held corporations and similar ownerships solely for investments or a management position in.

E. List any management fee, equipment rental, bonuses or other arrangement that will provide payment to non-Indian owners beyond their share of profits and salaries, as indicated above.

F. Describe or attach any stock options or other ownership options that are outstanding and any agreements between owners or between owners and third parties which restrict ownership or control of Indian owners.

G. Identify any owner or management official of the named company who is or has been an employee of another company that has an ownership interest in or a present business relationship with the named company. Present business relationships include shared space, equipment, financing or employees as well as both companies have some of the same owners.

H. Indicate if this company or other companies with any of the same officers have previously received or been denied certification or participation as an Indian preference firm and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

III. Management

A. For each owner of more than five percent (5%) interest, all senior management personnel and members of the Board of Directors provide the following:

1. Name, address and Social Security Number. If Indian, Tribe and enrollment number.

2. Present position (description of all duties).

3. Previous business experience.

4. Previous work experience in areas in which firm intends to engage.

5. Other previous work experience.

6. Education and training.

7. Other jobs presently held.

B. Control Company. Identify by name, race, sex and title in company those individuals (owner and non-owners) who are responsible for day-to-day management, including but not limited to those with prime responsibility for:

1. Financial decisions.

2. Management decisions, such as:

a) Marketing and sales;

b) Hiring and firing;

c) Purchase of major or equipment or supplies; and

d) Supervision of field personnel.

IV. Capital and Equipment

A. Equipment. List all equipment (costing $300.00 or more when new).

Quantity	Description	Price, Book Value	How Obtained (purchased, provided by owner, etc.)

B. Capital.

1. Attach a current balance sheet.

2. Identify amount and source of original and present capital (e.g., contributed by owner, bank loan, if loan, indicate name(s) of those legally bound to repay if other than corporation).

C. Additional Submissions.

Each applicant must submit with this application the following:

1. Lists of officers, principal stockholders and directors, with post office addresses and number of shares held by each.

2. A sworn statement of the proper officer showing:

a) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity and value of the same share;

b) Of the stock sold, how much remains unpaid and subject to assessment;

c) The amount of cash the company has in its treasury and elsewhere;

d) The property, exclusive of cash, owned by the company and its value; and

e) The total indebtedness of the company and the nature of its obligations.

V. Certification

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further hereby certify that I have read the applicable

TERO Code, criteria and procedures and do hereby submit to the jurisdiction provided for therein.

Name of Firm:_____

By:_____
(Signature of Authorized Official)

Name (please type or print):_____

Title (please type or print):_____