

**MUSCOGEE (CREEK) NATION  
CODE ANNOTATED**

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**TITLE 34. PRISONS  
CUKOYEKCV RAKKO**

*(Reserved for Future Use)*



# TITLE 35. SOCIAL SERVICES/PUBLIC ASSISTANCE

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### Cross References

Air conditioners and fans, see Title 20, § 4-101 et seq.  
 Burial assistance, see Title 4, § 1-101.  
 Emergency home improvement, see Title 24, § 4-101.  
 Grave preparation expenses, see Title 4, § 1-102.  
 Housing rehabilitation, see Title 24, § 3-101 et seq.  
 Medical assistance, see Title 22, § 5-101 et seq.  
 Vision assistance, see Title 22, § 6-101 et seq.

### Code of Federal Regulations

Financial assistance and social services programs, see 25 CFR 20.100 et seq.

## CHAPTER 1. FALSE INFORMATION; PENALTIES

### Section

- 1-101. Providing false information.
- 1-102. Disqualification.
- 1-103. Repeated violations.
- 1-104. Appeals.
- 1-105. Administrative proceedings.

### Table of Prior Statutes

Former Section	New Sections	Former Section	New Sections
6-101 .....	6-101	6-103 .....	6-103
6-102 .....	6-102	6-104 .....	none
		6-105 .....	none

### § 1-101. Providing false information

It shall be a violation of the civil laws of the Muscogee (Creek) Nation for any person to provide false information to the Muscogee (Creek) Nation (or any officer or employee of the Muscogee (Creek) Nation) for the purpose of

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receiving any Tribal or federal benefit administered by or through the Muscogee (Creek) Nation.

[NCA 82-49, § 101, approved Sept. 13, 1982.]

**§ 1-102. Disqualification**

Any person who has provided false information to the Muscogee (Creek) Nation for the purpose of receiving a benefit may be disqualified by a Director responsible for that program or by the Executive Director, upon a finding by that officer that a preponderance of the evidence indicates the information was false. The disqualification shall extend only to the program affected, and shall not be less than thirty (30) days nor more than three hundred sixty-five (365) days in length.

[NCA 82-49, § 102, approved Sept. 13, 1982.]

**§ 1-103. Repeated violations**

Any person who is determined to be in violation of this chapter a third time shall be subject to disqualifications according to the terms of Title 35, § 1-102 from all Tribal programs.

[NCA 82-49, § 103, approved Sept. 13, 1982.]

**§ 1-104. Appeals**

Disqualifications by Directors or by the Executive Director may be appealed to the District Court of the Muscogee (Creek) Nation, which shall hear the case *de novo*, subject to the appeal to the Supreme Court of the Muscogee (Creek) Nation.

[NCA 82-49, § 104, approved Sept. 13, 1982.]

**§ 1-105. Administrative proceedings**

Administration proceedings required by any federal regulations, such as the Fair Hearing Procedures required by the Commodity Distribution Program, are required to be completed prior to the filing of any action in District Court.

[NCA 82-49, § 105, approved Sept. 13, 1982.]

## **CHAPTER 2. FAMILY VIOLENCE PREVENTION**

### **Section**

2-101. Authorization.

### **Cross References**

Protection from domestic and family violence, see Title 6, § 3-101 et seq.

### **§ 2-101. Authorization**

The Muscogee (Creek) National Council authorizes the Principal Chief to establish a program to:

1. Provide immediate shelter and related assistance for victims of family violence and their dependents; and;
2. To carry out coordination, research, training, technical assistance and evaluation activities.

[NCA 87-39, § 102, approved June 30, 1987.]

## **CHAPTER 3. MEDICAL TRAVEL FUND**

### **Section**

3-101. Findings.

3-102. Expenditures.

### **Cross References**

Budget, Medical Travel Fund, see Title 37, § 2-104.

### **§ 3-101. Findings**

The National Council finds that:

A. Some Creek citizens children have special medical needs that have been treated in state and out-of-state hospitals.

B. Parents of children needing such services out of state need to accompany the child in need and be present at the hospital during the child's stay. Some parents have financial needs to accompany children for such out of state medical care.

[NCA 92-74, § 101, approved May 27, 1992; amended by NCA 93-85, § 101, approved May 18, 1993.]

### **§ 3-102. Expenditures**

The Principal Chief is hereby authorized to expend funds up to a one-time grant of two thousand dollars (\$2,000) per family from the Medical Travel Fund upon finding of special needs in accordance with the findings of Title 35, § 3-101 and according to guidelines established by the Social Services Program who will implement the program.

[NCA 92-74, § 104, approved May 27, 1992; amended by NCA 96-05, § 103, approved Feb. 24, 1996.]

## CHAPTER 4. FOOD DISTRIBUTION

### Section

4-101. Distributing agency.

#### Historical and Statutory Notes

NCA 93-170, § 101, provides:

“Findings:

“The National Council finds that:

“A. Since 1986, the Cherokee Nation has been the Distributing Agency for the Muscogee (Creek) Nation Commodity Program.

“The Muscogee (Creek) Nation Food Distribution Program is currently serving 3,100 participants. The program is currently serving 23 communities within the Muscogee (Creek) Nation boundaries. Currently, the staff consists of 11 employees. The program now uses 2 trucks and 2 vans for distribution to tailgate sites.

“B. The Creek Nation Food Distribution Program is experiencing various problems with Cherokee Nation, which is currently the Distributing Agency.

“The problems being, untimely delivery of goods to Creek Nation and fewer selection of

commodities which impedes the organization of warehouse scheduling and diminishes food selection to Creek Nation participants.

“This problem has been in existence for the past two years and does not appear to gain improvement for the future.

“C. Upon attaining Distributing Agency status, the Muscogee (Creek) Nation will realize a more timely schedule of food shipments, a larger selection of commodities, and with direct communication with the Kansas City vendor, the problems stated above would be minimal and overall benefits of the program would be improved and realized by the participants.

“D. Budget modification is needed to expand the Distribution Agency aspect of this program to include the Seminole Nation who will be served by the Creek Nation Distribution Agency.”

### § 4-101. Distributing agency

The National Council authorizes the Muscogee (Creek) Nation Food Distribution Program to be a Distributing Agency.

[NCA 93-170, § 102, approved Dec. 23, 1993.]

## **CHAPTER 5. EMERGENCY HARDSHIP PROGRAM**

### **Section**

- 5-101. Establishment of guidelines.
- 5-102. Appropriation.
- 5-103. Authorization.
- 5-104. Repealer.

### **§ 5-101. Establishment of guidelines**

The eligibility requirements shall be:

1. An applicant and/or spouse must be the head of household. The applicant must be an enrolled Muscogee (Creek) citizen. An applicant who is not an enrolled citizen of the Muscogee (Creek) Nation may apply on behalf of the citizen(s) who are minor children, dependent elders or incompetency for whom an affidavit must be completed to verify that the awarded funds under this program will be expended for the said Creek citizen(s) benefit.

2. Applicants must have an unanticipated break in income not due to personal fault, rather due to employer-related reasons or an extenuating circumstance within the past twelve (12) months to cause the need for assistance.

3. Applicants who experience annual breaks in income are not eligible for this program, but will be referred to the state Employment Security Commissions and to other local and state agencies in the state in which they reside, and/or other Tribal programs.

4. Medical expenses may be considered as an extenuating circumstance if all resources (examples: Medical Assistance Act, Contract Health, etc.) are exhausted. Other examples of extenuating circumstances may include, but are not limited to: death of household member, crime victim, separation, or addition of household members.

5. Types of assistance are included below, but are not limited to:

A. Shelter expenses (i.e. rent/mortgage) no greater than five hundred thousand dollars (\$500,000); where such assistance under the Program will be likely to help an applicant continue their regular payment without threat of immediate foreclosure, eviction, or other adverse action.

B. Utility expenses such as natural gas, propane, wood, electric, and/or water.

C. Assistance may be provided for telephone expense if the applicant or beneficiary is elderly (sixty (60) years or older), or use of a telephone is medically necessary, and the service is a basic service for 911 or a discount service such as enhanced lifeline.

D. Muscogee (Creek) citizens are also eligible to apply for weather related "Act of God" storm damage assistance in the form of temporary emergency shelter needs (if displaced), no greater than the amount of five hundred dollars (\$500.00) under the Emergency Hardship Program.

6. Assistance may be given to any eligible household only one (1) time in a twelve (12) month period up to five hundred dollars (\$500.00) based on need as determined by the Social Services Department.



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7. Applicants seeking assistance from the Emergency Hardship Program must provide emergency information such as delinquent accounts, repairs, or notices in the name of the applicant or spouse.

8. Emergency Hardship Assistance will be unavailable to applicants with utility services cut off, unless the Social Services Department can contact the appropriate issuer of the notice and develops the information that said assistance up to five hundred dollars (\$500.00) maximum will terminate the cut off, eviction, or foreclosure action.

9. The Emergency Hardship Program under this law cannot provide duplicate assistance previously provided to an applicant by any community, local, state, federal or Tribal agency.

10. All applicants must provide information requested by the Social Services Department in order for Social Services to perform its obligation by this law.

11. The manager shall have discretionary authority.

[Added by NCA 04-161, § 3, eff. Sept. 30, 2004.]

### Historical and Statutory Notes

#### Former sections:

Former § 5-101, which authorized the Principal Chief to expend funds to assist Creek citizens outside the boundaries of the Creek Na-

tion, was added by NCA 95-127, § 103; amended by NCA 97-104, § 103; NCA 98-114, § 103; and repealed by NCA 04-161, § 2.

### Library References

Indians ☞210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Social Security and Public Welfare §§ 12 to 18, 26 to 27.

## § 5-102. Appropriation

The amount of five hundred twenty-five thousand and no/100 dollars (\$525,000) is hereby appropriated from the Bingo Revenue Fund Account for the implementation of this Law. All unexpended funds appropriated by implementation of this Act shall be returned to the Tribal Treasury.

[Added by NCA 04-161, § 4, eff. Sept. 30, 2004.]

### Historical and Statutory Notes

#### Former sections:

Former § 5-102, which established guidelines for expending funds for Creek citizens outside

the boundaries of the Creek Nation, was added by NCA 95-127, § 105 and repealed by NCA 04-161, § 2.

### Library References

Indians ☞210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Social Security and Public Welfare §§ 12 to 18, 26 to 27.

## § 5-103. Authorization

The National Council hereby authorizes the Principal Chief or his designee to expend the sum of five hundred twenty-five thousand and no/100 dollars (\$525,000) from the Bingo Revenue Fund Account for the Social Services

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Department to disburse to eligible Creek citizens under the Emergency Hardship Department Program guidelines for their use.

[Added by NCA 04–161, § 5, eff. Sept. 30, 2004.]

### Historical and Statutory Notes

#### Former sections:

Former § 5–103, which provided that funds for Creek citizens outside the boundaries of the

Creek Nation would be funded by law only, was added by NCA 95–127, § 105 and repealed by NCA 04–161, § 2.

### Library References

Indians ☞210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Social Security and Public Welfare §§ 12 to 18, 26 to 27.

## § 5–104. Repealer

The purpose of this Act is to repeal NCA 02–095, NCA 02–094, NCA 01–42, NCA 98–114, NCA 97–104, NCA 96–62, NCA 95–127, NCA 94–83, NCA 93–52, NCA 92–131, NCA 89–177, and NCA 89–123 and to establish new guidelines.

[Added by NCA 04–161, § 2, eff. Sept. 30, 2004.]

### Historical and Statutory Notes

A. On Dec. 23, 2003, the National Council, via a veto-override, approved NCA 03–201 repealing NCA 96–58, NCA 96–70, NCA 96–93, NCA 97–16, NCA 99–149 and NCA 03–157 and any other legislation conflicting with this Act. The law created a new School Clothing Program.

B. On June 30, 2004, the Principal Chief and National Council approved NCA 04–118 repeal-

ing NCA 03–201, NCA 96–58, NCA 96–70, NCA 96–93, NCA 97–16, NCA 99–149 and NCA 03–157 and any other legislation conflicting with this Act. The law created a new School Clothing Program.

C. On Nov. 28, 2006, the Principal Chief and National Council approved NCA 06–256 repealing NCA 04–126.

### Library References

Indians ☞210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Social Security and Public Welfare §§ 12 to 18, 26 to 27.

## CHAPTER 6. SCHOOL CLOTHING PROGRAM

### Section

- 6-101. Eligibility.
- 6-102. Administration/distribution of grants.
- 6-103. Application period.
- 6-104. Appropriation.
- 6-105. Authorization.
- 6-106. Repealer.
- 6-201 to 6-205. Repealed.

### Historical and Statutory Notes

Subchapter 1 removed as a heading name and categorized under Chapter 6: Comprehensive School Clothing Assistance Program. Subchapter 2 repealed by NCA 06-256, § 2.

A. On Dec. 23, 2003, the National Council, via a veto-override, approved NCA 03-201 repealing NCA 96-58, NCA 96-70, NCA 96-93, NCA 97-16, NCA 99-149 and NCA 03-157 and any other legislation conflicting with this Act. The law created a new School Clothing Program.

B. On June 30, 2004, the Principal Chief and National Council approved NCA 04-118 repealing NCA 03-201, NCA 96-58, NCA 96-70, NCA 96-93, NCA 97-16, NCA 99-149 and NCA 03-157 and any other legislation conflicting with this Act. The law created a new School Clothing Program.

C. On Nov. 28, 2006, the Principal Chief and National Council approved NCA 06-256 repealing NCA 04-126.

### § 6-101. Eligibility

A. The child for whom the application is submitted shall be currently enrolled as a Muscogee (Creek) Citizen as evidenced by an original enrollment card or the submission of a membership detail document verified by the Muscogee (Creek) Nation Citizenship Board which indicates the child is eligible for citizenship and will be issued a roll number.

B.

1. **Public and private schools.** Child must be at least three (3) years old and enrolled in any certified Head Start or private school program, or the child must be at least four (4) years old and enrolled in a public school or private school program and no higher than the twelfth (12th) grade.

2. **Home school.** Child must be between the ages of five (5) and eighteen (18). However, in the event that a child tests out before he/she turns eighteen (18), the child shall no longer be eligible to participate in the program.

C.

1. **Public and private schools.** Proof of enrollment must be provided for all children as evidenced by documentation from school officials on school letterhead, including the official seal of the school.

2. **Home school.** Proof of enrollment must be provided for all children as evidenced by documentation of accredited curriculum and the signing of an affidavit by the individual providing the education stating that the child is home schooled. The affidavit shall be provided by Social Services to the applicant. Turning in a false affidavit may result in the applicant being prosecuted under the laws of the Muscogee (Creek) Nation and will result in the child(ren) not being eligible for services under the program.

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D. The applicant must return signed receipts in the amount of two hundred and no/100 dollars (\$200.00) per child for school clothing purchases no later than ninety (90) days from the issuance date of the check. If receipts are not returned or receipts are not returned in the total amount distributed, the custodial parent/guardian and/or spouse of the household will receive a reduced amount the following year in increments of two hundred and no/100 dollars (\$200.00) per child. Should a new child be eligible the following year, they will not be affected by the reduced amount.

[Added by NCA 04–118, § 3, approved June 30, 2004; amended by NCA 05–177, § 1, approved Aug. 4, 2005; NCA 06–070, § 2, eff. May 8, 2006; NCA 06–256, § 2, approved Nov. 28, 2006; NCA 08–147, § 1, approved Nov. 3, 2008; NCA 09–234, § 1, approved Dec. 28, 2009.]

**Historical and Statutory Notes**

**Derivation:** Title 35, § 6–101, added by NCA 96–58, § 103, and repealed by NCA 04–118, § 8. was added by NCA 96–58, § 103 and repealed by NCA 04–118, § 8.

**Former section:** Former § 6–101, which established eligibility guidelines for the School Clothing Program,

**Library References**

Indians ⇄133, 210. C.J.S. Indians §§ 57 to 59, 66 to 72, 150.  
Social Security and Public Welfare ⇄4. C.J.S. Social Security and Public Welfare  
Westlaw Topic Nos. 209, 356A. §§ 12 to 18, 26 to 27.

**§ 6–102. Administration/distribution of grants**

A. The Muscogee (Creek) Nation Social Services Department shall administer the School Clothing Program.

B. One (1) payment of two hundred and no/100 dollars (\$200.00) shall be allowed per child for each school year.

C. Grants will be available for catastrophic loss (natural disaster, domestic violence or homeless).

D. Grants will be available on a first come, first served basis until all funds are expended. Once funds are expended, no waiting list(s) shall be developed to carry into the next program year. All previous waiting lists shall be disregarded.

E. One hundred eleven thousand two hundred twenty-nine and no/100 dollars (\$111,229.00) of the total appropriation shall be allocated for administrative costs. Any funds remaining after administrative costs are expended shall be utilized for the School Clothing Program.

[Added by NCA 04–118, § 4, approved June 30, 2004; amended by NCA 05–177, § 1, approved Aug. 4, 2005; NCA 06–070, § 3, eff. May 8, 2006; NCA 06–256, § 2, approved Nov. 28, 2006; NCA 08–147, § 1, approved Nov. 3, 2008.]

**Historical and Statutory Notes**

**Derivation:** Title 35, § 6–102, added by NCA 96–58, § 104, and repealed by NCA 04–118, § 8. **Former sections:** Former § 6–102, which related to the distribution of grants for the School Clothing Program.

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## Title 35, § 6–105

gram, was added by NCA 96-58, § 104 and repealed by NCA 04–118, § 8.

### Library References

Indians ☞133, 210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72, 150.

C.J.S. Social Security and Public Welfare

§§ 12 to 18, 26 to 27.

### § 6–103. Application period

The application period for the School Clothing Program shall be for a duration of one hundred twenty (120) days with the beginning and ending dates to be determined by the Social Services Department.

[Added by NCA 04–118, § 5, approved June 30, 2004; amended by NCA 06–070, § 4, eff. May 8, 2006; NCA 06–256, § 2, approved Nov. 28, 2006; NCA 08–147, § 1, approved Nov. 3, 2008.]

### Historical and Statutory Notes

#### Derivation:

Title 35, § 6–103, added by NCA 96–58, § 105; amended by NCA 97–16, § 102; and repealed NCA 04–118, § 8.

Program, was added by NCA 96–58, § 105; amended by NCA 97–16, § 102; and repealed by NCA 04–118, § 8.

#### Former sections:

Former § 6–103, which established a cutoff date for applications to the School Clothing

### Library References

Indians ☞133, 210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72, 150.

C.J.S. Social Security and Public Welfare

§§ 12 to 18, 26 to 27.

### § 6–104. Appropriation

The sum of one million, three hundred sixty-four thousand, eight hundred forty and no/100 dollars (\$1,364,840.00) is hereby appropriated from the Gaming Revenue Fund Account for the implementation of this Act.

[Added by NCA 04–118, § 6, approved June 30, 2004; amended by NCA 04–190, § 2, approved Oct. 18, 2004; NCA 06–070, § 5, eff. May 8, 2006; NCA 08–147, § 1, approved Nov. 3, 2008.]

### Historical and Statutory Notes

#### Former sections:

Former § 6–104, which granted discretionary authority to the Deputy Director of Community

Services in administering the School Clothing Program, was added by NCA 96–58, § 108 and repealed by NCA 04–118, § 8.

### Library References

Indians ☞133, 210.

Social Security and Public Welfare ☞4.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72, 150.

C.J.S. Social Security and Public Welfare

§§ 12 to 18, 26 to 27.

### § 6–105. Authorization

The National Council hereby authorizes the Principal Chief to expend the sum of one million, three hundred sixty-four thousand, eight hundred forty and no/100 dollars (\$1,364,840.00) from the Gaming Revenue Fund Account for the

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School Clothing Program. This appropriation shall be included in the Comprehensive Annual Budget for Fiscal Year 2009 and annually thereafter. Funds shall carry forward until fully expended.

[Added by NCA 04-118, § 7, approved June 30, 2004; amended by NCA 04-190, § 3, approved Oct. 18, 2004; NCA 06-070, § 6, eff. May 8, 2006; NCA 06-256, § 1, approved Nov. 28, 2006; NCA 08-147, § 1, approved Nov. 3, 2008.]

**Historical and Statutory Notes**

**Former sections:** Former § 6-105, which related to the plan of implementation for the School Clothing Program, was added by NCA 96-58, § 109 and repealed by NCA 04-118, § 8.

**Library References**

Indians ☞133, 210. C.J.S. Indians §§ 57 to 59, 66 to 72, 150.  
Social Security and Public Welfare ☞4. C.J.S. Social Security and Public Welfare  
Westlaw Topic Nos. 209, 356A. §§ 12 to 18, 26 to 27.

**§ 6-106. Repealer**

NCA 96-58, NCA 96-70, NCA 96-93, NCA 97-16, NCA 99-149, NCA 03-157, NCA 03-201, NCA 04-126 and any other legislation in conflict with this Act is hereby repealed.

[Added by NCA 04-118, § 8, approved June 30, 2004; amended by NCA 06-256, § 2, approved Nov. 28, 2006.]

**Library References**

Indians ☞133, 210. C.J.S. Indians §§ 57 to 59, 66 to 72, 150.  
Social Security and Public Welfare ☞4. C.J.S. Social Security and Public Welfare  
Westlaw Topic Nos. 209, 356A. §§ 12 to 18, 26 to 27.

**§§ 6-201 to 6-205. Repealed by NCA 06-256, § 2, approved Nov. 28, 2006**

## **CHAPTER 7. NATURAL DISASTER ACT**

### **Section**

7-101. Natural disaster assistance.

### **§ 7-101. Natural disaster assistance**

A. Households with Creek citizens (whether single, head-of-household or dependent) may be eligible for assistance for the loss of furniture, clothing, groceries, housing, etc. and emergency shelter costs.

B. Payment will be made directly to the vendor upon submission (by the applicant) of vendor's price quote for furniture, apartment rental/deposits, appliances, other essential home furnishings, or emergency shelter costs. Reimbursement costs will be allowed to be payable to the Tribal citizens for emergency shelter costs incurred prior to application upon presentation of receipts.

C. A voucher will be issued for groceries and clothing.

D. This assistance may be utilized by the applicant in addition to other forms of assistance whether by federal, state or local service agencies for disaster relief.

E. The Social Services Department of the Division of Community Services will implement the program. The Department Manager will have final approval authority of all applications received by applicants.

[NCA 96-68, § 104, approved Aug. 9, 1996; amended by NCA 99-65, § 103, approved May 26, 1999.]

### **Cross References**

Budget, natural disaster assistance, see Title 37, § 2-114.

## **CHAPTER 8. TRIBAL ENERGY ASSISTANCE PROGRAM**

### **Section**

- 8-101. Eligibility.
- 8-102. Policy.
- 8-103. Procedures.
- 8-104. Administration of program.

### **Cross References**

Budget, Tribal Energy Assistance Program, see Title 37, § 2-122.

### **§ 8-101. Eligibility**

Any enrolled Tribal citizen (regardless of residency) aged fifty-five (55) and over, or, any citizen (regardless of age) who can document a permanent medical disability shall be eligible to apply for energy assistance. The applicant must have primary responsibility for utility payments or be the spouse of the responsible party.

[NCA 99-95, § 103, approved Aug. 31, 1999.]

### **§ 8-102. Policy**

It shall be the policy of the Muscogee (Creek) Nation to assist all eligible applicants of the "Tribal Energy Assistance Program" with grants (one per household) for heating or cooling consistent with the LIHEAP energy assistance program season. Applicants may participate twice yearly and grants shall be two hundred dollars (\$200.00) to be applied to applicants heating or cooling cost.

[NCA 99-95, § 104, approved Aug. 31, 1999; amended by NCA 04-016, § 1, approved Jan. 28, 2004; NCA 06-276, § 1, approved Dec. 18, 2006.]

### **§ 8-103. Procedures**

Procedures for application shall be as follows:

A. Applicant must complete an application for assistance with the Social Services Department. If the applicant can verify that he/she cannot present in person to the office, an application may be taken by telephone and documentation faxed or mailed.

B. Applicant must submit verification of citizenship in the form of a Tribal enrollment card and the original utility bill from the utility vendor.

C. If the applicant is permanently (medically) disabled, verification of the disability shall be documented by proof of Social Security disability benefits and submitted with the application. Age eligibility shall be determined from the Tribal enrollment card.

D. The applicant shall be notified by mail of determination by the caseworker. The Manager of the Social Services Department shall have the final determination of appeals of any adverse decisions by the caseworker.



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**Title 35, § 8-104**

E. Grants shall be made payable and forwarded to the vendor.

[NCA 99-95, § 104, approved Aug. 31, 1999.]

**§ 8-104. Administration of program**

The Social Services Department of the Division of Community Services shall be authorized to administer the program. The manager of the Social Services Department is authorized discretionary authority in applying grants (if available) from the Tribal Energy Assistance Program to applicants of the federally funded energy assistance program if that program is out of funds for that period.

[NCA 99-95, § 105, approved Aug. 31, 1999.]

## CHAPTER 9. SPECIAL APPROPRIATIONS GUIDELINES

### Section

- 9-101. Findings.
- 9-102. Assignment.
- 9-103. Special appropriation guidelines.
- 9-104. Accountability.

### Historical and Statutory Notes

NCA 02-081, § 2, provides: “Section Two. Purpose. The purpose of this Act is to require that person(s) and/or organization seeking financial assistance from the Muscogee (Creek) Nation for reasons other than emergency needs for the preservation of home and life, bear an equal share of the funding requirement, and to establish criteria and guidelines for funding accountability, and recovery.”

### § 9-101. Findings

The National Council finds that:

A. Financial resources of the Muscogee (Creek) Nation must be prioritized to meet the health and welfare needs of the citizens of the Nation, for the protection and expansion of the Nation’s land base, and for promoting economic development within the Nation.

B. Guidelines are needed to establish funding criteria and requirements, as well as accountability requirements and recovery of Tribal funds when so required.

C. Citizens seeking funds for any purpose other than immediate health or housing needs should be required to self-fund no less than fifty percent (50%) of the funding needed.

[NCA 02-081, § 1-101, approved May 30, 2002.]

### § 9-102. Assignment

All special appropriations requests will be assigned directly to the Business and Governmental Committee for their review and consideration.

[NCA 02-081, § 3, approved May 30, 2002.]

### § 9-103. Special appropriation guidelines

A. Special appropriations shall be made on the basis of need, giving priority to needs for the purpose of preservation or maintenance of home and/or life, when such needs cannot be met by existing programs of the Muscogee (Creek) Nation or its entities. Appropriations for such need will be based on the actual financial needs, and will not require participation in the funding of such needs by the individuals:

1. Health—for the purpose of procuring and providing medical treatment, medication, transportation for medical purposes.

2. Welfare—for the purpose of giving assistance to citizens for such needs as rent, utilities, emergency repairs.

B. All other special appropriations will be considered only on the availability of funds and in the absence of any reservation of available funds for needs cited in Title 35, § 9–101. Such funding by the Nation will be on a matching basis only. The following will require line item budgets to be submitted with the request:

1. Educational/curricular—Areas of need beyond the assistance provided by the Nation for purposes of scholarships, clothing and travel. Stated needs will require proof, and will further require self-funding by the individual/entity equal to no less than fifty percent (50%) of the stated need.

2. Churches and ceremonial grounds—Financial reports of the organization must be submitted to the respective standing committee for consideration of any appropriation. Appropriations for churches and/or ceremonial grounds should not be considered unless the request is accompanied by a letter from the pastor, deacons, elders or Mekko, and minutes from any meetings of the organization showing the approval of such request. Appropriations will require that the church/ceremonial ground participate in the funding by self-funding equal to no less than fifty percent (50%) of the project cost.

3. Hobby/athletics—Such funding shall receive the lowest level of priority, and will be funded based upon a first come, first served basis, after the more highly prioritized needs are met. These special appropriations will require self-funding by the individual/entity equal to no less than seventy-five percent (75%) of the stated need.

[NCA 02–081, § 4, approved May 30, 2002.]

#### **§ 9–104. Accountability**

A. All special appropriations for health and welfare purposes shall require presentation of original bills complete with citizens' names and addresses, and account numbers where applicable. Payment will be made directly to the creditor/vendor where possible.

B. All other special appropriations shall require presentation of original receipts to the Office of the Controller, within thirty (30) days of the completion of the project. Project status reports will be forwarded to the Office of the Controller for those projects that involve more than sixty (60) days to complete. Expenditures must be made in compliance with the submitted line item budget. Any modifications to the budget items must be justified in writing.

C. The Office of the Controller may disallow any expenditure determined to be out of compliance with the purpose of the appropriation.

D. Failure to comply with accountability measures will be so noted by the Office of the Controller and may result in disallowance of all expenditures, resulting in repayment of the funds to the Nation, and will further disqualify the individual/entity for any other funding. Such non-compliance may be referred to the Office of the Attorney General for further action.

[NCA 02–081, § 5, approved May 30, 2002.]

## **CHAPTER 10. MUSCOGEE (CREEK) NATION CITIZEN LEGAL SERVICES DEPARTMENT**

### **Section**

- 10-101. Findings.
- 10-102. Purpose.
- 10-103. Creation.
- 10-104. Eligibility.
- 10-105. Commission.
- 10-106. Contract.
- 10-107. Insurance.
- 10-108. Grievance procedure and appeals process.
- 10-109. Interference by Tribal officials.
- 10-110. Court costs and publication fees.
- 10-111. Accountability; quarterly and annual reports.
- 10-112. Muscogee (Creek) preference; contract attorneys.
- 10-113. Notice to citizens.
- 10-114. Muscogee (Creek) preference; legal clinics.
- 10-115. Notice to citizens.

### **Cross References**

Budget, Muscogee (Creek) Nation Legal Services Clinic, see Title 37, § 2-135.  
Legal services and attorney contracts, see Title 2, § 1-101 et seq.

### **§ 10-101. Findings**

The National Council finds that:

A. Many Muscogee (Creek) Citizens have limited or no access to legal assistance. Muscogee (Creek) Citizens have no where to turn when certain legal rights, some guaranteed by treaty, are denied.

B. There is a need for complete legal services in the following areas for citizens of the Muscogee (Creek) Nation and their families:

- (1) basic elder law needs such as probate and guardianship,
- (2) basic estate planning, such as simple wills, deeds, durable powers of attorney, advanced directives;
- (3) basic family law, divorce and guardianships of minor children, including cases that might arise under the Indian Child Welfare Act (ICWA);
- (4) consumer law and collection issues;
- (5) basic criminal law defense, such as misdemeanor violations and some limited felony cases, as defined by the Commission;
- (6) community education programs and presentations; and
- (7) regularly scheduled Chartered Community Meetings, outreach site visits to Senior Center activities, Commodity Distribution sites, Elderly Nutrition sites, Tribal towns and other Tribal social service agencies.

[NCA 02-091, § 2-101, approved May 30, 2002; amended by NCA 07-317, § 2, eff. Jan. 2, 2008.]

**Library References**

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 10–102. Purpose**

The purpose of this chapter is to create the Muscogee (Creek) Nation Citizen Legal Services Department:

The goal of the Muscogee (Creek) Nation Citizen Legal Services Department will be to provide direct legal representation for Muscogee (Creek) citizens. [NCA 02–091, § 3, approved May 30, 2002; amended by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Library References**

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 10–103. Creation**

There is hereby created the Muscogee (Creek) Nation Citizen Legal Services Department, an independent agency of the Tribe.

[NCA 02–091, § 4, approved May 30, 2002; amended by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Library References**

Indians ↻210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 10–104. Eligibility**

All enrolled members of the Muscogee (Creek) Nation for all services provided by the Muscogee (Creek) Nation citizen Legal Services Department. In addition, the same assistance will be extended to individuals who are not enrolled members but are eligible for enrollment under the Muscogee (Creek) Constitution and Laws. No Muscogee (Creek) citizen is eligible for payment of legal expenses by the Muscogee (Creek) Nation except through the Muscogee (Creek) Nation Citizen Legal Services Department.

[NCA 02–091, § 6, approved May 30, 2002; amended by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Library References**

Indians ↻210, 222, 223.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 161 to 162, 180.

**§ 10–105. Commission**

There is hereby created a seven (7) member Commission, all to be citizens of the Muscogee (Creek) Nation living within Tribal jurisdiction boundaries, who will oversee and coordinate the operation of the Muscogee (Creek) Nation citizen Legal Services Department. The members of the Commission shall

## Title 35, § 10–105

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consist of the (1) Speaker of the National Council or designee, (2) one member of the Business and Governmental Committee of the National Council, (3) one Tribal citizen appointed by the Speaker of the National Council, (4) the Principal Chief or designee, (5) one Tribal citizen appointed by the Principal Chief, (6) the Second Chief or designee and (7) the District Court Judge of the Muscogee (Creek) Nation. Tribal citizen appointments can not be an employee or an elected official of the Muscogee (Creek) Nation or entity of thereof. The Commission shall meet at a minimum of once a month. Meeting compensation for members who are not elected or appointed officials shall be one hundred twenty-five and no/100 dollars (\$125.00) per meeting, in addition to mileage. [Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

### Historical and Statutory Notes

**Derivation:**

Title 35, § 10–106, added by NCA 02–091, § 7; and renumbered to § 10–105 by NCA 07–317, § 2.

**Former sections:**

Former § 10–105, which provided the service area, was added by NCA 02–091, § 6.

### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## § 10–106. Contract

A. The Commission shall negotiate and the Principal Chief shall execute a contract with licensed attorneys experienced in Federal Indian Law, Muscogee (Creek) Nation and Oklahoma Law in accordance with this chapter and containing all items of legal services set out and contained in Title 35, § 10–101. These attorneys will be independent contractors and will be responsible for the administration of the program within the parameters as set out in this chapter and in accordance with policy and procedures developed by the Commission. All contracts must follow the Tribe’s procurement policy. There will be one (1) attorney who will be the managing attorney, responsible for all reporting and communications with the Commission and Court.

B. The contract shall specify payment by the Muscogee (Creek) Nation at the beginning of each month upon receipt by the District Court of an original invoice to be followed by a monthly report from the attorney contracting group as specified in Title 35, § 10–113. Funds shall be appropriated to the District Court specifically for the Muscogee (Creek) Nation Citizen Legal Services Department.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

### Historical and Statutory Notes

**Derivation:**

Title 35, § 10–107, added by NCA 02–091, § 8; and renumbered to § 10–106 by NCA 07–317, § 2.

**Former sections:**

Former § 10–106, which created the advisory board, was added by NCA 02–091, § 7.

### Library References

Indians ⇌142(2), 210. Westlaw Topic No. 209.

C.J.S. Indians §§ 11, 37 to 38, 57 to 59, 66 to 72.

### § 10–107. Insurance

The Muscogee (Creek) Nation Citizen Legal Services Department shall maintain legal malpractice insurance for the benefit of Muscogee (Creek) Nation citizen clients and hold harmless the Muscogee (Creek) Nation.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

#### Historical and Statutory Notes

**Derivation:**

Title 35, § 10–108, added by NCA 02–091, § 8; and renumbered to § 10–107 by NCA 07–317, § 2.

**Former sections:**

Former § 10–107, which authorized the contract for legal services, was added by NCA 02–091, § 8.

#### Library References

Indians ⇌210.  
Insurance ⇌2391(2).  
Westlaw Topic Nos. 209, 217.

C.J.S. Indians §§ 57 to 59, 66 to 72.  
C.J.S. Insurance §§ 1384 to 1387.

### § 10–108. Grievance procedure and appeals process

The Muscogee (Creek) Nation Citizen Legal Services Department shall provide the Commission written policies and procedures detailing a grievance procedure and appeals process for any denials of service.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

#### Historical and Statutory Notes

**Derivation:**

Title 35, § 10–109, added by NCA 02–091, § 8; and renumbered to § 10–108 by NCA 07–317, § 2.

**Former sections:**

Former § 10–108, related to legal malpractice insurance, was added by NCA 02–091, § 8.

#### Library References

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 10–109. Interference by Tribal officials

The acceptance, prioritizing and assignment of cases selected by the Muscogee (Creek) Nation Citizens Legal Services Department are to be free of interference by Tribal officials.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

#### Historical and Statutory Notes

**Derivation:**

Title 35, § 10–111, added by NCA 02–091, § 8; and renumbered to § 10–109 by NCA 07–317, § 2.

**Former sections:**

Former § 10–109, which provided the grievance procedure and appeals process, was added by NCA 02–091, § 8.

#### Library References

Indians ⇌210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**Title 35, § 10–110**

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**§ 10–110. Court costs and publication fees**

A. The Attorneys shall determine, in accordance with guidelines established by the Commission, a client’s eligibility for payment of court costs and publication fees from the Legal Service’s Court Costs and Publication Fee Revolving Fund. A written recommendation with payee information and invoice for the services needed will be presented to the District Court Clerk for proper payment.

B. The National Council hereby authorizes the District Court Clerk to expend monies from the Legal Service’s Court Cost and Publication Fees Revolving Fund upon receipt a written recommendation from the Muscogee (Creek) Nation Citizen Legal Services Department and presentment of a proper invoice.

C. The Muscogee (Creek) Nation District Court may in accordance with District Court Rules waive court costs in cases filed by the Muscogee (Creek) Nation Citizen Legal Services Department. The Muscogee (Creek) Nation Supreme Court may in accordance with Supreme Court Rules waive court costs in cases appealed by the Muscogee (Creek) Nation Citizen Legal Services Department.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Historical and Statutory Notes**

**Derivation:**

Title 35, § 10–112, added by NCA 02–091, §§ 8, 10 and 11; and renumbered to § 10–110 by NCA 07–317, § 2.

**Former sections:**

Former § 10–110, relating to national council member service requests, was added by NCA 02–091, § 8.

**Cross References**

Legal services court costs and publication fee revolving fund, see Title 26, § 5–108.

**Library References**

Indians ⇄210, 660 to 662.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

**§ 10–111. Accountability; quarterly and annual reports**

The Managing Attorney shall submit to the Commission within thirty (30) days of the close of each fiscal quarter, a quarterly activity report on the Muscogee (Creek) Nation Citizen Legal Services Department in the preceding fiscal quarter and within forty-five (45) days of the close of each fiscal year, a complete fiscal year’s activity report and audit shall be submitted to the Commission. The Commission shall request information at any time.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Historical and Statutory Notes**

**Derivation:**

Title 35, § 10–113, added by NCA 02–091, § 9; and renumbered to § 10–111 by NCA 07–317, § 2.

**Former sections:**

Former § 10–111, related to interference by Tribal officials, was added by NCA 02–091, § 8.



**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 10–112. Muscogee (Creek) preference; contract attorneys**

A. Muscogee (Creek) Nation citizens will be given preference in the contracting of licensed attorneys.

B. Muscogee (Creek) Nation citizens will be given hiring preference for all staff positions created to accomplish the goals of this chapter.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Historical and Statutory Notes****Derivation:**

Title 35, § 10–114, added by NCA 02–091, § 13; and renumbered to § 10–112 by NCA 07–317, § 2.

**Former sections:**

Former § 10–112, related to court costs and publication fees, was added by NCA 02–091, §§ 8, 10 and 11.

**Cross References**

Legal Services Court Costs and Publication Fee Revolving Fund, see Title 26, § 5–108.

**Library References**

Indians ⇨210, 222.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 72, 180.

**§ 10–113. Notice to citizens**

Notice to the Muscogee (Creek) Nation’s citizens shall be by publication in the *Muscogee Nation News* using both the Mvskoke Emponakv and English, informing the citizens of the Muscogee (Creek) Nation Citizen Legal Services Department, its startup date, and information concerning appointments to obtain legal services.

[Added by NCA 07–317, § 2, eff. Jan. 2, 2008.]

**Historical and Statutory Notes****Derivation:**

Title 35, § 10–115, added by NCA 02–091, § 15; and renumbered to § 10–113 by NCA 07–317, § 2.

**Former sections:**

Former § 10–113, related to accountability and reports, was added by NCA 02–091, § 9.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 10–114. Muscogee (Creek) preference; legal clinics**

A. The University of Tulsa Boesche Legal Clinic shall give Muscogee (Creek) Nation Legal Services Clinic enrollment preference to Muscogee (Creek) Nation citizen law students.

B. The University of Tulsa Boesche Legal Clinic shall give Muscogee (Creek) Nation citizens hiring preference for all clinic staff positions created to accom-

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plish the goals of this chapter, such as Clinic Instructor/Supervising Attorney, Clinic Legal Fellow/Graduate Attorney and Paralegal Assistant.

[NCA 02–091, § 13, approved May 30, 2002.]

**§ 10–115. Notice to citizens**

Notice to the Muscogee (Creek) Nation’s citizens shall be published in the *Muscogee Nation News*, using both the Mvskoke Emponakv and English, informing the citizens of the Muscogee (Creek) Nation Legal Services Clinic, its startup date, and information concerning appointments to obtain legal services.

[NCA 02–091, § 14, approved May 30, 2002.]

## **CHAPTER 11. SOCIAL SECURITY ASSISTANCE PROGRAM**

### **Section**

11-101. Definitions.

11-102. Staffing.

11-103. Qualifications of Social Security Liaison Coordinator.

### **§ 11-101. Definitions**

A. "Applicant" shall mean a person who has applied for services through the Social Security Assistance Program of the Muscogee (Creek) Nation.

B. "Coordinator" shall mean the Coordinator of the Muscogee (Creek) Nation.

C. "Service Recipient" shall mean a person who is eligible for services through the Social Security Assistance Program of the Muscogee (Creek) Nation.

[Added by NCA 05-139, § 1, eff. Oct. 5, 2005.]

### **§ 11-102. Staffing**

The Social Security Assistance program shall be administered under the Social Services Department of the Muscogee (Creek) Nation. This program shall employ a Social Security Liaison Coordinator, who shall report directly to the Manager of Social Services. Additional staff will consist of a Secretary who shall report directly to the Social Security Liaison Coordinator. Funds for additional staffing shall be requested as needed.

[Added by NCA 05-139, § 1, eff. Oct. 5, 2005.]

### **Library References**

Indians ☞210.

Social Security and Public Welfare ☞5.

Westlaw Topic Nos. 209, 356A.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Social Security and Public Welfare

§§ 12 to 19.

### **§ 11-103. Qualifications of Social Security Liaison Coordinator**

The Social Security Liaison Coordinator shall possess a minimum of a Bachelor's Degree from an accredited college or university, a thorough knowledge of Social Security, Medicare and Medicaid applications, as well as denials and appeals, and strong file organizational skills. Preferred qualifications include at least five (5) years of work experience in a Social Security department or setting and Muscogee (Creek) Nation Tribal Membership.

[Added by NCA 05-139, § 1, eff. Oct. 5, 2005.]



# TITLE 36. TAXATION AND REVENUE

## OHHUNTVCKV HVTVM CVTOKNAWV RVFULKVT

Chapter	Section
1. MUSCOGEE (CREEK) NATION TAX COMMISSION.....	1-101
3. MOTOR VEHICLE TAX AND LICENSE CODE. ....	3-101
4. SALES TAX CODE. ....	4-101
5. CIGARETTES AND TOBACCO PRODUCTS. ....	5-101
6. APPEALS OF DENIAL OF LICENSE APPLICATIONS; EN- FORCEMENT ACTIONS AND APPEALS. ....	6-101
7. LIQUOR AND BEVERAGE CODE. ....	7-101
8. OIL AND GAS SEVERANCE TAX CODE. ....	8-101

### Historical and Statutory Notes

NCA 01-136, §§ 10B. and 10C., provide:

“B. Implied repealer. This Act is intended to constitute the entire and complete Muscogee (Creek) Nation Tax Code, subject to future amendments thereof. All laws or portions thereof that authorize taxation by the Muscogee (Creek) Nation or that involve the Tax Commissioner, and that are not expressly amended or expressly repealed by this Act, are hereby repealed. All laws or portions thereof that are inconsistent with this Act are hereby repealed.

“C. No revival of other laws. Repeal by this Code of any law, ordinance or resolution or any parts of law, ordinance or resolution shall not have the effect of reviving any prior law, ordinance or resolution theretofore repealed or suspended by such repealed Code, nor shall this repeal have the effect of nullifying any regulation of the Tax commissioner issued under previous ordinances or laws which is authorized by this Code, nor shall this repeal have the effect of interrupting the term of the current Tax Commissioner, nor shall this repeal have the effect of interrupting any license issued by the Tax Commissioner or any responsibilities thereunder.”

### Cross References

Non-profit corporations, franchise tax, see Title 3, § 2-101.  
 Profit-making corporations, franchise tax, see Title 3, § 1-101.

## CHAPTER 1. MUSCOGEE (CREEK) NATION TAX COMMISSION

### Section

- 1-101. Short title and codification.
- 1-102. Definitions.
- 1-103. Creation of Muscogee (Creek) Nation Tax Commission.
- 1-104. Powers and duties of the Tax Commissioner.
- 1-105. Rulemaking authority.
- 1-106. Seal.
- 1-107. Background checks and bonding.
- 1-108. Deposit into Muscogee (Creek) Nation Treasury.
- 1-109. Severability of provisions.

### Historical and Statutory Notes

NCA 01-136, § 2, §§ 101, 102, provide:

“Section 101. Findings  
 “The National Council finds that:

“A. Under the Constitution of the Muscogee (Creek) Nation, the National Council may legis-

## TAXATION AND REVENUE

late upon matters to become Laws of the Nation, including:

“1. To promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation. [Article VI, Section 7(a)].

“2. To create authorities with attendant powers to achieve objectives allowed within the scope of the Constitution. [Article VI, Section 7(i)].

“3. To lay and collect taxes within the Muscogee (Creek) Nation territorial jurisdiction from whatever source derived. [Article VI, Section 7(h)].

“B. The future of the Muscogee (Creek) Nation and the welfare of its people depend on diversified economic development and entry

into businesses that provide employment and financial independence.

“C. The present needs of the Muscogee (Creek) people include a need to broaden its resource base through a uniform tax revenue system.

“D. The Muscogee (Creek) Nation must establish standards of business practices with attendant responsibilities and provide a method to regulate licensing within the Muscogee (Creek) Nation territorial jurisdiction.

“E. The Muscogee (Creek) Nation must become self-sufficient in all its economic affairs, as reliance on outside resources can be adverse to the goal of economic independence of this sovereign nation.

“**Section 102. Purpose.** It is the purpose and intent of this Act to provide revenues for essential governmental services of the Muscogee (Creek) Nation.”

### § 1–101. Short title and codification

This Code shall be known and may be cited as the Muscogee (Creek) Nation Tax Code, and shall be codified as Title 36 of the Muscogee (Creek) Nation Code of Laws.

[NCA 01–136, § 103, eff. Aug. 1, 2001.]

#### Historical and Statutory Notes

**Derivation:**

NCA 86–08, § 104.

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 1–102. Definitions

The following words and phrases when used in this title shall, for the purposes of this title, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Commission” means the Muscogee (Creek) Nation Tax Commission.

B. “Commissioner” means the Tax Commissioner.

C. “Community” means a community organized and chartered by the Muscogee (Creek) Nation pursuant to applicable law of the Muscogee (Creek) Nation.

D. “Hearing de novo” means a new hearing or a hearing for the second time contemplating an entire trial in the same manner in which the matter was originally heard and a review of previous hearings.

E. “License” means authorization by the Muscogee (Creek) Nation Tax Commission to do an act, which without permission would be illegal, including authorization to a person, group, community, firm, or corporation to pursue some occupation to carry on some business subject to regulation under the jurisdiction of the Muscogee (Creek) Nation.

F. “Licensee” means a person who has obtained a license from the Muscogee (Creek) Nation Tax Commissioner.

G. “Nation” means the Muscogee (Creek) Nation.

H. “National Council” means the National Council of the Muscogee (Creek) Nation.

I. “Permit” means a written warrant issued by a person in authority empowering the grantee to do some act not forbidden by the Muscogee (Creek) Nation but not allowable without such authority.

J. “Shall” is used in this title as imposing an obligation to act.

K. “Taxes” mean pecuniary charges levied for the privilege of carrying on economic activity and shall mean any tax which is payable to, collectible by, or administered by the Muscogee (Creek) Nation.

L. “Territorial jurisdiction” means the territorial jurisdiction of the Muscogee (Creek) Nation as defined in Title 27, § 1–102 of the Code of Laws of the Muscogee (Creek) Nation.

[NCA 01–136, § 104, eff. Aug. 1, 2001.]

**Historical and Statutory Notes**

**Derivation:**

NCA 86–08, § 105.

**§ 1–103. Creation of Muscogee (Creek) Nation Tax Commission**

There is hereby created the “Muscogee (Creek) Nation Tax Commission” for the orderly development, administration, regulation of taxation, and collection of taxes.

[NCA 01–136, § 105, eff. Aug. 1, 2001.]

**Historical and Statutory Notes**

**Derivation:**

NCA 86–08, § 201.

**Library References**

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 1–104. Powers and duties of the Tax Commissioner**

**A. Administration.** The Muscogee (Creek) Nation Tax Commissioner is hereby invested with the power and charged with the duty to administer and enforce the Muscogee (Creek) Nation Tax Code, including without limitation, the following powers:

1. The leasing, furnishing, and equipping any building or land required for the operation of this Title;
2. The buying or leasing of all plants and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this title;

3. The employment of managers and also every officer, investigator, clerk, or other employee required for the operation or carrying out of this title and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

4. The assessment, calculation and collection of all taxes, fees and penalties assessed in accordance with this title or other applicable law of the Nation;

5. The issuance of receipts for collected taxes;

6. The denial or approval of applications for licenses required by this title and the issuance of such licenses;

7. All necessary powers and control over entities subject to the provisions of this title, or of those entities over which specific control is granted to the Commission by law of the Muscogee (Creek) Nation; and

8. The exercise of all other authority delegated or conferred upon the Tax Commissioner by this section and this title and by any other applicable law of the Nation, or as may be reasonably necessary in the administration or enforcement of any tax law of the Nation.

**B. Enforcement.** The Commissioner is hereby authorized to seek enforcement of violations of the Muscogee (Creek) Nation Tax Code through any legally available means, including without limitation the following:

1. Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, upon reasonable notice, during normal business hours, at any other time agreed to by the said taxpayer, or at any time pursuant to a search warrant signed by the District Court of the Muscogee (Creek) Nation;

2. Administer oaths, conduct hearings and issue subpoenas to compel the attendance of witnesses and the production of any books, records and papers of any taxpayer, persons, firm, association or corporation relating to the enforcement of the Muscogee (Creek) Nation tax laws;

3. Examine under oath, either orally or in writing any taxpayer or any principal agent, master, servant, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the Muscogee (Creek) Nation tax laws;

4. Appoint one or more investigators or prosecuting officers who, under its discretion, shall perform such duties as it may require and who shall be paid such salaries, fees, and expenses as the Commission may fix.

5. Deputize law enforcement officials including the Lighthorse, the Bureau of Indian Affairs Police, and any officers who have been cross-commissioned with the Muscogee (Creek) Nation for the purpose of enforcement of the tax laws of the Muscogee (Creek) Nation;

6. Report violations of any applicable Muscogee (Creek) Nation laws to Muscogee (Creek) Nation law enforcement;



7. Report violations of any applicable state laws to appropriate state enforcement authorities if related to implementation and enforcement of the Muscogee (Creek) Nation Tax Code;

8. Bring actions on behalf of the Nation in the Courts of the Muscogee (Creek) Nation for the collection of taxes, penalties and interest, and the enforcement of the tax laws of the Muscogee (Creek) Nation and defend against actions brought in said Courts against the Tax Commissioner or relating to the implementation or enforcement of the tax laws of the Nation.

**C. Delegation.** The Commissioner is hereby authorized to delegate his/her authority under this section to such employees of the Muscogee (Creek) Nation Office of the Tax Commission as may be necessary to administer and enforce this title.

[NCA 01–136, § 106, eff. Aug. 1, 2001.]

#### Historical and Statutory Notes

**Derivation:**

NCA 86–08, § 206.

NCA 92–71, § 104.

#### Library References

Indians ⇄225.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149.

### § 1–105. Rulemaking authority

**A. Promulgation and enforcement of regulations.** The Tax Commissioner shall have the authority to prescribe, promulgate, and enforce, without National Council approval, such written rules and regulations as may be necessary to administer and enforce this title, including without limitation rules and regulations for its internal operational procedures, for the collection of taxes, for the making and filing of reports, for the computation of taxes, for the filing of any reports or returns required by any Muscogee (Creek) Nation tax laws, for granting and denying applications for licenses, for hearings and appeals and for such other purposes as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law; provided that said rules and regulations may not be inconsistent with this title.

**B. Filing requirements for regulations.** No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signature of the Tax Commissioner and the official seal of the Tax Commissioner shall have been filed for record in the office of the National Council Secretary and the office of the Clerk of the Muscogee (Creek) Nation Courts;

**C. Judicial notice of regulations.** The Courts of the Muscogee (Creek) Nation shall take judicial notice of all rules and regulations of the Tax Commission promulgated pursuant to the tax laws of the Muscogee (Creek) Nation.

[NCA 01–136, § 107, eff. Aug. 1, 2001.]

## Title 36, § 1–105

## TAXATION AND REVENUE

### Historical and Statutory Notes

**Derivation:**

NCA 86–08.  
NCA 92–71, § 204.

### Cross References

Cigarettes and tobacco products, rules and regulations, see Title 36, § 5–104.

### Library References

Indians ⇌225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

## § 1–106. Seal

The Tax Commissioner is authorized, directed to acquire, and use a seal which shall be circular in form with the words “TAX COMMISSION—MUSCOGEE (CREEK) NATION” around the edge thereof, and the word “Seal” in its center. The seal shall be impressed upon the originals or certified copies of all licenses, orders, rules, regulations and other official documents of the Commission as evidence of their authenticity and authority.

[NCA 01–136, § 108, eff. Aug. 1, 2001.]

### Historical and Statutory Notes

**Derivation:**

NCA 86–08, § 202.

### Library References

Indians ⇌225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

## § 1–107. Background checks and bonding

Background checks and bonding background checks shall be performed on all Tax Commission personnel and bonding shall be required of all Tax Commission personnel responsible for handling tax monies including, but not limited to taxes, penalties and interest collected.

[NCA 01–136, § 109, eff. Aug. 1, 2001.]

### Library References

Indians ⇌225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

## § 1–108. Deposit into Muscogee (Creek) Nation Treasury

A. Tax revenues collected by the Muscogee (Creek) Nation Tax Commission pursuant to this title shall be promptly transferred to the Muscogee (Creek) Nation Controller for deposit into the General Fund and shall be available for appropriation by the National Council for the provision of essential government functions and services, including the public welfare and such other matters as determined by the National Council to be in the best interests of the Muscogee

## FUEL TAX CODE

## Title 36, § 1–109

(Creek) Nation and its citizens, subject to requirements for earmarking of certain tax revenue set forth in Title 36, § 3–113 and Title 36, § 5–107.

B. All property, whether real or personal, and all moneys acquired, administered, possessed, or received by the Tax Commission shall be the property of the Muscogee (Creek) Nation.

[NCA 01–136, § 110, eff. Aug. 1, 2001.]

### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 1–109. Severability of provisions

The provisions of this title are hereby deemed to be severable and should any part of this title be held to be invalid by final judgment of the Muscogee (Creek) Nation District Court, the remainder shall be severable from such invalid provisions and shall remain in full force and effect.

[NCA 01–136, § 111, eff. Aug. 1, 2001.]

## CHAPTER 2. FUEL TAX CODE [RESERVED]

*Chapter Two has been reserved by NCA 01–136, § 2 for amendment and codification of NCA 95–89, as amended by NCA 97–87.*

## CHAPTER 3. MOTOR VEHICLE TAX AND LICENSE CODE

### Section

- 3-101. Citation.
- 3-102. Definitions.
- 3-103. Registration eligibility.
- 3-104. Certificate of title requirement.
- 3-105. Registration application.
- 3-106. Registration tax.
- 3-107. Annual registration fee.
- 3-108. License plate.
- 3-109. Operation of motor vehicle in the Muscogee (Creek) Nation.
- 3-110. Sale of vehicle with Muscogee (Creek) Nation title to non-Indian.
- 3-111. Recognition of foreign titles and registrations.
- 3-112. Penalties.
- 3-113. Use of tax revenues.
- 3-114. Intergovernmental agreements; authority.

### Historical and Statutory Notes

NCA 01-136, § 4, §§ 301, 302, provide:

“Section 301. Findings

“The National Council finds that:

“A. Numerous Muscogee citizens live in rural parts within the political jurisdiction of the Muscogee (Creek) Nation as defined by the Constitution of the Muscogee (Creek) Nation, Article I., Section 2, where the road and bridge infrastructure is insufficient to allow access or productive use of lands which require creation or repair.

“B. Public parking lots within Muscogee government facilities are in need of repair.

“C. The Muscogee (Creek) Nation has certain responsibilities for rights-of-way through the area within the political jurisdiction of the Muscogee (Creek) Nation.

“D. The Muscogee (Creek) Nation is in need of revenues for the purpose of funding for construction and improvement of roads, construction and improvement of public parking lots, and public safety within its political jurisdiction.

“Section 302. Purpose

“The purpose is to register certain motor vehicles within the political jurisdiction of the Muscogee (Creek) Nation and raise revenue for the Nation.”

### Cross References

Traffic Code, see Title 22, § 1-101 et seq.

### § 3-101. Citation

This chapter of Title 36 shall be known and cited as the Muscogee (Creek) Nation “Motor Vehicle Tax and License Code.”

[NCA 00-174, § 103, approved Nov. 18, 2000; amended by NCA 01-136, § 303, eff. Aug. 1, 2001.]

### Library References

Indians ⇄225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-102. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “All terrain vehicle” shall mean a motorized vehicle manufactured and used exclusively for off-highway use which is sixty (60) inches or less in width,

with an unladen dry weight of one thousand five hundred (1500) pounds or less, traveling on two (2) or more low-pressures tires.

B. "Commercial vehicle" shall mean any vehicle used primarily for the transportation of persons or goods in the ordinary course of trade or business.

C. "Eligible vehicle" shall mean any personal vehicle, commercial vehicle, motorcycle, recreational vehicle, trailer, farm truck, or all terrain vehicle, which is principally garaged within the political jurisdiction of the Muscogee (Creek) Nation and title to which is held by: (i) the Muscogee (Creek) Nation, (ii) a chartered community of the Muscogee (Creek) Nation which is located in the political jurisdiction of the Muscogee (Creek) Nation or (iii) any enrolled member of the Muscogee (Creek) Nation who resides within the political jurisdiction of the Muscogee (Creek) Nation. An "eligible vehicle" shall not include a salvage vehicle.

D. "Farm trailer" shall mean any vehicle owned by a farmer and used primarily for the purpose of transporting farm products to market or for the purpose of transporting to the farm material or things to be used thereon, and not for commercial or industrial purposes.

E. "Farm truck" shall mean any vehicle equipped with four (4) or more wheels and a cargo area for the conveyance of property that is used primarily for agricultural purposes, but not for commercial or industrial purposes. Vans and sport utility vehicles may not carry a "farm truck" tag.

F. "Motorcycle" shall mean any two (2) or three-wheeled personal vehicle.

G. "Person" shall mean any natural person or legal entity legally competent to hold title to a motor vehicle.

H. "Personal vehicle" shall mean any vehicle having four (4) or more wheels, including but not limited to cars, trucks, vans and sport utility vehicles; provided however, the definition of personal vehicle shall not include a commercial vehicle as defined in subsection A of this section, a recreational vehicle as defined in subsection I of this section or a farm truck as defined in subsection D of this section.

I. "Physically disabled driver" shall mean any person who is an enrolled member of the Muscogee (Creek) Nation and who generally meets the definition of a physically disabled person under Oklahoma law, as may be further modified by the Tax Commissioner of the Muscogee (Creek) Nation.

J. "Rebuilt vehicle" shall mean any salvage vehicle which has been rebuilt and inspected for the purpose of registration and title with another Tribe or state.

K. "Recreational vehicle" shall mean any vehicle that is equipped to serve as temporary living quarters for recreational, camping or travel purposes and is used solely as a family or personal conveyance.

L. "Salvage vehicle" shall mean any vehicle which is within the last ten (10) model years and has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value, immediately prior to the damage.

M. “Senior citizen” shall mean any person who is an enrolled member of the Muscogee (Creek) Nation who has reached the age of sixty-five (65) and is licensed by the State of Oklahoma to drive an eligible vehicle.

N. “Trailer” shall mean any vehicular portable structure built on a chassis which is not propelled by its own power but is towed by another vehicle with a width not exceeding eight (8) feet in travel mode and overall length not exceeding forty (40) feet, including the hitch or coupling, whether used for towing property or livestock or as a temporary dwelling for travel or recreational use.

O. “Vehicle” shall mean any wheeled conveyance for carrying persons or property capable of being propelled under its own power through the use of an electric engine or internal combustion engine greater than fifty (50) cubic centimeters, designed primarily for use on roads and/or highways and equipped with brakes, headlights, tail lights, brake lights, a horn, turn signals and a rear-view mirror, the ownership of which is reflected on a Certificate of Title. [NCA 00-174, § 105, approved Nov. 18, 2000; amended by NCA 01-136, § 304, eff. Aug. 1, 2001; NCA 04-089, § 2, approved July 1, 2004; NCA 06-075, § 1, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 1, approved Oct. 2, 2008.]

### § 3-103. Registration eligibility

**A. Muscogee (Creek) Nation.** The Muscogee (Creek) Nation shall register all eligible vehicles to which it holds title with the Muscogee (Creek) Nation Tax Commission.

**B. Chartered communities.** Any chartered community of the Muscogee (Creek) Nation which holds title to an eligible vehicle shall have the option to apply for registration of said eligible vehicle with the Muscogee (Creek) Nation Tax Commission, instead of registration with another governmental entity.

**C. Citizens.** Any Muscogee (Creek) Nation citizen who resides within the political jurisdiction of the Muscogee (Creek) Nation and who holds title to an eligible vehicle shall have the option to apply for registration of said vehicle with the Muscogee (Creek) Nation Tax Commission, instead of registration with another governmental entity; provided that failure of such person to apply for registration of an eligible vehicle with the Muscogee (Creek) Nation Tax Commission or with another governmental entity within thirty (30) days after purchasing or obtaining possession of said motor vehicle or within twenty (20) days of expiration of the previous tag shall subject said person to penalties as provided in subsection B of Title 36, § 3-112.

[NCA 00-174, § 106, approved Nov. 18, 2000; amended by NCA 01-136, § 305, eff. Aug. 1, 2001.]

#### Library References

Indians ☞226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-104. Certificate of title requirement

**A. Title.** Prior to the registration of an eligible vehicle with the Muscogee (Creek) Nation for the first time by a specific owner of the vehicle, the owner

shall apply to the Tax Commissioner, on such form as the Commissioner shall by rule direct, for a Muscogee (Creek) Nation Vehicle Certificate of Title for said vehicle. The applicant shall furnish proof of purchase from a licensed new or used car dealer, or a properly endorsed Vehicle Certificate of Title issued by another jurisdiction, or in the case of an applicant who has acquired title to a vehicle already registered with the Muscogee (Creek) Nation Tax Commission, a properly endorsed Muscogee (Creek) Nation Vehicle Certificate of Title.

**B. Original, transfer, and duplicate titles.** Upon proper application and payment of all fees and taxes, the Tax Commissioner shall issue an Original Muscogee (Creek) Nation Vehicle Certificate of Title to the first purchaser of a vehicle from a new vehicle dealer, a Transfer Muscogee (Creek) Nation Certificate of Title to a second or subsequent owner of a vehicle whether purchased from an individual or dealer, and a Duplicate Muscogee (Creek) Nation Vehicle Certificate of Title to the owner of record to replace a lost, stolen or mutilated original or transfer title. No Muscogee (Creek) Nation title shall be issued on a salvage title issued by another tribe or state. The Muscogee (Creek) Nation shall not issue any titles on salvage vehicles. Notice of liens against said vehicle shall be placed upon said title either by submission of a valid lien entry form from a lending institution or upon receipt of a title issued by another tribe or state with a valid lien filed upon the face of the title.

**C. Fee.** The Commissioner shall charge a fee of five dollars (\$5.00) for issuing each original, transfer or duplicate Muscogee (Creek) Nation Vehicle Certificate of Title. A receipt will be given for said fee.

[NCA 00-174, § 107, approved Nov. 18, 2000; amended by NCA 01-136, § 306, eff. Aug. 1, 2001; NCA 04-089, § 2, approved July 1, 2004.]

#### Library References

Indians ☞ 225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-105. Registration application

**A. Documents.** Each applicant for vehicle registration with the Muscogee (Creek) Nation shall present upon application the following documents:

1. The applicant's properly endorsed Muscogee (Creek) Nation Vehicle Certificate of Title; or an application for a Muscogee (Creek) Nation Vehicle Certificate of Title if the applicant has not previously obtained such Certificate.
2. Valid United States state or Territorial driver's license or other documents prescribed by the Commissioner showing applicant's residence within the boundaries of the political jurisdiction of the Muscogee (Creek) Nation;
3. If the applicant is an individual, a copy of the applicant's Muscogee (Creek) Nation membership card, along with a signed statement consenting to the Tax Commissioner's release of information confirming his or her status as a Muscogee (Creek) Nation citizen to a subsequent purchaser upon request by the purchaser; and,
4. Proof of current liability insurance policy or bond covering any liability for an accident involving such motor vehicle, to limit, exclusive of interest and

costs of: (i) Not less than ten thousand dollars (\$10,000) because of bodily injury to or death to any one person in any one accident, (ii) not less than twenty thousand dollars (\$20,000) of bodily injury to or death of two (2) or more persons in any one accident, and (iii) not less than ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one accident.

**B. Approval.** Upon approval of the registration application and payment of all applicable fees and taxes by the applicant, the Tax Commissioner shall provide to the applicant a Muscogee (Creek) Nation certificate of registration, tag and decal.

**C. Denial.** The Commissioner shall have the authority to deny registration to any applicant when the application information is determined to be insufficient to meet requirements for registration, fraudulent or incorrect or the applicant has failed to pay all applicable fees and taxes. The Commissioner shall notify the applicant of the denial of the registration by certified mail.

**D. Revocation.** If the Commissioner approves an application for registration and fraudulent information is subsequently discovered, the Commissioner shall have the authority to revoke the registration. The Commissioner shall notify the applicant of the revocation of the registration by certified mail.

[NCA 00-174, § 108, approved Nov. 18, 2000; amended by NCA 01-136, § 307, eff. Aug. 1, 2001; NCA 07-146, § 2, eff. May 23, 2007.]

#### Library References

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-106. Registration tax

**A. Registration tax charge.** A one-time registration tax shall be charged for the registration of any eligible vehicle not previously registered with the Muscogee (Creek) Nation by the specific applicant, including the registration of an eligible vehicle registered with the Muscogee (Creek) Nation by a previous owner/seller of the vehicle, as follows:

1. Registration tax on personal vehicles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for a personal vehicle, provided that the actual purchase price (A.P.P.) is not more than twenty percent (20%) above the average retail value and no more than twenty percent (20%) below the average retail value.

2. Registration tax on motorcycles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for registration of a motorcycle, provided that the actual purchase price (A.P.P.) is no more than twenty percent (20%) above the average retail value and no more than (20%) below the average retail value.

3. Registration tax on commercial vehicles. A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a commercial vehicle, provided that the owner of said vehicle shall sign an affidavit, under oath, in such form as shall be



prescribed by the Tax Commissioner, that the vehicle will be used primarily for trade or business purposes, and shall either: (i) Affix the federal employer identification number of said business to the affidavit, or (ii) cause the name of the business to be permanently affixed on each side of said vehicle in letters or numerals of at least one (1) inch in height and in a color contrasting with the color of said vehicle. Proof of trade or business purposes shall be required each year for subsequent registrations.

4. Registration tax on recreational vehicles. A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a recreational vehicle.

5. Registration tax on all terrain vehicles. A registration tax of one and one-half percent (1.5%) of the actual purchase price (A.P.P.) shall be charged for an all terrain vehicle, provided that the actual purchase price (A.P.P.) is not more than twenty percent (20%) above the average retail value and no more than twenty percent (20%) below the average retail value. However, if the all terrain vehicle is used for agricultural/farm purposes and the citizen provides an agricultural exemption card to the Tax Commission, then the all terrain vehicle shall be exempt from registration tax.

**B. Registration tax for physically disabled drivers.** A registration tax equal to one half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a vehicle owned and operated by a physically disabled driver as defined in this chapter. Eligible persons are allowed to register not more than two (2) vehicles under this section.

**C. Registration tax for senior citizens.** A registration tax equal to one-half (1/2) of the amount of the tax imposed on personal vehicles shall be charged for registration of a vehicle owned and operated by a senior citizen as defined in this chapter. Eligible persons are allowed to register not more than two (2) vehicles under this section.

**D. No registration tax on farm trucks and commercial trailers.** There shall be no registration tax levied on farm trucks, farm tractors or commercial trailers.

**E. No registration tax for veterans.** There shall be no registration tax levied on eligible vehicles owned by citizens of the Muscogee (Creek) Nation who present documentation that they are entitled to veteran status.

[NCA 00-174, § 109, approved Nov. 18, 2000; amended by NCA 01-136, § 308, eff. Aug. 1, 2001; NCA 06-075, § 2, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 2, approved Oct. 2, 2008.]

#### Library References

Indians ☞ 225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-107. Annual registration fee

**A. Regular fees.** Unless subject to a special fee pursuant to subsection B, C, D or E of this section, there is hereby levied on every eligible vehicle which is registered with the Muscogee (Creek) Nation Tax Commission an annual

registration fee in accordance with the following schedule, provided that the registration fee on said vehicles previously registered with any other tribe or with any state shall be figured as if those vehicles had been registered with the Muscogee (Creek) Nation for an identical number of years:

1. Registered for 1–5 years: \$75.00
2. Registered for 6–10 years: \$55.00
3. Registered for 11–15 years: \$30.00
4. Registered for 15 or more years: \$15.00

**B. Special fees for physically disabled drivers.** Citizens of the Muscogee (Creek) Nation who qualify as physically disabled drivers as defined in this chapter shall be entitled to the amount of thirty dollars (\$30.00) for annual registration of not more than two (2) eligible vehicles.

**C. Special fees for senior citizens.** Citizens of the Muscogee (Creek) Nation who qualify as senior citizens as defined in this chapter shall be entitled to pay a special fee in the amount of thirty dollars (\$30.00) for annual registration of not more than two (2) eligible vehicles.

**D. Special fees for veterans.** Citizens of the Muscogee (Creek) Nation who present documentation that they are entitled to veteran status shall be entitled to pay a special fee for annual registration of not more than two (2) eligible vehicles as follows:

- i. Veterans only, special fee: \$15.00
- ii. Disabled veterans, special fee: \$11.50
- iii. Winners of medals for heroism in combat, special fee: \$5.00
- iv. Prisoners of war, special fee: FREE

**E. Special fees for farm trucks.** The annual registration fee on farm trucks shall be a special fee in the amount of thirty dollars (\$30.00) per registered vehicle.

**F. Special fees for commercial trailers.** The annual registration fee on commercial trailers shall be four dollars (\$4.00) per vehicle.

**G. Special fees for all terrain vehicles.** A one time registration fee on all terrain vehicles shall be ten dollars (\$10.00) per vehicle.

[NCA 00-174, § 110, approved Nov. 18, 2000; amended by NCA 01-136, § 309, eff. Aug. 1, 2001; NCA 06-075, § 3, eff. May 8, 2006, approved May 8, 2006; NCA 08-162, § 3, approved Oct. 2, 2008.]

#### Library References

Indians ⇄225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-108. License plate

**A. Standard license plate.** Each vehicle registered with the Muscogee (Creek) Nation shall be issued a license plate to be properly displayed on the rear of said vehicle. All license plates shall be in such form as described:

1. Each license plate shall be made of metal with white lettering on a red background, unless otherwise provided herein,

2. Each license plate shall bear the name Muscogee (Creek) Nation, unless otherwise provided herein,

3. Each license plate shall bear the Muscogee (Creek) Nation seal, unless otherwise provided herein,

4. Each license plate shall bear the word Oklahoma, unless otherwise provided herein,

5. Each license plate shall contain no more than five (5) characters, made up of numbers, letters or a unique combination of both, unless otherwise provided herein.

6. The identifying symbols shall be large and clear enough to be read by the unaided eye at a distance of not less than fifty (50) feet.

7. Each license plate shall provide a space for the placement of month and year decals on the upper left and the upper right corners of the license plate, respectively.

8. The license plates for each class of vehicles shall be distinctive and different from those assigned to other classes of vehicles.

**B. License plates with special symbols or legends.** The Commissioner may, at his/her discretion provide by rule or regulation for special symbols or legends to be placed upon personal vehicles license plates issued for the following classes of persons, provided that the Commissioner shall first require documentation that the owner of the vehicle is entitled to the special symbol or legend:

1. The physically handicapped,
2. Veterans of the armed forces,
3. Winners of selected medals for heroism in combat,
4. Past or present prisoners of war,
5. Parents whose child has been killed as a result of service in the armed forces, and
6. Past and present elected Tribal officials

**C. Personalized license plates.** The Commissioner may, at his/her discretion provide by rule or regulation for personalized license plates for personal vehicles upon request of the owner. Personalized license plates may be placed on personal vehicles in lieu of the regular tag. The Commissioner may charge additional fees for issuing personalized license plates. The Commissioner reserves the right to reject a request for a personalized license plate at any time without stating a reason. Personalized license plates shall contain no more than five (5) characters, made up of numbers, letters or a unique combination of both.

**D. Muscogee (Creek) Nation government vehicles.** The Commissioner shall issue without charge, appropriate titles, certificates of registration and license plates for any motor vehicle owned by the Muscogee (Creek) Nation or its agencies. Title to any such vehicles shall be in the name of the Muscogee (Creek) Nation and such vehicles may be disposed of only by action of the National Council. If the particular agency has been authorized to purchase and

dispose of property in the name of the agency by law of the National Council, the agency may hold title to a vehicle purchased through an authorized budget line item in its own name, and dispose of the vehicle pursuant to its authorized powers, unless the purchase was made from appropriated Tribal funds the vehicles may be declared surplus property and disposed of in accordance with Title 32, § 3-101 et seq.

**E. Lost, mutilated or destroyed license plate or decal.** In the event of loss, mutilation or destruction of a license plate or decal the owner of such registered vehicle shall file an affidavit showing such fact and obtain another plate or decal. The charge shall be five dollars (\$5.00) for each such plate or decal. In the event a license plate becomes so mutilated as to make its numbers, letters or decals unreadable, the owner/operator of the vehicle shall be subject to fine. Law enforcement shall have the authority to detain and cite any owner or operator of vehicles bearing such mutilated license plates.

[NCA 00-174, § 111, approved Nov. 18, 2000; amended by NCA 01-136, § 310, eff. Aug. 1, 2001.]

#### Cross References

Great seal and official flag, see Title 37, § 1-101 et seq.  
Official seal, see Const. Art. I, § 3.

#### Library References

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-109. Operation of motor vehicle in the Muscogee (Creek) Nation

**A. Driver's license.** Every operator of a motor vehicle upon the public streets, roadways or highways in the political jurisdiction of the Muscogee (Creek) Nation shall have in their possession a currently valid United States state or territorial driver's license and shall exhibit such license to any law enforcement officer upon request.

#### **B. Insurance.**

1. Unless otherwise provided in this subsection, every owner or operator of a motor vehicle operated upon the public streets, roadways or highways in the political jurisdiction of the Muscogee (Creek) Nation shall maintain with some insurance company or surety company, a liability insurance policy or bond, to cover any liability for an accident involving such motor vehicle, to limit, exclusive of interest and costs of:

- a. Not less than ten thousand dollars (\$10,000) because of bodily injury to or death of two (2) or more persons in any one accident, and
- b. Not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and
- c. Not less than ten thousand dollars (\$10,000) because of injury to or destruction of property of others in any one (1) accident.

2. This requirement shall not apply to any operator if the owner of such motor vehicle has such insurance which covers the operator while he/she is operating the vehicle.

**C. Insurance security verification form.** Except as provided in subsection D of this section, every owner of a motor vehicle registered within the Muscogee (Creek) Nation shall carry in such vehicle at all times a current owner's security verification form listing the vehicle which has been issued by an insurance company or surety company and shall produce such form upon request for inspection by any law enforcement officer or representative of the Commissioner and, in the case of a collision, the form shall be shown upon request to any person affected by said collision.

**D. Exemption from insurance security verification form requirement.** The following shall not be required to carry an owner's or operator's security verification form or an equivalent form during operation of a motor vehicle and shall not be required to surrender such form for vehicle registration purposes:

1. Any vehicle owned or leased by the federal, state, territory or Tribal government, or any agency or political subdivision thereof;
2. Any vehicle bearing the name, symbol or logo of a business, corporation or utility on the exterior whose business, corporation or utility has a deposit, bond, self-insurance or fleet policy on file with the Tax Commissioner;
3. Any vehicle authorized for operations, pursuant to a permit number issued by the Interstate Commerce Commission; and
4. Any vehicle owned by a licensed used motor vehicle dealer and not regularly used upon the public highways.

[NCA 00-174, § 112, approved Nov. 18, 2000; amended by NCA 01-136, § 311, eff. Aug. 1, 2001.]

#### Library References

Indians ☞226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-110. Sale of vehicle with Muscogee (Creek) Nation title to non-Indian

Any sale of a vehicle with a valid Muscogee (Creek) Nation title from a Muscogee (Creek) Nation citizen to a non-member shall require the seller to provide a copy of his or her current CDIB or Muscogee (Creek) Nation membership cards to the purchaser. If the seller fails to provide this information upon sale, the Muscogee (Creek) Nation Tax Commissioner may provide information confirming the seller's status as a Muscogee (Creek) Nation citizen upon request of the purchaser.

[NCA 00-174, § 113, approved Nov. 18, 2000; amended by NCA 01-136, § 312, eff. Aug. 1, 2001.]

#### Library References

Indians ☞226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-111. Recognition of foreign titles and registrations

It shall not be unlawful by reason of this title for any person to possess or operate a motor vehicle within the political jurisdiction of the Muscogee

(Creek) Nation so long as the vehicle is properly registered and tagged by the jurisdiction in which such person resides in which the vehicle is principally garaged and such jurisdiction extends like or similar recognition to the vehicle tags, certificates of title and registrations issued by the Muscogee (Creek) Nation.

[NCA 00-174, § 114, approved Nov. 18, 2000; amended by NCA 01-136, § 313, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 3-112. Penalties

**A. False or fraudulent information.** Any Indian person who knowingly issues or promulgates false or fraudulent information in connection with either the security verification form or an equivalent form of an owner or operator shall be guilty of an offense and shall be subject to a fine not exceeding five hundred dollars (\$500.00) or imprisonment for not more than six (6) months or by both such fine or imprisonment.

**B. Failure to register.** Failure of the owner of an eligible vehicle to apply for a Muscogee (Creek) Nation certificate of title, certificate of registration, tag and decal within twenty (20) days of the date of expiration of a Muscogee (Creek) Nation tag shall result in the civil penalty of twenty-five cents (\$0.25) per day beginning on the twenty-first (21st) day. This penalty shall not exceed two (2) times the registration fee for the vehicle. Any vehicle not registered within three (3) months after the expiration of the previous Muscogee (Creek) Nation registration and being operated upon any public street or highway is hereby declared contraband and shall be subject to seizure and sale.

**C. Waiver of penalties for failure to register.** The Commissioner shall have the authority to waive penalties for failure to register a vehicle, in cases where such vehicle is proven to have been inoperable during the registration period. Proof of inoperability may be by, but is not limited to, submission of parts or repair receipts or such other evidence deemed appropriate by the Tax Commission.

**D. Operation of vehicle; criminal offense.** Any Indian person who operates, or allows to be operated a motor vehicle owned by him/her, in violation of the provisions of this chapter, shall be guilty of a misdemeanor and shall be subject to a fine not exceeding two hundred fifty dollars (\$250.00), or imprisonment for not more than thirty (30) days, or both such fine and imprisonment.

**E. Operation of vehicle; public nuisance; seizure.** Any motor vehicle operated in violation of the provisions of this chapter shall be considered a public nuisance. The Commissioner shall seize any Muscogee (Creek) Nation license plate placed upon such vehicles and not allow the return or re-registration of the vehicle until a security verification form is filed with the Commissioner or other action as ordered by the Commissioner is taken to verify that such vehicle will not be used in violation of this section. If such vehicle has been in an accident, any law enforcement officer shall impound such vehicle until a

security verification form or other appropriate action as ordered by the Commissioner is filed with the Commissioner. If no form is filed within six (6) months, the Attorney General shall file appropriate forfeiture proceedings to forfeit such vehicle to the Nation.

[NCA 00-174, § 115, approved Nov. 18, 2000; amended by NCA 01-136, § 314, eff. Aug. 1, 2001.]

**Cross References**

Administrative enforcement proceeding, see Title 36, § 6-103.

**Library References**

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 3-113. Use of tax revenues**

The tax revenue collected pursuant to the Motor Vehicle Code shall be earmarked for funding of education, public health and welfare, public safety, construction and improvement of roads and parking lots within the jurisdiction of the Muscogee (Creek) Nation, and such other matters as determined by the National Council to be in the best interest of the Muscogee (Creek) Nation and its citizens.

[NCA 00-174, § 116, approved Nov. 18, 2000; amended by NCA 01-43, § 1, eff. May 1, 2001; NCA 01-136, § 315, eff. Aug. 1, 2001; NCA 02-090, § 1, approved May 30, 2002.]

**Cross References**

Deposit of tax revenues into Muscogee (Creek) Nation Treasury, see Title 36, § 1-108.

**Library References**

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 3-114. Intergovernmental agreements; authority**

The Principal Chief of the Muscogee (Creek) Nation is hereby authorized to enter into intergovernmental agreements of any kind with any Governmental Authority to implement the provisions of this Motor Vehicle Tax and License Code. The term “Governmental Authority” shall include (a) any federal, tribal, state, county or municipal government or political subdivision thereof, (b) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (c) any court, administrative tribunal or public utility.

[Added by NCA 06-075, § 4, eff. May 8, 2006, approved May 8, 2006.]

**Library References**

Indians ⇄216, 225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 140 to 149.

## CHAPTER 4. SALES TAX CODE

### Section

- 4-101. Citation.
- 4-102. Definitions.
- 4-103. Tax levy rate.
- 4-104. Impact of tax.
- 4-105. Credit for state sales tax collected.
- 4-106. Exemptions.
- 4-107. Sales licensing.
- 4-108. Payment of tax.
- 4-109. Records and audit.
- 4-110. Civil penalties; criminal sanctions.

### Historical and Statutory Notes

NCA 01-136, § 5, § 401, provides:

“Section 401. Findings.

“The National Council finds that:

“1. Article VI, section 7(h), of the Constitution of the Muscogee (Creek) Nation empowers the National Council to lay and collect taxes within the boundaries of the Nation’s jurisdiction.

“2. The number of vendors soliciting sales on the Nation’s property has been increasing and will continue to increase in the future.

“3. The sales tax would increase the revenues of the Muscogee (Creek) Nation, complement its regulatory jurisdiction and otherwise benefit the Nation’s citizens; and

“4. To avoid imposing an excessive tax burden on private vendors collecting state sales taxes from their non-Muscogee customers, the National Council finds that a credit equal to a portion of said state tax collected by such vendors is appropriate until the Council decides to legislate otherwise.”

### Cross References

Alcoholic Beverages, see Title 21 § 5-115.

### § 4-101. Citation

This chapter of Title 36 shall be known and may be cited as the “Muscogee (Creek) Nation Sales Tax Code.”

[NCA 00-149, § 1-101, approved Sept. 30, 2000; amended by NCA 01-136, § 402, eff. Aug. 1, 2001.]

### Library References

Indians ⇄225.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149.

### § 4-102. Definitions

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Business enterprises” shall mean any activity engaged in or caused to be engaged in by any person with object of gain, benefit or advantage, either direct or indirect by sales of goods or items of value, including trade, commerce, manufacture, power production, or any other productive activity such as extraction, processing, assembly, construction, transportation, and transmission.

B. “Consumer” shall mean and include any person who receives or comes into possession of goods or items of value from a vendor upon a sale of same.



C. "Current state sales tax" shall mean the amount of the Oklahoma state sales tax required to be collected pursuant to 68 O.S. § 1354 as of September 30, 2000, and shall not be affected by any changes thereto which may be enacted by the state legislature.

D. "Current Tribal sales tax" shall mean the amount of the sales tax required to be collected pursuant to Title 36, § 4-103, as the same may be amended by the National Council from time to time.

E. "Fair market value" shall mean a fair sales price for the good or item. A price agreed upon by interested parties during the completion of the sale by trade, barter or exchange is prima facie evidence of a fair sales price.

F. "Fireworks" shall mean any composition or device for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and which is defined as common or special fireworks by the United States Department of Transportation (DOT). The term "fireworks" shall not include toy cap pistols and caps, blank cartridges, railroad flares and model rockets.

G. "Goods" or "items of value" shall mean any tangible personal property.

H. "Gross receipts" or "gross proceeds" shall mean the total amount of consideration for the sales of any items of value or goods taxable under this chapter, whether the consideration is in money or otherwise. "Gross receipts" or "gross proceeds" shall include, but not be limited to:

1. Cash paid;
2. Any amount for which payment is charged, deferred, or otherwise to be made in the future, regardless of the time or manner of payment;
3. Any amount for which credit or a discount is allowed by the vendor; or
4. Any value of a trade-in or other property accepted in-kind by the vendor as consideration. Provided, that for purposes of calculating the amount of gross receipts, no deduction shall be made for cost of the goods or items of value sold, labor service performed, interest paid, or losses, or of any expenses, whatsoever, whether or not the goods or items of value sold were produced, constructed, fabricated, processed, or otherwise assembled for or at the request of the consumer as part of the sale.

I. "Person" shall mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this Sales Tax Code can be applied.

J. "Sale" and its derivatives, shall mean any transfer of ownership for consideration from a vendor to any person no matter how characterized, not including the payment of salaries or wages, or payment for personal services to an independent contractor.

K. "Sales for resale" shall mean sales of tangible personal property to any purchaser who is purchasing said tangible personal property for the purpose of reselling it either in its present form or as an attachment to or as an integral part of other tangible personal property.

L. “Sales tax” shall mean a compulsory payment levied on the sales price on all items of value or goods, as further defined herein, for the support of the government of the Muscogee (Creek) Nation.

M. “Special event” or “short term event” shall mean activities organized by the Muscogee (Creek) Nation of ten (10) days or less duration which activities are not organized for the sole purpose of selling goods.

N. “Territorial jurisdiction” means the territorial jurisdiction of the Muscogee (Creek) Nation as defined in Title 27, § 1–102 of the Code of Laws of the Muscogee (Creek) Nation, except that any such individual restricted or trust land which is the subject of a valid business lease as of September 30, 2000, shall not be deemed within the Muscogee (Creek) Nation territorial jurisdiction solely for purposes of this Sales Tax Code until the date immediately following the expiration or termination of such leases.

O. “Vending machine” shall mean any machine or device which, upon the payment or insertion of money (or tokens which have been purchased for money), a good or item of value as defined by subsection G of this section is dispensed. It shall not include any machine or device which dispenses only exempt goods as defined under Title 36, § 4–106.

P. “Vendor” shall mean and include any person who in the ordinary course of business sells any goods or items of value to another, whether such sale would be described as a “wholesale” or “retail” sale. A sale is “by” a particular vendor if that vendor will receive at least fifty-one percent (51%) of the net income or loss from the sale.

[NCA 00–149, § 1–102, approved Sept. 30, 2000; amended by NCA 01–136, § 403, eff. Aug. 1, 2001.]

### § 4–103. Tax levy rate

**A. Sales tax levy.** There is hereby levied a sales tax of six percent (6%) on the gross receipts or gross proceeds of all items of value or goods bought, sold, rented, leased or exchanged, or any combination thereof, from any vendor within the Muscogee (Creek) Nation’s territorial jurisdiction on or after November 1, 2000. If a sale is consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the goods or items of value sold.

**B. Collection.** The Tax Commissioner is hereby directed to commence collecting all such sales taxes levied hereunder on November 1, 2000.

[NCA 00–149, § 3–101, approved Sept. 30, 2000; amended by NCA 01–136, § 404, eff. Aug. 1, 2001.]

### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 4–104. Impact of tax

**A. Impact on consumer.** The impact of the taxes imposed by this Sales Tax Code is declared to be on the consumer and shall be added to the purchase price of goods or items of value sold and recovered from the consumer.

**B. Invoices and receipts.** Every vendor shall show the amount of such taxes paid as separate items on any invoices or receipts which they may issue.

**C. Collection.** Any monies which are collected or required to be collected under this Sales Tax Code by a vendor shall be deemed to be held by such vendor in trust for the Muscogee (Creek) Nation.

[NCA 00–149, § 3–102, approved Sept. 30, 2000; amended by NCA 01–136, § 405, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 4–105. Credit for state sales tax collected

**A. Credit.** So that vendors subject to this Sales Tax Code may remain competitive with vendors which are not subject to this chapter, a credit against the sales taxes required to be collected under Title 36, §§ 4–103 and 4–104 shall be allowed to any licensed vendor that chooses to collect taxes pursuant to Title 68 Oklahoma Statutes § 1354, in the amount of said state sales taxes so collected, without regard to the amount actually remitted to the Oklahoma Tax Commission. This credit must be directly passed on to the consumer at the point of sale by collecting, as Tribal sales tax, only the difference between the current state sales tax and the current Tribal sales tax.

**B. Proof.** To be allowed the credit authorized by this section, a vendor must submit to the Commissioner (i) proof of the amount of the state sales tax collected and (ii) proof that the credit allowed herein has been passed on to the consumer. The sufficiency of both such items of proof shall be a matter of discretion of the Tax Commissioner. A statement of the amount of the credit allowed and any proof thereof which may be required by the Commissioner shall be provided to the Tax Commission together with or as a part of the sales tax report required by Title 36, § 4–108.

[NCA 00–149, § 3–103, approved Sept. 30, 2000; amended by NCA 01–136, § 406, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 4–106. Exemptions

The following are hereby specifically exempted from the tax levied pursuant to this Sales Tax Code:

1. Sales of tobacco otherwise subject to taxation under laws of the Muscogee (Creek) Nation;
2. Sales of motor fuels;
3. Sales of drugs or medicines prescribed for the treatment of human beings by a person licensed to prescribe the medicines or drugs;

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4. Sales of prosthetic devices to an individual for use by the individual (for use of this paragraph, “prosthetic device” means a device which replaces a missing part of the human body and shall include any supplies physically connected to the device);
5. Medical, dental, optical or other health related goods provided by the Muscogee (Creek) Nation Division of Health Administration;
6. Sales of eyeglasses, contact lenses and hearing aids prescribed for human beings by a person licensed to prescribe such items;
7. Sales of prepared food and drink products by the Elderly Nutrition Program of the Muscogee (Creek) Nation;
8. Sales of bingo cards and pull tabs or electronic simulation of same;
9. Sales of food by the Eufaula Dormitory;
10. Sales of event tickets and concessions at extra-curricular events sponsored by the Eufaula Dormitory;
11. Sales of food or food products for home consumption which are purchased in whole or in part with coupons or debit cards issued pursuant to the federal food program as authorized by §§ 2011 through 2036 of Title 7, Chapter 51 of the United States Code, as to that portion purchased with such coupons. The exemption provided for such sales shall be inapplicable to such sales upon the effective date of any federal law that removes the requirement of the exemption as a condition for participation by the state in the federal food stamp program;
12. Sales of eligible vehicle as that term is defined by § 3–102 of this Title;
13. Sales of goods or items of value derived directly from the Muscogee (Creek) Nation territorial jurisdiction including but not limited to livestock, timber, fish and crops for human or animal consumption;
14. Sales of crude petroleum or natural or casing head gas from wells located on tribal property;
15. Sales by any individual enrolled citizen of the Muscogee (Creek) Nation, chartered community, church or ceremonial ground group or other recognized Muscogee Tribal organization (not including business enterprises of the Nation and not including business enterprises of chartered communities) who/which conducts sales within the Muscogee (Creek) Nation territorial jurisdiction;
16. Sales to the Muscogee (Creek) Nation or any office, board, agency, division, school or enterprise thereof and sales to any chartered community of the Muscogee (Creek) Nation;
17. Sales to any other federally recognized Indian Tribe or any office, board, agency, division or enterprise thereof;
18. Sales to the United States government or the State of Oklahoma or any political subdivision thereof;
19. Sales to any city or county government, public school district or public institute of higher education; and

20. Sales for resale, provided that the purchaser must provide the vendor with proper identification and proof of intent to resell the item(s) purchased upon such forms as the Tax Commissioner prescribes;

21. Sales by any charitable or non-profit organization as identified by their official status granted by the Internal Revenue Service.

[NCA 00-149, § 3-104, approved Sept. 30, 2000; amended by NCA 01-100, § 2, eff. June 8, 2001; NCA 01-136, § 407, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 4-107. Sales licensing

**A. Application.** Every person desiring to engage in the business of selling goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction except as provided by subsection C of this section, must submit an application for and receive from the Muscogee (Creek) Nation Tax Commission a vendor's sales license prior to establishing or maintaining any place of business or retail or wholesale outlet for the sale of goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction or otherwise soliciting such sales within the Muscogee (Creek) Nation territorial jurisdiction. The provisions of this Sales Tax Code apply to all vendors, including vendors conducting business within the Muscogee (Creek) Nation territorial jurisdiction prior to the effective date hereof and those commencing such business in the future. The vendor's application shall be completed and signed by the owner of the business or, in the case of a corporation or a chartered community, a duly authorized officer thereof. The application shall include an express written acknowledgment of and consent to the civil jurisdiction of the Muscogee (Creek) Nation and its courts for all purposes related to implementation and enforcement of this Sales Tax Code and a designation of a registered agent for service of process at the location to be licensed. Forms for such application and licenses shall be prescribed by and be made available from the Tax Commission. Vendors operating within the Muscogee (Creek) Nation territorial jurisdiction as of the effective date of this Sales Tax Code shall apply for a license within twenty (20) days of September 30, 2000.

**B. Types of licenses.** The following licenses may be issued:

1. Annual Vendor's Sales License: All vendors engaged in the sale of goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction who are not exempt from licensing as provided in subsection C of this section or otherwise qualified hereunder for a Temporary Sales License, shall apply for and obtain an Annual Vendor's Sales License before engaging in or soliciting for the sale of such goods or items of value. The Annual Vendor's Sales License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license shall be required for each separate location at which a vendor may establish a place of business or retail outlet. The certificate of Annual Vendor's Sales License shall be conspicuously posted in a public area in each such place of business or retail or

wholesale outlet. A fee of twenty dollars (\$20.00) shall be paid for each new or renewal of Annual Vendor's Sales License issued. This license shall not be valid for sales by vending machines or sales of fireworks in which case a Muscogee Vending License or a Muscogee Fireworks License shall be required as provided by paragraphs 3 and 4 of this subsection below.

2. Temporary Vendor's Sales License: The Temporary Vendor's Sales License shall be issued to vendors not otherwise exempt as provided in subsection C of this section for special or short term events within the Muscogee (Creek) Nation territorial jurisdiction or temporary solicitation of sales in said territorial jurisdiction, not longer than ten (10) days in duration and shall be valid for a period of ten (10) days. The certificate of Temporary Vendor's Sales License shall be conspicuously posted in a public area in each temporary outlet or, in the case of mobile or traveling salespersons, the license shall be carried by the salesperson and presented for inspection to anyone requesting to view the license. A license fee of fifty dollars (\$50.00) shall be paid for each temporary retail sales license issued and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title. This license shall not be valid for sales by vending machines or sales of fireworks in which case a Muscogee Vending License or a Muscogee Fireworks License shall be required as provided by paragraphs 3 and 4 of this subsection below.

3. Muscogee Vending License: Every vendor soliciting sales within the Muscogee (Creek) Nation territorial jurisdiction through use of a vending machine located or to be located within the Muscogee (Creek) Nation territorial jurisdiction shall, upon making application, be issued a Muscogee Vending License or a Muscogee Small Vending License for each such vending machine and a decal reflecting same. The Muscogee Vending License and Muscogee Small Vending License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license and decal shall be required for each vending machine owned by a non-exempt vendor. The decal shall be affixed to the vending machine for which it has been issued in a conspicuous location. For vending machines which require the payment of less than twenty-five cents (or a token of equivalent value), a Muscogee Small Vending License and decal shall be issued for a license fee of five dollars (\$5.00) and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title. For vending machines which require the payment of twenty-five cents (\$0.25) or more (or a token of equivalent value) a Muscogee Vending License and decal shall be issued for a license fee of twenty dollars (\$20.00) and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title.

4. Muscogee Fireworks License: All vendors engaged in the sale of fireworks within the Muscogee (Creek) Nation territorial jurisdiction who are not exempt from licensing as provided in subsection C of this section, shall, upon making application, be issued a Temporary or an Annual Muscogee Fireworks License before engaging in or soliciting for the sale of such fireworks. The Temporary Muscogee Fireworks License shall be valid for one calendar month from the date of issuance and shall be nontransferable and non-assignable. The Annual Muscogee Fireworks License shall be valid for one calendar year from the date of issuance and shall be nontransferable and non-assignable. A separate license

shall be required for each separate location at which a vendor may establish a temporary or permanent place of business or retail or wholesale outlet. The certificate of Muscogee Fireworks License shall be conspicuously posted in a public area in each such place of business or retail or wholesale outlet. A license fee of fifty dollars (\$50.00) for the temporary license and five hundred dollars (\$500.00) for the annual license shall be paid for each such Muscogee Fireworks License issued and shall be in lieu of sales taxes and applicable sales reports otherwise required under this title.

**C. Exemption from license requirements.** Vendors, one hundred percent (100%) of whose sales are exempt pursuant to Title 36, § 4-106, shall not be required to apply for and be issued a license. In the event any part of the vendor's sales become taxable under this Sales Tax Code the vendor must apply for and receive a license as provided under this section.

**D. Denial of applications.** The Tax Commissioner shall have the authority to deny an application for a vendor's license. All denied applicants shall have the right to appeal pursuant to Title 36, § 6-101.

[NCA 00-149, § 3-105, approved Sept. 30, 2000; amended by NCA 01-80, § 2, approved May 25, 2001; NCA 01-136, § 408, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 4-108. Payment of tax

**A. Reports.** Reports shall be made and remitted on a monthly basis as hereinafter provided. Every vendor not otherwise exempt as provided under Title 36, § 4-106 or holding a license under Title 36, § 4-107, shall submit to the Tax Commission, not later than the twentieth (20th) day of each month, a report, on such form as prescribed by the Tax Commission, of all sales and gross amount of sales taxes collected during the preceding month.

**B. Payments.** Every vendor not otherwise exempt as provided under Title 36, § 4-106 or holding a license under paragraph 2, 3 or 4 of subsection B of Title 36, § 4-107 shall pay the gross sales taxes collected during the preceding month to the Tax Commission at the same time the report for that period is submitted.

**C. Payment under protest.** A vendor who receives a notice from the Commissioner as authorized by Title 36, § 6-103 alleging a failure to remit some or all the sales tax required to be collected and remitted hereunder may make a full or partial payment of the disputed amount under protest. If a vendor makes a full or partial payment under protest, the vendor shall receive a credit of one and one-half percent (1.5%) interest per month, compounded monthly, against any interest penalty assessed under subsection B of Title 36, § 4-110. In the event of a finding that the amount of payment under protest exceeds the vendor's actual liability for taxes owed, the Muscogee (Creek) Nation Tax Commissioner shall refund any overpayment within thirty (30) days of finality of such determination.

[NCA 00-149, § 3-106, approved Sept. 30, 2000; amended by NCA 01-136, § 409, eff. Aug. 1, 2001.]

**Library References**

Indians ⇨225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 4–109. Records and audit**

**A. Maintenance of records.** Every vendor shall maintain for not less than three (3) years complete and adequate records of gross receipts, including invoices showing all goods or items of value received and sold or otherwise disposed of, the price at which sold, and the amount of sales taxes collected and paid to the Tax Commission. The burden of proving that a sale was not a taxable sale shall be upon the vendor. The Tax Commission may subject the records of any vendor to an examination and/or an audit at any time by the Commissioner or, at the Commissioner's discretion, a certified public accountant selected by the Commissioner.

**B. Audit costs.** The cost of conducting any audit under this section may be assessed as a civil fine against a vendor in the event that the Commissioner determines that the vendor willfully failed to report, collect or remit any tax due hereunder and revealed by such audit or that the vendor otherwise violated this Sales Tax Code.

[NCA 00–149, § 3–107, approved Sept. 30, 2000; amended by NCA 01–136, § 410, eff. Aug. 1, 2001.]

**Library References**

Indians ⇨225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 4–110. Civil penalties; criminal sanctions**

**A.** It shall be unlawful for any person or vendor to solicit sales or otherwise engage in the business of selling goods or items of value within the Muscogee (Creek) Nation territorial jurisdiction in violation of this Sales Tax Code.

**B.** Every vendor who shall fail to collect the taxes imposed by this Sales Tax Code, or fail to submit the reports and/or remit the taxes imposed by this Sales Tax Code, shall be liable for the full amount of the tax owed, plus interest on the amount of such tax at one and one-half percent (1.5%) per month, compounding monthly, until paid.

**C.** Any person who or which collects sums due under this Sales Tax Code and fails to remit same to the Tax Commission in accordance with Title 36, § 4–108 shall be liable for a civil fine not to exceed five hundred dollars (\$500.00) for each month for which such remittance was required to be made.

**D.** Any person required to submit a report pursuant to Title 36, § 4–108 who fails to timely submit such report shall be liable for a civil fine not to exceed two hundred dollars (\$200.00) for each monthly report not so submitted. The proceedings for assessing and collecting such fines are set forth in Title 36, § 6–102.

**E.** The license of any vendor may be revoked, suspended or modified by the Tax Commissioner for any violation of this Sales Tax Code. The Tax Commis-



sioner may also require a vendor who has been delinquent in the reporting or remittance of taxes under this Sales Tax Code to post a bond not to exceed three times the average quarterly tax liability of said vendor. In addition to the foregoing, the Tax Commissioner shall have the broad discretion to determine the amount of and assess any fine or other penalty authorized hereunder.

F. Criminal sanctions. In addition to any criminal sanctions contained in the Muscogee (Creek) Nation Criminal Code, persons violating any provisions of this Sales Tax Code shall be subject to criminal sanctions as follows:

1. It shall be unlawful for any Indian person to willfully, intentionally and knowingly solicit sales or engage in the business of selling goods or time for which they are required to collect sales tax on behalf of the Muscogee (Creek) Nation and failing to collect and remit said sales taxes to the Muscogee (Creek) Nation. Every Indian person convicted of violating this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.

2. It shall be unlawful for any Indian person to willfully and intentionally display a false or expired Vendor's Sales License. Every Indian person convicted of violating this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.

3. It shall be unlawful for any Indian person to willfully, intentionally and knowingly make or cause to be made a false application to the Muscogee (Creek) Nation or any of its programs, entities or agencies for the purpose of obtaining Tribal membership or receiving any permit, license, service or other benefit provided by or through the Muscogee (Creek) Nation. Every Indian person convicted of a violation of this paragraph shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1000.00) or by both such fine and imprisonment.

[NCA 00-149, § 4-101, approved Sept. 30, 2000; amended by NCA 01-136, § 411, eff. Aug. 1, 2001.]

#### **Historical and Statutory Notes**

##### **Derivation**

NCA 00-148, § 103.

##### **Cross References**

Administrative enforcement proceeding, see Title 36, § 6-103.

##### **Library References**

Indians ☞ 225, 623, 624.

Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 151 to 179.

## CHAPTER 5. CIGARETTES AND TOBACCO PRODUCTS

### Section

- 5-101. Citation.
- 5-102. Definitions.
- 5-103. Administration of chapter.
- 5-104. Tax Commission rules and regulations.
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- 5-128. Minors; supply of cigarettes and tobacco products; misrepresentation.
- 5-129. Exclusions from taxation.
- 5-130. Exemption for religious and ceremonial use.
- 5-131. Unlawful cigarette and tobacco products; seizure; forfeiture.
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- 5-133. Disposal of forfeited cigarettes and tobacco products; report.
- 5-134. Inspection of carrier's records.
- 5-135. Unlawful for carrier to refuse inspection of records.
- 5-136. Description of offense.
- 5-137. Sufficiency of evidence.
- 5-138. Proof of violation.
- 5-139. Inferences of fact from evidence found.
- 5-140. Transfer, sale, and possession of cigarettes and tobacco products; when unlawful.
- 5-141. Penalty for sale of cigarettes and tobacco products without license.
- 5-142. Officer or agent of corporation deemed a party to offense.
- 5-143. Occupant of premises deemed party to offense.
- 5-144. Premises where cigarettes and tobacco products illegally sold public nuisance.
- 5-145. Penalty for violating chapter; revocation of license.

### Historical and Statutory Notes

NCA 01-136, § 6, §§ 501, 502, provide:  
"Section 501. Policy.

"A. It is hereby declared to be the policy of the Muscogee (Creek) Nation to raise revenues through the collection of taxes for the manufac-

ture, sale, and distribution of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction by the Muscogee (Creek) Nation Tax Commission.

“B. This Tobacco Code is an exercise of the police power of the Muscogee (Creek) Nation, in and for the protection of the welfare, health, peace, morals, and safety of the people of the Muscogee (Creek) Nation, and its provisions shall be construed for the accomplishment of such purposes.

“C. Except as otherwise required by other applicable law of the Muscogee (Creek) Nation

or by any applicable federal law, the provisions and requirements of this Chapter and any rules, regulations and licenses authorized hereunder shall apply to the sale or barter of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction.

“Section 502. Purpose

“The purpose and intent of this Tobacco Code is to regulate the sale of cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction and to raise revenues.”

**Cross References**

Tulsa smoke shop, see Title 11, § 7–101.

**§ 5–101. Citation**

This chapter of Title 36 shall be known and cited as the Muscogee (Creek) Nation “Tobacco Code.”

[NCA 01–136, § 503, eff. Aug. 1, 2001.]

**Library References**

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–102. Definitions**

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Cigarette” means and includes all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore and weighing not in excess of three (3) pounds per thousand (1000) cigarettes.

B. “Tribally licensed retail store” means a retail store which sell cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction under the Tax Commissioner’s authority and direction.

C. “Muscogee (Creek) Nation wholesale enterprise” means any enterprise owned by the Nation which serves as a wholesale purchaser and distributor of cigarette and tobacco products.

D. “Package” means a container or receptacle used for holding cigarette and tobacco products.

E. “Public place” means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

F. “Sell” or “to sell” shall include all of the following: to solicit and/or receive an order for; to keep or expose for sale; to deliver to value; to peddle; to possess with intent to sell; to traffic in; for any consideration, promised or obtained, directly or indirectly or under any pretext or means whatsoever, to procure or allow to be procured for any other person; “sale” shall include every act of selling as defined herein.

G. “Stamp” means the stamp or stamps produced by the Commission or any other stamp (including the compact stamp) authorized by the Commission that is evidence of the payment of the tax imposed by this chapter.

H. “Tobacco product” means and includes any smokable product of any species of the tobacco plant, including smoking tobacco suitable for smoking in pipes or rolling into cigarettes, any roll of tobacco for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute therefore except cigarettes, but not including chewing tobacco of any description including snuff.

I. “Vending machine” means and includes any coin operated machine by means of which cigarettes or tobacco products are sold or dispensed.

J. “Warehouse” means a building or structure owned, operated or licensed by the Muscogee (Creek) Nation as a wholesale facility for the receiving, storage, and distribution of cigarettes and tobacco products as permitted by this chapter.

[NCA 01–136, § 504, eff. Aug. 1, 2001; amended by NCA 05–119, § 1, eff. May 31, 2005.]

### § 5–103. Administration of chapter

The Tax Commission shall have the power and duty to administer the Tobacco Code including without limitation the authority to grant and issue licenses under and in pursuance to this title and to do all such things as are deemed necessary or advisable by the Commission for the purpose of carrying into effect the provisions of this chapter or the rules and regulations made by the Commissioner to implement this chapter.

[NCA 93–04, § 1–201, approved Jan. 7, 1993; amended by NCA 01–136, § 505, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5–104. Tax Commission rules and regulations

The Tax Commissioner’s authority to make rules and regulations pursuant to Title 36, § 1–105 shall include rules and regulations not inconsistent with this chapter that are determined by the Commissioner to be necessary for carrying out the provisions of this chapter, including the following:

A. Regulations prescribing an official stamp which shall be attached to every package of cigarettes and tobacco products sold or stamped under this Tobacco Code;

B. Regulations prescribing forms to be used for the purpose of this Tobacco Code or of the rules and regulations made thereunder and the terms and conditions in permits and licenses issued and granted under this Tobacco Code;

C. Regulations prescribing the form of records of purchase of cigarettes and tobacco products and the reports to be made thereon to the Commission and providing for inspection of the records so kept;

D. Regulations prescribing the fees payable in respect of permits and licenses issued under this chapter for which no fees are prescribed in this chapter and prescribing the fees for anything done or permitted to be done under the rules and regulations made thereunder; and

E. Regulations prescribing, subject to the provisions of this chapter, the conditions and qualifications necessary for the obtaining of a cigarettes and tobacco products license and the books and records to be kept and the returns to be made by the licensee and providing for the inspection of such licensed premises.

[NCA 01–136, § 506, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5–105. Muscogee (Creek) Nation cigarette and tobacco products wholesale enterprise

**A. Establishment.** The Muscogee (Creek) Nation Trade and Commerce Authority may establish a Muscogee (Creek) Nation cigarettes and tobacco products wholesale enterprise for the purpose of purchasing and importing cigarettes and tobacco products for wholesale distribution to licensed retail stores which sell cigarettes and tobacco products within the Muscogee (Creek) Nation territorial jurisdiction. Such enterprise shall not be operated by the Tax Commission, but shall be subject to the regulatory authority of the Tax Commission, including without limitation licensing and taxing authority. No other entity shall be authorized to establish or operate a cigarette and tobacco products wholesale enterprise within the Muscogee (Creek) Nation territorial jurisdiction.

**B. Shipment, storage, distribution and records.** All cigarettes and tobacco products purchased by a Muscogee (Creek) Nation wholesale enterprise shall be consigned and shipped to such enterprise at a location within the Muscogee (Creek) Nation territorial jurisdiction. The wholesale enterprise shall unload all such products into its warehouse within the Muscogee (Creek) Nation territorial jurisdiction and shall distribute said cigarette and tobacco products from such warehouse to licensed retail stores and shall keep records at such enterprise's principal place of business of all cigarettes and tobacco products, including the name or kind received, on hand, sold, and distributed. Such records may at all times be inspected by any member or representative of the Tax Commission.

**C. Invoices.** Upon each delivery of cigarettes and tobacco products by a Muscogee (Creek) Nation wholesale enterprise, a duplicate copy of an invoice of the cigarettes and tobacco products purchased shall be delivered to the recipient and (1) one copy shall be retained by said Muscogee (Creek) Nation wholesale enterprise. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of cigarette and tobacco product purchased, the price paid, the name of the recipient, and the number of the license, with such other information as may be required by the Tax

Commission. The licensed store shall keep and retain the duplicate invoice of all purchases made from a Muscogee (Creek) Nation wholesale enterprise, which shall at all times be subject to inspection by the duly authorized officers, agents, and employees of the Tax Commission.

**D. Advance payment.** Possession and control of cigarettes or tobacco products owned by the Muscogee (Creek) Nation shall not be surrendered to any person or entity without the Muscogee (Creek) Nation first being paid the full purchase price for same in cash or its equivalent.

**E. Revenue.** All monies received from the wholesale sale of cigarettes and tobacco products to cigarette and tobacco retail stores shall be deposited in a revolving fund in the Tribal treasury to the credit of the Commission. The Commission is hereby authorized to purchase cigarettes and tobacco products from moneys deposited to its account in the revolving fund. The Commission shall pay from its account in the revolving fund its administrative expenses, subject to the limits imposed by legislative appropriation.

**F. Obligations.** No obligation created or incurred by the Commission for the operation of a Muscogee (Creek) Nation cigarette and tobacco wholesale or retail enterprise may ever be or become a general debt or claim against the Muscogee (Creek) Nation but shall be payable by the Muscogee (Creek) Nation Wholesale Enterprise solely from funds derived from its operations, and nothing herein shall be construed to be a waiver of the sovereign immunity of the Muscogee (Creek) Nation.

[NCA 01–136, § 507, eff. Aug. 1, 2001.]

#### Library References

Indians ⇨225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5–106. Muscogee (Creek) Nation cigarette and tobacco products retail enterprise

The Muscogee (Creek) Nation, an agency of the Muscogee (Creek) Nation, or any authorized Muscogee (Creek) Nation entity established by law of the Nation may establish and operate cigarette and tobacco products retail businesses within the Muscogee (Creek) Nation Territorial jurisdiction. Such enterprises shall not be operated by the Tax Commission, but shall be subject to the regulatory authority of the Tax Commission, including without limitation licensing and taxing authority.

[NCA 01–136, § 508, eff. Aug. 1, 2001.]

#### Library References

Indians ⇨225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5–107. Tax on cigarettes

A. There is hereby levied upon the sale, use, gift, possession and/or consumption of cigarettes within the Muscogee (Creek) Nation territorial jurisdic-

tion a tax of fifty-five cents (\$0.55) for each package of cigarettes containing twenty (20) cigarettes or less.

B. Of the fifty-five cents (\$0.55) tax per package of cigarettes imposed and levied hereunder, one cent (\$.001) shall be earmarked for expenditure on the preparation and distribution of health education materials benefitting the Nation's citizens.

C. Each year, during and as a part of the Comprehensive Annual Budget process, the Director of the Health Administration, after consultation with the Controller regarding the availability of revenues earmarked for health education, shall prepare and present a budget for the use and expenditure of said revenues for preparation of health education materials for presentation and distribution to Muscogee (Creek) Nation citizens, as well as a written plan identifying the health issues to be addressed, describing the health education materials to be distributed and the manner of distribution of such materials. The appropriation of funds earmarked for health education materials shall be included in the Health Administration portion of the Comprehensive Annual Budget, shall not exceed earmarked taxes collected during the previous fiscal year, and shall be used exclusively for supplies, materials, artwork, design, printing, postage, equipment, and travel within the Nation's boundaries or to other areas outside the boundaries where substantial numbers of the Nation's citizens reside.

[NCA 93–04, § 1–301, approved Jan. 7, 1993; amended by NCA 95–101, § 5, passed Dec. 16, 1995 (unsigned); NCA 96–73, § 103, approved Oct. 28 1996; NCA 99–39, §§ 103, 104, approved April 30, 1999; NCA 01–136, § 509, eff. Aug. 1, 2001; NCA 05–287, § 2, eff. Jan. 5, 2006.]

#### **Cross References**

Deposit of tax revenues into Muscogee (Creek) Nation Treasury, see Title 36, § 1–108.

#### **Library References**

Indians ⇌225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### **§ 5–108. Tax on tobacco products**

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco products within the Muscogee (Creek) Nation territorial jurisdiction a tax of five percent (5%) of the factory list price exclusive of any trade discount, special discounts, or deals which shall be paid prior to the time of retail sale and delivery thereof. This tax does not apply to sales by the Muscogee (Creek) Nation to persons for resale to ultimate consumers outside the Muscogee (Creek) Nation territorial jurisdiction.

[NCA 93–04, § 1–302, approved Jan. 7, 1993; amended by NCA 01–136, § 510, eff. Aug. 1, 2001.]

#### **Library References**

Indians ⇌225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–109. Tax in lieu of other taxes**

The taxes levied by Title 36, § 5–107 and Title 36, § 5–108 on cigarettes and tobacco products respectively shall be in lieu of all other forms of tax including sales and other general taxes imposed by law. It is not in lieu of the cost to the Muscogee (Creek) Nation of purchasing the cigarettes and tobacco products including the face value of the Compact Stamp.

[NCA 93–04, § 1–303, approved Jan. 7, 1993; amended by NCA 01–136, § 511, eff. Aug. 1, 2001.]

**Library References**

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–110. Tax on ultimate consumer**

All taxes paid pursuant to Title 36, § 5–107 and Title 36, § 5–108 shall be conclusively presumed to be direct taxes on the retail consumer pre-collected for the purpose of convenience and facility only. The full face value of the tax shall be added to the cost of the cigarettes and tobacco products and recovered from the ultimate consumer.

[NCA 93–04, § 1–304, approved Jan. 7, 1993; amended by NCA 01–136, § 512, eff. Aug. 1, 2001.]

**Library References**

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–111. Tax stamp**

**A. Stamps as evidence of tax payment.** Payment of taxes imposed by this chapter of Title 36 shall be evidenced by such stamps as required by the Tax Commission to be affixed to each package of cigarettes and tobacco products. Every wholesaler who has paid such taxes shall show the amount of such taxes as a separate item on any invoices which they may issue.

**B. Stamp requirement.** Each person who owns or operates a retail store which sells cigarettes and tobacco products in Muscogee (Creek) Nation territorial jurisdiction shall buy, sell, or have in their possession only those cigarettes and tobacco products to which the wholesaler has first caused to have affixed such stamp or stamps as required by the Tax Commission.

**C. Wholesaler license.** Every wholesaler of cigarettes or tobacco products must apply and receive from the Commission a “Tobacco Wholesaler License” prior to distributing cigarettes and tobacco products to retail stores which sell cigarette and tobacco products in Muscogee (Creek) Nation territorial jurisdiction. Forms for such applications and license shall be provided by the Commission to wholesalers of cigarettes or tobacco products operating in the Muscogee (Creek) Nation territorial jurisdiction.

**D. Wholesaler reports.** Every wholesaler or retailer of cigarettes or tobacco products shall submit monthly reports to the Commission. The Commission



shall promulgate regulations and develop forms regarding disclosure of the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps, tax paid, purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco purchased and such other information pertinent to their business done in the Muscogee (Creek) Nation territorial jurisdiction as the Commission shall require; and sales of tobacco; buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done in the Muscogee (Creek) Nation territorial jurisdiction as the Commission shall require.

**E. Records.** All wholesalers and retailers of tobacco within the Muscogee (Creek) Nation territorial jurisdiction, shall maintain for not less than three (3) years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased paid. The Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer, and whether the proper tax has been paid.

[NCA 93-04, § 1-305, approved Jan. 7, 1993; amended by NCA 01-136, § 513, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-112. Retail license; eligibility; licensee duties

**A. Retail license.** Every retailer of cigarettes or tobacco products must apply for and receive from the Commission a Tobacco Retailer License prior to establishing any retail store for the sale of cigarettes or tobacco within the Muscogee (Creek) Nation territorial jurisdiction. A separate license is required for each separate retail store site. Forms for such application and license shall be provided by the Commission.

**B. Eligibility requirements.** An applicant for a retail license is eligible to obtain a retail license, and a recipient of a retail license is authorized to maintain a retail license, only if the Commissioner determines that the following eligibility requirements have been met, and continue to be met:

1. The place of business or the retail store is located within Muscogee (Creek) Nation territorial jurisdiction;
2. The site of the business or retail store is owned by the license applicant or is validly leased to the license applicant;
3. If the applicant for the licensee has a lease, sub-lease or an assignment of the site of the business or retail store, the applicant shall provide a copy of the lease, sub-lease or assignment to the Tax Commission; and
4. The business or retail store is wholly owned and operated by the Muscogee (Creek) Nation, a chartered Indian community and/or an Indian citizen or citizens of the Muscogee (Creek) Nation; provided that if any corporation or partnership owns stock or other interest in, manages or operates the business

or retail store, on property owned by the Muscogee (Creek) Nation, at least fifty-one percent (51%) of the stock or partnership interest shall be held by the Muscogee (Creek) Nation or a chartered Indian community that has use of the property and/or an Indian citizen or citizens, as demonstrated by a governing document, a copy of which shall be provided to the Tax Commission; and provided further, that if a business or retail store on property owned by the Muscogee (Creek) Nation is managed or operated by any person, corporation or partnership other than the Muscogee (Creek) Nation or a chartered Indian community or an Indian citizen owner, said manager or operator shall be required to obtain a license for the site, and said site shall be eligible for a license only if said manager or operator has a written lease agreement, partnership agreement, management agreement or other type of agreement with the Muscogee (Creek) Nation or a chartered Indian community that has use of the property which requires distribution of at least fifty-one percent (51%) of the net revenues from said business or retail store to said Muscogee (Creek) Nation or a chartered Indian community that has use of the property provided further that a financial report and proof of such distribution shall be provided to the Commissioner semi-annually on or before June 30 and December 31 of the calendar year for which the license was issued, and at such other times as requested by the Tax Commissioner. All currently existing written lease agreements, partnership agreements, management agreements or other types of memorandum with the Muscogee (Creek) Nation or a chartered Indian community shall be honored until the date of expiration.

5. If a non-Indian holds any stockholder or partnership interest in a corporation or partnership which owns the business or retail store, a copy of the corporation's articles of incorporation or a copy of the partnership documents shall be provided to the Tax Commission, along with any other written documentation demonstrating that distribution of at least fifty-one percent (51%) of the net revenues from said business or retail store to said Indian citizen or citizens is required.

**C. Duties of licensees.** Retailers who receive licenses from the Tax Commission are subject to the following requirements:

1. Cigarette packages sold at the outlet must have affixed a stamp depicting taxes collected for the benefit of the Muscogee (Creek) Nation.

2. The licensee must display in a prominent place a current and valid license or permit for that location.

3. The licensee shall not allow the license or stamps to be transferred to any other person or organization or for any other location without written approval of the Commissioner.

4. The licensee is prohibited from allowing any person under the age of eighteen (18) years of age to be employed in the sale of tobacco products or to purchase tobacco products.

5. The licensee shall maintain such operations and financial records and documents as required by this chapter and by regulations and rules of the Tax Commission, for the purpose of insuring proper collection of the Nation's taxes,

and shall follow all other applicable rules and regulations of the Tax Commission.

[NCA 01-136, § 514, eff. Aug. 1, 2001; NCA 01-215, § 1, approved Dec. 4, 2001.]

#### Cross References

Denial of application for retail or wholesale tobacco license, see Title 36, § 6-101.

#### Library References

Indians ↻225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-113. Chartered community priority; profits

**A. First priority.** Chartered communities shall be afforded first priority for licensing a retail tobacco store within their community boundaries.

**B. Notice; failure of community to exercise preference.** The Tax Commissioner shall notify a chartered community when an application has been received for a retail tobacco license within that community's jurisdiction. The community shall have thirty (30) days to exercise its preference for a retail license after notice from the Tax Commissioner. If a chartered community fails to exercise its preference in licensing a retail store within the community's area by submitting formal application to the Muscogee (Creek) Nation Tax Commission, other operators may then be allowed to apply for licensing within the community jurisdiction.

**C. Community consent under certain circumstances.** If a chartered community currently operates/sanctions a retail store within their community, and another entity desires to also license a location within a five (5) mile radius of the existing community cigarette and tobacco store, said entity must have the formal consent of the community.

**D. Community needs to be considered.** Before acting on an application for a license for a location for a retail cigarette and tobacco store owned or operated by the Muscogee (Creek) Nation (whether within or without a Travel Plaza Enterprise) within a five (5) mile radius of an existing community owned cigarette and tobacco store, the Tax Commissioner shall take into consideration the social and economic needs of the chartered community and avoid economic harm to the community, if at all possible.

**E. Communities to receive portion of Nation's profits.** If a cigarette and tobacco retail store owned or operated by the Muscogee (Creek) Nation (whether within or without a Travel Plaza Enterprise) is located within a five (5) mile radius of an existing community cigarette and tobacco store, the Tax Commissioner shall assure that chartered communities receives three percent (3%) of the net sales of cigarette tobacco products sold at such Tribally owned cigarette and tobacco store as compensation whether said store is within or without a Travel Plaza Enterprise. Chartered communities entitled to such compensation shall be given copies of all invoices and other purchase and sales records together with their quarterly payment and chartered communities shall have the right to audit the books of said Tribally owned cigarette and tobacco store. In the event that a chartered community ceases the retail sale of cigarettes and

tobacco products within a five (5) mile radius of a cigarette and tobacco retail store owned or operated by the Muscogee (Creek) Nation, the community shall not be entitled to payment of any percentage of the net sales by said Muscogee (Creek) Nation retail store.

**F. Gaming facility sales.** A retail store operated by a chartered Indian community is hereby authorized to sell cigarettes and tobacco products directly to a Gaming facility that is located within the chartered Indian community's boundaries; provided that the Gaming facility wishes to sell cigarettes and tobacco products to its patrons; and provided further that the chartered Indian community and the Gaming facility enter into a contract formalizing this agreement. Once the contract is fully executed, it shall be the responsibility of the chartered Indian community to inform the Commission of this activity. Once the chartered Indian community has purchased the cigarettes and tobacco products in accordance with the laws of the Muscogee (Creek) Nation from a licensed wholesale enterprise, these cigarettes and tobacco products shall not be subject to any further taxation by the Commission. For the purposes of this chapter, the chartered Indian community shall not be considered a wholesale enterprise.

[NCA 01-136, § 515, eff. Aug. 1, 2001; amended by NCA 09-154, § 1, eff. Oct. 8, 2009.]

#### Historical and Statutory Notes

**Derivation:**

NCA 97-94.  
NCA 98-02.

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-114. Application; investigation

**A. Applications.** Prior to the issuance of any license under this chapter, the applicant shall file with the Commission an application in writing, signed by the applicant's management and containing such information and statements relative to the applicant and the premises where the cigarette and tobacco products is to be sold as may be required by the Commission. The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. All applicants for a Muscogee (Creek) Nation retail cigarette and tobacco products license, including corporate officers and managers, may be required by the Commission when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license.

**B. Investigation.** Upon receipt of a completed application for a license under this chapter, accompanied by the necessary license fee, the Commission shall within thirty (30) days make a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and the premises are suitable for the carrying on of the

business and whether the requirements of this chapter and rules and regulations promulgated by the Commission are met and complied with.

[NCA 93-04, § 4-202, approved Jan. 7, 1993; amended by NCA 01-136, § 516, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-115. License as privilege; criteria for decision on application

**A. Privilege.** A license under this chapter is a privilege which the Muscogee (Creek) Nation may grant to an applicant and is not a right to which any applicant is entitled.

**B. Eligibility; findings.** The Commission must find in every case where it makes an order for the issuance of a new retail license that:

1. The application is for a retail store;
2. The applicant and its management has a good record and can demonstrate that the management of the applicant is likely to operate the establishment in compliance with all applicable laws of the Muscogee (Creek) Nation;
3. The applicant's management is not under the age of twenty-one (21) years;
4. The applicant or anyone in the applicant's management has not been convicted of a felony ; and
5. The location to be licensed is at a site which will make it accessible to law enforcement authorities and oversight by the Tax Commissioner.

**C. Annual fee.** Each retail store licensed to sell cigarettes and tobacco products, under the provisions of this chapter, shall pay an annual license fee of one hundred dollars (\$100.00).

[NCA 93-04, § 4-201, approved Jan. 7, 1993; amended by NCA 01-136, § 517, eff. Aug. 1, 2001.]

#### Cross References

Juvenile adjudication not to impose civil disability, see Title 6, § 1-404.

#### Library References

Indians ⇄225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-116. Contents of retail license; posting; privilege; expiration; fees

**A. Contents of license; posting.** Every license issued under this part shall set forth the name of the person or entity to whom issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the Commission shall deem necessary. Every license must be posted in a conspicuous place on the premises wherein

the business authorized under the license is conducted, and such license shall be exhibited upon request to any authorized representative of the Commission or to any peace officer of the Muscogee (Creek) Nation.

**B. Personal license.** Any license issued under the provisions of the part shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license unless sooner revoked or suspended.

**C. Discretion.** The number of such licenses that the Commission may issue shall be determined by the Commission in the exercise of its sound discretion, and the Commission, may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

[NCA 93-04, § 4-102, approved Jan. 7, 1993; amended by NCA 01-136, § 518, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-117. Denial of license

**A. Denial.** The Commission may deny the issuance of a cigarettes and tobacco products license if it determines that licensing eligibility requirements have not been met.

**B. Public welfare.** No license under this chapter may be issued if the Commission finds that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this chapter will not be carried out by the issuance of such license.

**C. Appeal.** If the Tax Commission denies an application for a license, the applicant may appeal the denial pursuant to Title 36, § 6-101.

[NCA 93-04, § 4-205, approved Jan. 7, 1993; amended by NCA 01-136, § 519, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5-118. Renewal; suspension or revocation; penalty

The Commission may upon its own motion and shall upon a written verified complaint of any person investigate the action and operation of any retailer licensed under this chapter. If the Commission, after investigation, shall have reasonable cause to believe that any such licensed store has violated any of the provisions of this chapter or any rules and regulations of the Commission, it may, in its discretion and in addition to the other penalties prescribed, reprimand a licensed store, proceed to revoke the license of any such licensed store or it may suspend the same for a period of not to exceed three (3) months or it

may refuse to grant a renewal of said license upon the expiration thereof or impose a civil penalty not to exceed one thousand five hundred dollars (\$1,500), subject to the opportunity for a hearing under Title 36, § 6–101.

[NCA 93–04, § 4–206, approved Jan. 7, 1993; amended by NCA 01–136, § 520, eff. Aug. 1, 2001.]

**Library References**

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–119. Expiration of licenses**

Each January 1, the Commission shall issue licenses for the retail sale of cigarettes and tobacco products on an annual basis and at such fees as are prescribed by law, and such licenses shall expire at midnight on December 31 of the license year. The Commission shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency.

[NCA 93–04, § 4–207, approved Jan. 7, 1993; amended by NCA 01–136, § 521, eff. Aug. 1, 2001.]

**Library References**

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–120. Renewal of suspended licenses**

After suspension or revocation of a license, the Commission shall have the power to renew the same if in its discretion a proper showing has been made.

[NCA 93–04, § 4–208, approved Jan. 7, 1993; amended by NCA 01–136, § 522, eff. Aug. 1, 2001.]

**Library References**

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–121. Vending machine permits**

**A. Application for permit.** Every wholesaler or retailer of cigarettes or tobacco products must apply for and receive from the Commission a “Tobacco Vending Machine Permit” prior to operating any vending machines within the Muscogee (Creek) Nation territorial jurisdiction. Forms for such application and permits shall be provided by the Commission.

**B. Permit non-assignable and non-transferable.** The Vending Machine Permit shall be non-transferable and non-assignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing cigarettes or tobacco products therefrom. A fee is to be assessed by Commission on each new or renewal permit issued.

**C. Seizure of contraband.** Any operating vending machine from which cigarettes or tobacco products may be purchased not having a Tobacco Vending Machine Permit attached thereto is contraband within the Muscogee (Creek) Nation territorial jurisdiction and is subject to seizure and sale as is prescribed by law.

[NCA 01–136, § 523, eff. Aug. 1, 2001.]

#### Library References

Indians ☞225, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 5–122. Search warrants

Upon information on oath by any investigator appointed under this title or by any law enforcement officer showing reasonable cause to believe that cigarettes and tobacco products are unlawfully kept for unlawful purposes in any building or premises, it shall be lawful for any court by warrant to authorize and empower the investigator or law enforcement officer or any other person named therein to enter and search the building or premises and every part thereof and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof or any closet, cupboard, box or other receptacle therein which might contain cigarettes and tobacco products.

[NCA 93–04, § 5–102, approved Jan. 7, 1993; amended by NCA 01–136, § 524, eff. Aug. 1, 2001.]

#### Library References

Searches and Seizures ☞79.  
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,  
132 to 134.

### § 5–123. Examination of retailer’s premises

The Commission or any duly authorized representative thereof or a law enforcement officer shall have the right at any time to make an examination of the premises of a retail licensed store as to whether the laws of the Muscogee (Creek) Nation and the rules and regulations of the Commission are being complied with by the licensee.

[NCA 93–04, § 5–103, approved Jan. 7, 1993; amended by NCA 01–136, § 525, eff. Aug. 1, 2001.]

#### Library References

Searches and Seizures ☞79.  
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,  
132 to 134.

### § 5–124. Prohibited acts

**A. Other business.** No officer or employee of the Tax Commission and no officer or employee of any Muscogee (Creek) Nation wholesale or retail enterprise, including those engaged in the sale of cigarettes and tobacco products at cigarette and tobacco stores within the Muscogee (Creek) Nation territorial jurisdiction, may be directly or indirectly interested or engaged in any other business or undertaking dealing in cigarettes and tobacco products, whether as



owner, part owner, partner, member of syndicated shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

**B. Receipt of gifts.** No officer or employee of the Tax Commission and no officer or employee of any Muscogee (Creek) Nation wholesale or retail enterprise may solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering cigarettes and tobacco products for sale to a Muscogee (Creek) Nation wholesale or retail enterprise pursuant to this chapter.

**C. Offer of remuneration.** No person selling or offering for sale to or purchasing cigarettes and tobacco products from a Muscogee (Creek) Nation wholesale or retail enterprise may either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the enterprise, to any employee of the Muscogee (Creek) Nation, or to anyone on behalf of such member or employee.

[NCA 93-04, § 1-204, approved Jan. 7, 1993; amended by NCA 01-136, § 526, eff. Aug. 1, 2001.]

### § 5-125. Unlawful sales solicitation or advertising; exceptions

**A. Unlawful sales solicitation or advertising.** No person within the Muscogee (Creek) Nation territorial jurisdiction shall:

1. canvass for, receive, take, or solicit orders for the purchase or sale of any cigarettes and tobacco products or act as agent or intermediary for the sale or purchase of any cigarettes and tobacco products or hold himself out as such agent or intermediary unless permitted to do so under rules and regulations that shall be promulgated by the Muscogee (Creek) Nation to govern such activities;

2. exhibit, publish, display or permit to be exhibited, published or displayed any form of advertisement or any other announcement, publication, or price list of or concerning cigarettes and tobacco products or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules and regulations of the Muscogee (Creek) Nation and then only in accordance with such rules and regulations.

**B. Inapplicability.** This section shall not apply to:

1. the Muscogee (Creek) Nation, or any act of the Muscogee (Creek) Nation; or

2. the receipt or transmission of a telegram or letter by any telegraph agent or operator or postoffice employee in the ordinary course of his employment as such agent, operator, or employee.

[NCA 93-04, § 3-101, approved Jan. 7, 1993; amended by NCA 01-136, § 527, eff. Aug. 1, 2001.]

**§ 5-126. Possession or disposal of cigarettes and tobacco products in manner other than prescribed law unlawful**

It shall be unlawful to sell or dispose of, or possess for the purpose of sale of cigarettes and tobacco products of any kind or character other than in the manner permitted by this chapter.

[NCA 93-04, § 3-102, approved Jan. 7, 1993; amended by NCA 01-136, § 528, eff. Aug. 1, 2001.]

**§ 5-127. Minors; unlawful purchases, sales or deliveries; misrepresentation; notice**

**A. Sales to minors prohibited.** It shall be an offense for any person who sells cigarettes or tobacco products within the Muscogee (Creek) Nation territorial jurisdiction to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any cigarette and/or tobacco product to any person under eighteen (18) years of age. Any person convicted of this offense shall be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines.

**B. Misrepresentation of age by minors.** Any person under eighteen (18) years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining any cigarette and tobacco products from such store shall be equally guilty with said store and shall, upon conviction thereof, be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of a cigarette and tobacco product to any person in violation of any federal law.

**C. Notice.** It shall be further mandatory under the provisions of this chapter that all cigarette and tobacco retail stores display in a prominent place in their premises a placard as issued by the Commission stating fully the consequences for violations of the provisions of this chapter by persons under eighteen (18) years of age.

[NCA 93-04, § 3-103, approved Jan. 7, 1993; amended by NCA 01-136, § 529, eff. Aug. 1, 2001.]

**Library References**

Indians ⇄ 133, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 150.

**§ 5-128. Minors; supply of cigarettes and tobacco products; misrepresentation**

**A.** No person shall sell, give, or otherwise supply cigarette and tobacco products to any person under eighteen (18) years of age or permit any person under that age to consume any cigarette and tobacco products.

**B.** Any person shall be guilty of a misdemeanor punishable for up to one (1) year in jail and up to five thousand dollars (\$5,000) in fines who:

1. invites a person under the age of eighteen (18) years into a public place where cigarette and tobacco products are sold and treats, gives, or purchases any cigarette and tobacco products for such person;

2. permits such person in a public place where any cigarette and tobacco products are sold to treat, give, or purchase cigarettes and tobacco products for him; or

3. holds out such person to be eighteen (18) years of age or older to the store manager of the establishment of his or her employee or employees.

[NCA 93–04, § 5–304, approved Jan. 7, 1993; amended by NCA 01–136, § 530, eff. Aug. 1, 2001.]

**Library References**

Indians ⇄133, 226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 150.

**§ 5–129. Exclusions from taxation**

Notwithstanding any other the provision in this title or any other provision of law, any natural person who shall come into possession or ownership of cigarettes or tobacco products outside the jurisdiction of the Muscogee (Creek) Nation for personal use and consumption only, and upon which is affixed evidence showing that any taxes validly imposed by another jurisdiction having the legal authority to so tax from which said cigarettes or tobacco products were acquired to have been paid, shall have exempted from payment of taxes pursuant to this chapter the following amounts of each of the following in possession and/or ownership at any one time:

1. Cigarettes—one thousand (1000) individual cigarettes.
2. Cigars—two hundred (200) individual cigars.
3. Other tobacco products—no more than two (2) pounds total.

[NCA 01–136, § 531, eff. Aug. 1, 2001.]

**Historical and Statutory Notes**

**Derivation:**

NCA 92–71, Title IV Tobacco Tax, § 406.

**Library References**

Indians ⇄225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5–130. Exemption for religious and ceremonial use**

Notwithstanding the provisions of Title 36, § 5–129 herein or any other provision of law, possession, gift, or use of noncommercial, privately produced tobacco for religious or ceremonial use shall be exempt from taxation; provided, however, that if such tobacco is sold, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

[NCA 01–136, § 532, eff. Aug. 1, 2001.]

**Historical and Statutory Notes**

**Derivation:**

NCA 92–71, Title IV Tobacco Tax, § 407.

## Library References

Indians ↻225.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

**§ 5-131. Unlawful cigarette and tobacco products; seizure; forfeiture**

Any investigator or law enforcement officer who finds any cigarette and tobacco products which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this chapter may forthwith seize and remove the same and the packages in which the cigarette and tobacco products are kept, and upon conviction of the person for a violation of any provisions of this chapter, the cigarette and tobacco products and all packages containing the same shall, in addition to any other penalty prescribed by this chapter, ipso facto be forfeited to the Muscogee (Creek) Nation.

[NCA 93-04, § 5-104, approved Jan. 7, 1993; amended by NCA 01-136, § 533, eff. Aug. 1, 2001.]

**§ 5-132. Seizure and forfeiture of cigarette and tobacco products and conveyance**

Whenever an investigator or any law enforcement officer is making or attempting to make a search under and in pursuance of authority in law shall find in any motor vehicle, vessel, boat or conveyance of any description any cigarette and tobacco products which are unlawfully kept or had for unlawful purposes contrary to any of the provisions in this chapter in any such vehicle, vessel, boat, or conveyance, the Court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law declare the cigarette and tobacco products or any part thereof so seized and the package in which the same is contained to be forfeited to the Muscogee (Creek) Nation and/or any other governmental entity which has a right to bring a forfeiture action in the Muscogee (Creek) Nation courts. The Court may in and by decree further declare the motor vehicle, vessel, boat, or conveyance seized to be forfeited sold, and proceeds disbursed to the appropriate governmental entity.

[NCA 93-04, § 5-105, approved Jan. 7, 1993; amended by NCA 01-136, § 534, eff. Aug. 1, 2001.]

**§ 5-133. Disposal of forfeited cigarettes and tobacco products; report**

In every case where cigarettes and tobacco products are seized by a law enforcement officer, it shall be his duty to forthwith make or cause to be made to the Commission a report in writing of the particulars of such seizure.

[NCA 93-04, § 5-107, approved Jan. 7, 1993; amended by NCA 01-136, § 535, eff. Aug. 1, 2001.]

**§ 5-134. Inspection of carrier's records**

For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the Commission or any person appointed by it in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and

documents in the possession of any common carrier doing business within the Muscogee (Creek) Nation territorial jurisdiction containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the Muscogee (Creek) Nation territorial jurisdiction.

[NCA 93–04, § 5–108, approved Jan. 7, 1993; amended by NCA 01–136, § 536, eff. Aug. 1, 2001.]

#### Library References

Searches and Seizures Ⓒ79.  
Westlaw Topic No. 349.

C.J.S. Searches and Seizures §§ 128 to 130,  
132 to 134.

### § 5–135. Unlawful for carrier to refuse inspection of records

Every common carrier and every office or employee of any such common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in Title 36, § 5–134 when requested to do so by the Commission or by a person so appointed by it shall be guilty of an offense against this chapter and subject to civil penalties.

[NCA 93–04, § 5–109, approved Jan. 7, 1993; amended by NCA 01–136, § 537, eff. Aug. 1, 2001.]

### § 5–136. Description of offense

In describing the offense respecting the sale or keeping for sale of other disposal of cigarettes and tobacco products or the having, keeping, giving, purchasing, or consumption of cigarettes and tobacco products in any information, summons, conviction, warrant, or proceeding under this Tobacco Code, it shall be sufficient to state simply the sale or keeping the sale or disposal, having, keeping, giving, purchasing, or consumption of cigarettes and tobacco products, without stating the name or kind of cigarettes and tobacco products or the price thereof, the name of any person to whom it was sold or disposed of or by whom it was taken or consumed or from whom it was purchased or received, or the quantity of cigarettes and tobacco products, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale of disposal of more or less than such quantity.

[NCA 93–04, § 5–203, approved Jan. 7, 1993; amended by NCA 01–136, § 538, eff. Aug. 1, 2001.]

### § 5–137. Sufficiency of evidence

In any prosecution under this chapter for the sale or keeping for sale or other disposal of cigarettes and tobacco products or the having, keeping, giving, purchasing, or consuming of cigarettes and tobacco products, it shall not be necessary that any witness should depose to the precise description or quantity of the cigarettes and tobacco products sold, disposed of, kept, had, given, purchased, or consumed or the precise consideration (if any) received or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon

circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt.

[NCA 93-04, § 5-205, approved Jan. 7, 1993; amended by NCA 01-136, § 539, eff. Aug. 1, 2001.]

#### Library References

Indians ☞613.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 5-138. Proof of violation

In providing the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of cigarettes and tobacco products, it shall not be necessary in any prosecution to show that any money actually passed or any cigarettes and tobacco products were actually consumed, if the court hearing the cases is satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place or that any consumption of cigarettes and tobacco products was about to take place. Proof of consumption or intended consumption of a cigarettes and tobacco products on premises on which such consumption is prohibited by some person not authorized to consume cigarettes and tobacco products thereon shall be evidence that such cigarettes and tobacco products were sold, given to, or purchased by the person consuming or being about to consume or carrying away the same, as against the occupant of the premises.

[NCA 93-04, § 5-206, approved Jan. 7, 1993; amended by NCA 01-136, § 540, eff. Aug. 1, 2001.]

### § 5-139. Inferences of fact from evidence found

Upon the hearing of any charge of selling or purchasing cigarettes and tobacco products or of unlawfully having or keeping cigarettes and tobacco products contrary to any of the provisions of this chapter, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of cigarettes and tobacco products found in the possession or the person accused or in any building, premise, vehicle, motorcar, automobile, vessel, boat, conveyance, or place occupied or controlled by him and from the frequency with which the cigarettes and tobacco products are received thereat or therein or is removed therefrom and from the circumstances under which it is kept or dealt with.

[NCA 93-04, § 5-207, approved Jan. 7, 1993; amended by NCA 01-136, § 541, eff. Aug. 1, 2001.]

#### Library References

Indians ☞611.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 5-140. Transfer, sale, and possession of cigarettes and tobacco products; when unlawful

**A. Prohibited sales.** Except as provided by this chapter, no person shall, within the Muscogee (Creek) Nation territorial jurisdiction, by himself, his

clerk, servant, or agent, expose or keep for sale or, directly or indirectly or upon any pretense or upon any device, sell or offer to sell, or in consideration of the purchase or transfer of any property or for any other consideration at the time of the transfer of any property, give to any other person any cigarettes and tobacco products.

**B. Possession limitations.** Nothing in this chapter shall prohibit any person entering the Muscogee (Creek) Nation territorial jurisdiction from any other location from having in his possession not to exceed one thousand (1,000) cigarettes or five hundred (500) cigars, or two (2) pounds of tobacco products. No person claiming to have so entered the Muscogee (Creek) Nation territorial jurisdiction shall at any time have in his possession more than these specified amounts of cigarettes and tobacco products.

**C. Possession of seized cigarettes and tobacco products.** Nothing contained in this section shall apply to the possession by a law enforcement officer or bailiff or cigarettes and tobacco products seized under execution or other judicial or extrajudicial process or to sales under executions or other judicial or extrajudicial process to the Commission.

**D. Prohibited purchases.** Except as provided in this chapter, no person shall, within the Muscogee (Creek) Nation territorial jurisdiction, by himself, his clerk, servant, or agent:

1. attempt to purchase any cigarettes and tobacco products;
2. directly or indirectly or upon any pretense or device, purchase any cigarettes and tobacco products; or
3. in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any cigarettes and tobacco products.

**E. Penalty.** It shall be unlawful for any Indian person to willfully, intentionally and knowingly violate any provision of this section. Every Indian person convicted of violating this section shall be guilty of a misdemeanor and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand dollars (\$1,000.00) or by both such fine and imprisonment.

[NCA 93-04, § 5-301, approved Jan. 7, 1993; amended by NCA 01-136, § 542, eff. Aug. 1, 2001.]

### § 5-141. Penalty for sale of cigarettes and tobacco products without license

Any person who has not been issued a license under this chapter who sells or keeps for sale any cigarettes and tobacco products is punishable by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or by imprisonment of not more than one (1) year or by both such fine and imprisonment.

[NCA 93-04, § 5-302, approved Jan. 7, 1993; amended by NCA 01-136, § 543, eff. Aug. 1, 2001.]

#### Library References

Indians ☞623.

Westlaw Topic No. 209.

C.J.S. Indians §§ 151 to 179.

**§ 5-142. Officer or agent of corporation deemed a party to offense**

Where an offense against this chapter is committed by a corporation, the officer or agent of the corporation, the officer or agent of the corporation in charge of the premises in which the offense is committed shall prima facie be deemed to be a party to the offense so committed and shall be personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section shall relieve the corporation or the person who actually committed the offense from liability.

[NCA 93-04, § 5-310, approved Jan. 7, 1993; amended by NCA 01-136, § 544, eff. Aug. 1, 2001.]

**§ 5-143. Occupant of premises deemed party to offense**

Upon proof of the fact that an offense against this chapter has been committed by any person in the employ of the occupant of any house, shop, room, or other premises in which the offense is committed or by any person who is suffered by the occupant to be or remain in or upon such house, shop, room, or premises or to act in any way for the occupant, the occupant shall prima facie be deemed to be a party to the offense so committed and shall be liable to the penalties prescribed for the offense as a principal offender, notwithstanding the fact that the offense was committed by a person who is not proved to have committed it under or by the direction of the occupant. Nothing in this section shall relieve the person actually committing the offense from liability there.

[NCA 93-04, § 5-311, approved Jan. 7, 1993; amended by NCA 01-136, § 545, eff. Aug. 1, 2001.]

**§ 5-144. Premises where cigarettes and tobacco products illegally sold public nuisance**

Any room, house building, boat, vehicle, structure, or place where cigarettes and tobacco products are knowingly sold or bartered in violation of this chapter and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) and be imprisoned not less than thirty (30) days or more than six (6) months.

[NCA 93-04, § 5-312, approved Jan. 7, 1993; amended by NCA 01-136, § 546, eff. Aug. 1, 2001.]

**Library References**

Nuisance ⇐65.  
Westlaw Topic No. 279.  
C.J.S. Nuisances §§ 14, 16, 24, 151.

**§ 5-145. Penalty for violating chapter; revocation of license**

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such



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fine or imprisonment, or both, except as is herein otherwise provided. If any retail licensee is convicted of any offense under this chapter, his license shall be immediately revoked or in the discretion of the Commission such other sanction imposed as may be authorized by law.

[NCA 93-04, § 5-314, approved Jan. 7, 1993; amended by NCA 01-136, § 547, eff. Aug. 1, 2001.]

**Cross References**

Administrative enforcement proceeding, see Title 36, § 6-103.

**Library References**

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

## **CHAPTER 6. APPEALS OF DENIAL OF LICENSE APPLICATIONS; ENFORCEMENT ACTIONS AND APPEALS**

### **Section**

- 6-101. Appeal of Tax Commissioner denial of application for sales vendor's license or retail tobacco license.
- 6-102. Investigations and inspections.
- 6-103. Administrative enforcement proceedings.
- 6-104. Judicial review of Commissioner's decision.
- 6-105. Civil action by Tax Commissioner.
- 6-106. Service of notices and other documents.
- 6-107. Other remedies.
- 6-108. Finality of Commission decision or court action.
- 6-109. Settlements of taxes due.
- 6-110. Substitute returns prepared by Commission.
- 6-111. Forgery of stamps.
- 6-112. Offenses.
- 6-113. General penalties.
- 6-114. Referrals for federal prosecution.
- 6-115. Exclusion.
- 6-116. Cancellation of leases upon exclusion.
- 6-117. Exempt property.

### **§ 6-101. Appeal of Tax Commissioner denial of application for sales vendor's license or retail tobacco license**

**A. Denial of application for vendor's license.** Any real party in interest shall have the right to appeal a decision of the Tax Commission denying an application for a vendor's license pursuant to Title 36, § 4-107.

**B. Denial of application for retail tobacco license.** Any real party in interest shall have the right to appeal a decision of the Tax Commissioner denying an application for a retail tobacco license pursuant to Title 36, § 5-112.

**C. Appeal deadline.** The applicant must appeal the Tax Commissioner's decision to deny the license application within thirty (30) days of the date of the issuance of the decision, or the Tax Commissioner's decision shall become final with no right of judicial review.

**D. Notice of hearing.** If an applicant appeals a denial of a license application pursuant to subsections A and B of this section, the Commissioner shall serve a Notice of Hearing by certified mail or personal service on the appealing party or the appealing party's service agent. Such Notice shall state the time and place of the hearing and shall further state that if the appealing party fails to appear and show cause why the Tax Commissioner's decision to deny the application should be reversed, the denial shall become final, without right of judicial review.

**E. Hearing.** The hearings authorized in this section shall be informal. The appealing party shall be afforded the opportunity to explain and/or show cause to the Commissioner why the license denial decision should be reversed. The may be represented by counsel and the Commissioner may request representation by the Office of the Attorney General. The Commissioner may render a

decision at the conclusion of the hearing or at any time thereafter. The Commissioner may, in his discretion, postpone his decision in order to further investigate the appealing party’s eligibility for a license or other matters relevant to the license application.

**F. Commissioner’s decision.** The Commissioner’s order and decision rendered after the hearing shall be in writing and shall state that the appealing party may seek review of the Commissioner’s decision by filing a Petition for Review of the Commissioner’s decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review. Judicial review shall be held pursuant to Title 36, § 6–103.

[NCA 01–136, § 601, eff. Aug. 1, 2001.]

**Cross References**

Cigarettes and tobacco products, appeal of denial of license, see Title 36, § 5–117.  
 Revocation or suspension of cigarettes and tobacco products license, see Title 36, § 5–118.

**Library References**

Indians ⇨434.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 151 to 179.

**§ 6–102. Investigations and inspections**

The Tax Commissioner is hereby authorized to investigate all violations of this title which come to his attention by whatever means and to initiate enforcement proceedings in accordance with the provisions of this section. The provisions of the Notices required by this section describe the procedures applicable to all enforcement proceedings hereunder. The Commissioner is authorized to require any person, corporation, community or entity conducting business or other activities, including operation of a motor vehicle licensed by the Tax Commission, within the Muscogee (Creek) Nation territorial jurisdiction subject to taxation of any kind pursuant to this title to make the books and records related to such business or other taxable activities available to the Commissioner for review and/or audit for the purpose of determining the tax liability.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 602, eff. Aug. 1, 2001.]

**Cross References**

Sales tax, failure to submit timely report, see Title 36, § 4–110.

**Library References**

Indians ⇨411.	C.J.S. Indians §§ 151 to 179.
Searches and Seizures ⇨79.	C.J.S. Searches and Seizures §§ 128 to 130,
Westlaw Topic Nos. 209, 349.	132 to 134.

**§ 6–103. Administrative enforcement proceedings**

**A. Service of Notice.** The Tax Commissioner shall initiate enforcement proceedings for any violation of this title by serving by certified mail or

personal service on the person, corporation, community or entity, or the designated service agent of said person, corporation, community or entity, a Notice of Violation.

**B. Contents of Notice.** The Notice shall state with reasonable particularity the nature of the violation or violations, the section or sections of this title which the respondent has violated, and the action which the respondent must take to remedy the violation(s). The Notice shall also state that all such remedial action(s) must be completed within ten (10) days failing which, the Tax Commissioner may take one or more of the actions described in subsection C of this section as appropriate to the nature of the violation. The Notice shall also state that the period for taking any remedial action may be extended for good cause at the sole discretion of the Tax Commissioner for up to sixty (60) additional days beyond the initial 10-day period, but no further extensions shall be allowed. The Notice of Violation shall also state that, in lieu of taking such remedial action, the respondent may serve on the Tax Commissioner a written Notice of Protest and Request for Hearing to demonstrate why no violation has occurred and/or why the proposed remedial action is incorrect or unauthorized in whole or in part. In cases where a respondent has failed to remit some or all of the taxes required to be collected and remitted pursuant to this title, the Notice of Violation need not include the amount owed unless the Commissioner has knowledge of the amount owed.

**C. Types of enforcement actions.** The Notice of Violation required in subsection B of this section shall include a description of the actions which may be taken by the Tax Commissioner and the respondent's potential liability for civil fines and criminal prosecution, as appropriate to the nature of the specific violation involved, including without limitation the penalties specified in Title 36, § 3–112 for Motor Vehicle Tax Code violations, the penalties specified in Title 36, § 4–110 for Sales Tax Code violations, the penalties specified in Chapter Five of this Title for violations of that chapter and any other penalties specified in the Criminal Offenses Code of the Muscogee (Creek) Nation.

**D. Remedial action; notice of protest and request for hearing.** Upon receipt of the Notice of Violation, the respondent shall take all remedial action described therein within the time allowed or, in lieu of taking such remedial action, shall serve upon the Commission the written Notice of Protest and Request for Hearing described in subsection A of this section.

**E. Notice of hearing on proposed enforcement and/or penalties.** In the event any respondent who or which has been served with a Notice of Violation fails to take all remedial action stated therein within the time allowed or to request a hearing as provided by subsection D of this section, the Commissioner shall serve such respondent or the respondent's service agent with a Notice of Hearing on Proposed Enforcement and/or Penalties. Said Notice shall state the time and place of the hearing, the amounts of any proposed fines or other penalties, and/or describe any other enforcement action authorized hereunder, including without limitation, revocation or suspension of any Muscogee (Creek) Nation Tax Commission license and the closure of respondent's place of business. The Notice shall also state that if the respondent fails to appear and show cause why the proposed enforcement action should not be taken or the proposed fines and/or penalties assessed, then the respondent shall be conclu-

sively deemed to have confessed to the violation(s) described in the Notice of Violation and that the proposed enforcement action and/or fines or penalties shall be taken and/or assessed against the respondent, without right of judicial review.

**F. Hearing.** The hearings authorized in this section shall be informal. The respondent shall be afforded the opportunity to explain and/or show cause to the Commissioner why no violation has occurred and/or why the proposed enforcement, fine or other penalty is incorrect or unauthorized under this title. The respondent may be represented by counsel and the Commissioner may request attendance by the Office of the Attorney General in an advisory capacity. The Commissioner may render his decision at the conclusion of the hearing or at any time thereafter. The Commissioner may, in his discretion, postpone his decision in order to further investigate the violation and/or formulate the appropriate enforcement action and/or fine or penalty.

**G. Commissioner's decision.** The Commissioner's order and decision rendered after the hearing shall be in writing and shall state, as appropriate, the following:

1. The nature of any violation(s) of this title;
2. The sections of this title violated by the respondent;
3. Whether any Muscogee (Creek) Nation Tax Commission license acquired by the respondent shall be revoked or suspended and, if so, the date on which the revocation or suspension shall be effective and the duration of any suspension so ordered;
4. The amount of any fine or penalty assessed;
5. Any other enforcement action, conditions or requirements which the Commissioner may impose consistently with this title; and
6. A statement that the respondent possesses appeal rights pursuant to this section and Title 36, § 6–104, copies of which shall be enclosed and that the respondent may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 603, eff. Aug. 1, 2001.]

#### Cross References

Cigarettes and tobacco products, penalty for violation, see Title 36, § 5–145.  
Sales tax, payment under protest, see Title 36, § 4–108.

#### Library References

Indians ⇄226.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149.

### § 6–104. Judicial review of Commissioner's decision

**A. Petition for review.** Any person, corporation, community or other entity found by the Commissioner to have violated any provision of this title after

hearing may seek review of the Commissioner's decision by filing a Petition for Review of the Commissioner's decision with the District Court of Muscogee (Creek) Nation within thirty (30) days of said decision, failing which the decision shall be final and not subject to judicial review. The Commissioner shall promptly file the full record of the proceeding with the Muscogee (Creek) Nation District Court .

**B. Standard for review.** In hearing the appeal, the Muscogee (Creek) Nation District Court shall give proper deference to the administrative expertise of the Commission. The Muscogee (Creek) Nation District Court shall not set aside, modify, or remand any determination by the Commission unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law.

**C. Legal representation.** The Petitioner may be represented by counsel in any proceeding or review by the District Court, and the Commissioner shall be represented by the Attorney General.

**D. District court decision.** The Muscogee (Creek) Nation District Court shall issue a written decision on all appeals. In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy against the Tax Commission except to order the return of the amount of the taxes, penalties, or interest in controversy unless an additional remedy is specifically provided by this title. All taxes, penalties and interest found to be wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded with interest beginning on the date final determination that wrongful collection was made. In the event that the District Court affirms the decision of the Commissioner, the Court shall award costs and a reasonable attorneys fee to the Tax Commission with the provision that any part of the attorneys fee collected shall be paid to the Controller for use by the Office of the Attorney General, and it may also award any relief against the Petitioner which the Court is authorized to enter under Title 36, § 6–105.

**E. Appeal to Supreme Court.** If the petitioner receives an adverse decision from the District Court, then the petitioner may appeal to the Muscogee (Creek) Nation Supreme Court within thirty (30) days after the District Court enters the decision. The appeal shall be limited to the record on appeal. The decision of the Muscogee (Creek) Nation Supreme Court shall be final.

[NCA 00–149, § 4–102, approved Sept.30, 2000; amended by NCA 01–136, § 604, eff. Aug. 1, 2001.]

#### Library References

Indians ⇄433, 434, 440(4), 440(6), 442.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 6–105. Civil action by Tax Commissioner

**A. Civil action.** The Tax Commissioner is hereby authorized to commence a civil action to collect any taxes, penalties, fines and/or interest owed pursuant to this title, and may seek any civil remedies, including but not limited to injunctive relief, garnishment, attachment, and execution, for the collection of any monies due to the Nation against any person, corporation, community or

entity conducting business or engaged in any other activities within the Muscogee (Creek) Nation territorial jurisdiction in violation of this title. Such actions shall be commenced in the District Court of the Muscogee (Creek) Nation and must be brought within three (3) years of the due date of any tax payment or tax return or the actual date of payment of any tax, whichever is the later, except in any case involving fraud, in which case an action must be brought within three (3) years of the discovery of the fraud. Injunctive relief may include, without limitation an order that the respondent shall cease and desist in the conducting of business or other activities in the Muscogee (Creek) Nation territorial jurisdiction in violation of this title. Violation of orders of the Court shall be punishable by civil contempt, including fines and/or, in the event that the contemnor is an Indian, imprisonment. In the event the Court awards judgment in favor of the Tax Commissioner, the Court shall award costs and a reasonable attorneys fee to the Tax Commission with the provision that any part of the attorneys fee collected shall be paid to the Controller for use by the Office of the Attorney General.

**B. Action for nuisance.** The Tax Commissioner is authorized to file an action to enjoin any nuisance defined by this Code or resulting from violation of this title, in the name of the Muscogee (Creek) Nation and with the assistance of the Attorney General of the Muscogee (Creek) Nation or by any other government entity authorized by the Muscogee (Creek) Nation to bring such action in Muscogee (Creek) Nation District Court. Such action shall be brought and tried as an action in equity and may be brought in any Court having jurisdiction to hear and determine equity cases. If it is made to appear, by affidavits or otherwise, to the satisfaction of the Court that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this Code constituting such nuisance. No bond shall be required in instituting such proceedings. Upon judgment of the Court ordering such nuisance to be abated, the Court may order that the room, house, building structure, boat, vehicle, or place where the nuisance occurred shall not be occupied or used for one (1) year thereafter. The Court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the Court making the order, in the penal and liquidated sum of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000), payable to the Muscogee (Creek) Nation and conditioned that the premises shall not be used for retail sales purposes and that he will pay all fines, costs, and damages that may be assessed for any violations of this Code upon said property.

[NCA 00-149, § 4-102, approved Sept.30, 2000; amended by NCA 01-136, § 605, eff. Aug. 1, 2001.]

#### Historical and Statutory Notes

**Derivation:**

NCA 93-04, § 5-313; amended by NCA 95-101, § 22.

**§ 6-106. Service of notices and other documents**

Any notice or other document required to be served hereunder shall be hand-delivered to the person, corporation, community or other entity to be served or sent by certified mail to the office or place of business of said person, corporation, community or other entity to be served. In the case of service by mail, service shall be complete upon the date of receipt or refusal to accept delivery by certified mail.

[NCA 00-149, § 4-103, approved Sept.30, 2000; amended by NCA 01-136, § 606, eff. Aug. 1, 2001.]

**Historical and Statutory Notes****Derivation:**

NCA 86-08.

NCA 92-71, § 204.

**§ 6-107. Other remedies**

Any person who believes that it has overpaid taxes under this title may apply to the Commission for a refund within six (6) months of the overpayment. Any tax paid, which after a hearing pursuant to the rules and regulations adopted by the Commission is found to be in excess of that required to be paid, shall be refunded to the person paying the tax, or credited against taxes due from the taxpayer.

[NCA 86-08, § 209, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 607, eff. Aug. 1, 2001.]

**§ 6-108. Finality of Commission decision or court action**

Any final finding or determination of the Commission not timely appealed, any final and unappealed determination of the Muscogee (Creek) Nation District Court, and any final Muscogee (Creek) Nation Supreme Court decision in proceedings pursuant to appeal shall be final and binding in any other proceeding against or by the same person before the Commission or the District Court of the Muscogee (Creek) Nation.

[NCA 86-08, § 211, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 608, eff. Aug. 1, 2001.]

**§ 6-109. Settlements of taxes due**

A. If at any time the Commission in good faith is in doubt of the liability of the taxpayer for the payment of taxes, it may compromise the liability by entering in writing with the taxpayer a settlement agreement that adequately protects the interests of the Nation.

B. If entered into after any court acquires jurisdiction of the matter, a settlement agreement shall be part of the stipulated order or judgment disposing of the case.

C. As a condition for entering into a settlement agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the settlement agreement.



D. A settlement agreement is conclusive as to the liability or non-liability for payment of taxes relating to the periods referred to in the settlement agreement, except upon a showing of fraud, malfeasance, misrepresentation or concealment of a material fact.

[NCA 86-08, § 212, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 609, eff. Aug. 1, 2001.]

### § 6-110. Substitute returns prepared by Commission

The Commission may assess tax based on substitute returns prepared by the Commission where no timely return or report was filed by the person required to file a return or report.

[NCA 86-08, § 214, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 610, eff. Aug. 1, 2001.]

### § 6-111. Forgery of stamps

Any person who falsely or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits any stamps, tags, licenses, or other instrument evidencing payment of taxes prescribed for use in this title or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged, payment of taxes imposed by the tax laws of the Muscogee (Creek) Nation shall be subject to a civil penalty of not more than one thousand dollars (\$1000.00) for each such violation in addition to any other penalties prescribed by law. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

[NCA 86-08, § 215, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 611, eff. Aug. 1, 2001.]

### § 6-112. Offenses

Any Indian person who violates any provisions of this title for the purpose of evading the payment of taxes imposed by this title shall be guilty of an offense and shall be punished by imprisonment in jail for a term not to exceed one (1) year or a fine not to exceed one thousand (\$1000.00) dollars or by both such fine and imprisonment.

[NCA 86-08, § 216, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 612, eff. Aug. 1, 2001.]

#### Library References

Indians ☞ 225, 264, 623, 624.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 140 to 149, 151 to 180, 183  
to 187, 191 to 194.

### § 6-113. General penalties

Any person who files any false report or return, or who fails to file any report or return, or who otherwise violates any of the provisions of this Title for the purpose of evading the payment of taxes imposed by this title shall forfeit a civil penalty of not more than one thousand dollars (\$1000.00) for each such violation in addition to any other penalties prescribed by law. Penalties will not be subject to waiver except at the discretion of the Tax Commission, whether

## **Title 36, § 6-113**

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failure to timely report and/or pay such tax is a result of good cause and not as a result of negligence, design, or inadvertence.

[NCA 86-08, § 217, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 613, eff. Aug. 1, 2001.]

### **§ 6-114. Referrals for federal prosecution**

It shall be the duty of all members of the Tax Commission, any Lighthorse Administration Officer, and the Attorney General, upon receiving reliable information that probable cause may exist to believe that any person has violated Title 36, § 6-111, to report the facts and circumstances known to him to the appropriate federal officials and to request that a federal investigation be commenced to determine whether 18 U.S.C. § 1163 has been violated.

[NCA 86-08, § 218, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 614, eff. Aug. 1, 2001.]

### **§ 6-115. Exclusion**

Any natural person or any corporation, partnership, association, company, firm, joint venture, estate, or trust or other person who violates any provision of the tax laws of the Muscogee (Creek) Nation for the purpose of evading payment of taxes imposed by said tax laws, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this Title may be excluded from carrying on any business within the jurisdiction of the Muscogee (Creek) Nation for a period not to exceed five (5) years, by order of the District Courts of the Muscogee (Creek) Nation, provided, that such exclusion as may be imposed may be suspended by the Court conditioned upon strict compliance with all laws of the Muscogee (Creek) Nation. An order of exclusion not suspended, shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the Muscogee (Creek) Nation during its term.

[NCA 86-08, § 219, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 615, eff. Aug. 1, 2001.]

### **§ 6-116. Cancellation of leases upon exclusion**

Whenever any person or business is excluded from the jurisdiction of the Muscogee (Creek) Nation and the order of exclusion is not suspended, and such person or business holds a lease to realty within the jurisdiction of the Muscogee (Creek) Nation for other than residential purposes, said lease may be canceled by the lessor within sixty (60) days of the order of exclusion at his option by sending written notice to lessee or his attorney by registered or certified mail, return receipt requested, at his last known address. A true and correct copy of the notice of lease cancellation shall be delivered by certified mail, return receipt requested, to the Superintendent of the Okmulgee Agency, the Attorney General, and the Tax Commission at the same time the notice is sent to the lessee. Such cancellation shall entitle lessor to full time use and possession of the premises and render the lease absolutely void from that date forward and shall relieve lessor and lessee from all future obligations under

such lease, provided, that such cancellation shall not relieve lessor or lessee from any obligation incurred prior to the date of cancellation.

[NCA 86-08, § 220, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 616, eff. Aug. 1, 2001.]

**§ 6-117. Exempt property**

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties, and interest, due the Muscogee (Creek) Nation:

A. Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater.

B. One automobile of fair market value equity not exceeding three thousand dollars (\$3,000.00)

C. Tools, equipment, utensils, or books necessary to the conduct of the business but not including stock or inventory.

D. Actual trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

E. Any dwelling used as the actual residence of the taxpayer including up to five (5) acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.

F. Household goods, furniture, wearing apparel, personal effects but not including televisions, radios, phonographs, tape recorders, more than two (2) firearms, works of art, and other recreational or luxury items.

G. All livestock, bridles and saddles.

H. All implements of husbandry used upon the homestead.

I. All ceremonial or religious items.

J. Keco and Kevpe.

[NCA 86-08, § 221, added by NCA 92-71, § 204, approved May 20, 1992; amended by NCA 01-136, § 617, eff. Aug. 1, 2001.]

## CHAPTER 7. LIQUOR AND BEVERAGE CODE

### Subchapter

1. General Provisions
2. Prohibition and Conformity With the Laws of the State of Oklahoma
3. Licensing
4. Liquor and Beer Sales and Transportation
5. Taxation and Audits
6. Liability, Insurance and Sovereign Immunity
7. Enforcement

### SUBCHAPTER 1. GENERAL PROVISIONS

#### Section

- 7-101. Findings.  
7-102. Purpose.  
7-103. Short title and codification.  
7-104. Authority.  
7-105. Definitions.  
7-106. Severability.

#### § 7-101. Findings

The National Council finds that:

A. It is the policy of the Nation to raise revenues through the collection of taxes for the sale and distribution of liquor and beer products within Muscogee (Creek) Nation Indian Country as defined by federal law.

B. The Nation has a duty to provide for the health, safety and welfare of its citizens.

C. As part of the Nation's responsibility to its citizens, the Nation must regulate and control the distribution, sale and possession of alcoholic beverages on Tribal lands located within Muscogee (Creek) Nation Indian Country as defined by federal law.

D. Except as otherwise required by other applicable laws of the Muscogee (Creek) Nation or by any applicable federal and state law, the provisions and requirements of this chapter and any rules, regulations and licenses authorized hereunder shall apply to the sale and distribution of liquor and beer products on properties under the jurisdiction of the Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

**§ 7–102. Purpose**

The purpose of this Act is to regulate the sale and distribution of liquor and beer products on properties under the jurisdiction of the Muscogee (Creek) Nation and to generate an additional revenue base.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

**§ 7–103. Short title and codification**

This Act shall be known and may be cited as the Muscogee (Creek) Nation Liquor and Beverage Code and shall be codified as Chapter 7 in Title 36 “Taxation and Revenue,” of the Code of Laws of the Muscogee (Creek) Nation.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

**§ 7–104. Authority**

This Act is enacted pursuant to Article VI, § 7, of the Constitution of the Muscogee (Creek) Nation and the Congressional Act of August 15, 1953 (Pub. L. 83–277, 67 State. 588, 18 U.S.C. § 1161).

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

**§ 7–105. Definitions**

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. “Alcohol” means a substance known as ethyl alcohol, hydrated oxide of ethyl or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, sugar or other substances including all dilutions and mixtures of this substance.

B. “Beer” means any beverage containing less than or equal to three and two-tenths percent (3.2%) of alcohol by weight and obtained by the alcoholic fermentation of an infusion of decoction of pure hops, pure extract of barley or other grain, malt, sugar or similar products.

C. “Beer outlet” means the Muscogee (Creek) Nation’s licensed retail sale business selling beer within the Muscogee (Creek) Nation Indian Country as defined by federal law, including all related and associated facilities under the control of the Operator. Moreover, where an Operator’s business is carried on as part of the operation of an entertainment or recreational facility, the “beer outlet” shall be deemed to include the entertainment or recreational facility and its associated areas.

D. “Commission” means the Muscogee (Creek) Nation Tax Commission as established pursuant to MCNCA Title 36 § 1-103.

E. “Commissioner” means the Muscogee (Creek) Nation Tax Commissioner as established pursuant to MCNCA Title 36 § 1-104.A.

F. “Liquor” means the four (4) varieties of liquor commonly referred to as alcohol, spirits, wine and beer in excess of three and two-tenths percent (3.2%) of alcohol, and all fermented, spirituous, vinous or malt liquors or any other intoxicating liquid, solid, semi-solid or other substance patented or not, containing alcohol, spirits, wine or beer, in excess of three and two-tenths percent (3.2%) of alcohol, and is intended for oral consumption.

G. “Liquor outlet” means the Muscogee (Creek) Nation’s licensed retail sale business selling liquor within the Muscogee (Creek) Indian Country as defined by federal law, including all related and associated facilities under the control of the Operator. Moreover, where an Operators business is carried on as part of the operation of an entertainment or recreational facility, the “liquor outlet” shall be deemed to include the entertainment or recreational facility and its associated areas.

H. “Nation” means the Muscogee (Creek) Nation as established under the Muscogee (Creek) Nation Constitution of 1979. Chartered communities of the Muscogee (Creek) Nation are considered component, inseparable subdivisions of the Muscogee (Creek) Nation and may only benefit from the rights and privileges from the Muscogee (Creek) Nation under this chapter.

I. “National Council” means the Muscogee (Creek) Nation National Council as constituted by Article VI of the Constitution of the Muscogee (Creek) Nation.

J. “Operator” means a person twenty-one (21) years of age or older who is properly licensed by the Commission to operate a liquor and/or beer outlet.

K. “Person” means a natural person, a partnership, an association of persons, a corporation, a firm, a limited liability company, a sole proprietorship, a trust, a joint venture, a consortium, a commercial entity, a Muscogee (Creek) Nation Tribal entity, a Muscogee (Creek) Nation chartered Indian community or an Indian Tribe.

L. “Sale” means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes and means all sales made by any person, whether as principal, proprietor or as an agent, servant, or employee, association, partnership or corporation of liquor or beer products.

M. “Wholesaler” means and includes any person doing any such acts or carrying on any such business or businesses that would require such person to obtain a wholesalers license or licenses hereunder.

N. “Wholesale price” means the established price for which liquor or beer are sold to the Muscogee (Creek) Nation or any Operator by the manufacturer or distributor or other reduction.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; NCA 07-159, § 1, approved July 10, 2007; NCA 08-003, approved Jan. 28, 2008. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-106. Severability

In the event that any provision or provisions of this Act are determined by a court of competent jurisdiction to be invalid for any reason, the remaining provisions of the Act shall be deemed severable from the provision or provisions determined to be invalid and shall remain in full force and effect as though the invalid provisions had never been part of the Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

## SUBCHAPTER 2. PROHIBITION AND CONFORMITY WITH THE LAWS OF THE STATE OF OKLAHOMA

#### Section

7-201. General prohibition.  
7-202. Possession for personal use.  
7-203. Conformity with the Laws of the State of Oklahoma.

### § 7-201. General prohibition

It shall be unlawful to buy, sell, give away, consume, furnish or possess any liquor or beer product containing alcohol for ingestion by human beings or to appear or be found in a place where liquor or beer products are sold and/or consumed, except as allowed for under this Act and the regulations promulgated hereunder.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-202. Possession for personal use

Possession of liquor or beer products for personal use by persons over the age of twenty-one (21) years shall, unless otherwise prohibited by federal, state or Muscogee (Creek) Nation Law or Regulation, be lawful within the Muscogee (Creek) Nation Indian Country as defined by federal law, so long as said liquor

or beer product was lawfully purchased from an establishment duly licensed to sell said beverages, whether on or off the Muscogee (Creek) Nation Indian Country as defined by federal law and consumed within a private residence or at a location or facility licensed for the public consumption of liquor or beer.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7–203. Conformity with the Laws of the State of Oklahoma

Federal law prohibits the introduction, possession and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when the same is in conformity both with laws of the State of Oklahoma and the Nation (18 U.S.C. § 1161). As such, compliance with this Act shall be in addition to and not a substitute for compliance with the laws of the State of Oklahoma. Operators acting pursuant to this Act shall comply with the State of Oklahoma’s liquor and beer laws to the extent required by 18 U.S.C. § 1161. However, the Nation shall have the fullest jurisdiction allowed under the federal laws over the sale of liquor and beer products, and related products or activities within Muscogee (Creek) Nation Indian Country as defined by federal law.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞321 to 323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

## SUBCHAPTER 3. LICENSING

### Section

- 7–301. Licensing of liquor and beer outlets.
- 7–302. National Council approval of liquor and/or beer outlet locations.
- 7–303. Application for liquor and/or beer outlet licenses.
- 7–304. Liquor and/or beer outlet licenses.
- 7–305. Other business by Operator.
- 7–306. Revocation of Operator’s license.
- 7–307. Discretionary review.

### § 7–301. Licensing of liquor and beer outlets

The Commission is empowered to do the following duties:

- a. Administer this Act by exercising general control, management and supervision of all liquor and beer sales, places of sales and sale outlets, as well as exercising all powers necessary to accomplish the purposes of this Act; and,
- b. Adopt and enforce rules and regulations in furtherance of the purposes of this Act and in the performance of its administrative functions.

[Added by NCA 06–132, § 2, eff. June 21, 2006; amended by NCA 07–159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]



## Library References

Indians ↻323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

**§ 7-302. National Council approval of liquor and/or beer outlet locations**

**A. National Council approval of location.** The National Council shall approve all liquor and/or beer outlet locations located on Muscogee (Creek) Nation Indian Country as defined by federal law by way of Tribal Resolution prior to the Commission issuing Licenses to said outlet locations.

**B. National Council location review.** The National Council may refuse to approve a liquor and/or beer outlet location located on the Muscogee (Creek) Nation Indian Country as defined by federal law, pursuant to Section 7-302 of this Act, if the National Council has reasonable cause to believe that:

1. The proximity of the outlet has a detrimental effect upon a social or governmental institution established by the laws of the Muscogee (Creek) Nation; or
2. The outlet is within fifty (50) feet of a residential area; or
3. There is any other reason as provided for and by Muscogee (Creek) Nation law or regulation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

## Library References

Indians ↻323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

**§ 7-303. Application for liquor and/or beer outlet licenses**

**A. Application.** Any person twenty-one (21) years of age or older may apply to the Commission for a liquor and/or beer outlet license.

**B. Licensing requirements.** The person applying for said license must make a showing once a year and must satisfy the Commission that:

1. He/she is a person of good moral character;
2. He/she has never been convicted of violating any laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of the gaming laws of the Nation, State of Oklahoma, any other Nation or any state of the United States;
3. He/she has never violated the laws commonly called the "Prohibition laws," as defined hereunder or under any subsequent regulations; and,
4. He/she has not had any permit or license to sell alcohol, beer or liquor as provided for in § 7-105 hereof revoked by any governmental authority within the previous one (1) year.

**C. Processing application.** The Commissioner shall receive and process applications and be the official representative of the Nation and the Commis-

sion in all matters related to the receipt of applications, liquor and beer excise tax collections and any other related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a responsible person, the Commission or its authorized representative may issue a license for the sale of liquor and/or beer products.

**D. Application fee.** Each application shall be accompanied by an application fee to be set by regulations of the Commission.

**E. Discretionary licensing.** Nothing herein shall be deemed to create a duty or requirement to issue a license. Issuance of a license is discretionary based upon the Commission's determination of the best interests of the Nation. A license is a privilege, and not a property right, to sell liquor and/or beer products within the jurisdiction of the Muscogee (Creek) Nation at licensed locations, but not operate to confer on, vest in, or license any title, interest or estate in Muscogee (Creek) Nation real property.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ⇄323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-304. Liquor and/or beer outlet licenses

Upon approval of an application, the Commission shall issue the applicant a liquor and/or beer license (License) which shall be valid for one (1) year from the date of issuance. The License shall entitle the Operator to establish and maintain only the type of outlet permitted on the License. This License shall not be transferable. The Operator must properly and publicly display the License in its place of business. The License shall be renewable at the discretion of the Commission; provided that the Operator submits an application form and application fee as provided for in Section 7-303(D) of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ⇄323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-305. Other business by Operator

An Operator may conduct another business simultaneously with managing a liquor and/or beer outlet; provided if such other business is in any manner affiliated or related to the liquor and/or beer outlet and is not regulated by another entity of the Nation it must be approved by the Commission prior to the initiation. Said other business may be conducted on same premise as a liquor

and/or beer outlet, but the Operator shall be required to maintain separate account books for the other business.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-306. Revocation of Operator's license

A. Failure of an Operator to abide by the requirements of this Act and any additional regulations or requirements imposed by the Commission shall constitute grounds for revocation of the Operator's license as well as enforcement of the penalties provided for in Section 7-701 of this Act.

B. Upon determining that any person licensed by the Nation to sell liquor and/or beer is for any reason no longer qualified to hold such license or reasonably appears to have violated any terms of this license or Muscogee (Creek) Nation regulations, including failure to pay taxes when due and owing, or have been found by any forum of competent jurisdiction, including the Commission, to have violated the terms of the Nation's or the State of Oklahoma's license or of any provision of this Act, the Commissioner shall immediately serve written notice upon the Operator that he/she must show cause within ten (10) days as to why his/her license should not be revoked or restricted. The notice shall state the grounds relied upon for the proposed revocation or restriction.

C. If the Operator fails to respond to the notice within ten (10) days of service, the Commissioner may issue an Order revoking the license as the Commissioner deems appropriate, effective immediately. The Operator may within the ten (10) days period file with the Commission a written response and request for hearing before the Commission.

D. At the hearing, the Operator may present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed revocation or restriction are in fact true, and whether such grounds justify the revocation or modifications of the license. The Nation may present evidence as it deems appropriate.

E. The Commission, after considering all of the evidence and arguments, shall issue a written decision either upholding the license, revoking the license or imposing some lesser penalty (such as temporary suspension or fine), and such decision shall be final and conclusive with regard to the Commission.

F. The Commission's final decision may be appealed by the Operator to the Muscogee (Creek) Nation District Court. Any findings of fact of the Commission are conclusive upon the District Court. The purposes of the District Court review are not to substitute the Court's finding of facts or opinion for the Commission's, but to guarantee due process of law. If the District Court should rule for the appealing party, the District Court may order a new hearing giving such guidance for the conduct of such as it deems necessary for a fair

hearing. In the event a party is unsuccessful before the District Court, they may exercise such appeal rights as available before the Muscogee (Creek) Nation Supreme Court. No damages or monies may be awarded against the Commission, its members nor the Nation, and its agents, officers and employees in such an action.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ⇄323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-307. Discretionary review

The Commission may refuse to grant a license for the sale of liquor and/or beer products, if the Commission has reasonable cause to believe that the license required by this Act has been obtained by fraud or misrepresentation. The Commission upon proof that said license was so obtained shall upon hearing revoke the same, and all funds paid therefore shall be forfeited.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ⇄323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

## SUBCHAPTER 4. LIQUOR AND BEER SALES AND TRANSPORTATION

### Section

- 7-401. Sales by liquor and beer wholesalers and transport of liquor and beer upon Muscogee (Creek) Nation Indian Country.  
7-402. Sales by retail operators.  
7-403. Transportation through Muscogee (Creek) Nation Indian Country not affected.

### § 7-401. Sales by liquor and beer wholesalers and transport of liquor and beer upon Muscogee (Creek) Nation Indian Country

**A. Right of Commission to scrutinize suppliers.** The Operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of the suppliers and/or wholesalers who supply or are expected to supply liquor and/or beer products to the outlet(s). The Commission may, at its discretion, limit or prohibit the purchase of said products from a supplier or wholesaler for the following reasons: non-payment of Muscogee (Creek) Nation taxes, bad business practices, or sale of unhealthy supplies. A ten (10) day notice of stopping purchases (Stop Purchase Order) shall be given by the Commission whenever purchases from a supplier or wholesaler are to be discontinued unless there is a health emergency, in which case the Stop Purchase Order may take effect immediately.

**B. Freedom of information from suppliers/wholesalers.** Operators shall in their purchase of stock and in their business relations with suppliers and wholesalers cooperate with and assist in the free flow of information and data to the Commission from suppliers and wholesalers relating to the sales and business arrangements between suppliers and Operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or documentary receipts of sales to the Operators. All records shall be kept according to Section 7-402(G) of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-402. Sales by retail operators

**A. Commission regulations.** The Commission shall adopt regulations that shall supplement this Act and facilitate their enforcement. These regulations shall include prohibitions on sales to minors, where liquor and/or beer may be consumed, persons not allowed to purchase liquor and/or beer, hours and days when outlets may be open for business and any other appropriate matters and controls.

**B. Sales to minors.** No person shall give, sell or otherwise supply any liquor and/or beer to any person under the age of twenty-one (21) years of age either for his or her own use or for the use of any other person.

**C. Consumption of liquor and/or beer upon licensed premises.** No Operator shall permit any person to open or consume liquor and/or beer on his/her premises and in his/her control unless the Commission allows the consumption of liquor and/or beer and identifies where liquor and/or beer may be consumed on Muscogee (Creek) Indian Country as defined by federal law.

**D. Conduct on licensed premises.**

1. No Operator shall be disorderly, boisterous or intoxicated on the licensed premises or any public premises adjacent thereto which are under his/her control, nor shall he/she permit disorderly, boisterous or intoxicated person to be thereon; nor shall he/she use or allow the use of profane or vulgar language thereon.

2. No Operator shall permit suggestive, lewd or obscene conduct or acts on his/her premises. For the purpose of this section, suggestive, lewd or obscene conduct or acts shall be those conduct or acts identified as such by federal, State of Oklahoma and/or the laws of the Nation.

**E. Employment of minors.** No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor or beer, either on a paid or voluntary basis.

**F. Operators premises open to Commission inspection.** The premises of all Operators, including vehicles used in connection with liquor and/or beer sales,

shall be open during business hours and at all reasonable times to inspection by the Commission.

**G. Wholesaler's/Operator's records.** The originals or copies of all sales slips, invoices and other memoranda covering all purchases of liquor and/or beer by the Operator or Wholesaler shall be kept on file in the retail premises of the Operator or Wholesaler purchasing the sales at least five (5) years after each purchase and shall be filed separately and kept apart from all other records, and as nearly as possible, shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All cancelled checks, bank statements and books of accounting, covering and involving the purchase of liquor and/or beer and all memoranda, if any, showing payment of money for liquor and/or beer other than by check shall be likewise preserved for availability for inspection and checking.

**H. Records confidential.** All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or the Nation's Attorney General's Office.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

### § 7-403. Transportation through Muscogee (Creek) Nation Indian Country not affected

Nothing herein shall pertain to the otherwise lawful transportation of liquor and/or beer through the Muscogee (Creek) Nation Indian Country as defined by federal law by persons remaining upon public roads and highways and where such beverages are not delivered, sold or offered for sale to anyone within the Muscogee (Creek) Nation Indian Country as defined by federal law.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

## SUBCHAPTER 5. TAXATION AND AUDITS

### Section

7-501. Excise tax imposed upon distribution of liquor and/or beer and use of such tax.  
7-502. Audits and inspections.

**§ 7-501. Excise tax imposed upon distribution of liquor and/or beer and use of such tax**

**A. General taxation authority.** The Commission shall have the authority to assess and collect tax on the sale of liquor and/or beer products to the purchaser or consumer. This tax shall be collected and paid to the Commission upon all liquor and/or beer products sold within the jurisdiction of the Nation. The Nation does hereby establish such a rate of six percent (6%) and may establish differing rates for any given class of merchandise, which shall be paid prior to the time of retail sale and delivery thereof.

**B. Added to retail price.** An excise tax to be set by the Muscogee (Creek) Nation on the wholesale price shall be added to the retail selling price of liquor and/or beer products to be sold to the ultimate consumer or purchaser in the amount of six percent (6%). All taxes paid pursuant to this Act shall be conclusively presumed to be direct taxes on the retail consumer pre-collected for the purpose of convenience and facility.

**C. Tax stamp.** Within seventy-two (72) hours after receipt of any liquor and/or beer products by any wholesaler or retailer subject to this Act, a Muscogee (Creek) Nation tax stamp shall be securely affixed thereto denoting the Muscogee (Creek) Nation tax thereon. Retailers or sellers of liquor and/or beer products within the Nation's jurisdiction may buy and sell or have in their possession only liquor and/or beer products which have the Muscogee (Creek) Nation tax stamp affixed to each package.

**D. Use of tax revenue.** Of the six percent (6%) excise tax imposed and levied hereunder, one percent (1%) shall be earmarked for expenditure on the establishment and maintenance of drug and alcohol prevention and treatment programs within the jurisdictional boundaries of the Muscogee (Creek) Nation, one percent (1%) shall be deposited in the Nation's Capital Improvements Fund Account; and the remaining four percent (4%) shall be transferred to the Muscogee (Creek) Nation Controller for deposit in to the General Fund and shall be available for appropriation by the National Council for essential government functions and/or services.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

**§ 7-502. Audits and inspections**

**A. Inspections.** All of the books and other business records of the Outlet shall be available for inspection and audit by the Commission or its authorized representative during normal business hours and at all other reasonable times, as may be requested by the Commission.

**B. Bond for excise tax.** The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the Commission on a monthly

basis unless otherwise specified in writing by the Commission. The Operator shall furnish a satisfactory bond to the Commission in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞225, 323.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 140 to 149, 194.

### SUBCHAPTER 6. LIABILITY, INSURANCE AND SOVEREIGN IMMUNITY

#### Section

7-601. Liability for bills.  
7-602. Muscogee (Creek) Nation liability and credit.  
7-603. Sovereign immunity.

#### § 7-601. Liability for bills

The Muscogee (Creek) Nation and the Commission shall have no legal responsibility for any unpaid bills owed by a liquor and/or beer outlet to a wholesaler, supplier or any other person.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 06-222, § 1, eff. Nov. 29, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

#### Library References

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

#### § 7-602. Muscogee (Creek) Nation liability and credit

**A. Liability.** Unless explicitly authorized by Muscogee (Creek) Nation statute or regulation, Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Nation or the Commission authorized to pledge Muscogee (Creek) Nation credit or financial responsibility for any of the expenses of his or her business operation. The Operator shall hold the Nation harmless from all claims and liability of whatever nature. The Commission shall revoke an Operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

**B. Insurance.** The Operator shall maintain at his or her own expense adequate insurance covering liability, fire, theft, vandalism and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverage deemed advisable, proof of which shall be filed with the Commission.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]



**Library References**

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

**§ 7-603. Sovereign immunity**

Nothing in this Act shall be construed as a waiver or a limitation of the sovereign immunity of the Muscogee (Creek) Nation or its agencies, nor their officers or employees. To the fullest extent possible, the Muscogee (Creek) Nation expressly retains its sovereign immunity for the purposes of enactment of this Act.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞323, 405.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179, 194.

**SUBCHAPTER 7. ENFORCEMENT****Section**

7-701. Violations and penalties.  
7-702. Repealer.

**§ 7-701. Violations and penalties**

Any person who violates this Act or elicits, encourages, directs or causes to be violated this Act, or Acts in support of this Act, or regulations of the Commission shall be guilty of an offense and subject to fine. Failure to have a current, valid or proper license shall not constitute a defense to an alleged violation of the licensing laws and/or regulations. The judicial system of the Muscogee (Creek) Nation shall have exclusive jurisdiction over said proceeding(s).

A. Any person convicted of committing any violation of this Act shall be subject to punishment of up to one (1) year imprisonment and/or a fine not to exceed five thousand dollars (\$5,000).

B. Additionally, any person upon committing any violation of any provision of this Act may be subject to civil action for trespass and upon having been determined by the Muscogee (Creek) Nation District Court to have committed said violation, shall be found to have trespassed upon the lands of the Nation and shall be assessed such damages as the Muscogee (Creek) Nation District Court system deems appropriate in the circumstances.

C. Any person suspected or having violated any provision of this Act shall, in addition to any other penalty imposed hereunder, be required to surrender any liquor and/or beer products in the persons possession to the officer making the complaint. The surrendered beverages, if previously unopened, shall only be returned upon a finding by the Muscogee (Creek) Nation District Court, after trial or proper judicial proceeding, that the individual committed no violation of this Act.

**Title 36, § 7-701**

**TAXATION AND REVENUE**

D. Any Operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Commission shall be empowered to seize forfeited products.

E. Any stock, goods or other items subject to this Act that have not been registered, licensed or taxes paid shall be contraband and subject to immediate confiscation by the Commission or its employees or agents; provided that within fifteen (15) days of the seizure the Commission shall cause to be filed an action against such property alleging the reason for the seizure or confiscation and upon proof, the Muscogee (Creek) Nation District Court shall order the property forfeited and vested with the Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 1, approved July 10, 2007. Effective upon publication in the Federal Register.]

**Library References**

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

**§ 7-702. Repealer**

Any and all previous liquor and beer Acts of the Muscogee (Creek) Nation are hereby repealed, any Acts in direct conflict with this Act are hereby impliedly repealed, and this Act shall have the full force and effect as Muscogee (Creek) Nation.

[Added by NCA 06-132, § 2, eff. June 21, 2006; amended by NCA 07-159, § 2, approved July 10, 2007. Effective upon publication in the Federal Reporter.]

**Library References**

Indians ☞323.  
Westlaw Topic No. 209.  
C.J.S. Indians § 194.

## **CHAPTER 8. OIL AND GAS SEVERANCE TAX CODE**

### **Section**

- 8-101. Short title and codification.
- 8-102. Definitions.
- 8-103. Tax levied on oil.
- 8-104. Tax levied on gas.
- 8-105. Due date of tax.
- 8-106. Payment of tax.
- 8-107. Payment bonds.
- 8-108. Incidence of tax-forfeiture for non-payment.
- 8-109. Purchaser may remit taxes.
- 8-110. Unit Operator may remit taxes.
- 8-111. Measurement of oil and gas.
- 8-112. Determination of market value.
- 8-113. Tax Commission may audit, correct and file reports.
- 8-114. Forms of reports.
- 8-115. Instructions.
- 8-116. Severance tax in lieu of other taxes.
- 8-117. Exclusion from taxation.
- 8-118. Lien upon oil and gas proceeds thereof.

### **§ 8-101. Short title and codification**

This Act shall be known and may be cited as the Muscogee (Creek) Nation Oil and Gas Severance Tax Code and shall be codified as Chapter 8 in Title 36, "Taxation and Revenue," of the Muscogee (Creek) Nation Code Annotated.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

### **§ 8-102. Definitions**

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

A. "Commission" means the Muscogee (Creek) Nation Tax Commission as established pursuant to MCNCA Title 36, § 1-103.

B. "Commissioner" means the Muscogee (Creek) Nation Tax Commissioner as established pursuant to MCNCA Title 36, § 1-104.A.

C. "Gas" means natural gas, coalbed methane and carbon dioxide.

D. "Gross income" means for oil and gas, the net amount realized by the taxpayer for sale of the oil and gas, whether the sale occurs at the wellhead or after transportation, manufacturing and processing of the product.

E. "Oil" means crude oil and condensate.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

### **§ 8-103. Tax levied on oil**

There is hereby levied a tax equal to ten percent (10%) of the gross market value of all petroleum or other crude, condensate or mineral oil produced,

severed, saved and removed from any Tribal lands located within the jurisdictional boundaries of the Muscogee (Creek) Nation.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

**§ 8-104. Tax levied on gas**

There is hereby levied a tax equal to ten percent (10%) of the gross market value of all gas, natural gas, casing head gas and other valuable hydrocarbon substances produced, severed, saved and removed from any Tribal lands within the jurisdictional boundaries of the Muscogee (Creek) Nation.

[Added by NCA 08-196, § 1, approved Dec. 3, 2008, eff. Dec. 3, 2008.]

**§ 8-105. Due date of tax**

The taxes imposed by the chapter shall be due at the time the taxable substances are produced, severed, saved or removed from the Tribal lands within the jurisdictional boundaries of the Muscogee (Creek) Nation and shall be payable monthly as provided by § 8-106 of this chapter.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-106. Payment of tax**

A. Payment of severance taxes herein imposed shall be paid monthly on or before the twenty-fifth (25th) day of the calendar month following the calendar month for which such payment is to be made. Any payment not made when payable shall incur a penalty of five percent (5%) of the amount of the tax due and shall bear interest at the statutory rate until paid.

B. If any person feels aggrieved by a tax assessment, penalty or interest imposed pursuant to this chapter, such person shall file a "Reporting and Remittance Form" when due and shall pay all taxes due and shall at that time give notice in writing to the Commission that all or part of such payment is made under protest, and shall in the notice state the grounds and reasons for such protest and shall state that the total sum, or a certain part thereof, is protested. The Commission shall thereupon schedule a hearing. A person delinquent in the payment of any taxes, penalties or interest payments, including any disputed taxes, penalties or interest payments, cannot make any protest concerning any amount due, but must be current in such payments and pay the tax being protested.

C. When a producer or operator files a "Reporting and Remittance Form" and pays, in protest, the taxes levied on oil and gas by § 8-103 or 8-104 of this Title, the Commission upon determination that the protest is not frivolous shall schedule a hearing and issue proper notice wherein the purchaser or operator may appear before the Commission within thirty (30) days and show cause for protest. The Commission shall issue a written order within thirty (30) days of the conclusion of the hearing.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-107. Payment bonds**

A. Whenever any taxpayer habitually fails or refuses to file any required report or pay any taxes due on or before the last lawful date for payment, the Commission upon notice and hearing may require that the Operator post a cash or surety bond to guarantee the payment of taxes due.

B. The bond shall be in an amount determined by the Commission to be sufficient to guarantee timely payment of the taxes imposed by this chapter, provided that the amount of said bond shall not exceed the total estimated taxes which will be due in the twelve (12) month period immediately following the giving of said bond.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-108. Incidence of tax-forfeiture for non-payment**

A. The incidence of the tax herein imposed shall be upon the Lessee and his successors in interest ("Operator") and the taxes herein imposed shall be a lien upon the interest of such Operator in the lease from which the taxable substances are produced. Said lien may be foreclosed and the interest of the Operator may be forfeited and sold as possessory interests for nonpayment of taxes, subject to subsection B of this section when said taxes remain unpaid in excess of sixty (60) days after the due date for filing of the returns required in this chapter.

B. On or before thirty (30) days prior to commencement of any forfeiture proceedings, the Commission shall serve to all persons known from the Nation, State of Oklahoma, the Bureau of Indian Affairs, United States Geological Service or any other recognized record service to have an interest in such leasehold of the amount of the taxes due and unpaid, the intent of the Commission to institute forfeiture proceedings, and the right of any of such persons to pay the taxes due on behalf of the Operator and recover such payment by civil suit. Said notice shall be served by the Nation's Lighthouse Police or by certified return receipt requested United States mail deliverable to the last known address of the Operator. Publication service may be done only when the Commission has been unable to personally serve the Operator. Publication notice shall be published at least once each full calendar week during the thirty (30) day waiting period in a newspaper in general circulation in Okmulgee County, Oklahoma. Costs of all publication shall be assessed as an additional tax upon the Operator.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-109. Purchaser may remit taxes**

The purchaser of any oil or gas subject to this tax shall withhold and pay directly to the Commission on behalf of the taxpayer the severance taxes due, and such purchaser shall not be liable for the payment of said amounts as provided that said severance tax payment was made in good faith and provided further, that any taxpayer on whose behalf the purchaser has withheld and paid severance taxes may apply to the Commission for a refund of any payment alleged to be in excess of the amount due as provided by law.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-110. Unit Operator may remit taxes**

The Production Operator of any unitized pool or producing field within which the trust or restricted Indian interest has been included under any unit operating agreement approved by the Secretary of the Interior may withhold and pay the severance taxes due on that portion of the production from the units attributable to lands and interest subject to the jurisdiction of the Nation with the express or implied consent of the Lessee.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-111. Measurement of oil and gas**

A. All crude oil and liquid hydrocarbon substances normally measured in liquid form shall be measured and reported in units of either barrels of forty-two (42) U.S. gallons or two hundred thirty-one (231) cubic inches per gallon corrected to standard temperature and other variables pursuant to the federal regulations applicable to Indian oil and gas leases.

B. All natural gas and other vaporous hydrocarbon substances normally measured in gaseous form shall be measured and reported in units of one thousand (1,000) cubic feet (MCF) corrected to standard temperature and pressure pursuant to the federal regulations applicable to Indian oil and gas leases.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-112. Determination of market value**

The actual sales price of any oil or gas herein subject to taxation may, in the sole discretion of the Commission, be considered as mere evidence of or conclusive evidence of the market value of such substances. The Commission shall have the authority to determine the minimum fair market value regardless of the actual sales price of such substances and in doing so may consider actual sales prices prevailing for like or substantially similar substances produced and sold in the area and prevailing market prices published in reputable trade journals of the oil and gas industry, provided that any person, firm, corporation or association against whom additional taxes are assessed due to establishment of such minimum fair market value may protest the amount due in accordance with this chapter.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-113. Tax Commission may audit, correct and file reports**

The Commission shall have the power and authority to ascertain and determine whether or not any report herein required to be filed with it is a true and correct report of the gross products, and of the value thereof, of such persons, firms, corporation or association engaged in the mining or production of petroleum or other crude condensate or mineral oil and gas, natural gas, casinghead gas or other hydrocarbon substances. If any person, firm, corporation or association has made an untrue or incorrect report of the gross production, value or volume thereof, or has failed or refused to make a required report, the Commission shall ascertain the correct amount of either and compute said tax. In exercise of this authority, the Commission is specifically

**OIL & GAS SEVERANCE TAX**

**Title 36, § 8-114**

authorized to obtain such records as may be available from the Bureau of Indian Affairs, the United States Geological Survey, the Oklahoma Tax Commission and the Oklahoma Corporation Commission necessary for the purposes and to consider recognized trade journals in determining the market value of produced substances.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-114. Forms of reports**

The Operator Remittance Report shall be in substantially the following form:

Muscogee (Creek) Nation  
Tax Commission  
(Address)

**OPERATOR REMITTANCE REPORT ---- OIL AND GAS SEVERANCE TAX**

- 1. BIA Lease Number \_\_\_\_\_
- 2. Reporting Period \_\_\_\_\_
- 3. Lessee Name and Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 4. Date of Lease or Assignment of Lease \_\_\_\_\_  
Original Lessee name \_\_\_\_\_
- 5. Unit Operator Name and Address (if unitized) and date of Unitization Agreement  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 6. Reporting Company Name and Address (if tax to be paid by other than Lessee or Unit Operator)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Explain your relationship to Lessee or Unit Operator

Product Production Value (Price)				
Oil	Volume	Per Unit	Gross Tax Amount	
Line	Well #	(Gas)	(BBLs or MCF)	Production Value
Rate Remitted				
A				
B				
C				
D				
E				

F

(Use Additional Sheets if necessary)

**TOTAL TAX REMITTED**

8. Paid by Check Number \_\_\_\_\_

Drawn On \_\_\_\_\_

Address \_\_\_\_\_

9. This report, consisting of \_\_\_\_\_ pages is submitted on behalf of \_\_\_\_\_ and has been examined by me, and under penalty of law, I hereby affirm, that to the best of my knowledge, and belief, it is a true and accurate and complete report of the severance taxes due to the Muscogee (Creek) Nation for this reporting period.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

[Added by NCA08-196, § 1, eff. Dec. 3, 2008.]

**§ 8-115. Instructions**

The following instructions shall be printed on each Operator Remittance Report:

I. General Instructions

A. Reporting period: Each calendar month is a reporting and remitting period

B. Who must report: The Lessee or Operator must report monthly on the Operator’s Remittance Report and remains responsible for appropriate reporting and remittance of taxes. However, a unit operator or purchaser may make reports and remit taxes upon application to and acceptance of the arrangement by the Commission. The Commissioner’s approval of such arrangements does not relieve the Lessee or Operator from his liability for the taxes due.

C. What wells are included in the report: Each lease must be reported on a separate form. However, all wells within a lease should, where practical, be included on the same report. Any well which is not in production during the reporting period should carry a notation explaining the status of the well, such as “shut in,” “injection well,” “salt water disposal,” or “capped and abandoned.”

D. Due date of report and remittance: Severance tax reports and accompanying remittances are due at the address designated by the Commission on the twenty-fifth (25th) day of the first calendar month following the reporting period covered by the report. There is no provision for an extension of time in which to file reports. Late payments will result in a five percent (5%) penalty. Interest on past due amounts is computed at the rate of one point sixty-six percent (1.66%) per month (twenty percent (20%) per annum). Habitual failure



to file timely reports may result in a requirement of a payment bond. FALSE OR FRAUDULENT REPORTS OR REFUSAL TO FILE REPORTS WITH THE INTENT TO EVADE TAXES MAY RESULT IN SEVERE PENALTIES INCLUDING FORFEITURE OF THE COMPANIES PRIVILEGE OF DOING BUSINESS WITHIN THE NATION'S JURISDICTIONAL BOUNDARIES.

E. Every taxpayer has the right to a full hearing before the Commission to challenge the amount of taxes, penalties or interest assessed to demand a refund of taxes paid under protest and to appeal the determination of the Commission to the Tribal Court if the taxpayer is aggrieved thereby in accordance with this chapter. To apply for a refund or credit, the taxpayer should file an amended report and petition for a refund with the Commission explaining the basis for the refund request.

## II. Reporting from Instructions

A. The Lease number is the number assigned by the Bureau of Indian Affairs to the original lease from the Indian owners. Other identifying information may be included as appropriate.

B. Reporting period: The reporting period is a calendar month from its first to last day inclusive.

Insert the name of the month reported and the applicable year

### C. Lessee name and address:

Insert the full name and address for the Lessee or his successor in interest (assignee). If the lease is held by a duly approved assignment that information shall be stated in the margin.

### D. Date of lease or assignment to Lessee:

Insert the date of approval of the lease assignment to your company by the Bureau of Indian Affairs. If your company holds its interest by virtue of an assignment, insert the name of the original Lessee.

### E. Unit operator

If the Leasehold is included in any approved common production unit or pool, insert the name and address of the unit operator and the date of approval of the unitization agreement by the Bureau of Indian Affairs.

### F. Reporting company

If the report is filed by someone other than the Lessee or Unit Operator report that person or companies name and address. If the report is made by a purchaser pursuant to an approved agreement or some other party interested in the lease include all relevant information.

### G. Report table

#### Part I      Well number

Indicate the well number used for completion, production or other reports to the Bureau of Indian Affairs and the United States Geological Survey. Describe each well as clearly as possible.

#### Part 2      Product

Indicate either oil, gas or other substance produced.

## **Title 36, § 8–115**

## **TAXATION AND REVENUE**

### Part 3      Production volume

Report the barrels of oil and condensate and the MCF of gas at standard reporting parameters.

### Part 4      Value

Indicate the actual sales price of the reporting company's agreed estimate of the fair market value of the substance reported whichever is higher.

### Part 5      Gross value

Multiply the production volume times the value per unit production.

### Part 6      Tax rate

The tax rate for both oil and gas is eight percent (8%) of the gross value of the substance produced, severed, saved or removed from the land.

### Part 7      Amount remitted

To determine the amount of tax to be remitted and paid with the return, multiply the gross value of the substances produced, severed, saved or removed from the land.

### Part 8–9

Insert all required information. The report must be signed by an authorized officer or employee of the reporting company. Any report not signed shall not be considered as timely filed and will be returned for signature. Any penalties and interest incurred due to any delay will be assessed as provided by law.

[Added by NCA 08–196, § 1, eff. Dec. 3, 2008.]

## **§ 8–116. Severance tax in lieu of other taxes**

The tax levied by §§ 8–103 and 8–104 of this chapter on oil and gas respectively, shall be in lieu of all sales taxes on the first sale of such oil and gas imposed by law, and of any possessory interest taxes on said leasehold attributable to the period during which the oil and gas lease was in production.

[Added by NCA 08–196, eff. Dec. 3, 2008.]

## **§ 8–117. Exclusion from taxation**

There shall be excluded from the provisions of this chapter the production attributable to the Indian Trust Royalty Interest of all individually owned and Tribally owned lands within the jurisdictional boundaries of the Muscogee (Creek) Nation. However, this is not to construe or convey to anyone the right to exclude this amount from the gross production taxes attributable to the Indian Trust Royalty (individually or Tribally owned lands within the jurisdictional boundaries of the Muscogee (Creek) Nation). The intent is not for the oil or gas purchaser or operator to use this as an exemption.

The Commission will impose the severance tax on the gross market value of the production attributable to the Muscogee (Creek) Nation percentage of the gross market value (individually or Tribally owned lands).

[Added by NCA 08–196, eff. Dec. 3, 2008.]

**§ 8-118. Lien upon oil and gas proceeds thereof**

A. The Commission shall have a lien upon the working interest share of all oil and gas produced within the Nation's jurisdictional boundaries, the proceeds upon the sale thereof and the proceeds of any other oil and gas produced within the Nation's jurisdictional boundaries attributable to a working interest owner having severance taxes due and unpaid whether arising from a well upon which payment is due or any other well, to secure payment of any oil and gas severance taxes, penalties or interest due and unpaid.

B. The lien created by this section shall be perfected by mailing a copy thereof by certified mail to the working interest owner owing said taxes, penalties or interest, and the purchaser, if different than the owner known to the Commission, and filing said lien in the office of the Secretary of the Nation.

C. The notice shall contain (1) the name of the working interest owner owing said taxes, penalties or interest and his/her last known address; (2) the name of the purchaser and his/her last known address; (3) the name or legal description of the well or wells or land upon which the well or wells upon which taxes, penalties or interest is due is located; (4) the name or legal description for the well or wells or the land upon which the well or wells are located upon the production of which the lien is attached; and (5) the amount of taxes, penalties or interest due.

D. From and after the date upon which the lien herein provided for is perfected, the purchaser shall pay over to the Commission all money in his/her hands attributable to the interest upon which the lien is attached until the lien is satisfied, and the Commission shall have the authority to seize and sell at public or private sale at any oil or gas found upon the premises to which the lien has attached in satisfaction of said lien; provided, that the exempt Indian Royalty Interest shall not be affected by said lien but shall be paid to the owner or owners thereof as if said lien did not exist, and the Commission shall protect said royalty due upon any oil or gas seized by it under this section, and pay said royalty over to those entitled thereto; and provided further, that payment of the Commission by a purchaser pursuant to this section shall be deemed payment to the working interest owner to the extent of the amount paid to the Commission.

E. Moneys paid to the Commission under this section shall be allocated as follows:

1. First, to severance taxes currently due
2. Then, to penalties and interest due and accruing upon unpaid severance taxes due
3. Finally, to principal of unpaid severance taxed due.

[Added by NCA 08-196, § 1, eff. Dec. 3, 2008.]



# TITLE 37. TRIBAL GOVERNMENT

## ETVLWV ENRAKRAKV

Chapter	Section
1. GREAT SEAL AND OFFICIAL FLAG. ....	1-101
2. BUDGET AND FINANCE. ....	2-101
3. EMPLOYEES. ....	3-101
4. CONFLICT OF INTEREST. ....	4-101
5. OPEN MEETINGS. ....	5-101
6. POLITICAL PRESSURE. ....	6-101
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### CHAPTER 1. GREAT SEAL AND OFFICIAL FLAG

Section
1-101. Official Muscogee (Creek) Nation flag and Great Seal design.
1-102. Manufacture and sale of flag.
1-103. Registering Nation’s seal as servicemark.

#### § 1-101. Official Muscogee (Creek) Nation flag and Great Seal design

The flag of the Muscogee (Creek) Nation shall include the Great Seal of the Nation set upon a white background of the flag. As graphically depicted in the Constitution, the seal illustrates a sheaf of wheat and a plow in the center of device surrounded by the words “Great Seal of the Muscogee Nation, I.T.” (Indian Territory)

[NCA 95-114, § 103, approved Dec. 29, 1995.]

#### Cross References

Official seal, see Const. Art. I, § 3.

Unauthorized use of the Great Seal of the Muscogee (Creek) Nation, see Title 14, § 2-504.

#### § 1-102. Manufacture and sale of flag

The Mound Building Oversight Committee is hereby authorized to order the manufacture of and sale of the Tribal flag depicting the Seal of the Muscogee (Creek) Nation as well as other traditional flags. The Mound Building Oversight Committee shall establish a wholesale and retail price for flags. Muscogee (Creek) Nation citizens may purchase flags from the Mound Building Oversight Committee at cost.

[NCA 95-114, § 104, approved Dec. 29, 1995; amended by NCA 98-08, § 103, approved Feb. 6, 1998; amended by NCA 05-013, § 2, eff. Feb. 9, 2005, NCA 05-178, § 1, eff. Sept. 2, 2005.]

#### Historical and Statutory Notes

Title 37 § 2-112 was initially repealed by repealing NCA 03-201 and repealing Title 37 NCA 03-201, § 7, veto overridden Dec. 23, § 2-112. The School Clothing Program was 2003. NCA 04-118 was subsequently passed recodified in Title 35, Chapter 6.

**Cross References**

Enterprise Fund Flag Account, see Title 37, § 2–209.

**Library References**

Indians ☞210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 1–103. Registering Nation’s seal as servicemark**

The Principal Chief or his designee is hereby authorized to make application and complete any other necessary documents in order to register the Nation’s Seal with the United States Patent and Trademark Office as a servicemark.

[NCA 95–114, § 105, added by NCA 98–08, § 104, approved Feb. 6, 1998.]

**Cross References**

Official seal, see Const. Art. I, § 3.  
Unauthorized use of the Great Seal of the Muscogee (Creek) Nation, see Title 14, § 2–504.

**Library References**

Indians ☞211, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57, 59, 63, 65 to 72, 182.

## **CHAPTER 2. BUDGET AND FINANCE**

### **Subchapter**

1. Required Annual Budget Items
2. Funds and Accounts
3. Advancement of Funds by Bureau of Indian Affairs
4. Tribal Judgment Funds
5. Applications for Financial Assistance
6. Audit Law
7. Controller
8. Office of Internal Audit and Compliance

### **Cross References**

Special appropriations guidelines, see Title 35, § 9-101 et seq.

## **SUBCHAPTER 1. REQUIRED ANNUAL BUDGET ITEMS**

### **Section**

- 2-101. Office of the Attorney General.
- 2-102. Law Enforcement Department.
- 2-103. Fire protection.
- 2-104. Medical Travel Fund.
- 2-105. Litigation and lobbying to protect Tribal sovereignty.
- 2-106. Physical Plant Maintenance and Capital Improvements Program.
- 2-107. National Congress of American Indians; dues.
- 2-108. Drug-free workplace.
- 2-109. Green Corn Ceremonial Assistance.
- 2-110. Repealed.
- 2-111. Employee Protection Commission; Recording Secretary compensation.
- 2-112. Repealed.
- 2-113. Rural volunteer fire department assistance.
- 2-114. Natural disaster assistance.
- 2-115. Eufaula Boarding School Board of Education.
- 2-116. Tribal Emergency Home Improvement Program.
- 2-117. Medical Assistance Program.
- 2-118. Comprehensive Assistance Grant Program for Churches and Ceremonial Grounds.
- 2-119. Mvskoke (Creek) Nation Pageant and Royalty.
- 2-120. Senior Services Department.
- 2-121. Grave preparation expenses.
- 2-122. Tribal Energy Assistance Program.
- 2-123. Este Cate Veterans (MVSOKOKE Nation) Honor Guard.
- 2-124. Muscogee Nation War Memorial; replacement of flags.
- 2-125. Day of Prayer.
- 2-126. National Council Speaker; compensation.
- 2-127. Tribal Construction Engineer.
- 2-128. Office of National Council Speaker; technical equipment/software maintenance.
- 2-129. Murrow Indian Children's Home.
- 2-130. Special Academic/Extra-Curricular Program.
- 2-131. Tribal Funds Grant and Tribal Incentive Grant Program.
- 2-132. Post-Graduate Program.
- 2-133. Burial assistance.
- 2-134. Original Allottees Client Services.
- 2-135. Muscogee (Creek) Nation Legal Services Clinic.
- 2-136. Incarceration of prisoners in county facilities.

**Title 37, § 2-101**

**TRIBAL GOVERNMENT**

**Section**

2-137. College of the Muscogee (Creek) Nation.

**§ 2-101. Office of the Attorney General**

A. The Attorney General shall prepare a timely budget request and recommendation be submitted to the Principal Chief, who shall in turn complete a budget review, identify appropriate funding resources, make necessary modifications, and submit an appropriations bill to the National Council for their review, modification and/or approval.

B. The appropriations bill shall include a detailed line item budget utilizing the following format:

**OFFICE OF THE ATTORNEY GENERAL**

FY-\_\_\_\_\_

A. Use of Funds

- 1. Personnel
- 2. Fringe Benefits
- 3. Travel
- 4. Equipment
- 5. Supplies
- 6. Contractual
- 7. Construction
- 8. Other
- 9. Total Direct Cost
- 10. Indirect Cost
- 11. Total Costs

B. Source of Funds

- 1. Source
- 2. Amount

C. Beginning and Ending Fiscal Year

[NCA 89-19, § 108, veto overridden Feb. 25, 1989.]

**Cross References**

Attorney General's Revolving Fund, see Title 37, § 2-202.  
Office of the Attorney General, see Title 16, § 3-101 et seq.

**Library References**

Attorney General ☞6.	C.J.S. Attorney General §§ 26 to 78.
Indians ☞210, 216.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Westlaw Topic Nos. 46, 209.	C.J.S. Parent and Child § 251.

**§ 2-102. Law Enforcement Department**

Within ninety (90) days of the beginning of the fiscal year, the Lighthorse Chief shall prepare a budget request and recommendation to be submitted to



**BUDGET AND FINANCE**

**Title 37, § 2-103**

the Principal Chief who shall in turn complete a budget review, identify appropriate funding resources, make necessary modifications and submit an “Appropriation Bill” to the National Council for their review, modification, and approval.

The appropriation bill shall include a detailed line item budget utilizing the following format:

Law Enforcement Department Budget

FY—\_\_\_\_\_

A. Use of Funds:

1. Personnel
2. Fringe Benefits
3. Travel
4. Equipment
5. Supplies
6. Contractual
7. Construction
8. Other
9. Total Direct Costs
10. Indirect Cost
11. Total Cost

B. Source of Funds

1. Source
2. Amount

C. Beginning and Ending Fiscal Year

[NCA 89-148, § 105, veto overridden Dec. 30, 1989.]

**Cross References**

Law Enforcement Department, see Title 16, § 4-101 et seq.

**Library References**

Indians ⇄216.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

**§ 2-103. Fire protection**

The Office of the Controller shall establish a line item budget for “FIRE PROTECTION FOR THE MUSCOGEE NATION” and this shall be reflected in the annual comprehensive budget.

[NCA 92-44, § 103, approved April 1, 1992.]

**Cross References**

Fire protection agreements or compacts, see Title 22, § 3-101.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–104. Medical Travel Fund**

A. The National Council hereby appropriates ten thousand dollars (\$10,000) each fiscal year from the General Taxes and Licenses Account. Said appropriation shall be incorporated into each fiscal budget as a permanent appropriation.

B. Any unexpended funds will revert back to the General Fund.

[NCA 92–74, § 103, approved May 27, 1992; amended by NCA 95–38, §§ 101, 102, approved Sept. 5, 1995.]

**Cross References**

Medical Travel Fund, see Title 35, §§ 3–101, 3–102.

**§ 2–105. Litigation and lobbying to protect Tribal sovereignty**

The Principal Chief shall prepare a budget for the use of funds to be expended from the Litigation and Lobbying Fund Account. In the event, the Principal Chief declares an emergency and needs funding to respond to state or federal action, no appropriation is hereby authorized from this account without approval from the National Council, for the protection of Tribal sovereignty.

[NCA 92–90, § 105, approved June 3, 1992; amended by NCA 95–10, § 103, approved Feb. 1, 1995.]

**Cross References**

Litigation and Lobbying Fund Account, see Title 37, § 2–206.

**Library References**

Indians ⇨210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–106. Physical Plant Maintenance and Capital Improvements Program**

A supplemental appropriation on an annual basis is hereby granted in the amount equal to the sinking fund for implementing the Annual Physical Plant Maintenance and Capital Improvements Program. The supplemental appropriation will be made based on a detailed budget submitted by the Office of the Administration, GSA/Facilities and shall be presented to the National Council for approval.

[NCA 92–109, § 104, approved July 27, 1992; amended by NCA 97–30, § 104, eff. March 31, 1997.]

**Cross References**

Maintenance and capital improvements sinking fund, see Title 37, § 2–207.  
Physical plant maintenance and capital improvement policy, see Title 28, § 5–101.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–107. National Congress of American Indians; dues**

The Comprehensive Budget, Office of the Principal Chief, shall contain a one thousand dollars (\$1,000) annual appropriation from Tribal funds for NCAI dues until otherwise provided by law.

[NCA 92–144, § 103, approved Nov. 25, 1992.]

**Cross References**

National Congress of American Indians, delegate and alternate delegates, see Title 25, § 3–101.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–108. Drug-free workplace**

The National Council hereby authorizes the Principal Chief to include an appropriate amount in the comprehensive budget to carry out the purposes of Title 37, § 3–801 et seq.

[NCA 93–107, § 114, approved July 12, 1993.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–109. Green Corn Ceremonial Assistance**

The annual appropriation for the Green Corn Ceremonial Assistance shall be established by the enactment of NCA 02–082 at twenty-four thousand dollars (\$24,000.00) beginning with the FY 2003 Comprehensive Annual Budget and annually thereafter.

[NCA 02–082, § 3, approved May 30, 2002.]

**Historical and Statutory Notes**

**Derivation:**

NCA 94–16, § 105.

**Cross References**

Green Corn Ceremonial Assistance, see Title 5, § 2–201 et seq.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**Title 37, § 2-110  
Repealed**

**TRIBAL GOVERNMENT**

**§ 2-110. Repealed by NCA 09-021, § 2, approved Jan. 31, 2009**

**Historical and Statutory Notes**

The repealed section, which related to the establishment and financing of the Travel Plaza, was derived from:  
NCA 95-105, § 105.

NCA 97-84, § 103,  
NCA 01-140, § 1-104.

**§ 2-111. Employee Protection Commission; Recording Secretary Compensation**

An appropriation of one thousand five hundred dollars (\$1,500) shall be included in the 1995 annual comprehensive budget and each year hereafter for the compensation of the Recording Secretary of the Employee Protection Commission.

[NCA 95-07, § 115, added by NCA 95-131, § 103, approved Oct. 31, 1995.]

**Cross References**

Employee Protection Commission, Recording Secretary, see Title 37, § 3-513.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2-112. Repealed by NCA 04-118, § 8, approved June 30, 2004**

**§ 2-113. Rural volunteer fire department assistance**

The Principal Chief is hereby authorized to expend forty thousand dollars (\$40,000.00) annually. Such appropriation shall be granted annually based upon the budget submitted by the Division of Tribal Affairs. No more than twenty thousand dollars (\$20,000.00) is to be used annually for new construction. No more that twenty thousand dollars (\$20,000.00) is to be used annually for fire fighting equipment. Funds for Title 22, § 3-201 et seq. shall begin being appropriated with the FY 97 comprehensive budget. Any unexpended funds at the end of the fiscal year will be returned to the Tribal Treasury.

[NCA 96-66, § 105, approved Sept. 4, 1996; amended by NCA 00-115, § 103, approved Aug. 3, 2000.]

**Cross References**

Rural volunteer fire departments, see Title 22, § 3-201 et seq.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2-114. Natural disaster assistance**

The Natural Disaster Act shall become a part of the Comprehensive Annual Budget and receive an annual appropriation of twenty-five thousand dollars

(\$25,000). Any funds unexpended at the end of the fiscal year shall be returned to the Treasury.

[NCA 96-68, § 103, approved Aug. 9, 1996; amended by NCA 98-81, § 103, approved Sept. 3, 1998, repealed by NCA 99-65, § 104, approved May 26, 1999; NCA 99-65, §§ 103, 105, approved May 26, 1999.]

**Cross References**

Natural disaster assistance, see Title 35, § 7-101.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2-115. Eufaula Boarding School Board of Education**

The Eufaula Boarding School Board of Education shall receive an annual appropriation of ten thousand dollars (\$10,000). All funds in excess of ten thousand dollars (\$10,000) shall be returned to the appropriate Tribal account.

[NCA 96-75, § 105, approved Sept. 17, 1996; amended by NCA 98-100, § 103, approved Oct. 5, 1998.]

**Cross References**

Eufala Boarding School, see Title 18, § 3-101 et seq.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2-116. Tribal Emergency Home Improvement Program**

The Principal Chief is hereby authorized to expend one hundred thirty-one thousand, six hundred eighty-nine dollars (\$131,689.00) from the interest on the Permanent Fund Account for the implementation of the Tribal Emergency Home Improvement Program. Funds which carry forward shall be deducted from the annual appropriation.

[NCA 96-105, § 104, approved Dec. 27, 1996.]

**Cross References**

Tribal Emergency Home Improvement Program, see Title 24, § 4-101.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2-117. Medical Assistance Program**

The National Council hereby authorizes an appropriation to be reflected in the Comprehensive Annual Budget entitled "Medical Assistance Act" in the amount of seventy-three thousand dollars (\$73,000.00). Of that amount, fifteen percent (15%) shall be budgeted for administrative cost to operate the program.

## **Title 37, § 2-117**

## **TRIBAL GOVERNMENT**

Administrative cost shall be defined as the cost associated with operating the program such as, but not limited to, personnel, fringe, supplies, printing, etc.

[NCA 97-05, § 105, approved May 8, 1997; amended by NCA 00-118, § 104, approved Aug. 3, 2000, repealed by NCA 00-130, § 104, approved Sept. 1, 2000; NCA 00-130, § 103, approved Sept. 1, 2000.]

### **Cross References**

Medical Assistance Program, see Title 22, § 5-101 et seq.

### **Library References**

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2-118. Comprehensive Assistance Grant Program for Churches and Ceremonial Grounds**

The Principal Chief is hereby authorized to place one thousand dollars (\$1,000,000) in the Creek Nation's FY 2008 Comprehensive Annual Budget, and annually thereafter, to finance the Comprehensive Assistance Grant Program for Muscogee (Creek) Nation Traditional Churches and Ceremonial Grounds. Any unexpended funds at the end of each Fiscal Year shall be returned to the Tribal Treasury.

[NCA 97-07, § 103, approved Jan. 28, 1997; amended by NCA 98-19, § 103, approved March 6, 1998; NCA 01-160, § 1, approved Sept. 7, 2001; amended by NCA 07-203, § 5, eff. Jan. 2, 2008.]

### **Cross References**

Churches and Ceremonial Grounds Grant Program, see Title 5, § 2-101 et seq.

### **Library References**

Indians ⇌210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2-119. Mvskoke (Creek) Nation Pageant and Royalty**

An annual appropriation of twenty-eight thousand dollars (\$28,000.00), combined with eleven percent (11%) indirect cost of three thousand eighty dollars (\$3,080.00), for a total of thirty-one thousand eighty dollars (\$31,080.00) shall be included in the Comprehensive Annual Budget for expenses associated with the Mvskoke (Creek) Nation Pageant and Royalty activities and any remaining funds shall be returned to the appropriate treasury account. Said funds will be administered in accordance with a budget prepared by the Pageant Committee. All Tribal funds unexpended at the end of each fiscal year shall be returned to the Tribal Treasury and be available for future appropriation by the National Council.

[NCA 98-91, § 103, approved Oct. 5, 1998; amended by NCA 07-195, § 1, eff. Aug. 6, 2007.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–120. Senior Services Department**

The National Council hereby appropriates one hundred six thousand, two hundred seventy-five dollars (\$106,275.00) and authorizes the Principal Chief to expend these funds for the Office of the Senior Services Department Manager in accordance with the revised budget to be included in the Comprehensive Annual Budget, beginning in the FY 2001 Comprehensive Annual Budget and thereafter.

[NCA 99–09, § 104, approved Feb. 3, 1999; amended by NCA 01–74, § 1, approved July 10, 2001.]

**Cross References**

Senior Services Department, see Title 20, § 1–101 et seq.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–121. Grave preparation expenses**

With the approval of a budget and program guidelines by the Tribal Affairs Committee, the National Council hereby authorizes the Principal Chief to expend ten thousand dollars (\$10,000.00) for expenses related to the preparation of graves for Tribal citizens. This appropriation shall be included annually in the Comprehensive Annual Budget beginning in FY 2001 and thereafter.

[NCA 99–29, § 104, approved Aug. 3, 1999; amended by NCA 00–113, § 104, approved Aug. 3, 1999.]

**Cross References**

Preparation of graves, see Title 4, § 1–102.

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–122. Tribal Energy Assistance Program**

The Principal Chief is hereby authorized to include the sum of fifty thousand dollars (\$50,000) annually in the Comprehensive Annual Budget beginning in FY–2000 from a funding source to be identified by the Controller (contingent on the availability of funds).

[NCA 99–95, § 105, approved Aug. 31, 1999.]

**Cross References**

Tribal Energy Assistance Program, see Title 35, § 8–101 et seq.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–123. Este Cate Veterans (MVSKOKE Nation) Honor Guard**

There will be an annual appropriation in the amount of ten thousand dollars (\$10,000.00) for the Este Cate Veterans (MVSKOKE Nation) Honor Guard. [NCA 99–161, § 103, approved Nov. 10, 1999; amended by NCA 00–117, § 103, approved Aug. 3, 2000.]

**Cross References**

Official Honor Guard, see Title 15, § 1–101 et seq.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–124. Muscogee (Creek) Nation War Memorial; replacement of flags**

The Comprehensive Budget, Office of the Principal Chief, for FY 2001 and annually thereafter until otherwise provided by law, shall contain a two thousand dollars (\$2,000) annual appropriation from Tribal funds for the purchase of the annual replacement of flags for the Muscogee (Creek) Nation War Memorial.

[NCA 00–43, § 104, approved March 29, 2000.]

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–125. Day of Prayer**

The Comprehensive Budget, Office of the Principal Chief, for FY 2001 and annually thereafter until otherwise provided by law, shall contain a one thousand dollars (\$1,000.00) annual appropriation from Tribal funds for the funding of the annual Day of Prayer.

[NCA 00–55, § 103, approved March 27, 2000.]

**Cross References**

Day of Prayer, see Title 5, § 3–101 et seq.

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–126. National Council Speaker; compensation**

The National Council hereby authorizes an increase in the compensation paid to the Speaker of the National Council with a salary range of



\$38,646.40—\$50,460.80 per year effective FY 2001 and it shall become a part of the Comprehensive Annual Budget annually thereafter.

[NCA 00–58, § 109, approved June 30, 2000.]

**Cross References**

National Council compensation, see Title 30, § 4–101.

Speaker compensation, see Title 30, § 5–101.

**Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–127. Tribal Construction Engineer**

The National Council hereby authorizes the Principal Chief to create the position of Tribal Construction Engineer within the Division of Tribal Affairs and include the position in the Comprehensive Annual Budget beginning with the FY 2001 Comprehensive Annual Budget and thereafter.

[NCA 00–69, § 103, approved Aug. 3, 2000.]

**Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–128. Office of National Council Speaker; technical equipment/software maintenance**

A. The National Council hereby authorizes the Principal Chief to expend/release twenty-seven thousand, two hundred forty-four dollars (\$27,244.00) for the upgrading of technical equipment/software utilized by the Office of the National Council.

B. The amount of twenty-seven thousand, two hundred forty-four dollars (\$27,244.00) contains an annual maintenance cost five thousand three hundred twenty-nine dollars (\$5,329) which shall become a part of the Comprehensive Annual Budget as an annual appropriation of the Legislative Branch Budget thereafter until otherwise provided by law.

[NCA 00–80, § 104, approved May 26, 2000.]

**Library References**

Indians ⇄210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–129. Murrow Indian Children’s Home**

The Principal Chief is hereby authorized to expend/release five thousand and no/100 dollars (\$5,000.00) annually to the appropriate officials of the Murrow Indian Children’s Home. This section shall be an annual appropriation beginning with FY 2001 Comprehensive Annual Budget. Beginning with the FY 2008 Comprehensive Annual Budget, the appropriation shall be increased to

## **Title 37, § 2–129**

## **TRIBAL GOVERNMENT**

fifty thousand and no/100 dollars (\$50,000.00) and annually thereafter. That the appropriation include per capita of one hundred twenty-five and no/100 dollars (\$125.00) per student for Christmas gifts each year.

[NCA 00–119, § 104, approved Aug. 3, 2000; amended by NCA 04–210, § 2, approved Nov. 29, 2004; NCA 06–210, § 2, approved Oct. 9, 2006; NCA 07–304, § 2, veto overridden Dec. 20, 2007.]

### **Library References**

Indians ☞132, 210, 340.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 150, 152,  
154 to 176, 193.

## **§ 2–130. Special Academic/Extra-Curricular Program**

The National Council hereby appropriates and authorizes the Principal Chief to expend forty-five thousand dollars (\$45,000) for the Special Academic/Extra-Curricular Program for FY 2001. This appropriation shall be included annually in the Comprehensive Annual Budget thereafter, depending on the availability of funds. Any unexpended funds at the end of the fiscal year shall be returned to the Tribal Treasury.

[NCA 00–136, § 103, approved Nov. 2, 2000.]

### **Cross References**

Special Academic/Extra-Curricular Program, see Title 18, § 1–201 et seq.

### **Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2–131. Tribal Funds Grant and Tribal Incentive Grant Program**

The National Council hereby authorizes an appropriation in the amount of fifty thousand dollars (\$50,000.00) to be reflected in the Comprehensive Annual Budget for the Tribal Funds Grant and Tribal Incentive Grant Program of the Higher Education Program within the Human Development Division of the Muscogee (Creek) Nation for financial assistance to all Tribal citizens. These funds are to be distributed equally to the programs.

[NCA 01–57, § 3, approved Oct. 9, 2001.]

### **Cross References**

Higher education and vocational scholarships and grants, see Title 18, § 2–101 et seq.

### **Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2–132. Post-Graduate Program**

The sum of one hundred eighty-seven thousand eight hundred twenty-nine dollars and (\$187,829.00) is hereby appropriated for the implementation of Title 18, § 2–401 et seq. from the Motor Fuel Fund Account. Said funds shall be

available for expenditure through September 30, 2002, and thereafter shall become an annual appropriation to be reflected in the comprehensive annual budget commencing with Fiscal Year 2003.

[NCA 01–113, § 4, approved July 10, 2001; amended by NCA 01–139, § 4, approved Aug. 9, 2001; NCA 01–224, § 1, approved Dec. 4, 2001; NCA 01–237, § 1, approved Dec. 17, 2001.]

**Cross References**

Post-Graduate Program, see Title 18, § 2–401 et seq.

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–133. Burial assistance**

A. The amount of two hundred twenty-five thousand dollars (\$225,000.00) is hereby appropriated from the Bingo Revenue Fund Account for the implementation of Title 4, § 1–101. All unexpended funds appropriated by implementation of this act <sup>1</sup> shall be returned to the Tribal Treasury and be available for future appropriations by the National Council.

B. This act <sup>1</sup> shall become effective October 1, 2001 and be included in the Comprehensive Annual Budget Law thereafter.

[NCA 01–158, §§ 3 to 5, eff. Oct. 1, 2001.]

<sup>1</sup> NCA 01–158, codified as Title 4, § 1–101 and this section.

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–134. Original Allottees Client Services**

The Principal Chief is required to include the amount of ten thousand dollars (\$10,000.00) in a line item designated as Original Allottees Client Services within the Comprehensive Annual Budget beginning with Fiscal Year 2003.

[NCA 97–01, § 103, fourth paragraph, as added by NCA 02–043, § 3, approved April 1, 2002.]

**Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–135. Muscogee (Creek) Nation Legal Services Clinic**

The Muscogee (Creek) Nation Legal Services Clinic budget for the fourth quarter of FY 2002 is one-fourth (1/4) of the annual budget submitted by the University of Tulsa Boesche Legal Clinic for the operation of the Muscogee (Creek) Nation Legal Services Clinic for an entire fiscal year. The appropriation for Fiscal Year 2003 shall be from any funds available for appropriation,

## **Title 37, § 2–135**

## **TRIBAL GOVERNMENT**

shall be in the Comprehensive Annual Budget and is to be a line item appropriation contained in the 2003 Budget of the District Court and annually thereafter.

[NCA 02–091, § 12, approved May 30, 2002.]

### **Cross References**

Muscogee (Creek) Nation Legal Services Clinic, see Title 35, § 10–101 et seq.

### **Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2–136. Incarceration of prisoners in county facilities**

An annual appropriation in the amount of fifty thousand dollars (\$50,000.00) shall be reflected in the budget of the Lighthorse Administration specifically to pay the cost of incarceration of the Nation’s prisoners that are housed in county facilities. The costs of incarceration may include medical treatment for the Nation’s prisoners that can not be performed at an IHS facility due to emergency circumstances and that is not covered by IHS contract health benefits, the prisoner’s insurance or other health benefits.

[NCA 01–39, § 5, approved April 5, 2001; amended by NCA 02–152, § 1, approved Oct. 30, 2002.]

### **Cross References**

Muscogee (Creek) Nation Legal Services Clinic, see Title 35, § 10–101 et seq.

### **Library References**

Indians ⇄210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## **§ 2–137. College of the Muscogee (Creek) Nation**

Beginning with Fiscal Year 2009, the annual appropriation allocated to the College of the Muscogee (Creek) Nation in the Comprehensive Annual Budget shall carry forward until fully expended.

[Added by NCA 09–134, § 2, approved Sept. 10, 2009.]

## **SUBCHAPTER 2. FUNDS AND ACCOUNTS**

### **Section**

- 2–201. Court Fund.
- 2–202. Attorney General’s Revolving Fund.
- 2–203. Permanent Fund.
- 2–204. Communications Department Revolving Account.
- 2–205. Medical Travel Fund.
- 2–206. Litigation and Lobbying Fund Account.
- 2–207. Maintenance and Capital Improvements Sinking Fund.
- 2–208. Economic Development Fund.

**Section**

- 2–209. Flag Account.
- 2–210. Farm Account.
- 2–211. Community Development Program Revolving Account.
- 2–212. Repealed.
- 2–213. Lighthorse Administration Revolving Account.
- 2–213A. Lighthorse Federal Forfeiture Revolving Fund.
- 2–214. Election Board Special Depository Account.
- 2–215. Mound Building Oversight Committee and Revolving Fund.
- 2–216. Muscogee (Creek) Nation Museum, Cultural Center and Archives Artifacts, Memorabilia and Documents Revolving Fund.
- 2–217. Real Property Escrow Fund.

**§ 2–201. Court Fund**

A. The Court Fund of the Muscogee (Creek) Nation is hereby established. The Controller shall insure that an adequate proportion of the Court Fund is available for immediate expenditure. and that the surplus of the Court Fund is invested in an interest bearing account.

B. The following types of income shall be deposited into the Court Fund upon their receipt by the District Court or the Supreme Court:

1. Court costs established by court order.
2. Fines collected by court order, as provided by law.
3. Transcript fees.
4. Payments for legal services.

C. The following types of expenditures shall be allowed from the Court Fund upon the approval of the District Court Judge or the Chief Justice of the Supreme Court:

1. Jury fees (not to exceed ten dollars (\$10.00) per day per juror).
2. Witness fees (not to exceed twenty cents (\$.20)) per mile per day).
3. Public Defenders (not to exceed \$100.00 (one hundred dollars) per day or \$300.00 (three hundred dollars) per client).

[NCA 81–31, §§ 105 to 107, approved Feb. 2, 1981.]

**Cross References**

Judicial branch, budget, finance and compensation, see Title 26, § 5–101 et seq.

**§ 2–202. Attorney General’s Revolving Fund**

There is hereby created in the Tribal Treasury a revolving fund for the Attorney General, to be designated to the Attorney General’s Revolving Fund. The Fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received from the sale of copies of surplus bound volumes and requested individual copies of opinions and such other monies as are provided for by law. Expenditures from said funds shall be made upon warrants issued by the Tribal Treasury against claims filed as prescribed by law with the Director of Finance for approval and payment.

[NCA 89–19, § 104, veto overridden Feb. 25, 1989.]

**Cross References**

Budget, Office of the Attorney General, see Title 37, § 2-101.

Opinions of Attorney General, sale of surplus bound volumes, see Title 16, § 3-107.

**§ 2-203. Permanent Fund**

**A. The Muscogee (Creek) Nation Permanent Fund.** The Permanent Fund is established to assure the availability of necessary monies to help fund the Muscogee (Creek) Nation in future years. Twenty percent (20%) of the net revenues from current Tribal gaming operations which are not restricted or reserved by subsection C of this section for contingencies or liabilities, shall be deposited in the Muscogee (Creek) Nation Permanent Fund to be invested in an interest bearing account in accordance with Title 37, § 2-717, of the Muscogee (Creek) Nation Code. The principal of the Permanent Fund shall remain intact forever, subject to the following:

1. The Muscogee (Creek) Nation may borrow funds in the Permanent Fund when such loan is expressly approved for a specific purpose by Tribal Resolution enacted by the National Council in accordance with subsection E of this section.

2. [Repealed by NCA 07-344, § 2, eff. Dec. 26, 2007].

**B. Interest on Permanent Fund.** The interest on the Permanent Fund shall be made available for appropriations by the National Council on a quarterly basis. The Controller shall provide the National Council with quarterly statements no later than the last day of the month following the end of a quarter that shall include the source and amount of interest earned during the previous quarter and the total amount of funds available for appropriations.

**C. Contingency Reserve Account.** The Muscogee (Creek) Nation Contingency Reserve Account is established, and a minimum balance of one million dollars (\$1,000,000) from Tribally owned and managed gaming operations shall be maintained in said account for potential use in the event that the Nation is determined to be liable for any fine or judgement related to Tribally owned and managed gaming operations and the National Council appropriates said funds for payment of said fines or judgements. During any disputes or litigation with any contract management firms, or in the event that determination is made by the Office of Principal Chief or the National Council as to the existence of any contingency or liability, specifically identified revenues from Tribally owned and managed gaming operations shall be, upon distribution to the Nation by the GOAB, placed into the interest bearing Contingency Reserve Account prior to any allocation to the Permanent Fund, Bingo Revenue Fund, Sinking Fund, or other allocations as established by any Muscogee (Creek) Nation law, until such contingency or liability is met or is determined to no longer exist. At such time, funds shall be removed from restriction, along with all accumulated interest income and shall be allocated as prescribed by applicable law of the Muscogee (Creek) Nation.

**D. Economic Development and Land Acquisition Fund.** There is hereby created an Economic Development Fund. Appropriations from this fund shall only be made pursuant to appropriation acts for the following purposes: purchase of property and any necessary incidental expenses associated with the

purchase of the property, including without limitation title opinions, title insurance, surveys and realtors' fees, the purchase of economic enterprises, and start-up costs and other expenses necessary to create and operate economic enterprises. The funding source for the Economic Development and Land Acquisition Fund shall be as follows:

1. All funds in the Sinking Fund established by the Travel Plaza Establishment and Financing Act of 1995 as of the effective date of this Act shall be deposited in the Economic Development and Land Acquisition Fund, provided that said Sinking Fund shall be eliminated immediately upon said transfer;

2. Ten percent (10%) of net revenues from Tribal gaming operations which are not restricted or reserved by subsection C of this section shall be deposited in the Economic Development and Land Acquisition Fund on a monthly basis, provided that such gaming revenues shall not be available for appropriations for expenditures in the fiscal year in which such gaming revenues were generated and deposit of funds shall be retroactive to October 1, 2005;

3. That portion of economic development revenues specified in the Muscogee (Creek) Nation Tribal Trade and Commerce Authority Act, Title 17 § 2-112, shall be deposited in the Economic Development and Land Acquisition Fund on an annual basis, provided that such revenues shall not be available for appropriations for expenditures in the fiscal year in which such gaming revenues were generated.

**E. Health Services Fund.** Five percent (5%) of net revenues from Tribal gaming operations which are not restricted or reserved by subsection C of this section shall be deposited in the Health Services Fund on a monthly basis, provided that such gaming revenues shall not be available for appropriations for expenditure in the fiscal year in which such gaming revenues were generated.

1. Funds deposited into the Health Services Fund shall be available for appropriation to the Muscogee (Creek) Nation Health Services Administration for the Contract Health Department to provide services exclusively to citizens of the Muscogee (Creek) Nation.

2. Deposit of funds to the Health Services Fund shall be retroactive to October 1, 2005, and shall remain in effect for an indeterminate period. The Office of the Controller shall be required to transfer funds from the Economic Development and Land Acquisition Fund to effect the provisions of this Act.

**F. Security for debt.** Stocks, bonds, mutual funds, cash, certificates of deposit or any other secured United States governmental securities of the "Permanent Fund" within the General Fund of the Nation may be pledged as security for any debt issuance of the Muscogee (Creek) Nation that is expressly approved by Tribal Resolution; provided that until April 1, 2009, no more than eighty percent (80%) of the total value of the Permanent Fund shall be subject to any such pledge or pledges at any time. Beginning April 2, 2009, no more than sixty percent (60%) of the total value of the Permanent Fund shall be subject to any such pledge or pledges at any time. Any such pledged security shall be separately designated as pledged for the specified debt, shall be maintained by the Nation in a separate investment account, and shall be unavailable for appropriation or expenditure for any other purposes so long as

said pledged security remains collateral for the debt or debts. When collateralization is no longer required at sixty percent (60%) then the collateralization will return to twenty-five percent (25%).

**G. Capital Improvement Fund.** A Capital Improvement Fund is hereby established. Appropriations from this fund shall only be made pursuant to appropriation acts for the following purposes: constructing new buildings on property owned by the Muscogee (Creek) Nation; maintenance of existing buildings and facilities on property owned by the Muscogee (Creek) Nation; and other capital improvements for facilities and property owned by the Muscogee (Creek) Nation, including necessary equipment and furnishings. Five percent (5%) of the net revenues from current Tribal gaming operations which are not restricted or reserved by subsection C of this section for contingencies or liabilities shall be deposited in the Muscogee (Creek) Nation Capital Improvement Fund to be invested in an interest bearing account.

**H. Gaming Fund; appropriations.** The Gaming Fund is hereby established for appropriations and expenditures for the purposes specified in the Muscogee (Creek) Nation Gaming Code, Title 21, § 12-102. In addition to funds in the Gaming Fund as of the effective date of this Act, forty percent (40%) of the net revenues from current Tribal gaming operations which are not restricted or reserved by subsection C of this section for contingencies or liabilities shall be deposited in the Gaming Fund on a quarterly basis. Such funds shall be available for appropriations for expenditures to be made in the fiscal year immediately following the year in which the gaming revenues were generated.

**I. Debt Retirement Fund.** The Debt Retirement Fund is hereby established in order to insure and fund a prompt retirement of all financed debts of the Muscogee (Creek) Nation, exclusive of enterprise debt that may provide for debt retirement through generated program income. Twenty percent (20%) of the net revenues from current Tribal gaming operations which are not restricted or reserved by subsection C of this section for contingencies or liabilities, shall be deposited in the Debt Retirement Fund. Deposits shall be invested in an interest bearing account in accordance with Title 37, § 2-717. All principal and interest payments due from financed debts of the Muscogee (Creek) Nation that are budgeted annually in the Comprehensive Annual Budget or authorized for payment from this Fund by Tribal Resolution, shall be made from the Debt Retirement Fund in accordance with the terms of the financing agreement. The Controller may transfer funds from the Debt Retirement Fund to the Permanent Fund, provided all financed debt of the Muscogee (Creek) Nation is satisfied, and provided further that sufficient reserves are in place for any anticipated financing.

**J. Controller oversight.** All expenditures from the funds established pursuant to this Act shall be subject to the oversight of the Controller of the Muscogee (Creek) Nation.

**K. Net revenue.** Solely for purposes of this section, with respect to any Tribal gaming operation and for any period of time, the term "net revenues" means gross gaming revenues less all amounts paid out as, or paid for, prizes; and less, without duplication (1) total gaming-related expenses and (2) all amounts of the gaming revenues required to be applied or retained by the



Tribal gaming operations for compliance with any terms related to any indebtedness of the Nation secured by a pledge of any assets or revenues of the gaming operations.

[NCA 89–135, § 102, approved Nov. 2, 1989; amended by NCA 01–140, § 1–103, approved Aug. 13, 2001; NCA 01–122, §§ 1, 2, approved Dec. 4, 2001; NCA 03–037, §§ 103, 104, eff. March 11, 2003; NCA 04–065, § 3, approved April 30, 2004; NCA 06–071, § 2, approved Aug. 9, 2006; NCA 06–233, §§ 2 and 3, eff. Nov. 6, 2006; NCA 07–344, § 2, eff. Dec. 26, 2007; NCA 08–078, approved May 16, 2008; NCA 08–166, § 1, approved Nov. 3, 2008; NCA 09–021, § 1, approved Jan. 31, 2009.]

#### Library References

Indians ↻210, 340.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72, 193.

### § 2–204. Communications Department Revolving Account

A revolving account for the Communications Department shall be established for all income earned through advertising to be deposited into the Communications Department operating budget. This revolving account is to also be used for funds the department receives for video productions and sales, desktop publishing requests, *Muscogee Nation News* subscriptions and any other funds accrued by the Department. This provision is retroactive and all funds, including interest, shall be returned to the Communications Department operating budget.

[NCA 92–46, § 102, approved July 28, 1992.]

#### Cross References

Advertising, Communications Department, see Title 16, § 5–101.

### § 2–205. Medical Travel Fund

There is hereby created a special fund to be called the Medical Travel Fund which shall be created for the travel of parents and their minor Creek enrollment eligible children who have special medical needs that need treatment in or out of state hospitals.

[NCA 92–74, § 103, approved May 27, 1992; amended by NCA 96–05, § 102, approved Feb. 24, 1992.]

#### Cross References

Budget, Medical Travel Fund, see Title 37, § 2–104.  
Expenditures, Medical Travel Fund, see Title 35, § 3–102.  
Findings, Medical Travel Fund, see Title 35, § 3–101.

### § 2–206. Litigation and Lobbying Fund Account

A. There is hereby created a Litigation and Lobbying Fund Account within the Treasury of the Muscogee (Creek) Nation, and this fund account shall be earmarked to pay for the cost of litigation, lobbying expense, public relations expenses, and/or other expenses associated with the protection of Tribal sovereignty against state and federal legislation.

B. 1. The temporary tax increase of two cents (\$0.02) per pack of cigarettes, sold in licensed tobacco smokeshops by the Muscogee (Creek) Nation, is to be repealed and become effective February 1, 1995.

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2. All revenue generated from this tax shall remain in the Litigation and Lobbying Fund Account until expended by an appropriation law of the National Council.

[NCA 92–90, §§ 103, 104, approved June 3, 1992; amended by NCA 95–10, §§ 101, 102, approved Feb. 1, 1995.]

### **Cross References**

Budget, litigation and lobbying to protect Tribal sovereignty, see Title 37, § 2–105.

## **§ 2–207. Maintenance and Capital Improvements Sinking Fund**

The Muscogee (Creek) Nation shall establish a sinking fund and program a reserve fund in the Annual Comprehensive Budget to meet the maintenance and capital needs of the Nation. Ten percent (10%) of the revenue received from office space rental income shall be placed in the Capital Improvements Sinking Fund on an annual basis; provided that this requirement shall not be applicable to the disposition of the lease revenue from the Muskogee Office Building located in Muskogee, Oklahoma, which shall be deposited into the separate sinking fund identified as the Muskogee Office Building Sinking Funds in accordance with the requirements of NCA 01–227.

[NCA 92–109, § 103, approved July 27, 1992; amended by NCA 97–81, § 103, eff. July 30, 1997; NCA 01–228, § 1, approved Dec. 4, 2001.]

### **Cross References**

Budget, physical plant maintenance and capital improvements program, see Title 37, § 2–106.  
Physical plant maintenance and capital improvement policy, see Title 28, § 5–101.

## **§ 2–208. Economic Development Fund**

A. The Economic Development Fund is hereby established within the Treasury of the Muscogee (Creek) Nation.

B. The amount of three hundred twenty-nine thousand, four hundred forty-seven dollars (\$329,447) is hereby appropriated from the third Three-Year Plan, Economic Development category, for fiscal years, 1990, 1991, and 1992, to be deposited by the Controller into the Economic Development Fund, which shall be an interest-earning account upon which expenditures may hereafter be authorized by appropriation by law.

C. Any interest earned on the Economic Development Fund shall be deposited by the Controller into the Economic Development Fund.

D. The Controller shall hereafter include the Economic Development Fund within all Quarterly Financial Statements.

[NCA 92–149, § 102, approved Sept. 19, 1992.]

### **Cross References**

Economic development, see Title 17, § 1–101 et seq.

## **§ 2–209. Flag Account**

A.<sup>1</sup> The Principal Chief is hereby authorized to expend the amount of three thousand two hundred dollars (\$3,200.00) from the Taxes and Licenses Account

to the Muscogee (Creek) Nation Mound Building Oversight Committee for the purpose of procuring a stock of Tribal flags, and other accessories bearing the Great Seal of the Nation and other traditional flags to offer for sale, said monies shall be placed in the Mound Building Oversight Committee Revolving Fund.

[NCA 95-114, § 107, added by NCA 98-08, § 104, approved Feb. 6, 1998; NCA 96-01, § 103, approved Jan. 29, 1996; amended by NCA 05-178, § 2, eff. Sept. 2, 2005.]

<sup>1</sup> So in original.

**Cross References**

Manufacture and sale of flag, see Title 37, § 1-102.

**Library References**

Indians ⇄210, 225, 226.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 140 to 149.

**§ 2-210. Farm Account**

There is hereby created within the Muscogee (Creek) Nation Treasury a revolving account which shall be known as the Farm Account. Income from the sale of cattle, crops, equipment and agricultural leases shall be credited to the Farm Account provided that if the Tribal Trade and Commerce Authority has assumed all agricultural duties pursuant to Title 28, Chapter 3, then all income from the farm shall go to the Tribal Trade and Commerce Authority to be utilized in accordance with Title 17, Chapter 2.

[NCA 96-41, § 104, approved July 5, 1996; amended by NCA 04-176, § 2, approved Nov. 29, 2004.]

**Cross References**

Farm operations, see Title 1, § 1-101.

**Library References**

Indians ⇄176, 210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72, 109.

**§ 2-211. Community Development Program Revolving Account**

A. The Principal Chief or his designee is hereby authorized to establish a revolving account for the Community Development Program.

B. The revolving account shall be a continuing account not subject to fiscal year limitations and shall be under the direction of the Community Development Program and the Office of the Controller.

C. The Principal Chief is hereby authorized to appropriate six thousand dollars (\$6,000.00) from the interest on the Permanent Fund Account to establish the revolving account for the Community Development Program.

[NCA 96-52, § 103, approved July 5, 1996.]

§ 2-212. Repealed by NCA 06-050, § 3, approved March 29, 2006

§ 2-213. Lighthouse Administration Revolving Account

**A. Creation of account.** The Judicial Branch is hereby authorized to reimburse the Lighthouse Administration for any process service fees previously collected for such service and any process service fees collected by the Judicial Branch in the future. Such fees shall immediately be paid over to the Muscogee (Creek) Nation Controller to be deposited into a revolving fund for use by the Lighthouse Administration as appropriated by the Muscogee (Creek) National Council. Funds presently in the revolving account referred to herein shall be included in the annual budget of the Lighthouse Administration. Deposits may be made to this fund from funds derived from forfeited items.

**B. Authorized use for undercover operations.** The Lighthouse Administration is authorized to expend funds in this Account for undercover operations in accordance with Lighthouse Policies and Procedures. The Lighthouse Chief of Police may have up to five hundred dollars (\$500) in cash withdrawn from the account at any given time. The Lighthouse Chief of Police may withdraw additional funds for the use of undercover operations only upon written approval by the Attorney General.

**C. Accountability.** The use of funds from the Undercover Operations Fund shall be documented in accordance with Lighthouse Policies and procedures and a monthly report of the expenditure and receipt of funds shall be made to the Muscogee (Creek) Nation Office of the Controller and to the Prosecutor. The monthly report submitted to the Controller shall include the date and amount of the transaction but shall not contain identifying information of confidential informants or uncharged defendants.

[NCA 98-103, § 103, approved Oct. 5, 1998; amended by NCA 05-226, § 3, approved Sept. 30, 2005.]

**Cross References**

Process service fees, see Title 26, § 5-106.

**Library References**

Indians ⇌210, 401.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

§ 2-213A. Lighthouse Federal Forfeiture Revolving Fund

There is hereby created a Lighthouse Federal Forfeiture Revolving Fund for use by the Lighthouse Police Department. Funds received from asset sharing of federal law enforcement forfeitures shall be deposited in this Fund and shall be available for use by the Lighthouse Police Department.

[Added by NCA 08-167, § 2, approved Nov. 3, 2008.]

§ 2-214. Election Board Special Depository Account

A special depository account, to be designated "Muscogee (Creek) Nation Election Board Special Depository Account," shall be used for receipt and disbursement of monies received by the Election Board for filing fees only. The

special depository account shall be a continuing fund not subject to fiscal year limitations, shall be under the administrative direction of the Election Board, and shall be under the fiscal control of the Controller of the Muscogee (Creek) Nation.

[NCA 99–20, § 3–104, approved April 30, 1999.]

#### Cross References

Candidacy filing fees, see Title 19, § 5–108.

Contest of candidacy, filing fee, see Title 19, § 5–204.

Contest of election for fraud or irregularities, filing fee, see Title 19, § 8–209.

Costs paid by Election Board, see Title 19, § 3–103.

Disposition of candidacy contest deposits, see Title 19, § 5–211.

Expenses of recount, see Title 19, § 8–208.

Recount filing fees, see Title 19, § 8–202.

### § 2–215. Mound Building Oversight Committee and Revolving Fund

**A. Purpose.** The purpose of this section is to create the Muscogee (Creek) Nation Mound Building Oversight Committee composed of representatives of each Constitutional body occupying the building. The Muscogee (Creek) Nation Mound Building Oversight Committee will be committed to providing cultural development, maintenance and improvement to the Mound Building, and shall be responsible for the selling of the Tribal flag, and other accessories bearing the Great Seal of the Nation and other traditional flags.

**B. Creation.** There is hereby created the Muscogee (Creek) Nation Mound Building Oversight Committee. The Muscogee (Creek) Nation Mound Building Oversight Committee shall consist of the Speaker of the National Council or designee and one member from each of the National Council Standing Committees, Chief Justice of the Supreme Court and District Judge. The Committee shall select a Chairman and record minutes of all meetings.

**C. Contractual.** The Muscogee (Creek) Nation Mound Building Oversight Committee shall negotiate and contract if necessary, for the cultural development, maintenance and improvement of the Mound Building, and the manufacture of the Tribal flag, and other accessories bearing the Great Seal of the Nation and other traditional flags.

**D. Accountability.** The Muscogee (Creek) Nation Mound Building Oversight Committee shall prove an accounting of the Committee's activity on a quarterly basis to the full National Council. The Muscogee (Creek) Nation Controller shall assist the Committee on an as needed basis.

**E. Appropriation.** The sum of one thousand forty-six, four hundred and no/100 dollars (\$146,000.00) is hereby appropriated from the Bingo Revenue Fund Account for the implementation of this Act. There is hereby created the Muscogee (Creek) Nation Mound Building Oversight Committee Revolving Fund. This revolving fund shall be held by the Controller and expended only upon the approval of the Chairman of the Committee. The Revolving Fund shall not be subject to any fiscal year limitations and can only be closed by an Act of the National Council.

**F. Authorization.** The National Council hereby authorizes the Muscogee (Creek) Nation Mound Building Oversight Committee to expend monies from

the Revolving Fund in accordance with the standard procurement and purchasing procedures of the Muscogee (Creek) Nation. The Committee is authorized to accept gifts of artifacts and money, make sales of authorized art prints, Tribal flags and other accessories bearing the Great Seal of the Nation and other traditional flags, apply for grants from any source, and deposit monies from such activities into the Revolving Fund. All funds deposited into the Revolving Fund from acceptance of gifts, donations, contributions or sales, are hereby appropriated and will be made available to the Muscogee (Creek) Nation Mound Building Oversight Committee for expenditure by the Office of the Controller without fiscal year limitations.

[NCA 03–147, §§ 3–8, veto overridden August 26, 2003; amended by NCA 05–178, § 3, eff. Sept. 2, 2005.]

**Library References**

Indians ⇄ 144, 210, 215.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 57 to 59, 66 to 72.

**§ 2–216. Muscogee (Creek) Nation Museum, Cultural Center and Archives Artifacts, Memorabilia and Documents Revolving Fund**

A. There is hereby created the Muscogee (Creek) Nation Museum, Cultural Center and Archives Artifacts, Memorabilia and Documents Revolving Fund.

B. All acquisitions from this revolving fund shall require approval by a majority vote of all Muscogee (Creek) Nation Museum, Cultural Center and Archives Oversight Committee members.

[Added by NCA 08–120, § 3, approved Sept. 2, 2008.]

**§ 2–217. Real Property Escrow Fund**

There is hereby created in the Office of the Treasury a Real Property Escrow Fund for the Division of Tribal Affairs. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies appropriated by the Nation to this fund. Expenditures from said fund shall be made upon the Principal Chief on behalf of the Muscogee (Creek) Nation entering into a Conditional Real Estate Contract and forwarding said Contract to the Controller for processing of the escrow payment only. The Principal Chief shall forward the final Real Estate Contract to the National Council for approval by way of Tribal Resolution. After closing or if no purchase is consummated, the monies held in escrow shall be returned to the Real Property Escrow Fund.

[Added by NCA 08–127, § 5, approved Nov. 3, 2008.]

**Historical and Statutory Notes**

NCA 08–127, §§ 1 and 2, provide:

“Section One. Findings. The National Council finds that:

“Many times the Nation loses out on property due to the process required for acquiring real property. The establishment of a Real Property Escrow Fund would enable the Nation to put

down earnest money which will solidify the Nation’s intent to purchase property from potential sellers while continuing with the Executive and Legislative process.

“Section Two. Purpose. The purpose of this Act is to appropriate the funds necessary to establish a Real Property Escrow Fund.”

SUBCHAPTER 3. ADVANCEMENT OF FUNDS  
BY BUREAU OF INDIAN AFFAIRS

**Section**

- 2-301. Requesting the Bureau of Indian Affairs to advance funds.
- 2-302. Controller's authority to request funds.
- 2-303. Supplemental requests.
- 2-304. Expenditure of funds by Controller.
- 2-305. Auditing of funds received.
- 2-306. Monthly report on funds expended.

**§ 2-301. Requesting the Bureau of Indian Affairs to advance funds**

The Muscogee (Creek) Nation hereby requests the U.S. Bureau of Indian Affairs to advance, each quarter, funds requested by the Controller of the Muscogee (Creek) Nation.

[NCA 81-52, § 101, approved April 2, 1981.]

**Library References**

Indians ☞ 117, 139.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 6 to 7, 54 to 55.

**§ 2-302. Controller's authority to request funds**

The Controller of the Muscogee (Creek) Nation is vested with the authority to make requests to the Bureau of Indian Affairs for Tribal funds.

[NCA 81-52, § 102, approved April 2, 1981.]

**§ 2-303. Supplemental requests**

Supplemental request may be made by the Controller when unusually large expenditures are necessary.

[NCA 81-52, § 103, approved April 2, 1981.]

**§ 2-304. Expenditure of funds by Controller**

Funds received by the Muscogee (Creek) Nation under this subchapter shall be expended by the Controller pursuant to the requirements of the Controller law (Title 37, § 2-701 et seq.).

[NCA 81-52, § 104, approved April 2, 1981.]

**§ 2-305. Auditing of funds received**

Funds received by the Muscogee (Creek) Nation under this subchapter shall be audited by the Controller on an annual basis according to the same principles and standards utilized to audit other funds owed to, belonging to or owned by the Muscogee (Creek) Nation.

[NCA 81-52, § 105, approved April 2, 1981.]

**§ 2-306. Monthly report on funds expended**

The Controller shall prepare a monthly report on funds expended, and shall submit the report to:

**Title 37, § 2-306**

**TRIBAL GOVERNMENT**

- A. The Muscogee (Creek) National Council;
- B. The Principal Chief of the Muscogee (Creek) Nation;
- C. Okmulgee Agency, U.S. Bureau of Indian Affairs for the use of the Bureau.

[NCA 81-52, § 106, approved April 2, 1981.]

**SUBCHAPTER 4. TRIBAL JUDGMENT FUNDS**

**Part**

- I. Expenditure, Generally
- II. Three-Year Plans

**Code of Federal Regulations**

Use or distribution of Indian judgment funds, see 25 CFR 87.1 et seq.

**PART I. EXPENDITURE, GENERALLY**

**Section**

- 2-401. Prohibition of expenditure.
- 2-402. Interest.

**Historical and Statutory Notes**

NCA 90-60, §§ 101 and 104, provide:  
“§ 101. Findings:  
“A. In 1985 the BIA held approximately eighteen million dollars (\$18,000, 000) of Muscogee (Creek) Nation Judgment Funds.  
“B. As of this date the BIA holds less than eleven million dollars (\$11,000, 000) of Muscogee (Creek) Nation Judgment Funds.  
“C. If the Principal Chief continues to propose spending and the National Council contin-

ues to approve of those proposals all Judgment Funds shall be expended in the near future.”  
“§ 104. Repeal.  
“All titles, chapters, articles, and sections of Tribal Ordinances and Tribal Policies which are in effect as of the date of this Act, and all other laws and parts of laws which are inconsistent with the provisions of this Act are hereby repealed.”

**§ 2-401. Prohibition of expenditure**

Beginning October 1, 1990 (FY 1991) no further Judgment Funds shall be expended.

[NCA 90-64, § 102, passed June 30, 1990 (unsigned).]

**§ 2-402. Interest**

Interest from Judgment Funds shall be expended for operation of the Muscogee (Creek) Nation Tribal Government as provided by law.

[NCA 90-64, § 103, passed June 30, 1990 (unsigned).]

**PART II. THREE-YEAR PLANS**

**Section**

- 2-451. Principal amounts to be invested.
- 2-452. Expenditure of interest.



**Section**

- 2-453. Public hearings.
- 2-454. Adoption of law.
- 2-455. Authorization of expenditures.
- 2-456. Funds not expended.
- 2-457. Jurisdiction over controversies.
- 2-458. Domestic assistance program matching funds.
- 2-459. Future principal amounts.
- 2-460. Distribution of Judgment Funds Act inapplicable.

**§ 2-451. Principal amounts to be invested**

The following principal amounts of tribal judgment funds of the Muscogee (Creek) Nation of Indians in Oklahoma shall be invested by the United States in interest-bearing accounts until otherwise provided by law; no expenditures shall be allowed from these principal amounts:

- Docket 169 \$894,899.00
- Docket 272 \$6,946,585.00
- Docket 277 \$1,170,000.00 (more or less)
- Docket 309-74 \$92,288.10

[NCA 82-11, § 1, approved Feb. 2, 1982.]

**§ 2-452. Expenditure of interest**

All interest accruing to the principal and interest accounts of the Muscogee (Creek) Nation in Dockets 169, 272, 277 and 309-74 from October 1, 1983, through September 30, 1986, and each three (3) year period thereafter, shall be set aside for expenditure through an approved Three-Year Plan. Interest earned on funds programmed for a Three-Year Plan prior to their release to the Muscogee (Creek) Nation shall become a part of the succeeding Three-Year Plan. Interest earned by the Nation on funds released under a Three-Year Plan shall be expended as part of that Three-Year Plan.

[NCA 82-11, § 102, §§ 2, 4, approved Feb. 2, 1982; amended NCA 92-86, § 103, approved July 2, 1992.]

**§ 2-453. Public hearings**

On or before June 1, 1986, and every third year thereafter, the Muscogee (Creek) Nation shall hold a Public Hearing to present a proposed Three-Year Plan for discussion and comment by Muscogee (Creek) Indians.

[NCA 82-11, § 5, approved Feb. 2, 1982; amended NCA 92-86, § 104, approved July 2, 1992.]

**§ 2-454. Adoption of law**

On or before July 1, 1986 and every third year thereafter, the Muscogee (Creek) Nation shall adopt a law proposing a Three-Year Plan for funds available under Title 37, § 2-452. The law shall be submitted to the Okmulgee Agency for the U.S. Bureau of Indian Affairs. The Secretary of the Interior or his authorized representative shall have thirty (30) days to either approve the plan or to reject the plan because it is contrary to federal law: if no action is taken within thirty (30) days, the Plan shall be considered approved. The

Muscogee (Creek) Nation shall have thirty (30) days to amend the Plan to meet any requirements of federal law specified by the Secretary or his authorized representative.

[NCA 82-11, § 6, approved Feb. 2, 1982; amended NCA 85-33, § 102, approved July 2, 1985; NCA 85-58, § 102, approved Oct. 1, 1985; NCA 86-14, § 102, passed March 29, 1986 (unsigned); NCA 86-15, § 102, passed March 29, 1986 (unsigned); NCA 92-86, § 105, approved July 2, 1992.]

**§ 2-455. Authorization of expenditures**

All expenditures under any Three-Year Plan must be appropriated and authorized by a law of the Muscogee (Creek) Nation, and shall be made in strict compliance with that law, this part, and the Three-Year Plan then in effect.

[NCA 82-11, § 7, approved Feb. 2, 1982.]

**§ 2-456. Funds not expended**

Funds not expended in any fiscal year may be carried forward to any remaining year of a Three-Year Plan. Funds not expended under a Three-Year Plan may be carried forward to the next Three-Year Plan.

[NCA 82-11, § 8, approved Feb. 2, 1982.]

**§ 2-457. Jurisdiction over controversies**

All controversies arising under, pursuant to, or in conflict with any Three-Year Plan, or any law of the Muscogee (Creek) Nation implementing a Three-Year Plan, are subject to the original and exclusive jurisdiction of the Courts of the Muscogee (Creek) Nation.

[NCA 82-11, § 9, approved Feb. 2, 1982.]

**§ 2-458. Domestic assistance program matching funds**

Expenditures under any Three-Year Plan may be utilized as matching funds for federal domestic assistance programs.

[NCA 82-11, § 10, approved Feb. 2, 1982.]

**§ 2-459. Future principal amounts**

All future principal amounts of Judgment Funds of the Muscogee (Creek) Nation shall be invested under the authority of Title 37, § 2-451.

[NCA 82-11, § 11, approved Feb. 2, 1982.]

**§ 2-460. Distribution of Judgment Funds Act inapplicable**

The Distribution of Judgment Funds Act of 1973 (Pub. Law 93-134; 87 Stat., 466; 25 U.S.C. §§ 1401-1406) shall not apply to the funds of the Muscogee (Creek) Nation, except the tax exemption provisions of 25 U.S.C. § 1407.

[NCA 82-11, § 12, approved Feb. 2, 1982.]

## SUBCHAPTER 5. APPLICATIONS FOR FINANCIAL ASSISTANCE

### Section

- 2-501. Submission of applications; authorization.  
 2-502. Copies of law authorized to accompany applications for financial assistance.  
 2-503. Review of sources of funding; development and submission of applications.  
 2-504. Approval of National Council.

### Historical and Statutory Notes

NCA 92-64, §§ 101, 102, provide:

“§ 101. Findings:

“The Muscogee National Council finds that:

“A. The Muscogee Nation is eligible to receive federal funding in a number of program categories authorized by the U.S. Congress.

“B. The Muscogee Nation may be eligible to receive funding from private foundations.

“C. The Muscogee National Council has the power to legislate on such matters and is responsible for promoting the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee Nation.

“D. It would be in the best interest of the Muscogee Nation to submit Applications and proposals to various funding sources for the provision of social and economic services to Creek Citizens and to support tribal government activities.

“§ 102. Purpose.

“The purpose of this act is to authorize the Executive Branch to submit applications and proposals to various federal and private funding sources to achieve short-range and long-range tribal goals and objectives.”

NCA 91-03, §§ 100, 102, provide:

“§ 100. Findings: The National Council finds that:

“A. There is a need for legislation authorizing offices and departments within the Execu-

tive Branch to pursue additional sources of financial assistance.

“B. Financial assistance is necessary to develop and maintain provision of tribal programs and services, to stimulate economic development, to strengthen tribal government and other development purposes.

“C. Funding to support delivery of tribal programs and services is derived from an assortment of organizations including local, state and federal governments and other philanthropy organizations and foundations.

“D. As part of the application process, a funding source may require an ‘Authorizing Ordinance’ from an applicable governing body indicating support of the proposed project.

“E. Funding agency request for proposals often minimizes preparation time of proposals, allowing inadequate time to obtain an ‘Authorization’ prior to submission of deadlines.

“F. Funding sources often require applicants provide ‘In-Kind’ or ‘Matching Funds’ as part of the proposed projects budget plans.

“§ 102. Purpose

“The purpose of this ordinance is to authorize:

“(1) The Executive Branch to pursue financial assistance for program development purposes.

“(2) The preparation and submission of applications for financial assistance.”

### Cross References

Children and Family Services Administration, contracts and cooperative agreements, see Title 6, § 1-202.

### § 2-501. Submission of applications; authorization

The Executive Branch of the Muscogee (Creek) Nation is hereby authorized to submit applications and proposals to various federal and private funding sources to achieve short-range and long-range Tribal goals and objectives.

[NCA 92-64, § 103, approved April 30, 1992.]

### § 2-502. Copies of law authorized to accompany applications for financial assistance

A. NCA 91-03 shall serve as authorizing legislation for purposes of submission of applications for financial assistance.

## **Title 37, § 2-502**

## **TRIBAL GOVERNMENT**

B. Copies and/or other reproductions of NCA 91-03 are authorized to accompany applications for financial assistance, proposals, and other requests for funding to promote and advance the physical, social and economic well-being of Indian people and to strengthen the governance of the Muscogee (Creek) Nation.

[NCA 91-03, §§ 103, 104, approved April 3, 1991.]

### **§ 2-503. Review of sources of funding; development and submission of applications**

The Executive Branch is authorized to review available sources of funding, develop and submit applications for funding to carry out subsection B of Title 37, § 2-502.

[NCA 91-03, § 105, approved April 3, 1991.]

### **§ 2-504. Approval of National Council**

A. Completed proposals will be submitted to the National Council for approval prior to the submission of the grant proposal.

B. The Executive Branch is hereby directed to submit a copy of any and all applications and proposals to the National Council for their record, including budget documents.

C. The Executive Branch is hereby directed to submit a copy of any and all grant or contract awards to the National Council for their record.

D. The Executive Branch is hereby directed to include any and all grant or contract awards into the Comprehensive Tribal Budget.

E. The Executive Branch is hereby directed to include any and all grant or contract awards into the provisions of the annual audit.

F. The National Council reserves the right to reject any and/or all grant or contract awards that do not conform to the short-range or long-range goals and objectives of the Muscogee (Creek) Nation.

[NCA 91-03, § 106, approved April 3, 1991; NCA 92-64, § 104, approved April 30, 1992.]

## **SUBCHAPTER 6. AUDIT LAW**

### **Section**

- 2-601. Official title of law.
- 2-602. Definitions.
- 2-603. Frequency of audits.
- 2-604. Standards; qualifications of accountants.
- 2-605. Expenses.
- 2-606. Audit report contents.
- 2-607. Audit reports; time for completion and distribution.
- 2-608. Examination of reports; deficiencies.
- 2-609. False statements in reports; false information to auditors.
- 2-610. Tribal accounting systems and procedures.

**Cross References**

Law Enforcement Department, contracts with federal or state agencies, annual audit, see Title 16, § 4-205.

**§ 2-601. Official title of law**

This chapter shall be cited as the Muscogee (Creek) Nation Audit Law.

[NCA 88-72, § 102, veto overridden Oct. 29, 1988.]

**§ 2-602. Definitions**

A. The term “auditor” as used in this chapter means a person or partnership, or corporation who makes an audit and prepares a report thereon as provided by law of the Muscogee (Creek) Nation.

B. The term “Muscogee (Creek) Nation” as used herein shall include any agency, department, program, enterprise, authority, or any other legal entity under the jurisdiction of the Muscogee (Creek) Nation.

[NCA 88-72, § 104, veto overridden Oct. 29, 1988.]

**§ 2-603. Frequency of audits**

The Muscogee (Creek) Nation shall provide for and cause to be made an annual audit of the financial affairs and transactions of each fund under the control of the Nation for each fiscal year. Provided, all federal and state funds shall be audited in compliance with contract or grant agreements. Such audits shall be made at the end of the fiscal year; provided, however, the National Council may require that audits be made at more frequent intervals.

[NCA 88-72, § 105, veto overridden Oct. 29, 1988.]

**§ 2-604. Standards; qualifications of accountants**

The audit of each fund shall be made in accordance with generally accepted audit standards as defended by the American Institute of Certified Public Accountants. Provided, such accountant shall make an application for approval by the Council for the ensuing year on or before the first day of March for each calendar year. Each accountant shall satisfy the National Council that such accountants are licensed by a State Board of Accountants, as a Certified Public Accountant, before being placed on the list of approved auditors.

[NCA 88-72, § 106, veto overridden Oct. 29, 1988.]

**§ 2-605. Expenses**

The expenses of audits shall be paid by the Nation.

[NCA 88-72, § 107, veto overridden Oct. 29, 1988.]

**§ 2-606. Audit report contents**

Each report on audit of funds under control of the Nation shall comply with the Single Audit Act of 1984.<sup>1</sup>

[NCA 88-72, § 108, veto overridden Oct. 29, 1988.]

<sup>1</sup> 31 U.S.C.A. § 7501 et seq.

**§ 2-607. Audit reports; time for completion and distribution**

A. Each audit required by this Act shall be completed and the audit report thereon shall be submitted by the auditor to the National Council within twelve (12) months after the close of the fiscal year of the Nation.

B. The audit reports, a time for completion, and distribution shall be made according to the Single Audit Act of 1984.<sup>1</sup>

[NCA 88-72, § 109, veto overridden Oct. 29, 1988.]

<sup>1</sup> 31 U.S.C.A. § 7501 et seq.

**§ 2-608. Examination of reports; deficiencies**

The National Council shall examine all reports submitted to it and shall determine whether said reports, comply with the provisions of this chapter. If the National Council finds they have not been complied with, the National Council shall notify the Principal Chief and the auditor who submitted said report by submitting to them a statement of deficiencies. If the deficiencies are not corrected within ninety (90) day time frame from the date of the statement of deficiencies, the National Council shall require another audit to be made in the manner provided in this chapter.

[NCA 88-72, § 110, veto overridden Oct. 29, 1988.]

**§ 2-609. False statements in reports; false information to auditors**

A. In any case where an accountant has knowingly issued an audit report, required under provisions of this article, containing any false or misleading statements, the National Council shall report such violation in writing to the Judicial Branch and in the case of Certified Public Accountants, to the Oklahoma State Board of Accountancy. The National Council shall revoke their rights to perform such audits in the future.

B. Any employee who knowingly or willfully furnishes to the auditors or to employees any false or fraudulent information shall be deemed guilty of malfeasance, and upon conviction, the courts shall enter judgment that such person so convicted shall be removed from office or employment from the Nation, with the exception of the Principal Chief, who is subject to impeachment.

[NCA 88-72, § 111, veto overridden Oct. 29, 1988.]

**§ 2-610. Tribal accounting systems and procedures**

All accounting systems and procedures used by the Nation shall conform to general accounting systems and procedures for governments.

[NCA 88-72, § 112, veto overridden Oct. 29, 1988.]

**SUBCHAPTER 7. CONTROLLER**

**Section**

2-701. Declaration of policy.

2-702. Establishment of office.

2-703. Nomination and confirmation.

## **BUDGET AND FINANCE**

## **Title 37, § 2-704**

### **Section**

- 2-704. Vacancies.
- 2-705. Reports.
- 2-706. Bonding; jurisdiction over actions for breach of fiduciary duties.
- 2-707. Removal.
- 2-708. Regulations.
- 2-709. Financial statements.
- 2-710. Enforcement of access to records.
- 2-711. Disbursement of funds; collection of debts and obligations.
- 2-712. Conversion, misappropriation, etc.
- 2-713. Payment of vouchers.
- 2-714. Sovereign immunity.
- 2-715. Audits.
- 2-716. Jurisdiction.
- 2-717. Contracting and signature authority; wire transfers; establishment of accounts.
- 2-718. Cash receipts and petty cash management.
- 2-719. Salary.

### **§ 2-701. Declaration of policy**

It is the policy of the Muscogee (Creek) Nation to administer funds according to strict accounting standards, and to administer those funds through an executive officer, the Controller, accountable to the Principal Chief and to the National Council.

[NCA 88-70, § 103, approved Oct. 18, 1988.]

#### **Cross References**

Funds advanced by Bureau of Indian Affairs, expenditure by Controller, see Title 37, § 2-304.

### **§ 2-702. Establishment of office**

The Tribal Office of Controller is hereby created and established as an authority with attendant powers subordinate to the Principal Chief and the National Council under the terms of this subchapter.

[NCA 88-70, § 104, approved Oct. 18, 1988.]

### **§ 2-703. Nomination and confirmation**

A. Nominations for the Office of the Controller shall be made by the Principal Chief and confirmed by the National Council under the terms of this subchapter.

B. The Controller shall have no previous felony convictions.

[NCA 88-70, § 105, approved Oct. 18, 1988; amended by NCA 95-78, § 103, approved July 21, 1995.]

#### **Cross References**

Juvenile adjudication not to disqualify from employment or office, see Title 6, § 1-404.

### **§ 2-704. Vacancies**

All vacancies for the Office of the Controller shall be filled by commissions granted by the Principal Chief which shall expire at the end of the next meeting of the National Council and if not confirmed, the person shall not be recommis-

## **Title 37, § 2-704**

## **TRIBAL GOVERNMENT**

sioned. An Acting Controller may be appointed for not more than sixty (60) days.

[NCA 88-70, § 107, approved Oct. 18, 1988.]

### **§ 2-705. Reports**

The Controller shall report regularly to the Principal Chief, keeping the Principal Chief and the Executive Director advised fully of all financial matters, and shall report to the National Council for all financial matters, and shall report to the National Council at the Quarterly meetings to advise them fully of all financial matters and answers all questions on that subject.

[NCA 88-70, § 108, approved Oct. 18, 1988.]

### **§ 2-706. Bonding; jurisdiction over actions for breach of fiduciary duties**

The Controller and any person designated by the Controller to have purchasing or check-writing authority pursuant to Title 37, § 2-717 shall be bonded in an amount of not less than fifty thousand dollars (\$50,000). The courts of the Muscogee (Creek) Nation shall have jurisdiction over any action brought by or on behalf of the Nation against the Controller or any such person designated by the Controller pursuant to Title 37, § 2-717 for breach of his or her fiduciary duties in administering the funds of the Muscogee (Creek) Nation.

[NCA 88-70, § 109, approved Oct. 18, 1988; amended by NCA 99-76, § 104, approved July 1, 1999.]

### **§ 2-707. Removal**

The Controller shall be subject to removal by law for the following but not limited to causes as defined in NCA 81-03, § 2001.<sup>1</sup>

- A. Violation of the oath of office.
- B. Conviction, in Tribal Court, of any felony under Tribal law.
- C. Conviction, in federal court, of any felony under federal law.
- D. Conviction, in Tribal Court, of any crime of corruption of a Tribal office.
- E. Excessive absence from duties of office.

[NCA 88-70, § 110, approved Oct. 18, 1988.]

<sup>1</sup> Superseded by NCA 89-75. See Title 31, § 1-104.

### **§ 2-708. Regulations**

The Controller shall submit his regulations for the administration of funds in control of, belonging to or owed to the Muscogee (Creek) Nation, for the approval of the National Council, by December 17, 1988.

[NCA 88-70, § 111, approved Oct. 18, 1988.]

### **§ 2-709. Financial statements**

The Controller shall prepare quarterly financial statements which disclose receipts, encumbered, expended, unencumbered and cash balance, contract funds for all funds under the control of the Muscogee (Creek) Nation. This



report shall be published each fiscal quarter in the *Muscogee Nation News* with a narrative explaining the financial statement.

[NCA 88-70, § 112, approved Oct. 18, 1988; amended by NCA 89-37, § 102, approved April 6, 1989.]

**§ 2-710. Enforcement of access to records**

The enforcement of the constitutional rights of access to records of Tribal funds by Tribal citizens is delegated to the Controller and his enforcement of that constitutional right is declared justiciable in the courts of this section<sup>1</sup>.

[NCA 88-70, § 113, approved Oct. 18, 1988.]

<sup>1</sup> So in original.

**§ 2-711. Disbursement of funds; collection of debts and obligations**

The Controller shall be responsible for assuring the proper disbursement of funds in the control of, or belonging to, the Muscogee (Creek) Nation and for the prompt and timely collection of debts and obligations owed to the Muscogee (Creek) Nation. In order to carry out the responsibilities assigned to the Office of the Controller under the provisions of this subchapter, the Controller shall be and hereby is vested with all of the power and authority set forth in Title 37, § 2-717.

[NCA 88-70, § 114, approved Oct. 18, 1988; amended by NCA 99-76, § 103, approved July 1, 1999.]

**§ 2-712. Conversion, misappropriation, etc.**

Upon his discovery of any indication of conversion of funds, misappropriation of funds, improper expenditure, unallowable costs, maladministration of funds, the Controller shall:

A. Sue for the recovery of the funds in any court of this Nation or any other courts having jurisdiction over the person implicated by probable cause, or

B. Report directly to the Principal Chief and the Speaker of the Muscogee (Creek) National Council upon the nature of the financial matter and his recommendations; and/or

C. Notify appropriate authorities as required by law.

[NCA 88-70, § 115, approved Oct. 18, 1988.]

**§ 2-713. Payment of vouchers**

Upon funds appropriated by laws of the Creek Nation, the Controller shall pay the vouchers presented him by the Principal Chief, the Speaker of the National Council or the Justice of the Supreme Court for their respective branches of Government in accordance with Section 108<sup>1</sup> above.

[NCA 88-70, § 116, approved Oct. 18, 1988.]

<sup>1</sup> So in original. NCA 88-70, § 108 (Title 37, § 2-705) does not appear to be applicable.

**§ 2-714. Sovereign immunity**

The sovereign immunity of the Muscogee (Creek) Nation is not waived by this subchapter, cannot be waived by an officer under this subchapter, and shall be

## **Title 37, § 2-714**

## **TRIBAL GOVERNMENT**

respected by the Controller at all times. The Controller shall advise the National Council of the Muscogee (Creek) Nation of all known claims against the sovereign immunity of the Muscogee (Creek) Nation, and upon adoption of an law as a specific waiver of such Tribal immunity, shall pay the same in the amount direct by the law, or as provided by law.

[NCA 88-70, § 117, approved Oct. 18, 1988.]

### **United States Code Annotated**

Sovereign immunity unaffected by Indian Self-Determination and Education Assistance Act, see 25 U.S.C.A. § 450n.

## **§ 2-715. Audits**

The Controller shall engage independent audits as required by contract or by Tribal Resolution with the approval of the National Council and not less than once yearly, and shall present the audit reports to the Principal Chief, National Council, and thereafter publish a notice of availability for public inspection in the *Muscogee Nation News*.

[NCA 88-70, § 118, approved Oct. 18, 1988.]

## **§ 2-716. Jurisdiction**

This subchapter and all circumstances and events arising under, pursuant to or in conflict with this subchapter are declared within the exclusive jurisdiction of the courts of the Muscogee (Creek) Nation.

[NCA 88-70, § 119, approved Oct. 18, 1988.]

## **§ 2-717. Contracting and signature authority; wire transfers; establishment of accounts**

A. The Controller and any person(s) designated by the Controller in writing shall have the authority to contract for, purchase and/or issue and approve purchase requisitions, purchase orders and authorizations for payment for any and all goods and services for all programs, offices, divisions, departments and agencies of the Muscogee (Creek) Nation. Provided, however, any such contracts, purchases, purchase orders and authorizations for payment in excess of one hundred thousand dollars (\$100,000) must be approved in writing by the Principal Chief or by Tribal Resolution of the National Council. The Principal Chief's approval authority may be delegated by him in writing to the Executive Director or other officer of the Nation in the event the Principal Chief is absent or unavailable and therefore unable to give such written approval, provided that the delegation shall be limited to the duration of such absence or unavailability. All purchases of goods and/or services must be made in accordance with an approved budget and an appropriation by the National Council.

B. Notwithstanding any other provision of law heretofore enacted by the National Council, the Controller shall have the authority to sign or endorse any check, draft or other written instrument of payment drawn on any account of the Muscogee (Creek) Nation, provided that any such instrument shall be in payment of a valid obligation or commitment of the Muscogee (Creek) Nation made and authorized under appropriation and in accordance with the law.

Provided, further, that any such instrument in excess of fifty thousand dollars (\$50,000) shall also be signed by the Principal Chief or if the Principal Chief be absent or unavailable, then by an officer of the Muscogee (Creek) Nation designated in writing for such purpose by the Principal Chief for the duration of such absence or unavailability.

C. The Controller may delegate in writing to one or more persons employed within the Office of the Controller his authority to sign or endorse checks, drafts or other instruments of payment, provided that the check, draft or other instrument is not in excess of five thousand dollars (\$5,000) or any lesser amount specified in the written delegation. In the event of his absence or unavailability, the Controller may, for the duration of such absence or unavailability, delegate in writing his signature authority under subsection B of this section to the Second Chief or to the Executive Director, provided that any instrument of payment in excess of fifty thousand dollars (\$50,000) shall also be signed by the Principal Chief, or if the Principal Chief is also absent or unavailable, then by an officer of the Nation designated in writing for such purpose by the Principal Chief for the duration of the Principal Chief's absence or unavailability.

D. In furtherance of his or her duties to properly administer and protect the funds of the Muscogee (Creek) Nation, and always in compliance with the laws of the Nation and applicable federal laws and regulations, the Controller shall have the authority to order or direct the wire transfer of any amount of funds from any account or accounts of the Muscogee (Creek) Nation without requirement of second signature or prior approval of any other official of the Nation. In accordance with the Nation's duly adopted Indian Housing Plans, and in compliance with the provisions of NAHASDA<sup>1</sup> or other applicable federal laws and regulations regarding the administration of Indian Housing Block Grant funds, the Controller shall also have the authority to order or direct the wire transfer of Indian Housing Block Grant funds or any other HUD funds held in any account or accounts of the Muscogee (Creek) Nation and/or to the appropriate account or accounts of the Housing Authority of the Creek Nation of Oklahoma, Inc. Provided, however, with respect to wire transfers to accounts of the Housing Authority of the Creek Nation of Oklahoma, Inc., any single wire transfer of such funds exceeding two hundred fifty thousand dollars (\$250,000) or any series of wire transfers of such funds occurring within any twenty-four (24) hour period which in the aggregate exceed two hundred fifty thousand dollars (\$250,000) shall require the prior written approval by the Principal Chief or, if the Principal Chief is absent or unavailable, by the officer of the Nation designated in writing for such purposes by the Principal Chief for the duration of the Principal Chief's absence or unavailability. The Controller shall not effect wire transfers of the Nation's funds to vendors, obligees or any other entities other than the Housing Authority of the Creek Nation of Oklahoma, Inc., unless the transfer has been approved in writing by the Principal Chief prior to the transfer of funds.

E. In furtherance of the duties and responsibilities imposed upon the Office of the Controller under the provisions of this Act, the Controller shall have the authority to:

1. Establish, with the written approval of the Principal Chief, appropriate accounts for the deposit and proper management of the Nation's funds at one or more banking, investment and/or other financial institutions which the Controller determines to be sound in financial condition;

2. Execute on behalf of the Muscogee (Creek) Nation, any appropriate agreements, bank account forms and other documents necessary for establishing such accounts; the Controller shall have the authority to execute such account agreement forms and documents whether or not the forms and documents provide for arbitration of disputes between the Nation and the banking, investment, or other financial institution and whether or not the forms and documents are to be construed by and governed in accordance with laws other than the Muscogee (Creek) Nation's laws; provided there is an absence of Muscogee (Creek) Nation law applicable to banking and/or financial investments and, provided further that a copy of the agreement or document containing an arbitration clause or choice of law provision must also be executed by the Principal Chief, and provided further that a copy of the agreement or document so executed shall be forthwith delivered to the Speaker of the National Council. The National Council hereby irrevocably and expressly grants a waiver of the Muscogee (Creek) Nation's sovereign immunity from suit, with respect to specific enforcement of the arbitration clause or choice of law provision found in the bank, investment or financial institution's forms or documents only in the Muscogee (Creek) Nation District Court or in a United States District Court in Oklahoma, provided that such waiver shall not extend to disputes between the Muscogee (Creek) Nation and any person or entity other than the bank, investment or financial institution named in said forms or documents; and provided further that such waiver of sovereign immunity shall constitute the Muscogee (Creek) Nation's consent to suit by the bank, investment or financial institution for the limited purpose of collection of the Muscogee (Creek) Nation's financial obligations to the bank, investment or financial institution established under the forms or documents from the funds of the Muscogee (Creek) Nation that are not subject to restrictions by law of the Muscogee (Creek) Nation or other governmental authority, and shall not be construed as granting a waiver for the purpose of obtaining a court judgement or order requiring payment from, delivery of, or otherwise affecting any other funds or assets of the Muscogee (Creek) Nation, or any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation, or any other funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation; and provided further that nothing in this limited waiver of sovereign immunity shall be construed as allowing any award of punitive damages or exemplary damages against the Muscogee (Creek) Nation.

3. Designate the persons who shall have signature authority on such accounts with the approval of the Principal Chief and consistent with the provisions of this section.

The National Council may from time to time, enact Tribal Resolutions which may be used and submitted by the Controller as evidence of his or her authority

to establish accounts with banking, investment, or other financial institutions. Provided, however, no such Resolution shall be construed to authorize the Controller to use, expend, manage, or invest the funds placed in any such account in any manner which would be inconsistent with the provisions of this Act or contrary to applicable law.

F. The provisions of this section shall not apply to funds or accounts which, pursuant to the provisions of duly enacted laws of the National Council, are placed under the independent control of boards of authorities of the Muscogee (Creek) Nation.

[NCA 88-70, § 120, added by NCA 92-13, § 101, approved April 1, 1992; amended by NCA 99-76, § 105, approved July 1, 1999; NCA 03-127, § 1, approved July 7, 2003; NCA 08-175, § 1, approved Nov. 3, 2008.]

<sup>1</sup> Native American housing assistance and self-determination, see 25 U.S.C.A. § 4101 et seq.

**Library References**

Indians ☞142, 210, 215.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 11, 37 to 38, 57 to 59, 66 to 72.

**Code of Federal Regulations**

Native American housing assistance, see 24 CFR 1000.1 et seq.

**§ 2-718. Cash receipts and petty cash management**

The National Council hereby authorizes the Controller to maintain policies required to meet the guidelines of generally accepted accounting principles for the centralization of cash receipts and petty cash management.

[NCA 01-203, § 3, approved Nov. 9, 2001.]

**§ 2-719. Salary**

The salary of the full-time position of Controller shall be increased from the present level to ninety-five thousand dollars (\$95,000.00) annually to be funded from indirect cost at one hundred percent (100%).

[NCA 92-48, § 103, approved April 1, 1992; amended by NCA 02-096, § 1; NCA 06-056, § 5, approved May 8, 2006.]

**SUBCHAPTER 8. OFFICE OF INTERNAL  
AUDIT AND COMPLIANCE**

**Section**

- 2-801. Office of Internal Audit and Compliance.
- 2-802. Internal auditor and compliance.
- 2-803. Audits and reporting.

**§ 2-801. Office of Internal Audit and Compliance**

There is hereby created with in the Office of the Treasury an Office of Internal Audit and Compliance.

[Added by NCA 05-083, § 2, approved May 6, 2005.]

**Library References**

Indians ⇨210, 215.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–802. Internal auditor and compliance**

**A. Duties.** The Office of Internal Audit and Compliance shall perform reviews and compliance checks on all programs and enterprises operated by the Muscogee (Creek) Nation to insure compliance with all Tribal and federal, and where applicable, state laws. The Office of Internal Audit and Compliance shall provide assistance and support to the Office of the Controller in and during the engagement of independent auditors for the purpose of compliance with OMB Circular A–133, The Single Audit Act, and shall also provide technical assistance in the resolution and prevention of any disclosed findings as a result of any independent audit. For the purpose of this subchapter, Nation programs shall include any board, division, program, enterprise or entity under the jurisdiction of the Nation.

**B. Personnel.** The Office of the Controller shall be responsible for development of appropriate job descriptions for the staffing of the Office of Internal Audit and Compliance, provided that said job descriptions for the position of auditor(s) shall require no less than a Bachelors degree in Business Administration or Accounting. The Office of Internal Audit and Compliance may, as necessary, provide support and technical assistance to other auditors and law enforcement agencies of the Nation, and to the Public Accountant, whose position was created by MCNCA Title 11, Section 6–303.D.

[Added by NCA 05–083, § 2, approved May 6, 2005.]

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 2–803. Audits and reporting**

**A. Audits.** Audits and compliance reviews shall be performed on each Nation Program on an ongoing basis. Emphasis will be given to known audit findings to ensure that such findings are not recurrent. Other programs will be reviewed by random selection. Addition audits may be performed in response to requests by the Office of the Principal Chief, the National Council, or the Judicial Branch of the Muscogee (Creek) Nation.

**B. Reporting.** Reports of potential audit findings or non-compliance shall be reported to the Controller, Program Manager and the Division Director. In the event that the program or agency does not provide adequate response to such reports, the Office of Internal Audit and Compliance shall forward the report to the Office of the Principal Chief and to the Executive Director. Reports will be made available to the National Council and to the Office of the Attorney General upon request. Discovery of any potential criminal activity shall be reported immediately to the Controller, Office of Principal Chief, and to the appropriate Tribal law enforcement agency.

[Added by NCA 05–083, § 2, approved May 6, 2005.]

**BUDGET AND FINANCE**

**Title 37, § 2-803**

**Library References**

Indians ↪210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

## CHAPTER 3. EMPLOYEES

### Subchapter

1. Boards, Authorities and Courts, Employment of Members Prohibited
2. Indian Preference
3. Disclosure of Names, Grades and Compensation
4. Employees Violating Law
5. Employee Protection
6. Politically Discharged Employees
7. Drug Testing Policy
8. Drug-Free Workplace
9. Minimum Hourly Wage

### SUBCHAPTER 1. BOARDS, AUTHORITIES AND COURTS, EMPLOYMENT OF MEMBERS PROHIBITED

#### Section

- 3-101. Prohibition.  
3-102. Resignation required.  
3-103. Exemption.

#### Cross References

Election Board members, removal for violation of this subchapter, see Title 19, § 2-108.

#### § 3-101. Prohibition

Effective May 25, 1981, no citizen of the Muscogee (Creek) Nation or other person who is employed by the Muscogee (Creek) Nation, or by any board or authority of the Muscogee (Creek) Nation, or by the Creek Nation Foundation Inc. shall be appointed to any board or authority of the Muscogee (Creek) Nation, or to any court of the Muscogee (Creek) Nation, with the exception of Chartered Muscogee (Creek) Indian Communities provided that the said Chartered Indian Community adopts by way of Constitution and bylaws Title 37, § 3-102C.

[NCA 81-60, § 101, approved June 8, 1981; amended by NCA 05-006, § 3, approved Feb. 9, 2005.]

#### Library References

Indians ⇄210, 214, 222, 224.  
Judges ⇄4.  
Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 72, 180.  
C.J.S. Judges §§ 28 to 35, 38 to 39.

#### § 3-102. Resignation required

A. Any person who holds office as a member of any board, authority or court of this Nation, who shall hereafter be offered employment with the Muscogee (Creek) Nation, or with any board or authority of the Muscogee (Creek) Nation, or with the Creek Nation Foundation, Inc. with the exception of the Chartered Muscogee (Creek) Indian Communities shall be required to resign such membership prior to employment.



## EMPLOYEES

## Title 37, § 3–202

B. Resignation under subsection A of this section may be conditional upon employment, and may be effective upon the initial date of employment.

C. Any person who holds office as a member of a Chartered Muscogee (Creek) Indian Community Board shall recuse themselves from any vote in the event that a conflict of interest occurs in regard to their position of employment with the Muscogee (Creek) Nation.

[NCA 81–60, §§ 102, 103, approved June 8, 1981; amended by NCA 05–006, § 4, approved Feb. 9, 2005.]

### Library References

Indians ☞210, 222, 224.

Judges ☞10.

Westlaw Topic Nos. 209, 227.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 72, 180.

C.J.S. Judges §§ 52 to 54, 68 to 69.

### § 3–103. Exemption

This subchapter shall not apply to the Executive Director of the Muscogee (Creek) Nation in his or her membership on the Board of Directors of Creek Nation Foundation, Inc.

[NCA 81–60, § 104, approved June 8, 1981.]

## SUBCHAPTER 2. INDIAN PREFERENCE

### Section

3–201. Title.

3–202. Applicability.

3–203. Preference.

3–204. Definition.

3–205. Muscogee (Creek) preference.

3–206. Employment prior to February 28, 1981.

3–207. Penalties.

### Cross References

Buy Creek Act, procurement, see Title 32, § 1–101 et seq.

Local Hire Act, procurement, see Title 32, § 2–101 et seq.

Prosecutor, Assistant Prosecutor and Indigent Defense Attorney, preferences in selection, see Title 14, § 1–206.

### § 3–201. Title

This subchapter shall be known as the Indian Preference Law.

[NCA 81–40, § 101, approved March 2, 1981.]

### Library References

Indians ☞213, 222, 224.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

### § 3–202. Applicability

A. This subchapter shall be binding upon every executive legislative, judicial and independent agency of the Muscogee (Creek) Nation, unless prohibited by

## **Title 37, § 3–202**

## **TRIBAL GOVERNMENT**

federal law. The Principal Chief is required to regularly report federal laws limiting the ability of the Nation to employ Indian people to the National Council.

B. This subchapter shall be effective concerning all hiring, promotion and transfer of employment of the Muscogee (Creek) Nation.

[NCA 81–40, §§ 102, 105, approved March 2, 1981.]

### **Library References**

Indians ⇨213, 222, 224.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

## **§ 3–203. Preference**

The Muscogee (Creek) Nation shall prefer to employ Indians (as defined by Title 37, § 3–204) in all positions where:

A. An Indian applicant is equally or more qualified than a non-Indian applicant, or

B. An Indian applicant is capable of being trained on the job to perform the required job duties within a sixty (60) day period, or

C. A position description requires that the employee speak and/or understand the Mvskoke (Muscogee) or Yuchi language, to be familiar with the culture or government of the Muscogee (Creek) people, or other qualifications which can be met only by the employment of qualified Indian people, or

D. Unless the prior and express consent of the National Council and Principal Chief is obtained by law, in the following specified positions:

1. Executive Director
2. Director
3. Manager

[NCA 81–40, § 103, approved March 2, 1981.]

### **Library References**

Indians ⇨213, 222, 224.

Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

## **§ 3–204. Definition**

The word “Indian,” as used in this subchapter, shall mean:

A. An enrolled Muscogee (Creek) Indian.

B. An enrolled member or citizen of any federally recognized Indian tribe, nation, band pueblo, rancheria or Alaskan Native Village, whose enrollment certifies them to be one-quarter (1/4th) or more Indian by blood, unless such a person is an unenrolled Muscogee (Creek) Indian.

[NCA 81–40, § 104, approved March 2, 1981.]

## **§ 3–205. Muscogee (Creek) preference**

In all personnel decisions involving hiring, promotion, and/or reduction in force, a preference shall be required for the employment of enrolled Muscogee

## EMPLOYEES

## Title 37, § 3-301

(Creek) Indians by blood whenever such persons are equally qualified with other applicants or personnel.

[NCA 81-40, § 104, approved March 2, 1981; amended by NCA 81-72, § 101, approved June 27, 1981.]

### Library References

Indians ☞213, 222, 224.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

### § 3-206. Employment prior to February 28, 1981

This subchapter shall not require the discharge of any person or persons who were employed by the Muscogee (Creek) Nation prior to February 28, 1981. [NCA 81-40, § 106, approved March 2, 1981.]

### Library References

Indians ☞213, 222, 224.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

### § 3-207. Penalties

Any hiring, promotion, transfer, salary increase or wage adjustment granted by the Muscogee (Creek) Nation which is contrary to the terms of this subchapter shall be construed as a separate violation for each such action granted. Each separate violation of this subchapter shall require immediate dismissal of the unqualified employee, and shall subject all approving administrative personnel to a maximum penalty of two hundred dollars (\$200.00) as determined by the Courts of the Muscogee (Creek) Nation.

[NCA 81-40, § 108, approved March 2, 1981.]

### Library References

Indians ☞213, 222, 224.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 32 to 35, 59 to 62, 67, 180.

## SUBCHAPTER 3. DISCLOSURE OF NAMES, GRADES AND COMPENSATION

### Section

3-301. Information to be provided.

### § 3-301. Information to be provided

Within ten (10) days of February 25, 1989 and on July 31 each year thereafter the Principal Chief shall submit to the National Council the following information:

A. A list of all Tribal positions and the names, grades and step levels of persons in those positions. Such list shall be published in the *Muscogee Nation News*.

B. A list of all Tribal positions and the compensation being paid for those positions. This shall include salaries, wages, stipends or any other compensation that is paid to any person under the jurisdiction of the Muscogee (Creek) Nation.

[NCA 89-07, § 102, veto overridden Feb. 25, 1989.]

**Library References**

Indians ☞210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**SUBCHAPTER 4. EMPLOYEES VIOLATING LAW**

**Section**

3-401. Violation of Constitution or law.

**§ 3-401. Violation of Constitution or law**

Any Creek Nation employee who violates the Creek Nation Constitution or any Creek Nation Tribal law is subject to termination from Creek Nation employment.

[NCA 88-73, § 102, veto overridden Jan. 28, 1989.]

**Library References**

Indians ☞214, 224.  
Westlaw Topic No. 209.  
C.J.S. Indians § 59.

**SUBCHAPTER 5. EMPLOYEE PROTECTION**

**Section**

- 3-501. Definitions.
- 3-502. Other employee rights.
- 3-503. Prohibited acts.
- 3-504. Bad faith on part of employee.
- 3-505. Employee at will doctrine not impliedly abolished.
- 3-506. Notification of employees.
- 3-507. Procedures for filing application for review of adverse employment action.
- 3-508. Investigation and conference procedures.
- 3-509. Request for hearing.
- 3-510. Formal adjudicatory proceedings.
- 3-511. Appeal of adjudicatory proceedings.
- 3-512. Employee Protection Commission.
- 3-513. Powers and duties of Commission.

**Historical and Statutory Notes**

NCA 95-07, § 101, provides: “Findings: “The National Council Finds That: “A. The Muscogee (Creek) National Council finds that it is in the interest of the citizens of	the Muscogee (Creek) Nation (hereinafter “Nation”) that illegal, unethical, dishonest, or improper conduct by any branch, agency, or department of the Nation; or by any person within such branch, agency, or department; or by any person hired to perform services for
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any such branch, agency, or department, be prevented.

“B. The Muscogee (Creek) National Council finds that the efficiency and effectiveness of operation of the Nation, its branches, agencies, and departments, is maximized by the elimination therein of all such illegal, unethical, dishonest, or improper conduct.

“C. The Muscogee (Creek) National Council believes that one primary interest of any government or governmental branch, agency, or department should be that it have credibility and

good standing both with its own citizens and those who are citizens and officials of other governments; and that such credibility and good standing are materially advanced when steps are taken to eliminate illegal, unethical, dishonest, or improper conduct.

“D. That an important component of the elimination of illegal, unethical, dishonest, or improper conduct within government is the ability of government personnel to report such conduct to the proper channels without fear of retaliation or reprisal.”

**§ 3-501. Definitions**

A. “Adverse employment action” shall be interpreted to include discharge or termination, whether actual or constructive; suspension, whether with or without pay; transfer; demotion; denial or reduction in wages or benefits; interference with the exercise of any right provided by this subchapter or any other statute of the Muscogee (Creek) Nation; or any act which otherwise adversely impacts an Employee’s compensation, terms, conditions, or privileges of employment. This shall also be interpreted to include threats of such actions, and offers of bribes to do or not do particular actions. It shall also refer to omissions, where the natural and probable result of such omission is an adverse impact upon the employee’s compensation, terms, conditions, or privileges of employment.

B. “Direct cause” of an act or omission shall be interpreted to mean that the act or omission would not have occurred but for the cause in question.

C. “Employee” shall be interpreted to include, without limitation, all officers (with the exception of elected officials) and employees of the Muscogee (Creek) Nation; all managers and employees of chartered communities, Muscogee (Creek) Nation bingo halls and smoke shops; and officers and employees of all Muscogee (Creek) Nation governmental agencies, branches, boards, committees, entities or related subdivisions, including the Creek Nation Foundation and employees of the Creek Nation Housing Authority, and thereof, whether now in existence or to exist in the future. The Creek Nation Housing Authority Office of Personnel shall implement this subchapter under the direction of the Creek Nation Personnel Office.

D. “Illegal motive” shall be interpreted to include the following:

1. An intention to retaliate or take reprisal against an employee for providing information or inducing another to provide information to the office of the Attorney General of the Muscogee (Creek) Nation, regarding any possible illegal, unethical, dishonest, or improper conduct by any other employee;

2. An intention to retaliate or take reprisal against an employee for providing information or inducing another to provide information to the office of the Attorney General of the Muscogee (Creek) Nation, regarding any adverse actions which have been taken in reprisal or retaliation for any action protected under this subchapter; or

## **Title 37, § 3-501**

## **TRIBAL GOVERNMENT**

3. An intention to interfere with an employee's exercise of any other right granted by this subchapter, or by any other statute of the Muscogee (Creek) Nation, whether present or future.

[NCA 95-07, § 102, eff. Feb. 13, 1995 (unsigned); amended by NCA 95-92, § 102, eff. Sept. 10, 1995 (unsigned); NCA 95-93, § 102, eff. Sept. 10, 1995 (unsigned).]

### **Library References**

Indians ☞224.  
Westlaw Topic No. 209.

### **§ 3-502. Other employee rights**

In addition to the employee rights provided by Title 37, § 3-501, employees shall have the following rights pursuant to this subchapter:

A. The right to call any illegal, unethical, dishonest, or improper acts of another employee to the attention of a supervisor;

B. The right to call any dangerous working condition to the attention of a supervisor, or to request an inspection of a dangerous working condition: provided, that this subsection shall not be construed to require such an inspection to be automatically granted upon request;

C. Making statements or testifying, or agreeing to do so voluntarily or in response to a subpoena, in any informal or formal adjudicatory proceeding, informal conference proceeding, rulemaking proceeding, investigation or inspection by a governmental agency or body of the Muscogee (Creek) Nation, or judicial proceeding; or

D. Exercising rights granted under this subchapter on behalf of another employee.

[NCA 95-07, § 103, eff. Feb. 13, 1995 (unsigned).]

### **Library References**

Indians ☞224.  
Westlaw Topic No. 209.

### **§ 3-503. Prohibited acts**

It shall be unlawful, and redressable as hereafter provided in this subchapter, for any employee to take any adverse employment action with regard to another employee, the direct cause of which is an illegal motive on the part of the actor.

[NCA 95-07, § 104, eff. Feb. 13, 1995 (unsigned).]

### **Library References**

Indians ☞224.  
Westlaw Topic No. 209.

### **§ 3-504. Bad faith on part of employee**

Nothing in this subchapter shall be construed to protect any action taken involving deliberate falsehoods on the part of an employee.

[NCA 95-07, § 105, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ↻224.  
Westlaw Topic No. 209.

**§ 3-505. Employee at will doctrine not impliedly abolished**

Nothing in this subchapter shall be construed to abolish the “employment at will doctrine” for employees affected thereunder, except as specifically provided by this subchapter.

[NCA 95-07, § 106, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ↻224.  
Westlaw Topic No. 209.

**§ 3-506. Notification of employees**

Within thirty (30) days of the effective date of this subchapter, the Muscogee (Creek) Nation Employee Protection Commission shall furnish copies of this subchapter to all employers, supervisors, departments, agencies, and divisions which are subject to this subchapter. Said employers, supervisors, departments, agencies, and divisions shall immediately notify all employees under their authority of the passage and general nature of this subchapter, and shall make available a copy thereof for review by each employee. In addition, all new employees shall receive, at the time of hiring, a copy of this subchapter.

[NCA 95-07, § 107, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ↻224.  
Westlaw Topic No. 209.

**§ 3-507. Procedures for filing application for review of adverse employment action**

**A. Who may file.** Any employee, or any authorized representative of employees, who believes that he/she has been the subject of any action prohibited by Title 37, § 3-503 may file an application for review of the complained-of act or omission. For purposes of these regulations, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he/she has been discriminated against and the facts surrounding the alleged discrimination.

**B. Where to file.** The employee or representative may file the application for review at the Office of Personnel, which shall maintain a log of all filings.

**C. Time for filing.** The employee or representative shall file an application for review within thirty (30) days after the alleged discrimination occurs. An application is considered filed:

1. On the date delivered if delivered in person to the Office of Personnel, or
2. On the date mailed to the Office of Personnel.

**D. Running of the time of filing.** The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

[NCA 95-07, § 108, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ☞224, 430.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-508. Investigation and conference procedures**

A. Within seven (7) days after receipt of any application for review, the Office of Personnel shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Muscogee (Creek) Nation Tribal Court, and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The alleged discriminating person may file a response to the application for review within ten (10) days after he/she receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he/she shall so state.

B. The Office of Personnel shall initiate an investigation of the alleged discrimination within thirty (30) days after receipt of the application for review. The Office shall complete the investigation within sixty (60) days of the date of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

C. Within seven (7) days after completion of the investigation the Office shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate or resolve the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee, and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

D. Following the investigation and any informal conference held, the Office shall complete a written report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.

[NCA 95-07, § 109, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ☞224, 411, 430.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-509. Request for hearing**

A. If the Office determines that a violation of this subchapter has occurred and was not resolved at an informal conference, the Personnel Director shall



request a hearing on the employee's behalf before the MCN Employment Security Commission within ten (10) days of the scheduled informal conference. The parties shall be notified of the determination. If the Personnel Director declines to request a hearing, the employee shall be notified within ten (10) days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.

B. The employee may request a hearing with the MCN Employment Security Commission after sixty (60) days have elapsed from the filing of his/her application.

[NCA 95-07, § 110, eff. Feb. 13, 1995 (unsigned).]

#### Library References

Indians Ⓒ224, 418.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

### § 3-510. Formal adjudicatory proceedings

A. Formal adjudication of a complaint filed under this subchapter shall be conducted in the District Court Room of the Muscogee (Creek) Nation by the Employment Security Commission.

B. A hearing shall be held as promptly as possible consistent with opportunity for discovery provided for under the MCN Rules of Civil Procedure.

C. 1. Upon a finding of a violation under Title 37, § 3-503, the MCN Employment Security Commission shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his/her former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings shall be assessed against the person committing the violation. Additionally, any person found by the Muscogee (Creek) Nation Employment Security Commission to have violated the provisions of this subchapter, shall forfeit his/her position and be ineligible for appointment to or employment in a position covered by this subchapter for a period not to exceed five (5) years.

2. Upon a finding that there has been no violation under Title 37, § 3-503, the MCN Employment Commission shall order that a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee charged with having committed the violation, for or in connection with, the defense of such charges, shall be assessed against the person filing the complaint. All time spent in the defense by the person charged with the violation, but not found to be in violation of this subchapter, shall be reinstated to the employee.

D. Any person filing an application for review under this subchapter shall do so on his/her own personal time, either on annual leave or leave without pay; nor can the employee utilize his/her office equipment or staff to assist in any part of the preparation for filing an application for review. If the Court rules in favor of the employee filing the application, he/she shall be reinstated

their time which was required for the filing and preparation of the application for review.

[NCA 95-07, § 111, eff. Feb. 13, 1995 (unsigned); amended by NCA 95-93, §§ 103, 104, eff. Sept. 10, 1995 (unsigned).]

**Library References**

Indians ☞224, 418, 422.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-511. Appeal of adjudicatory proceedings**

The decision of the Commission may be appealed by any party by the filing of a verified petition in a District Court of the Muscogee (Creek) Nation.

[NCA 95-07, § 112, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ☞224, 433, 434.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**§ 3-512. Employee Protection Commission**

There is hereby created an agency of the Muscogee (Creek) Nation, which shall be called the Muscogee (Creek) Nation Employee Protection Commission (hereinafter "Commission"). There shall be three (3) positions for members of the Commission. One (1) member shall be the Principal Chief's designee; one (1) member shall be a designee of the Supreme Court, selected by the Justices of that Court; the Speaker of the National Council's designee.

[NCA 95-07, § 113, eff. Feb. 13, 1995 (unsigned).]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-513. Powers and duties of Commission**

The Commission shall have the following powers and duties:

A. To receive, review, investigate, and act upon complaints by employees of adverse employment actions which are alleged to violate Title 37, § 3-503;

B. To hold informal meetings in order to resolve the matter by means of a conciliation agreement, and to take actions necessary to enforce the same;

C. To hold formal hearings when necessary under the provisions of this subchapter, for the adjudication of claims of violations of this subchapter;

D. To enter orders for appropriate relief, or to deny relief, when justified by the law and evidence;

E. To take actions, including but not limited to filing suit in the District Court of the Muscogee (Creek) Nation, to enforce its own orders and adjudications; and

F. To formulate and adopt rules and regulations, and to take any other action, not inconsistent with this subchapter or any statute of the Muscogee (Creek) Nation, which is necessary and proper in aiding the Commission in carrying out its duties and exercising its powers conferred herein.

G. To hire a recording secretary whose compensation shall be forty-five dollars (\$45) a meeting. The Secretary shall not be an employee of the Muscogee (Creek) Nation. The Secretary shall provide the equipment necessary for the recording/transcribing of minutes of the Commission meetings. [NCA 95-07, § 114, eff. Feb. 13, 1995 (unsigned); amended by NCA 95-131, § 102, approved Oct. 31, 1995.]

**Cross References**

Budget, Employee Protection Commission, Recording Secretary compensation, see Title 37, § 2-111.

**Library References**

Indians ☞224, 418, 422.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 151 to 179.

**SUBCHAPTER 6. POLITICALLY DISCHARGED EMPLOYEES**

**Section**

3-601. Right of action.  
3-602. Court hearing; reinstatement.

**§ 3-601. Right of action**

Any employee who is discharged or removed from office for the following reasons:

- A. Refusal to contribute any money or thing of value to a political candidate, whether directly or indirectly, or
- B. Refusal to be active or participate in any political contest or any election in the Muscogee (Creek) Nation, or
- C. Refusal to use Muscogee (Creek) Nation equipment or supplies in support of a candidate in any political contest or election

Shall be entitled to bring a suit in the District Court of the Muscogee (Creek) Nation for reinstatement.

[NCA 91-78, § 101, veto overridden Oct. 19, 1991.]

**Library References**

Indians ☞213, 224, 507, 533.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59 to 61, 151 to 179.

**§ 3-602. Court hearing; reinstatement**

The District Court shall hear a discharged employee's complaint and if the court finds the discharged employee was discharged for refusing to contribute

to or participate in a political campaign for any candidate for public office, the court shall order the discharged employee reinstated to his former position of employment.

[NCA 91-78, § 102, veto overridden Oct. 19, 1991.]

**Library References**

Indians ☞213, 224, 518, 533.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59 to 61, 151 to 179.

**SUBCHAPTER 7. DRUG TESTING POLICY**

**Section**

- 3-701. Drug policy defined.
- 3-702. Definitions.
- 3-703. Notice of drug convictions.
- 3-704. Drug testing of Muscogee (Creek) Nation employees.
- 3-705. Reasonable individualized suspicion.
- 3-706. Notification of employee.
- 3-707. Testing procedure.
- 3-708. No protection from law enforcement agencies.
- 3-709. Method of analysis.
- 3-710. Sample collected for employee to challenge test results.
- 3-711. Grievances.
- 3-712. Attempting to supply “clean” urine sample or tampering with urine sample.
- 3-713. Refusal to submit to drug testing.
- 3-714. Privacy of drug testing results.
- 3-715. Use by Nation of drug testing results.
- 3-716. Searches.
- 3-717. Administrative procedures.

**Cross References**

Drug offenses, see Title 14, § 2-701 et seq.

**§ 3-701. Drug policy defined**

It is the policy of the Muscogee (Creek) Nation that the consumption of illegal drugs and the abuse of legal drugs while in the work place and intoxication by illegal drugs and the abuse of legal drugs when at work represent a violation of the law and may also represent a threat to personal and public safety and property. Abuse and use of such substances can grossly diminish the productivity and reliability of employees thereby violating a public trust placed in public employees. Therefore, such behavior shall not be tolerated and the Muscogee (Creek) Nation will administer a program to educate employees about the hazards of drug usage and to eliminate drug usage amount by employees.

[NCA 93-42, § 101, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3–702. Definitions**

A. Illegal drugs or intoxicating substances are those classified or scheduled drugs for which a criminal penalty can be incurred for use, sale or distribution. Ingesting legal substances as inhalants, propellants, or volatile substances, for their intoxicating effects is included.

B. Legal drugs can include alcohol plus prescription medication which has not been prescribed for the employee, or has not been prescribed for the amount obtained by the employee, or is not being used at the dosage prescribed for the employee and has an intoxicating and/or potentially addicting effect. [NCA 93–42, § 101, approved July 12, 1993.]

**§ 3–703. Notice of drug convictions**

It shall be required as a condition of employment that an employee will notify their Department Head in writing of any criminal drug statute conviction, no later than five (5) days after such conviction.

[NCA 93–42, § 101, approved July 12, 1993.]

**Library References**

Indians ⇄224.  
Westlaw Topic No. 209.

**§ 3–704. Drug testing of Muscogee (Creek) Nation employees**

Drug tests by urinalysis test for the purpose of detecting the use of illegal classified or scheduled drugs and the abuse of legal drugs by any classified, appointed, temporary or law enforcement employee is deemed as reasonable and within policy when there is reasonable individualized suspicion of drug use.

[NCA 93–42, § 102, approved July 12, 1993.]

**Library References**

Indians ⇄224.  
Westlaw Topic No. 209.

**§ 3–705. Reasonable individualized suspicion**

Drug tests may be administered to Muscogee (Creek) Nation employees by urinalysis test and results used as a basis for disciplinary action when there is reasonable individualized suspicion of intoxication by legal or illegal drugs based on:

- A. Odors or other direct physical signs of legal or illegal drug use immediately perceivable by the senses, or
- B. Physical presence of legal or illegal intoxicating substances or containers or paraphernalia commonly associated with the use of such substances, or
- C. Direct witnessing of the consumption of intoxicating substances, or
- D. Marked changes in an employee’s behavior such as extreme excitability, strong and inappropriate feelings of euphoria, or uncontrollable drowsiness or inattention, or

E. Suspicion that such drug use has occurred or is ongoing. Testing for drug use based on suspicion yet not based on direct and immediate physical or behavioral evidence, must only be conducted when there is sufficient confidence in the information leading to such suspicion.

[NCA 93-42, § 102, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-706. Notification of employee**

Any Muscogee (Creek) Nation employee must be informed of the possibility that they could undergo drug tests by urinalysis test for illegal classified or scheduled drugs and legal drugs before any such urinalysis test may actually be conducted. See Exhibit A, attached hereto.

**Exhibit A.**

**Sample Letter**

**NOTICE TO EMPLOYEE SUBJECT TO [REASONABLE SUSPICION]**

**TESTING FOR ILLEGAL DRUGS**

[Date]

Subject: Notice of Reasonable Suspicion Testing for Illegal Drugs From:

[Supervisor/Management Official]

To: [Employee]

It has been determined by [agency/special district] officials that sufficient grounds exist to authorize collection of a urine specimen from you on the basis of reasonable suspicion. Collection procedures under reasonable suspicion testing will require you to provide a specimen under direct observation.

[NOTE: The supervisor/management official MUST provide a separate statement describing all relevant circumstances which formed the basis for the decision to conduct reasonable suspicion drug testing.]

Drug testing for the [agency/special district] is performed through urinalysis by [an independently contract laboratory certified by the Department of Defense]. The testing methodology reflects the scientific and technical procedures necessary to assure the results are highly reliable and accurate. These procedures will include an initial screen of the urine sample and if the results are positive, the test will be confirmed by another method. You will be given an opportunity to list all prescription and over-the-counter drugs that could affect the outcome of the drug test and which may be identified through the confirmation process.

To assure that the sample collected from you is not confused with any other sample, strict procedures will be used when collecting, transferring, and testing the specimen. The total of these procedures is known as the chain of custody. The test results from your sample will be handled with maximum respect for individual confidentiality consistent with safety and security.

If it has been determined that you are using illegal drugs, you will be subject to disciplinary measures, including termination.

Refusal to submit to testing or failure to cooperate with the collection procedures will be grounds for disciplinary action.

If you have other questions, please contact [appropriate individual].

[NCA 93–42, § 103 and Exhibit A, approved July 12, 1993.]

#### **Library References**

Indians ☞224.

Westlaw Topic No. 209.

### **§ 3–707. Testing procedure**

A. When urinalysis or blood test is to be conducted for reasonable individualized suspicion, the supervisor in charge will advise the employee that the employee is suspected of being under the influence of intoxicants. The supervisor will advise the employee that if such intoxication is confirmed, that the employee may be dismissed. The supervisor shall notify their higher level supervisor that an employee is being asked to submit to a drug test.

B. If the employee is ambulatory, the employee's supervisor will transport the employee to the Medical Division where a urinalysis test will be conducted. The exempt supervisor will witness the consent form and supply a written statement outlining the reasons for requesting the drug tests.

C. 1. If the urinalysis test results are determined to be positive and if the employee is a current participant in the Employee Assistance Program (EAP) for substance abuse, the employee may be suspended, demoted, or terminated following a pre-action or pre-termination hearing.

2. If the employee is not a participant of the EAP and work rules were violated in conjunction with a positive drug test, the employee shall be subject to dismissal following a pre-termination hearing.

3. If the employee is not a participant of the EAP and had a positive drug test, but did not break other work rules, the appointing authority may suspend, demote, or dismiss the employee following a pre-action of pre-termination hearing.

4. Additional factors that shall be considered when determining the disciplinary action shall be the responsibilities of the position, the dangers which the drug use or intoxication presented, and the past work history of the employee.

5. Continued employment shall be contingent upon the employee agreeing in writing to undergo periodic drug testing for two (2) years and satisfactorily participating in the Employee Assistance Program.

D. If substances were detected in the urinalysis test which were allegedly prescribed for the employee, the employee has twenty-four (24) hours after learning of the results of the urinalysis test to produce a valid prescription. Employees who cannot produce a valid prescription will be subject to disciplinary action. The decision to suspend, demote, or dismiss will be based on criteria set out in the above policy sections.

E. The exempt supervisor shall be responsible to make a reasonable effort to insure the employee is safely transported to their place of residence after testing for drug use has been completed.

F. If an employee is not conscious, the situation will be considered a medical emergency. The physician will take whatever actions are deemed necessary, within the scope of professional judgment, to adequately respond to the emergency.

[NCA 93-42, § 104, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-708. No protection from law enforcement agencies**

No section of this policy is to be interpreted as protecting Muscogee (Creek) Nation employees from law enforcement agencies or agents wishing to apprehend or investigate Muscogee (Creek) Nation employees for the use, sale, or distribution of an illegal controlled or scheduled substance as a part of a bona fide criminal investigation.

[NCA 93-42, § 105, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-709. Method of analysis**

Evidence of drug use will only be considered as valid when both presumptive and confirmatory analysis methods are used.

[NCA 93-42, § 106, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-710. Sample collected for employee to challenge test results**

Employees wishing to receive urine or blood tests which could be used to challenge the results of drug test urinalysis must:

- A. Do so at their own expense;
- B. Allow the physician to draw or witness the sample;
- C. Have the sample drawn or witnessed within one (1) hour from the time at which the urine or blood was collected;
- D. Arrange for a reputable laboratory of their choosing to collect the sample directly from the office of the physician for analysis.

[NCA 93-42, § 107, approved July 12, 1993.]



**Library References**

Indians ⇌224.  
Westlaw Topic No. 209.

**§ 3-711. Grievances**

Grievances arising from implementation of this drug testing policy will be handled through the Muscogee (Creek) Nation Policies and Procedures grievance procedure.

[NCA 93-42, § 107, approved July 12, 1993.]

**Library References**

Indians ⇌224.  
Westlaw Topic No. 209.

**§ 3-712. Attempting to supply “clean” urine sample or tampering with urine sample**

Employees found supplying or attempting to supply a “clean” urine sample, not their own, by whatever means, shall be subject to dismissal. Employees tampering with their urine sample through the introduction of chemical substances shall be subject to dismissal.

[NCA 93-42, § 108, approved July 12, 1993.]

**Library References**

Indians ⇌224.  
Westlaw Topic No. 209.

**§ 3-713. Refusal to submit to drug testing**

If reasonable individualized suspicion exists, an employee’s refusal to sign the consent form, or to submit to drug testing when requested, shall be subject to disciplinary action that may include dismissal.

[NCA 93-42, § 109, approved July 12, 1993.]

**Library References**

Indians ⇌224.  
Westlaw Topic No. 209.

**§ 3-714. Privacy of drug testing results**

Employees required to submit to a drug test urinalysis or test shall be afforded a certain degree of privacy. Only the physician, the departmental appointing authority, and the Personnel Director or designee are to be made aware of the results. Urinalysis or blood test results will not be placed in the employee’s personnel file. The results will be stored at the medical division and will be purged under authority of the physician every ten (10) years.

[NCA 93-42, § 109, approved July 12, 1993.]

**Library References**

Indians ⇌224.  
Westlaw Topic No. 209.

**§ 3-715. Use by Nation of drug testing results**

Drug screen urinalysis or blood test results may be used by the Muscogee (Creek) Nation for evidential purposes, to support cause for the discharge, demotion, or suspension of employees; or to demonstrate that a Muscogee (Creek) Nation employee was acting in a responsible manner when the action of the employee has been made the subject of litigation.

[NCA 93-42, § 109, approved July 12, 1993.]

**Library References**

Indians Ⓒ224.  
Westlaw Topic No. 209.

**§ 3-716. Searches**

Equipment and supplies owned by the Muscogee (Creek) Nation and used by employees may be searched for drugs upon reasonable individualized suspicion that drugs will be found in particular equipment or supplies. The personal effects of employees may only be searched as a part of a bona fide criminal investigation which could lead to the arrest of the employee.

[NCA 93-42, § 109, approved July 12, 1993.]

**Library References**

Indians Ⓒ224. C.J.S. Searches and Seizures §§ 17, 20 to 24,  
Searches and Seizures Ⓒ25, 40. 27, 29 to 30, 34 to 41, 43, 45 to 50, 56, 58  
Westlaw Topic Nos. 209, 349. to 67, 69, 79, 81 to 82, 84 to 85, 130.

**§ 3-717. Administrative procedures**

Department heads are responsible for establishing and communicating their administrative procedures that clearly state probable departmental actions where drug use has been confirmed.

[NCA 93-42, § 109, approved July 12, 1993.]

**SUBCHAPTER 8. DRUG-FREE WORKPLACE**

**Section**

- 3-801. Definitions.
- 3-802. Policy.
- 3-803. Procedures.
- 3-804. Suspensions and disciplinary actions.
- 3-805. External sanctions.
- 3-806. Counseling and rehabilitation sources; Employee Assistance Program.
- 3-807. Health risks.
- 3-808. Investigations.
- 3-809. Off-the-job drug use.
- 3-810. Prescribed medical treatment.
- 3-811. Alcohol use.
- 3-812. Drug testing.

**Historical and Statutory Notes**

NCA 93-107, §§ 101, 102, provide: “§ 101. Findings:

“The National Council finds that:

“The drug free work place act of 1988, 34 CFR, Part 85, subpart F, requires certification regarding a drug-free work place. The regulations published January 31, 1989, *Federal Register*, requires certification by grantee, prior to award, that they will maintain a drug free work place.

“§ 102. Purpose and Scope:

“A. The Muscogee (Creek) Nation is committed to providing a safe and healthy work environment for its members and reliable services to the impact on the tribe and have the potential

to affect an individuals ability to perform work in an efficient and productive manner. A basic objective of the tribe is to maintain a work environment free from the effects of drugs or alcohol abuse or misuse.

“B. The Drug-Free Workplace Act passed by Congress in 1988 [see 41 U.S.C.A. § 701 et seq.] requires federal contractors and grantees to certify to the contracting or granting agency that they will provide a drug-free workplace. This policy is adopted in order to comply with this statutory directive.”

#### Cross References

Budget, drug-free workplace, see Title 37, § 2–108.

Drug offenses, see Title 14, § 2–701 et seq.

### § 3–801. Definitions

**A. Controlled substance**—Cocaine, marijuana, opiates, amphetamines and any other substance designated a “controlled substance” in schedules I through V of Section 202 of the Controlled Substances Act (231 U.S.C. § 812). Except peyote—when used by Native American church members of one-quarter (1/4) blood or more off the job for ceremonial purpose where peyote is a sacrament or aid to worship.

**B. Conviction**—A finding of guilt (including judicial acceptance of a plea of nolo contendens) or imposition of a sentence, or both, by a judicial body determining violations of federal or non-federal criminal drug statutes.

**C. Criminal drug statute**—A federal or non-federal criminal statute involving the manufacture, distribution, dispensation, use or possession of any controlled substance.

**D. Employee**—Shall include all administrative and professional staff, classified, staff, student trainees, management personnel of the Muscogee (Creek) Nation and any independent agency, or division of the Nation.

**E. Illegal drug**—Drugs which are illegal under federal, state, or local laws include, but are not limited to marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited physician.

**F. Project director**—The individual having administrative supervision over a project resulting from a federal grant or contract.

**G. Workplace**—Muscogee (Creek) Nation owned or controlled property or the site for performance of work.

[NCA 93–107, §§ 103, 111, approved July 12, 1993.]

#### Library References

Indians ⇄224.

Westlaw Topic No. 209.

### § 3–802. Policy

In support of this anti-drug abuse legislation, it is the policy of Muscogee (Creek) Nation to establish and maintain appropriate compliance by:

## Title 37, § 3-802

## TRIBAL GOVERNMENT

A. Publishing and distributing to all employees a written statement regarding this controlled substance prohibition in the workplace, with descriptions of disciplinary actions which may be taken against employees for violation of such prohibition. See Appendix A, following Title 37, § 3-812.

B. Establishing a drug-free awareness program.

C. Notifying the contracting or granting agency within ten (10) days of receiving notice of an employee's criminal drug statute conviction for a violation occurring in the workplace.

D. Imposing appropriate administrative disciplinary action on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted or who has otherwise violated this policy.

E. Making a good-faith continuous effort to maintain a drug-free workplace through the implementation of the requirements set forth in the Drug-Free Workplace Act.<sup>1</sup>

F. Prohibiting the use, possession, manufacture, distribution or dispensation of any illegal drug, narcotic, or controlled substance while on the job or Tribal property.

[NCA 93-107, § 104, approved July 12, 1993.]

<sup>1</sup> 41 U.S.C.A. § 701 et seq.

### Library References

Indians ⇄224.

Westlaw Topic No. 209.

## § 3-803. Procedures

A. A copy of the written statement in Appendix A (following Title 37, § 3-812), regarding the controlled substance prohibition in the workplace, shall be disseminated to all current employees, posted in the workplace of each department of the Nation and given to each new employee.

B. The project director will have the responsibility of explaining this policy to employees working on a federal contract/grant.

C. An employee shall notify the project director or, in the absence of a project director, his/her immediate supervisor or other supervisory administrator, of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

D. The project director shall notify the Department of Grants and Contracts Administration (GCA) of an employee's criminal drug statute conviction for a violation occurring in the workplace. The GCA shall notify the federal contracting or granting agency of such conviction within ten (10) days of the notice under subsection C of this section or otherwise receiving actual notice of such conviction. The project director's notification shall be made in a timely manner so that GCA may comply with the time requirement set forth herein.

[NCA 93-107, § 105, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3–804. Suspensions and disciplinary actions**

A. An employee found at any time to have violated the drug-free workplace policy may be disciplined by Muscogee (Creek) Nation even when the violation has not resulted in a criminal conviction. Employees may also be temporarily suspended if such is deemed necessary to protect the best interest and safety of the Tribe, its components and participants. Further, employees alleged to have violated this prohibition shall be subject to disciplinary action including, but not limited to, expulsion, termination of employment, referral for prosecution, and/or completion, at the individual's expense, of an appropriate rehabilitation program. As an alternative to disciplinary action, the Muscogee (Creek) Nation may require satisfactory participation in a drug abuse assistance or rehabilitation program as a condition to continued employment. The drug abuse assistance/rehabilitation program shall be one that has been previously approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency.

B. In determining whether a violation of the drug-free workplace policy has occurred and the disciplinary action to be imposed as a result of such violation, relevant provisions of the Employee Handbook shall be followed insofar as employees are concerned, and the relevant Policy and Procedures Letter(s) shall be followed insofar as staff employees are concerned.

C. One of the actions set forth in subsection A of this section (i.e., discipline or satisfactory participation in a drug abuse assistance/rehabilitation program) shall be taken within thirty (30) days of receiving notice from an employee of a conviction as provided for in subsection C of Title 37, § 3–803.

D. Failure of an employee to report his/her criminal drug statute conviction for a violation in the workplace within five (5) days of the conviction is grounds for dismissal of that employee.

E. For staff employees, appropriate and established leave policies will be followed or the purposes of such treatment and rehabilitation.

F. Where necessary because of conviction and incarceration, decisions relative to suspension or dismissal or the granting of leave for treatment will be determined individually.

[NCA 93–107, § 106, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3–805. External sanctions**

Federal law provide for a variety of legal sanctions for the unlawful possession and distribution of illicit drugs. These sanctions include, but are not limited to incarceration and monetary fines.

[NCA 93–107, § 107, approved July 12, 1993.]

## Library References

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-806. Counseling and rehabilitation sources; Employee Assistance Program**

A. The Muscogee (Creek) Nation Employee Assistance Program operated by the Personnel Services Office may be contacted for preliminary counsel and advice regarding chemical dependency problems and referral to approved chemical dependence treatment agencies.

B. There are several programs in the community or nearby that provide rehabilitation and counseling assistance to drug victims. Employees may obtain a listing of these programs from the Personnel Services Office. Seeking help from, being referred to or from these services is confidential, and will not, along, result in disciplinary action. In addition, the following toll-free, hotline numbers may be of use to someone needing help or advice:

National Institution on Drug Abuse	1-800-662-HELP
National Drug Abuse Hotline	1-800-241-9746

[NCA 93-107, § 108, approved July 12, 1993.]

## Library References

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-807. Health risks**

Drug use represent serious threats to health and the quality of life. More than twenty-five thousand (25,000) people die each year from drug-related accidents or health problems. With most drugs it is probable that users will develop psychological and physical dependence. The general categories of drugs and their effects are as follows:

**A. Amphetamines/stimulants**—(speed, uppers, crank, caffeine, etc.) speed up the nervous system which can cause increased heart and breathing rates, higher blood pressure, decreased appetite, headaches, blurred vision, dizziness, sleepiness, anxiety, hallucinations, paranoia, depression, convulsions and death due to a stroke or heart failure.

**B. Anabolic steroids**—seriously affect the liver, cardiovascular, and reproductive systems. Can cause sterility in males and females, as well as impotency in males.

**C. Barbiturates/depressants**—(downers, quaaludes, valium, etc.) slow down the central nervous system which can cause decreased heart and breathing rates, lower blood pressure, slowed reactions, confusion, distortion of reality, convulsion, respiratory depression, coma, and death. Depressants combined with alcohol can be lethal.

**D. Cannabis**—(marijuana, hashish, hash, etc.) impairs short-term memory, comprehension, concentration, coordination, and motivation. May also cause

paranoia and psychosis. Marijuana smoke contains more cancer-causing agents than tobacco smoke.

**E. Cocaine/crack**—stimulates the central nervous system and is extremely addictive, both psychologically and physically. Effects include dilated pupils, increased heart rate, elevated blood pressure, insomnia, loss of appetite, hallucinations, paranoia, seizures, and death due to cardiac arrest or respiratory failure.

**F. Hallucinogens**—(PCP, angel dust, LSD, etc.) interrupt the functions of the part of the brain which controls the intellect and instincts. May result in self-inflicted injuries, impaired coordination, dulled senses, incoherent speech, depression, anxiety, violent behavior, paranoia, hallucinations, increased heart rate and blood pressure, convulsions, coma, and heart and lung failure.

**G. Narcotics**—(smack, horse, demerol, percodan, etc.) initially produces feelings of euphoria often followed by drowsiness, nausea, and vomiting. An overdose may result in convulsions, coma, and death.

[NCA 93–107, § 109, approved July 12, 1993.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 3–808. Investigations

All investigations of drug and alcohol abuse or misuse shall be under the direction of the Personnel Officer. Methods of investigations into suspected violations of this act may include but not limited to urinalysis drug testing to detect the presence of drugs or alcohol, and inspections or searches. All employees shall abide by the terms of this act as a condition of employment and cooperate fully in investigations of suspected violations of this policy.

[NCA 93–107, § 110, approved July 12, 1993.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 3–809. Off-the-job drug use

Unlawful involvement with drugs or narcotics while on the job or off is not acceptable because it can affect the job performance as well as the sensitivity of our Tribal citizens. The use, possession, manufacture, distribution or dispensation, of illegal drugs, narcotics or controlled substances while on the job or off is considered a violation of this act and is grounds for disciplinary action up to and including discharge. Tribal employees will not be permitted to report to work or perform their duties after having ingested illegal drugs and while under the influence thereof.

[NCA 93–107, § 111, approved July 12, 1993.]

### § 3–810. Prescribed medical treatment

The use of controlled medication or over-the-counter drugs as part of a prescribed medical treatment program is naturally not grounds for corrective

action, but it may be important for supervision to know such is occurring on order to determine job assignments. Any member undergoing prescribed medical treatment with a controlled medication that could impair his/her physical, mental operational faculties shall immediately report this treatment to his/her supervisor.

[NCA 93-107, § 111, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-811. Alcohol use**

The use of alcohol on the job or Tribal premises is prohibited, and use of alcohol off the job that adversely affects a member’s job performance is not acceptable.

[NCA 93-107, § 111, approved July 12, 1993.]

**Library References**

Indians ☞224.  
Westlaw Topic No. 209.

**§ 3-812. Drug testing**

A. An employee shall be requested to submit to a urinalysis drug/alcohol screening test only when there is reasonable individualized suspicion to believe that employee is intoxicated by drugs or alcohol. These tests will be initiated by the Personnel Officer within the Executive Branch as deemed necessary on an individual basis. Additionally drug/alcohol test may be requested following certain serious accidents as determined by the responsible divisional director or manager. Refusal to participate in a drug/alcohol test where there is reasonable individualized suspicion or after an accident causing personal injury or property damage or a positive analytical test result indicating illegal drug use will result in disciplinary action up to and including discharge.

B. The personnel services administration is hereby charged with the responsibility of negotiating with a reputable firm to provide these type of on site drug/alcohol urinalysis tests.

[NCA 93-107, §§ 112, 113, approved July 12, 1993.]

**Library References**

Indians ☞224. C.J.S. Searches and Seizures §§ 3, 21, 51 to  
Searches and Seizures ☞31, 40. 56, 58 to 67, 69, 130.  
Westlaw Topic Nos. 209, 349.

**APPENDIX A**

**MUSCOGEE (CREEK) NATION**

**Management Policy & Procedures Letter**

**MEMORANDUM**

**TO:** All Employees of the Muscogee Nation



**EMPLOYEES—DRUG TESTING POLICY**

**Title 37, Ch. 3  
Subch. 8, App. A**

National Council/Judicial Branch/Independent Agencies  
Boards and Commissions  
Personnel Services  
Contracts and Grants Administration

**FROM:** Executive Director

**SUBJECT:** Drug-Free Work Place Policy Statement

**POLICY STATEMENT**

In accordance with the Drug-Free Work Place Act of 1988, Muscogee (Creek) Nation hereby notifies all employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace. Any employee found to have violated this prohibition may be subject to disciplinary action up to and including dismissal or be required to satisfactorily participate in a drug abuse assistance or rehabilitation program as a condition of continued employment. The drug abuse assistance/rehabilitation program shall be one that has been previously approved for such purposes by a federal state or local health, law enforcement or other appropriate agency. The imposition of such disciplinary action or requirement to satisfactorily participate in a drug abuse assistance/rehabilitation program is premised solely upon a violation of this prohibition and does not require a criminal conviction.

As a condition of employment at Muscogee (Creek) Nation all employees will:

1. Comply with the terms of this statement; and
2. Notify the Muscogee (Creek) Nation in writing (through their immediate supervisor, other supervisory administrator or project director) of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

Such conviction may, of course, result in the employee being disciplined or required to satisfactorily participate in a drug abuse assistance/rehabilitation program as specified above. Failure of an employee to report his/her conviction, as required herein, constitutes grounds for dismissal.

As a further requirement of the Drug-Free Work Place Act, the Muscogee (Creek) Nation has established a drug-free awareness program for the purpose of informing employees about the dangers of drug abuse in the workplace, the Muscogee (Creek) Nation's prohibition of controlled substances in and on Tribal property, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed for drug abuse violations. An Employee Assistance Program has been created in furtherance of the drug-free awareness program. Information about the drug-free awareness program and the Employee Assistance Program may be obtained from the Personnel Services Department.

Reference is made to the Drug-Free Work Place Act of 1988 as sources of information and clarification.

**ALCOHOL AND DRUG POLICY**

Verification of Employee Awareness of Drug Policy

The Anti-Drug Abuse Act of 1988 requires the Creek Nation to establish a drug free workplace.

1. It shall be the policy of Creek Nation to provide a drug free workplace for its employees. Any employee reporting to work under the influence, use on the job, or distribution on the job of alcohol or any mind altering drug shall be subject to disciplinary action.

2. As a condition of employment, an employee must agree to notify the Creek Nation in writing of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) calendar days after such conviction. Any employee involved in irrational behavior or an accident on the job, and the incident thought to be drug related, shall be required to take a drug test. Drug testing will follow the recommendation of a Department Chairman, Personnel Manager and/or Principal Chief. Any employee refusing to take a drug test, after just cause for suspicion, shall be discharged. If the drug test is positive the employee shall be discharged.

3. An employee convicted of a drug related felony while off duty shall be discharged from employment. An employee convicted of a drug related misdemeanor while off duty will be required to attend a drug rehabilitation program. After two (2) convictions of an employee for drug related misdemeanors, the employee shall be discharged from employment with the Creek Nation.

“I have read the Anti-Drug Policy and understand that all employees will comply with all statements included in this policy.”

\_\_\_\_\_  
Supv./Mgr./Dir. Signature

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Personnel Mgr. Signature

**SUBCHAPTER 9. MINIMUM HOURLY WAGE**

**Section**

- 3-901. Establishment of minimum wage rates.
- 3-902. Prohibition of sex, race, age or disability discrimination.
- 3-903. Allowance for pre-existing minimum wage rates.

**§ 3-901. Establishment of minimum wage rates**

The Muscogee (Creek) Nation, its independent agencies, except the Gaming Operations Authority Board and all casinos under the management of the Gaming Operations Authority Board, Muscogee (Creek) Nation Business Enterprise and Tribal Trade and Commerce Authority, and any other entity owned by the Muscogee (Creek) Nation shall, to each employee who, in any workweek, is an employee of the Muscogee (Creek) Nation, its independent agency, except the Gaming Operations Authority Board and all casinos under the management of the Gaming Operations Authority Board, Muscogee (Creek) Nation Business Enterprise and Tribal Trade and Commerce Authority, or any other entity owned by the Nation, and while working in such a capacity is engaged in commerce or in the production of goods, pay wages at the following rates:

Not less than seven dollars and sixty-seven cents (\$7.67) per hour during the period beginning on October 1, 2007 and ending on September 30, 2008, not less than nine dollars and twenty-five cents (\$9.25) per hour during the year beginning on October 1, 2008 and ending on September 30, 2010, and not less than ten dollars and fifteen cents (\$10.15) per hour beginning on October 1, 2010 and continuing thereafter until and unless amended by law.

[Added by NCA 07-001, § 3, eff. May 2, 2007; amended by NCA 09-053, § 1, approved May 6, 2009, eff. Oct. 1, 2009.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 3-902. Prohibition of sex, race, age or disability discrimination

No employer having employees subject to the provisions of this section shall discriminate, within any establishment in which such employees are working, between employees on the basis of sex, race, age or disability by paying wages to employees in such establishment at a rate less than the rate paid to any other employee in such establishment for equal work on jobs which require equal skill, effort and responsibility and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any factor other than sex, race, age or disability; provided that an employer who is paying a wage differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of the employee.

For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this law.

[Added by NCA 07-001, § 3, eff. May 2, 2007.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 3-903. Allowance for pre-existing minimum wage rates

Nothing herein prohibits, impedes or hinders any employer of the Muscogee (Creek) Nation from paying employees a minimum wage higher than that declared by the United States Fair Labor Standards Act of 1938<sup>1</sup> as amended, or by any standard which has previously or presently been enacted by administrative rules or decisions or by prior legislation of the Muscogee (Creek) Nation.

[Added by NCA 07-001, § 3, eff. May 2, 2007.]

<sup>1</sup> See 29 U.S.C.A § 206.

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

## CHAPTER 4. CONFLICT OF INTEREST

### Section

- 4-101. Prohibition.
- 4-102. Termination of contracts.
- 4-103. Violations.

### § 4-101. Prohibition

No officer or employee of the Muscogee (Creek) Nation or officer or employee of any entity under the jurisdiction of the Muscogee (Creek) Nation shall be permitted to enter into business contracts or do business with the Muscogee (Creek) Nation.

[NCA 89-04, § 101, veto overridden Feb. 25, 1989.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 4-102. Termination of contracts

All contracts and/or business that may at this time (February 25, 1989) have been entered into between officers or employees of the Muscogee (Creek) Nation or with any entity under the jurisdiction of the Muscogee (Creek) Nation are hereby terminated as of February 25, 1989.

[NCA 89-04, § 102, veto overridden Feb. 25, 1989.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

### § 4-103. Violations

A. Any employee of the Muscogee (Creek) Nation or entity under the jurisdiction of the Muscogee (Creek) Nation found to be in violation of this subchapter shall be terminated immediately.

B. Any officer of the Muscogee (Creek) Nation found to be in violation of this subchapter shall be subject to removal as defined by the Constitution and laws of the Muscogee (Creek) Nation.

[NCA 89-04, §§ 103, 104, veto overridden Feb. 25, 1989.]

#### Library References

Indians ☞224.  
Westlaw Topic No. 209.

## CHAPTER 5. OPEN MEETINGS

### Section

- 5-101. Tribal meetings to be public.
- 5-102. Executive sessions.
- 5-103. Exempt meetings.
- 5-104. Public notice.
- 5-105. Violations.

### § 5-101. Tribal meetings to be public

All meetings of a legislative body, or of an administrative body, board, commission, committee, subcommittee, authority, or any of its political subdivisions, including but not limited to chartered Indian communities, and all other boards, agencies, assemblies, council, departments, commissions, or organizations, advisory or otherwise, of the Creek Nation, district, or communities supported in whole or in part by Tribal monies or authorized to spend Tribal monies, are open to Creek citizens except for as otherwise provided by this chapter. The vote shall be taken in such a manner that Creek citizens may know the vote of each person entitled to vote.

[NCA 88-89, § 102, approved Nov. 10, 1989.]

#### Library References

- |  |   |
|--|---|
| Administrative Law and Procedure ¶124. | C.J.S. Indians §§ 151 to 179.                               |
| Indians ¶410.                          | C.J.S. Public Administrative Law and Procedure §§ 32 to 35. |
| Westlaw Topic Nos. 15A, 209.           |   |

### § 5-102. Executive sessions

A. If excepted subjects are to be discussed at a meeting or session, the meeting or session must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in subsection B of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the main motion calling for the executive session unless auxiliary to the main question. No action may be taken at the Executive session.

B. The following excepted subjects may be discussed in an executive session:

1. Matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit.
2. Subjects that tend to prejudice the reputation and character of any person, provided, the person may request a public discussion.
3. Matters, which by law, Community Charter, or law are required to be kept confidential.

[NCA 88-89, § 102, approved Nov. 10, 1989.]

#### Library References

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| Administrative Law and Procedure ¶124. | Indians ¶410. |
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## Title 37, § 5–102

## TRIBAL GOVERNMENT

Westlaw Topic Nos. 15A, 209.  
C.J.S. Indians §§ 151 to 179.

C.J.S. Public Administrative Law and Procedure §§ 32 to 35.

### § 5–103. Exempt meetings

This chapter does not apply to:

A. Judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding.

B. Juries.

C. Meetings of a hospital medical staff.

D. Meeting of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

[NCA 88–89, § 102, approved Nov. 10, 1989.]

#### Library References

Administrative Law and Procedure ⇨124.  
Indians ⇨410.  
Westlaw Topic Nos. 15A, 209.

C.J.S. Indians §§ 151 to 179.  
C.J.S. Public Administrative Law and Procedure §§ 32 to 35.

### § 5–104. Public notice

Reasonable public notice shall be given for all meetings required to be open under this chapter.

[NCA 88–89, § 102, approved Nov. 10, 1989.]

#### Library References

Administrative Law and Procedure ⇨124.  
Indians ⇨410.  
Westlaw Topic Nos. 15A, 209.

C.J.S. Indians §§ 151 to 179.  
C.J.S. Public Administrative Law and Procedure §§ 32 to 35.

### § 5–105. Violations

Action taken contrary to this chapter is void.

[NCA 88–89, § 102, approved Nov. 10, 1989.]

#### Library References

Administrative Law and Procedure ⇨124.  
Indians ⇨410.  
Westlaw Topic Nos. 15A, 209.

C.J.S. Indians §§ 151 to 179.  
C.J.S. Public Administrative Law and Procedure §§ 32 to 35.

## CHAPTER 6. POLITICAL PRESSURE

### Section

- 6-101. Requiring Tribal employee or officer to make political contribution.
- 6-102. Requiring Tribal employee or officer to take part in political campaign.
- 6-103. Attempting to cause Tribal employee or officer to put political pressure on others.
- 6-104. Requiring political participation as condition for receiving Tribal benefits or services.
- 6-105. Housing Authority an agency or authority for purposes of chapter.
- 6-106. Use of Tribal property for political campaign purposes.
- 6-107. Use of Tribally compensated time for political participation.

### Historical and Statutory Notes

NCA 91-71, §§ 101, 102, provide:

“Section 101. Findings:

“A. There is a need for a law of the Muscogee (Creek) Nation to prohibit the coercion and intimidation of employees to make political contributions and to actively support candidates.

“B. Citizens need protection from political harassment and coercion while receiving benefits and services from the Muscogee Nation.

“Section 102. The purpose of this act is to establish a policy:

“A. That employees of the Muscogee (Creek) Nation, its agencies, authorities and boards or other entities, should not be required to partici-

pate in or contribute to a political campaign as a condition of employment, and

“B. To prohibit any interference in the right of an employee to vote for the candidate of his or her choice; and

“C. To prohibit all employees and officers of the Muscogee (Creek) Nation or its agencies, authorities and boards from using their positions of power or authority to influence or attempt to influence any citizen into believing that the citizen or a relative of that citizen might lose some right or entitlement as a citizen or that they might be otherwise harassed by such employee or officer for failing to support any certain candidate or slate of candidates for public office.”

### § 6-101. Requiring Tribal employee or officer to make political contribution

An employee or officer of the Muscogee (Creek) Nation or its agencies, authorities or boards, who shall use his or her position or authority to require or attempt to require another employee or officer to contribute any money or thing of value, directly or indirectly, to any political campaign or to any candidate for public office in the Muscogee (Creek) Nation shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91-71, § 103, (returned unsigned).]

### Library References

Indians ⇄216, 224, 623, 624.

Westlaw Topic No. 209.

C.J.S. Indians §§ 59, 151 to 179.

### § 6-102. Requiring Tribal employee or officer to take part in political campaign

An employee or officer of the Muscogee (Creek) Nation, its agencies, authorities or boards, who shall use his or her position of authority to require another employee or officer to take part in a political campaign or in any way be active or participate in any political contest or any election in the Muscogee (Creek)

Nation shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91–71, § 104, (returned unsigned).]

**Library References**

Indians ⇨216, 224, 623, 624.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 151 to 179.

**§ 6–103. Attempting to cause Tribal employee or officer to put political pressure on others**

Any employee or officer of the Muscogee (Creek) Nation, its agencies, authorities or boards, who attempts to cause another employee or officer to violate the provisions of this chapter shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91–71, § 105, (returned unsigned).]

**Library References**

Indians ⇨216, 224, 623, 624.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 151 to 179.

**§ 6–104. Requiring political participation as condition for receiving Tribal benefits or services**

Any person who coerces, intimidates or otherwise threatens any citizen in such a way as to require that citizen to contribute any money or thing of value, directly or indirectly, to any candidate for public office in the Muscogee (Creek) Nation, or to participate in any political contest or any election in the Muscogee (Creek) Nation, or to vote for a particular candidate as a condition to receiving or continuing to receive any benefit or service from the Muscogee (Creek) Nation, shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91–71, § 106, (returned unsigned).]

**Library References**

Indians ⇨216, 224, 623, 624.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 151 to 179.

**§ 6–105. Housing Authority an agency or authority for purposes of chapter**

For the purposes of this chapter the Housing Authority of the Creek Nation of Oklahoma is an agency or authority of the Muscogee (Creek) Nation.

[NCA 91–71, § 107, (returned unsigned).]



**Library References**

Indians ↻227.  
Westlaw Topic No. 209.  
C.J.S. Indians § 76.

**§ 6–106. Use of Tribal property for political campaign purposes**

Any person who uses or causes to be used any equipment, supplies or other property of the Muscogee (Creek) Nation, its agencies, authorities or boards, for political campaign purposes to support any candidate, shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91–71, § 108, (returned unsigned).]

**Library References**

Indians ↻216, 224, 623, 624.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 151 to 179.

**§ 6–107. Use of Tribally compensated time for political participation**

An employee or officer of the Muscogee (Creek) Nation, its agencies, authorities or boards, who uses time, for which he is compensated as such employee or officer, to participate in, be active in or in any way contribute any service to a political candidate or campaign shall be guilty of a misdemeanor, punishable by confinement in jail for a period not to exceed sixty (60) days, or a fine of not more than five thousand dollars (\$5,000), or by both such confinement and fine.

[NCA 91–71, § 109, (returned unsigned).]

**Library References**

Indians ↻216, 224, 623, 624.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 59, 151 to 179.

## CHAPTER 7. DONATIONS

### Section

- 7-101. Findings.
- 7-102. Appropriation.
- 7-103. Authorization.
- 7-104. Real property.

### § 7-101. Findings

The National Council finds that individuals, corporations and other entities inquire about making donations to various departments or to the General Treasury of the Muscogee (Creek) Nation for tax purposes; however, there is no mechanism in place to accept the donation for the Nation's use. The purpose of this Act is to authorize the appropriation of funds or other property that have been donated to the Muscogee (Creek) Nation.

[Added by NCA 08-130, § 1, approved Aug. 29, 2008.]

### § 7-102. Appropriation

All donations made by persons or entities to the Muscogee (Creek) Nation shall be appropriated when said donation is accepted by the Principal Chief; provided the Principal Chief may refuse to accept any donation when acceptance is not in the best interest of the Muscogee (Creek) Nation or if the donation is not for a public purpose.

[Added by NCA 08-130, § 1, approved Aug. 29, 2008.]

### § 7-103. Authorization

The National Council hereby authorizes the Principal Chief to utilize the donation as the donor designates; provided the designated use is in compliance with applicable law. In addition, when no designation for use is made, the Principal Chief is authorized to deposit funds in the General Treasury or in the case of personal property forward the property to GSA for determination of distribution of property.

[Added by NCA 08-130, § 1, approved Aug. 29, 2008.]

### § 7-104. Real property

Due to the special requirements of real property, including trust acquisition and title requirements, donations of real property shall require acceptance by enactment of a Tribal Resolution specific to said real property donation.

[Added by NCA 08-130, § 1, approved Aug. 29, 2008.]

## CHAPTER 8. RIGHT TO WORK

### Section

- 8-101. Applicability.
- 8-102. Participation in labor organization as condition of employment prohibited.
- 8-103. Jurisdiction.
- 8-104. Enforcement.

### § 8-101. Applicability

This law shall apply to:

- (1) all employees of the Muscogee (Creek) Nation, its enterprises, agencies and entities;
- (2) all employees of Chartered Indian Communities;
- (3) all businesses organized under the laws of the Muscogee (Creek) Nation and their employees; and
- (4) all private employers doing business within the Muscogee (Creek) Nation and their employees.

[Added by NCA 09-168, § 2, approved Oct. 8, 2009.]

### § 8-102. Participation in labor organization as condition of employment prohibited

A. As used in this section, “labor organization” means any organization of any kind, or agency or employee representation committee or union, that exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation.

B. No person shall be required, as a condition of employment or continuation of employment, to:

- 1. Resign or refrain from voluntary membership in; voluntary affiliation with; or voluntary financial support of a labor organization;
- 2. Become or remain a member of a labor organization;
- 3. Pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;
- 4. Pay to any charity or other third party, in lieu of such payments, any amount equivalent to or pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or
- 5. Be recommended, approved, referred, or cleared by or through a labor organization.

C. It shall be unlawful to deduct from the wages, earnings, or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization unless the employee has first provided a written order of consent, signed by the employee, authorizing

such deductions. This consent may be changed at any time by the employee under the same notification process.

D. The provisions of this section shall apply to all employment contracts entered into after the effective date of this section and shall apply to any renewal or extension of any existing contract; provided nothing in this section shall alter the “at will jurisdiction” of the Muscogee (Creek) Nation or be construed as a waiver, limited or otherwise, of the sovereign immunity of the Muscogee (Creek) Nation.

[Added by NCA 09–168, § 2, approved Oct. 8, 2009.]

**§ 8–103. Jurisdiction**

All persons who enter the Muscogee (Creek) Nation shall be deemed to have given consent to the jurisdiction of the Muscogee (Creek) Nation and shall be subject to the provisions of this Title 37, Chapter 8.

A. Registration of labor organizations

1. Every labor organization, defined under Section 7–102(A), wishing to operate on Muscogee (Creek) Nation shall be required to file for the appropriate license or registration for which the business relationship is desired.

2. Every labor organization officer, agent and representative shall be identified and shall comply with the terms, conditions, regulations, fines, taxes and fees established by the appropriate Muscogee (Creek) Nation regulatory body.

B. Licensure

No labor organization shall be granted a license or registered as an approved vendor to conduct business or provide services on the Muscogee (Creek) Nation’s property if any principle or officer has been convicted of a felony.

C. Violations.

It shall be a violation of this law, subject to enforcement in Section 7–104 as well as applicable criminal laws contained in Title 14, for any person to:

1. Represent or act on behalf of a labor organization without a valid license or registration as an approved vendor of the Muscogee (Creek) Nation;

2. Solicit membership for or act as representative of any labor organization with out authority of the labor organization;

3. Make false statements or presentations in an application for a license;

4. Unlawfully seize or occupy any Muscogee (Creek) Nation property during the existence of a labor dispute;

5. Coerce or intimidate any employee in the enjoyment of his/her legal rights; to coerce or intimidate any elected or appointed Tribal official; or to intimidate the family, picket the domicile or injure the person or property of any employee or Tribal official; or

6. Engage in picketing in any manner which constitutes a Tribal offense, including picketing in a manner to prevent ingress or egress from any premise, and picketing other than in a reasonable and peaceful manner.

[Added by NCA 09–168, § 2, approved Oct. 8, 2009.]

**§ 8-104. Enforcement**

Any contract or agreement entered into by any employer which violates Section 7-102 shall be void ab initio. Any union or other labor organization which seeks to include such a provision in a labor agreement and any employer, other than the Muscogee (Creek) Nation or its entities or agencies, who agrees to such provision shall be subject to a civil penalty of not less than five hundred dollars (\$500.00) and not more than five thousand dollars (\$5000.00) in addition to any other damages, compensatory or punitive, which may be awarded in the Muscogee (Creek) Nation District Court. All fines shall be payable directly to the Muscogee (Creek) Nation General Treasury. Furthermore, any employee or individual Tribal member shall have standing to bring an action in the Muscogee (Creek) Nation District Court seeking an injunction, mandamus or specific performance under this law.

[Added by NCA 09-168, § 2, approved Oct. 8, 2009.]



# TITLE 38. TRIBAL ENTITIES

## ETVLWV ENTVLKUSE

Chapter	Section
1. TRIBAL STORE.....	1-101
2. BOARD OF ECONOMIC AFFAIRS.....	2-101
3. TRIBAL DRIVEWAYS PROGRAM.....	3-101

### CHAPTER 1. TRIBAL STORE

Section
1-101. Establishment.
1-102. Supervision.
1-103. Expenditures; financial reports.
1-104. Persons permitted to make purchases.

#### § 1-101. Establishment

The Tribal Store is hereby established as an agency of the Government of the Muscogee (Creek) Nation.

[NCA 82-32, § 101, approved June 4, 1982.]

#### Library References

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

#### § 1-102. Supervision

The Principal Chief is authorized and directed to supervise the activities of the Tribal Store.

[NCA 82-32, § 101, approved June 4, 1982.]

#### Library References

Indians ☞210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

#### § 1-103. Expenditures; financial reports

The Principal Chief is authorized to spend such funds as may be appropriated for the purpose of the Tribal Store, and is required to submit quarterly financial reports upon the Tribal Store to the National Council.

[NCA 82-32, § 102, approved June 4, 1982.]

#### Library References

Indians ☞210, 216.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**Title 38, § 1-104**

**TRIBAL ENTITIES**

**§ 1-104. Persons permitted to make purchases**

The Tribal Store shall permit purchases exclusively by enrolled Muscogee (Creek) Indians, and by any such enrolled citizen on behalf of any Muscogee (Creek) Indian church, community, ceremonial ground, or agency of the government of the Muscogee (Creek) Nation.

[NCA 82-32, § 104, approved June 4, 1982.]

**Library References**

Indians ⇐210, 222.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to  
72, 180.



## **CHAPTER 2. BOARD OF ECONOMIC AFFAIRS**

### **Section**

2-101. Membership.

### **§ 2-101. Membership**

The membership of the Board of Economic Affairs is hereby limited to a total of three (3) members, nominated by the Principal Chief and confirmed by the National Council, for the term of two (2) years.

[NCA 81-47, § 104, approved April 8, 1981; amended by NCA 81-56, § 102, approved April 28, 1981.]

### **Library References**

Indians ☞210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## CHAPTER 3. TRIBAL DRIVEWAYS PROGRAM

### Section

- 3-101. Services.
- 3-102. Eligibility and priorities.
- 3-103. Guidelines, applications, and approvals.

### § 3-101. Services

The Tribal Driveways Program shall provide driveway repair or replacement services to homes of eligible Tribal citizens. Each project shall not exceed five thousand dollars (\$5,000.00) for materials.

[Added by NCA 03-102, § 101, eff. June 6, 2003.]

#### Library References

Indians ⇨210, 222. C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to  
Westlaw Topic No. 209. 72, 180.

### § 3-102. Eligibility and priorities

#### A. Eligibility requirements.

1. Individual must be an enrolled member of the Muscogee (Creek) Nation, who can verify his or her membership with a certified Tribal enrollment card;
2. Individual must reside within the territorial jurisdiction of the Muscogee (Creek) Nation;
3. Individual must own and live on the property needing repair services;
4. There must be an existing driveway on the property; and
5. The property must not have received driveway repair assistance within the previous four (4) years.

#### B. Priorities.

Priorities shall be given to the elderly, applicants who are suffering from a severe health problem, handicap or permanent disability, and driveways that are rapidly deteriorating.

#### Library References

Indians ⇨210, 222. C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to  
Westlaw Topic No. 209. 72, 180.

### § 3-103. Guidelines, applications, and approvals

A. The applicant for services shall complete the “Driveway Repair Application” provided by the Tribal Driveways Program.

B. The applicant must fill out the application completely and provide a copy of his or her Tribal enrollment card and a copy of the deed to the property to be considered for driveway repair services. Failure to provide all necessary information may delay the application process.

C. Selection for services shall be made by the Tribal Driveways Program. A decision to grant or deny an application shall be based on the information

**TRIBAL STORE**

**Title 38, § 3–103**

contained in the application, the priorities described in § 3–102B of this Act and current funding available to the Tribal Driveways Program.

[NCA 03–102, §§ 103–105, eff. June 6, 2003.]

**Library References**

Indians ↻210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**TITLE 39. TRIBAL TOWNS**  
**ETVLWOCVLKE**

*(Reserved for Future Use)*



# TITLE 40. GREEN GOVERNMENT INITIATIVE

## ENRAKRAKV LANAT SVLICECKV

Chapter	Section
1. GREEN GOVERNMENT INITIATIVE IN BUILDING. ....	1-101
2. GREEN BUILDING CODE. ....	2-101
3. PERMIT PROCESS	
4. VIOLATIONS OF GREEN BUILDING CODE AND APPEAL PROCESS	
5. RECYCLE INITIATIVE. ....	5-101
6. GREEN INITIATIVES IN PROCESSES. ....	6-101
7. SOLID WASTE. ....	7-101

### CHAPTER 1. GREEN GOVERNMENT INITIATIVE IN BUILDING

#### Subchapter

1. Purpose; Definitions; General Provisions

#### SUBCHAPTER 1. PURPOSE; DEFINITIONS; GENERAL PROVISIONS

#### Section

- 1-101. Authority.
- 1-102. Purpose.
- 1-103. Definitions.
- 1-104. General provisions.

#### § 1-101. Authority

This Law of the Muscogee (Creek) Nation shall be known and cited as the Muscogee (Creek) Nation Green Government Initiative and shall be codified in Title 40 of the Muscogee (Creek) Nation Code of Laws.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

#### § 1-102. Purpose

A. The purpose of this title and subsequent chapters is:

1. To improve public health, safety, and general welfare by enhancing the design and construction of buildings through the use of building concepts having a positive environmental impact and encouraging sustainable construction practices in the following categories:

- a. Planning and design;
- b. Energy efficiency;
- c. Water efficiency and conservation;

- d. Material conservation and resource efficiency;
- e. Environmental air quality;
2. Provide for funding that will allow the Office Environmental Safety to continue to seek green initiatives for the betterment of the Muscogee (Creek) Nation;
3. Allow the Office of Environmental Safety to implement sections of the federal Emergency Economic Stabilization Act of 2008 which will extend tax credits for energy efficiency and renewable energy to the Nation and its' citizens;
4. Provide for the issuance of permits and collection of fees;
5. Provide for penalties for the violation of building and home codes;
6. Develop requirements for Muscogee (Creek) Nation governmental entities to seek energy conservation and natural processes in all that the Nation undertakes including, but not limited to; new buildings and remodeling of existing or purchased properties, operations and maintenance, administration of operations, recycling measures, and protections of Muscogee (Creek) Nation lands and the surrounding land base.
7. Provide for the protection of the Muscogee (Creek) Nation agricultural land and sustainability of the Nation's commercial agricultural lands.

B. Further, this title and subsequent chapters are designed to help promote a more traditional way of life by returning to what our ancestors valued and believed to be our sources of life: wind, sun, water, and the natural environment around us. This return to a more traditional way of life shall begin with a comprehensive building code that will allow the Muscogee (Creek) Nation, (herein referred to as "Nation") to serve as an example for all Native American Tribes to lead the effort to return to our traditional beliefs. This Green Building Code (herein referred to as "this Code") will regulate the site preparation and construction, alteration, moving, demolition, repair, use, and occupancy of buildings, and structures built on the Nation's land including, but not limited to: governmental buildings (for occupancy and non-occupancy), commercial buildings (for occupancy and non-occupancy), and building service equipment within the jurisdiction of the Muscogee (Creek) Nation. A minimum requirement for the design of all new commercial and governmental buildings and renovations and additions to all commercial or governmental buildings in the Nation shall be compliant with the *International Energy Conservation Code 2006*. Further, the Nation shall work to insure that residential housing built by the Muscogee (Creek) Nation or any other entity is compliant with the **Leadership in Energy and Environmental Design (LEED)** program that promotes the design and construction of high performance "green" buildings and homes. The LEED rating system measures the environmental performance of new buildings and homes across eight separate resource categories, including energy efficiency. All LEED buildings and homes shall be required to be ENERGY STAR qualified.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

**§ 1-103. Definitions**

Unless the context otherwise requires, as used in this chapter, the following terms shall be defined as follows:

A. **2006 International Energy Conservation Code “IECC”**. “**IEEC 2006**” means the Code established requiring minimum design and construction requirements for energy efficiency.

B. **Leadership in Energy and Environmental Design (LEED)**. “**LEED**” means the program that is a third-party certification program and nationally accepted benchmark for the design, construction, and operation of high performance green buildings.

C. **Commercial building**. “**Commercial building**” means any structure, privately owned or owned and run by the Nation, that is designed for commercial, business, industrial, municipal or school use, excluding residential buildings or structures, as identified by the 2006 IECC or specifically outlined in this Title.

D. **Residential housing**. “**Residential housing**” means any structure built by the Muscogee (Creek) Nation or an entity on behalf of the Nation including, but not limited to, the Indian Housing Authority pursuant to Title 24, § 1-104, subsection E-“Housing Project or project.”

E. **Green building**. “**Green building**” means taking a holistic approach to design, construction, and demolition that minimizes a commercial or residential building’s impact on the environment, the occupants, and the community and utilizes new available technologies as is applicable. Green Buildings include all existing buildings and future buildings.

F. **Green initiatives**. “**Green initiatives**” means the holistic process of environmental stewardship. The initiative in this title is designed to accelerate the adoption of building practices that result in energy-efficient, healthier and environmentally sustainable buildings by promoting credible and practical green building approaches and technologies for residential and commercial construction on the lands of the Muscogee (Creek) Nation.

H. **Energy efficiency**. “**Energy efficiency**” means the processes by which the Muscogee (Creek) Nation maximizes materials, technology, processes, and systems that help reduce energy consumption in buildings and facilities owned, built or refurbished by the Nation or any entity acting on behalf of the Nation.

I. **Sustainable construction materials**. “**Sustainable construction materials**” means, but is not limited to any of the following:

1. **Recycled content**: Products with identifiable recycled content, including post-industrial content with a preference for post-consumer content.

2. **Natural, plentiful; or renewable**: Materials harvested from sustainably managed sources and preferably have an independent certification (e.g., certified wood) and are certified by an independent third party.

3. **Resource efficient manufacturing process**: Products manufactured with resource-efficient processes including reducing energy consumption, minimizing waste (recycled, recyclable, and/or source reduced product packaging), and reducing greenhouse gases.

4. **Locally available:** Building materials, components, and systems found locally or regionally saving energy and resources in transportation to the project site.

5. **Salvaged, refurbished, or remanufactured:** Includes saving a material from disposal and renovating, repairing, restoring, or generally improving the appearance, performance, quality, functionality, or value of a product.

6. **Reusable or recyclable:** Select materials that can be easily dismantled and reused or recycled at the end of their useful life.

7. **Recycled or recyclable product packaging:** Products enclosed in recycled content or recyclable packaging.

8. **Durable:** Materials that are longer lasting or are comparable to conventional products with long life expectancies.

J. **Indoor Air Quality “IAQ”.** “**Indoor Air Quality**” means the presence or absence of air pollutants in buildings and is enhanced by utilizing materials that meet the following criteria:

1. **Low or non-toxic:** Materials that emit few or no carcinogens, reproductive toxicants, or irritants as demonstrated by the manufacturer through appropriate testing.

2. **Minimal chemical emissions:** Products that have minimal emissions of Volatile Organic Compounds (VOCs). Products that also maximize resource and energy efficiency while reducing chemical emissions.

3. **Low-VOC assembly:** Materials installed with minimal VOC-producing compounds, or no-VOC mechanical attachment methods and minimal hazards.

4. **Moisture resistant:** Products and systems that resist moisture or inhibit the growth of biological contaminants in buildings.

5. **Healthfully maintained:** Materials, components, and systems that require only simple, non-toxic, or low-VOC methods of cleaning.

6. **Systems or equipment:** Products that promote healthy IAQ by identifying indoor air pollutants or enhancing the air quality.

K. **Water conservation.** “**Water conservation**” means using any available technologies to help reduce water consumption in buildings, homes, and water in landscaped areas on the Nation’s property.

L. **Energy Star.** “**Energy Star**” means the joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that helps protect the environment through energy efficient products and practices. At all times when available, Energy Star products and practices should be used.

M. **Emergency Economic Stabilization Act of 2008.** “**Emergency Economic Stabilization Act of 2008**” means the U.S. Government’s tax exemption program that allows for tax credit for energy efficient products.

N. **Exemptions.** “**Exemptions**” means those exceptions to this Title that are made for purposes of cultural, heritage, or traditional reasons other exceptions that are enumerated in this title.

O. **Where applicable.** “**Where applicable**” as it applies to this Title and subsequent chapters shall mean that where it is economically feasible, all



projects shall comply with the standards as set out in this Title and variations from this Title shall be at the discretion of the Commission.

P. **Variance/Variation.** “**Variance/Variation**” shall mean amount, rate, extent, or degree of change that is allowed from the standards as set out in this Title and subsequent chapters.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

**§ 1-104. General provisions**

The provisions of this chapter outline planning, design, and development methods that include environmentally responsible site selection, residential and commercial building design, building enhancements and developments to protect, restore, and enhance the environmental quality of the site and buildings and to respect the integrity of the values that are exposed by the citizens of Muscogee (Creek) Nation. The preservation and use of available natural resources shall be accomplished through evaluation and careful planning to minimize negative effects on the site, the commercial or residential buildings, and all adjacent areas.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

## CHAPTER 2. GREEN BUILDING CODE

### Subchapter

1. Purpose; Definitions; General Provisions
2. Green Building Code

### SUBCHAPTER 1. PURPOSE; DEFINITIONS; GENERAL PROVISIONS

#### Section

- 2-101. Purpose.
- 2-102. Definitions.
- 2-103. Office of Environmental Services Authority.
- 2-104. General provisions.

#### § 2-101. Purpose

This subchapter has been created to give authority and funding to the Office of Environmental Safety (hereinafter “OES”) to promulgate rules and regulations not inconsistent with the scope of this Title that will help the OES initiate a new set of Building Codes that will be environmentally friendly and in keeping with the Green Government Initiative. The provisions of this subchapter are not intended to prevent the use of any material, installation process, method or design method of construction, but to give the OES guidance on performance of their duties under this Code. The Building Code as designed and promulgated by the OES shall not apply to buildings that are deemed Historical on the National Historic Register’s List or that the National Council deems to be historical in nature.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

#### § 2-102. Definitions

Definitions.

Unless the context otherwise requires; as used in this chapter the following terms shall be defined as follows:

A. **Altered building.** “**Altered building**” shall mean any building that is owned or operated by the Muscogee (Creek) Nation or any entity working for or controlled by the Nation that is substantially altered. This shall include any ancillary buildings.

B. **Ancillary buildings.** “**Ancillary buildings**” include any and all buildings that are attached, detached, or in the same general area as an altered or new building. This shall include but not limited to: garages, barns, maintenance facilities in which a person may be using as part of their employment with the Muscogee (Creek) Nation.

C. **Building Code.** “**Building Code**” shall mean the rules and regulations that will be developed in regards to all new buildings of the Muscogee (Creek) Nation and all existing buildings that will be substantially altered in structure in which a person may perform jobs in the furtherance of their employment.

D. **New building.** “**New building**” shall include any new structure that is erected on the grounds of the Muscogee (Creek) Nation that will be occupied by individuals or have the potential to be occupied by individuals. New buildings also include those buildings that are designed in the furtherance of employees and contractor’s jobs and include but are not limited to garages, barns, and maintenance facilities.

E. **Substantially altered.** “**Substantially altered**” shall include any building that is undergoing any reservation of ten percent (10%) or more the total building’s square footage.

[Added by NCA 09–040, § 1, approved Aug. 5, 2009.]

### **§ 2–103. Office of Environmental Services Authority**

It shall be the responsibility of the Office of Environmental Services to promulgate a Green Building Code in compliance with this Title and existing Building Codes of the Muscogee (Creek) Nation. This authority shall include but is not limited to; design and implementation of a Building Code in furtherance of this Title, a process for applications and permits for vendors to qualify as Certified Green Builders, enforcement procedures for implementing and enforcing the Green Building Code’s provisions, a process for appeals of denial of certification or permits, and violations of the Green Building Code.

[Added by NCA 09–040, § 1, approved Aug. 5, 2009.]

### **§ 2–104. General provisions**

This subchapter is designed to give authority to the OES to implement the policies and procedures of the Muscogee (Creek) Nation so that all entities of the Muscogee (Creek) Nation shall be good stewards of the environment.

[Added by NCA 09–040, § 1, approved Aug. 5, 2009.]

## **SUBCHAPTER 2. GREEN BUILDING CODE [RESERVED]**

*This subchapter is reserved for the Green Building Code promulgated by the Office of Environmental Services in furtherance of this Title.*

## **CHAPTER 3. PERMIT PROCESS [RESERVED]**

*Chapter 3 of Title 40 Green Government Initiatives is reserved for the Permit Process that will be implemented by the Office of Environmental Services in conjunction with Chapter 2 of Title 40. This Chapter shall not be inconsistent with the goals of this Title.*

**GREEN GOVERNMENT INITIATIVE**

**CHAPTER 4. VIOLATIONS OF GREEN BUILDING  
CODE AND APPEAL PROCESS [RESERVED]**

*Chapter 4 of Title 40 Green Government Initiatives is reserved for the violations of the Green Building Code and the appeals process associated with certification of the Green Building Code which will be promulgated by the Office of Environmental Services.*

## CHAPTER 5. RECYCLE INITIATIVE

### Subchapter

1. Purpose; Definitions; General Provisions
2. Establishment of Recycling Program

### SUBCHAPTER 1. PURPOSE; DEFINITIONS; GENERAL PROVISIONS

#### Section

- 5-101. Purpose.
- 5-102. Definitions.
- 5-103. Applicable regulations.
- 5-104. Designated recyclable materials.

#### § 5-101. Purpose

This chapter has been created because of the great interest of the people of the Muscogee (Creek) Nation in preserving the environment for future generations. It shall be the policy of the Muscogee (Creek) Nation to reduce the amount of solid waste generated by requiring the recycling of recyclable materials to the fullest extent possible by the government of the Muscogee (Creek) Nation and individuals or entities employed by the Nation and by the citizens of the Nation.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

#### § 5-102. Definitions

Definitions.

Unless the context otherwise requires, as used in this chapter, the following terms shall be defined as follows:

- Aluminum.** “**Aluminum**” means aluminum cans only.
- Commercial establishment.** “**Commercial establishment**” means any non-residential building owned by or leased to the Muscogee (Creek) Nation, including, but not limited to, those used for retail, wholesale, industrial, manufacturing, dining, offices, professional services, automobile services, hotels and motels, restaurants, or shipping and receiving areas.
- Corrugated cardboard.** “**Corrugated cardboard**” means paper in which a portion has been made to have a wavy surface (alternating ridges and grooves) and is placed between two (2) flat surfaces for the sake of strength, and which is commonly used to form cartons. Does not include linerboard or paperboard such as cereal boxes or clothing liners.
- Linerboard/paperboard.** “**Linerboard/paperboard**” means non-corrugated cardboard, and other paperboard boxes such as cereal boxes, tissue boxes, etc.
- Drop-off center.** “**Drop-off center**” means a Muscogee (Creek) Nation operated recycling center located at various areas to be determined by Office of

Environmental Services open to local residents and Muscogee (Creek) Nation citizens, and Muscogee (Creek) Nation businesses/non-profit organizations.

F. **Drop-off center accepted materials.** “**Drop-off center accepted materials**” means that when a drop-off center is open, the Recycling Drop-Off Center accepts office papers, newspapers, magazines, cardboard, glass, and plastic materials.

G. **Earned recycling receptacles** “**Earned recycling receptacles**” means receptacles earned after a certain weight percentage is received of recyclables.

H. **Glass containers.** “**Glass containers**” means bottles and jars, being transparent or translucent, and used for packing or bottling of various materials. This does not include plastics or glass products such as laboratory glass, window glass, blue glass, flat glass, mirrors, plate glass, light bulbs, dishes or ceramics.

I. **Magazines.** “**Magazines**” means any publications printed on glossy, clay-coated paper.

J. **Newspaper.** “**Newspaper**” means newsprint-grade paper, the common, inexpensive machine-finished paper made chiefly from wood pulp, which is printed and distributed, and includes all newspaper advertisement, comics, and enclosures. This does not include newspapers soiled by food, paint, petroleum products, oil or oil solvents, or other solid wastes that are not recyclable.

K. **Office paper.** “**Office paper**” means printed or unprinted sheets, shavings, and cuttings of white sulphite or sulphate ledger, bond, writing, and other papers which have a similar fiber and filler content, and which are free treated, coated, padded, and heavily printed paper, carbon paper, and non-paper materials. Includes computer and laser printout.

L. **Person.** “**Person**” in this subsection includes any firm, institution, partnership, association or corporation, public or private, organized or existing under the laws of the Nation or individual citizen.

M. **Plastic containers.** “**Plastic containers**” means any clear and colored bottles and jugs for food, beverage, and laundry materials made from high density polyethylene (HDPE) and polyethylene terephthalate (PET) plastics, excluding containers for use in chemical, laboratory, or automotive applications, and excluding caps and lids.

N. **Recyclable materials.** “**Recyclable materials**” means any type of refuse designated by the Green Commission through rules and regulations issued under this section to be separated for recycling.

O. **Recycling plan.** “**Recycling plan**” means a plan submitted to the Muscogee (Creek) Nation Green Building Commission that includes information on which recyclable materials comprise five percent (5%) or more by weight of the waste stream, how the commercial establishment will handle those recyclable materials and a description of other materials that are being recycled.

P. **Refuse.** “**Refuse**” means rubbish and recyclable materials.

Q. **Rubbish.** “**Rubbish**” means all perishable and non-perishable refuse generated by commercial establishments excluding items designated as recyclable.

## RECYCLE INITIATIVE

## Title 40, § 5-201

R. **Solid waste.** “Solid waste” means non-hazardous waste, household waste, industrial waste, food waste, and municipal waste.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

### § 5-103. Applicable regulations

These regulations apply to any person who generates refuse in Muscogee (Creek) Nation jurisdictional boundaries.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

### § 5-104. Designated recyclable materials

The following materials shall be designated as recyclable materials.

1. Aluminum (soda cans only)
2. Corrugated cardboard
3. Ferrous cans (steel or tin)
4. Glass containers (clear, green, and brown)
5. Magazines
6. Newspaper
7. Office paper
8. Plastic containers

All materials subject to any other title of this Code are considered designated recyclables in addition to the above list. The Green Building Commission reserves the right to add or remove recyclable materials as defined in these regulations at any time.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

## SUBCHAPTER 2. ESTABLISHMENT OF RECYCLING PROGRAM

### Section

- 5-201. Establishment of program.
- 5-202. Mandatory separation of recyclable materials.
- 5-203. Collection of recyclable materials.
- 5-204. Special events.
- 5-205. Education program.

### § 5-201. Establishment of program

There is established a program for the mandatory separation of certain recyclable materials from refuse which shall apply to all buildings, but not limited to, in the Muscogee (Creek) Nation territorial boundaries, and shall be carried out under the supervision of the Green Building Commissioners of the Muscogee (Creek) Nation or the Office of Environmental Services until the Green Building Commission is established.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

**§ 5–202. Mandatory separation of recyclable materials**

It shall be mandatory for each Muscogee (Creek) Nation governmental body to separate all designated recyclable materials from other refuse in accordance with the provisions of this subsection. These mandatory recycling requirements shall apply to all buildings without regard to whether the building's solid waste is collected by municipalities within the Muscogee (Creek) Nation jurisdiction.

A. **Buildings which receive municipal solid waste collection services.** It shall be mandatory for each owner or occupant of a building which receives city solid waste collection services to separate from other refuse all recyclable materials designated by the Commissioner in rules and regulations issued under this section.

B. **Buildings which do not receive municipal solid waste collection services.** It shall be mandatory for each owner or occupant of a building which does not receive city solid waste collection to separate all designated recyclable materials from other refuse in accordance with a recycling plan to be submitted to the Commissioner or his or her designee, in accordance with subsection E of this section.

[Added by NCA 09–040, § 1, approved Aug. 5, 2009.]

**§ 5–203. Collection of recyclable materials****A. Residential dwellings.**

1. As long as funds are available, the Muscogee (Creek) Nation, as incentive, will provide opportunities for household recycling receptacles. The materials designated for recycling in rules and regulations promulgated by the Commission shall be placed in the household recycling receptacles.

2. The preparation and placement of recyclables shall be accomplished in accordance with rules and regulations to be issued by the Commission under this section.

3. All earned recycling containers and receptacles shall be delivered to a designated recycling drop off center.

4. Recyclables shall not be placed in the same refuse containers as rubbish or mixed with rubbish or litter for collection, removal, or disposal. If separation of recyclable materials from rubbish does not take place, the Nation may decide not to accept said rubbish.

5. Upon placement of recyclables for the Nation or its contractor at each drop off center, pursuant to this subsection, such recyclables shall become the property of the Nation. It shall be a violation of this section if any person, other than authorized agents of the Nation acting in the course of their employment or contract, collects or causes to be collected any recyclables so placed. Each and every such collection in violation of this subdivision from one or more locations shall constitute a separate and distinct offense. In addition to the penalty provided in subsection I of this section, any violator of this subsection shall make restitution to the Nation for the value of recyclables illegally removed.

B. **Commercial and nonprofit establishments.** In commercial nonprofit establishments, the materials designated for recycling in rules and regulations



promulgated by the Commission shall be placed in recycling receptacles provided by the Muscogee (Creek) Nation and/or owners of such buildings if funds are available. The owner or owners of such buildings shall be responsible for the costs of recyclables separation and collection. Any savings in solid waste disposal realized due to recycling shall accrue to the owner or owners of such buildings. The Commission shall have the authority to require documentation from the Nation's recyclables collection contractors and from any owner, lessee or tenant of a building which does not receive Nation recyclables collection services, that recyclables are being delivered to a broker or end market that causes the material to be recycled or composted rather than disposed of in a landfill or incinerated.

**C. Recycling plans.**

1. All commercial or governmental entities shall submit recycling plans to commission upon request.
2. Contents of plan. Each recycling plan will cover the following items:
  - a. Which recyclables will be taken to proper drop off centers;
  - b. Frequency of drop offs;
  - c. Methods to be used for in-house collection, including types of containers;
  - d. Any other items which may be specified in rules and regulations promulgated by the Commission under this section.
3. Format of plan. Plans shall be submitted in a format to be specified in rules and regulations promulgated by the Commission under this section.

**D. Recyclable materials.** The recyclable materials to be separated shall be designated by the Commission in rules and regulations to be issued under this subsection. If the Commission designates a material as recyclable, such designation shall govern the treatment of such material notwithstanding the provisions of any ordinance to the contrary.

**E. The Office of Environmental Services.** The Office of Environmental Services, a division under the Muscogee (Creek) Nation, shall be responsible for providing advice, assistance, and recommendations to the Commission regarding the recycling program.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

**§ 5-204. Special events**

Recycling receptacles may be requested for community special events including, but not limited to, all traditional dances, Creek festivals, rodeos, food sales, and the like that may or may not require an event permit from the Muscogee (Creek) Nation. The following standards for receptacles and collected material apply:

1. The number of recycling receptacles shall equal the number of solid waste receptacles;
2. The solid waste and recycling receptacles shall be placed next to one another throughout the event venue.

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3. The types of recyclable materials suitable for deposit into each recycling receptacle shall include, at a minimum, aluminum cans and plastic bottles or as requested by the event coordinator.

4. Each recycling receptacle shall be clearly identified as a recycling receptacle and display a list of the types of recyclable materials that may be deposited into the receptacle. Recyclable materials deposited into the recycling receptacles must be delivered by Event Coordinators and returned to Office of Environmental Services for recycling, not a landfill for disposal.

Added by NCA 09-040, § 1, approved Aug. 5, 2009.

**§ 5-205. Education program**

It shall be the responsibility of all Muscogee (Creek) Nation governmental establishments to adequately inform all employees and/or resident users and patrons of the requirements of the recycling program. The required educational program, at a minimum, shall include written instructions to all parties identifying the materials to be recycled, how the materials are to be prepared, how to use the collection system, and updates detailing any changes in the program. Additionally it shall be the responsibility of the Commission to offer educational materials to all schools and entities requesting such materials.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

## **CHAPTER 6. GREEN INITIATIVES IN PROCESSES**

### **Section**

6-101. Purpose.

6-102. Definitions.

6-103. General provisions.

### **§ 6-101. Purpose**

The purpose of this subchapter is to help define “green processes” that the Muscogee (Creek) Nation shall strive to implement. This shall include but not be limited to the work processes of the Nation’s government and entities or individuals working for or on behalf of the government. All processes within the Nation’s government shall be reviewed from time to time to ensure compliance with this title is being implemented and/or maintained.

Added by NCA 09-040, § 1, approved Aug. 5, 2009.

### **§ 6-102. Definitions**

A. **Applicability.** “**Applicability**” shall mean that this subchapter is applicable to all entities of the Muscogee (Creek) Nation and any partners, associations, individuals, etc. who are working with or on behalf of the government.

Added by NCA 09-040, § 1, approved Aug. 5, 2009.

### **§ 6-103. General provisions**

The government of the Muscogee (Creek) Nation shall take the initiative to find ways to limit waste, conserve energy, and use recycled materials when available. This subchapter shall be deemed to be applicable to all processes associated with the day to day functions of the Muscogee (Creek) Nation government and those entities or individuals working for or on behalf of the Nation. These processes should be used in conjunction with subchapter 5 “Recycle Initiative” of this title. These processes include but are not limited to:

#### **A. Office paper procedures:**

1. Use electronic media to transmit internal governmental memorandums, orders, correspondence, etc. as applicable;
2. Use recycled copy paper;
3. Refill ink cartridges;
4. Use electronic order processing, purchase orders, acknowledgments, etc. where available instead of fax machines;
5. Use electronic payment options as available instead of check;

#### **B. Office environment:**

1. Turn off computers and other electronic equipment at the end of each day or between uses;
2. Turn off lights when not in use;
3. Set thermostats to optimal use levels;

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4. Close doors and windows when not in use;

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]

## CHAPTER 7. SOLID WASTE

### Subchapter

1. Purpose; Definitions; General Provisions

### SUBCHAPTER 1. PURPOSE; DEFINITIONS; GENERAL PROVISIONS

#### Section

- 7-101. Purpose.
- 7-102. Authority of the Office of Environmental Services.
- 7-103. Definitions.
- 7-104. Solid waste general provisions.

#### § 7-101. Purpose

A. The Muscogee (Creek) Nation declares it to be the policy of the Nation that solid waste generated on lands under the Nation's jurisdiction or solid waste that is imported onto the lands of the Nation shall be treated, stored and disposed of so as to minimize the present and future threat to human health and the environment, and that pollution prevention, waste reduction and recycling shall be encouraged.

B. The purpose of this subchapter is to establish solid waste laws and provisions necessary to promulgate rules and regulations in regards to a Solid Waste Code. These provisions are written to regulate the collections, transportation, and processing of solid waste that will:

1. Protect the public health, safety and welfare;
2. Protect the environment of the Muscogee (Creek) Nation;
3. Conserve the valuable land and other natural resources;
4. Enhance the beauty and quality of the environment; and
5. Encourage recycling of solid waste as defined in the recycling chapter of this title.

Added by NCA 09-040, § 1, approved Aug. 5, 2009.

#### § 7-102. Authority of the Office of Environmental Services

A. It shall be the authority of the Office of Environmental Services to promulgate rules, regulations and permitting processes and issues when necessary to:

1. Establish requirements for disposal, transfer, transport, treatment and storage of solid waste in ways that ensure public safety and protection of the environment to the greatest extent possible;
2. Require methods of pollution prevention, waste reduction, conservation, avoidance or mitigation of impacts not inconsistent with this title;

3. Set-up of processes and procedures for the sampling and submission of environmental impact statements that will be in compliance with this title and the subchapters herein;
4. Promulgate rules that address the transportation of solid waste. Such rules shall not be less stringent than those of the United States Department of Transportation or the Interstate Commerce Commission;
5. Regulating borrow and storage areas for soils and storage of chemicals including but not limited to cleaning materials and other toxins;
6. Developing comprehensive solid waste management rules and best management practices not inconsistent with this title;
7. Oversee development of an integrated solid waste management plan with input from the public, other Tribes, municipalities, county governments and regional solid waste planning management entities;
8. Establish administrative permits and enforcement procedures;
9. Establish standards and requirements for the remediation of groundwater, surface waters, or contaminated soils resulting from releases, spills or other activities;
10. Enforcing the applicable provisions of federal laws and regulation including but not limited to those related to landfills in compliance with 40 C.F.R. Part 258.
11. The rules and regulations authorized by this section shall be in compliance with Title 40's Chapter 5 entitled "Recycling Initiative".

Added by NCA 09–040, § 1, approved Aug. 5, 2009.

**§ 7–103. Definitions**

The following definitions shall be used in conjunction with this subchapter for the purposes of this title.

**A. Affiliated person.** "Affiliated person" shall mean any officer, director, partner or sole proprietor or any employee of this Nation. Additionally, affiliated person can be any person who is a general or key manager or who directs operations at the site of any Muscogee (Creek) Nation entity or any person who controls more than five percent (5%) of an applicant's debt or equity.

**B. Disclosure statement.** "Disclosure statement" means a written statement by the applicant wishing to discard or carry solid waste which shall contain:

1. the full name, business address, and social security or federal employment identification number of the applicant, business or all affiliated persons;
2. the full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least ten percent (10%) or which is a parent company or subsidiary of the applicant and a description of the ongoing organizational relationships as they impact operations;
3. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations;

4. a listing and explanation of any administrative, civil or criminal legal actions against the applicant and or any affiliated persons in the ten (10) years immediately preceding the filing of the application. Such action shall include without limitations any permit denial or sanction imposed by a Tribe, municipality, city, state regulatory agency or the United States Environmental Protection Agency; and

5. a listing of any other Tribe, federal and state environmental agency that has or has had regulatory responsibility over the applicant.

**C. Disposal site.** “**Disposal site**” shall mean any place, including but not limited to, landfills, transfer stations, surface disposal sites, and burial areas at which solid waste is dumped, abandoned or accepted or disposed of by incineration, land fills, land application, composting, shredding, compaction, bailing or any other method, or by processing by pyrolysis, resource recover or any other method, technique or process designed to change the physical, chemical or biological character or composition of any solid waste so as to render such waste safe or nonhazardous, amenable to transport, recover or storage or reduced in volume.

**D. Dwelling.** “**Dwelling**” means a permanently-constructed, habitable structure designed and constructed for full or part-time occupancy in all weather conditions, which is not readily mobile. The term shall include but is not limited to traditional housing, manufactured homes, or other habitable dwellings such as apartments or condominiums;

**E. Final closure.** “**Final closure**” means those measures for providing final capping material, proper drainage, perennial vegetative cover, maintenance, monitoring and other closures actions required for statute, rule permit or order;

**F. Inert waste.** “**Inert waste**” means any solid waste that is insoluble in water, chemically inactive, that will not leach contaminants or is commonly found as a significant percentage of residential waste;

**G. History of noncompliance.** “**History of noncompliance**” means an past operations by an applicant or affiliated person which clearly indicate a reckless disregard for environmental regulation, or a demonstrated patter of prohibited conduct which could reasonably expected to result in adverse environmental impact if a permit were issued;

**H. Solid waste.** “**Solid waste**” means all putrescible and non-putrescible refuse in solid, semisolid, or liquid form or contained gaseous material, including but not limited to garbage, rubbish, ashes or incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid or semisolid commercial and industrial waste including explosives, biomedical wastes, mining wastes, herbicides and pesticide wastes.

**I. Solid waste landfill.** “**Solid waste landfill**” means but is not limited to municipal solid waste landfills as defined in the federal or state regulations;

**J. Solid waste management system.** “**Solid waste management system**” means the system that shall be developed by the Office of Environmental Services of the Muscogee (Creek) Nation for the purposes of collection, disposal

of solid waste by any person engaging in such processes as a business, individual, municipality, authority, trust, county, or any combination thereof;

**K. Transfer station.** “**Transfer station**” means any disposal site, processing facility or other place where solid waste is transferred from a vehicle or container to another vehicle or container for transport, including but not limited to railroad, barge, truck, or other unloading facility. It does not include;

1. a facility such as an apartment complex or manufacturing plant where solid waste that is transferred has been generated by the occupants, residents or facility functions;
2. a citizen collection station; or
3. a solid waste collection system which leaves the waste in enclosed containers along the collection route for later transport; and

**L. Waste reduction.** “**Waste reduction**” means to reduce the volume of waste being generated and/or requiring disposal.

Added by NCA 09-040, § 1, approved Aug. 5, 2009.

**§ 7-104. Solid waste general provisions**

The Muscogee (Creek) Nation National Council recognizes that it is necessary for the public safety, health, interest and economic welfare to encourage and promote the recycling and reuse of recoverable materials. The recycling and recovering of materials can substantially reduce production and disposal costs, save Tribal lands conserve natural resources and protect the environment. It is therefore declared and the National Council authorizes the Office of Environmental Services shall further this goal by promulgating rules and regulations in compliance with this title and this subchapter.

[Added by NCA 09-040, § 1, approved Aug. 5, 2009.]



# TITLE 41. ANIMALS

## VPUEKV

Chapter	Section
1. BISON HERD MANAGEMENT. ....	1-101

### CHAPTER 1. BISON HERD MANAGEMENT

Section
1-101. Purpose.
1-102. Bison herd management.
1-103. Authority for disposition.

#### § 1-101. Purpose

A. The Director of Tribal Affairs shall prepare a Bison Herd Management Plan, which shall balance the long range goals of:

1. Increase in herd population.
2. Protection of Tribal lands from overgrazing.
3. Genetic diversity of herd population.
4. Establishing criteria for the optimum financial return to the Nation in the sale of bison not suitable to be maintained in the Tribal herd, with specific recommendations of the proper age to sell younger males and elder females.
5. Grazing of suitable Tribal lands with no assigned use and grazing of suitable lands of Muscogee (Creek) Citizens upon request and approval.
6. Availability of sales and/or loans or leases of individual bison to Muscogee (Creek) Citizens who wish to establish bison herds.
7. Providing opportunities for families with inherited lands in undivided fractional ownership to establish bison herds whenever that family determines that such use would provide more economic return to the family than alternative uses of that land.

[Added by NCA 06-078, § 2, approved May 30, 2006.]

#### Library References

Animals ☞3.5, 14.	C.J.S. Animals §§ 194 to 227, 237 to 243, 518.
Indians ☞150, 210.	C.J.S. Indians §§ 36, 57 to 59, 66 to 72, 80 to
Westlaw Topic Nos. 28, 209.	83, 87 to 92.

#### § 1-102. Bison herd management

The Bison Herd Management Plan shall be submitted to the Speaker of the National Council, with distribution to the Tribal Affairs Committee of the National Council on or before January 15, 2007, and shall be subject to the amendment and approval of the Muscogee (Creek) National Council by ordinance.

[Added by NCA 06-078, § 2, approved May 30, 2006.]

**Title 41, § 1–102**

**ANIMALS**

**Library References**

Animals ⇨3.5.

Indians ⇨150, 210.

Westlaw Topic Nos. 28, 209.

C.J.S. Animals §§ 194 to 227.

C.J.S. Indians §§ 36, 57 to 59, 66 to 72, 80 to 83, 87 to 92.

**§ 1–103. Authority for disposition**

Until the approval of the Bison Herd Management Plan, the Director of Tribal Affairs shall have the authority to sell, at market price, two (2) young male bison per year to the anonymous donor, and shall deposit the proceeds into the Treasury to be reserved for future purchases and transportation of young bison which are unrelated to the present herd.

[Added by NCA 06–078, § 2, approved May 30, 2006.]

**TITLE 42. MOTOR VEHICLES**  
**ESCVLKV**

*(Reserved for Future Use)*



**TITLE 43. OIL AND GAS**  
**KULKE NEHA HVTVM NEHA**

*(Reserved for Future Use)*



**TITLE 44. RAILROADS**  
**METKELETKV ENNENE**

*(Reserved for Future Use)*





**TITLE 45. UNITED STATES  
WVCENA**

*(Reserved for Future Use)*



**TITLE 46. WATER RIGHTS**  
**OWV OHFVTCV**

*(Reserved for Future Use)*



**TITLE 47. PROBATE**  
**OHFVTCECETV**

*(Reserved for Future Use)*



# TITLE. 48. WORKER'S COMPENSATION VTOTKV SETEMFEKETV

Chapter	Section
1. GENERAL PROVISIONS. ....	1-101
2. TRIBAL WORKERS' BENEFIT ADVISORY COUNCIL. ....	2-101
3. ADMINISTRATIVE DUTIES AND POWERS. ....	3-101
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6. BENEFITS. ....	6-101
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## CHAPTER 1. GENERAL PROVISIONS

Section
1-101. Citation and purpose.
1-102. Waiver of sovereign immunity.
1-103. Insurance requirements.
1-104. Definitions.
1-105. Acknowledgment of Code.
1-106. Time limits for reporting of incidents and filing of claims.
1-107. Burden of proof.
1-108. Right to waive defenses.
1-109. Guardian for minor or incompetent.

### § 1-101. Citation and purpose

This Code shall be known and cited as the “Workers’ Benefit Code” and shall be administered by the Tribal Workers’ Benefit Advisory Council (“TWBAC”), or its successor. The purpose of this Code is to establish the rights and benefits of employees of the Muscogee (Creek) Nation for on-the-job bodily injuries due to accidents or occupational illness or disease as set forth herein.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### § 1-102. Waiver of sovereign immunity

The Muscogee (Creek) Nation hereby expressly grants a limited waiver of the Muscogee (Creek) Nation’s sovereign immunity from suit, with respect to specific enforcement of the Worker’s Benefit Code and only in the Muscogee (Creek) Nation Courts, provided that such waiver shall not extend to disputes between the Nation and any person or entity other than those with standing under the Worker’s Benefit Code; provided that such waiver of sovereign immunity shall constitute the Nation’s consent to suit by a covered worker for the limited purpose of collection of the Nation’s financial obligations to the covered worker established under this Code from the funds of the Nation that are not subject to restrictions by law of the Nation or other governmental

authority, and shall not be construed as granting a waiver for the purpose of obtaining a court judgment or order requiring payment from, delivery of, or otherwise affecting (1) any other funds or assets of the Muscogee (Creek) Nation, (2) any real property, personal property or chattels of the Muscogee (Creek) Nation or any entities, agencies or (3) any funds belonging to, or owed to, owned by, held in trust for, administered by or under the control of the Muscogee (Creek) Nation or any entities, agencies or political subdivisions of the Muscogee (Creek) Nation; and provided further that nothing in this limited waiver of sovereign immunity shall be construed as allowing any award of punitive damages or exemplary damages against the Muscogee (Creek) Nation. Nothing herein shall be construed as having conferred jurisdiction on any state courts or tribunals. Nothing herein shall be construed as making state law applicable to the Muscogee (Creek) Nation, its entities or its employees.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞234, 405.  
 Westlaw Topic No. 209.  
 C.J.S. Indians §§ 59, 151 to 179.

**§ 1–103. Insurance requirements**

Every employer must insure for the benefits provided under this Code, but are allowed self-insured retention levels in accordance with the rules of the TWBAC. Any insurance company issuing a policy insuring benefits hereunder shall: (1) require a loss prevention/control program sufficient to enable the Nation to provide a safe workplace for all Tribal workers; and (2) assist the employer in reducing hazards in the workplace and in the implementation of continued safety policies and procedures.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210, 223.	C.J.S. Indians §§ 32 to 35, 57 to 59, 62, 66 to 75, 161 to 162, 180.
Workers’ Compensation ☞186.	C.J.S. Workmen’s Compensation § 114.
Westlaw Topic Nos. 209, 413.	

**§ 1–104. Definitions**

Pronouns of the masculine gender used in this Code shall apply to both sexes. Unless stated otherwise in specific sections of the Code, time limits shall be calculated using calendar days. Unless the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Code:

- A. “Administrator” or “Tribal Workers’ Benefit Claim Administrator” shall mean either the insurance company providing coverage hereunder, any subcontractor appointed by said insurance company, or subcontractor selected by the TWBAC, but shall not mean the TWBAC who shall administer the system.
- B. “Attending physician” shall mean the physician, or other medical care provider that is responsible for the planning, provision and oversight of medical treatment to a covered worker who sustains a covered injury.



C. "Average weekly wage" shall mean as follows:

1. For a covered worker hired for a regular full or part-time position expected to last at least thirteen (13) weeks, the average weekly wage shall be calculated based on the preceding thirteen (13) weeks of the covered worker's actual wage earnings. In the case of a worker who has not worked for a covered employer within the immediate preceding thirteen (13) weeks, the average weekly wage shall be calculated based on the salary level the worker was hired at or is currently receiving.

2. For a covered worker hired for a temporary, emergency or special projects basis who has continuously worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated as provided in paragraph 1, above.

3. For a covered worker hired on a temporary, emergency or special projects basis who has not continually worked for a minimum of thirteen (13) weeks, the average weekly wage shall be calculated by taking the expected total gross wages and divide by the expected number of work weeks.

4. For covered workers serving as volunteers, the average weekly wage shall be the salary of similarly paid positions for the covered employer performing similar work.

For purposes of this definition, the work week shall be as defined by the personnel manual or policy applicable to the covered employee at the time of injury.

D. "Benefits" shall mean the indemnity and medical payments provided by this Code.

E. "Indemnity" shall mean total disability and partial disability income benefits and impairment payments.

F. "Medical" shall mean medical expenses, mileage and any other expenses associated with medical treatment.

G. "Muscogee (Creek) Nation" and "Nation" mean the Muscogee (Creek) Nation, a federally recognized American Indian Tribe, its agencies, and any Tribal corporations and enterprises located within the jurisdictional boundaries of the Muscogee (Creek) Nation.

H. "Child" shall mean dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children; but does not include married children unless they are shown to be dependents.

I. "Claimant" shall mean the injured covered worker or, in the event of death of the covered worker, dependents of the deceased covered worker.

J. "Consulting physician" shall mean the physician, other health care provider or other health care expert that is retained by the Administrator to assist the Administrator in carrying out its duties and responsibilities under this Code. Such activities may include, but are not limited to, determination of the validity of a claim; review of an attending physician's diagnosis and treatment plans; determination of MMI; and determination of impairment rating. At the discretion and expense of the Administrator, an injured worker may be required by

the Administrator to be seen by the consulting physician to assist in making any required recommendations.

K. "Course and scope of employment" shall mean the employer's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the normal course and scope of employment, as defined by job description, and the worker must be acting in furtherance of the employer's interest at the time of the incident and or accident, in order for a claim to be compensable.

L. "Covered employer" and "employer" shall mean the Nation, its agencies, boards, entities, communities, and enterprises.

M. "Covered worker" and "worker" shall mean every person who has entered into the employment of or performs work for a covered employer or apprenticeship for a covered employer, every executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a Tribal corporation, including a person holding an official position, or standing in a representative capacity of the employer, including officials elected or appointed by the Muscogee (Creek) Nation, compensated monetarily or otherwise, except as hereinafter specified. The terms covered worker and worker shall not include an independent contractor working under contract for an employer, whether that contract is express or implied. Covered workers shall include all persons employed by the employer regardless of where they work, whether it is on or off the Muscogee (Creek) Nation. Covered workers shall include volunteers or other persons providing work for an employer who do so without receiving compensation.

N. "Death" shall mean any fatality of the covered worker proximately and directly caused by work injury or occupational disease.

O. "Dependents" shall mean the following persons, and they shall be deemed to be the only recognizable dependents under the provisions of this Code:

1. The widow or widower, if married and living with the deceased at the time of deceased's death and legally entitled to be supported by the deceased as a dependent. For purposes of this Code, a covered worker may, in a written self-declaration to be provided by the employer, designate a person as his dependent domestic partner because of a traditional Native American marriage, or for other reasons, which person shall be treated as a dependent widow(er) if the person was living with the deceased covered worker at the time of his death, provided a person may not be designated as a dependent domestic partner if said person and employer could not be married in accordance with Title 6, § 2-104;

2. A child under eighteen (18) years of age, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in an accredited education institution at the time of the covered worker's injury, unmarried and dependent upon the deceased; or

3. Any of the following persons who were wholly dependent on the earnings of the covered worker for support at the time of his injury. The relation of dependency must exist at the time of injury:

- i. A parent or grandparent; or
- ii. A grandchild, brother or sister, niece or nephew only if under eighteen (18) years of age, or incapable of self-support and dependent upon the deceased.

P. "Disability" shall mean the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work-related injury and/or occupational disease and must be supported by the worker's attending physician and, if requested by the Administrator, the consulting physician. "Partial disability" is distinguished as any incapacity less than one hundred percent (100%) disability as defined above.

Q. "Impairment" shall mean any anatomic or functional abnormality or loss existing after maximum medical improvement (MMI) as defined herein that results from a compensable injury and/or occupational disease and is reasonably presumed to be permanent based on reasonable medical probability.

R. "Injury" shall mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result there from and occupational disease arising out of and in the course of employment as herein defined. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment. Injury includes heart-related or vascular injury, illness or death only if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment. Injury shall not include mental injury that is unaccompanied by physical injury, except in the case of rape which arises out of and in the course of employment.

S. "Intoxication" shall mean blood or impaired alcohol content in excess of five hundredths of a percent (.05%) or conviction of the offense of driving while intoxicated or actual physical control, (or words to that effect) by any court of competent jurisdiction, or loss of the normal use of one's mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; or (5) any other similar substance.

T. "Maximum medical improvement" (MMI) shall mean the earlier of:

1. The point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
2. The expiration of thirty-six (36) months from the date incapacity income benefits begin to accrue.

U. "Occupational disease" shall mean only those diseases which arise out of and in the course and scope of the worker's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature

of the employment. Such disease must be incidental to the character of the business, occupation, or process in which the worker was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed to outside of said occupation is not compensable as an occupational disease. Mental illness shall only be covered if accompanied by a physical injury.

V. "Parent or grandparent" shall mean the natural or adoptive father or mother or the natural or adoptive grandfather or grandmother of the covered worker.

W. "Policy" shall mean any Nation Workers' Benefit Policy of Insurance issued to the Nation.

X. "Quasi-dependent" shall mean those persons who were only partially dependent on the earnings of the covered worker for support at the time of the injury causing death.

Y. "Scheduled weeks" shall mean one hundred four (104) weeks and is the maximum number of weeks that a covered worker shall be entitled to functional impairment benefits under this Code.

Z. "Settlement" shall mean the date the release of all claims is executed and the monetary terms of the agreement met.

AA. "Spouse" shall mean the person married to the covered worker at the time of the death or injury to the covered worker. Spouse shall include all persons legally married to the covered worker, married because of a traditional Indian marriage ceremony, or who is a domestic partner to the covered worker as declared by the covered worker in a written self-declaration to be provided by the employer.

BB. "Tribal Court" shall mean the Muscogee (Creek) Nation District Court.

CC. "Tribal Workers' Benefit Advisory Council" ("TWBAC"), or its successor, shall mean the entity organized to administer the System in accordance with Section 2-101 et seq.

DD. "Tribal Workers' Benefit System" shall mean this Code, any and all rules and regulations promulgated hereunder, as well as the functions of the Administrator, the TWBAC and the arbitration panel established to adjudicate disputes under Chapter 9 of this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**§ 1-105. Acknowledgment of Code**

A. All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take workers' benefits in accordance with the tenants, conditions, and provisions of this Code by virtue of employment with the Nation or other employers as defined herein. All covered workers and persons asserting a claim for workers' benefits acknowledge that the Nation is a federally recognized American Indian Tribe and is exercising its inherent sovereign authority in providing workers' benefits under this Code.

B. The employer shall be responsible for and shall have posted in a conspicuous location a notice as follows:

**NOTICE TO WORKERS**

**YOUR EMPLOYER IS INSURED UNDER THE NATION WORKERS' BENEFIT SYSTEM THROUGH:**

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If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by the Workers' Benefit Code. **NOTIFY YOUR EMPLOYER IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.** If you fail to do so, you may lose your benefits under the Nation Workers' Benefits System. In no event shall benefits be paid to a worker who failed to notify their employer within thirty (30) days after sustaining such work-related injury.

It is your responsibility to file a claim for benefits under the Nation Workers' Benefit Code with the Administrator of the Nation Workers' Benefit System. You are required to report any injuries or notification of occupational disease as soon as possible, and in no event more than ten (10) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Nation Workers' Benefit System Claim Administrator at:

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Your exclusive remedy for any work connected injury or occupational disease is through the Nation Workers' Benefits System. The state's Worker Compensation System has no authority to accept a claim from you under the Nation Workers' Benefit Code as you are employed by the Muscogee (Creek) Nation, a sovereign Indian Nation employer, which is exclusively under the jurisdiction of its own Nation Workers' Benefit System.

**NOTICE TO EMPLOYERS**

You are required to display this poster conspicuously in a manner that will be of greatest benefit to your workers.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞401.	C.J.S. Workmen's Compensation §§ 156, 240,
Westlaw Topic Nos. 209, 413.	746 to 758.

**§ 1-106. Time limits for reporting of incidents and filing of claims**

A. A covered worker shall report to his immediate supervisor, department director, or the personnel manager/human resources director, any incident or accident which causes an on-the-job injury as soon as possible, but in no event later than ten (10) days of the incident. The supervisor, department director, personnel manager or human resources director receiving the report of the incident or accident shall submit the report to the Administrator within seven (7) days of receipt from the covered worker.

B. Claims for injury must be made by the covered worker to the Administrator within three (3) months of the date of occurrence.

C. Claims for occupational disease shall be made by the covered worker to the Administrator within three (3) months from date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event, longer than six (6) months from the date the worker terminates employment with the employer.

D. Failure to give notice of injury to the employer or to file a claim with the Administrator, within the above-stated time limit shall constitute a forfeiture by the covered worker, or, in case of death, his representatives of all benefits available and payable under this Code. The report(s) made in subsection A, above shall not substitute for the claims for injury or claims for occupational disease required in this section.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⇄210, 414.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

**§ 1-107. Burden of proof**

The burden of proof shall rest upon the covered worker, or, in the case of death, his dependents to prove:

A. That the injury complained of was a result of an incident, accident or occupational disease;

B. That the injury arose out of the covered worker's employment;

C. That the injury arose while in the course and scope of employment and arose proximately out of covered employment; and

D. That the injury arose while in the furtherance of the employer's interests.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⇄210, 421.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to 179.

**§ 1-108. Right to waive defenses**

The Administrator shall have the right and power to waive any and all defenses affecting the compensability of a covered injury under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**§ 1-109. Guardian for minor or incompetent**

Any person who is mentally incompetent and/or under the age of eighteen (18) and is entitled to receive compensation under this Code shall be appointed a guardian or other representative by the Muscogee (Creek) Nation Tribal Court if a guardian has not been appointed in a prior action.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⇄126, 133.

Infants ⇄76.

## **GENERAL PROVISIONS**

Mental Health ~~§~~485.  
Westlaw Topic Nos. 209, 211, 257A.  
C.J.S. Indians §§ 46 to 50, 53, 150.

## **Title 48, § 1–109**

C.J.S. Infants §§ 195, 321 to 336, 338 to 343.  
C.J.S. Mental Health §§ 314, 316 to 325.

## CHAPTER 2. TRIBAL WORKERS' BENEFIT ADVISORY COUNCIL

### Section

- 2-101. Establishment.
- 2-102. TWBAC membership.
- 2-103. Powers of TWBAC.
- 2-104. Travel/expenses.

### § 2-101. Establishment

There is hereby established a Tribal Workers' Benefit Advisory Council ("TWBAC") whose purpose is to administer the Tribal Workers' Benefit System by promulgating rules and procedures of operations and to cooperate for the prevention of injuries and occupational diseases to workers, and in the event of injury or occupational disease, the worker's rehabilitation or restoration to health and vocational opportunity.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|------------------------------|--|
| Indians ☞210.                | C.J.S. Indians §§ 57 to 59, 66 to 72.      |
| Workers' Compensation ☞1076. | C.J.S. Workmen's Compensation §§ 700, 702. |
| Westlaw Topic Nos. 209, 413. |  |

### § 2-102. TWBAC membership

The TWBAC shall be comprised of five (5) persons holding the following positions:

- A. The Muscogee (Creek) Nation Personnel Manager, or his/her designee;
- B. The Human Resources Director for Creek Nation Tulsa Casino or his/her designee;
- C. The Muscogee (Creek) Nation Controller or his/her designee;
- D. An employee of the Muscogee (Creek) Nation selected by the Muscogee (Creek) Nation Executive Director; provided that said employee shall not be a Deputy Director of the Nation;
- E. Tribal Trade and Commerce Authority Human Resources Director;
- F. Muscogee (Creek) Nation Business Enterprise Human Resources Director; and
- G. A physician at the Okmulgee Indian Health Center. A person shall serve on the TWBAC so long as that person holds the position qualifying the person to serve on the TWBAC.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|------------------------------|---------------------------------------|
| Indians ☞210, 216.           | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞108.  | C.J.S. Workmen's Compensation § 100.  |
| Westlaw Topic Nos. 209, 413. |                                       |



**§ 2-103. Powers of TWBAC**

TWBAC shall have the following duties and powers:

A. To meet on a bi-monthly basis to carry out the duties and powers of TWBAC;

B. To promulgate rules and regulations for the implementation and administration of this Code;

C. To periodically review the benefits provided for under this Code and to make recommendations to the National Council for amendments to benefit levels or any other needed revisions to this Code deemed advisable by the TWBAC;

D. To develop programs and to cooperate with the Administrator for the preparation and presentation of information and educational programs designed to prevent injuries and occupational diseases to covered workers;

E. To take any and all other actions deemed reasonable and necessary for the implementation of this Code, including but not limited to setting rates and adequate reserve levels;

F. To retain consultants when deemed necessary by the TWBAC in order to carry out its duties as provided herein;

G. To select the Administrator; and

H. To select an arbitration panel consisting of three (3) people trained in mediation to adjudicate the disputes regarding benefits provided under this Code as set forth in below.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.

Workers' Compensation ☞1090.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 712, 717.

**§ 2-104. Travel/expenses**

TWBAC members shall also receive travel expenses for all authorized travel and mileage reimbursement to and from meetings duly convened within the jurisdictional boundaries of the Muscogee (Creek) Nation, in accordance with Muscogee (Creek) Nation policies and procedures regarding travel.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

## **CHAPTER 3. ADMINISTRATIVE DUTIES AND POWERS**

### **Section**

- 3-101. Custodian duties.
- 3-102. Payment and distribution of benefits.
- 3-103. Nation workers' benefit system Administrator powers and duties.
- 3-104. Acceptance/denial of claim.

### **§ 3-101. Custodian duties**

The Administrator or its designee shall be the payor of the workers' benefits. All authorized disbursements there from shall be paid by the Administrator or its designee with its stated authority and shall be the custodian of all claim files and related documents.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### **Library References**

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|------------------------------|---|
| Indians ☞210.                | C.J.S. Indians §§ 57 to 59, 66 to 72.   |
| Workers' Compensation ☞1090. | C.J.S. Workmen's Compensation §§ 706 to |
| Westlaw Topic Nos. 209, 413. | 707, 710 to 712, 717.                   |

### **§ 3-102. Payment and distribution of benefits**

The Administrator shall administer this Code in accordance with the terms and conditions described herein and any rules promulgated by the TWBAC, and remit payment for all matters of benefit claims as provided for in this Code. Further, the Administrator shall have the authority to determine the distribution of benefit checks.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### **Library References**

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|------------------------------|---|
| Indians ☞210.                | C.J.S. Indians §§ 57 to 59, 66 to 72.   |
| Workers' Compensation ☞1090. | C.J.S. Workmen's Compensation §§ 706 to |
| Westlaw Topic Nos. 209, 413. | 707, 710 to 712, 717.                   |

### **§ 3-103. Nation workers' benefit system Administrator powers and duties**

A. The Administrator shall be empowered to request medical reports, police reports, autopsy reports and special investigations. The Administrator shall also be empowered to engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further this Code.

B. In the case of death of a covered worker, the Administrator may request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and shall have the right to request any and all reports made from such autopsies if deemed necessary. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at the autopsy ordered by the Administrator.

C. The Administrator may retain a consulting physician for purposes of assisting in carrying out the duties and powers provided for in this Code.

D. The Administrator shall complete and keep accurate administrative records. Claim files shall be maintained on all activities relating to the claims made under the policy. All closed files shall be preserved for not less than six (6) years.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

Indians ☞210.

Workers' Compensation ☞1090.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 712, 717.

### § 3-104. Acceptance/denial of claim

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and do either of the following: 1) begin payment of compensation within twenty-one (21) days of a valid claim, or 2) send the claimant written notice by certified mail return receipt requested, within twenty-one (21) days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall either commence the payment of benefits or notify the claimant in writing by certified mail return receipt requested that the claim is denied.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

Indians ☞210.

Workers' Compensation ☞1090 to 1095.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 706 to 707, 710 to 715, 717 to 719.

## CHAPTER 4. COVERAGE AND COMPENSABILITY

### Section

- 4-101. Entitlement to benefits.
- 4-102. Disclosure of pre-existing disabilities.
- 4-103. Mental trauma injuries.
- 4-104. Going to and returning from work.
- 4-105. Benefits precluded by neglect and/or refusal of worker to submit to treatment.
- 4-106. Injury or death by consumption and/or application of drugs and/or chemicals.
- 4-107. Intoxication.
- 4-108. False statement or representation to obtain compensation; penalty and forfeiture.
- 4-109. Injuries resulting from self-inflicted injuries, willful misconduct, or "horseplay".
- 4-110. Injuries resulting from "acts of God".
- 4-111. Recreational, social or athletic activities.
- 4-112. Voluntary activities.
- 4-113. Injuries caused by third parties.

### § 4-101. Entitlement to benefits

A. Any claimant for benefits under this Code shall be responsible for filing his claim with the Administrator.

B. Coverage exists under this Code for a covered worker's injury without regard to fault or negligence, if the injury arises out of and in the normal course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury, including, without limitation, any covered worker whose work at the time of injury was subject to Federal Workers' Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ☞210.

Workers' Compensation ☞511, 606.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 288 to 290, 295, 365 to 367.

### § 4-102. Disclosure of pre-existing disabilities

A. All workers shall disclose any pre-existing physical or mental disorder and/or disability known, or that reasonably should have been known, to the worker that would prevent, affect or impair him from performing in a reasonable and safe manner the activities involved in the position in which he works. Disclosure shall be made in the employment application or before commencing new job duties after job reclassification, reassignment, promotion, demotion or other change in job duties. The content of such disclosure shall be made promptly by the worker after submitting a claim for benefits under this Code.

B. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code shall be declined by the Administrator, if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to Section 4-102.A.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞554.	C.J.S. Workmen's Compensation § 328.
Westlaw Topic Nos. 209, 413.	

**§ 4–103. Mental trauma injuries**

A. Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under this Code, except that mental trauma may be recoverable if it results from accidental injury or an incident traceable to a definite time, place and cause rather than from repetitive mental trauma.

B. Regardless of Section 4–103.A., a mental trauma or emotional injury that arises principally from a personnel action, including without limitation, a transfer, promotion, demotion or termination is not a compensable injury under this Code.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞546.	C.J.S. Workmen's Compensation § 313.
Westlaw Topic Nos. 209, 413.	

**§ 4–104. Going to and returning from work**

An accident and/or incident occurring to a worker while on the way to or from work, including lunch break, is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest, provided the worker has not deviated from the direct course of travel.

[Add by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞719.	C.J.S. Workmen's Compensation § 431.
Westlaw Topic Nos. 209, 413.	

**§ 4–105. Benefits precluded by neglect and/or refusal of worker to submit to treatment**

A. No benefits shall be payable for the death or disability of a worker if the worker's death is caused by, or the worker's disability aggravated, caused or continued by, an unreasonable refusal or neglect to submit to and/or follow any competent or reasonable surgical or medical treatment, medical aid or advice. A worker who has refused and/or neglected to submit to medical and/or therapeutic treatment, or to take medications as prescribed, shall be deemed to have reached maximum medical improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.

B. Any covered worker entitled to benefits under this Code shall be presumed to have reached maximum medical improvement if such covered worker

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has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of occurrence or from the last date of prior treatment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ☞210.

Workers' Compensation ☞798.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 481.

### § 4-106. Injury or death by consumption and/or application of drugs and/or chemicals

No benefits of any nature shall be payable to a covered worker for injury and/or death caused or contributed to by any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntarily poisoning, except those drugs prescribed by a physician or other practitioner licensed to prescribe such medication and only when taken as prescribed.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### § 4-107. Intoxication

No benefits of any nature shall be payable to a covered worker injured or killed while intoxicated, as defined in Section 1-104.S, regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under this Code. All workers accepting employment with the employer and under this Code agree to submit to post-incident/post-accident drug and alcohol screening as authorized in the employer's personnel policies, and agree to waive any privilege associated with the results of said tests.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ☞210.

Workers' Compensation ☞798.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 481.

### § 4-108. False statement or representation to obtain compensation; penalty and forfeiture

If, in order to obtain any benefits under the provisions of this Code, any person willfully makes a false statement or representation, including material omissions of fact, he shall forfeit all rights to compensation, benefits or payment upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition which was not disclosed as required under this Code may be declined by the Administrator pursuant to Section 4-102.B.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.

Workers' Compensation ⌘771.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 471 to 472.

**§ 4-109. Injuries resulting from self-inflicted injuries, willful misconduct, or "horseplay"**

No benefits of any nature shall be payable to a covered worker whose injury or death was caused by the covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the normal course and scope of employment and thus such an injury is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear or use a safety device and/or to perform work in a certain manner may cause a worker to forfeit all rights to compensation, benefits, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease. A covered worker's willful disabling of safety devices on equipment constitutes a willful intention to injure himself thereby precluding eligibility for benefits under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.

Workers' Compensation ⌘671, 774, 778.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 468, 471 to 475.

**§ 4-110. Injuries resulting from "acts of God"**

No benefits of any nature shall be payable to a covered worker who is injured or killed when the injury arose out of an act of God, unless the employment exposed the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death that results from a natural cause (i.e., heart attack, stroke or other natural function failure) that does not arise out of the normal course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.

Workers' Compensation ⌘637.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation § 456.

**§ 4-111. Recreational, social or athletic activities**

No benefits of any nature shall be payable to a covered worker who is injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.

Workers' Compensation ☞664.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 401, 405 to 406.

**§ 4-112. Voluntary activities**

No benefits under this Code shall be payable to a covered worker if the injury, disease or death arises from participation in voluntary physical fitness activities during the regular work day, regardless of whether the employee is or is not compensated for the time in which the physical fitness activities take place.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.

Workers' Compensation ☞255, 664.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 158, 401, 405 to 406.

**§ 4-113. Injuries caused by third parties**

No benefits of any nature shall be payable to a covered worker who is injured or killed as the result of an act of a third party, result of an act of a third party, including co-workers, who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons relevant to his employment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.

Workers' Compensation ☞678.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

C.J.S. Workmen's Compensation §§ 409, 420, 424.



## CHAPTER 5. BENEFITS—GENERAL PROVISIONS

### Section

- 5-101. Right to compensation and medical treatment benefits.
- 5-102. Workers' benefit as exclusive remedy.
- 5-103. Effect of compensation paid in other jurisdictions or third party recovery.
- 5-104. Liability of third parties; subrogation.
- 5-105. Assignability of benefits; attachment of liens.
- 5-106. Aggravation of pre-existing disease or condition.
- 5-107. Termination of benefits upon death.

### § 5-101. Right to compensation and medical treatment benefits

A covered worker coming within the provisions of this Code who is injured, or in the event of a workers' death, the dependents of such covered worker, arising out of and in the normal course and scope of employment and while acting in furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of this Code, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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| Indians ☞210.                      | C.J.S. Indians §§ 57 to 59, 66 to 72.      |
| Workers' Compensation ☞230, 410.1. | C.J.S. Workmen's Compensation §§ 135, 137. |
| Westlaw Topic Nos. 209, 413.       |  |

### § 5-102. Workers' benefit as exclusive remedy

The rights and remedies for a worker on account of injury or occupational disease for which benefits under this Code are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for any injury or death covered under this Code and including any other benefits or compensation that a worker may attempt to obtain from a third party that may be able to seek indemnification from an employer.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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| Indians ☞210.                | C.J.S. Indians §§ 57 to 59, 66 to 72.          |
| Workers' Compensation ☞2084. | C.J.S. Workmen's Compensation §§ 1587 to 1591. |
| Westlaw Topic Nos. 209, 413. |  |

### § 5-103. Effect of compensation paid in other jurisdictions or third party recovery

A covered worker who pursues and recovers compensation under the workers' compensation laws of another jurisdiction in violation of this Code, is

barred from hereby expressly recovering under this Code. If a covered worker files suit or makes formal demands against a third party for monetary damages due to accidental injury, occupational disease or death for which benefits are provided under this Code, the covered worker or, in the case of death, the dependents of the deceased, shall forfeit and waive any and all rights to compensation under this Code.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**§ 5-104. Liability of third parties; subrogation**

The employer and/or its representative, insurer, guarantor or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of or injuries to said worker arising out of and in the normal course and scope of employment and while the worker was acting in furtherance of the employer's interest to the extent of the benefits bestowed upon said worker. In case of recovery, the Administrator or arbitration panel established under Chapter 9 of this Code shall enter judgment for distribution of the proceeds thereof as follows:

A. A sum sufficient to repay the employer and/or the Administrator for the amount of compensation actually paid to the worker under this Code up to that time;

B. A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable, but the sum is not the final adjudication of the future payments which the worker is entitled to receive and if the sum received by the employer is in excess of the amount required to pay the compensation, the excess shall be paid to the worker.

C. The balance, if any, shall be paid over to the worker. For subrogation purposes hereunder, any payment made to a covered worker, his guardian, parent, next of kin or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability, or otherwise.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ☞2189 to 2191.	C.J.S. Workmen's Compensation §§ 1673 to 1676.
Westlaw Topic Nos. 209, 413.	

**§ 5-105. Assignability of benefits; attachment of liens**

Benefits are not assignable, except that a legal beneficiary may, assign the right to death benefits. Income from death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, judgment, or claim in the following order of priority:

**BENEFITS—GENERAL PROVISIONS**

**Title 48, § 5–107**

- A. Court-ordered child support issued or recognized by the Muscogee (Creek) Nation Tribal Court;
- B. A subrogation interest established under this Code; and
- C. Debts owed to the Nation.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ⌘1097.	C.J.S. Workmen's Compensation § 730.
Westlaw Topic Nos. 209, 413.	

**§ 5–106. Aggravation of pre-existing disease or condition**

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the normal course and scope of employment and while the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the pre-existing disease and/or injury is aggravated thereby, the aggravation of the disease or injury is, subject to provisions herein. The amount of the award for that disability as set forth in this Code may be reduced or denied in its entirety by the Administrator in consideration of the following:

- A. A prior settlement from any source for the same impairment;
- B. The difference between the degree of impairment of the worker before the covered injury and the degree of impairment after the injury; or
- C. The benefits to be paid for impairments and/or disabilities would be in excess of one hundred percent (100%) of the whole person. For purposes of this section, benefits include those benefits or payments made under this Code, benefits from the worker's compensation laws of any other jurisdiction or payments from third parties.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.	C.J.S. Indians §§ 57 to 59, 66 to 72.
Workers' Compensation ⌘552.	C.J.S. Workmen's Compensation § 325.
Westlaw Topic Nos. 209, 413.	

**§ 5–107. Termination of benefits upon death**

Where a worker is entitled to compensation for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⌘210.	Westlaw Topic Nos. 209, 413.
Workers' Compensation ⌘440.1.	C.J.S. Indians §§ 57 to 59, 66 to 72.

## CHAPTER 6. BENEFITS

### Section

- 6-101. Vocational rehabilitation.
- 6-102. Waiting period.
- 6-103. Total disability and partial disability income benefits.
- 6-104. Impairment benefits.
- 6-105. Benefit-issuance period.
- 6-106. Not to exceed pre-injury average weekly wage.
- 6-107. Benefit offsets.

### § 6-101. Vocational rehabilitation

Vocational rehabilitation benefits or training are not mandatory under this Code, but may, in the discretion of the Administrator, be ordered pursuant to its authority established herein, or as required under rules promulgated by the TWBAC.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|-------------------------------|---------------------------------------|
| Indians ☞210.                 | Westlaw Topic Nos. 209, 413.          |
| Workers' Compensation ☞900.1. | C.J.S. Indians §§ 57 to 59, 66 to 72. |

### § 6-102. Waiting period

An initial waiting period of seven (7) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this section. In cases where the injury results in a disability continuing fourteen (14) days or more, the benefits will be allowed from the date of disability.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|------------------------------|---------------------------------------|
| Indians ☞210.                | C.J.S. Indians §§ 57 to 59, 66 to 72. |
| Workers' Compensation ☞837.  | C.J.S. Workmen's Compensation § 555.  |
| Westlaw Topic Nos. 209, 413. |                                       |

### § 6-103. Total disability and partial disability income benefits

A. When the worker is disabled from work duty as determined by the consulting physician, or in the Administrator's discretion, the attending physician, by reason of a compensable injury or occupational disease, benefits shall be payable as follows:

1. If the covered worker is one hundred percent (100%) disabled, benefits are payable at seventy percent (70%) of the worker's pre-injury average weekly wage during the continuance of such total disability, in case of temporary total disability, seventy percent (70%) of the employee's average weekly wages shall be paid to the worker during the continuance thereof, but not in excess of fifty-two (52) weeks, except as otherwise provided for in this Code. After compensation has been paid for a period of forty-two (42) weeks, the worker may request a review of the case by the TWBAC for continued temporary total disability benefits. Upon a finding that benefits should be extended beyond the initial fifty-two (52) week period, compensation may be continued for additional

successive fifty-two (52) week periods, provided that the worker requests a review of the case at forty-two (42) weeks during each period involved, and upon a finding by the TWBAC that benefits should be extended. Total payments of compensation for temporary total disability may not exceed three hundred (300) weeks in the aggregated except for good cause shown as determined by the TWBAC.

2. If the covered worker is less than one hundred percent (100%) disabled, benefits are payable at seventy percent (70%) of the difference between a worker's pre-injury average weekly wage and the wage the covered worker is earning or capable of earning in his partially disabled condition.

B. Except as provided herein, such benefits will continue to be paid in accordance with the terms of this Code until which time the earliest of the following occurs:

1. The expiration of thirty-six (36) months from the date of the occurrence, or in the case of an occupational disease thirty-six (36) months from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is inherent or related to the worker's occupation;

2. The consulting physician, or at discretion of the Administrator, the attending physician, declares that the worker has reached maximum medical improvement;

3. The worker is incarcerated;

4. A full, unrestricted release is provided by the attending physician;

5. A modified or light duty release is provided by the consulting physician or attending physician and a bona fide job offer of suitable work consistent with the worker's disability is rejected;

6. A new or intervening incident is the proximate cause of disability;

7. Benefits are refused by the worker;

8. Presumption of MMI or abandonment of medical treatment;

9. Suspension of benefits by the Administrator for reasons authorized in this Code or by the authority of the arbitration panel established under Chapter 9;

10. The worker's earning capacity is reduced for reasons other than the disability from the work-related injury; or

11. The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this section, and the covered worker's estate is not entitled to any further benefits.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### **Library References**

Indians ⇄210.

Westlaw Topic Nos. 209, 413.

Workers' Compensation ⇄840.3, 840.7,  
840.3.

C.J.S. Indians §§ 57 to 59, 66 to 72.

### **§ 6-104. Impairment benefits**

A. At the expiration of thirty-six (36) months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached MMI regardless of disability and/or current medical status. The attending

physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association (AMA) based on reasonable medical probability. In addition, the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs. The attending physician's impairment rating and treatment may be subject to review and revision by the consulting physician at the discretion of the Administrator,

B. The impairment ratings are to be converted to the covered worker as a whole. Those ratings assigned to a specific body part are to be converted in accordance with the AMA guidelines.

C. The rating may not be issued prior to the declaration of maximum medical improvement. The Administrator may reserve issuance of payment under the following conditions:

1. Contribution for prior impairment ratings;
  2. Clarification by the Administrator as to the validity of the date for MMI;
- or
3. Similar rating or maximum medical improvement issues to be resolved by the consulting physician or, if necessary, the arbitration panel established under Chapter 9.

D. The rating recognized by the arbitration panel established under Chapter 9 is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of maximum medical improvement. Such benefits will become effective the date of the ruling and commence at that time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.

E. Benefits will be payable based on the impairment rating issued to the covered worker multiplied by two hundred thousand dollars (\$200,000) and divided by the total number of scheduled weeks (104). Benefits payable under this section are limited to a total of two hundred thousand dollars (\$200,000) regardless of the impairment rating issued and regardless of the number of body parts involved.

F. A lump sum settlement for impairments will be given to a covered worker who receives a rating of fifteen percent (15%) of the covered worker as a whole or less. Notwithstanding provisions herein, the Administrator shall retain the right and discretion to order lump sum settlements in those cases with a rating of greater than fifteen percent (15%) of the covered worker as a whole.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

Indians ☞210.  
Workers' Compensation ☞860.1.

Westlaw Topic Nos. 209, 413.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 6-105. Benefit-issuance period

Except as provided herein:

- A. All benefits under this chapter are to be issued weekly;

## **BENEFITS**

## **Title 48, § 6-107**

B. There shall be no acceleration of benefits under this Code; and

C. Any settlement issued on behalf of a covered worker shall be executed by signed memorandum only.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### **§ 6-106. Not to exceed pre-injury average weekly wage**

In no event may the worker's incapacity income benefits or other income sources that supplement the loss income exceed one hundred percent (100%) of the worker's pre-injury average weekly wage, as may be increased by a Tribal-approved cost of living adjustment.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### **§ 6-107. Benefit offsets**

The Administrator is entitled to reduce benefits payable to covered workers in an amount equal to employee payments paid for by the employer for any pecuniary wages paid in the form of social security, long-term and short-term disability, employer-elected salary contribution, vacation or sick leave, except for sick or paid administrative leave in the first seven (7) calendar days after an accident and or onset of an occupational disease, or any other entitlement of a similar nature paid in whole or in part by the employer. Further, if any overpayment is made under this chapter to the covered worker of any disability income benefits as set forth in Section 6-103, such shall be deducted from any benefits payable under functional impairment benefits as set forth in Section 6-104; or in the case where no functional impairment benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### **Library References**

Indians ☞210.

Workers' Compensation ☞934.1 to 934.11.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

## CHAPTER 7. DEATH BENEFITS

### Section

- 7-101. Distribution of death benefits.
- 7-102. Redistribution of death benefits.
- 7-103. Verification of eligibility of death benefits.
- 7-104. Burial benefits.

### § 7-101. Distribution of death benefits

When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefits shall be payable to the covered worker's dependents who were wholly dependent on the earnings of the worker for support at the time of his injury, compensation upon the basis of seventy percent (70%) per week of the worker's average weekly wage, commencing from the date of death as follows:

A. If there are no children entitled to benefits, then all death benefits shall pass to the surviving spouse for the earlier of 1) the date at which the worker would have reached sixty-five (65); 2) the life of the surviving spouse or 3) until remarriage. To be an eligible "surviving spouse," the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half (1/2) of death benefits and the remaining one-half (1/2) of death benefits shall be paid to each surviving eligible child in equal shares.

B. If there is no surviving spouse, equal shares of all to:

1. Any child of the deceased until the child reaches the age of eighteen (18), or until the child dies, or until the date the worker would have reached the age of sixty-five (65), whichever occurs first;

2. Any child beyond eighteen years of age, if such child older than eighteen (18) years of age is enrolled as a full-time student in any accredited educational institution at the time of the injury to the covered worker. That child shall be entitled to benefits until the earliest of:

- a. the date on which the child dies,
- b. the date on which the child reaches twenty-five (25),
- c. the date on which the child ceases, for a second consecutive academic term, to be enrolled as such a student; or
- d. the date on which the worker would have reached the age of sixty-five (65) years of age;

3. Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity, or the incapacitated child's death, or on the date in which the worker would have reached the age of sixty-five (65) years of age, whichever is earlier; or

C. If there is no surviving spouse, nor any surviving eligible children, death benefits shall be paid to any surviving minor and/or dependent grandchildren equally, until such time as the surviving minor and/or grandchild dies or ceases



## DEATH BENEFITS

## Title 48, § 7-102

to be a minor or until the date on which the worker would have reached the age of sixty-five (65), whichever is earlier.

D. If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling or grandparent of the deceased and who is wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one (1) of these dependents survives the deceased, the death benefits shall be divided among them in equal shares. Death benefits shall be paid until the earlier of the date on which the worker would have reached the age of sixty-five (65) or until the death of the dependent.

E. If the worker is not survived by any of the above dependents and is survived by quasi-dependents who were only partially dependent upon the earnings of the covered worker at the time of his death, then weekly compensation payable under this section shall be equal to the same proportion of the weekly benefits for the benefit of the person wholly dependent as the amount contributed by the worker to such quasi-dependents bears to the annual earnings of the deceased at the time of injury. Death benefits shall be paid until the earlier of the date on which the worker would have reached the age of sixty-five (65) or until the death of the dependent.

F. If the worker is not survived by any legal beneficiaries, any duty to pay such benefits, but not including burial benefits, under this chapter shall cease immediately;

G. If a worker is entitled to compensation for an injury sustained, and death ensues from any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ⇌210.

Workers' Compensation ⇌410.1.

Westlaw Topic Nos. 209, 413.

C.J.S. Indians §§ 57 to 59, 66 to 72.

### § 7-102. Redistribution of death benefits

A. If a legal beneficiary as defined in Section 7-101 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Section 7-101.

B. If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under Section 7-101 shall cease immediately.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ⇌210.

Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72.

**Title 48, § 7-103**

**WORKER'S COMPENSATION**

**§ 7-103. Verification of eligibility of death benefits**

Upon request from the Administrator, all persons claiming to be eligible for death benefits shall furnish all necessary written documentation to support their claim of eligibility.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ☞210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 7-104. Burial benefits**

If death results from a compensable injury, the person and/or entity who incurs liability for the costs of the burial shall be paid five thousand dollars (\$5,000.00) to cover said expenses. This burial benefit payment shall not be reduced as a result of any burial benefit paid by any other source.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Workers' Compensation ☞440.1.  
Westlaw Topic No. 413.

## CHAPTER 8. MEDICAL BENEFITS

### Section

- 8-101. Entitlement to medical benefits.
- 8-102. Right to select doctor; employer selection.
- 8-103. Release of medical-related information.
- 8-104. Medical expenses.
- 8-105. Settlement of future medical treatment.

### § 8-101. Entitlement to medical benefits

All covered workers are entitled to reasonable health care, supplies and reasonably necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurred.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|-----------------------------|---------------------------------------|
| Indians ☞210.               | Westlaw Topic Nos. 209, 413.          |
| Workers' Compensation ☞966. | C.J.S. Indians §§ 57 to 59, 66 to 72. |

### § 8-102. Right to select doctor; employer selection

A. Except in an emergency where the employer, Administrator or his agent cannot be reached immediately, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the employer, in writing, following which the employer and the worker may agree to alternate care reasonably suited to treat the injury. If the employer and the worker cannot agree on alternate care, the arbitration panel established under Chapter 9 may, upon written application and the reasonable proofs of the necessary thereof, allow and order other such care. Any non-authorized treatment of the covered worker is not payable under this section and shall be at the worker's sole expense.

B. Chiropractic, osteopathic, naturopathic, acupuncture or other non-traditional forms of treatment must be approved by the Administrator and approved by the attending physician. Duration of treatment and/or number of visits to such medical providers shall be subject to Administrator's approval, who may rely upon the advice of the consulting or attending physician.

C. After notice and opportunity for a hearing, the arbitration panel established under Chapter 9 of this Code may issue a decision relieving the Administrator of its duty to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this chapter.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

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|-----------------------------|------------------------------|
| Indians ☞210.               | Westlaw Topic Nos. 209, 413. |
| Workers' Compensation ☞966. |                              |

C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–103. Release of medical-related information**

Any worker, employer or insurance carrier or its agents making or defending a claim for benefits agrees to the release of all information to which the worker, employer, insurance carrier or its agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon written request, and includes any third-party health care providers. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally for civil damages by reason of the release of the information.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⇨210.  
Westlaw Topic No. 209.  
C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–104. Medical expenses**

Expenses shall be limited to those usual and customary charges in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under this Code agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

**Library References**

Indians ⇨210. Westlaw Topic Nos. 209, 413.  
Workers' Compensation ⇨990. C.J.S. Indians §§ 57 to 59, 66 to 72.

**§ 8–105. Settlement of future medical treatment**

The worker may negotiate settlement of future medical expenses which will be paid in weekly installments to the worker. The basis for settlement will be the value of the current and future medical treatment plan. Settlements under this section are not to exceed one hundred thousand dollars (\$100,000) and must be approved by the TWBAC.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

## CHAPTER 9. ADJUDICATION OF DISPUTES

### Section

9-101. Appeals from decisions of the Administrator.

9-102. Hearings.

9-103. Claimant attorney's fees and other related arbitration costs.

### § 9-101. Appeals from decisions of the Administrator

The Administrator shall administer the Tribal Worker's Benefit System in accordance with the terms and conditions set forth in this Code. Any appeal from a final decision of the Administrator shall follow the procedures as set forth in this Code and in accordance with any and all rules and regulations of the TWBAC. All appeals shall be filed within thirty (30) days of the decision of the Administrator.

**A. First Level—Binding Arbitration.** A worker may appeal a decision of the Administrator by filing a contested claim with the arbitration panel and an administrative hearing shall be held, if so requested in writing. Further, the Administrator may seek a declaratory decision that the actions of the Administrator are in compliance with this Code, and may request a hearing in writing. A worker appealing the decision of the Administrator shall bear the burden of proof that the Administrator's decision was not in compliance with, or was in violation of, this Code. The arbitration panel will conduct all hearings in accordance with their established rules and render a written decision in the dispute. The decision of the arbitration panel shall be final and binding on all parties except for an appeal to the Muscogee (Creek) Nation Tribal Court as provided herein.

**B. Second Level—Tribal Court.** Any and all appeals from a decision of the arbitration panel shall be heard by the Muscogee (Creek) Nation Tribal Court. The arbitration panel's decision shall be upheld unless the Tribal Court finds that the decision was:

1. Unsupported by evidence;
2. Arbitrary and capricious;
3. An abuse of discretion by the Administrator; or
4. Contrary to this Code or other applicable law.

[Added by NCA 05-049, § 1, approved March 28, 2005, eff. April 1, 2005.]

### Library References

Indians ☞210, 418, 430.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to  
179.

### § 9-102. Hearings

A. The worker and the Administrator shall have the right to be represented by an attorney at their own expense in all matters presented before the arbitration panel and/or the Tribal Court, if applicable, to cross-examine all witnesses and to review all evidence, as may be related to the matter under consideration. However, attorney fees are limited by Section 9-103.

B. The arbitration panel hearing shall not be bound by formal rules of evidence or by technical or formal rules of procedure. The arbitration panel may conduct investigations in such a manner as its judgment is best calculated to ascertain the substantial rights of the parties and to promote the spirit and intent of the Tribal Workers' Benefit System.

C. A full and complete record of the arbitration panel proceedings shall be kept by the TWBAC by a method provided for in their rules and regulations and shall be available to any party who requests the record in writing, demonstrating reasonable need for such record, and by paying the fee set forth in the rules and regulations of the TWBAC.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

Indians ☞210, 419, 500.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to  
179.

### § 9–103. Claimant attorney's fees and other related arbitration costs

A. If the arbitration panel awards benefits to the worker in excess of the

Administrator's original benefit determination (as communicated to the worker), the claimant's attorney's fees will be approved with a maximum limit of ten percent (10%) of the total benefit award, or five thousand dollars (\$5,000), whichever is less. Disputes over attorney's fees must be filed with the arbitration panel in accordance with the TWBAC established rules and regulations.

B. The claimant or Administrator may engage the services of physicians or experts for hearing purposes at the respective parties' costs which are not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of this Code limiting the outside or unauthorized treatment.

[Added by NCA 05–049, § 1, approved March 28, 2005, eff. April 1, 2005.]

#### Library References

Indians ☞210, 660, 661.  
Westlaw Topic No. 209.

C.J.S. Indians §§ 57 to 59, 66 to 72, 151 to  
179.