



THE 164 REVIEW AND SIGNATURE PROCESS

NAVAJO NATION EXECUTIVE ORDER NO. 07-2013

April 18, 2013

WHEREAS:

1. The President of the Navajo Nation serves as the Chief Executive Officer for the Executive Branch of the Navajo Nation government with *full* authority to conduct, supervise, and coordinate personnel and programs of the Navajo Nation; and
2. The President of the Navajo Nation holds the fiduciary responsibility for the proper and efficient operation of all Executive Branch offices and functions; and
3. The Office of the Attorney General of the Navajo Nation is charged with protecting the legal needs of the Navajo Nation; representing both Executive and Legislative Branch interests; and, providing legal advice to the Executive and Legislative Branch, including the Navajo Nation Council; and
4. The Navajo Nation Council by Resolution CO-45-12, adopted amendments to Title 2 of the Navajo Nation Code; and
5. To fully protect the interests of the Navajo Nation government, the process for legislative and non-legislative review under the Section 164 review process using the SAS Review Sheet requires the Executive Branch to conform to the Title 2 Amendments; and
6. The term "SAS" currently is used for the process by which Executive Branch agencies review documents and sign an "SAS" sheet. There are three classes of documents that currently are reviewed by Executive Branch agencies through the SAS process:
 - a. Documents requiring review and approval by the Navajo Nation Council or Committee under 2 N.N.C. § 164(A).
 - b. Documents requiring review and signature under 2 N.N.C. § 164(B) before approval by the President.
 - c. Documents that do not require review and approval under either Section 164(A) or (B), but which through some other statutory requirement or through administrative practice require review and signature before approval or execution by an Executive Branch official or employee.

THEREFORE:

1. In accordance with the 2012 Title II amendments, three categories of review will be used:
 - a. **Section 164(A) Review:** covers documents that require Legislative approval under Section 164(A) of Title II.
 - b. **Section 164(B) Review:** covers documents that require review and signature of Executive Branch officials or employees prior to execution by the President under Section 164(B) of Title II.
 - c. **Executive Review:** covers documents that require review and signature of Executive Branch officials or employees pursuant to Navajo Nation laws other than Section 164(A) or (B).
2. The term "SAS" will no longer be used. Instead, the three classes of review will be utilized, and forms will be generated to clearly distinguish the different classes of documents.
3. An electronic means of tracking and viewing the status of these review packets shall be developed and implemented through a web browser to provide transparency and convenience to the Navajo Nation. Once the electronic tracking system is operational, program sponsors, reviewers, and appropriate IT leadership in each division shall be responsible for taking any necessary training to learn how to use the electronic tracking system.
4. **Documents to be Reviewed under Section 164(A)**
Section 164(A) lists five documents that require legislative approval: (1) statements of policy, (2) enactment of positive law, (3) intergovernmental agreements, (4) budget allocations, and (5) budget reallocations. Each document is defined in Title II, Section 110. Under Executive Order 01-2004, issued by President Joe Shirley, Jr. on July 1, 2004, Section 164(A) documents require legal review by the Department of Justice before an Executive Branch official or employee can seek a Council Delegate sponsor for that legislation. Further, in practice, the Navajo Nation Council and Committees generally expect an SAS sheet to be included as part of the materials included in a legislation packet.

Through this Executive Order, the Office of the President and Vice President reaffirms that review and signature of the Department of Justice will be required for documents listed in Section 164(A) before Executive Branch officials or employees may seek a Council Delegate sponsor. The Department of Justice (DOJ) will be required to review the document within seven (7) working days of the date and time the document is first submitted to DOJ. OMB and the Office of the Controller will also be required to review all 164(A) documents having a financial impact on the Nation. For such documents requiring their review, OMB and Office of the Controller will be required to review and sign such documents within seven (7) working days.

Prior to the effective date of this Executive Order, the Department of Justice shall develop and issue a Section 164(A) review sheet, which will be used by all Executive Branch officials and employees.

5. **Documents to be Reviewed Under Section 164(B)**
There are eight documents listed in Section 164(B) requiring review and signature before execution by the President: (1) subcontracts, (2) grants, (3) contracts expending Council-appropriated funds, (4) letters of assurance, (5) memoranda of understanding, (6) memoranda of agreement, (7) other agreements that do not involve spending of money, and (8) amendments to any of these documents.

Under Section 164(B), only four individuals are listed as required to review and sign a document: (1) the Division Director, (2) the Director of the Office of Management and Budget for documents having a financial impact on the Navajo Nation; (3) the Controller for documents having a financial impact on the Navajo Nation,

and (4) the Attorney General. Further, the Business Regulatory Department has separate authority to review contracts for compliance with the Navajo Business Opportunity Act. *See* 5 N.N.C. § 207(C)(5).

The Office of the President and Vice President mandates that those five reviewers are the only ones required for Section 164(B) review. Depending on the document, only three or four of those reviewers will be required. However, no other individual or program's review and signature will be required. Other agencies, such as Risk Management or other insurance programs, may be consulted for advice on their area of expertise, but their signatures will not be included on the Section 164(B) review sheet.

Neither Section 164 nor Executive Order currently sets a timeline for programs to review a Section 164(B) document. For the review process to work, a timeline is necessary. Therefore, the Office of the President and Vice President hereby requires each of the four (4) reviewers under Section 164(B) to conduct the review within seven (7) working days from the date and time it is received. However, for the Business Regulatory Department, review shall be completed in two (2) working days as that office's review is limited to NBOA compliance. The Office of the President and Vice President encourages programs to send any complex documents or documents never before reviewed by Section 164(B) reviewers as a "pre-review" before submitting them through the process. If programs work with Section 164(B) reviewers in advance of formally submitting the document, seven working days is sufficient for review and signature.

Prior to the effective date of this Executive Order, the Department of Justice shall develop and issue a Section 164(B) review sheet, which will be used by all Executive Branch officials and employees.

6. **Document Requiring Executive Official Review Outside Sections 164(A) and (B)**

This category of review includes different types of documents that require some sort of Executive Branch review, such as relinquishments of Navajo membership or Credit Services loan approvals, but which are not listed in Section 164(A) or (B). There is no one form that can cover these different types of review, and programs currently use modified forms of an SAS sheet. Before this Executive Order becomes effective, each Executive Branch program shall develop a list of all those documents it currently sends through SAS review. For all those documents that do not fall under Section 164(A) or (B), specific forms shall be developed listing the Executive Branch offices or officials that will review and sign. Further, the programs shall develop clear timelines for review of such documents. Programs are encouraged to work with the Department of Justice in the development of such forms.

7. **Role of Programs**

It is important to emphasize that programs sponsoring documents for review are ultimately responsible for preparing complete and accurate document packages prior to submitting them to reviewers. Programs sponsoring documents are also responsible for ensuring that document packages are uploaded into and tracked using the electronic tracking system. Incomplete or inaccurate packages unnecessarily result in time and work for reviewers to attempt to fix the problems before moving a document forward. Further, programs must anticipate deadlines under their funding agreements or from their vendors and not attempt to push through documents at the last minute, including hotel contracts for trainings and conferences. Programs are on notice that the timelines set by this Executive Order do not mean that programs may expect immediate action on document review. Programs therefore shall not attempt to push documents through the system in a few days or hours when adequate preparation would have allowed the documents to be reviewed within the reasonable time limits set out in this Order.

8. **Role of Reviewers**

Consistent with the process stated in Section 164(B), the officials reviewing any of the three classes of documents are to "review and sign." They are not "approving" the document. They are making comments and recommendations to the officials or employees authorized to approve or execute the document. Reviewers may make suggestions on how to improve the document, and may work with the sponsoring program to incorporate

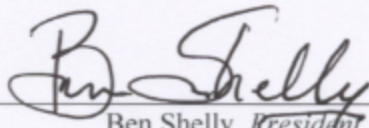
those changes within the required review time limit. However, they do not have the authority to reject a document and return it the program unsigned, hold a document past the required time period to force programs to make changes, or otherwise refuse to sign or act to move the document forward. Reviewers will also be responsible for making sure that document packets needing their review are processed using the electronic tracking system.

Based on these principles, the Office of the President and Vice President mandate the following guidelines to all reviewers. There are only three actions a reviewer can take: (1) sign with the comment that the document is sufficient as is, (2) sign with comments that the document is not sufficient based upon specific concerns within the authority of that official to state, or (3) not sign it within the required time period. If an official does not sign the Review sheet within the required time period, it will move forward automatically, and the lack of signature will mean that there are no comments or objections. The sponsoring program may choose to revise the document after review and resubmit the document to the reviewer before moving the document forward to the next reviewer. Further, once the review process is complete, the Office of the President and Vice-President may require the program to work with the reviewer to address any comments and fix the document.

FURTHERMORE:

1. This Executive Order will become effective on July 1, 2013, to give all Executive Branch officials and employees time to generate forms and train staff on the new review procedures. After that date, SAS review within the Executive Branch will not exist, and all Executive Branch officials and employees will refer to the review process under one of the three classes of review: (1) Section 164(A) Review, (2) Section 164(B) Review, or (3) Executive Review. Training sessions will be coordinated by the Department of Justice.
2. Pursuant to 2 N.N.C. §1005 (C)(14), I, Ben Shelly, President of the Navajo Nation, hereby direct that this Executive Order No. 07-2013 shall be binding on all Navajo Nation Executive Branch employees and subject to enforcement under the Navajo Nation Personnel Policies Manual.

Executed at the Office of the President and Vice President of the Navajo Nation this 18th day of April 2013.



Ben Shelly, *President*
THE NAVAJO NATION

ATTEST:



Harrison Tsosie, *Attorney General*

THE NAVAJO NATION DEPARTMENT OF JUSTICE