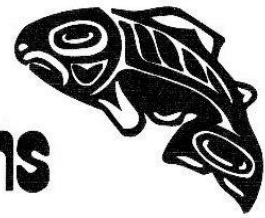


Puyallup Tribe of Indians



NOTICE

TO: PUYALLUP TRIBAL MEMBERS
FROM: PUYALLUP TRIBAL COUNCIL
DATE: 04/15/2024
SUBJECT: TERO ORDINANCE AND REGULATIONS

The purpose of the Puyallup Tribe's Tribal Employment Rights Ordinance and Regulations PTC 3.24 and 3.24R is to establish and regulate employment rights under the purview of the Puyallup Tribe.

The Puyallup Tribal Constitution Article VI, Section 1(l) of the Constitution and Bylaws of the Puyallup Tribe authorizes the Tribal Council to, safeguard and promote the peace, safety, morals, and general welfare of the Puyallup Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation.

The Puyallup Tribal Council finds it is necessary at times to amend the Tribal Employment Rights Ordinance and Regulations in order to meet the needs of the Puyallup Tribal community.

Tribal Council posts this legislation at appropriate locations in compliance with Section 2.12.040 of the "Code Adoption, Revision, and Distribution" Ordinance. **The Ordinance and Regulations are drafts and shall be posted for 30 days for public comment until Wednesday, May 15, 2024, and will be sent to Tribal Council for consideration prior to final review and adoption.**

The Amended TERO Ordinance and Regulations will be posted for public comment at the following locations: Puyallup Tribal Administration Building, Puyallup Tribal Court, Puyallup Tribe's House of Respect, and the Kwawachee Counseling Center.

Comments must be forwarded to the Puyallup Tribal Council's Secretary at CouncilOffices@puyalluptribe-nsn.gov

The draft legislation can be viewed on the Tribe's website: www.PuyallupTribe-nsn.gov
Additional copies are available upon request by contacting Lydia Butler-Smith in the Law Offices at: 253- 573-7800 Ext. 7877



PUYALLUP TRIBE OF INDIANS



**PUYALLUP TRIBAL COUNCIL
RESOLUTION NO. 280324-A**

WHEREAS, the Puyallup Tribe has existed since creation as the aboriginal people who are the owners and guardians of their lands and waters; and

WHEREAS, the Puyallup Tribe is an independent sovereign nation, having historically negotiated with several foreign nations, including the United States in the Medicine Creek Treaty; and

WHEREAS, the Puyallup Tribal Council is the governing body of the Puyallup Tribe in accordance with the authority of its sovereign rights as the aboriginal owners and guardians of their lands and waters, reaffirmed in the *Medicine Creek Treaty*, and their *Constitution and ByLaws*, as amended and approved by the Tribe and the Assistant Secretary of the Interior; and

WHEREAS, Article VI, Section 1(l) of the Constitution and Bylaws of the Puyallup Tribe authorizes the Tribal Council to, safeguard and promote the peace, safety, morals, and general welfare of the Puyallup Reservation by regulating the conduct of trade and the use and disposition of property upon the reservation; and

WHEREAS, Article VI, Section 1(m) of the Constitution and Bylaws of the Puyallup Tribe authorizes the Tribal Council to, charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Puyallup Tribe by ordinance; and

WHEREAS, the purpose of the Puyallup Tribe's *Tribal Employment Rights Ordinance 3.24* and *Tribal Employment Rights Regulations PTC 3.24* is to establish and regulate an employment rights program to increase the employment of Puyallup Tribal members; and

WHEREAS, it is necessary at times to amend the *Tribal Employment Rights Ordinance* and the *Tribal Employment Rights Regulations* in order to meet the needs of the Puyallup Tribal community.

This Resolution amends the *Tribal Employment Rights Ordinance 3.24R* and *Tribal Employment Rights Regulations PTC 3.24*. The purpose of these amendments is to clarify policies, procedures, and laws as they relate to the Puyallup Tribe's establishment and regulation of employment rights under the purview of the Puyallup Tribe.

NOW THEREFORE BE IT RESOLVED, that the amended *Tribal Employment Rights Ordinance PTC 3.24 R* and *Tribal Employment Rights Regulations PTC 3.24* are adopted as attached:

[AMENDED REGULATION AND ORDINANCE ATTACHED AT END OF THIS DOCUMENT]

**PUYALLUP TRIBAL COUNCIL
RESOLUTION NO. 280324-A**

Page 2 of 2

NOW THEREFORE BE IT FURTHER RESOLVED, that the Puyallup Tribal Council posts this legislation at appropriate locations in compliance with Section 2.12.040 of the "Code Adoption, Revision, and Distribution" Ordinance for thirty (30) days that at the end of the 30-day comment period, unless comments are received and changes made as a result of any comments received, this Code shall take effect as herein adopted, upon final Puyallup Tribal Council approval.


NOW THEREFORE BE IT FINALLY RESOLVED, by the Tribal Council that it authorizes the Tribal Council Chairman (Bill Sterud), and in his absence, the Vice-Chairwoman (Sylvia P. Miller), to execute this Resolution and other such required implementing documents as are required on behalf of the Tribe.

CERTIFICATION

I, Nadine Prabh, Secretary of the Puyallup Tribal Council of the Puyallup Reservation do hereby certify that the above Resolution was duly adopted at a Regular Meeting of the Puyallup Tribal Council held on the Puyallup Indian Reservation on the 28th day of MARCH 2024, a quorum being present with a vote of 6 FOR, 0 AGAINST, 0 ABSTAINING, and NOT VOTING its adoption.


Secretary, Puyallup Tribal Council

ATTEST:



Bill Sterud, Chairman or
Vice-Chairwoman, Sylvia P. Miller
Puyallup Tribal Council

ORDINANCE DRAFT 03.13.2024

3.24.010 Declaration of policy.

As a guide to the interpretation and application of this chapter, the public policy of the Puyallup Tribe of Indians is declared to be as follows:

The right to tax business activities on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries is an important resource of the Puyallup ~~Tribe of Indians~~Indian Nation.

Federal legislation enables the Puyallup Tribal Council to pass laws to implement and enforce this right for the welfare of the members of the Puyallup Tribe of Indians and other Indians.

Puyallup Tribal members and other Indians are entitled to the protection of the unique and special employment rights enacted by the federal government. Tribal government can and should participate in the enforcement of those laws. The Puyallup Tribe believes it important to establish an employment rights program and office to use these laws to increase employment of Puyallup Tribal members and other Indian workers and to eradicate discrimination against all Indians.

3.24.015 Exemption.

(a) Upon Tribal Council's determination that it is in the best interest of the Puyallup Tribe for certain businesses or types of businesses to be exempt, Tribal Council may by resolution exempt certain businesses or types of businesses from application of this chapter for leases, activities and operations occurring on the Tribal lands provided that there is an approved process consistent with the goals of increasing employment through a hiring preference as provided within the TERO Ordinance and these regulations.

(b) Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor. Marine View Ventures, Inc., its agents, contractors, lessees and assigns shall be exempted from application of this chapter for leases, activities and operations occurring on the Tribal lands managed by MVV where the rents and other development costs for any such project equal or exceed \$50,000,000; provided, however, that this exemption shall only apply to work under any contract that was signed and approved on or before May 15, 2017.

Subchapter 2. Definitions

3.24.020 Definitions generally.

Words of this chapter shall have the meaning given them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, it shall be construed in harmony with the purposes of this title.

- (a) "~~Commission Committee~~" means the Puyallup Tribal Employment Rights ~~Commission Advisory Committee~~ established by this chapter.
- (b) "~~Covered employer~~ Covered Employer" means any employer hiring two or more employees who during any twenty (20)-day period to perform sixteen (16) or more hours working within the exterior boundaries of the Puyallup Reservation on Tribally owned trust lands working within the jurisdiction of the Puyallup Tribe or its Tribal Lands.
- (c) "Director" means the Director of the Puyallup Tribal Employment Rights Office.
- (d) "Employee" means any person employed by a Covered Employer for financial compensation, for remuneration.
- (e) "Employer" means any person or business entity that hires two or more employees.
- (f) "Entity" means any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person. The term "entity" is intended to be as broad and encompassing as possible to ensure the coverage of this chapter over all employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Tribe Commission and Courts.
- ~~(g) "Government commercial enterprise" means any activity by the Puyallup Tribe or other governments, local, state, or federal, that is not a traditional function of government as defined by the United States Internal Revenue Service.~~
- (h) "Indian" means any member of a federally recognized tribe.
- (i) "Local Indian" means any member of a federally recognized tribe who resides within the exterior boundaries of the Puyallup Indian Reservation.
- (j) "TERO" means the Puyallup Tribal Employment Rights Office.

Subchapter 3. Indian Preference

3.24.030 Indian preference in employment.

All ~~covered employer~~ Covered Employers, for all employment on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries, shall give preference to qualified Indians, in the following order of preference: (1) Puyallup Tribal members, (2) Local Indians and Spouses of or Guardian of a Puyallup Tribal member (3) non-with the first preference to local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the Puyallup Tribal Employment Rights ~~Office Commission~~ which sets forth the specific obligations of employers in regard to Indian preference and local Indian preference.

3.24.040 Application of Indian preference requirements.

These requirements shall not apply to any direct employment by the Puyallup Indian Tribe, the federal, state, or other governments or their subdivisions. It shall apply to all the contractors or grantees of such governments and to all commercial enterprises operated by such governments.

3.24.050 Indian preference in contracting.

All entities awarding contracts or subcontracts for supplies, services, labor, or materials in the amount of \$20,000 or more where the majority of the work on the contract or subcontract will occur on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries shall give preference in contracting and subcontracting to qualified businesses entities that are certified by the TERO Commission as fifty-one percent (51%) percent or more Indian-owned and controlled, with a the following order of preference: (1) Puyallup Tribal members, (2) Local Indians and Spouses of or Guardian of a Puyallup Tribal member (3) non-local Indians. ~~first preference to qualified entities that are 51 percent or more owned and controlled by local Indians.~~

3.24.060 Application of Indian preference in contracting.

These requirements shall not apply to the award of contracts awarded directly by the Tribal Council of the Puyallup Tribe of Indians, by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians for approval. The Puyallup Tribal Council reserves the right to exempt certain contracts or employers consistent with PTC 03.24R.020.

3.24.070 Tribal programs or divisions.

Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a preferred contractor as described herein. ~~local Indian contractor.~~

3.24.080 Subcontracts included.

This chapter shall apply to all subcontracts with Covered Employers awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter.

3.24.090 All Covered Employers entities to comply.

All ~~covered e~~ Covered Employers entities shall comply with the rules, regulations, guidelines and orders of the TERO Commission which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting.

3.24.100 System for certifying businesses firms for Indian preference.

The TERO Commission ~~has established shall an approved establish a~~ system for certifying businesses firms as Indian preference and local Indian preference eligible.

3.24.110 Unions.

Any ~~covered employer~~ Covered Employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Puyallup Tribe of Indians. Such agreement shall be subject to the approval of the Director of the TERO.

Subchapter 4. Tribal Employment Rights ~~Committeession~~

3.24.120 Tribal Employment Rights ~~Committeession~~.

There is created a Puyallup Tribal Employment Rights ~~Advisory Committee~~~~Commission~~. The ~~Committeession~~ shall be composed in the following manner: The Puyallup Tribal Council shall select from its general membership seven Tribal members to serve on the TERO ~~Committeession~~.

~~These Commissioners shall be entitled to reimbursement for services in the form of Committee stipends. Members shall serve until replaced. When a vacancy occurs, the remaining Commissioners may exercise all of the powers of the Commission until a vacancy is filled.~~

~~3.24.130 Quorum.~~

~~A majority of the Commission shall constitute a quorum to transact business.~~

3.24.1340 Recusal of ~~Committeession~~ ~~M~~members.

No ~~member of the Commission~~ ~~Committee member~~ shall participate in any action or decision by the ~~Commission~~~~Committee~~ directly involving himself or herself, or a member of his or her immediate family, or any person, business or other entity of which he or she or a member of his or her immediate family is an employee, or in which he or she or a member of his or her immediate family has a substantial ownership interest, or with which he or she or a member of his or her immediate family has a substantial contractual relationship.

3.24.1450 Definition of immediate family.

For the purposes of this subchapter, "immediate family" means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister.

3.24.1560 ~~Commission~~~~Committee Memberer~~ ~~P~~participation.

Nothing in this subchapter shall preclude a ~~Commission~~~~Committee memberer~~ from participating in any action or decision by the ~~Commission~~~~Committee~~ which:

- (a) Generally affects a class of persons, regardless of whether the ~~Commission~~~~Committeeer~~ or a member of his or her immediate family is a member of that class;
- (b) Affects the Puyallup Tribe of Indians or a Tribal enterprise, regardless of whether the ~~Commission~~~~Committee er~~ is a member of the Tribe.

3.24.1670 Voluntary recusal.

A ~~Commission~~~~Committee memberer~~ may voluntarily recuse himself or herself and decline to participate in any action or decision by the ~~Commission~~~~Committee~~ when the ~~Commission~~~~Committee memberer~~, in his or her discretion, believes:

- (a) That he or she cannot act fairly or without bias; or
- (b) That there would be an appearance that he or she could not act fairly or without bias.

Subchapter 5. Purposeowers of the CommissionCommittee

3.24.1780 Purposeowers of the CommissionCommittee.

~~The Commission shall have full power, jurisdiction, and authority to:~~

(a) The Committee shall advise and make recommendations to Tribal Council on matters concerning TERO.

~~(b) The Committee may make recommendations concerning the adoption or the amendments rules, regulations and laws concerning the TERO. Formulate, adopt, amend and rescind rules, regulations and guidelines necessary to carry out the provisions and intent of this chapter. Unless there are exigent circumstances, the Commission shall provide Tribal members a reasonable time for comment before promulgating any regulation.~~

~~(b) Require each covered employer or entity to submit to the Commission an acceptable compliance plan indicating how it will comply with this chapter. Such compliance plans shall be submitted before a covered employer or entity may commence work on trust lands within the exterior boundaries of the Puyallup Indian Reservation.~~

~~(c) Impose numerical hiring goals and timetables that specify the minimum number of Indians a covered employer or entity must hire, by craft or skill level.~~

~~(d) Require covered employers to establish or participate in such training programs as the Commission determines necessary in order to increase the pool of qualified Indians on the Puyallup Indian Reservation as quickly as possible.~~

~~(e) Establish in conjunction with Tribal employment and training programs a Tribal hiring hall or skills bank and impose a requirement that no covered employer may hire a non-Indian until the Tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians.~~

~~(f) Prohibit covered employers from using qualification criteria or other requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this subsection, the Commission shall adopt the EEOC guidelines to the extent they are appropriate. The Commission shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians.~~

~~(g) To enter into agreements with unions to ensure union compliance with this chapter. Such agreements shall in no way constitute recognition or endorsement of any union.~~

~~(h) Impose contract and subcontract preference requirements, with a first preference to local Indian firms as eligible for Indian preference and local Indian preference.~~

(ci) The Committee shall participate in grievance related reviews—Conduct hearings in accordance with such rules of practice and procedure as may be adopted by the CommissionCommittee, and to recommend or order any relief or sanctions provided by this chapter, and to petition the Tribal Court for

~~orders as are necessary and appropriate to enforce decisions of the Commission or Director and any sanctions imposed by them.~~

~~(j) The Commission shall delegate to the Director the authority to carry out the day-to-day operations of the Commission and such other authority as is convenient or necessary to the efficient administration of this chapter, except that the Commission shall not delegate its authority to adopt, amend or rescind rules, regulations or guidelines or to conduct hearings or to impose sanctions.~~

~~(k) The Commission acting through the Director is authorized to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Puyallup Indian Reservation and to enter into cooperative relationships with federal agencies, such as the BIA or IHS, in order to implement any federal Indian preference employment or contracting requirements, as such agency may lawfully delegate to the Puyallup Tribe.~~

Subchapter 6. TERO Director

3.24.1890 TERO Director.

~~Puyallup Tribal Council~~ ~~The Commission~~ shall have exclusive authority to appoint, direct, suspend or remove the Director.

3.24.190200 Authority of Director.

The Director shall have authority to hire staff, to expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state or other sources to carry out the purposes of this chapter.

3.24.20010 Duties of the Director.

The Director shall:

(a) administer the policies, authorities and duties prescribed for him or her or him in this chapter and delegated to him or her by Tribal Council~~the Commission~~;

(b) require each Covered Employer to submit to TERO an acceptable compliance plan indicating how it will comply with this chapter. Such compliance plans shall be submitted before a Covered Employer may commence work within the jurisdiction of the Puyallup Tribe;

(c) impose numerical hiring goals and timetables that specify the minimum number of Indians a Covered Employer must hire, by craft or skill level;

(d) require Covered Employers to establish or participate in such training programs as the TERO determines necessary in order to increase the pool of qualified Indians within the Puyallup Tribe of Indians jurisdiction;

(e) establish in conjunction with Tribal employment and training programs a Tribal hiring hall or skills bank and impose a requirement that no Covered Employer may hire a non-Indian until the Tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians. Tribal Council reserves the right to update or amend any established process if it has been determined to be in the best interest of the Puyallup Tribe provided that unless an approved process for implementing tribal preference remains a priority has been adopted by Tribal Council;

(f) prohibit Covered Employers from using qualification criteria or other requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this subsection, the TERO shall adopt the EEOC guidelines to the extent they are appropriate. The TERO shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians;

(g) to negotiate agreements on behalf of Tribe with unions to ensure union compliance with this chapter. Such agreements shall in no way constitute recognition or endorsement of any union;

(h) impose contract and subcontract preference requirements, with a first preference to Puyallup Tribal member owned businesses, second to other local Indian businesses as eligible for Indian preference and local Indian preference;

(i) to petition the Tribal Court for orders as are necessary and appropriate to enforce decisions of the Committee or Director and any sanctions imposed by them;

(k) to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Puyallup Indian Reservation and to enter into cooperative relationships with federal agencies, such as the BIA or IHS, in order to implement any federal Indian preference employment or contracting requirements, as such agency may lawfully delegate to the Puyallup Tribe.

Subchapter 7. Employment Rights Fee

3.24.2120 Employment rights fee.

An employment rights fee to raise revenue for Tribal operations ~~and the operation of the Commission~~ is imposed as follows:

(a) —Every ~~covered employer~~ Covered Employer ~~or entity~~ with a construction contract in the sum of \$20,000 or more shall pay a fee of two and one-half ~~percent (2.5%) percent~~ of the total amount of the contract. Such fee shall be paid by the employer ~~or entity~~ prior to commencing work within the jurisdiction of the Puyallup Tribe. Where good cause is shown, the Director may authorize an employer ~~construction contractor~~ to pay the fee in installments over the course of the contract. This fee shall not apply to contracts awarded directly to the Puyallup Tribal Council using Tribal funds exclusively to pay the contract costs; provided, that in the event a portion of the contract is payable using non-Tribal funds then the fee may be imposed only upon the amount of non-Tribal funds expended.

(b) —Every ~~covered employer~~ Covered Employer ~~or entity other than construction contractors~~ working within the jurisdiction of the Puyallup Tribe, or with gross sales within the jurisdiction of the Puyallup Tribe of more than \$20,000, shall pay a quarterly fee of two and one-half ~~percent (2.5%) percent~~ of his employees' quarterly payroll which shall be paid within 30 days of the end of the quarter. This fee shall not apply to education, health, governmental, or nonprofit employers.

3.24.2230 Fee collected by Tribal Accounting Office.

The fee shall be collected by the Tribal Accounting Office.

Subchapter 8. Complaints against Covered Employers. ~~and Their Investigation~~

3.24.240 Complaints.

Any individual, group of individuals or organization that believes any ~~covered-employer~~Covered Employer or entity, the Director or the Commission has violated any requirements imposed by this chapter or regulations issued pursuant to it may file a complaint with the Director.

3.24.250 Contents of complaint.

The complaint shall be in writing and shall contain such information as is necessary to enable the Director to carry out an investigation.

3.24.260 Investigation timeline.

The Director shall complete the investigation within thirty (30) days of the date on which a complaint is filed unless an extension has been granted ~~by the Commission~~. Such extension shall not exceed 30 days.

3.24.270 Duties of the Director.

The Director shall complete the investigation within thirty (30) days of the date on which a complaint is filed unless an extension has been granted ~~d by the Commission~~. Such extension shall not exceed thirty (30) days.

3.24.280 Investigations.

On ~~Director's~~ own initiative or pursuant to a complaint, the Director or his agent shall make such public or private investigation within the jurisdiction of the Puyallup Tribe of Indians as ~~he or the Director~~Commission deems necessary to determine whether any ~~covered-employer~~Covered Employer or entity has violated any provision of this chapter or rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder.

3.24.290 Authority to enter.

The Director or his agent may enter during business hours the place of business or employment of any employer for the purpose of such investigations.

3.24.300 Trade secrets or confidential information.

When requesting any reports or other information from a ~~covered-employer~~Covered Employer, the Director shall request that the ~~covered-employer~~Covered Employer identify all material which contains trade secrets or privileged or confidential commercial, financial or employment information. Any material so identified shall be kept confidential by the Director or other interested party, or if the Director~~the Commission~~ determines that the material does not contain confidential information, but that the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy.

3.24.310 Restriction of access to certain information.

Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial or employment information subpoenaed pursuant to this chapter or used in a compliance hearing or subsequent appeal to the Tribal Court shall be confidential records of the ~~TERO Commission~~ or the Tribal Court, and shall not be opened to public inspection ~~and the Tribal Court.~~

3.24.320 Investigative powers.

For the purpose of investigations or ~~reviews~~hearings, which, in the opinion of the Director ~~or the Commission~~, are necessary and proper for the enforcement of this chapter, ~~a Commissioner~~, the Director or his agent so designated may ~~take written statements, or declarations as administer oaths or affirmations, subpoena witnesses, take evidence,~~ and require, ~~by subpoena~~, the production of books, papers, contracts, agreements or other documents, records or information which the Director ~~or the Commission~~ deems relevant or material to the ~~investigation.~~ inquiry.

Subchapter 9. Enforcement

3.24.330 Monitoring compliance.

The Director or his agent may require the ~~C~~covered ~~E~~employer ~~or entity~~ to submit such reports as deemed necessary to monitor compliance with the requirements of this chapter or any rule or order hereunder.

3.24.340 Notice of violation.

When the Director has grounds to believe a violation of this chapter or the regulations issued pursuant to it has occurred, ~~the Director~~he shall notify the ~~covered employer~~Covered Employer ~~or entity~~ in writing, specifying the alleged violations. The ~~D~~irector may withhold the name(s) of the complaining party if there is reason to believe that such party will be subject to retaliation.

3.24.350 Informal settlement.

The Director shall seek to achieve an informal settlement of the alleged violation. If ~~the Director~~he is unable to accomplish this, he ~~or she~~ shall issue a formal notice of noncompliance, which shall also advise the ~~covered employer~~Covered Employer ~~or entity~~ of the right to request a hearing.

3.24.360 Notice of violation to include.

The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer ~~or entity~~ with a reasonable time, which in no event shall be less than five (5) days from the date of receipt of such notice, to comply, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require compliance to occur within five (5) days.

3.24.370 Request for review of decision to issue violation ~~hearing.~~

The ~~employer~~party may request a ~~review of a TERO decision to issue a violation~~ hearing before the Commission which shall be held no sooner than five (5) days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited ~~review~~ hearing is deemed necessary by the ~~Director~~Commission to avoid irreparable harm. If

an ~~employer-party~~ fails or refuses to comply and does not request a ~~reviewhearing~~, the ~~TEROCommission~~ may proceed pursuant to PTC 3.24.400.

3.24.380 Bond may be required.

If the ~~employerparty~~ requests a ~~review of a decisionhearing~~ and the Director has good cause to believe that there is a danger that the ~~employerparty~~ remove itself or its property for the jurisdiction of the Tribe prior to the hearing, he ~~or she~~ may, in his ~~or her~~ discretion, require the party to post a bond with the ~~TribeCommission~~ in an amount sufficient to cover possible monetary damages that may be assessed against the ~~employerparty~~ at the hearing. If the ~~employerparty~~ fails or refuses to post said bond, the ~~TEROCommission~~ may also petition the Puyallup Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the ~~Tribe or any individual or business the Court deems appropriate Commission and other parties~~ during the pendency of the complaint and hearing proceedings ~~in Puyallup Tribal Court.~~

3.24.390 Conduct of ~~reviewhearing~~.

All ~~reviews performedhearings held~~ pursuant to PTC 3.24.370 shall be conducted by the ~~CommissionCommittee~~. The ~~CommissionCommittee~~ may consider any evidence which it deems relevant and the conduct of the ~~reviewhearing~~ shall be governed by the rules of practice and procedure which may be adopted by the ~~CommissionCommittee~~. The ~~CommissionCommittee~~ shall not be bound by technical rules of evidence in the conduct of ~~reviewhearings~~ under this chapter and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any ~~order, decision, rule or regulation made, approved or confirmed by the decision, rule or regulation made, approved or confirmed by the Commission~~. No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged.

3.24.400 Remedies when violation has occurred.

If, after the hearing, the ~~CommitteeCommission~~ determines that a violation occurred and that the ~~employerparty in violationcharged has no adequate defense in law or fact, or if no hearing is requested, depending on the circumstances the Committee, the Commission may recommend any of the following:~~

- (a) Deny such party the right to do business on the Puyallup Indian Reservation;
- (b) Suspend such party's operation within the Puyallup Indian Reservation;
- (c) Terminate such party's operation within the Puyallup Indian Reservation;
- (d) Deny the right of such party to conduct any further business within the Puyallup Indian Reservation;
- (e) Impose a civil fine on such party in an amount not to exceed \$500.00 per day for each violation;
- (f) Order such party to make payment of back pay to any aggrieved Indian;
- (g) Order such party to dismiss any employees hired in violation of the Puyallup Tribe's employment rights requirements;

(h) Order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of 25 U.S.C. 1301 et seq.

3.24.410 ~~The Committee recommendation after review.~~~~Decision of the Commission.~~

The ~~Committee~~Commission's ~~recommendation~~ ~~decision~~ shall be in writing and shall be ~~delivered~~ ~~to served on~~ the ~~TERO~~charged party by registered mail or in person no later than thirty (30) days after the close of ~~review~~the hearing. This shall be heavily considered in TERO's final decision.

3.24.420 Injunctive relief.

Where the ~~employer~~party's failure to comply immediately with the ~~TERO's decision,~~ ~~Commission's order~~ may cause irreparable harm, the ~~TERO~~Commission may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this chapter, pending the ~~employer~~party's appeal or expiration of the time for appeal.

Subchapter 10. Appeal

3.24.430 Appeal.

An appeal to the Tribal Court may be taken from any ~~decision of the TERO~~~~final order of the Commission~~ by any party adversely affected thereby. The appeal shall be filed with the Court no later than thirty (30) days after a final order is entered. The Tribal Court shall affirm the decision of the ~~TERO~~Commission unless it is determined that the ~~final order or~~ decision is arbitrary, capricious or in excess of the authority of the ~~TERO~~Commission.

3.24.440 Notice of appeal.

The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the Director within thirty (30) days after the date of the ~~decision~~~~entry of the order~~. The notice of appeal shall:

- (a) Set forth the ~~issued violation~~~~order~~ from which the appeal is taken;
- (b) Specify the grounds upon which reversal or modification of the ~~issued violation~~~~order~~ is sought;
- (c) Be signed by the appellant.

3.24.450 Automatic stay.

Except as otherwise provided herein, the ~~decision of the TERO~~~~order of the Commission~~ shall be automatically stayed pending the determination of the Tribal Court. The Director, however, may petition and the Court, for good cause shown, may order the party requesting the hearing to post a bond sufficient to cover monetary damages that the ~~TERO~~Commission assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the ~~TERO~~Commission's ~~decision~~~~order~~ if that ~~decision~~~~order~~ is upheld by the Court.

3.24.460 Reversal or modification of ~~the TERO's decision~~Commission's order.

If the ~~decision of TERO~~order of the Commission is reversed or modified, the Court shall specifically direct the ~~TERO Commission~~ regarding further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein.

3.24.470 ~~The TERO's decision~~Order affirmed or no appeal taken.

If the ~~TERO's decision~~Commission's order is affirmed on appeal, or if no appeal is sought within thirty (30) days from the date of the ~~decision~~Commission's order, the ~~TERO Commission~~ shall petition the Court and the Court shall grant such orders as are necessary to enforce and appropriate to enforce the ~~decision(s) of the TERO~~orders of the Commission and the sanctions or fees imposed by it.

Subchapter 11. Enforcement

3.24.480 Emergency relief.

If, at any stage in the enforcement process, the ~~TERO Commission~~ has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the ~~TERO Commission~~ or the Court will not be able to collect monetary damages or TERO fees that are owed by that party pursuant to any outstanding ~~TERO issued violation or order of the~~order of the Commission ~~of~~ Court, or which may be owed if the charges set out in any outstanding notice of violations are upheld, the ~~TERO Commission~~ may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the ~~Tribe Commission~~ and other affected parties.

3.24.490 Enforcement of order.

If, thirty (30) days after a decision by the ~~TERO Commission~~, no appeal has been filed, or, thirty (30) days after an ~~order decision~~ by the Court on an appeal from a decision by the ~~TERO Commission~~, a party has failed to pay monetary damages imposed on it or otherwise complied with an order ~~of the Commission~~ ~~of~~ the Court, the ~~TERO Commission~~ may petition the Court to order the Tribal Police to confiscate and hold for sale such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.

3.24.500 Petition for confiscation.

The petition shall be accompanied by a list of property belonging to the party which the ~~TERO Commission~~ has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal Police to confiscate and hold said property or as much is available.

3.24.510 Notice of confiscation.

The Tribal Police shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it.

3.24.520 Sale of confiscated property.

If thirty (30) days after confiscation the party has not come into compliance, the Court shall order the Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the TribeCommission and all costs incurred by the Court and Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Subchapter 12. Fair Labor Standards Act

3.24.530 Fair Labor Standards Act incorporated herein.

The provisions of the Federal Fair Labor Standards Act, as amended now or in the future, regarding minimum wages (including Davis-Bacon minimum wages), overtime, fringe benefits, and time for payment of wages, are adopted by reference in and by this chapter.

3.24.540 Enforcement.

The TEROCommission shall have the authority to monitor and enforce those requirements, pursuant to the monitoring and enforcement authorities provided generally to the TEROCommission by this chapter; provided, that this section shall apply only to those employers who are otherwise covered by the federal law. No employer who is not presently subject to the federal laws or subsequently made subject by amendments or Court decision shall be covered by this section.

3.24.550 Purpose of subchapter.

The purpose of this subchapter is to give the TEROCommission parallel authority to monitor and enforce the fair labor requirements against those already covered by federal law on behalf of the Tribe, not to expand such requirements against those already covered by federal law and not to expand such requirements to employers not already covered.

3.24.560 Credit for penalties paid to federal government.

In imposing backpay awards, penalties and interest sanctions under this chapter, the TEROCommission shall credit an employer with any backpay, interest, and penalties paid pursuant to an order of settlement entered into with the federal government for the same violation.

Subchapter 13. Police Authorization

3.24.570 Police authorization.

The Puyallup Tribal Police are expressly authorized and directed to enforce such cease and desist or related requirementsorders as may from time to time be properly issued by the TEROCommission and the Director. Such requirementsorders do not require a judicial decree or order to render them enforceable. A removal order, however, shall not be enforced unless it is accompanied by a judicial decree of the Tribal Court.

3.24.580 Police not civilly liable.

The Police shall not be civilly liable for enforcing requirements related to TERO violationsorders signed by the Director or ordered by the court and the Commission.

Subchapter 14. Miscellaneous

3.24.590 Severability.

If any provision of this chapter or the application of it to any person, ~~entity~~ or circumstance is held invalid, this chapter shall be given effect without the invalid provision or application and, to this end, the provisions, sections, and subsections herein are declared to be severable.

3.24.600 Repeal of prior acts.

All provisions of any Tribal ordinance, resolution or regulation previously enacted or adopted by the Puyallup Tribe of Indians and its Tribal Council which are inconsistent with this chapter are hereby repealed.

3.24.610 Effective date.

This chapter shall become effective on ~~the twelfth day of July, 1991.~~

3.24.010 Declaration of policy.

As a guide to the interpretation and application of this chapter, the public policy of the Puyallup Tribe of Indians is declared to be as follows:

The right to tax business activities on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries is an important resource of the Puyallup Tribe of Indians.

Federal legislation enables the Puyallup Tribal Council to pass laws to implement and enforce this right for the welfare of the members of the Puyallup Tribe of Indians and other Indians.

Puyallup Tribal members and other Indians are entitled to the protection of the unique and special employment rights enacted by the federal government. Tribal government can and should participate in the enforcement of those laws. The Puyallup Tribe believes it important to establish an employment rights program and office to use these laws to increase employment of Puyallup Tribal members and other Indian workers and to eradicate discrimination against all Indians.

3.24.015 Exemption.

(a) Upon Tribal Council's determination that it is in the best interest of the Puyallup Tribe for certain businesses or types of businesses to be exempt, Tribal Council may by resolution exempt certain businesses or types of businesses from application of this chapter for leases, activities and operations occurring on the Tribal lands provided that there is an approved process consistent with the goals of increasing employment through a hiring preference as provided within the TERO Ordinance and these regulations.

(b) Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor.

Subchapter 2. Definitions

3.24.020 Definitions generally.

Words of this chapter shall have the meaning given them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, it shall be construed in harmony with the purposes of this title.

(a) "Committee" means the Puyallup Tribal Employment Rights Advisory Committee established by this chapter.

(b) "Covered Employer" means any employer hiring two or more employees who during any twenty (20) day period to perform sixteen (16) or more hours working within the jurisdiction of the Puyallup Tribe or its Tribal Lands.

(c) "Director" means the Director of the Puyallup Tribal Employment Rights Office.

- (d) "Employee" means any person employed by a Covered Employer for financial compensation.
- (e) "Employer" means any person or business that hires two or more employees.
- (f) "Entity" means any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person. The term "entity" is intended to be as broad and encompassing as possible to ensure the coverage of this chapter over all employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Tribe and Courts.
- (h) "Indian" means any member of a federally recognized tribe.
- (i) "Local Indian" means any member of a federally recognized tribe who resides within the exterior boundaries of the Puyallup Indian Reservation.
- (j) "TERO" means the Puyallup Tribal Employment Rights Office.

Subchapter 3. Indian Preference

3.24.030 Indian preference in employment.

All Covered Employers, for all employment on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries, shall give preference to qualified Indians, in the following order of preference: (1) Puyallup Tribal members, (2) Local Indians and Spouses of or Guardian of a Puyallup Tribal member (3) non-local Indians, in all hiring, promotion, training, lay-offs, and all other aspects of employment. Such employers shall comply with the rules, regulations, guidelines and orders of the Puyallup Tribal Employment Rights Office which sets forth the specific obligations of employers in regard to Indian preference and local Indian preference.

3.24.040 Application of Indian preference requirements.

These requirements shall not apply to any direct employment by the Puyallup Indian Tribe, the federal, state, or other governments or their subdivisions. It shall apply to all the contractors or grantees of such governments and to all commercial enterprises operated by such governments.

3.24.050 Indian preference in contracting.

All entities awarding contracts or subcontracts for supplies, services, labor, or materials in the amount of \$20,000 or more where the majority of the work on the contract or subcontract will occur on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries shall give preference in contracting and subcontracting to qualified businesses that are certified by the TERO as fifty-one percent (51%) or more Indian-owned and controlled, with the following order of preference: (1) Puyallup Tribal members, (2) Local Indians and Spouses of or Guardian of a Puyallup Tribal member (3) non-local Indians.

3.24.060 Application of Indian preference in contracting.

These requirements shall not apply to the award of contracts awarded directly by the Tribal Council of the Puyallup Tribe of Indians, by the federal or state government or their subdivisions. These requirements shall apply to any contract awarded by any commercial enterprise of the Puyallup Tribe of Indians, even if said contracts must be submitted to the Tribal Council of the Puyallup Tribe of Indians

for approval. The Puyallup Tribal Council reserves the right to exempt certain contracts or employers consistent with PTC 03.24R.020.

3.24.070 Tribal programs or divisions.

Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a preferred contractor as described herein.

3.24.080 Subcontracts included.

This chapter shall apply to all subcontracts with Covered Employers awarded by a Tribal, federal, or state direct contractor or grantee, whether or not the prime contract was subject to this chapter.

3.24.090 All Covered Employers to comply.

All Covered Employers shall comply with the rules, regulations, guidelines and orders of the TERO which set forth the specific obligations of such entities in regard to Indian preference in contracting and subcontracting.

3.24.100 System for certifying businesses for Indian preference.

The TERO has established an approved system for certifying businesses as Indian preference and local Indian preference eligible.

3.24.110 Unions.

Any Covered Employer who has a collective bargaining agreement with one or more unions shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations and guidelines of the Puyallup Tribe of Indians. Such agreement shall be subject to the approval of the Director of the TERO.

Subchapter 4. Tribal Employment Rights Committee

3.24.120 Tribal Employment Rights Committee.

There is created a Puyallup Tribal Employment Rights Advisory Committee. The Committee shall be composed in the following manner: The Puyallup Tribal Council shall select from its general membership seven Tribal members to serve on the TERO Committee.

3.24.130 Recusal of Committee Members.

No Committee member shall participate in any action or decision by the Committee directly involving himself or herself, or a member of his or her immediate family, or any person, business or other entity of which he or she or a member of his or her immediate family is an employee, or in which he or she or a member of his or her immediate family has a substantial ownership interest, or with which he or she or a member of his or her immediate family has a substantial contractual relationship.

3.24.140 Definition of immediate family.

For the purposes of this subchapter, "immediate family" means, including by adoption, brother, sister, son, daughter, mother, father, husband, wife, step-brother, step-sister, half-brother, and half-sister.

3.24.150 Committee Member Participation.

Nothing in this subchapter shall preclude a Committee member from participating in any action or decision by the Committee which:

- (a) Generally affects a class of persons, regardless of whether the Committee or a member of his or her immediate family is a member of that class;
- (b) Affects the Puyallup Tribe of Indians or a Tribal enterprise, regardless of whether the Committee is a member of the Tribe.

3.24.160 Voluntary recusal.

A Committee member may voluntarily recuse himself or herself and decline to participate in any action or decision by the Committee when the Committee member, in his or her discretion, believes:

- (a) That he or she cannot act fairly or without bias; or
- (b) That there would be an appearance that he or she could not act fairly or without bias.

Subchapter 5. Purpose of the Committee

3.24.170 Purpose of the Committee.

- (a) The Committee shall advise and make recommendations to Tribal Council on matters concerning TERO.
- (b) The Committee may make recommendations concerning the adoption or the amendments rules , regulations and laws concerning the TERO.
- (c) The Committee shall participate in grievance related reviews in accordance with such rules of practice and procedure as may be adopted by the Committee, and to recommend any relief or sanctions provided by this chapter.

Subchapter 6. TERO Director

3.24.180 TERO Director.

Puyallup Tribal Council shall have exclusive authority to appoint, direct, suspend or remove the Director.

3.24.190 Authority of Director.

The Director shall have authority to hire staff, to expend funds appropriated by the Tribal Council, and to obtain and expend funding from federal, state or other sources to carry out the purposes of this chapter.

3.24.200 Duties of the Director.

The Director shall:

(a) administer the policies, authorities and duties prescribed for him or her in this chapter and delegated to him or her by Tribal Council;

(b) require each Covered Employer to submit to TERO an acceptable compliance plan indicating how it will comply with this chapter. Such compliance plans shall be submitted before a Covered Employer may commence work within the jurisdiction of the Puyallup Tribe;

(c) impose numerical hiring goals and timetables that specify the minimum number of Indians a Covered Employer must hire, by craft or skill level;

(d) require Covered Employers to establish or participate in such training programs as the TERO determines necessary in order to increase the pool of qualified Indians within the Puyallup Tribe of Indians jurisdiction;

(e) establish in conjunction with Tribal employment and training programs a Tribal hiring hall or skills bank and impose a requirement that no Covered Employer may hire a non-Indian until the Tribal hiring hall or bank has certified that no qualified Indian is available to fill the vacancy, with a first preference in referral to local Indians. Tribal Council reserves the right to update or amend any established process if it has been determined to be in the best interest of the Puyallup Tribe provided that tribal preference remains a priority;

(f) prohibit Covered Employers from using qualification criteria or other requirements that serve as barriers to Indian employment unless the employer can demonstrate that such criteria or requirements are required by business necessity. In developing regulations to implement this subsection, the TERO shall adopt the EEOC guidelines to the extent they are appropriate. The TERO shall have the right to impose its own requirements in addition to or in lieu of EEOC guidelines when necessary to address unique qualification problems confronting Indians;

(g) to negotiate agreements on behalf of Tribe with unions to ensure union compliance with this chapter. Such agreements shall in no way constitute recognition or endorsement of any union;

(h) impose contract and subcontract preference requirements, with a first preference to Puyallup Tribal member owned businesses, second to other local Indian businesses as eligible for Indian preference and local Indian preference;

(i) to petition the Tribal Court for orders as are necessary and appropriate to enforce decisions of the Committee or Director and any sanctions imposed by them;

(k) to enter into cooperative relationships with federal employment rights agencies, such as EEOC and OFCCP, in order to eliminate discrimination against Indians on and off the Puyallup Indian Reservation and to enter into cooperative relationships with federal agencies, such as the BIA or IHS, in order to implement any federal Indian preference employment or contracting requirements, as such agency may lawfully delegate to the Puyallup Tribe.

Subchapter 7. Employment Rights Fee

3.24.210 Employment rights fee.

An employment rights fee to raise revenue for Tribal operations is imposed as follows:

(a) Every Covered Employer with a construction contract in the sum of \$20,000 or more shall pay a fee of two and one-half percent (2.5%) of the total amount of the contract. Such fee shall be paid by the employer prior to commencing work within the jurisdiction of the Puyallup Tribe. Where good cause is shown, the Director may authorize an employer to pay the fee in installments over the course of the contract. This fee shall not apply to contracts awarded directly to the Puyallup Tribal Council using Tribal funds exclusively to pay the contract costs; provided, that in the event a portion of the contract is payable using non-Tribal funds then the fee may be imposed only upon the amount of non-Tribal funds expended.

(b) Every Covered Employer working within the jurisdiction of the Puyallup Tribe, or with gross sales within the jurisdiction of the Puyallup Tribe of more than \$20,000, shall pay a quarterly fee of two and one-half percent (2.5%) of his employees' quarterly payroll which shall be paid within 30 days of the end of the quarter. This fee shall not apply to education, health, governmental, or nonprofit employers.

3.24.220 Fee collected by Tribal Accounting Office.

The fee shall be collected by the Tribal Accounting Office.

Subchapter 8. Complaints against Covered Employers.

3.24.240 Complaints.

Any individual, group of individuals or organization that believes any Covered Employer has violated any requirements imposed by this chapter or regulations issued pursuant to it may file a complaint with the Director.

3.24.250 Contents of complaint.

The complaint shall be in writing and shall contain such information as is necessary to enable the Director to carry out an investigation.

3.24.260 Investigation timeline.

The Director shall complete the investigation within thirty (30) days of the date on which a complaint is filed unless an extension has been granted. Such extension shall not exceed 30 days.

3.24.270 Duties of the Director.

The Director shall complete the investigation within thirty (30) days of the date on which a complaint is filed unless an extension has been granted. Such extension shall not exceed thirty (30) days.

3.24.280 Investigations.

On Director's own initiative or pursuant to a complaint, the Director or his agent shall make such public or private investigation within the jurisdiction of the Puyallup Tribe of Indians as the Director deems necessary to determine whether any Covered Employer has violated any provision of this chapter or rule or order hereunder, or to aid in prescribing rules, regulations and guidelines hereunder.

3.24.290 Authority to enter.

The Director or his agent may enter during business hours the place of business or employment of any employer for the purpose of such investigations.

3.24.300 Trade secrets or confidential information.

When requesting any reports or other information from a Covered Employer, the Director shall request that the Covered Employer identify all material which contains trade secrets or privileged or confidential commercial, financial or employment information. Any material so identified shall be kept confidential by the Director or other interested party, or if the Director determines that the material does not contain confidential information, but that the release of which would cause unnecessary or excessive business or financial injury or would invade individual privacy.

3.24.310 Restriction of access to certain information.

Any state or federal tax records, trade secrets, or privileged or confidential commercial, financial or employment information subpoenaed pursuant to this chapter or used in a compliance hearing or subsequent appeal to the Tribal Court shall be confidential records of the TERO or the Tribal Court, and shall not be opened to public inspection.

3.24.320 Investigative powers.

For the purpose of investigations or reviews, which, in the opinion of the Director are necessary and proper for the enforcement of this chapter, the Director or his agent so designated may take written statements, or declarations as evidence, and require, the production of books, papers, contracts, agreements or other documents, records or information which the Director deems relevant or material to the investigation.

Subchapter 9. Enforcement

3.24.330 Monitoring compliance.

The Director or his agent may require the Covered Employer to submit such reports as deemed necessary to monitor compliance with the requirements of this chapter or any rule or order hereunder.

3.24.340 Notice of violation.

When the Director has grounds to believe a violation of this chapter or the regulations issued pursuant to it has occurred, the Director shall notify the Covered Employer in writing, specifying the alleged violations. The Director may withhold the name(s) of the complaining party if there is reason to believe that such party will be subject to retaliation.

3.24.350 Informal settlement.

The Director shall seek to achieve an informal settlement of the alleged violation. If the Director is unable to accomplish this, he or she shall issue a formal notice of noncompliance, which shall also advise the Covered Employer of the right to request a hearing.

3.24.360 Notice of violation to include.

The formal notice shall set out the nature of the alleged violation and the steps that must be taken to come into compliance. It shall provide the employer with a reasonable time, which in no event shall be

less than five (5) days from the date of receipt of such notice, to comply, unless the Director has reason to believe irreparable harm will occur during that period, in which case the Director may require compliance to occur within five (5) days.

3.24.370 Request for review of decision to issue violation.

The employer may request a review of a TERO decision to issue a violation , no sooner than five (5)days and no later than thirty (30) days after the date for compliance set forth in the Director's notification to the party charged of a violation, unless an expedited review is deemed necessary by the Director to avoid irreparable harm. If an employer fails or refuses to comply and does not request a review, the TERO may proceed pursuant to PTC 3.24.400.

3.24.380 Bond may be required.

If the employer requests a review of a decision and the Director has good cause to believe that there is a danger that the employer remove itself or its property for the jurisdiction of the Tribe prior to the hearing, he or she may, in his or her discretion, require the party to post a bond with the Tribe in an amount sufficient to cover possible monetary damages that may be assessed against the employer at the hearing. If the employer fails or refuses to post said bond, the TERO may also petition the Puyallup Tribal Court for such interim and injunctive relief as is appropriate to protect the rights of the Tribe or any individual or business the Court deems appropriate during the pendency of the complaint and hearing proceedings in Puyallup Tribal Court.

3.24.390 Conduct of review.

All reviews performed pursuant to PTC 3.24.370 shall be conducted by the Committee. The Committee may consider any evidence which it deems relevant and the conduct of the review shall be governed by the rules of practice and procedure which may be adopted by the Committee. The Committee shall not be bound by technical rules of evidence in the conduct of review under this chapter and no informality in any proceeding, as in the manner of taking testimony, shall invalidate any decision made. No stenographic record of the proceedings and testimony shall be required except upon arrangement by and at the cost of the party charged.

3.24.400 Remedies when violation has occurred.

If, after the hearing, the Committee determines that a violation occurred and that the employer in violation , depending on the circumstances the Committee may recommend any of the following:

- (a) Deny such party the right to do business on the Puyallup Indian Reservation;
- (b) Suspend such party's operation within the Puyallup Indian Reservation;
- (c) Terminate such party's operation within the Puyallup Indian Reservation;
- (d) Deny the right of such party to conduct any further business within the Puyallup Indian Reservation;
- (e) Impose a civil fine on such party in an amount not to exceed \$500.00 per day for each violation;
- (f) Order such party to make payment of back pay to any aggrieved Indian;

(g) Order such party to dismiss any employees hired in violation of the Puyallup Tribe's employment rights requirements;

(h) Order the party to take such other action as is necessary to ensure compliance with this chapter or to remedy any harm caused by a violation of this chapter, consistent with the requirements of 25 U.S.C. 1301 et seq.

3.24.410 The Committee recommendation after review.

The Committee's recommendation shall be in writing and shall be delivered to the TERO no later than thirty (30) days after the close of review. This shall be heavily considered in TERO's final decision.

3.24.420 Injunctive relief.

Where the employer's failure to comply immediately with the TERO's decision, may cause irreparable harm, the TERO may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of this chapter, pending the employer's appeal or expiration of the time for appeal.

Subchapter 10. Appeal

3.24.430 Appeal.

An appeal to the Tribal Court may be taken from any decision of the TERO by any party adversely affected thereby. The appeal shall be filed with the Court no later than thirty (30) days after a final order is entered. The Tribal Court shall affirm the decision of the TERO unless it is determined that the decision is arbitrary, capricious or in excess of the authority of the TERO.

3.24.440 Notice of appeal.

The appeal shall be taken by serving a written notice of appeal with the Tribal Court, with a copy to the Director within thirty (30) days after the date of the decision. The notice of appeal shall:

- (a) Set forth the issued violation from which the appeal is taken;
- (b) Specify the grounds upon which reversal or modification of the issued violation is sought;
- (c) Be signed by the appellant.

3.24.450 Automatic stay.

Except as otherwise provided herein, the decision of the TERO shall be automatically stayed pending the determination of the Tribal Court. The Director, however, may petition and the Court, for good cause shown, may order the party requesting the hearing to post a bond sufficient to cover monetary damages that the TERO assessed against the party or to assure the party's compliance with other sanctions or remedial actions imposed by the TERO's decision if that decision is upheld by the Court.

3.24.460 Reversal or modification of the TERO's decision.

If the decision of TERO is reversed or modified, the Court shall specifically direct the TERO regarding further action in the matter, including making and entering any order or orders in connection therewith, and the limitations or conditions to be contained therein.

3.24.470 The TERO's decision affirmed or no appeal taken.

If the TERO's decision is affirmed on appeal, or if no appeal is sought within thirty (30) days from the date of the decision, the TERO shall petition the Court and the Court shall grant such orders as are necessary to enforce and appropriate to enforce the decision(s) of the TERO and the sanctions or fees imposed by it.

Subchapter 11. Enforcement

3.24.480 Emergency relief.

If, at any stage in the enforcement process, the TERO has reason to believe there is a danger that a party will remove itself or its property from the jurisdiction of the Tribal Court, such that the TERO or the Court will not be able to collect monetary damages or TERO fees that are owed by that party pursuant to any outstanding TERO issued violation or order of the Court, or which may be owed if the charges set out in any outstanding notice of violations are upheld, the TERO may petition the Tribal Court pursuant to the rules and procedures of that Court to attach and hold sufficient property of the party to secure compliance or for such other relief as is necessary and appropriate to protect the rights of the Tribe and other affected parties.

3.24.490 Enforcement of order.

If, thirty (30) days after a decision by the TERO, no appeal has been filed, or, thirty (30) days after an order by the Court on an appeal from a decision by the TERO, a party has failed to pay monetary damages imposed on it or otherwise complied with an order the Court, the TERO may petition the Court to order the Tribal Police to confiscate and hold for sale such property of the party as is necessary to ensure payment of said monetary damages or to otherwise achieve compliance.

3.24.500 Petition for confiscation.

The petition shall be accompanied by a list of property belonging to the party which the TERO has reason to believe is within the jurisdiction of the Tribal Court, the value of which approximates the amount of monetary damages at issue. If the Court finds the petition to be valid, it shall order the Tribal Police to confiscate and hold said property or as much is available.

3.24.510 Notice of confiscation.

The Tribal Police shall deliver in person or by certified mail a notice to the party informing it of the confiscation and of its right to redeem said property by coming into compliance with the order outstanding against it.

3.24.520 Sale of confiscated property.

If thirty (30) days after confiscation the party has not come into compliance, the Court shall order the Police to sell said property and use the proceeds to pay any outstanding monetary damages imposed by the Tribe and all costs incurred by the Court and Police in the confiscation and sale. Any proceeds remaining shall be returned to the party.

Subchapter 12. Fair Labor Standards Act

3.24.530 Fair Labor Standards Act incorporated herein.

The provisions of the Federal Fair Labor Standards Act, as amended now or in the future, regarding minimum wages (including Davis-Bacon minimum wages), overtime, fringe benefits, and time for payment of wages, are adopted by reference in and by this chapter.

3.24.540 Enforcement.

The TERO shall have the authority to monitor and enforce those requirements, pursuant to the monitoring and enforcement authorities provided generally to the TERO by this chapter; provided, that this section shall apply only to those employers who are otherwise covered by the federal law. No employer who is not presently subject to the federal laws or subsequently made subject by amendments or Court decision shall be covered by this section.

3.24.550 Purpose of subchapter.

The purpose of this subchapter is to give the TERO parallel authority to monitor and enforce the fair labor requirements against those already covered by federal law on behalf of the Tribe, not to expand such requirements against those already covered by federal law and not to expand such requirements to employers not already covered.

3.24.560 Credit for penalties paid to federal government.

In imposing backpay awards, penalties and interest sanctions under this chapter, the TERO shall credit an employer with any backpay, interest, and penalties paid pursuant to an order of settlement entered into with the federal government for the same violation.

Subchapter 13. Police Authorization

3.24.570 Police authorization.

The Puyallup Tribal Police are expressly authorized and directed to enforce such cease and desist or related requirements as may from time to time be properly issued by the TERO. Such requirements do not require a judicial decree or order to render them enforceable. A removal order, however, shall not be enforced unless it is accompanied by a judicial decree of the Tribal Court.

3.24.580 Police not civilly liable.

The Police shall not be civilly liable for enforcing requirements related to TERO violations signed by the Director or ordered by the court.

Subchapter 14. Miscellaneous

3.24.590 Severability.

If any provision of this chapter or the application of it to any person, or circumstance is held invalid, this chapter shall be given effect without the invalid provision or application and, to this end, the provisions, sections, and subsections herein are declared to be severable.

3.24.600 Repeal of prior acts.

All provisions of any Tribal ordinance, resolution or regulation previously enacted or adopted by the Puyallup Tribe of Indians and its Tribal Council which are inconsistent with this chapter are hereby repealed.

3.24.610 Effective date.

This chapter shall become effective on

REGULATIONS DRAFT 03.12. 2024

3.24 R.010 Declaration of Policy.

As a guide to the interpretation and application of this chapter, the public policy of the Puyallup Tribe of Indians is declared to be as follows:

The right to tax business activities on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries is an important resource of the Puyallup Tribe of Indians.

Federal legislation enables the Puyallup Tribal Council to pass laws to implement and enforce this right for the welfare of the members of the Puyallup Tribe of Indians and other Indians.

Puyallup Tribal members and other Indians are entitled to the protection of the unique and special employment rights enacted by the federal government. Tribal government can and should participate in the enforcement of those laws. The Puyallup Tribe believes it important to establish an employment rights program and office to use these laws to increase employment of Puyallup Tribal members and other Indian workers and to eradicate discrimination against all Indians. Subchapter 1. General Provisions

03.24R.020 Exemptions.

- (a) Upon Tribal Council's determination that it is in the best interest of the Puyallup Tribe for certain contracts or employers to be exempt, Tribal Council may by resolution exempt certain contracts or employers from application of this chapter for leases, activities and operations occurring on the Tribal lands provided that there is an approved process consistent with the goals of increasing employment through a hiring preference as provided within the TERO Ordinance and these regulations.
- (b) Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor.

3.24R.030 Purpose.

The following regulations are issued pursuant to the authority granted to the Puyallup Tribe of Indians Employment Rights Office (hereinafter "TERO") by the Puyallup Tribe of Indians Employment Rights Ordinance Code (Chapter 3.24 PTC), which requires tribal preference in the preferential employment hiring, training and all aspects of employment, of Indians and Indian-owned businesses/firms by all contract-awarding entities and employers operating on lands held in trust for Indians or the Puyallup Indian Tribe within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned trust lands as described herein and defined below (3.24R.030 (kg)) located elsewhere. [Res. 061293 (12/06/93

3.24R.040 Dissemination.

The obligation of all employers to comply with Tribal employment rights requirements shall be made known to all existing, former and future employers. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement or Notice to Contractors that the successful bidder shall comply with TERO laws and these regulations and that a bidder may contact the TERO to obtain additional information. Those Tribal and other offices responsible for issuing business permits for the Tribe Reservation or otherwise engaged in activities involving contact with prospective

employers on ~~Tribal landsthe Reservation~~ shall be responsible for informing such prospective employers of these regulations. [~~Res. 061293 (12/06/93) § 1.2~~]

3.24R.0530 Definitions. Words of this chapter shall have the meaning given them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, it shall be construed in harmony with the purposes of this title. For purposes of these Regulations and the accompanying Ordinance, the following terms and definitions shall apply:

(a) "Committeession" means the Puyallup Tribal Employment Rights Advisory Committeession established by PTC 3.24.

~~(a) "Commercial enterprise" means any activity by the Puyallup Tribe of Indians of the federal or state governments that is not a traditional government function as defined by the Internal Revenue Service.~~

(b) "Covered employer" means any employer employing two or more employees who, during any 20-day period, work, cumulatively, 16 or more hours work on trust lands within the exterior boundaries of the Puyallup Indian Reservation jurisdiction of the Puyallup Tribe or its Tribal Lands.

(c) "Director" means the Director of the Puyallup Tribal Employment Rights Office.

~~(de) "Employee" means any person employed by a Covered Employer entity for financial compensation. "Employee" means any person employed for remuneration.~~

~~(ed) "Employer" means any person or entity that hires two or more Eemployees. "Employer" means any person, partnership, corporation or other entity that employs, for remuneration, two or more employees.~~

(fe) "Entity" or "Entities" means any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person, including Tribal departments, programs and or its their divisions. The term "entity" is intended to be as broad and encompassing as possible to ensure the coverage of this chapter overall employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Tribe the Commission and Courts. "Entity" means any person, partnership, corporation, enterprise, or other natural or artificial person or organization. The term "entity" shall be defined to ensure coverage of all employment and contract activities within the Tribe's jurisdiction.

~~(g) "Government Commercial Enterprise" means any activity by the Puyallup Tribe of Indians of the Federal or State governments that is not a traditional government function as defined by the Internal Revenue Service.~~

~~(ghf) "Indian" means any enrolled member , spouse of, or guardian of a child enrolled in a federally recognized tTribe. "Indian" means any member of a federally recognized Tribe.~~

(hig) "Local Indian" means enrolled Puyallup Tribal member, spouse, guardian or any member of a federally recognized tribe who resides within the exterior boundaries of the Medicine Creek Treaty Ceded lands or Tribally owned trust lands outside of these boundaries jurisdiction of the Puyallup Tribe or its Tribal Lands. "Local Indian" means a member of a federally recognized Tribe who has resided on or near the Puyallup Indian Reservation for a period of not less than 60 days before the start of the project at issue.

(ij) "TERO" means the Puyallup Tribal Employment Rights Office.

~~(h) "Near the Reservation" means a location which is within a reasonable daily commuting distance of the job site at issue.~~

~~(iii) "Non local Indian" means a member of a federally recognized tribe who does not live on or near Medicine Creek Treaty Ceded lands or Tribally owned trust lands outside of these boundaries, the Puyallup Indian Reservation.~~

(kgj) "Tribal Lands" for purposes of this Ordinance, means any land within the jurisdiction of the Puyallup Tribe of Indians including any Tribally owned land both within and outside of the 1873 Survey Area. Additional areas may be included as provided in an Intergovernmental Agreement authorizing and outlining compliance in areas other than those listed above, which may include ceded land means any land within the exterior boundaries of Medicine Creek Treaty Ceded Lands and any tribally owned trust lands outside those boundaries. "Trust land(s)" means land held in trust by the United States government for the use and benefit of Indians or an Indian tribe. [Res. 061293 (12/06/93) § 1.3]

3.24R.0640 Coverage.

(a) Employment. These regulations shall apply to all Covered Employers and Entities. They shall not apply to direct employees of the Puyallup Indian Tribe, the Federal government, the Washington State government, or the subdivisions of such government, individual Tribal members or Tribal member owned businesses. These regulations shall apply to all contractors or grantees of such governments and to all commercial enterprises and Entities operated by such governments.

(b) Contracting and Subcontracting. These regulations shall apply to all Covered Employers and Entities. They shall not apply to direct employees of the Puyallup Indian Tribe, the Federal government, the Washington State government, the subdivisions of such government, individual Tribal members or Tribal member owned businesses. These regulations shall apply to all contractors or grantees of such governments and to all commercial enterprises and Entities operated by such governments. Contracts directly awarded by the Puyallup Tribal Council or the federal government are not subject to these regulations.

1. The contract and subcontract preference requirements of these regulations shall apply to an entity awarding one or more contracts and/or subcontract(s) for supplies, services, labor or materials within Tribal Lands, in a total amount which exceeds \$20,000; provided, the majority of the work or the majority of the supplies or materials shall be expended on trust lands.
2. The subcontracts awarded by entities which have received contracts from the Tribe or Federal government are subject to these regulations.
3. A contract awarded by a commercial enterprise of the Puyallup Indian Tribe is also subject to these regulations.

(c) Employment Rights Fee. An employment rights fee of two and one-half percent (2.5%) ~~Five (5) percent~~ of the contract amount shall be assessed against any covered employers or Entities.

3.24R.0750 Submission of Compliance Plans.

Each Covered Employer Entity, contractor, or subcontractor, intending to engage in business activity on or near the Reservation Tribal Lands, twenty one days (21) prior to the daytime it commences work on or near the Reservation, shall submit a completed Compliance Pa- ~~contracting training~~ plan to the TERO. No new employer or entity shall commence work on or near the Reservation Tribal Lands until it has met with the TERO and developed an acceptable plan for implementing its obligations under these regulations.

(a) Employment and Training Plan. The employment and training plan shall show the number of man-hours, by craft and skill category, anticipated to complete the contract or project. The employer shall identify those persons to be approved as permanent and key employees (see PTC 3.24R.060(b)) and shall provide sufficient data or reports to verify the status of those employees.

1. The plan shall also describe how the employer intends to participate in the Tribe's training programs.

(b) Contracting and Subcontracting Plan. The contracting and subcontracting plan shall indicate all contracts and subcontracts that will be entered into by a Covered Employer entity and the projected dollar amounts thereof.

If the Covered Employer entity has awarded a firm contract or subcontract work, it shall list the name of that business firm and indicate whether it is a firm business certified by the TERO as Indian preference-eligible. If the business firm has not been certified, the entity shall further indicate why a technically qualified certified business firm registered with the TERO, if any, was not selected. The plan shall also indicate how the Covered Employer entity intends to comply with Subchapter 3 of these regulations when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted. The awarding Covered Employer entity assumes all responsibility for ensuring their Subcontractors are compliant with the TERO.

Subchapter 2. Indian Preference in Employment and Training

3.24R.0860 Hiring.

(a) Tribal Hiring Hall. ~~An employer may recruit and hire workers from whatever sources available and by whatever process chosen; provided, that (except as provided in subsection (b) of this section) the~~ Covered Employer may not employ a non-local Indian or a non-Indian until the TERO is given a minimum of forty-eight (48) hours notice to locate and refer a qualified local Indian. In those instances where a worker is needed in less than forty-eight (48) hours, the employer may request this requirement be waived. Such waiver shall be granted, provided the employer can demonstrate that a need exists.

(b) For purposes of Indian preference for these Regulations is Ordinance and the accompanying Ordinance Regulations, preference shall be given in the following order for all opportunities and in the reverse order for any lay-offs as listed and described below.

- (1) Puyallup Tribal member
- (2) Other Local Indians and Spouses of or Guardian of a Puyallup Tribal member
- (3) Non-Local Indian
- (4) Others

~~(c) A best faith effort shall be made to locate, refer and hire in the preference order as listed above. When an employer or the TERO cannot locate a qualified local Indian, a best faith effort shall be made to locate, refer and hire an Indian who does not qualify as a local Indian but who is a member of a federally recognized tribe; provided, that where not prohibited by federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members, second preference will be given to or other Local Indians along with Spouses of or Guardian of a Puyallup Tribal member. If none are available, second-third preference will be given to Non-Local other Indians and finally others. If no client is available for dispatch through the TERO and the contractor or subcontractor has an existing employee who is registered with the TERO office as a client, the contractor or subcontractor will commit to shall make effort to transfer said employee to the covered project.~~

(d) An employer may request, transfer, recruit and hire workers from whatever sources available and by whatever process chosen; provided the Covered Employer have met their obligations under these regulations and accompanying Ordinance or TERO has given authorization to do so should a position or dispatch request be unfillable.

~~(e)~~ Permanent and Key Employees. Prior to commencing work on or near the Puyallup Indian Reservation Tribal Lands, a prospective employer and all subcontractors shall identify key and permanent employees. Such employees may be employed on the project whether or not they are local Indians. A "permanent employee" is defined as one who remains on the employer's or subcontractor's annual payroll, or is an owner of the business firm. A "key employee" means a top supervisory employee or an employee who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee had worked for the employer on previous projects shall not qualify that employee as a key or permanent employee.

~~Length of employment of the employee does not automatically define that employee as key. A trade supervisory position such as a Foreman or Lead will be filled by the TERO if a qualified client is available.~~

~~(f) Exceptions for regular employees may be granted by the TERO Director, Officer or Dispatcher on a case-by-case basis when TERO has determined that no eligible TERO client is available to fill the position. Any employer or subcontractor filling a vacant position in its organization immediately prior to undertaking work pursuant to the contract to be performed on Tribal trust lands shall provide satisfactory evidence to the TERO Director that such hiring was not intended to circumvent these regulations.~~

(g) Upon approval by the TERO of each key employee or permanent employee requested by the employer, the TERO shall issue a permit to that employee.

~~(h)~~ Work Permits.

(1) No person who is not a Puyallup Tribal member, ~~or a Local Indian or Indian as defined,~~ shall be employed by a ~~C~~covered ~~E~~mployer until he or she has obtained a work permit from the TERO.

(2) Work permits shall be granted under the following circumstances:

(A) To all key and permanent employees listed in the employer's preference plan who are certified by the TERO Director, Officer or Dispatcher as meeting the criteria for key and permanent employees.

(B) To ~~nonlocal Indians or~~ non-Indians hired after the employer has asked the TERO to locate and refer a qualified Tribal member or local Indian and the TERO has been unable to do so within the time provided by these ~~R~~egulations. When the TERO has been unable to locate and refer a local Indian within the time provided, the employer ~~may~~shall request, and the TERO ~~may~~shall issue, a work permit for ~~the nonlocal Indian or non-Indian hired for the position at issue. At no time will the TERO delay the permit process unnecessarily, or deny a permit without a written justification.~~

(C) To a person ~~employed by a covered employer, when the person is employed on or near the Reservation, in a permanent position and he or she began his or her employment before the effective date of the TERO Ordinance (Chapter 3.24 PTC), requested by the Employer to fill an existing position on a temporary need should an existing employee be unavailable, who are verified by the TERO Director, Officer or Dispatcher as meeting the criteria for said position.~~

(D) To all owners ~~upon verification that the person is the legitimate owner of the relevant Business Entity, or top management of covered eEntities may be considered a (permanent employee for purposes of this Regulations and accompanying Ordinance) when such owner will be performing work for his or her entity. Prior to commencing work, the person shall demonstrate that he or she is a legitimate owner of the entity and shall request a permit. Upon finding that the person is a legitimate owner, the TERO Director shall issue said person a work permit.~~

(E) To such other persons that the ~~TERO Commission~~ determines are entitled to a permit.

(id) Sanctions. Any ~~non-Local Indian individual~~ found to be employed by a ~~C~~covered ~~E~~mployer who does not have a valid work permit shall be summarily removed from the job and the employer shall be subject to such additional sanctions as the ~~TERO Commission~~ may reasonably impose. In imposing sanctions under this section, the ~~TERO Commission~~ shall consider the following factors:

- (1) Was the violation intentional?
- (2) Did the employer act quickly to remove the employee in question?
- (3) Whether the employer had been cited for work permit violations in the past?

(4) Has the employer had similar issues while working with other TERO's or Tribes?

(5) Has the employer been sanctioned prior by other TERO's or Tribes and to what extent?

(j) Termination. No Tribal member or Local Indian worker shall be terminated prior to the completion of the work that they were hired for without cause. In the event of a lay-off Covered Employer must take steps to retain required percentage as agreed in TERO plan of the TERO qualified workers in the same order of preference as required under PTC 3.24R.060 (b)(1-4), until all nonlocal Indians or non-Indian workers in the same craft have been terminated. This method of termination shall continue until such time as there are no members of each class who meet the threshold qualifications for the job.

(1) Should an Covered Employer lay off by crews, qualified local Indians shall be transferred to crews that will be retained; provided there are nonlocal Indians or non-Indians in the same craft employed on the crews that are to be retained.

(f) Unions. An employer or subcontractor who has a collective bargaining agreement with one or more labor unions shall obtain written agreement from said unions indicating that they will comply with these Indian preference requirements. Specifically, the contractor may make initial job referral requests to the union. Any covered employer who has a collective bargaining agreement with one or more unions that are signatory to the Puyallup Tribal Labor Agreement shall comply with the Tribal Labor Agreement, including Indian preference laws, and with the rules, regulations, and guidelines of the Puyallup Tribe of Indians. Any Covered Employer who has a collective bargaining agreement with one or more unions that is not signatory to the Tribal Labor Agreement, shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, and with the rules, regulations, and guidelines of the Puyallup Tribe of Indians. Although Union membership is not a requirement of Indian Preference employees, the Puyallup Tribe agrees to allow Union Representatives and Business Agents to demonstrate the benefits of Union membership to all local and non-local Indians. Unions and their representatives may not at any time either directly or indirectly, will they harass, coerce or threaten any Indian to join a union or one who chooses to not become a Union member.

(g) However, if the TERO union does not have a qualified Tribal member or local client available Indian worker on any of its out-of-work lists, the TERO union shall contact the appropriate Union TERO to identify a qualified local or non-local Indian worker. Should the Union TERO identify find such a worker, he or she shall be referred through both the Union hiring hall and the the TERO to the job site. If the identified local or non-local Indian is not registered with Puyallup TERO, they must first meet the criteria and register before being dispatched.

Covered Employer must not accept referrals from a union The union may not refer a nonlocal Indian or non-Indian to the contractor until TERO has indicated that no qualified local Indian worker client is available and has stated they may proceed with dispatching a non-Indian. The non-Indian must obtain a work permit through TERO before reporting to jobsite.

(h) Before referring the nonlocal Indian to the job site, the union shall request and the TERO shall issue a work permit for that worker. No Indian worker shall be required to travel to a site off trust If a TERO client needs lands to be processed by the union hiring hall, and the client is unable to travel to the hiring hall, such processing shall be done either on Tribal Lands, by trust lands or by telephone, or mail or electronically through email or virtual meeting.

(i) Any TERO Indian worker client who does not wish to become a member of the union shall be granted a temporary work permit for the duration of the project. Said worker shall pay all union dues but shall not be required to pay an initiation fee collect fringe benefits paid directly in to their wage. An Apprentice position shall be filled with an Apprentice level or entry level TERO client, and shall be or become a member of said union through direct entry. A union member TERO client must remain a union member, unless it is determined to be a short-term short-term project, whereas the client has the right to opt-out for that project. That opt-out is project specific and is not to be carried over to another project even if said project is with the same employer. [Res. 061293 (12/06/93) § 2.1]

3.24R.0970 Training.

Upon the request of ~~the~~TERO, all employers shall participate in training programs to assist TERO participants~~Indians~~ become qualified in the various job classifications used by the employer. The parties recognize the necessity for specialized training and agree to indenture qualified Indian apprentice candidates in Washington State Certified Apprenticeship Programs, including but not limited to Registered Tribal Apprenticeship Programs. Union sponsored apprenticeship programs shall allow direct entry of qualified Indian apprentice candidates. Minimum apprenticeship standards and ratios shall be established for the hiring of Indian Preference apprentices for the project. Employers engaged in construction shall participate in the Tribe's training programs or a union apprenticeship program. All trainees or apprentices shall be local Indians followed by non-local Indians as provided in the order above in PTC 3.24R.0860(ba). If an employer is not participating in a union apprenticeship program, the Tribe shall make a best effort to bear the costs of such training or apprenticeship programs. Employers with collective bargaining agreements with unions may use union apprenticeship programs, provided they obtain agreement from the unions to hire Indian apprentices ~~only~~ on the project. ~~[Res. 061293 (12/06/93) § 2.2]~~

3.24R.100080 Job qualification or personnel requirements.

An employer may not use job qualification criteria or personnel requirements which are not required by business necessity to serve as barriers to the employment of Indians. The burden shall be on the employer to demonstrate that the criterion or personnel requirement is required by business necessity and meets Bona Fide Occupational Qualification criteria as determined by EEOC. The employer shall eliminate the criterion or personnel requirement at issue if it is unable to show such business necessity. ~~[Res. 061293 (12/06/93) § 2.3]~~

3.24R.110090 Religious accommodations.

(a) Employers shall make reasonable accommodation ~~for~~ the religious beliefs of Indian workers.

(b) In implementing these requirements, the TERO shall be guided by the principles established by the EEOC Guidelines, particularly 29 CFR Parts 1604 through 1607. However, the TERO shall have the right to go beyond the EEOC principles in order to address employment barriers unique to Indians in regards to religious and cultural beliefs and practices.

(c) Where the TERO and the employer are unable to reach agreement on matters covered in this section, a review shall be conducted~~hearing shall be held~~, as provided for in these regulations. The TERO Director shall make a determination on the issues and shall order such actions as Director~~he~~ deems necessary to bring the employer into compliance with this section. The employer may request review of appeal the decision of the TERO Director under the procedures provided for in Subchapter 6 of these regulations. ~~[Res. 061293 (12/06/93) § 2.35]~~

3.24R.12000 Promotion.

The employer shall give local Indians preferential consideration for all promotion opportunities and shall encourage local Indians to seek such opportunities; provided, that where not prohibited by ~~F~~federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members are available, second preference shall be given to local~~other~~ Indians followed by non-local Indians as provided in 3.24R.0860(ba). ~~[Res. 061293 (12/06/93) § 2.4]~~

3.24R.13040 Summer students.

Local Indians shall be given preference in the hiring of summer student help. ~~[Res. 061293 (12/06/93) § 2.5]~~

3.24R.1420 Retaliation.

No employer shall punish, terminate, harass, or otherwise retaliate against any employee, contractor or other person who has exercised his or her rights under these regulations or the accompanying TERO Ordinance (Chapter 3.24 PTC) or has assisted another to do so. Further, any employer who harasses or abuses an employee of the TERO carrying out official duties under this chapter shall be summarily

removed from ~~Tribal trust Lands~~. ~~The Covered Employer awarding entity~~ ~~An employer~~ shall be responsible for the actions of its ~~contractor~~, subcontractors and their employees regarding the prohibitions in this section. [~~Res. 061293 (12/06/93) § 2.6~~]

3.24R.1530 Counseling and support programs.

The TERO, in conjunction with other Tribal and Federal offices, will provide counseling and other support services to Indians employed by ~~Covered~~ ~~E~~mployers to help such Indians retain employment. Employers shall cooperate with such counseling and support services. ~~No client shall be unreasonably terminated or laid off until counseling or support has been provided.~~ [~~Amended during 2010 recodification; Res. 061293 (12/06/93) § 2.7~~]

Subchapter 3. Indian Preference in Contracting and Subcontracting

3.24R.1640 Entity obligations.

(a) Generally, Every entity engaged in business activity on ~~Tribal trust Lands~~ or within the jurisdiction of the Puyallup Tribe shall give preference to ~~businesses~~ ~~firms~~ certified by the TERO ~~Tribe~~ under Subchapter 4 of these Regulations in any contract or subcontract it awards; provided ~~fifty~~ ~~50~~ percent (~~50%~~) or more of said contract or subcontract is to be performed on ~~trust lands of Tribal Lands~~ within the jurisdiction of the Puyallup Tribe; and provided further, that there are qualified certified ~~firms~~ ~~businesses~~ willing to perform the work at a reasonable price, as defined ~~under~~ ~~by~~ PTC 3.24R.180. If the entity determines that certified ~~businesses~~ ~~firms~~ are not qualified to perform all of the work required under a contract or subcontract, the entity shall apportion the project in such manner that the certified ~~businesses~~ ~~firms~~ can qualify for that portion of the work.

(b) Order of Preference. The following order of preference shall apply in the award of contracts and subcontracts:

(1) First preference shall be given to Indian preference certified ~~businesses~~ ~~firms~~, ~~fifty-one percent~~ (~~51%~~) ~~percent~~ or more of which are owned by ~~the~~ Puyallup ~~Tribe~~, ~~Puyallup Tribal member(s)~~, and other local Indians.

(2) Second preference shall be given to other Indian preference certified ~~businesses~~ ~~firms~~.

(c) If no Indian preference certified ~~businesses~~ ~~firms~~ are available, Indian/non-Indian joint ventures approved by the TERO shall be given preference over wholly non-Indian-owned ~~businesses~~ ~~firms~~ or joint ventures.

(~~d~~e) Notice to TERO and to Certified ~~Businesses~~ ~~Firms~~. Any entity intending to issue a bid, request for proposal, or other ~~non-emergency~~ action leading to the employment of a contractor covered by the TERO Ordinance (Chapter 3.24 PTC) and these regulations shall notify the TERO of its plans not less than ~~twenty-one~~ (~~21~~) ~~10~~ days before issuing notice to bidders or other potential contractors. The entity shall also obtain from the TERO a list of Indian preference certified ~~businesses~~ ~~firms~~ and shall send a copy of the bid notice or other notice setting out the contract opportunity to each Indian preference certified ~~businesses~~ ~~firm~~ engaged in the field of commerce in which the contract work will take place. The TERO shall identify such ~~businesses~~ ~~firms~~ according to the order of preference set out in subsection (b) of this section. An entity that fails to comply with this requirement shall be subject to the sanctions set out in Subchapter 9 of the TERO Ordinance (Chapter 3.24 PTC).

(d) Proviso. Provided, that if any requirement of these regulations is inconsistent with the requirements of Federal law, the regulation shall take precedence to the latter. (As used in these regulations, the terms "contract" and "subcontract" apply to all contracts, including, but not limited to, contracts for construction, supplies, services, and equipment, regardless of tier.)

3.24R.1750 Responsibility for compliance.

Any entity engaged in business activity on ~~Tribal Lands~~ lands or within the jurisdiction of the Puyallup Tribe of Indians shall be liable for the compliance of its contractors and subcontractors with these regulations. Specifically:

(a) Construction. An entity awarding a prime construction contract shall give preference in the award of the contract and for ensuring that the prime contractor also gives preference in the selection of subcontractors.

~~(b) When a prime contract is awarded directly by an agency of the United States government (see subsection (b) of this section), the prime contractor shall be the responsible entity.~~

~~(c) When the entity is an Indian housing authority (IHA), it shall not be subject to any monetary sanctions as provided in PTC 3.24R.310, and shall be exempt from any requirements of these regulations that are inconsistent with the Department of Housing and Urban Development's Indian preference regulations.~~

~~(d) When the entity is owned by the Puyallup Tribe and has been determined to be exempt from Covered Employer status under PTC 3.24R.020 (a-b) it shall not be subject to any monetary sanctions as provided in PTC 3.24R.310, and shall be exempt from any requirements of these regulations unless otherwise agreed to.~~

~~(e) Given that no Covered Employer as prime contractor shall be permitted to commence work on the Reservation Tribal Lands until it has demonstrated that it will comply with the subcontract preference requirements, it is in the interest of the funding entity to ensure its low bidder will comply with the subcontract preference requirements prior to the award of the contract. The Puyallup Tribe of Indians shall not be liable for any losses incurred by the funding entity because it has entered into a contract with a prime contractor which, because of its failure to provide adequate proof that it will fully comply with the subcontract preference requirements of these regulations (e.g., through the submission of an acceptable Compliance Subcontractor plan; see PTC 3.24R.050(b)), is not permitted to commence work on the Reservation.~~

~~(f) —Natural Resource Development (Oil, Gas, Hard Rock Minerals, Timber, Etc.). Whereas the Tribe does not have authority over the United States government and Federal agency contracting policies and procedures, these regulations do not apply to the award of direct prime contracts by a Federal agency. However, the selected Covered Employer contractor shall be required to comply with all subcontract preference requirements. Timber management companies contracted by the Puyallup Tribe of Indians on Tribally owned lands are a Covered Employer covered entity and shall comply. [Res. 061293 (12/06/93) § 3.2]~~

3.24R.1860 Requirements in contracting.

Preference shall be given to certified ~~businesses firms~~ in the award of all contracts. A ~~business entity~~ may select ~~its~~ contractors in any manner ~~or~~ procedure it so chooses; provided:

(a)—Competitive Award. If a ~~business entity~~ uses competitive bidding or proposals, competition shall be limited to certified ~~businesses firms~~. If the entity is unsure whether there are any qualified certified ~~businesses firms~~, it shall publish a prior invitation for certified ~~businesses firms~~ to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of intent, evidence sufficient to establish their technical qualifications. If the ~~business entity~~ fails to receive any statement of intent from a technically qualified certified ~~business firm~~, it may, after notifying the TERO, advertise for bids or proposals to the low bidder. If only one certified ~~business firm~~ submits a bid or statement of intent, the ~~primary business entity~~ (unless otherwise prohibited by Federal law or regulation) shall enter into negotiations with that ~~certified business firm~~ and shall award the contract to that ~~business firm~~ so long as the ~~business firm~~ is technically qualified and is willing to perform the work at a reasonable price.

(b)—Negotiated Award. If the ~~business entity~~ selects its contractor through negotiations or other informal process, it shall not enter into a contract with a noncertified ~~business firm~~ unless it has contacted every

certified businessfirm in the relevant field and has determined that there is no certified firm business available that is technically qualified to perform the work required at a reasonable price. A business firm which is not certified shall not be selected, provided a certified businessfirm meets the minimum threshold qualifications. [~~Res. 061293 (12/06/93) § 3.3~~]

3.24R.1970 Requirements in subcontracting.

(a)—General Requirements. Preference shall be given in the award of all subcontracts to certified businessesfirms. The TERO Notice to Contractors shall be included for any solicitations of bids from subcontractors. The contractor may select its subcontractor in any manner it so chooses; however:

(1) If the contractor uses competitive bidding or proposals, competition shall be limited to certified businessesfirms. If the contractor is unsure whether there are any qualified certified businessesfirms, it may publish a prior invitation for certified businessesfirms to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of intent, evidence sufficient to establish their technical qualification. If the contractor fails to receive any statement of intent from a technically qualified firm business, it may, after so notifying the TERO, advertise for bids or proposals without limiting competition to certified businessesfirms and may award to the low bid. If only one certified firm business submits a bid or statement of intent, the contractor shall enter into negotiations with that businessfirm and shall award the contract to it, provided the businessfirm is technically qualified and is willing to perform the work at a reasonable price, as defined in PTC 3.24R.180.

(2) If the contractor selects its subcontractor through negotiations or other informal process, it shall not enter into a contract with a noncertified businessfirm unless it has contacted every certified businessfirm in the relevant field and has determined that there is no certified businessfirm available that is technically qualified to perform the work required at a reasonable price. So long as a certified businessfirm meets the minimum threshold qualifications as defined in PTC 3.24R.180, no noncertified businessfirm may be selected.

(b) Special Requirements. BusinessesEntities awarding construction contracts shall comply with the following special requirements in the award of subcontracts:

(1) The bid notice shall require that each bidder submit, as part of its bid, a subcontract plan showing, for each subcontract it intends to enter, the name of the businessfirm, whether it is certified, if it is not certified why the contractor did not select a certified businessfirm, and the projected subcontract price, as provided for in PTC 3.24R.050(b). (Since, pursuant to that section, a contractor will not be permitted to commence work on the Reservation unless it has an approved subcontracting plan, it is in the contract-awarding entity's self-interest to declare as nonresponsive or non-responsible any bidder who fails to submit a satisfactory plan.) The subcontract price information for each bidder shall be provided to the TERO and shall be used to ensure that a contractor has not engaged in bid shopping as a means to discourage certified businesses firms or to force them to accept a subcontract at an unreasonably low price.

(2) It shall be illegal for any contractor or bidder to engage in bid shopping. "Bid shopping" is defined as any practice involving or comparable to the contracting of different subcontracting businesses firms, informing them that a competitor has underbid them, but offering them an opportunity to underbid the competitor. Any contractor found to have engaged in bid shopping shall be prohibited from engaging in work on trust lands or within the jurisdiction of the Puyallup Tribe of Indians; if engaged in work, shall be liable for treble damages for any losses suffered by a certified businessfirm as a result of the contractor's bid shopping practices. The TERO shall have the right to require any contractor to demonstrate that a reasonable relationship exists between the dollar amount of a proposed subcontract and the reasonable costs of supplies, materials and labor.

(3) The contractor shall not be prohibited from requiring that a subcontractor provide some form of security. However, if a subcontractor bonding requirement has been imposed and an Indian

businessfirm is unable to obtain a bond, the prime contractor shall permit the Indian subcontractor to provide another adequate form of security. A list of acceptable bonding alternatives follows:

- (A) No bond required on amounts of less than \$25,000;
- (B) Surety bonds;
- (C) Cash bonds – to 25 percent – held in escrow by ~~Tribal Attorney or~~ bank;
- (D) Increased retainers – 25 percent instead of normal;
- (E) Letter of credit – 100 percent;
- (F) Letter of credit – 10 percent – with cash monitoring system;
- (G) Cash monitoring system;
- (H) Other options to be considered as they arise.

The final decision on whether an alternative form of security is sufficient shall rest with the TERO.

(4) If no available certified business firm available is qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one certified businessfirm, where otherwise permitted by law the contractor shall make a good faith effort to divide that subcontract into smaller pieces so that several certified businessesfirms may qualify and perform the work.

(c) Technical Assistance to Indian Subcontractors. The prime contractor shall develop, submit and implement a plan for assisting Indian subcontractors to develop and improve their technical and managerial capabilities.

3.24R.200480 Responsibility for evaluating technical qualifications and reasonable price.

(a) Technical Qualifications. The businessentity and its contractors and subcontractors shall have the discretion to determine technical qualifications. Should the businessentity determine that there are no technically qualified certified businessesfirms available it shall provide to each certified businessfirm it rejects a description, in writing, of areas in which it believes the businessfirm is weak and steps it should take to upgrade its qualifications.

(b) If a certified businessfirm that is disqualified because of insufficient technical qualifications believes that the disqualification was an improper effort by an entity, contractor, or subcontractor to circumvent its preference responsibilities under these regulations, it may file a complaint with the TERO. The complaint shall be filed within twenty (20) days after the businessfirm received notice of non-qualification. The burden shall be on the complaining businessfirm to demonstrate that it is qualified and its disqualification was the result of an effort to circumvent these regulations. If after a hearing, as provided for in PTC 3.24R.300, the complaint is found to be valid, the TERO Director shall impose such reasonable sanctions as he or she deems appropriate, including punitive damages.

(cb) Reasonable Price. A businessentity may use any process it so chooses for determining what constitutes a reasonable price including, but not limited to, competitive bidding (open or closed), private negotiations, or the establishment of prototype cost ceiling before bidding or negotiations commence.

(c) Before a businessentity may reject all certified businessfirms on the basis of price, it must offer one or more of the certified businessesfirms an opportunity to negotiate price. If there is only one technically qualified certified businessfirm, an entity shall enter into negotiations on price with that businessfirm and must contract with that businessfirm if a reasonable price can be negotiated. No businessentity may reject a certified businessfirm on the grounds that the price is not reasonable and subsequently contract with a noncertified businessfirm at the same or higher price. Any contract modification executed between an

~~certified business entity~~ and a noncertified ~~business firm~~ during the course of a project which results in a higher price to the ~~noncertified~~ ~~at business firm~~ will be subject to review by the TERO to assure that the modification in price is justified and not a circumvention of this section. Any ~~Covered Employer entity~~ found to have violated this regulation by such circumvention shall be liable for treble damages for any loss suffered by a certified ~~business firm~~ as a result of the ~~businesses' entity's~~ action. ~~[Res. 061293 (12/06/93) § 3.5]~~

3.24R.210490 Operation of the contract or subcontractor.

Once an ~~primary business entity~~ enters into a contract with a certified ~~business firm~~, the TERO shall not intervene in the relationship between the parties unless a certified ~~business firm~~ demonstrates that action taken against it is intended primarily to circumvent the requirements of these regulations.

3.24R.22000 Brokering and fronts.

No Indian ~~business firm~~ shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or subcontract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as a front or brokering out services.

Subchapter 4. Criteria and Procedures for Certifying ~~Firm s~~Businesses as Indian Preference Eligible

3.24R.2340 General statement of policy.

Pursuant to its sovereign authority, the Puyallup Tribe of Indians ~~of the Puyallup Indian Reservation~~ has imposed Indian ~~contract~~ preference ~~contract~~ requirements as a tool for promoting the economic development of ~~Indian owned companies, the Reservation~~. Indian preference in contracting can assist in the development of Indian businesses and thereby assist the Tribe and its members to achieve economic self-sufficiency.

If the preference tool is abused, however, it will undermine development and discredit the process. Therefore, it is the policy of the Tribe to require that an applicant for Indian contract preference certification provide substantial evidence that it is a legitimate Indian-owned and controlled ~~business firm~~.

Specific criteria shall apply in the evaluation of an applicant. See PTC 3.24R.220. Experience has shown that persons interested in abusing the Indian preference program are able to structure ~~businesses~~ ~~firms~~ to get around most specific criteria. Therefore, in addition to applying the specific criteria, the reviewing body for the Tribe shall evaluate a ~~business firm~~ under the following general criteria:

(a) Applying sound management principles, whether the ~~firm business~~ would be structured as it is, and whether the Indian owners would have been given the amount of ownership and control they have, if there were no Indian preference program in existence. If the reviewing body determines that there is good reason to believe that the ~~business firm~~ has been structured (managerially or financially) in a manner that is convoluted or inconsistent with sound business practices in order to enable the ~~business firm~~ to qualify for Indian preference certification, the ~~business firm~~ shall be denied certification, even if it meets the specific criteria, unless the ~~business firm~~ is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.

(b) The specific criteria also require that the ownership, control and management of a ~~business firm~~ make sense from a sound business perspective. The Indian owners must own and control at least ~~fifty-one percent (51%)~~ ~~54 percent~~ of the ~~business firm~~. A primary consideration is what the Indian owner(s) brought to the ~~business firm~~ as justification for a share of the business, were Indian preference not a factor. For example, assume the Indian owner paid for his share through a promissory note to the non-Indian owners. In the ordinary course of business, such a transaction would not occur unless the new owners brought something of value, such as managerial or technical expertise, capital, equipment, or marketing opportunities. The ability to qualify for Indian preference is not considered such a marketing opportunity. Such an arrangement would be cause to deny Indian preference certification unless a sound business reason for the arrangement exists. Where an Indian can demonstrate that he or she was unable

to provide good value for his or her fifty-one percent (51%) percent-share because the usual sources of capital were closed off to him or her because he or she was an Indian, that person shall be required to demonstrate that he or she extended his or her capital raising ability as far as possible – such that he or she is “at risk” in a significant way – e.g., mortgaged a house or vehicle.

(c) The Indian owner(s) must be directly involved in the businessfirm's's management. While it is not required that an Indian owner be the chief operating officer of the businessfirm, at least one of the Indian owners must be involved in the day-to-day operations of the businessfirm on a full-time basis and in a senior level position. The Indian person in this position shall have the experience or expertise in the area of business the businessfirm is engaged in (or in management generally) to make the senior level role a legitimate one. The Indian owner(s) must also have sufficient knowledge about the businessfirm to be accountable for the businessfirm's activities.

(d) Certification shall not be granted to a businessfirm whose Indian owners are not involved in the manner described above. There is virtually no benefit to the Indian community from such passive ownership, other than profits to the owners. It could take several years for a business firm to show a profit, if one in fact materializes. Yet during that time the non-Indian managers can benefit at the expense of the Indian community. The limited benefits to the Indian owner(s) do not justify this risk. One of two exceptions to this rule is that certification will be granted to 100 percent Indian-owned firm business s where the manager of the business is a non-Indian spouse of an Indian and the family lives on or near the Reservation. No effort will be made to distinguish between the value contributed by a non-Indian spouse versus the Indian spouse. The family's contribution will be treated as an undivided unit. The second exception is for a more “public corporation,” defined as one that is owned by 10 or more persons, 70 percent of which is Indian-owned and the chief executive officer is an Indian.

(1) Joint Ventures. Joint ventures shall not be granted certification as Indian preference firm businesses. However, an Indian/non-Indian joint venture will be given preference over non-Indian firm businesses, if there are no certified Indian preference unitary firm businesses available.

Such rigorous criteria, giving substantial discretion to the reviewing body, are necessary and appropriate for the Indian contract preference program. Neither the Tribe nor the Indian community benefits from the establishment of “bogus” Indian firm businesses, while the certification of such firm businesses undercuts the credibility of the Tribe's Indian preference program. An Indian firm business or individual that is unable, on its own, to qualify as the prime contractor on a large project has other options open to it besides participating in the development of a bogus firm business.- For example, he or she can seek work at the subcontractor or employee level and benefit from the Tribe requirement that preference be given to Indian subcontractors and employees.

(2) Procedural Requirements. The procedural requirements for certification provide that applications shall be reviewed by the staff of the Tribe's Tribal Employment Rights Office (TERO), which shall request any additional information it believes appropriate. The TERO will then make a decision on certifications submit the application, together with its recommended findings, to the TERO Commission. If a business is dissatisfied with the TERO's decision and believes that these procedures were not properly followed, The Commission shall review the application and findings, interview the principals of the firm, request additional information appropriate, and make its determination whether certification should be granted. ~~The firm business~~ has the right of appeal to the Tribal Court, which shall reverse the decision only if it finds that the decision was arbitrary or capricious.

(3) Probationary Certification. A firm business shall first receive a probationary certification of one year, or a longer period where the TERO Commission believes such is necessary. The TERO and the Commission shall have the right at any time, either on their own initiative or upon filing of a complaint by any party, to conduct an investigation of a firm business to determine if its certification should be suspended or withdrawn.

3.24R.2420 Criteria for Indian contract preference certification.

To receive certification as a firm business eligible for Indian preference, an applicant must satisfy all the criteria set out in this section:

(a) Ownership. The firm business must be at least fifty-one percent (51%) percent Indian-owned. The applicant must demonstrate the following:

(1) Formal Ownership. That an Indian or Indians own(s) fifty-one percent (51%) percent or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the businessfirm's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

(A) Financial ownership – i.e., the Indian(s) owns fifty-one percent (51%) percent or more of the assets and equipment, will receive fifty-one percent (51%) percent or more of the businessfirm's assets upon dissolution, and will receive fifty-one percent (51%) percent or more of the profits; and

(B) Control – i.e., the Indian(s)' fifty-one percent (51%) percent or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the businessfirm are to be made by a majority vote except where otherwise required by law.

(2) Value. The Indian owner(s) provided real value for fifty-one percent (51%) percent or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of the ownership share. It will not be considered "real value" if the Indian(s) purchased the ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the firm business or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the firm business that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian participant and that he or she could not pay good value for his or her fifty-one percent (51%) percent or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian. The Indian owner(s) may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

(3) Profit. The Indian owner(s) will receive fifty-one percent (51%) percent or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive fifty-one percent (51%) percent or more of the profits.

(b) Management Control. The firm-mustbusiness must be under significant Indian management and control. The firm-mustbusiness must be able to demonstrate that:

(1) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the firm-asbusiness as his or her primary employment activity. The Indian owner does not have to be the chief executive officer. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the firm isbusiness is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the firm-'sbusiness's activities to be accountable to the Tribe for the business'sfirm's activities. This provision may be waived when:

(A) The firm business is one-hundred percent (100%) percent Indian-owned and the chief executive officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or

(B) The firm business is modeled on a publicly held corporation such that it is owned by ten (10) or more persons, is at least seventy percent (70%) percent Indian-owned, the chief executive officer and the highest-salaried employee in the firm business is/are Indian, and a majority of the employees are Indian.

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

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

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

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

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

(D) Brokers. Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

(E) Manufacturing Companies. In determining whether or not a manufacturing firm business is fifty-one percent (51%) percent Indian-owned and controlled, the TERO Commission shall be guided by the Small Business Administration Standard Operating Procedures on certifying firm sbusinesses as eligible for the 8(a) program. [~~Amended during 2010 recodification; Res. 061293 (12/06/93) § 4.2~~]

3.24R.2530 Certification procedures.

(a) Application for Certification. A firm business seeking certification as an Indian preference eligible firm business shall submit a completed application (see PTC 3.24R.240) to the TERO on a form provided by the TERO. (Application forms may be obtained at the TERO's Office.) TERO staff will be available to assist a firm business fill out the application. Within twenty-one (21) days after receipt of a completed application, the staff shall review the application, request such additional information as it believes during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate, ~~and submit analysis and recommended disposition to the Commission~~. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, the TERO may extend the processing period by an additional twenty-one (21) days, by sending notification of the extension to the applicant by registered mail. ~~Within 15 days of receipt of the TERO's analysis and recommended disposition, the Commission shall hold a hearing on the application, posting notice of the hearing time at the Tribal Office, the Agency, and the TERO's Office at least five days prior to the hearing. In addition, any other party wishing to~~

~~present information to the Commission shall be entitled to do so, by requesting, no less than one day prior to the hearing, an opportunity to participate. A party may be represented by counsel. The hearing shall be conducted as provided for the TERO hearing procedures.~~

(b) Probationary Certification. An applicant granted certification shall be issued a one-year probationary certificate. During that period, the TERO staff ~~and the Commission~~ shall monitor the ~~business~~firm's activities to ensure that the ~~firm business~~ is operating in the manner described in its application. During the probationary period, the TERO ~~and the Commission~~ shall have the right to request and receive such information and documents as they deem appropriate.

(c) Final Certification. At the end of the probationary period the ~~TERO Commission, after receiving recommendations from the TERO staff,~~ shall either:

- (1) Grant full certification;
- (2) Continue the probationary period for up to six months; or
- (3) Deny certification.

(d) Withdrawal of Certification. From the information provided in reports required by subsection (f) of this section and PTC 3.24R.250, on the basis of a written grievance filed by any other ~~firm business~~ or person, or on its own initiative, the TERO may initiate ~~the process proceedings~~ to withdraw or suspend the certification of any ~~firm business~~. The TERO shall ~~prepare an analysis and recommended disposition for the Commission and shall~~ send the ~~firm business~~ notice, by registered mail, that its certification is being examined, along with the grounds therefor. ~~The Commission shall then set a date for a hearing to be held within 21 days after it receives the analysis and recommended disposition from the TERO. At the hearing, the TERO staff shall present the case for suspension or withdrawal and the hearing shall be conducted as set out in PTC 3.24R.300(b).~~ After the ~~examination~~hearing, the ~~TERO Commission~~ may:

- (1) Withdraw certification;
- (2) Suspend certification for not more than one year;
- (3) Probation; or
- (4) Order corrective action within a fixed period.

~~An employer firm~~ that has had its certification withdrawn may not reapply for a period of one year.

(e) ~~Employers~~Firms Certified Prior to the Adoption of These Criteria. Each ~~Covered Employer~~firm holding Indian preference certification from the Tribe prior to the effective date of these regulations shall submit an application as required by these regulations to the TERO within ~~thirty (30)~~ days following the effective date of these regulations.

~~(1) Should the TERO determine the employer firm qualified it shall, within twenty-one (21) days of its receipt by the TERO, approve application. recommend approval of the application within 21 days of receipt of the application to the Commission.~~

~~— The Commission shall, within 30 days of receipt of the recommendation, issue a new certificate without holding a public hearing. The Commission may refuse to issue a new certificate when it has reason to believe that such certification is not merited.~~

~~(2) Should the TERO determine the Covered Employer firm does not qualify, it shall prepare an analysis of the reasons therefor, together with its recommended disposition. The analysis shall be submitted to the Commission within 21 days after receipt of the application. Should the TERO require additional information from the employer firm, computation of the twenty-one (21)-day~~

period shall be ~~paused stayed by the Commission~~ for a reasonable time to permit such information to be provided. ~~A The Commission, after providing the employerfirm an opportunity for a review of decisionhearing as provided in PTC 3.24R.300(b), which shall be conductedheld within fifteen (15) days after receipt of the TERO's disposition, the TERO shallpt of the TERO's findings, shall:~~

~~(A) (1) Grant the Covered Employerfirm a new certificate; or~~

~~(B) (2) Determine that the employerfirm is not in compliance. If TEROthe Commission determines that the employerfirm is not in compliance, it shall provide the reasons therefor. The employerfirm shall then have fifteen (15) days from the date of the decision to demonstrate to the Commission that it has made such changes as are necessary to come into compliance. If at the end of the fifteen (15)-day period the Covered Employer firm has failed to come into compliance, its certificate shall be withdrawn. A copy of the withdrawal notice shall be sent to the employerfirm.~~

(f) Change in Status and Annual Reports. Each certified employerfirm shall report in writing to the TERO any changes in its ownership or control status within the 60 days following such. Each certified employerfirm, on the anniversary of its receipt of permanent certification, shall update its initial application for certification ~~on the annual report form provided by the TERO~~. Failure to provide such information shall constitute grounds for withdrawal of certification. ~~[Res. 061293 (12/06/93) § 4.3]~~

~~(g) Update of records and status. All certified employersfirms will maintain contact with the TERO and keep all contact information current and up to date annually. Failure to notify or maintain contact, or to notify of the closure or discontinuation of the businessfirm may will result in the revocation of the certification and removal from the Certified I.P. list. If certification is revokedOnce removed the employerfirm wouldll need to reapply for recertification.~~

3.24R.2640 Application for certification as an Indian preference businessfirm.

1. Covered EmployerFirm Identification.

Name of firm ~~Covered Employer's Business~~ (exactly as you want it to appear on all documents).

Address: _____

Telephone: _____

Date of Submission: _____

Single business: _____ Joint Venture: _____

Contact Person: _____

Address: _____

Telephone (Bus.) _____ Home: _____

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

Federal Identification Number: _____

Number of Employees: _____ Number of Indian Employees: _____

Year business was established: _____

2. Ownership.

A. Type of ownership (check one):

____ Sole proprietorship

____ Partnership (attach copy of partnership agreement with all amendments since date partnership created).

____ Corporation (attach copy of the Certificate of Incorporation, Articles of Incorporation and Bylaws, including all amendments since date of incorporation).

B. Percent of Indian ownership: ____%

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

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

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

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

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

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

3. MANAGEMENT

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

1. Name, address and social security number. If Indian, please include his or her Tribe and enrollment number.
2. Present position and description of duties.
3. Previous business experience.
4. Previous work experience in areas in which the firm business intends to engage.
5. Other previous work experience.
6. Education and training.
7. Other jobs presently held.

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

1. Financial Decisions.
2. Management decisions, such as:
 - a. Marketing and sales;
 - b. Hiring and firing;
 - c. Purchase of major equipment or supplies;
 - d. Supervision of field personnel.

4. CAPITAL AND EQUIPMENT

A. Equipment. List all equipment which costs \$300.00 or more when new.

QUANTITY

DESCRIPTION

PRICE

HOW OBTAINED (Purchased, etc.)

B. Capital.

1. Attach a current balance sheet.
2. Identify amount and source of original and present capital. (e.g., contributed by owner, bank loan – if loan, indicate name(s) of those legally bound to repay if other than organization).

C. Additional submissions.

Each applicant shall submit with this application the following:

1. List of officers, principal stockholders, and directors, with mailing addresses and number of shares held by each.
2. A sworn statement of the proper officer showing:
 - a. The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity and value of the same per share.
 - b. Of the stock sold, how much remains unpaid and subject to assessment.
 - c. The amount of cash the company has in its treasury and elsewhere.
 - d. The property, exclusive of cash, owned by the company and its value.
 - e. The total indebtedness of the company and the nature of its obligations.

5. CERTIFICATION

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further certify that I have read the applicable ordinances, regulations, criteria and procedures of the Puyallup Tribe of Indians and do hereby submit to the jurisdiction provided therein.

Name of ~~firm~~ business: _____

By:

(Signature of authorized officer and title)

Name: _____

Title: _____

[Res. 061293 (12/06/93) Appendix]

Subchapter 5. Fees

3.24R.2750 Provision for collection of fees.

Except as otherwise provided all fees are due and shall be paid in full by any ~~C~~covered ~~E~~employer prior to commencing work. Other arrangements for payment may be negotiated and any determination shall be in writing and signed by the Director.

Immediately upon becoming aware that a project is covered by TERO, the Covered Eemployer shall contact the TERO to schedule Orientation. ~~is intending to engage in work, the Director shall mail to the employer, by registered mail, a notice. The purpose of Orientation is to educate the employer on the requirements, laws and regulations, which include the TERO fee. The employer will be informed of regarding~~ the nature and purpose of the fee, the percentage, the specific amount due, if known, the date due, and the possible consequences should the employer fail to comply. The notice shall be accompanied by a formal notice of fees due informing Covered Employer ~~him/her~~ that payment is overdue.

Should the employer fail to pay the fee by the day it commences work on Tribal Ltrust lands or within the jurisdiction of the Puyallup Tribe of Indians, interest shall begin to accrue on that date at the rate of 10 percent per annum. On the day following that on which the employer commenced work, the Director shall

send notice to the employer, by registered mail, that the fee is overdue and of the consequences imposed if the fee is not paid immediately.

If the fee is not paid by the fifteenth day after the employer commenced work, the Director shall ~~issue~~ file a formal ~~violation charge~~ of noncompliance, and shall schedule a ~~meeting Commission hearing to be held~~ within five days or as soon thereafter as the can be reasonably done ~~Commission can meet~~ and shall inform the employer of the scheduled ~~time , date and purpose of the meeting~~ hearing.

~~The outcome of the meeting will~~ At the hearing, to be held whether or not the employer attends, the Commission shall determine how the Tribe will move forward with the employer and if issuance of violation was proper and if additional penalties as described below should be imposed; whether the employer has failed to comply. If it finds noncompliance, it shall:

- (a) Impose penalties of not more than 10 percent (10%) of the amount due;
- (b) Petition the Tribal Court to affirm the imposed violation of this chapter ~~decision of the Commission~~ and to enforce any related requirements or penalties ~~its order through confiscation proceeding~~ as provided by law.

Where the Director of the ~~TERO Commission~~ has reasonable cause to believe that an employer will flee the jurisdiction prior to resolution of the matter, the Director may accelerate ~~initiate~~ one any of the procedures provided for in PTC 3.24.480, notwithstanding the above procedure.

3.24R.260 Entities and Employers ~~with a permanent place of business on the Reservation~~ responsibility of fee

~~An Covered E~~ employer or entity ~~whom the Director determines will have a permanent place of business on the Reservation shall pay the fee pursuant to the following:~~

~~(a) On April 15th, July 15th, October 15th and January 15th, the employer shall submit, on a form provided by the Director, information showing his total payroll for the previous quarter, accompanied by a check equal to two and one-half percent of the payroll for that quarter.~~

~~(b) The Director, upon receipt of a written request may authorize, in writing, an employer to submit the information and payments on a quarterly schedule other than the one set out in subsection (a) of this section. When doing so, make the schedule compatible with the employer's fiscal year structure.~~

~~(c) An employer covered by this section shall be subject to the same interest, penalty and enforcement requirements and deadlines as those established in PTC 3.24R.250. The Director shall send said employers appropriate notices and forms. [Res. 061293 (12/06/93) § 5.2] who is awarded a contract by an covered ebusiness Entity is responsible for the payment of the TERO fee. The fee is to be recognized as a sovereign right of the Puyallup Tribe of Indians and doing business within Tribal Lands, shall be paid as they would any other governmental fee or tax.~~

The TERO fee is not to be included or incorporated in to the bid or contract in order to circumvent the payment or to charge back the fee to the awarding entity. Fees are calculated at two and one half percent five percent (2.55%) of the project total cost, which includes any change orders or added modifications. It is the responsibility of the awarding entity to ensure that all bids are evaluated and determined that the fee is not included in a line item or included in any other portion of the bid or contract.

3.24R.270 Alternative arrangement.

The Director, in ~~their~~ his discretion, may, upon receipt of a written request, negotiate and authorize an employer to pay the required fee in installments over the course of the year or the contract, as appropriate, when:

- (a) The total annual fee exceeds \$10,000; and

(b) The employer demonstrates hardship or other good cause.

The decision to authorize an alternative arrangement, which shall be in writing, shall rest solely with the TERO Director and is not appealable ~~to the Commission or the Courts.~~

The employer shall pay interest, at the prime rate, on all amounts paid after the day he or she commences work on the Reservation when paying under an alternative arrangement.

Subchapter 6. Administrative Procedures

3.24R.280 Reports ~~and~~ monitoring and compliance.

(a) All Covered Employers entities engaged in any aspect of business activity on Tribal Lands or within the jurisdiction of the Puyallup Tribe of Indians shall submit reports and such other information as requested by TERO. Designated Employees of the TERO have the authority to make on-site inspections during regular working hours in order to monitor a Covered Employer's entity's compliance with these regulations. The Director, Compliance Officer or Dispatcher shall notify the employer, entity or a supervisor on site immediately should there be any direct violations or concerns of non-compliance.

(b) Employees of the TERO also have the authority to inspect and copy all relevant records of a Covered Employer entity, of the employer entity's signatory unions or subcontracts, to speak with both TERO and non TERO workers on the job site, and to engage in similar investigatory activities as deemed necessary. All information collected by the TERO shall be kept strictly confidential, unless disclosure is required during a hearing or appeal as provided for in these regulations. [Res. 061293 (12/06/93) § 6.1]

(c) Any Covered Employer employer or their employees, if requested, shall identify themselves to the TERO Director, Officer or Dispatcher while on site performing work. Failure to cooperate shall constitute removal by the Compliance Officer of that individual from the site until proper identification is provided. If the contacted party is uncooperative, their direct supervisor will be contacted in order to reach resolution. It is the Covered Employers responsibility to ensure all employees are informed and educated on the requirements of TERO and the steps necessary to maintain compliance.

3.24R.290 Individual complaint procedures.

(a) Noncompliance by a ~~a Covered Employer Entity~~. Any Indian or group of Indians, representatives or group of a class of Indians, certified ~~employer firm, group of certified firms~~, or other persons or entity who believe that a ~~Covered Employer entity~~ has failed to comply with these regulations, or who believe that they have been discriminated against by an ~~employer covered entity~~ because they are Indian, may file a complaint, whether or not they can show that they were personally harmed by the ~~businesses' entity's~~ noncompliance.

(b) Noncompliance by TERO. Any entity, group of entities, non-certified ~~employers firms~~, non-Indian workers, or entity who believe that an action of the TERO Office under these regulations is in violation of these regulations, or Tribal or ~~F~~ederal law, may file a complaint with the TERO Committee. Persons may file whether or not they can show they were personally harmed by the TERO's action.

(c) All complaints by a business entity, their employee or a TERO client must be submitted through follow the appropriate chain of command. All administrative remedies must be exhausted through the proper chain of command as follows authority:

(1) Complaints against Employers. Submissions must be in writing to the TERO Compliance Officer in a direct attempt for resolution between parties. The Compliance Officer may require a meeting or mediation with involved parties to reach resolution. Once an agreement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party.

- (A) ~~(2)~~—If resolution cannot be reached between the parties ~~with~~ the assistance of the Compliance Officer, the complaint shall be taken to the Director. The Director will arrange a meeting with the involved parties to seek an informal settlement. Once a settlement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party. Any reached agreement will be documented in writing with signatures of all involved parties.
- (B) If resolution cannot be reached between the parties, the complaining party may file a complaint with the Tribal Court. The judge will review any and all evidence or documentation provided by all involved parties and render a decision based on the facts and merits of the case.
- (C) Complaints shall be submitted to the TERO. Complaints will not be heard by or infringed upon by Puyallup Tribal Council. The TERO is responsible for ensuring that all procedures are followed, documented and resolved to the fullest extent of jurisdiction.

~~(3) If resolution cannot be reached between the party and the Director, it will then be submitted to the TERO Commission. The TERO commission will review any and all evidence or documentation provided by all involved parties and render a decision. As this is a case hearing and not a legal hearing, an attorney may be present for advisement, but shall not represent parties or speak on their behalf.~~

~~(4) If resolution cannot be reached through the TERO Commission the final step is submission to Tribal Court. The judge will review any and all evidence or documentation provided by all involved parties and render a decision based on the facts and merits of the case.~~

~~Complaints shall be submitted to TERO. Complaints will not be heard by or infringed upon by Puyallup Tribal Council. The TERO is responsible for ensuring that all procedures are followed, documented and resolved to the fullest extent of jurisdiction.~~ (2) Complaints against the TERO. Submissions must be in writing to the TERO Compliance Officer in a direct attempt for resolution between parties. The Compliance Officer may require a meeting or mediation with involved parties to reach resolution. Once an agreement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party.

- (A) If resolution cannot be reached between the party and the TERO, the complaint shall be forwarded to the TERO Committee and complaint review procedures codified in PTC 3.24 TERO Ordinance and herein shall be followed. The Committee Chair will arrange a meeting with the involved parties to seek an informal settlement. Once a settlement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party. Any reached agreement will be documented in writing with signatures of all involved parties.
- (B) If resolution cannot be reached between the party and the TERO, the complaining party may file a complaint with the Tribal Court. The judge will review any and all evidence or documentation provided by all involved parties and render a decision based on the facts and merits of the case.
- (C) Complaints shall be submitted to TERO. Complaints will not be heard by or infringed upon by Puyallup Tribal Council. The TERO is responsible for ensuring that all procedures are followed, documented and resolved to the fullest extent of jurisdiction.

3.24R.300 Compliance and hearing procedures.

(a) Informal Settlement. If the TERO has reason to believe that a ~~Covered Employer~~~~covered entity~~ has failed to comply with any of these regulations, it shall notify the ~~employer~~~~entity~~ in writing, specifying the alleged violation(s). Should the party notified be a contractor or a subcontractor, notice shall also be provided to the ~~employer~~~~entity~~ holding the permit or authorization under which the contractor or subcontractor is operating and such entity shall be a party to all further negotiations, hearings and appeals.

The TERO shall then conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved and the Director has reasonable cause to believe a party has violated the ordinance (Chapter 3.24 PTC) or regulations, he shall issue a formal notice of noncompliance to the party and shall proceed with the enforcement procedure provided by law.

~~(b) — Procedures for Hearing. All hearings before the Commission shall be governed by the Puyallup Tribe of Indians' due process hearing procedure. [Res. 061293 (12/06/93) § 6.3]~~

3.24R.310 Sanctions.

The ~~TERO Commission~~ may impose any or all of the following sanctions where it finds a violation of the ordinance ~~PTC 3.24 (Chapter 3.24 PTC)~~ or ~~these~~ regulations. If, after ~~review~~ ~~the hearing~~, the ~~TERO Commission~~ determines that ~~a~~ ~~the violation has occurred, the TERO shall:~~ ~~alleged and that the party charged has no adequate defense in law or fact, or if no hearing is requested, the Commission may:~~

- (a) Deny such party the right to commence business on or near ~~Tribal Lands~~ ~~the Puyallup Indian Reservation~~;
- (b) Impose a ~~civil fine~~ ~~fine~~ in an amount not to exceed \$1,000 for each violation;
- (c) Suspend such party's operation on or near ~~the Puyallup Indian Reservation~~ ~~Tribal Lands~~;
- (d) Terminate such party's operation on or near ~~the Puyallup Indian Reservation~~ ~~Tribal Lands~~;
- (e) Deny the right of such party to conduct any further business on or near ~~the Puyallup Indian Reservation~~ ~~Tribal Lands~~;
- (f) Order such party to make payment of back pay to any aggrieved Indian;
- (g) Order such party to dismiss any employees hired in violation of these regulations;
- (h) Order such party to take such other action as is necessary to ensure compliance with the ordinance (Chapter 3.24 PTC) or to remedy any harm caused by a violation of the ordinance.

~~(i) The TERO Commission's decision shall be in writing, shall be served on the charged party by registered mail or in person and shall be submitted not later than 30 days after the close of the hearing. Where failure to comply immediately with the TERO Commission's orders may cause irreparable harm, the TERO Commission may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of the ordinance (Chapter 3.24 PTC), pending the party's appeal or expiration of the time for appeal.~~

3.24R.320 Appeals.

Any ~~business entity~~ or complaining party shall have the right to appeal any decision ~~of the Commission~~ to the Tribal Court.

3.24R.330 Bonds.

The Director may require an entity to post a bond with the ~~Tribe Commission~~ pending a ~~hear~~ ~~hearing~~ ~~ng~~ ~~before the Commission~~ and may petition the Court from a decision of the ~~TERO Commission~~, upon making a written finding that any of the following conditions exist. The entity:

- (a) Has no permanent place of business on trust lands or within the jurisdiction of the Puyallup Indian Tribe; and
- (b) The amount of sanction exceeds or likely will exceed \$1,000; and

(c) The project on which the entity is employed will be substantially completed within 60 days, such that it may be difficult to locate property of said employer on trust lands or within the jurisdiction of the Puyallup Indian Tribe that would be available for attachment or confiscation should the entity fail to pay a sanction imposed on it; and

(d) The entity has failed to comply with an order of the ~~TERO Commission~~ or the Courts in the past, and the employer has engaged in behavior that demonstrates a disregard for the authority and requirements of the ~~TERO Commission~~, such that the Director ~~or Commission~~ has good reason to believe the entity will not comply with the orders of the ~~TERO Commission~~ or the Court.

3.24R.340 Attachment.

The ~~TERO Commission~~ may petition the Court for attachment of property of an entity should any of the following conditions exist:

- (a) An entity has refused or failed to post a bond after being ordered to do so by the Director, ~~Commission~~ or Court as provided in PTC 3.24R.330; or
- (b) The ~~TERO Commission~~ has good reason to believe the entity will remove itself or its property before it can complete its efforts to require the entity to post a bond; or
- (c) The entity has demonstrated an intent to disregard the orders of the Director, ~~Commission~~ or Court.

3.24R.350 Irreparable harm.

A finding of irreparable harm upon the petition of the ~~Commission or TERO Director~~ for injunctive relief shall be made only upon a showing that damage will occur that cannot be adequately remedied through the payment of monetary damages. Such showing shall include but is not limited to the following:

- (a) That a contractor or subcontractor is about to or has begun work on a contract or subcontract entered into in violation of the provisions of the ordinance (Chapter 3.24 PTC) or regulations requiring contract or subcontract preference, when there is one or more Indian ~~businesses/firms~~ available to perform said contract or subcontract, since it is impossible to measure in monetary terms the damages suffered by an Indian ~~firm's/business's~~ failure to obtain a contract or subcontract.
- (b) An ~~business/entity~~ or its subcontractor is about to or has hired two or more persons in violation of the provisions of the ordinance (Chapter 3.24 PTC) or regulations requiring Indian employment preference, and there are Indians available to fill those positions, since it is difficult to identify the specific Indians who would fill those positions once the number of positions at issue is two or greater, making the payment of payback difficult to achieve.
- (c) An ~~Covered Employer/entity~~ refuses to submit a preference plan in the time required and indicates through words or action that it intends to disregard the requirement imposed by the ordinance (Chapter 3.24 PTC) or regulations.

Subchapter 7. Due Process ~~Administrative Review/Hearing~~ Procedures

3.24R.360 ~~R/Preview/hearing~~ procedures.

- (a) Review of TERO Files. The respondent employer or entity against whom ~~a violation has been issued/the charge has been filed~~ shall have the right to review the case file of the Director by scheduling a visit to the TERO Office during regular working hours at any point after receiving notice of a hearing. The Director, however, shall have the right to protect confidential information. The file shall be cleared of confidential information in a manner that causes the loss of the least amount of relevant information from the files.
- (b) List of Witnesses. Ten days prior to the ~~time set for review/hearing~~ (or as soon as possible if the ~~review/hearing~~ is to be ~~conducted/held~~ within 10 days after notice), the respondent and the Director shall ~~share with each other/submit to the Commission Chairman~~ a list of witnesses that each intends to

~~include call as part of the review the hearing, the approximate length of their statement testimony, and the subject matter and relevance of their statement testimony. It shall indicate any witnesses that's presence must be requested must be subpoenaed. Both the complainant and respondent are responsible for notifying their respective witnesses and requesting their presence at the hearing. The Director shall then issue the subpoenas.~~

(c) ~~Prehearing Interviews of Witnesses.~~ The respondent and the Director shall have the right to submit questions to interview any the witnesses of the other party, prior to the review hearing. The Director's witnesses shall be interviewed in the presence of the Director or his delegate. The respondent's witnesses shall be interviewed under such reasonable conditions as are established by the respondent. ~~Either party may appeal to the Chairman of the Commission if cooperation is not forthcoming and the Chairman is empowered to require such steps as are necessary to resolve the problem.~~

(d) ~~Requests for Subpoenas of Documents and items Things.~~ The respondent shall, no later than 10 days prior to the review hearing (or as soon as possible if the hearing is noticed less than 10 days before the review hearing), provide the Director with a list of information items it wishes to have requested subpoenaed and the relevance of each. The Director shall request subpoena all relevant items listed as well as items needed by the Director. ~~Any disputes shall be brought to the Chairman of the Commission who shall resolve such disputes.~~

(e) ~~Postponements.~~ Any request for a postponement of the review hearing must be submitted in writing to the Director Chairman of the Commission no fewer than three (3) days prior to the hearing. Should the Director and the respondent mutually agree to submit a request for a postponement because of the possibility of settling the matter, the decision for postponement may occur anytime requests for a postponement may be submitted at any time. [Res. 061293 (12/06/93) § 7.1]

~~3.24R.370 Conduct of the hearing.~~

~~(a) — Presiding Officer. As presiding officer, the Chairman of the Tribal Employment Rights Commission will control the proceedings. He or she will take whatever action is necessary to ensure an equitable, orderly, and expeditious hearing. Parties shall abide by the presiding official's rulings. The presiding official has the authority, among others, to:~~

~~(1) — Administer oaths or affirmations;~~

~~(2) — Regulate the course of the hearing;~~

~~(3) — Rule on offers of proof;~~

~~(4) — Limit the number of witnesses when testimony would be unduly repetitious; and~~

~~(5) — Exclude any person from the hearing for contemptuous conduct or misbehavior that obstructs the hearing.~~

~~(b) — Director. The TERO Director shall represent the TERO on all charges filed by it, even if the charge was initiated by a complaint filed by a private individual.~~

~~(c) — Respondent. The respondent shall be present for the hearing and he or his representative (other than an attorney) shall represent him during the proceedings.~~

~~(d) — Attorneys. Either party may have an attorney present as an advisor. The attorney, however, may not make any presentations, cross-examine witnesses or address the Commission.~~

~~(e) — Recording of the Hearing. The Commission shall electronically record the hearing and shall retain the electronic record for not less than one year after the hearing. The respondent shall be permitted to record the hearing.~~

~~(f) Prohibition Against Reprisals. All parties shall have the right to testify on their behalf without fear of reprisal.~~

~~(g) Starting Time. The hearing shall be opened promptly at the time specified by the Commission.~~

~~(h) Opening Statements. Both parties may present opening statements regarding what they intend to prove at the hearing.~~

~~(i) Order of Proceedings. The Director shall present the TERO's case first.~~

~~(j) Examination and Cross-Examination of Witnesses. Both parties may subpoena and examine friendly and hostile witnesses. Both parties may examine and cross-examine witnesses. No harassment or efforts to intimidate witnesses shall be permitted. The Commission members may examine witnesses at any point in their testimony. The testimony of all witnesses shall be under oath or affirmation.~~

~~(k) Irrelevant Testimony. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be entertained. The Commission shall prohibit any testimony that it deems irrelevant in order to keep control of the hearing.~~

~~(l) Written DeclarationsTestimony. Written declarations testimony shall be permitted as admitted into evidence for the review during w/the hearing only when a witness cannot appear in person. When a party wishes to use the written testimony of a witness who cannot appear,~~

~~3.24R.380 DThe decision.~~

~~The TEROCommission shall render a decision by majority vote and deliver~~r~~ the decision in writing to each of the respondentparties.~~

~~3.24R.390 Effective date.~~

~~This chapter shall become effective on the _____ day of _____, 2023 and supercedes previous chapter.~~

REGULATIONS DRAFT 03.12. 2024

3.24 R.010 Declaration of Policy.

As a guide to the interpretation and application of this chapter, the public policy of the Puyallup Tribe of Indians is declared to be as follows:

The right to tax business activities on Tribal and trust lands within the exterior boundaries of the Puyallup Indian Reservation and on Tribally owned lands outside those boundaries is an important resource of the Puyallup Tribe of Indians.

Federal legislation enables the Puyallup Tribal Council to pass laws to implement and enforce this right for the welfare of the members of the Puyallup Tribe of Indians and other Indians.

Puyallup Tribal members and other Indians are entitled to the protection of the unique and special employment rights enacted by the federal government. Tribal government can and should participate in the enforcement of those laws. The Puyallup Tribe believes it important to establish an employment rights program and office to use these laws to increase employment of Puyallup Tribal members and other Indian workers and to eradicate discrimination against all Indians.

03.24R.020 Exemptions.

- (a) Upon Tribal Council's determination that it is in the best interest of the Puyallup Tribe for certain contracts or employers to be exempt, Tribal Council may by resolution exempt certain contracts or employers from application of this chapter for leases, activities and operations occurring on the Tribal lands provided that there is an approved process consistent with the goals of increasing employment through a hiring preference as provided within the TERO Ordinance and these regulations.
- (b) Tribal programs or divisions other than commercial enterprises shall not be required to comply with this chapter but shall, when submitting a contract to the Tribal Council for approval, indicate as part of the submission to the Council the steps taken to award the contract to a local Indian contractor.

3.24R.030 Purpose.

The following regulations are issued pursuant to the authority granted to the Puyallup Tribe of Indians Employment Rights Office (hereinafter "TERO") by the Puyallup Tribe of Indians Employment Rights Ordinance (Chapter 3.24 PTC), which requires tribal preference in the hiring, training and all aspects of employment, of Indians and Indian-owned businesses by all contract-awarding entities and employers operating on Tribal Lands as described herein and defined below (3.24R.030 (k)).

3.24R.040 Dissemination.

The obligation of all employers to comply with Tribal employment rights requirements shall be made known to all existing, future employers. All bid announcements issued by any Tribal, Federal, State or other private or public entity shall contain a statement or Notice to Contractors that the successful bidder shall comply with TERO laws and regulations and that a bidder may contact the TERO to obtain additional information. Those Tribal and other offices responsible for issuing business permits for the Tribe or otherwise engaged in activities involving contact with prospective employers on Tribal lands shall be responsible for informing such prospective employers of these regulations.

3.24R.050 Definitions. Words of this chapter shall have the meaning given them in this section unless the context clearly indicates another meaning. If the meaning of a word is not clear, it shall be construed in harmony with the purposes of this title. For purposes of these Regulations and the accompanying Ordinance, the following terms and definitions shall apply:

- (a) "Committee" means the Puyallup Tribal Employment Rights Advisory Committee established by PTC 3.24.

- (b) "Covered employer" means any employer employing two or more employees who, during any 20-day period, work, cumulatively, 16 or more hours work on trust lands within the jurisdiction of the Puyallup Tribe or its Tribal Lands.
- (c) "Director" means the Director of the Puyallup Tribal Employment Rights Office.
- (d) "Employee" means any person employed by a Covered Employer for financial compensation.
- (e) "Employer" means any person or entity that hires two or more Employees.
- (f) "Entity" or "Entities" means any person, partnership, corporation, joint venture, association, government, governmental enterprise or any other natural or artificial person, including Tribal departments, programs and or its divisions. The term "entity" is intended to be as broad and encompassing as possible to ensure the coverage of this chapter overall employment and contract activities within the Tribe's jurisdiction and the term shall be so interpreted by the Tribe and Courts.
- (g) "Indian" means any enrolled member of a federally recognized Tribe.
- (h) "Local Indian" means enrolled Puyallup Tribal member or any member of a federally recognized tribe who resides within the jurisdiction of the Puyallup Tribe or its Tribal Lands.
- (i) "TERO" means the Puyallup Tribal Employment Rights Office.
- (j) "Tribal Lands" for purposes of this Ordinance, means any land within the jurisdiction of the Puyallup Tribe of Indians including any Tribally owned land both within and outside of the 1873 Survey Area. Additional areas may be included as provided in an Intergovernmental Agreement authorizing and outlining compliance in areas other than those listed above.

3.24R.060 Coverage.

- (a) Employment. These regulations shall apply to all Covered Employers. They shall not apply to direct employees of the Puyallup Indian Tribe, the Federal government, the Washington State government, the subdivisions of such government, individual Tribal members or Tribal member owned businesses. These regulations shall apply to all contractors or grantees of such governments and to all commercial enterprises and Entities operated by such governments.
- (b) Contracting and Subcontracting. These regulations shall apply to all Covered Employers. They shall not apply to direct employees of the Puyallup Indian Tribe, the Federal government, the Washington State government, the subdivisions of such government, individual Tribal members or Tribal member owned businesses. These regulations shall apply to all contractors or grantees of such governments and to all commercial enterprises and Entities operated by such governments.
 1. The contract and subcontract preference requirements of these regulations shall apply to an entity awarding one or more contracts and/or subcontract(s) for supplies, services, labor or materials within Tribal Lands.
 2. The subcontracts awarded by entities which have received contracts from the Tribe or Federal government are subject to these regulations.
 3. A contract awarded by a commercial enterprise of the Puyallup Indian Tribe is also subject to these regulations.
- (c) Employment Rights Fee. An employment rights fee of two and one-half percent (2.5%) of the contract amount shall be assessed against any covered employers.

3.24R.070 Submission of Compliance Plans.

Each Covered Employer intending to engage in business activity on Tribal Lands, twenty one days (21) prior to the day it commences work, shall submit a completed Compliance Plan to the TERO. No new employer or entity shall commence work on Tribal Lands until it has met with the TERO and developed an acceptable plan for implementing its obligations under these regulations.

(a) Employment and Training Plan. The employment and training plan shall show the number of man-hours, by craft and skill category, anticipated to complete the contract or project. The employer shall identify those persons to be approved as permanent and key employees and shall provide sufficient data or reports to verify the status of those employees.

1. The plan shall also describe how the employer intends to participate in the Tribe's training programs.

(b) Contracting and Subcontracting Plan. The contracting and subcontracting plan shall indicate all contracts and subcontracts that will be entered into by a Covered Employer and the projected dollar amounts thereof.

If the Covered Employer has awarded a contract or subcontract work, it shall list the name of that business and indicate whether it is a business certified by the TERO as Indian preference-eligible. If the business has not been certified, the entity shall further indicate why a technically qualified certified business registered with the TERO, if any, was not selected. The plan shall also indicate how the Covered Employer intends to comply with Subchapter 3 of these regulations when awarding all contracts and subcontracts not yet awarded at the time the plan is submitted. The awarding Covered Employer assumes all responsibility for ensuring their Subcontractors are compliant with the TERO.

Subchapter 2. Indian Preference in Employment and Training

3.24R.080 Hiring.

(a) Tribal Hiring Hall. The Covered Employer may not employ a non-local Indian or a non-Indian until the TERO is given a minimum of forty-eight (48) hours notice to locate and refer a qualified local Indian. In those instances where a worker is needed in less than forty-eight (48) hours, the employer may request this requirement be waived. Such waiver shall be granted, provided the employer can demonstrate that a need exists.

(b) For purposes of Indian preference for these Regulations and the accompanying Ordinance, preference shall be given in the following order for all opportunities as listed and described below.

- (1) Puyallup Tribal member
- (2) Other Local Indians and Spouses of or Guardian of a Puyallup Tribal member
- (3) Non-Local Indian
- (4) Others

(c) A best faith effort shall be made to locate, refer and hire in the preference order as listed above; provided, that where not prohibited by Federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members, second preference will be given to other Local Indians along with Spouses of or Guardian of a Puyallup Tribal member. If none are available, third preference will be given to Non-Local Indians and finally others. If no client is available for dispatch through the TERO and the contractor or subcontractor has an existing employee who is registered with the TERO office as a client, the contractor or subcontractor shall make effort to transfer said employee to the covered project.

(d) An employer may request, transfer, recruit and hire workers from whatever sources available and by whatever process chosen; provided the Covered Employer have met their obligations under these regulations and accompanying Ordinance or TERO has given authorization to do so should a position or dispatch request be unfillable.

(e) Permanent and Key Employees. Prior to commencing work on Tribal Lands, a prospective employer and all subcontractors shall identify key and permanent employees. Such employees may be employed on the project whether or not they are local Indians. A "permanent employee" is defined as an owner of the business. A "key employee" means a top supervisory employee or an employee who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the employer. The fact that an employee had worked for the employer on previous projects shall not qualify that employee as a key or permanent employee. Length of employment of the employee does not automatically define that employee as key.

(f) Exceptions for regular employees may be granted by the TERO Director, Officer or Dispatcher on a case-by-case basis when TERO has determined that no eligible TERO client is available to fill the position.

(g) Upon approval by the TERO of each key employee or permanent employee requested by the employer, the TERO shall issue a permit to that employee.

(h) Work Permits.

(1) No person who is not a Puyallup Tribal member, Local Indian or Indian as defined, shall be employed by a Covered Employer until he or she has obtained a work permit from the TERO.

(2) Work permits shall be granted under the following circumstances:

(A) To all key and permanent employees listed in the employer's preference plan who are certified by the TERO Director, Officer or Dispatcher as meeting the criteria for key and permanent employees.

(B) To non-Indians hired after the employer has asked the TERO to locate and refer a qualified Tribal member or local Indian and the TERO has been unable to do so within the time provided by these Regulations. When the TERO has been unable to locate and refer a local Indian within the time provided, the employer may request, and the TERO may issue, a work permit for position at issue. At no time will the TERO delay the permit process unnecessarily, or deny a permit without a written justification.

(C) To a person requested by the Employer to fill an existing position on a temporary need should an existing employee be unavailable, who are verified by the TERO Director, Officer or Dispatcher as meeting the criteria for said position.

(D) To all owners upon verification that the person is the legitimate owner of the relevant Business.

(E) To such other persons that the TERO determines are entitled to a permit.

(i) Sanctions. Any individual found to be employed by a Covered Employer who does not have a valid work permit shall be summarily removed from the job and the employer shall be subject to such additional sanctions as the TERO may reasonably impose. In imposing sanctions under this section, the TERO shall consider the following factors:

(1) Was the violation intentional?

(2) Did the employer act quickly to remove the employee in question?

(3) Whether the employer had been cited for work permit violations in the past?

(4) Has the employer had similar issues while working with other TEROs or Tribes?

(5) Has the employer been sanctioned prior by other TEROs or Tribes and to what extent?

(j) Termination. No Tribal member or Local Indian worker shall be terminated prior to the completion of the work that they were hired for without cause. In the event of a lay-off Covered Employer must take steps to retain required percentage as agreed in TERO plan of the TERO qualified workers in the same order of preference as required under PTC 3.24R.060 (b)(1-4).

(1) Should a Covered Employer lay off by crews, qualified local Indians shall be transferred to crews that will be retained; provided there are nonlocal Indians or non-Indians in the same craft employed on the crews that are to be retained.

(f) Unions. Any covered employer who has a collective bargaining agreement with one or more unions that are signatory to the Puyallup Tribal Labor Agreement shall comply with the Tribal Labor Agreement, including Indian preference laws, rules, regulations, and guidelines of the Puyallup Tribe of Indians. Any Covered Employer who has a collective bargaining agreement with one or more unions that is not signatory to the Tribal Labor Agreement, shall obtain written agreement from such union(s) stating that the union shall comply with Indian preference laws, rules, regulations, and guidelines of the Puyallup Tribe of Indians. Although Union membership is not a requirement of Indian Preference employees, the Puyallup Tribe agrees to allow Union Representatives and Business Agents to demonstrate the benefits of Union membership to all local and non-local Indians. Unions and their representatives may not at any time either directly or indirectly, harass, coerce or threaten any Indian to join a union or one who chooses to not become a Union member.

(g) If TERO does not have a qualified client available, TERO shall contact the appropriate Union to identify a qualified local or non-local Indian worker. Should the Union identify such a worker, he or she shall be referred through both the Union hiring hall and the TERO to the job site. If the identified local or non-local Indian is not registered with Puyallup TERO, they must first meet the criteria and register before being dispatched. Covered Employer must not accept referrals from a union until TERO has indicated that no qualified client is available and has stated they may proceed with dispatching a non-Indian. The non-Indian must obtain a work permit through TERO before reporting to jobsite.

(h) If a TERO client needs to be processed by the union hiring hall, and the client is unable to travel to the hiring hall, such processing shall be done either on Tribal Lands, by telephone, mail or electronically through email or virtual meeting.

(i) Any TERO client who does not wish to become a member of the union shall be granted a temporary work permit for the duration of the project. Said worker shall collect fringe benefits paid directly in to their wage. An Apprentice position shall be filled with an Apprentice level or entry level TERO client, and shall be or become a member of said union through direct entry. A union member TERO client must remain a union member, unless it is determined to be a short-term project, whereas the client has the right to opt-out for that project. That opt-out is project specific and is not to be carried over to another project even if said project is with the same employer.

3.24R.090 Training.

Upon the request of TERO, all employers shall participate in training programs to assist TERO participants become qualified in the various job classifications used by the employer. The parties recognize the necessity for specialized training and agree to indenture qualified Indian apprentice candidates in Washington State Certified Apprenticeship Programs, including but not limited to Registered Tribal Apprenticeship Programs. Union sponsored apprenticeship programs shall allow direct entry of qualified Indian apprentice candidates. Minimum apprenticeship standards and ratios shall be established for the hiring of Indian Preference apprentices for the project. Employers engaged in construction shall participate in the Tribe's training programs or a union apprenticeship program. All trainees or apprentices shall be local Indians followed by non-local Indians as provided in the order above in PTC 3.24R.080(b). If an employer is not participating in a union apprenticeship program, the Tribe shall make a best effort to bear the costs of such training or apprenticeship programs. Employers with

collective bargaining agreements with unions may use union apprenticeship programs, provided they obtain agreement from the unions to hire Indian apprentices on the project.

3.24R.100 Job qualification or personnel requirements.

An employer may not use job qualification criteria or personnel requirements which are not required by business necessity to serve as barriers to the employment of Indians. The burden shall be on the employer to demonstrate that the criterion or personnel requirement is required by business necessity and meets Bona Fide Occupational Qualification criteria as determined by EEOC. The employer shall eliminate the criterion or personnel requirement at issue if it is unable to show such business necessity.

3.24R.110 Religious accommodations.

(a) Employers shall make reasonable accommodation for the religious beliefs of Indian workers.

(b) In implementing these requirements, the TERO shall be guided by the principles established by the EEOC Guidelines, particularly 29 CFR Parts 1604 through 1607. However, the TERO shall have the right to go beyond the EEOC principles in order to address employment barriers unique to Indians in regards to religious and cultural beliefs and practices.

(c) Where the TERO and the employer are unable to reach agreement on matters covered in this section, a review shall be conducted, as provided for in these regulations. The TERO Director shall make a determination on the issues and shall order such actions as Director deems necessary to bring the employer into compliance with this section. The employer may request review of the decision of the TERO Director under the procedures provided for in Subchapter 6 of these regulations.

3.24R.120 Promotion.

The employer shall give local Indians preferential consideration for all promotion opportunities and shall encourage local Indians to seek such opportunities; provided, that where not prohibited by Federal law, first preference shall be given to members of the Puyallup Tribe, then if no qualified Puyallup Tribal members are available, second preference shall be given to local Indians followed by non-local Indians as provided in 3.24R.080(b).

3.24R.130 Summer students.

Local Indians shall be given preference in the hiring of summer student help.

3.24R.140 Retaliation.

No employer shall punish, terminate, harass, or otherwise retaliate against any employee, contractor or other person who has exercised his or her rights under these regulations or the accompanying TERO Ordinance (Chapter 3.24 PTC) or has assisted another to do so. Further, any employer who harasses or abuses an employee of the TERO carrying out official duties under this chapter shall be summarily removed from Tribal Lands. The Covered Employer shall be responsible for the actions of its contractor, subcontractors and their employees regarding the prohibitions in this section.

3.24R.150 Counseling and support programs.

The TERO, in conjunction with other Tribal and Federal offices, will provide counseling and other support services to Indians employed by Covered Employers to help such Indians retain employment. Employers shall cooperate with such counseling and support services. No client shall be unreasonably terminated or laid off until counseling or support has been provided.

Subchapter 3. Indian Preference in Contracting and Subcontracting

3.24R.160 Entity obligations.

(a) Generally. Every entity engaged in business activity on Tribal Lands or within the jurisdiction of the Puyallup Tribe shall give preference to businesses certified by the TERO under Subchapter 4 of these Regulations in any contract or subcontract it awards; provided fifty percent (50%) or more of said contract or subcontract is to be performed on Tribal Lands within the jurisdiction of the Puyallup Tribe; and provided further, that there are qualified certified businesses willing to perform the work at a reasonable price, as defined under PTC 3.24R.180. If the entity determines that certified businesses are not qualified

to perform all of the work required under a contract or subcontract, the entity shall apportion the project in such manner that the certified business can qualify for that portion of the work.

(b) Order of Preference. The following order of preference shall apply in the award of contracts and subcontracts:

(1) First preference shall be given to Indian preference certified businesses, fifty-one percent (51%) or more of which are owned by the Puyallup Tribe, Puyallup Tribal member(s), and other local Indians.

(2) Second preference shall be given to other Indian preference certified businesses.

(c) If no Indian preference certified businesses are available, Indian/non-Indian joint ventures approved by the TERO shall be given preference over wholly non-Indian-owned businesses or joint ventures.

(d) Notice to TERO and to Certified Businesses. Any entity intending to issue a bid, request for proposal, or other non-emergency action leading to the employment of a contractor covered by the TERO Ordinance (Chapter 3.24 PTC) and these regulations shall notify the TERO of its plans not less than twenty-one (21) days before issuing notice to bidders or other potential contractors. The entity shall also obtain from the TERO a list of Indian preference certified businesses and shall send a copy of the bid notice or other notice setting out the contract opportunity to each Indian preference certified business engaged in the field of commerce in which the contract work will take place. The TERO shall identify such businesses according to the order of preference set out in subsection (b) of this section. An entity that fails to comply with this requirement shall be subject to the sanctions set out in Subchapter 9 of the TERO Ordinance (Chapter 3.24 PTC).

(d) Proviso. Provided, that if any requirement of these regulations is inconsistent with the requirements of Federal law, the regulation shall take precedence to the latter. (As used in these regulations, the terms "contract" and "subcontract" apply to all contracts, including, but not limited to, contracts for construction, supplies, services, and equipment, regardless of tier.)

3.24R.170 Responsibility for compliance.

Any entity engaged in business activity on Tribal Lands or within the jurisdiction of the Puyallup Tribe of Indians shall be liable for the compliance of its contractors and subcontractors with these regulations. Specifically:

(a) Construction. An entity awarding a prime construction contract shall give preference in the award of the contract and for ensuring that the prime contractor also gives preference in the selection of subcontractors.

(b) When a prime contract is awarded directly by an agency of the United States government, the prime contractor shall be the responsible entity.

(c) When the entity is an Indian housing authority (IHA), it shall not be subject to any monetary sanctions as provided in PTC 3.24R.310, and shall be exempt from any requirements of these regulations that are inconsistent with the Department of Housing and Urban Development's Indian preference regulations.

(d) When the entity is owned by the Puyallup Tribe and has been determined to be exempt from Covered Employer status under PTC 3.24R.020 (a-b) it shall not be subject to any monetary sanctions as provided in PTC 3.24R.310, and shall be exempt from any requirements of these regulations unless otherwise agreed to.

(e) Given that no Covered Employer as prime contractor shall be permitted to commence work on Tribal Lands until it has demonstrated that it will comply with the subcontract preference requirements, it is in the interest of the funding entity to ensure its low bidder will comply with the subcontract preference requirements prior to the award of the contract. The Puyallup Tribe of Indians shall not be liable for any

losses incurred by the funding entity because it has entered into a contract with a prime contractor which, because of its failure to provide adequate proof that it will fully comply with the subcontract preference requirements of these regulations (e.g., through the submission of an acceptable Compliance Plan; see PTC 3.24R.050(b)), is not permitted to commence work on the Reservation.

(f) Natural Resource Development (Oil, Gas, Hard Rock Minerals, Timber, Etc.). Whereas the Tribe does not have authority over the United States government and Federal agency contracting policies and procedures, these regulations do not apply to the award of direct prime contracts by a Federal agency. However, the selected Covered Employer shall be required to comply with all subcontract preference requirements. Timber management companies contracted by the Puyallup Tribe of Indians on Tribally owned lands are a Covered Employer and shall comply.

3.24R.180 Requirements in contracting.

Preference shall be given to certified businesses in the award of all contracts. A business may select contractors in any manner or procedure it so chooses; provided:

(a) Competitive Award. If a business uses competitive bidding or proposals, competition shall be limited to certified businesses. If the entity is unsure whether there are any qualified certified businesses, it shall publish a prior invitation for certified businesses to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of intent, evidence sufficient to establish their technical qualifications. If the business fails to receive any statement of intent from a technically qualified certified business, it may, after notifying TERO, advertise for bids or proposals to the low bidder. If only one certified business submits a bid or statement of intent, the primary business (unless otherwise prohibited by Federal law or regulation) shall enter into negotiations with that certified business and shall award the contract to that business so long as the business is technically qualified and is willing to perform the work at a reasonable price.

(b) Negotiated Award. If the business selects its contractor through negotiations or other informal process, it shall not enter into a contract with a noncertified business unless it has contacted every certified business in the relevant field and has determined that there is no certified business available that is technically qualified to perform the work required at a reasonable price. A business which is not certified shall not be selected, provided a certified business meets the minimum threshold qualifications.

3.24R.190 Requirements in subcontracting.

(a) General Requirements. Preference shall be given in the award of all subcontracts to certified businesses. The TERO Notice to Contractors shall be included for any solicitations of bids from subcontractors. The contractor may select its subcontractor in any manner it so chooses; however:

(1) If the contractor uses competitive bidding or proposals, competition shall be limited to certified businesses. If the contractor is unsure whether there are any qualified certified businesses, it may publish a prior invitation for certified businesses to submit a statement of intent to respond to such a limited advertisement when published and to furnish, with the statement of intent, evidence sufficient to establish their technical qualification. If the contractor fails to receive any statement of intent from a technically qualified business, it may, after so notifying the TERO, advertise for bids or proposals without limiting competition to certified businesses and may award to the low bid. If only one certified business submits a bid or statement of intent, the contractor shall enter into negotiations with that business and shall award the contract to it, provided the business is technically qualified and is willing to perform the work at a reasonable price, as defined in PTC 3.24R.180.

(2) If the contractor selects its subcontractor through negotiations or other informal process, it shall not enter into a contract with a noncertified business unless it has contacted every certified business in the relevant field and has determined that there is no certified business available that is technically qualified to perform the work required at a reasonable price. So long as a certified business meets the minimum threshold qualifications as defined in PTC 3.24R.180, no noncertified business may be selected.

(b) Special Requirements. Businesses awarding construction contracts shall comply with the following special requirements in the award of subcontracts:

(1) The bid notice shall require that each bidder submit, as part of its bid, a subcontract plan showing, for each subcontract it intends to enter, the name of the business, whether it is certified, if it is not certified why the contractor did not select a certified business, and the projected subcontract price, as provided for in PTC 3.24R.050(b). (Since, pursuant to that section, a contractor will not be permitted to commence work on the Reservation unless it has an approved subcontracting plan, it is in the contract-awarding entity's self-interest to declare as nonresponsive or non-responsible, any bidder who fails to submit a satisfactory plan.) The subcontract price information for each bidder shall be provided to the TERO and shall be used to ensure that a contractor has not engaged in bid shopping as a means to discourage certified businesses or to force them to accept a subcontract at an unreasonably low price.

(2) It shall be illegal for any contractor or bidder to engage in bid shopping. "Bid shopping" is defined as any practice involving or comparable to the contracting of different subcontracting businesses, informing them that a competitor has underbid them, but offering them an opportunity to underbid the competitor. Any contractor found to have engaged in bid shopping shall be prohibited from engaging in work on trust lands or within the jurisdiction of the Puyallup Tribe of Indians; if engaged in work, shall be liable for treble damages for any losses suffered by a certified business as a result of the contractor's bid shopping practices. The TERO shall have the right to require any contractor to demonstrate that a reasonable relationship exists between the dollar amount of a proposed subcontract and the reasonable costs of supplies, materials and labor.

(3) The contractor shall not be prohibited from requiring that a subcontractor provide some form of security. However, if a subcontractor bonding requirement has been imposed and an Indian business is unable to obtain a bond, the prime contractor shall permit the Indian subcontractor to provide another adequate form of security. A list of acceptable bonding alternatives follows:

- (A) No bond required on amounts of less than \$25,000;
- (B) Surety bonds;
- (C) Cash bonds – to 25 percent – held in escrow by bank;
- (D) Increased retainers – 25 percent instead of normal;
- (E) Letter of credit – 100 percent;
- (F) Letter of credit – 10 percent – with cash monitoring system;
- (G) Cash monitoring system;
- (H) Other options to be considered as they arise.

The final decision on whether an alternative form of security is sufficient shall rest with the TERO.

(4) If no available certified business is qualified to perform a particular subcontract because the subcontract is too large for the capacity of any one certified business, where otherwise permitted by law the contractor shall make a good faith effort to divide that subcontract into smaller pieces so that several certified businesses may qualify and perform the work.

(c) Technical Assistance to Indian Subcontractors. The prime contractor shall develop, submit and implement a plan for assisting Indian subcontractors to develop and improve their technical and managerial capabilities.

3.24R.200 Responsibility for evaluating technical qualifications and reasonable price.

(a) Technical Qualifications. The business and its contractors and subcontractors shall have the discretion to determine technical qualifications. Should the business determine that there are no technically qualified certified businesses available it shall provide to each certified business it rejects a description, in writing, of areas in which it believes the business is weak and steps it should take to upgrade its qualifications.

(b) If a certified business that is disqualified because of insufficient technical qualifications believes that the disqualification was an improper effort by an entity, contractor, or subcontractor to circumvent its preference responsibilities under these regulations, it may file a complaint with the TERO. The complaint shall be filed within twenty (20) days after the business received notice of non-qualification. The burden shall be on the complaining business to demonstrate that it is qualified and its disqualification was the result of an effort to circumvent these regulations. If after a hearing, as provided for in PTC 3.24R.300, the complaint is found to be valid, the TERO Director shall impose such reasonable sanctions as he or she deems appropriate, including punitive damages.

(c) Reasonable Price. A business may use any process it so chooses for determining what constitutes a reasonable price including, but not limited to, competitive bidding (open or closed), private negotiations, or the establishment of prototype cost ceiling before bidding or negotiations commence.

(c) Before a business may reject all certified business on the basis of price, it must offer one or more of the certified businesses an opportunity to negotiate price. If there is only one technically qualified certified business, an entity shall enter into negotiations on price with that business and must contract with that business if a reasonable price can be negotiated. No business may reject a certified business on the grounds that the price is not reasonable and subsequently contract with a noncertified business at the same or higher price. Any contract modification executed between an certified business and a noncertified business during the course of a project which results in a higher price to the noncertified business will be subject to review by the TERO to assure that the modification in price is justified and not a circumvention of this section. Any Covered Employer found to have violated this regulation by such circumvention shall be liable for treble damages for any loss suffered by a certified business as a result of the businesses' action.

3.24R.210 Operation of the contract or subcontractor.

Once a primary business enters into a contract with a certified business, the TERO shall not intervene in the relationship between the parties unless a certified business demonstrates that action taken against it is intended primarily to circumvent the requirements of these regulations.

3.24R.220 Brokering and fronts.

No Indian business shall represent that it is exercising management control of a project in order to qualify for Indian preference in the award of said contract or subcontract when in fact such management control is exercised by a non-Indian entity such that the Indian entity is acting as a front or brokering out services.

Subchapter 4. Criteria and Procedures for Certifying Businesses as Indian Preference Eligible

3.24R.230 General statement of policy.

Pursuant to its sovereign authority, the Puyallup Tribe of Indians has imposed Indian preference contract requirements as a tool for promoting the economic development of Indian owned companies. Indian preference in contracting can assist in the development of Indian businesses and thereby assist the Tribe and its members to achieve economic self-sufficiency.

If the preference tool is abused, however, it will undermine development and discredit the process. Therefore, it is the policy of the Tribe to require that an applicant for Indian contract preference certification provide substantial evidence that it is a legitimate Indian-owned and controlled business.

Specific criteria shall apply in the evaluation of an applicant. See PTC 3.24R.220. Experience has shown that persons interested in abusing the Indian preference program are able to structure businesses to get

around most specific criteria. Therefore, in addition to applying the specific criteria, the reviewing body for the Tribe shall evaluate a business under the following general criteria:

(a) Applying sound management principles, whether the business would be structured as it is, and whether the Indian owners would have been given the amount of ownership and control they have, if there were no Indian preference program in existence. If the reviewing body determines that there is good reason to believe that the business has been structured (managerially or financially) in a manner that is convoluted or inconsistent with sound business practices in order to enable the business to qualify for Indian preference certification, the business shall be denied certification, even if it meets the specific criteria, unless the business is able to demonstrate beyond a reasonable doubt that it was not structured to manipulate the Indian preference criteria.

(b) The specific criteria also require that the ownership, control and management of a business make sense from a sound business perspective. The Indian owners must own and control at least fifty-one percent (51%) of the business. A primary consideration is what the Indian owner(s) brought to the business as justification for a share of the business, were Indian preference not a factor. For example, assume the Indian owner paid for his share through a promissory note to the non-Indian owners. In the ordinary course of business, such a transaction would not occur unless the new owners brought something of value, such as managerial or technical expertise, capital, equipment, or marketing opportunities. The ability to qualify for Indian preference is not considered such a marketing opportunity. Such an arrangement would be cause to deny Indian preference certification unless a sound business reason for the arrangement exists. Where an Indian can demonstrate that he or she was unable to provide good value for his or her fifty-one percent (51%) share because the usual sources of capital were closed off to him or her because he or she was an Indian, that person shall be required to demonstrate that he or she extended his or her capital raising ability as far as possible – such that he or she is “at risk” in a significant way – e.g., mortgaged a house or vehicle.

(c) The Indian owner(s) must be directly involved in the business's management. While it is not required that an Indian owner be the chief operating officer of the business, at least one of the Indian owners must be involved in the day-to-day operations of the business on a full-time basis and in a senior level position. The Indian person in this position shall have the experience or expertise in the area of business the business is engaged in (or in management generally) to make the senior level role a legitimate one. The Indian owner(s) must also have sufficient knowledge about the business to be accountable for the business's activities.

(d) Certification shall not be granted to a business whose Indian owners are not involved in the manner described above. There is virtually no benefit to the Indian community from such passive ownership, other than profits to the owners. It could take several years for a business to show a profit, if one in fact materializes. Yet during that time the non-Indian managers can benefit at the expense of the Indian community. The limited benefits to the Indian owner(s) do not justify this risk. One of two exceptions to this rule is that certification will be granted to 100 percent Indian-owned businesses where the manager of the business is a non-Indian spouse of an Indian and the family lives on or near the Reservation. No effort will be made to distinguish between the value contributed by a non-Indian spouse versus the Indian spouse. The family's contribution will be treated as an undivided unit. The second exception is for a more “public corporation,” defined as one that is owned by 10 or more persons, 70 percent of which is Indian-owned and the chief executive officer is an Indian.

(1) Joint Ventures. Joint ventures shall not be granted certification as Indian preference businesses. However, an Indian/non-Indian joint venture will be given preference over non-Indian businesses, if there are no certified Indian preference unitary businesses available.

Such rigorous criteria, giving substantial discretion to the reviewing body, are necessary and appropriate for the Indian contract preference program. Neither the Tribe nor the Indian community benefits from the establishment of “bogus” Indian businesses, while the certification of such businesses undercuts the credibility of the Tribe's Indian preference program. An Indian business or individual that is unable, on its own, to qualify as the prime contractor on a large project has other

options open to it besides participating in the development of a bogus business. For example, he or she can seek work at the subcontractor or employee level and benefit from the Tribe requirement that preference be given to Indian subcontractors and employees.

(2) **Procedural Requirements.** The procedural requirements for certification provide that applications shall be reviewed by the staff of the Tribe's Tribal Employment Rights Office (TERO), which shall request any additional information it believes appropriate. The TERO will then make a decision on certification. If a business is dissatisfied with the TERO's decision and believes that these procedures were not properly followed, the business has the right of appeal to the Tribal Court, which shall reverse the decision only if it finds that the decision was arbitrary or capricious.

(3) **Probationary Certification.** A business shall first receive a probationary certification of one year, or a longer period where the TERO believes such is necessary. The TERO shall have the right at any time, either on their own initiative or upon filing of a complaint by any party, to conduct an investigation of a business to determine if its certification should be suspended or withdrawn.

3.24R.240 Criteria for Indian contract preference certification.

To receive certification as a business eligible for Indian preference, an applicant must satisfy all the criteria set out in this section:

(a) **Ownership.** The business must be at least fifty-one percent (51%) Indian-owned. The applicant must demonstrate the following:

(1) **Formal Ownership.** That an Indian or Indians own(s) fifty-one percent (51%) or more of the partnership, corporation, or other arrangement for which the application is being submitted. Such ownership must be embodied in the business's organic documents, such as its stock ownership or partnership agreement. Ownership includes:

(A) **Financial ownership** – i.e., the Indian(s) owns fifty-one percent (51%) or more of the assets and equipment, will receive fifty-one percent (51%) or more of the business's assets upon dissolution, and will receive fifty-one percent (51%) or more of the profits; and

(B) **Control** – i.e., the Indian(s)' fifty-one percent (51%) or more ownership provides him or her with a majority of voting rights or other decisional authority and that all decisions of the business are to be made by a majority vote except where otherwise required by law.

(2) **Value.** The Indian owner(s) provided real value for fifty-one percent (51%) or more ownership by providing capital, equipment, real property or similar assets commensurate with the value of the ownership share. It will not be considered "real value" if the Indian(s) purchased the ownership share, directly or indirectly, through a promissory note, the ultimate creditor of which is the non-Indian owner of the business or an immediate relation thereof, or any similar arrangement, unless a convincing showing can be made that the Indian owner(s) brought such special skills, marketing connections, or similar benefits to the business that there is a good reason to believe the arrangement would have been entered into even if there were not an Indian participant and that he or she could not pay good value for his or her fifty-one percent (51%) or more Indian ownership because the normal capital sources were closed to him or her because he or she is an Indian. The Indian owner(s) may satisfy this requirement by demonstrating further that he or she extended his or her capital-raising capability as far as possible, such that the Indian participant clearly is at risk in the business in relationship to his or her means.

(3) **Profit.** The Indian owner(s) will receive fifty-one percent (51%) or more of all profits. If there is any provision that gives the non-Indian owner a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. Salary scales will be reviewed to ensure the relative salaries being paid Indian and non-Indian owners are consistent with the skills of the parties and are not being used to circumvent the requirement that Indian owners receive fifty-one percent (51%) or more of the profits.

(b) Management Control. The business must be under significant Indian management and control. The business must be able to demonstrate that:

(1) One or more of the Indian owners must be substantially involved, as a senior level official, in the day-to-day management of the business as his or her primary employment activity. The Indian owner does not have to be the chief executive officer. However, he or she must, through prior experience or training, have substantial occupational ties to the area of business in which the business is engaged such that he or she is qualified to serve in the senior level position and is sufficiently knowledgeable about the business's activities to be accountable to the Tribe for the business's activities. This provision may be waived when:

(A) The business is one-hundred percent (100%) Indian-owned and the chief executive officer is the spouse and/or parent of the owner(s), the family lives on or near the Reservation, and the majority of employees are Indian; or

(B) The business is modeled on a publicly held corporation such that it is owned by ten (10) or more persons, is at least seventy percent (70%) Indian-owned, the chief executive officer and the highest-salaried employee in the business is/are Indian, and a majority of the employees are Indian.

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

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

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

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

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

(D) Brokers. Brokers will be certified only if they are dealers who own, operate, or maintain a store, warehouse, or other establishment in which the commodities being supplied are bought, kept in stock, and sold to the public in the usual course of business; provided, that this requirement shall not apply where the applicant demonstrates that it is customary and usual in the area of trade for a broker/dealer not to maintain an establishment and to keep the commodities in stock.

(E) Manufacturing Companies. In determining whether or not a manufacturing business is fifty-one percent (51%) Indian-owned and controlled, the TERO shall be guided by the Small Business Administration Standard Operating Procedures on certifying businesses as eligible for the 8(a) program.

3.24R.250 Certification procedures.

(a) Application for Certification. A business seeking certification as an Indian preference eligible business shall submit a completed application (see PTC 3.24R.240) to the TERO on a form provided by the TERO. (Application forms may be obtained at the TERO's Office.) TERO staff will be available to assist a business fill out the application. Within twenty-one (21) days after receipt of a completed application, the staff shall review the application, request such additional information as it believes during the time any request for additional information is outstanding), conduct such investigations as it deems appropriate. Copies of the analysis and recommended disposition shall be kept confidential and shall not be made available to the applicant or any other party. When it is so required, the TERO may extend the processing period by an additional twenty-one (21) days, by sending notification of the extension to the applicant by registered mail.

(b) Probationary Certification. An applicant granted certification shall be issued a one-year probationary certificate. During that period, the TERO staff shall monitor the business's activities to ensure that the business is operating in the manner described in its application. During the probationary period, the TERO shall have the right to request and receive such information and documents as they deem appropriate.

(c) Final Certification. At the end of the probationary period the TERO shall either:

- (1) Grant full certification;
- (2) Continue the probationary period for up to six months; or
- (3) Deny certification.

(d) Withdrawal of Certification. From the information provided in reports required by subsection (f) of this section and PTC 3.24R.250, on the basis of a written grievance filed by any other business or person, or on its own initiative, the TERO may initiate the process to withdraw or suspend the certification of any business. The TERO shall send the business notice, by registered mail, that its certification is being examined, along with the grounds therefor. After the examination, the TERO may:

- (1) Withdraw certification;
- (2) Suspend certification for not more than one year;
- (3) Probation; or
- (4) Order corrective action within a fixed period.

An employer that has had its certification withdrawn may not reapply for a period of one year.

(e) Employers Certified Prior to the Adoption of These Criteria. Each Covered Employer holding Indian preference certification from the Tribe prior to the effective date of these regulations shall submit an application as required by these regulations to the TERO within thirty (30) days following the effective date of these regulations.

- (1) Should the TERO determine the employer qualified it shall, within twenty-one (21) days of its receipt by the TERO, approve application.
- (2) Should the TERO determine the Covered Employer does not qualify, it shall prepare an analysis of the reasons therefor, together with its disposition. Should the TERO require additional information from the employer, computation of the twenty-one (21) day period shall be paused for a reasonable time to permit such information to be provided. After providing the employer an

opportunity for a review of decision as provided in PTC 3.24R.300(b), which shall be conducted within fifteen (15) days after receipt of the TERO's disposition, the TERO shall:

- (A) Grant the Covered Employer a new certificate; or
- (B) Determine that the employer is not in compliance. If TERO determines that the employer is not in compliance, it shall provide the reasons therefor. The employer shall then have fifteen (15) days from the date of the decision to demonstrate that it has made such changes as are necessary to come into compliance. If at the end of the fifteen (15) day period the Covered Employer has failed to come into compliance, its certificate shall be withdrawn. A copy of the withdrawal notice shall be sent to the employer.

(f) Change in Status and Annual Reports. Each certified employer shall report in writing to the TERO any changes in its ownership or control status within the 60 days following such. Each certified employer, on the anniversary of its receipt of permanent certification, shall update its initial application for certification. Failure to provide such information shall constitute grounds for withdrawal of certification.

(g) Update of records and status. All certified employers will maintain contact with the TERO and keep all contact information current and up to date annually. Failure to notify or maintain contact, or to notify of the closure or discontinuation of the business may result in the revocation of the certification and removal from the Certified I.P. list. If certification is revoked the employer would need to reapply for recertification.

3.24R.260 Application for certification as an Indian preference business.

1. Covered Employer Identification.

Name of Covered Employer's Business (exactly as you want it to appear on all documents).

Address: _____

Telephone: _____

Date of Submission: _____

Single business: _____ Joint Venture: _____

Contact Person: _____

Address: _____

Telephone (Bus.) _____ Home: _____

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

Federal Identification Number: _____

Number of Employees: _____ Number of Indian Employees: _____

Year business was established: _____

2. Ownership.

A. Type of ownership (check one):

____ Sole proprietorship

____ Partnership (attach copy of partnership agreement with all amendments since date partnership created).

____ Corporation (attach copy of the Certificate of Incorporation, Articles of Incorporation and Bylaws, including all amendments since date of incorporation).

B. Percent of Indian ownership: ____%

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

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

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

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

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

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

3. MANAGEMENT

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

1. Name, address and social security number. If Indian, please include his or her Tribe and enrollment number.

2. Present position and description of duties.

3. Previous business experience.

4. Previous work experience in areas in which the business intends to engage.

5. Other previous work experience.

6. Education and training.

7. Other jobs presently held.

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

1. Financial Decisions.

2. Management decisions, such as:

a. Marketing and sales;

b. Hiring and firing;

c. Purchase of major equipment or supplies;

d. Supervision of field personnel.

4. CAPITAL AND EQUIPMENT

A. Equipment. List all equipment which costs \$300.00 or more when new.

QUANTITY

DESCRIPTION

PRICE

HOW OBTAINED (Purchased, etc.)

B. Capital.

1. Attach a current balance sheet.

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

C. Additional submissions.

Each applicant shall submit with this application the following:

1. List of officers, principal stockholders, and directors, with mailing addresses and number of shares held by each.

2. A sworn statement of the proper officer showing:

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

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

- c. The amount of cash the company has in its treasury and elsewhere.
- d. The property, exclusive of cash, owned by the company and its value.
- e. The total indebtedness of the company and the nature of its obligations.

5. CERTIFICATION

I hereby certify that the information provided in this application is true and complete to the best of my knowledge and belief. I further certify that I have read the applicable ordinances, regulations, criteria and procedures of the Puyallup Tribe of Indians and do hereby submit to the jurisdiction provided therein.

Name of business: _____

By:

(Signature of authorized officer and title)

Name: _____

Title: _____

Subchapter 5. Fees

3.24R.270 Provision for collection of fees.

Except as otherwise provided all fees are due and shall be paid in full by any Covered Employer prior to commencing work. Other arrangements for payment may be negotiated and any determination shall be in writing and signed by the Director.

Immediately upon becoming aware that a project is covered by TERO, the Covered Employer shall contact the TERO to schedule Orientation. The purpose of Orientation is to educate the employer on the requirements, laws and regulations, which include the TERO fee. The employer will be informed of the nature and purpose of the fee, the percentage, the specific amount due, if known, the date due, and the possible consequences should the employer fail to comply. The notice shall be accompanied by a formal notice of fees due informing Covered Employer that payment is overdue.

Should the employer fail to pay the fee by the day it commences work on Tribal Lands or within the jurisdiction of the Puyallup Tribe of Indians, interest shall begin to accrue on that date at the rate of 10 percent per annum. On the day following that on which the employer commenced work, the Director shall send notice to the employer, by registered mail, that the fee is overdue and of the consequences imposed if the fee is not paid immediately.

If the fee is not paid by the fifteenth day after the employer commenced work, the Director shall issue a formal violation of noncompliance, and shall schedule a meeting within five days or as soon thereafter as the can be reasonably done and shall inform the employer of the scheduled time , date and purpose of the meeting.

The outcome of the meeting will determine how the Tribe will move forward with the employer and if issuance of violation was proper and if additional penalties as described below should be imposed:

- (a) Impose penalties of not more than 10 percent (10%) of the amount due;

(b) Petition the Tribal Court to affirm the imposed violation of this chapter and to enforce any related requirements or penalties as provided by law.

Where the Director of the TERO has reasonable cause to believe that an employer will flee the jurisdiction prior to resolution of the matter, the Director may accelerate initiation any of the procedures provided for in PTC 3.24.480, notwithstanding the above procedure.

3.24R.260 Entities and Employers responsibility of fee

A Covered Employer who is awarded a contract by an business is responsible for the payment of the TERO fee. The fee is to be recognized as a sovereign right of the Puyallup Tribe of Indians and doing business within Tribal Lands, shall be paid as they would any other governmental fee or tax.

The TERO fee is not to be included or incorporated in to the bid or contract in order to circumvent the payment or to charge back the fee to the awarding entity. Fees are calculated at two and one half percent (2.5%) of the project total cost, which includes any change orders or added modifications. It is the responsibility of the awarding entity to ensure that all bids are evaluated and determined that the fee is not included in a line item or included in any other portion of the bid or contract.

3.24R.270 Alternative arrangement.

The Director, in their discretion, may, upon receipt of a written request, negotiate and authorize an employer to pay the required fee in installments over the course of the year or the contract, as appropriate, when:

- (a) The total annual fee exceeds \$10,000; and
- (b) The employer demonstrates hardship or other good cause.

The decision to authorize an alternative arrangement, which shall be in writing, shall rest solely with the TERO Director and is not appealable.

The employer shall pay interest, at the prime rate, on all amounts paid after the day he or she commences work on the Reservation when paying under an alternative arrangement.

Subchapter 6. Administrative Procedures

3.24R.280 Reports, monitoring and compliance.

(a) All Covered Employers engaged in any aspect of business activity on Tribal Lands or within the jurisdiction of the Puyallup Tribe of Indians shall submit reports and such other information as required by TERO. Designated Employees of the TERO have the authority to make on-site inspections during regular working hours in order to monitor a Covered Employer's compliance with these regulations. The Director, Compliance Officer or Dispatcher shall notify the employer, entity or a supervisor on site immediately should there be any direct violations or concerns of non-compliance.

(b) Employees of the TERO also have the authority to inspect and copy all relevant records of a Covered Employer, of the employer's signatory unions or subcontracts, to speak with both TERO and non TERO workers on the job site, and to engage in investigatory activities as deemed necessary. All information collected by the TERO shall be kept strictly confidential, unless disclosure is required during a hearing or appeal as provided for in these regulations.

(c) Any Covered Employer or their employees, if requested, shall identify themselves to the TERO Director, Officer or Dispatcher while on site performing work. Failure to cooperate shall constitute removal by the Compliance Officer of that individual from the site until proper identification is provided. If the contacted party is uncooperative, their direct supervisor will be contacted in order to reach resolution. It is the Covered Employers responsibility to ensure all employees are informed and educated on the requirements of TERO and the steps necessary to maintain compliance.

3.24R.290 Individual complaint procedures.

(a) Noncompliance by a Covered Employer. Any Indian or group of Indians, representatives or group of a class of Indians, certified employer, or other persons or entity who believe that a Covered Employer has failed to comply with these regulations, or who believe that they have been discriminated against by an employer because they are Indian, may file a complaint, whether or not they can show that they were personally harmed by the businesses' noncompliance.

(b) Noncompliance by TERO. Any entity, group of entities, non-certified employers, non-Indian workers, or entity who believe that an action of the TERO Office under these regulations is in violation of these regulations, or Tribal or Federal law, may file a complaint with the TERO Committee. Persons may file whether or not they can show they were personally harmed by the TERO's action.

(c) All complaints by a business, their employee or a TERO client must be submitted through the appropriate chain of command. All administrative remedies must be exhausted through the proper chain of command as follows:

(1) Complaints against Employers. Submissions must be in writing to the TERO Compliance Officer in a direct attempt for resolution between parties. The Compliance Officer may require a meeting or mediation with involved parties to reach resolution. Once an agreement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party.

(A) If resolution cannot be reached between the parties with the assistance of the Compliance Officer, the complaint shall be taken to the Director. The Director will arrange a meeting with the involved parties to seek an informal settlement. Once a settlement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party. Any reached agreement will be documented in writing with signatures of all involved parties.

(B) If resolution cannot be reached between the parties, the complaining party may file a complaint with the Tribal Court. The judge will review any and all evidence or documentation provided by all involved parties and render a decision based on the facts and merits of the case.

(C) Complaints shall be submitted to the TERO. Complaints will not be heard by or infringed upon by Puyallup Tribal Council. The TERO is responsible for ensuring that all procedures are followed, documented and resolved to the fullest extent of jurisdiction.

(2) Complaints against the TERO. Submissions must be in writing to the TERO Compliance Officer in a direct attempt for resolution between parties. The Compliance Officer may require a meeting or mediation with involved parties to reach resolution. Once an agreement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party.

(A) If resolution cannot be reached between the party and the TERO, the complaint shall be forwarded to the TERO Committee and complaint review procedures codified in PTC 3.24 TERO Ordinance and herein shall be followed. The Committee Chair will arrange a meeting with the involved parties to seek an informal settlement. Once a settlement is reached, the agreement will be documented in writing, with the agreed requirements stated clearly and with signatures of all involved parties, along with the procedures to be followed should that agreement be breached by any party. Any reached agreement will be documented in writing with signatures of all involved parties.

(B) If resolution cannot be reached between the party and the TERO, the complaining party may file a complaint with the Tribal Court. The judge will review any and all evidence or documentation provided by all involved parties and render a decision based on the facts and merits of the case.

- (C) Complaints shall be submitted to TERO. Complaints will not be heard by or infringed upon by Puyallup Tribal Council. The TERO is responsible for ensuring that all procedures are followed, documented and resolved to the fullest extent of jurisdiction.

3.24R.300 Compliance and hearing procedures.

(a) Informal Settlement. If the TERO has reason to believe that a Covered Employer has failed to comply with any of these regulations, it shall notify the employer in writing, specifying the alleged violation(s). Should the party notified be a contractor or a subcontractor, notice shall also be provided to the employer holding the permit or authorization under which the contractor or subcontractor is operating and such entity shall be a party to all further negotiations, hearings and appeals.

The TERO shall then conduct an investigation of the charge and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved and the Director has reasonable cause to believe a party has violated the ordinance (Chapter 3.24 PTC) or regulations, he shall issue a formal notice of noncompliance to the party and shall proceed with the enforcement procedure provided by law.

3.24R.310 Sanctions.

The TERO may impose any or all of the following sanctions where it finds a violation of the PTC 3.24 or these regulations. If, after review, the TERO determines that a violation has occurred, the TERO shall:

- (a) Deny such party the right to commence business on or near Tribal Lands;
- (b) Impose a fine in an amount not to exceed \$1,000 for each violation;
- (c) Suspend such party's operation on or near Tribal Lands;
- (d) Terminate such party's operation on or near Tribal Lands;
- (e) Deny the right of such party to conduct any further business on or near Tribal Lands,
- (f) Order such party to make payment of back pay to any aggrieved Indian;
- (g) Order such party to dismiss any employees hired in violation of these regulations;
- (h) Order such party to take such other action as is necessary to ensure compliance with the ordinance (Chapter 3.24 PTC) or to remedy any harm caused by a violation of the ordinance.
- (i) The TERO's decision shall be in writing, shall be served on the charged party by registered mail or in person and shall be submitted not later than 30 days after the close of the hearing. Where failure to comply immediately with the TERO's orders may cause irreparable harm, the TERO may move the Tribal Court for, and the Tribal Court shall grant, such injunctive relief as necessary to preserve the rights of the beneficiaries of the ordinance (Chapter 3.24 PTC), pending the party's appeal or expiration of the time for appeal.

3.24R.320 Appeals.

Any business or complaining party shall have the right to appeal any decision to the Tribal Court.

3.24R.330 Bonds.

The Director may require an entity to post a bond with the Tribe pending a hearing and may petition the Court from a decision of the TERO, upon making a written finding that any of the following conditions exist. The entity:

- (a) Has no permanent place of business on trust lands or within the jurisdiction of the Puyallup Indian Tribe; and

(b) The amount of sanction exceeds or likely will exceed \$1,000; and

(c) The project on which the entity is employed will be substantially completed within 60 days, such that it may be difficult to locate property of said employer on trust lands or within the jurisdiction of the Puyallup Indian Tribe that would be available for attachment or confiscation should the entity fail to pay a sanction imposed on it; and

(d) The entity has failed to comply with an order of the TERO or the Courts in the past, and the employer has engaged in behavior that demonstrates a disregard for the authority and requirements of the TERO, such that the Director has good reason to believe the entity will not comply with the orders of the TERO or the Court.

3.24R.340 Attachment.

The TERO may petition the Court for attachment of property of an entity should any of the following conditions exist:

(a) An entity has refused or failed to post a bond after being ordered to do so by the Director, or Court as provided in PTC 3.24R.330; or

(b) The TERO has good reason to believe the entity will remove itself or its property before it can complete its efforts to require the entity to post a bond; or

(c) The entity has demonstrated an intent to disregard the orders of the Director, or Court.

3.24R.350 Irreparable harm.

A finding of irreparable harm upon the petition of the TERO for injunctive relief shall be made only upon a showing that damage will occur that cannot be adequately remedied through the payment of monetary damages. Such showing shall include but is not limited to the following:

(a) That a contractor or subcontractor is about to or has begun work on a contract or subcontract entered into in violation of the provisions of the ordinance (Chapter 3.24 PTC) or regulations requiring contract or subcontract preference, when there is one or more Indian businesses available to perform said contract or subcontract, since it is impossible to measure in monetary terms the damages suffered by an Indian business's failure to obtain a contract or subcontract.

(b) An business or its subcontractor is about to or has hired two or more persons in violation of the provisions of the ordinance (Chapter 3.24 PTC) or regulations requiring Indian employment preference, and there are Indians available to fill those positions, since it is difficult to identify the specific Indians who would fill those positions once the number of positions at issue is two or greater, making the payment of payback difficult to achieve.

(c) An Covered Employer refuses to submit a preference plan in the time required and indicates through words or action that it intends to disregard the requirement imposed by the ordinance (Chapter 3.24 PTC) or regulations.

Subchapter 7. Due Process Administrative Review Procedures

3.24R.360 Review procedures.

(a) Review of TERO Files. The respondent employer or entity against whom a violation has been issued shall have the right to review the case file of the Director by scheduling a visit to the TERO Office during regular working hours at any point after receiving notice of a hearing. The Director, however, shall have the right to protect confidential information. The file shall be cleared of confidential information in a manner that causes the loss of the least amount of relevant information from the files.

(b) List of Witnesses. Ten days prior to the time set for review (or as soon as possible if the review is to be conducted within 10 days after notice), the respondent and the Director shall share with each other a list of witnesses that each intends to include as part of the review, the approximate length of their statement, and the subject matter and relevance of their statement. It shall indicate any witnesses that's presence must be requested. Both the complainant and respondent are responsible for notifying their respective witnesses and requesting their presence at the hearing.

(c) Prehearing Interview of Witnesses. The respondent and the Director shall have the right to submit questions to any witnesses prior to the review. The Director's witnesses shall be interviewed in the presence of the Director or his delegate. The respondent's witnesses shall be interviewed under such reasonable conditions as are established by the respondent.

(d) Requests for Documents and items. The respondent shall, no later than 10 days prior to the review (or as soon as possible if the hearing is noticed less than 10 days before the review), provide the Director with a list of information it wishes to have requested and the relevance of each. The Director shall request all relevant items listed as well as items needed by the Director.

(e) Postponements. Any request for a postponement of the review must be submitted in writing to the Director no fewer than three (3) days prior to the hearing. Should the Director and the respondent mutually agree to a postponement because of the possibility of settling the matter, the decision for postponement may occur anytime.

(l) Written Declarations. Written declarations shall be permitted as evidence for the review when a party wishes to use the written testimony of a witness who cannot appear.

3.24R.380 Decision.

The TERO shall render a decision and deliver the decision in writing to the respondent.