

GUIDELINE
NAVAJO NATION EXECUTIVE BRANCH
DOCUMENT REVIEW
As Required in Executive Order No. 06-2023

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SUBPART B. GENERAL

Section 100. What is the purpose of this Guideline?

On August 18, 2023, Navajo Nation President Dr. Buu Nygren executed Executive Order No. 06-2023 to ensure all documents that require execution by the Navajo Nation President and/or review/approval by the Navajo Nation Council and/or Standing Committee are timely reviewed and such documents are in compliance with applicable Navajo Nation laws and policies.

The purpose of this Guideline it to implement the Executive Order, provide administrative instructions, and identify best practices to Sponsoring Entities and Reviewers.

As required in the Executive Order, this Guideline will be updated from time to time.

Section 101. Who has to comply with this Guideline?

This Guideline applies to the Chapters and Executive Branch, including its divisions, departments, programs, offices, and commissions.

Section 102. What types of documents are covered under this Guideline?

- A. Pursuant to 2 N.N.C. § 164(A), the following types of documents require review and approval by the Navajo Nation Council or Committee:
 - 1. Statement of Policy;
 - 2. Enactment of positive law;
 - 3. Intergovernmental Agreements;
 - 4. Budget allocations; and
 - 5. Budget reallocations.

- B. Pursuant to 2 N.N.C. § 164(B) and § 222(A), the following types of documents require review and signature by the Navajo Nation President or a designee when the documents pertain to the Executive Branch:
 - 1. Subcontracts implementing agreements approved under 2 N.N.C. § 164 (A);

2. Grant providing funds to the Navajo Nation;
3. Contracts expending funds appropriated by the Navajo Nation Council;
4. Letter of Assurance agreements;
5. Memoranda of Understanding;
6. Memoranda of Agreement and other agreements that does not expend funds;
7. Other Agreements that do not expend funds; and
8. Associated amendments to the above-listed documents (1) through (7).

C. Pursuant to Navajo Nation laws and policies, the following documents, although not an exhaustive list, may not qualify for a § 164(A) or (B) review, but do require review by the Executive Branch through the Executive Official Review Process:

1. Assignments of Mineral Leases;
2. Budget Modifications;
3. Business Site Leases;
4. Carry Over Requests;
5. Chapter Ordinances;
6. Delegations of approval and/or management authority of a business site leasing transaction;
7. Delegations of approving authority from the Navajo Nation Council or a Committee thereof;
8. Division Policies, which include Regulations as referenced in the Navajo Nation Code;
9. Expenditure Plans;
10. Financing, and Business and Industrial Development Fund financing, including loans (except micro loans below \$ 10,000.00), loan guarantees, investments and debt security;
11. Five Management Plans under the Local Governance Act;
12. Fund Management Plans;
13. General Land Leases;
14. Grant Applications;
15. Land relinquishments or relinquishments for commercial purposes;
16. Land withdrawals for non-commercial purposes;
17. Leases of Office Space;
18. Lease Purchase Agreements;
19. Local Ordinances (Local Government Units);
20. NHA Requests for Release of Funds;
21. Oil and Gas Prospecting Permits, Drilling and Exploration Permits, Mining Permits; Mining Leases;
22. Plans of Operation/Division Polices requiring a Committee's approval;
23. Relinquishments of Navajo membership;
24. Resource Leases;
25. Rights of Way;

26. Rights of Way Consents where there has been no delegation of authority to the Navajo Land Department to grant the Nation's consent to a right of way;
27. Other.

Section 103. What if my document is not listed in Section 102?

If the Sponsoring Entity is uncertain as to whether a document falls under one of the above-mentioned review categories, the Sponsoring Entity shall contact DOJ for a determination. If the Sponsoring Entity's document is indeed not listed, then the Sponsoring Entity has the opportunity to use the "Other" Document under Executive Official Review.

Section 104. What definitions apply in this Guideline and are there examples that fall under a specific definition? Several of the following definitions are found at 2 N.N.C. § 110 and are included here for ease of reference.

- A. "Budget Reallocation" means the reallocation of general, proprietary, fiduciary and special revenue-internal funds between business units. This definition could include a program changing the purpose of a business unit to another purpose. See 2 N.N.C. § 110(S).
- B. "Chapter" means a local government unit, which is a political subdivision of the Navajo Nation and does not include Local Governance Act-certified chapters that have received approval of its Five Management Plan. See 2 N.N.C. § 110(D).
- C. "Facility Use Agreement" is an agreement granting access and governing the use of a facility.
- D. "Financial Impact" means any agreement that obligates the Navajo Nation to expend funds no matter what the sources of the funds, or provides funds to the Navajo Nation. This definition would include, but is not limited to the following examples: a Contract to obtain services and/or goods; a Grant Agreement from another governmental entity; or Amendments/modifications to the aforementioned. See 2 N.N.C. § 110(H).
- E. "Grant" means a contribution, gift or subsidy (in cash or kind) bestowed by a government or other organization (the grantor) for specified purposes to an eligible recipient (the grantee). Grants are usually conditioned upon certain qualifications as to the use, maintenance of specified standards, or a proportional contribution by the grantee or other grantor(s).
- F. "Intergovernmental Agreement" ("IGA") means an agreement between the Navajo Nation and another government that involves the sharing of government powers, and includes Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) contracts. An IGA does not

include an agreement between the Navajo Nation and another government where the Nation or the other government acts in a landowner or commercial capacity. See 2 N.N.C. § 110(J).

- G. “Letter of Assurance” means a letter sent to another party in lieu of a bond or other surety assuring the receiver that the sender will perform its contract obligations. See 2 N.N.C. § 110(L).
- H. “Local Government Unit” means political subdivisions of the Navajo Nation including, Chapters, Townships, or other municipal forms of government for the purposes of 2 N.N.C. §§ 500 to 503. See 2 N.N.C. § 110(M).
- I. “Memorandum of Agreement” (“MOA”) means a binding written agreement between two or more parties to cooperatively work together to resolve an issue of mutual concern, or to accomplish one or more agreed upon projects or one or more mutual purposes. An MOA lays out the ground rules for a positive cooperative effort. It may be used between the tribal government and a private individual or entity, or between the central government and a local governance certified chapter or Navajo Nation Township, and is legally enforceable. See 2 N.N.C. § 110(N).
- J. “Memorandum of Understanding” means a non-binding written agreement between two or more parties indicating an intended line of action where the parties agree to act in good faith to comply with the terms. It may be used between the tribal government and a private individual or entity, or between the central government and a local governance certified chapter or Navajo Nation Township, and is not legally enforceable. Agreements between tribal divisions, agencies, programs, and non-certified Chapters are not MOUs for purposes of 2 N.N.C. § 164 (B) and may be executed by the appropriate division or program director of non-certified Chapter president. See 2 N.N.C. § 110(O).
- K. “Positive Law” means legislation by the Navajo Nation Council that creates or amends a section or sections of the Navajo Nation Code. See 2 N.N.C. § 110(U).
- L. “Reviewer” means those Executive Branch entity that is required to review documents by Navajo Nation Code or by Executive Order. This includes but is not limited to BRD, OMB, OOC, OAG, and OPVP. The Reviewers are listed on the 164 and Executive Official Review forms with the exception of “Other” documents that are not already listed on either the 164 or Executive Official Review forms.
- M. “Review Process” means the process by which the Sponsoring Entity submits a document for review and the Reviewers check for sufficiency.

- N. “Sponsoring Entity” means the Executive Branch entity, such as a Division, department, program, office, agency, commission, or Chapter, that is seeking the review a document for either execution or submission to the Legislative Branch.
- O. “Statement of Policy” means a written statement submitted to a federal, state or local government by a Navajo Nation official stating the official position of the Navajo Nation on proposed legislation or other action by that government. See 2 N.N.C. § 110(W).

Section 105. What are the responsibilities of the Sponsoring Entity?

It is the Sponsoring Entity’s responsibility to ensure it has obtained the correct Review Form and marked the correct Document for review. This is to ensure both accuracy and efficient use of the Nation’s resources.

It is highly recommended but not mandatory that Sponsoring Entities include a memorandum explaining the reason it is placing a document in the review system. This memorandum assists Reviewers in expediting their reviews.

It is the Sponsoring Entity’s responsibility to ensure the document that needs to be executed or reviewed for Legislative action is supported with all the necessary supporting documentation in compliance with applicable laws and policies, including but not limited to grant requirements.

It is the Sponsoring Entity’s responsibility to ensure that it works with the respective Department Manager, Division Director or their equivalent to obtain the necessary review and approval before submittal through the Review process.

It is the Sponsoring Entity’s responsibility to identify employees by name along with their best contact information, including those employees most familiar with the underlying project or action. These are employees who can answer questions regarding the document being reviewed.

If the Sponsoring Entity is purchasing something, also referred to as procuring a good or service, it is the Sponsoring Entity’s responsibility to understand the Navajo Business Opportunity Act and Navajo Nation Procurement Act, and Procurement Regulations. The Sponsoring Entity can reach out to the BRD or the OAG with questions on these three (3) laws and regulations or other laws and regulations that may be applicable to the procurement of goods and/or services.

It is the Sponsoring Entity’s responsibility to anticipate deadlines, including internal Navajo Nation deadlines and grants deadlines, to ensure there is sufficient time to process a document for execution.

It is the Sponsoring Entity's responsibility to actively monitor the review process and check-in from time to time with Reviewers to find out if there are any questions or concerns.

Section 106. What are the responsibilities of the Reviewer?

It is the responsibility of the Reviewers to review all documents and ensure the documents are in compliance with applicable laws, regulations, and policies for the Reviewer's scope of authority.

It is the responsibility of the Reviewers to provide transparent processes.

It is the responsibility of the Reviewers to ensure that reviews are consistent among all employees within a Reviewer's Division.

It is the responsibility of the Reviewers to provide excellent customer service.

Section 107. What is the 164 review form?

The 164 review form is the document that Sponsoring Entities are required to print out and include for document review when processing a document listed in Section 102 (A) or (B) above. Sponsoring Entities obtain the form from the FMIS system.

Reviewers must sign the review form to show that the Reviewers have reviewed the document. The Division Director or designee for the Reviewer signs the 164 Review Form.

OOC is responsible for maintaining and updating the review form until such time as an alternative system is created.

Section 108. What is an Executive Official Review form?

The Executive Official Review form is the document that Sponsoring Entities are required to print out and include for document review when processing a document listed in Section 102 (C) above. Sponsoring Entities obtain the form from the FMIS system.

Reviewers must sign the review form to show that the Reviewers have reviewed the document.

OOC is responsible for maintaining and updating the review form until such time as an alternative system is created.

Section 109. Is my Division allowed to amend or use our own 164 or Executive Official Review form?

No. It is required that all Sponsoring Entities use the same form as provided on Attachment 1 and 2 to ensure consistency during the Review process.

Section 110. How will I know if the document is sufficient?

You will know the document is sufficient if the Reviewer has marked the box “sufficient” on the Review Form. The Reviewer is required to sign the Review Form indicating that a review has taken place unless the Reviewer did not review within the required review period.

To indicate whether the document is sufficient, which is different than indicating that a review has occurred, the Reviewer will mark the box indicating “sufficient.” If the document is not sufficient, the Reviewer will mark the box labeled “insufficient” and outline in a memorandum the insufficiencies within that Reviewer’s authority to identify. A Reviewer’s checklist indicating the insufficiencies of the document cannot be used in place of a written memorandum. The reason is hand-written notes are too often indecipherable. A checklist may be included as a point of reference, but a written memorandum must explain the reason why the Reviewer found the document insufficient.

Section 111. Is the Reviewer always required to mark a box indicating the document is sufficient or not?

Yes. It is the Reviewer’s responsibility to ensure that the “sufficient” or “insufficient” box is marked.

If however, the Reviewer does not review a document within the allotted time period, the Sponsoring Entity may retrieve the document and move the document onto the next Reviewer for review. The Sponsoring Entity must prepare a memorandum informing the next Reviewers and OPVP that the Sponsoring Entity has retrieved the document because it was not reviewed within the allotted time. This memorandum must be included with the document for review.

Section 112. What is the order of review during the 164 Review process?

The 164(A) and (B) Review form outlines the Reviewer(s) depending on the type of document submitted through the 164 Review process. The Sponsoring Entities shall submit the document in the order that the Reviewers are listed on the 164 Review form. For example, for Grants/Funding Agreement, the Sponsoring Entities are required to submit to OMB before submittal to OOC, and OOC shall review before OAG.

Section 113. As the Sponsoring Entity, do I have to address the Reviewer’s concerns before I submit the document to the Office of the President and Vice President?

It is highly recommended that the Sponsoring Entity resolve Reviewer’s concerns before submitting the document to OPVP. If the Sponsoring Entity disagrees with the Reviewer’s concerns, then it is highly recommended that the Sponsoring Entity communicate with OPVP the reasons it disagrees with the Reviewer’s concerns.

Section 114. Are there time limits on how long a Reviewer has to review a document?

Yes, there are time limits for review of documents identified on the 164 Review Form.

- A. The Business Regulatory Department has two (2) working days to review a contract where the purchase is being procured (“procurement contract”) or an amendment to a procurement contract.
- B. OMB, OOC, and OAG each have five (5) working days to review a document.
- C. The time begins upon submittal of the document listed in Section 102(A) and (B) to the Reviewer. Upon receipt of the document, the Reviewer shall stamp the 164 Review Form or Executive Official Review Form to indicate the day and time of submittal.
- D. The review day period begins on the day and time of submittal. For example, if a document is submitted on Monday at 4 p.m., the Reviewer has until the following Monday at 4 p.m. to provide its review if the Reviewer has a 5-day review period.

Section 115. Does the Reviewers’ time limit include weekends and Navajo Nation holidays?

No. The time limit rule applies to working days only. However, the time limit with respect to the hour of submittal would still be applicable in the event the President issues an early release. For example, if the document was submitted on Tuesday at 8:30 a.m. and the President issues early release for Friday and there are no intervening Navajo Nation holidays, the review period ends at 8:30 a.m. the following Tuesday.

Section 116. Does the time limit apply to the Office of the President and Vice-President?

No. The time limit rule is only applicable to BRD, OOC, OMB and OAG for 164(A) and (B) documents.

Section 117. If a Reviewer has more than one program/unit/section within an office or department, is each program/unit/section allowed the maximum number of days for review?

No. The time limit review rule applies to the entire Reviewer's Division. If a Reviewer requires review by more than one program/unit/section within its Division, it is that Reviewing Division's responsibility to ensure all the programs/units/sections review the document within or by the 5th or 2nd working day, whichever is applicable.

Section 118. What action determines the Reviewer's completion of its review?

The Reviewer shall log-out the document in the FMIS by entering the date and time the review is complete. The log-out will indicate that the Reviewer completed his/her review. For purposes of this section, the log-out does not indicate when the Sponsoring Entity picked up the document from the Reviewer.

Section 119. Must the Reviewer keep a document for the entire time allotted for review?

No! Reviewers are expected to be as efficient with time as possible. For example, if a Reviewer completes its review in 3 days and it is allotted 5 days, the Reviewer should log out the document as quickly as possible so the Sponsoring Entity can submit the document onto the next Reviewer.

Section 120. The Reviewer did not review the 164(A) or (B) document within its allotted review period, what do I do as a Sponsoring Entity?

If a Reviewer did not review within its allocated time limit, the Sponsoring Entity may pick-up the 164(A) or (B) document from the Reviewer and submit the document to the next Reviewer.

The Sponsoring Entity must include a written memorandum within the document that the Reviewer failed to review the document within its allotted time period. If OOC or OMB did not confirm the availability of funds, then the Sponsoring Entity must include in the document packet an FMIS print out showing that funds are available in the correct line item.

Instead of retrieving the document, the Sponsoring Entity may contact OPVP or its Division Director for assistance in obtaining a review by the Reviewer that failed to complete its review within the allotted time period.

Section 121. If the Reviewer did not review within its allotted time period, is the document deemed sufficient?

Yes. If the Reviewer failed to review the 164(A) or (B) document within the allotted time, the Reviewer is deemed to have no comments and/or objections to such document.

Section 122. If the Office of the President and Vice President requires the Sponsoring Entity to address the Reviewer's issues, does the allotted time period apply when it is resubmitted to the Reviewer?

No. The review period only applies when it was first submitted to and stamped by the Reviewer. OPVP may identify a new timeline for the resubmitted review.

Section 123. What is a financial impact?

A financial impact is defined in Section 104(D). It is the Sponsoring Entity's responsibility to determine if there is a financial impact as defined above and to submit the document to the OOC and OMB. If necessary, the Sponsoring Entity may seek assistance from the OAG for determination.

Section 124. Does a no-cost extension modification constitute a financial impact?

No. Even though a no-cost extension is not considered a financial impact, it is required that OOC or OMB determine if the no-cost extension is appropriate. OMB will determine if the no-cost extension is consistent with an external Funding Agreement when applicable. OOC will determine if the no-cost extension is consistent with the Navajo Nation current budget.

Section 125. If the Navajo Nation enters into an Agreement with another governmental entity, does that Agreement automatically constitute an Intergovernmental Agreement that requires Committee action?

No. While the Navajo Nation receives funds from another governmental entity or the governmental entity titles the Agreement as an "Intergovernmental Agreement," the Agreement does not automatically constitute an Intergovernmental Agreement. To determine if an Agreement constitutes an Intergovernmental Agreement, it is recommended that the Sponsoring Entity review the definition as provided in Section 104(F) with the purpose and the duties of each party as provided in the Agreement. The Sponsoring Entity may seek assistance from OAG for a determination.

Section 126. In order to log-on to the FMIS, what is the process?

The Sponsoring Entity is required to contact the FMIS Technical Support of OOC for log-in information. The contact information for the FMIS Technical Support is 928-871-6337 or support@nnooc.org.

SUBPART C. 164(A) REVIEW

Section 200. What type of actions fall under a 164(A) review?

See Section 102 (A).

Section 201. What if it is not clear if my action requires 164(A) review?

See Section 103.

Section 202. Who is required to review 164(A) documents?

The Division Director, OAG, and OPVP must always review documents that are being submitted to the Legislative Branch for action. OAG is required to review the documents for legal sufficiency. OPVP reviews for policy matters. These documents include statements of policy or positive law.

If the document is determined to have a financial impact, the document should be submitted to OMB and OOC for review. These documents include intergovernmental agreements as defined by 2 N.N.C. § 110, budget resolutions, and budget reallocations.

SUBPART D. 164(B) REVIEW

Section 300. What type of actions fall under a 164(B) review?

See Section 102 (B).

Section 301. What if it is not clear if my action requires 164(B) review?

See Section 103.

Section 302. Which Reviewers are required to review 164(B) documents?

Like the 164(A) documents, the OAG is required to review the documents for legal sufficiency and if it is determined that the document has a financial impact on the Navajo Nation, the document also should be submitted to OOC and OMB. The Division Director is also a required Reviewer for 164(B) documents.

Section 303. Is Business Regulatory Department required to review 164(B) documents?

Yes, if the document is to procure services and/or goods using public funds. While the BRD is a Reviewer, BRD is required to complete its review within two (2) days. The same time and date rule applies to BRD's review as provided in Section 114 and 115.

Section 304. Is Risk Management Department required to review, approve and sign the 164 review form?

No, but if a Sponsoring Entity is procuring services, the Sponsoring Entity should consult with the Risk Management Department before it seeks services to ensure the minimum required insurance is included on the Invitation for Bid or Request for Proposals.

SUBPART E. EXECUTIVE OFFICIAL REVIEW

Section 400. What types of actions fall under an Executive Official Review?

See Section 102 (C).

Section 401. What if it is not clear if my action requires Executive Official Review?

See Section 103.

Section 402. Which Reviewers are required to review Executive Official Review documents?

Reviewers are listed on the Executive Official Review Form. It is recommended that the Sponsoring Entity review applicable law(s) and/or policy(ies) to ensure required Reviewers are included as part of the Executive Official Review.

Section 403. Is the time limit rule applicable to Executive Review documents?

No. If a Sponsoring Entity submits a document listed on Section 102(C) and any other documents requiring an Executive Review, the time limit rule does not apply. This is because there are a variety of documents with different Reviewers and considerations. In addition, the Division of

Natural Resources is currently administering a partial electronic system for tracking reviews. That system is called the Navajo Nation System.

Section 404. What is the order of review during the Executive Official Review process?

The Executive Official Review form outlines the Reviewer(s) depending on the type of document submitted through the Executive Official Review process. The Sponsoring Entities shall submit the document in the order that the Reviewers are listed on the Executive Official Review form. For example, for Business Site Leases, review is required by the Division Director, OOC, and OAG before it is submitted to OPVP for signature by the President.

SUBPART F. OTHER

Section 500. As a Reviewer, I would like to make a notation of some issues regarding the document, but there is no room on the 164 Review or Executive Official Review form, what do I do?

The 164 Review form will have a box allowing the Reviewer to mark as “insufficient” if it is determined that there are issues with the document. If issues exist, Reviewers are required to explain their concerns in a memorandum. There should be no handwritten notations on the 164 or Executive Official Review form other than the date and signatures of the Reviewers.

Section 501. As a Reviewer, I would like to stamp the date and time when the document was submitted to my office, where can I stamp the document?

The back page of the 164 or Executive Official Review form will be open for stamps. The front page of the 164 or Executive Official Review form is **only** for the date and signature of the Reviewers. There should be **no** stamps on the front page of the 164 or Executive Official Review form.

Section 502. I noted that there are numerous acronyms listed on this Guideline and on the 164 and Executive Official Review forms, what do those acronyms stand for?

“BIDF” is the Business and Industrial Development Fund.

“BRD” is the Business Regulatory Department of the Division of Economic Development.

“FMIS” is the Financial Management Information System.

“FWD” is the Fish and Wildlife Department of the Division of Natural Resources.

“HPD” is the Historic Preservation Department of the Division of Natural Resources.

“LGA” is the Local Governance Act.

“LGU” is the Local Government Unit.

“NHA” is the Navajo Housing Authority.

“NNEPA” is the Navajo Nation Environmental Protection Agency.

“NLD” is the Navajo Land Department of the Division of Natural Resources.

“OAG” is the Office of the Attorney General, also known as the Department of Justice.

“OMB” is the Office of Management and Budget, which includes, but not limited to the Budget Section and Contracts and Grants Section.

“OOC” is the Office of Controller, which includes, but is not limited to Contract Accounting, Purchasing Services Department and Accounts Receivable.

“OPVP” is the Office of the President and Vice-President.

Section 503. If I do not understand section(s) of the Executive Order No. 06-2023, this Guideline, the 164 Review Form, or the Executive Official Review form, what do I do?

It is recommended that you seek assistance from the OAG or OPVP, as the review process concludes with OPVP for most documents.

Section 504. When does this Guideline go into effect?

August 18, 2023, the same day that Executive Order No. 06-2023 is signed.