

CHAPTER 2-4 ADMINISTRATIVE PROCEDURE ACT

2-4-1 Administrative Procedure Act Limited in Its Application

Unless the Colville Tribal Council shall act by resolution to make this Chapter, the Colville Administrative Procedure Act, applicable to other administrative actions taken by the Tribe, this Chapter, Chapter 2-4, shall only be applicable to Chapter 4-5 (On-Site Wastewater Treatment and Disposal); Chapter 4-6 (Mining Water Quality Protection); Chapter 4-7 (Forest Practices Water Quality); Chapter 4-8 (Water Quality Standards); Chapter 4-9 (Hydraulics Project Permitting); Chapter 4-10 (Water Use and Permitting); Chapter 4-15 (Shoreline Management); Chapter 10-1 (Tribal Employment Rights); and Chapter 10-3 (Indian Preference In Contracting) of the Colville Tribal Code.

(Chapter 4-9 through 10-3 included 8/10/01)
(Amended 9/6/01, Resolution 2001-495)

2-4-2 Findings

(a) The Colville Confederated Tribes have a primary interest in assuring that the administrative procedures carried out by the Tribe, and implemented through its subordinate administrative bodies pursuant to Tribal law, are consistent with the basic principles of common sense, justice and fairness. The Colville Administrative Procedure Act is intended to implement the following major principles:

- (1) Except in emergencies, all rule-making, both procedural and substantive, shall be accompanied by notice to interested persons, and opportunities to submit views or information;
- (2) Proper publicity shall accompany the enactment of all administrative rules;
- (3) Provision shall be made for advanced determination of the applicability of the administrative rules to particular cases;
- (4) Administrative adjudicatory hearings shall be fundamentally fair, particularly in regard to such matters as notice, rules of evidence, taking of official notice, and preparation of the Administrative Record;
- (5) Responsible deciding officers and Agency heads in quasi-judicial cases shall be personally familiar with the evidence presented in that proceeding; and
- (6) Adequate provision shall be made to provide for judicial review of administrative errors.

(b) The Colville Confederated Tribes have jurisdiction to enforce the Colville Administrative Procedure Act and to insure that all persons, whether residing upon the Colville Indian Reservation or conducting business or other activities within the exterior boundaries of the Reservation are provided with due process of law. Tribal jurisdiction of all such persons and lands is necessary to protect the economy, health, safety and welfare of the Reservation population.

2-4-3 Definitions

For the purpose of this Chapter:

- (a) "Agency" means any tribal board, commission, department, or officer, authorized by law to propose rules for adopting by the Business Council or to adjudicate contested cases, except that the term "agency" shall not include either the Business Council or any Tribal Court.
- (b) "Rule" means any order, directive or regulation of general applicability enacted into law by the Business Council:
 - (1) The violation of which subjects a person to a civil fine, civil penalty or other civil

administrative sanction;

(2) Which establishes, alters or revokes any procedure, practice or requirement relating to agency hearings;

(3) Which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law;

(4) Which establishes, alters or revokes any qualifications or standards for the issuance, suspension or revocation of licenses to pursue any commercial activity. The term includes the amendment or repeal of a prior rule, but does not include:

(i) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(ii) Declaratory rulings issued pursuant to this Chapter as now or hereafter amended.

(c) The "Colville Environmental Quality Commission" or "CEQC" means the environmental policy-making and environmental administrative appellate body of the Colville Confederated Tribes.

(d) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before such agency is required by law prior or subsequent to the determination by the agency of the legal rights, duties, or privileges of specific parties. Contested cases shall also include all cases of licensing where a license is revoked, suspended, or modified, or in which the granting of an application is contested by a person having standing to contest such matter under the law.

(e) "Council" or "Business Council" means the Colville Business Council of the Colville Confederated Tribes.

(f) "License" or "permit" means the whole or part of any agency approval, registration, or any form of permission required by law to engage in any activity.

(g) "Licensing" or "permitting" means the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or modification of a license or permit.

(h) "Person" means any individual, association of individuals; partnership; private, public, tribal or municipal corporation; tribal enterprise; company; business enterprise; any county, tribal, federal, state or local government; or any governmental entity.

(i) "Reservation" means all land within the exterior boundaries of the Colville Indian Reservation established on July 2, 1872 by Executive Order, and to the greatest extent permissible by law, such other lands as have been or may be added to the reservation or held in trust by the United States for the Confederated Tribes of the Colville Reservation or its members.

(j) "Reservation population" means all persons who reside on or otherwise conduct business or other activities on any lands, whether trust or fee, within the exterior boundaries of the Colville Indian Reservation.

(k) "Reservation resources" or "Reservation environment" means land, surface and ground water, fish, biota, plants, animals, air, wildlife and capital improvements on the Colville Indian Reservation.

(l) "Secretary" means the Secretary of the Colville Business Council.

(m) "Sponsoring Agency" means the tribal agency which prepares a rule or other matter under this Chapter for action by the Business Council.

(n) "Tribe" means the Colville Confederated Tribes.

2-4-4 Adoption of Rules of Practice and Procedure—Public Inspection of Agency Orders, Decisions and Opinions

In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt informal procedures prescribed or authorized by this Chapter, together with forms and instructions.

(b) To the extent not prohibited by federal law nor prohibited for reasons of confidentiality by Tribal law, each agency shall keep on file for public inspection all final orders, decisions and opinions in contested cases and any index to those orders, decisions or opinions prepared by the agency for its own use. No agency order, decision or opinion is valid or effective against any person, nor may it be invoked by the agency for any purpose, unless, upon reasonable request therefore, it is available for public inspection. This provision is not applicable in favor of any person who has actual or constructive notice knowledge of the agency order, decision or opinion in question.

2-4-5 Notices of Intention to Adopt Rules and Opportunity To Submit Data

(a) Prior to proposing that the Business Council adopt, amend, or repeal any rule, the sponsoring agency proposing that the Business Council take such action shall:

(1) Publish notice thereof either in the Colville Tribal Tribune, or in two (2) other newspapers of general circulation in Okanogan and Ferry Counties, and mail a copy of the notice to all persons who have made timely request to the agency for information regarding the proposed rule-making proceedings. Such notice shall include:

(i) Reference to the authority under which the rule is proposed;

(ii) A statement of either the terms or substance of the proposed rule or a description of the subjects and issues involved; and

(iii) The time when, place where, and manner in which interested persons may present their views thereon;

(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments in writing. Opportunity for public hearing may be granted if requested in a timely manner and determined by the sponsoring agency to be in the public interest. It is the intent of this Chapter that reasonable and timely requests for public hearings be favorably acted upon by the sponsoring agency. Following the close of the public comment period, and prior to making its final recommendation to the Business Council, the agency shall fully consider all oral comments and written submissions respecting the proposed action.

(b) No regulatory proceeding shall be held on any final rule until twenty (20) days have passed from the publication date of the Tribal Tribune or newspapers in which notice is given of the adoption of said rule by the Business Council.

(c) No rule hereafter adopted is valid unless adopted in substantial compliance with this section, or, if an emergency rule designated as such, adopted in compliance with section 2-4-5. In any proceeding a rule cannot be contested on the ground of noncompliance with the procedural requirements of this section, as now or hereafter amended, after one (1) year has elapsed from the effective date of the rule.

2-4-6 Emergency Rules and Amendments

(a) If an agency recommends, and the Business Council so finds that immediate adoption or amendment of a rule is necessary for the preservation of the public health, safety, or general welfare of the Reservation population, and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to the public interest, the Council may dispense with such requirements and immediately adopt the rule or amendment as an emergency rule or amendment. The Council's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency rule or amendment. An emergency rule or amendment shall not remain in effect for longer than one hundred-eighty (180) days after adoption.

(b) The emergency rule may be published in any newspaper but such publication is solely to inform the public of its adoption and nothing in this section shall be construed to prevent the implementation of the rule upon its adoption by the Council in accordance with this section.

2-4-7 Rules Filed with the Secretary and Public Inspection

(a) Each agency shall file with the Secretary a true copy of all rules now in effect and being implemented by that agency. The Secretary shall keep a permanent register of such rules and all rules subsequently adopted by the Council in accordance with this Chapter. This permanent register shall be open to public inspection during normal business hours.

(b) Emergency rules enacted in accordance with section 2-4-5 shall become effective upon their adoption by the Council. All other rules hereafter adopted pursuant to this Chapter shall become effective upon the expiration of twenty (20) days following their publication as provided for in section 2-4-4, unless a later date is required by applicable law or specified in the rule. After the Council adopts an emergency rule pursuant to section 2-4-5 a copy of such emergency rule shall promptly be filed with the Secretary.

2-4-8 Statement of Purpose of Rules and How Implemented—Contents—Distribution by Agency

(a) When an agency proposes that the Business Council take action to adopt a rule pursuant to this Chapter, the sponsoring agency shall insure that the proposed rule is accompanied by a statement prepared by the sponsoring agency which generally describes the purpose of the proposed rule and how the rule is to be implemented. Such statement shall contain, but is not limited to, the following:

(1) A title, a description of the rule's purpose, the name of the sponsoring agency, the legal authority for the proposed rule, and any other information which may be of assistance in identifying the proposed rule or its purpose;

(2) A summary of the proposed rule;

(3) The agency personnel who are responsible for drafting the proposed rule and who will be responsible for implementation and enforcement of the proposed rule;

(b) Upon filing the proposed rule with the Secretary the sponsoring agency shall have copies of all statements prepared in accordance with this section, on file and available for public inspection.

2-4-9 Compilation of Rules and Judicial Notice

(a) The Secretary may compile and index all rules adopted by the Council pursuant to this Chapter and remaining in effect.

(b) Judicial notice shall be taken by the Tribal Court of rules adopted by the Council pursuant to this Chapter.

2-4-10 Petition for Adoption, Amendment, Repeal of Rules—Agency Action

Any interested person may petition an agency and request that such agency propose that the Council

promulgate, amend, or repeal any rule. Within sixty (60) days after the submission of such petition, or at the next regular meeting of the agency if it does not meet within this sixty (60) day period, the agency shall formally consider the petition and within thirty (30) days thereafter shall either deny the petition in writing (stating its reasons for the denial) or initiate rule-making proceedings in accordance with this Chapter. Upon its receipt of any such petition, the agency may elect to take no action other than to immediately refer the matter to the appropriate administrative appellate body with jurisdiction over the matter in question and request that such administrative appellate body respond to the petition on the agency's behalf. Where such a referral is made, the administrative appellate body shall first determine whether it has jurisdiction over the matter, and if so finds, the administrative appellate body shall respond to the Petition within the time periods set forth herein.

2-4-11 Declaratory Judgment on Validity of Rule

(a) The validity of any rule may be determined upon petition for a declaratory judgment thereon addressed to the Colville Tribal Court when it appears that the rule, or its threatened application, interferes with or impairs or immediately threatens to interfere with or impair, the legal rights or privileges of the petitioner. The sponsoring agency shall be made a party to the proceeding, provided, that the Tribal Court shall not have jurisdiction to hear any such petition for declaratory judgment, and no declaratory judgment may be rendered, unless the petitioner has first requested in writing that the sponsoring agency pass upon the validity of the rule in question.

(b) Upon its receipt of any such petition the sponsoring agency may elect to take no action other than to immediately refer the matter to the appropriate administrative appellate body with jurisdiction over the matter in question and request that such administrative appellate body respond to the petition on the agency's behalf. In such case the administrative appellate body shall first determine whether it has jurisdiction over the referred matter and if so finding the administrative appellate body shall then pass upon the validity of the rule in question.

(c) In any proceeding under section 2-4-11(a) the Court shall declare the rule invalid only if it finds that the rule violates constitutional provisions, exceeds the lawful authority of the Council or was adopted without compliance with lawful rule-making procedures.

2-4-12 Declaratory Ruling by Agency

On petition of any interested person an agency may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule enforceable by such agency. A declaratory ruling, if issued after an informal hearing and stated to be binding, is binding between the agency and the petitioner on the state of facts alleged, unless it is altered or set aside on appeal either by an administrative appellate body with jurisdiction over the matter or by the Colville Tribal Court. Such a ruling is subject to review in the Colville Tribal Court in the manner hereinafter provided for the review of decisions in contested cases by section 2-4-19.

2-4-13 Contested Cases Notice and Procedural Rules

(a) In any contested case, the agency shall afford all parties an opportunity for hearing upon their request. Moreover, where the agency with jurisdiction over the matter determines that a hearing should be held in furtherance of the public interest such agency may provide for a hearing even where one is not requested by any party. In any event, no such hearing shall be held upon less than twenty (20) days advance notice to all parties. The notice shall include:

- (1) A statement of the time, place and nature of the proceeding;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) A reference to the particular sections of the Tribal law involved;

- (4) A short and plain statement of the issues and matters asserted.
- (b) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.
- (c) Unless precluded by law, informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.
- (d) The record in a contested case shall include:
 - (1) All pleadings, motions, intermediate rulings;
 - (2) Evidence received or considered;
 - (3) A statement of matters officially noticed;
 - (4) Questions and offers of proof, objections, and rulings thereon;
 - (5) Proposed findings and exceptions;
 - (6) Any decision, opinion, or report by the officer presiding at the hearing.
- (e) Oral proceedings shall be recorded or transcribed for the purposes of agency decision. A copy of the entire record or any part thereof shall be furnished to any party upon their written request therefor and payment of the costs thereof.
- (f) Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.
- (g) The Federal Rules of Civil Procedure and Evidence may where applicable, be used as general guides for proceedings before any agency, except as to matters covered explicitly by Tribal law. The Federal Rules shall be interpreted as instructive rather than controlling in any event.
- (h) Agencies, or their authorized agents, may:
 - (1) Administer oaths and affirmations, examine witnesses, and receive evidence, and no person shall be compelled to divulge information which he could not be compelled to divulge in Tribal Court;
 - (2) Issue subpoenas;
 - (3) Rule upon offers of proof and receive relevant evidence;
 - (4) Take or cause depositions to be taken;
 - (5) Regulate the course of the hearing;
 - (6) Hold conferences for the settlement or simplification of the issues;
 - (7) Dispose of procedural matters by decision; and
 - (8) Take any other action authorized by Tribal law consistent with this Chapter.

2-4-14 Contested Cases, Rules of Evidence and Cross-Examination

In contested cases:

(a) Agencies, or their authorized agents, may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by Law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(b) All evidence, including but not limited to records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(c) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence.

(d) Agencies, or their authorized agents, may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies, or their authorized agents, may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

2-4-15 Agency Hearings and Contested Cases—Hearings, Oaths, Subpoenas, Evidence Witnesses-Contempt

(a) In order to determine the necessity or desirability of proposing that the Council adopt, amend, repeal, or otherwise revise a rule or proposed rule, agencies may hold public hearings, subpoena witnesses, administer oaths, take the testimony of any person under oath, and in connection therewith, require the production for examination of any books or papers relating to the subject matter of contemplated regulation. This subsection shall not preclude the exercise of subpoena powers for investigative purposes granted agencies by other provisions of Tribal law.

(b) In any contested case, after proper service of notice, agencies, their authorized agents, or the hearing examiner hearing the case may:

(1) Issue a subpoena upon the request of any party upon a statement showing general relevance and reasonable scope of the evidence sought. Provided, however, that such subpoena may be issued with like effect by the attorney of record of the party to the contested case in whose behalf the witness is required to appear, and the form of such subpoena in each case may be the same as when issued by the agency except that it shall only be subscribed by the signature of such attorney;

(2) Issue a subpoena upon their own motion;

(c) Subpoenas may be served outside the Reservation to the maximum extent allowable in conformance with the requirements of the Due Process Clause of the Indian Civil Rights Act, 25 U.S.C. 1301, for purposes of long-arm jurisdiction with respect to any activity or consequence of any activity occurring within the Colville Indian Reservation.

(d) Witnesses in an agency hearing or contested case shall be paid the same fees and allowances, in the same manner and under the same conditions, as provided for witnesses in the Colville Tribal Courts. Provided, that the agency shall have the power to fix the allowance for meals and lodging. Such fees and allowances and the cost of producing records required to be produced by agency subpoena, shall be paid by the agency or, in a contested case, by the party requesting the issuance of the subpoena.

(e) If an individual fails to obey a subpoena or obeys a subpoena but refuses to testify when requested concerning any matter under examination or investigation at the hearing, the agency or attorney issuing the subpoena may petition the Colville Tribal Court for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask that the Tribal Court issue an order of the court to compel the witness to appear and testify before the agency.

(f) Upon its receipt of such petition, the Court shall enter an order directing the witness to appear before the Court at a time and place to be fixed in such order and then and there to show cause why he has not responded to the subpoena or has refused to testify. A copy of the order shall promptly be served upon the witness.

(g) If it appears to the Court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, and in the case of a rule-making hearing that the requested appearance and testimony are reasonably necessary to secure information the expected nature of which would reasonably tend to cause the agency to exercise its rule-making authority, the Court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey said order the witness shall be subject to civil contempt proceedings before the Colville Tribal Court.

2-4-16 Contested Cases—Consideration of the Record and Re-opening

In a contested case, the officials who are to render the decision shall personally consider the whole record or such portions thereof as may be cited by the parties. Subsequent to the close of the contested case hearing and when determined to be in the interest of justice, the decision-making officer may temporarily postpone his decision and elect to re-open the record and request that the parties to the proceeding submit additional legal memoranda and/or present oral argument. After fully considering such additional written or oral presentations, the decision-making officer shall promptly render his decision.

2-4-17 Consultation with Agency Officers Ex Parte Contacts

(a) Except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law, no hearing examiner or agency or member of an agency presiding in a contested case or preparing a decision, or proposal for decision shall consult with any person or party on any issue of fact or law in the proceedings, except that in analyzing and appraising the record for decision any agency member or hearing examiner may:

- (1) Consult with members of the agency making the decision,
- (2) Have the aid and advice of one or more personal assistants,
- (3) Have the assistance of other employees of either the agency or the office of the Reservation Attorney who have not participated in the proceeding in any manner, who are not engaged for the agency in any investigative functions in the same or any current factually related case and who are not engaged for the agency in any prosecutory functions.

2-4-18 Contested Cases—Decisions and Orders—Findings and Conclusions—Requests for Reconsideration

(a) Every decision and order rendered by an agency in a contested case shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of each fact found upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed to each party or if a party is represented by an attorney, to his attorney of record.

(b) Should any party request a rehearing or reconsideration of the agency's order or decision, such request

shall be made within ten (10) days of such order or decision, and the agency shall take action upon such request within thirty (30) days of receipt thereof. Where a request for rehearing or reconsideration has been timely made, the agency order or decision shall not be final either for further administrative or judicial review until the agency acts upon such request.

2-4-19 Administrative Appeals—Finality—Exhaustion of Administrative Remedies

Whenever an administrative order or decision is reviewable by an administrative appellate body, the order or decision so reviewable shall not be considered a final agency order or decision if any party to the order or decision timely petitions for review of that order or decision to such administrative appellate body. Unless as otherwise specified by Tribal law, such petitions for administrative appellate review shall be filed within thirty (30) days of the agency action which is the subject of such appeal. Exhaustion of administrative remedies is a jurisdictional requirement to seeking judicial review thereof.

2-4-20 Judicial Review of Final Agency Action

(a) Any person aggrieved by either a final decision in a contested case, or by the promulgation of a rule under this Chapter, is entitled to judicial review thereof only under the provisions of this Chapter and such person may not use any other procedure to obtain judicial review of such final decision or such final rule, even though another procedure is provided elsewhere by a special law or other provision of Tribal law of general application.

(b) Proceedings for review under this Chapter shall be instituted by filing a petition in the Colville Tribal Court. The petition shall be served and filed within twenty (20) days after either service of the final administrative decision in a contested case, or within twenty (20) days of the effective date of a rule promulgated under this Chapter. Copies of any such petition for review shall be served upon the agency, the appellate administrative agency, if any, the Office of Reservation Attorney and all parties of record by certified mail, return receipt requested. The Court, in its discretion, may permit other interested persons to intervene.

(c) In the case of any request for judicial review of a rule promulgated under this Chapter, only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.

(d) The filing of the petition shall neither stay enforcement of the agency decision nor the rule. Where other tribal laws provide for stay or supersede as of an agency decision, it may be stayed by the agency or the reviewing Court only as provided therein, otherwise, the agency may do so or the reviewing Court may order a stay upon such terms as it deems proper.

(e) Within thirty (30) days after service of the petition, or within such further time as the Court may allow, the agency shall transmit to the reviewing Court the original or a certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the Court for the additional costs. The Court may require or permit subsequent corrections or additions to the record when deemed desirable and in the interests of justice.

(f) The review shall be conducted by the Court without a jury and shall be confined to the record. Any alleged irregularities in procedure before the agency, not shown in the record, shall be submitted to the Court in the form of a motion to the Court, supported by a memorandum of law and affidavits. The Court may, in the case of motions, and shall otherwise, upon request, hear oral argument and receive written briefs. The length of briefs and time for arguments shall be set by the Court.

(g) The Court may affirm the final decision of the agency or uphold promulgation of the rule, it may remand the case for further proceedings; or it may reverse the final decision or the rule, in whole or in part, if the substantial rights of petitioners have been prejudiced because the administrative findings, inferences,

conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the lawful authority or jurisdiction of the agency or otherwise unlawful;
- (3) Clearly erroneous in view of the entire record; or
- (4) Arbitrary or capricious.

2-4-21 Appeal to Colville Tribal Court of Appeals

An aggrieved party may request review of any final judgment or final decision of the Colville Tribal Court under this Chapter by appeal to the Colville Court of Appeals. Such appeal shall be based upon the record and shall be taken in the manner provided by law for appeals from the Colville Tribal Court in other civil cases as provided for by the Subchapter on Appellate Proceedings under Chapter 1-1 of the Colville Tribal Code.

2-4-22 Provisions Applicable to Licenses, Licensing and Emergency Actions

(a) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, an existing full, temporary, or provisional license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing Court.

(b) No revocation, suspension, annulment, modification, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by Certified Mail Return Receipt Requested to the licensee of facts or conduct which warrant the intended action, and the licensee was given reasonable opportunity to show compliance with all lawful requirements for the retention of the license.

(c) Where an agency finds that protection of public health, safety, or welfare requires that immediate emergency action be taken, and incorporates a finding to that effect in it, order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be instituted within five (5) working days of such emergency action and shall be promptly determined.

2-4-23 Severability

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

2-4-24 General Repeal and Saving

All Tribal law or parts of Tribal laws, whether special or comprehensive in nature, which are subject to the Colville Administrative Procedure Act, and which are inconsistent with the provisions of this Chapter, are hereby repealed, but such repeal shall not affect pending proceedings. Provided, that this section shall not apply to Chapters 4-5, 4-6, 4-7, and 4-8 of the Colville Tribal Code.

2-4-25 Effective Date

This Chapter shall take effect thirty (30) days after the date of its enactment by the Council.

2-4-26 Operation of Chapter If in Conflict with Federal Law

If any part of this Chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the Colville Confederated Tribes, such conflicting part of this Chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the

agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this Chapter in its application to the agencies concerned.

2-4-27

Savings—Authority of Agencies to Comply with Act—Effect of Subsequent Legislation

Nothing in the Colville Administrative Procedure Act shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by or otherwise recognized by law. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of the Administrative Procedure Act. No subsequent Tribal laws shall be held to supersede or modify the provisions of the Administrative Procedure Act or its applicability to any agency except to the extent that such Tribal law shall do so expressly.

(Chapter 2-4 Adopted 1/18/85, Resolution 1985-20)