



**HO-CHUNK NATION CODE (HCC)
TITLE 5 – BUSINESS AND FINANCE CODE
SECTION 13 – DEBARMENT PROCESS ACT**

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TABLE OF CONTENTS

1. Authority	1
2. Purpose	2
3. General	2
4. Declaration of Policy	2
5. Responsibilities	2
6. Definitions	3
7. Reporting Policies	4
8. Settlement	4
9. The Occurrence of a Cure	4
10. Unacceptable Actions	4
11. Performance Monitoring	5

1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget.

c. Article V, Section 2(f) of the Constitution grants the Legislature the power to set salaries, terms and conditions of employment for all governmental personnel.

d. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

e. Article V, Section 2(l) of the Constitution grants the Legislature the power to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets.

2. Purpose. To protect its interests, the Nation ensures the integrity of its programs, departments, and enterprises by conducting business and contracting only with responsible persons. The Nation has identified certain actions as unacceptable.

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a. See the Nation's *Appropriations and Budget Process Act* (2 HCC § 4) for policies governing appropriations and budget.

b. See the Nation's *Materials Management Policies and Procedures Manual* (5 HCC § 9) for policies and procedures for the purchasing and management of products/materials and services.

3. **General.** The Ho-Chunk Nation operates a number of programs, departments and enterprises for the protection and well-being of its membership. These activities are funded by federal and state contracts and grants, and also by net profits from enterprises owned by the Nation.

4. **Declaration of Policy.** To protect its interests, the integrity of its programs, departments, and enterprises, the Nation will contract with, conduct business with, or accept services from responsible persons and entities only, while deeming certain actions as unacceptable. The scope of this policy is far-reaching and seeks to cover any outside person, entity, corporation, organization, or business. Common examples of outside businesses or service providers that may be effected by this Act include: construction companies, subcontractors, engineering and architectural firms, food and beverage suppliers, outside legal-counsel, policy analysts and auditing firms, equipment providers, and other suppliers that are used in the ordinary course of the Nation's business.

5. **Responsibilities.** Black Listed. If a supplier, vendor, or contractor, commits any of the unacceptable actions identified in this law, they will be "Black Listed" (unable to sell to, contract with, or provide service(s) to the Nation) pending an investigation (not to exceed thirty (30) days) or a negotiated settlement. Each department head will be responsible for maintaining and keeping a list which identifies any such supplier/vendor/contractor, whose status is in accordance with the definition of "Black Listed" as defined below.

6. **Definitions.** Black Listed Status. If a supplier is "Black Listed" they are either:

a "Cure" means to correct or remedy.

b. "Debarred" means prohibited from contracting with, selling to, entering into business with, or providing a service to the Nation for a definite period of time as a final determination that such a supplier/vendor/contractor is not presently responsible.

c. "Suspended" means temporarily barred from contracting with, selling to, entering into business with, or providing a service to the Nation for a reasonable period of time pending completion of an investigation from the Nation's Compliance Department, or legal proceedings initiated by the Nation's Department of Justice, or when appropriate Legislative Counsel.

7. **Reporting Policies.** Department heads shall request the assistance of the Nation's Compliance Department, the Nation's Treasury Department, and the Nation's Department of Justice in investigating possible cases of suspension, or debarment, by sending each of the three (3) aforementioned departments an initial incident report.

a. Because of their position and working knowledge of the various contractual relationships in their respective departments, Department heads will recommend potential suspension, or debarment of a supplier/vendor/ contractor in the form of an Incident Report, which must readily and specifically state that a supplier, vendor, or contractor has engaged in any unacceptable actions listed in this law.

b. Each department will be responsible for drafting their own Incident Report forms.

(1) Notice of Proposed Debarment or Notice of Suspension. The Department of Justice will be responsible for issuing Notices of Proposed Debarment or Notices of Suspension, which will provide that:

(a) The Nation is considering debarring or suspending the supplier/vendor/contractor;

(b) The reason(s) for the proposed debarment, or suspension, thereby giving constructive and actual notice of the conduct, or transaction(s) upon which the proposed debarment, or suspension is based;

(c) The effect of, or consequences of, a debarment, or suspension from contractual business or service activities with the Nation; and

(d) Any applicable process or opportunity to administratively appeal a suspension or debarment.

(2) Notice of Suspension. In issuing a Notice of Suspension, the Department of Justice is imposing a temporary status of ineligibility to contract with, engage in business, or provide service(s) to the Nation. A suspension may become effective before a final determination if there is adequate evidence that:

(a) There is cause for a debarment; and

(b) Immediate action is necessary to protect the Nation's interests.

(3) Notice of Debarment. A debarment, as opposed to a suspension, is for a definite period of time as a final determination that a supplier, contractor, or vendor is not presently responsible.

(4) Investigation or Negotiated Settlement. If a supplier, contractor, or vendor commits any one (1) or more, of the Unacceptable Actions listed in this Act, they will be subject to debarment (unable to sell to, engage in business with, or provide services to the Nation) pending either an investigation (not to exceed thirty (30) days) or a negotiated settlement.

8. **Settlement.** The Nation may settle a debarment or suspension action at any time **if it is in the best interest of the Nation to do so.** All department heads, including Business, will request Legislative Counsel and the Department of Justice to assist in any settlement or negotiation of a debarment or suspension action.

9. **The Occurrence of a Cure.** If a debarred or suspended supplier/vendor/contractor has “cured” a breach, or has taken substantial steps to correct, right, or remedy an unacceptable action, Legislative Counsel and the Department of Justice will consider the affected department’s recommendation, while relying on a legal analysis in determining whether to proceed with a debarment or suspension action, after the initial receipt of the incident report form.

10. **Unacceptable Actions** include:

- a. Overcharging the Nation and not refunding the difference.
- b. Sending products without orders.
- c. Performing poor quality work and being unwilling to make the necessary corrections.
- d. Providing poor quality products or falsely advertising products and being unwilling to accept the products return or make good on the advertised products.
- e. Violations of contract terms.
- f. Threatening or harassing of staff.
- g. Offering gifts/gratuities, or coupons for gifts/gratuities, of any value.
- h. Offering money, or coupons that can be exchanged for money, of any amount.
- i. Conviction of, or a civil judgement for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain; or performing a public or private agreement or transaction.
- j. Conviction of, or a civil judgement for violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging.
- k. Conviction of, or a civil judgement for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.
- l. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects a vendor/supplier/contractor’s present responsibility.

m. Violation of the terms of a public agreement or transaction so serious as to affect the integrity of a Nation program, business interest, or enterprise, including but not limited to:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions;

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

n. Any other action so serious or compelling in nature that affects a supplier/vendor/contractor's present responsibilities, including a lack of good faith effort on behalf of the supplier/vendor/contractor to complete all and any contractual duties.

Should any supplier/vendor/contractor commit an action in reference to paragraphs 10 (e), (f), (g), (h), (i), or (j) above; and the actions are verified through investigation, the supplier/vendor/contractor will be permanently Black Listed Nation-wide in order to protect other Nation departments and enterprises. Should a Nation department or enterprise in good faith, accidentally, or mistakenly enter into business with, or contract with a Black-Listed supplier/vendor/contractor, such a Nation department or enterprise will not be penalized.

11. Performance Monitoring. Since it is possible for a supplier/vendor/contractor to lose its status, ongoing performance monitoring is essential. Nation Departments will solicit useful and constructive evaluations of supplier performance from all necessary governmental and business departments, including the Nation's Treasury Department, the Department of Justice, and the Nation's Compliance Department. Department heads may request to review other Department's Black List(s) as they are available from the Nation's Treasury Department, the Legislative Office, and/or the Nation's Department of Justice.

a. Particular attention should be paid to all suppliers/vendors/contractors for recent ownership changes, mergers, takeovers, or leveraged buy-outs, changes in operating procedures or management philosophy. For these reasons, the Nation's Treasury Department will scrutinize each tax-identification number submitted by any supplier/vendor/contractor who engages in any business or contractual transaction with the Nation.

b. Performance of all suppliers/contractors/vendors will be reviewed semi-annually by department heads. The results of these evaluations, both positive, negative, and those needing improvement, shall be shared with the Department of Justice, Treasury, and Legislative Counsel.

c. Each Department will be submit their Black-List to the Department of Justice, Treasury, and to Legislative Counsel on an annual basis.

Legislative History:

- 01.19.17 Legislature adopts resolution 01.19.17M placing the proposed Debarment Process Act out for forty-five (45) day public comment.
- 04.04.17 Legislature adopts resolution 04.04.17K adopting the Debarment Process Act (5 HCC § 13).