

Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on December 26, 2002, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: January 10, 2003.

**Michael S. Moore,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 03-3398 Filed 2-10-03; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Jicarilla Apache Liquor Control Ordinance

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Jicarilla Apache Liquor Control Ordinance. It repeals and replaces all previous tribal enactments pertaining to the regulation of liquor on the Jicarilla Apache Reservation. The Ordinance regulates the control, possession and sale of liquor on the Jicarilla Apache Tribe trust lands, to be in conformity with the laws of the State of New Mexico, where applicable and necessary. Although the Ordinance was adopted on September 10, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

**EFFECTIVE DATE:** This Ordinance is effective on February 11, 2003.

**FOR FURTHER INFORMATION CONTACT:** Iris Drew, Office of Tribal Services, Branch of Tribal Relations, 1951 Constitution Avenue, NW, MS 320-SIB, Washington, DC 20245; Telephone (202)513-7628.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 71 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Jicarilla Apache Tribe Liquor Control Ordinance, Resolution No. 2001-O-481-09, was duly adopted by the Jicarilla Apache Tribal Council,

governing body of the Jicarilla Reservation, on September 10, 2001. The Jicarilla Apache Tribe, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Jicarilla Apache Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistance Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 2001-O-481-09, the Jicarilla Apache Liquor Control Ordinance was duly adopted by the Jicarilla Apache Tribal Council, governing body of the Jicarilla Apache Indian Reservation, on September 10, 2001.

Dated: January 31, 2003.

**Aurene M. Martin,**

*Assistant Secretary—Indian Affairs.*

The Jicarilla Apache Liquor Control Ordinance, Resolution No. 2001-O-481-09, reads as follows:

#### Title 18, Chapter 4. Liquor Licensing

##### § 1. Definitions.

As used in this Chapter the following definitions shall apply:

(a) *Commission.* The Jicarilla Apache Alcohol and Gaming Commission.

(b) *Intoxication or Intoxicated.* A state in which a person's mental or physical functions are noticeably impaired as a result of the use of alcohol or drugs.

(c) *Licensed Premises.* The area within a Liquor Establishment in which the Licensee is authorized to sell Liquor.

(d) *Licensee.* Any person who owns a valid, current Tribal Liquor License or his or her valid agent or designee.

(e) *Liquor.* Distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, vodka, aromatic bitters, or any similar alcoholic beverage, including blended and fermented beverages, dilutions or mixtures of one or more of the foregoing, containing more than one-half of one percent alcohol, but excluding medicinal bitters. Liquor also includes beer, or any other alcoholic beverage created by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale, and wine, which means alcoholic beverages obtained by the fermentation of natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent alcohol by volume.

(f) *Liquor Establishment.* A location licensed by the Jicarilla Apache Alcohol

and Gaming Commission to serve or sell liquor, including the grounds and parking lot of such location.

(g) *Liquor Offenses Section.* Title 7, Chapter 2, Section 12 of the Jicarilla Apache Tribal Code.

(h) *Minor.* Any person under the age of twenty-one (21) years.

(i) *Package.* Any unbroken, unopened container or receptacle used for holding liquor.

(j) *Public Place.* Includes streets, plazas, highways, roads, stores, shopping centers and other businesses, government and other public buildings, schools, churches, public meeting halls, buses and bus depots, on the Reservation which are open to and generally used by the public, and the grounds thereof; it also includes parks and playgrounds and other open spaces on the Reservation which are open to and generally used by the public.

(k) *Purchase.* Includes the exchange, barter, traffic, or receipt, with or without consideration, by any means whatsoever, of liquor.

(l) *Sale.* Includes the exchange, barter, traffic, or donation with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor.

(m) *Tribal Entity.* Any entity owned by the Jicarilla Apache Tribe or Nation.

(n) *Tribal Lands.* All land within the exterior boundaries of the Jicarilla Apache Reservation, all lands held in trust by the United States for the Jicarilla Apache Tribe and all lands held by the Jicarilla Apache Tribe or Nation subject to a restriction against alienation imposed by the United States.

(o) *Tribal Liquor License.* A license granted by the Jicarilla Apache Alcohol and Gaming Commission in accordance with the provisions of this Chapter to distribute liquor at a liquor establishment.

(p) *Tribal Subdivision.* Any political subdivision or department of the Jicarilla Apache Tribe or Nation.

##### § 2. Applicability.

This Chapter shall apply to all persons engaging or seeking to engage in the purchase or sale of liquor on tribal lands; provided, however, that nothing in this Chapter shall apply to:

(a) Liquor used for scientific research or for manufacturing products other than liquor;

(b) Liquor used for medical purposes under the direction of a physician or a hospital, or a mental health, health care, or dental clinic;

(c) Liquor contained in preparations not fit for human consumption such as cleaning compounds; and

(d) Liquor for sacramental use under a religion recognized as valid by the

Commission. Denial of recognition of a religion by the Commission shall be subject to immediate review by the Tribal Council.

### § 3. Jicarilla Apache Alcohol and Gaming Commission.

The Commission shall succeed to all the powers any duties of the Jicarilla Apache Gaming Board created by ordinance 94-O-384-3. Two of the members of the Commission shall serve on a part-time basis and one on a full-time basis. Each member shall serve for a term of three years commencing on the date of appointment; provided that the initial Commission appointed after adoption of this ordinance shall consist of a full-time member with a four-year term, one part-time member with a two-year term and one part-time member with a three-year term. The President shall appoint one Commission member to serve as Chairman.

In addition to the restrictions set forth in Title 18, Chapter 5, Section 7(e), no person may serve on the Commission if he or she:

- (1) Has within five (5) years been convicted of a liquor-related misdemeanor; or
- (2) Has any direct financial interest in, or is a manager of, any liquor establishment. A tribal member will not be disqualified from serving on the Commission on the basis of the Tribe's ownership of a liquor establishment.

In addition to the powers and duties under Title 18, Chapter 5, Section 7(f), the Commission shall be empowered to:

- (1) Review applications for a tribal liquor license and either grant a tribal liquor license or deny the application;
- (2) Conduct, or cause to be conducted, a background investigation of any person having or seeking to have an ownership interest in, or who is or is seeking to be a manager of, a liquor establishment;
- (3) Inspect, on its own initiative or in response to an affidavit based on a reasonable, good faith belief that a violation may have occurred, on its own or in collaboration with the tribal police, alleged violations by licensees of this Chapter;
- (4) Conduct, on its own initiative or in response to a complaint, hearings on alleged violations by licensees of this Chapter. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires. The Commission may order any licensee to take any appropriate action it deems necessary to comply with this Chapter;
- (5) Bring, in the name of the Tribe, any civil action in tribal court or in any

court of competent jurisdiction of any state or the United States to enforce the provisions of this Chapter or to enjoin or otherwise prevent any violation of this Chapter. The Commission may also refer suspected criminal violations of this Chapter to the appropriate governmental authority for investigation and prosecution;

(6) Adopt an annual operating budget which shall be subject to the approval of the Tribal Council and, in accordance with this budget, employ a staff as it deems necessary to fulfill its responsibilities under this Chapter. The Commission shall submit an annual report of the revenues it receives to the Tribal Council; such revenues shall be used to fund the operations of the Commission;

(7) Promulgate and adopt regulations, subject to approval by the Tribal Council, to assist in the implementation of this Chapter and to govern the purchase and sale of liquor on tribal lands; and

(8) Require payment of reasonable fees associated with licensing a liquor establishment additional to those set forth in this Chapter.

### § 4. Licensing.

(a) General Qualifications for License; Standards for Evaluating A License Application.

(1) *Applicants.* If the applicant for a tribal liquor license is an individual person, the person must be an enrolled member of the Jicarilla Apache Tribe who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. If the applicant is a corporation, partnership, or other business entity, majority ownership and control of the entity must be held by the Jicarilla Apache Tribe, tribal entities, tribal subdivisions and enrolled members of the Tribe; and the manager of the proposed licensed premises must be a person who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, and who is at least twenty-one (21) years of age. For purposes of this section, majority ownership and control means the right to 51 percent or more of the profits and losses of the entity and the power to direct the management, policy and operations of the entity. No person may own or control ten percent (10%) or more of an entity holding a Tribal Liquor License if that person has been convicted of a liquor-related misdemeanor within the last five (5) years or a felony, or is less than twenty-one (21) years of age.

(2) *Evaluation of Application.* The Commission shall issue a Tribal liquor license only if the qualifications set forth in this Chapter are satisfied and, in addition, if the Commission concludes within its discretion that issuing the license will serve the best interests of the Reservation community and the regulatory goals of this Chapter. The Commission shall not issue a tribal liquor license if the Commission determines that:

(A) The proposed activity is likely to undermine economic development on the Reservation;

(B) The proposed activity is likely to impose undue burdens on public safety;

(C) The applicant has failed to demonstrate financial capability to meet all obligations of this Chapter, or

(D) The applicant has failed to identify adequate procedures to prevent violations of this Chapter on the proposed licensed premises.

(3) *Factors to be Considered by Commission.* In deciding whether a proposed license will serve the best interests of the Reservation community, the Commission may consider the following factors, among others:

(A) Whether the application is for the operation of a new or an existing Liquor Establishment;

(B) Whether the applicant is in compliance with applicable tribal and federal law;

(C) Whether the applicant has violated any provision of this Chapter, and if so, whether the violation has been remedied;

(D) The location, number and density of liquor establishments on the Reservation;

(E) Whether food is sold at the establishment; and

(F) The health and welfare of the public.

(4) *Public Comments.* Before the issuance of any Tribal liquor license, the Commission shall allow comments from the public at a time and place advertised in a local newspaper of general circulation.

(5) *Location of Licensed Premises.* The Commission shall not grant a Tribal liquor license to any proposed liquor establishment which is located within 400 feet of the property boundary of a church or school. The Commission may designate other areas that are similarly to be protected.

(b) *Specific License Application Requirements.*

In order to apply for a Tribal liquor license, an applicant must:

- (1) Submit to the Commission a written application for the license under oath, on a form prescribed by and stating the information required by the

Commission, together with a nonrefundable application fee of five hundred dollars (\$500);

(2) Submit to the Commission for its approval floor plans which show the proposed licensed premises for which the license application is submitted;

(3) Submit to the Commission an area map designating the location of the proposed licensed premises; and

(4) Submit such additional information as the Commission may require.

(c) *Fingerprints.*

If required by the Commission, a non-tribal applicant for a Tribal liquor license, if an individual, shall file with the application two complete sets of the applicant's fingerprints taken under the supervision of and certified to by an officer of the tribal police or a state, county or municipal police department. If the applicant is a corporation, it shall, upon request by the Commission, file two complete sets of fingerprints of each principal officer, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited partnership, it shall, upon request by the Commission, submit two complete sets of fingerprints of each general partner, and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited liability company or other business entity, it shall, upon request by the Commission, submit fingerprints as required by the Commission. The Commission may issue a temporary license pending resolution of the background clearances, subject to revocation by the Commission at any time, with or without cause.

(d) *Classes of License; Special Restrictions on License.*

The Commission is authorized to establish by regulation various classes of tribal liquor licenses and to specify the activities authorized by each class, including but not limited to licenses for restaurants, bars, package sales, home brewing, and special events. When the Commission grants a tribal liquor license, it may grant such license with any special restrictions, such as restrictions on type of liquor served or hours of operation, as it deems appropriate. The Commission shall explain in writing the reasons for imposing any special restrictions on a license. A licensee may appeal the imposition of any special restrictions to the Tribal Council as provided in Section 10 of this Chapter.

(e) *Commission Action on Application.*

After reviewing the complete application, the Commission shall send

the applicant a proposed decision on the application. The applicant shall have twenty (20) working days to respond in writing to the proposed decision, and may request a hearing before the Commission. The Commission may conduct a hearing on any application on its own initiative, with notice to the applicant. Following any hearing on the application and the expiration of the time allowed for a written response to the proposed decision, the Commission shall issue a final written decision. The written decision shall include findings of fact and an explanation of the grounds for the decision.

(f) *Annual Renewal of License.*

Each person or entity holding a tribal liquor license shall apply to renew that license annually on a form provided by the Commission with a nonrefundable renewal fee in an amount set by regulation of the Commission. The Commission may decline to renew a tribal liquor license only for good cause, such as repeated and intentional violation of any of the provisions of this Chapter, or failure to submit in a timely manner the renewal application and the renewal fee. The Commission may renew a tribal liquor license with special restrictions in addition to any imposed on the expired license. Denial of an application to renew a tribal liquor license or the imposition of special restrictions shall be appealable under Section 10 of this Chapter.

(g) *Amendments of Applicable Law.*

All tribal liquor licenses are subject to any amendment of the tribal code or regulations of the Commission which may be adopted or made effective after the license is approved.

**§ 5. Transfer or Lease of Tribal Liquor License.**

No tribal liquor license shall be transferred or leased other than with approval of the Commission through the procedure set forth in Section 4 of this Chapter.

**§ 6. Reporting.**

Every licensee shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand and such other information as the Commission may reasonably require, including but not limited to, copies of audits, tax returns, and any forms that the Commission may require to be filled out. The Commission may require a licensee to provide it with periodic reports, and it may require the production of any book, record, document, invoice, or voucher kept, maintained, received, or issued by any such licensee in connection with his or

her business. If a licensee fails or refuses to furnish within a reasonable period of time any reports or information requested by the Commission, the Commission or its designee may enter the premises of such licensee where the records are kept and make such examination as it deems necessary.

A licensee who is convicted of a violation of the Liquor Offenses Section shall, within two (2) working days of such conviction, report the conviction to the Commission. In addition to any other civil assessment imposed under tribal law, there shall be an assessment of \$100 for each day a licensee is late in reporting this information to the Commission.

**§ 7. Violation of Liquor Offenses Section.**

Any violation of the Liquor Offenses Section by a licensee is a violation of this Chapter.

**§ 8. Restrictions on Liquor Sales.**

(a) *Sales Only by Holders of Tribal Liquor License and Only at Licensed Premises; Exception.*

No sale of liquor shall be made within tribal lands except by persons holding a tribal liquor license and except at licensed premises; provided, however, that nothing in this Chapter shall prohibit social gifts of liquor to someone who would not otherwise be prevented from obtaining liquor under this Chapter or other applicable law. The Commission may issue a special use permit to enrolled tribal members authorizing specific sales of liquor for specific time periods not to exceed one (1) week, on terms to be established by its regulations.

(b) *Hours and Days of Business; Election Days.*

(1) Liquor may be sold, served, or consumed on any licensed premises only during hours authorized by the Commission. The Commission shall set hours of operation for each liquor establishment individually, subject to appeal under Section 10 of this Chapter to the Tribal Council.

(2) Alcoholic beverages shall not be sold, served, or consumed on licensed premises during voting hours on the days of any tribal, state, or federal election.

(3) The Tribal Council may prohibit the purchase, sale, or consumption of liquor during days and hours in addition to those set forth in this Section.

(4) Nothing in this Section 8(b) shall prohibit, or authorize the prohibition of, the consumption at any time of liquor in guest rooms of hotels or by people in

their own homes, or by people who are guests in the home of another.

(c) *Sales to be Made by Adults.*

All sales of liquor pursuant to this Chapter shall be made by persons twenty-one (21) years of age or older.

(d) *Evidence of Age and Identity.*

Evidence of age and identity of a purchaser of liquor must be shown by a current and valid driver's license or a United States passport, which contains the signature, birth date, and picture of the holder of the license or passport, or any other form of identification acceptable to the Commission.

(e) *Demand for Identification.*

Liquor establishments shall have the authority to demand of any person the production of proper evidence of age and identity before making a sale of liquor to such person.

(f) *Right/Duty to Refuse Sale.*

A liquor establishment shall have the authority and duty to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by this Section, any person who the seller believes is already under the influence of liquor, or to anyone else if the seller reasonably believes that the transaction would lead to a violation of this Chapter. The operator of a liquor establishment shall have the authority to require that a person who the operator reasonably believes is already under the influence of liquor vacate the licensed premises.

(g) *Wholesale Liquor Distributors.*

A person holding a valid tribal liquor license may purchase liquor from any wholesale liquor distributor validly licensed in the jurisdiction of its principal place of business. Wholesale liquor distributors are expressly prohibited from selling liquor within tribal lands or for distribution within tribal lands to anyone not holding a tribal liquor license, subject to the exception set forth in Section 8(a) of this Chapter.

(h) *Sales Only to Be Made by Certified Servers; Alcohol Server Training Required for License Renewal.*

All sales of liquor authorized by this Chapter shall be made by persons who have successfully completed a liquor server training program approved by the Commission and are certified as having completed the course by the Commission or the entity that provides the training program. Any licensee seeking renewal of a license shall submit to the Commission, as a condition of license renewal, proof that each server employed by the licensee during the prior licensing year has completed an alcohol server program approved by the Commission.

(i) *Happy Hours.*

The Commission may adopt a policy on happy hours and on pricing schemes where liquor is sold on certain occasions or at certain times for a price that is substantially lower than the price it is sold for at other times. The Commission may at any time request from a liquor establishment a written description of its policies on such happy hours and pricing schemes and either approve or disapprove such policies. Disapproval of such a policy shall be appealable to the Tribal Council under the procedure set forth in Section 10 of this Chapter.

**§ 9. Suspension or Revocation of Liquor License; Special Restrictions; Monetary Sanctions.**

The Commission is authorized to revoke or suspend a tribal liquor license or to impose special restrictions on a license for a violation or violations of any provision of this Chapter, after the licensee is given at least seven (7) calendar days notice of the proposed action and the opportunity to appear and to be heard before the Commission, either in person or through a representative, and to submit such evidence as the Commission deems relevant to the matter at issue. Such suspensions, revocations, and imposition of special restrictions are appealable to the Tribal Council under Section 10 of this Chapter. In addition to any civil assessment provided by tribal law, the Commission may initiate an action in Tribal Court for the imposition of monetary sanctions against a Licensee for a violation of this Chapter, to compensate the Tribe for economic losses it suffers, directly or indirectly, as a result of the violation.

**§ 10. Appeal to Tribal Council.**

(a) *Appealable Actions.* Any person or entity who is denied a tribal liquor license, or whose tribal liquor license is suspended or revoked, or whose tribal liquor license has been limited by special restrictions may appeal the adverse action to the Tribal Council within thirty (30) days of final action by the Commission.

(b) *Record on Appeal.* The record on appeal shall consist of the final written decision of the Commission, all evidence presented to or relied on by the Commission, a taped or transcribed record of any hearing, and any other records of the Commission or any other information requested by the Tribal Council.

(c) *Stay Pending Appeal.* Suspension or revocation of a tribal liquor license may be stayed pending an appeal under this Section, at the discretion of the Tribal Council. The Tribal Council may

request that the appellant post an appeal bond in an amount set by the Council.

(d) *Decision of Council Final.* All decisions of the Tribal Council on appeals under this section shall be final.

**§ 11. Private Right of Action.**

Subject to the limitations of Section 12 of this Chapter, any person who suffers personal injury or property damage as a result of a violation of Section 7 or Section 8 of this Chapter shall have a right of action for money damages against the person or entity whose violation of Section 7 or Section 8 of this Chapter caused or contributed to his or her injury.

**§ 12. No Waiver of Sovereign Immunity.**

Nothing in this Chapter is intended to be or shall be construed as authorizing any waiver of the sovereign immunity of the Jicarilla Apache Tribe or any of its subdivisions or of any business entity owned in whole or in part by the Tribe.

**§ 13. Severability.**

If any provision of this Ordinance is found to be invalid or unenforceable, all remaining provisions shall be given full force and effect the fullest extent practicable.

[FR Doc. 03-3385 Filed 2-10-03; 8:45 am]

BILLING CODE 4310-4J-P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Seneca Nation of Indians Liquor Ordinance**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Seneca Nation of Indians Liquor Ordinance governing the possession, consumption and sale of liquor on Seneca Nation Territory (Allegany Territory, except for excluded portions of the City of Salamanca, and Cattaraugus and Oil Springs Reservations) as well as the Seneca Nation Alcoholic Beverages Control Act, section 12 of the Ordinance, governing the possession, consumption and sale of liquor on restricted fee land acquired pursuant to the Seneca Nation Land Claims Settlement Act of 1990, 25 U.S.C. 1774f(c), in conformity with the laws of the State of New York, where applicable and necessary. Although the Ordinance, including section 12, was adopted on November 16, 2002, it does not become effective until published in the **Federal Register**, because the failure