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CHAPTER ONE

PARTIES TO CRIMES

5-1-1 PERSONS CAPABLE OF COMMITTING CRIMES--All persons are capable of committing crimes except the following:

- (1) Children under the age of 10 years;
- (2) Children of the age of 10 years or more but under the age of 14 years in the absence of proof that at the time of the committing of the act charged against them they knew its wrongfulness;
- (3) Persons who committed the act charged while under the involuntary subjection to the power of superiors;
- (4) Persons who, at the time of committing the act charged against them, were mentally ill.

5-1-2 AIDING, ABETTING, ADVISING, OR ASSISTING CRIMINAL CONDUCT-CHARGED AND PUNISHED AS PRINCIPAL--Any person, who, with the intent to promote or facilitate the commission of a crime, aids, abets, advises, or assists another person in the planning or commission of a crime, is chargeable and punishable as a principal to the crime committed.

5-1-3 ACCESSORIES TO CRIME--A person is an accessory to a Class A crime, if, with the intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a Class A crime, he renders assistance to the other person. There are no accessories to Class B crimes or Class C crimes.

The term "render assistance" means to:

- (1) Harbor or conceal the other person;
- (2) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension, including information as to the impending discovery or apprehension of the other person;
- (3) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or;
- (4) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class A crime.

CHAPTER TWO

CATEGORIES OF CRIMES

5-2-1 CLASS C CRIMES--A Class C crime carries a maximum penalty of a fine not to exceed One Hundred Dollars (\$100.00) and court costs.

5-2-2 CLASS B CRIMES--A Class B crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (\$500.00) and court costs.

5-2-3 CLASS A CRIMES--A Class A crime carries a maximum penalty of a fine not to exceed Five Hundred Dollars (\$500.00) and court costs or a jail term of not to exceed six (6) months or both the fine and the jail term.

5-2-4 SERVING JAIL TIME IN LIEU OF PAYMENT OF FINE--In the event that a fine is imposed by the court and the defendant is unable or unwilling to pay the fine, the court may order the same to be served out in jail at the rate of Twenty Dollars (\$20.00) per day. In addition, if the defendant is willing to work during the period of incarceration either while serving out a fine or serving out a jail sentence, the court may in its discretion grant additional credit against the jail term or fine for the work performed by the defendant during the period of incarceration.

CHAPTER THREE

ATTEMPTS TO COMMIT CRIME

5-3-1 ATTEMPT DEFINED--PUNISHMENT--Any person who attempts to commit a crime and in the attempt does any act toward the commission of the crime, but fails or is prevented or is intercepted in the perpetration thereof, is punishable as follows:

- (1) If the attempted crime is punishable as a Class A crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment, or both, as prescribed upon a conviction for a Class A crime; or
- (2) If the attempted crime is punishable as a Class B crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty, either fine or imprisonment or both, as is prescribed for a Class B crime; or,
- (3) If the attempted crime is punishable as a Class C crime, the person guilty of such attempt is punishable by up to one-half of the maximum penalty prescribed for commission of a Class C crime.

5-3-2 DEFENSES NOT AVAILABLE FOR CHARGE OF ATTEMPT--It is no defense to a charge of attempt that;

- (a) The offense attempted was actually committed;

or

- (b) That in attempting unsuccessfully to commit a crime, the person accused actually accomplished the commission of another and different crime; or
- (c) The actor was legally or factually incapable of completing the crime if the crime could have been committed had the circumstances been as the actor believed them to be.

CHAPTER FOUR

GENERAL DEFENSES

5-4-1 CONDUCT FORCED OR UNDER THREAT OF FORCE--A person may not be convicted of a crime where he engaged in conduct which would otherwise be criminal because of the use or threatened use of unlawful force upon him or upon another person, which force or threatened use thereof a reasonable person in his situation would have been unable to resist.

5-4-2 VOLUNTARY INTOXICATION--No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition.

CHAPTER FIVE

ASSAULT AND RELATED CRIMES

5-5-1. SIMPLE ASSAULT--A person is guilty of simple assault if he:

- (1) Attempts to cause or knowingly causes bodily injury to another; or
- (2) Negligently causes bodily injury to another with a dangerous weapon; or
- (3) Attempts by physical menace to put another in fear of imminent serious bodily harm, whether or not such harm actually occurs.

Simple assault is a Class B crime.

5-5-2 AGGRAVATED ASSAULT--A person is guilty of aggravated assault if he:

- (1) Attempts to cause serious bodily injury to another, or causes such injury knowingly, under circumstances manifesting extreme indifference to the value of human life; or
- (2) Attempts to cause, or knowingly cause, bodily injury to another with a dangerous weapon; or
- (3) Attempts to cause, or knowingly causes, any bodily injury to a law enforcement officer or judge or magistrate of the Rosebud Sioux Tribal Court; or other public officer of the Rosebud Sioux Tribe, Bureau of Indian Affairs, or Public Health Service while such public officer is engaged in the performance of his duties; or
- (4) Assaults another with the intent to commit serious bodily injury which results in serious bodily injury.

Aggravated Assault is a Class A crime.

5-5-3 REASONABLE FORCE DURING ARREST IS NOT ASSAULT--To use or attempt or offer to use reasonable force upon the person of another is not assault when committed by any law enforcement officer in the course of arresting one who has committed a crime and delivering him into custody.

5-5-4 REASONABLE ATTEMPT TO PREVENT CRIME AGAINST PERSONAL PROPERTY NOT ASSAULT--To use or attempt or offer to use force or violence toward the person of another is not assault when committed by the person about to be injured, or by another person in his aid or defense, in preventing or attempting to prevent a crime against his person or a trespass or other unlawful interference with real or personal property in his unlawful possession, provided that the force or violence used is not more than is reasonably necessary to prevent the crime.

5-5-5 REASONABLE FORCE USED BY A PARENT, GUARDIAN, OR TEACHER NOT ASSAULT--To use or attempt or offer to use force or violence toward the person of another is not assault when committed by a parent or the authorized agent of any parent or by any guardian, teacher, or other

school official in the exercise of a lawful authority to restrain or correct his child or ward provided restraint or correction has been rendered necessary by the misconduct of such child or ward or by his refusal to obey the lawful command of such parent or authorized agent, guardian, teacher or other school official and the force or violence used is reasonable in manner and moderate in degree.

CHAPTER SIX

KIDNAPPING AND RELATED OFFENSES

5-6-1 KIDNAPPING--Any person who shall seize, confine, decoy, abduct, or carry away any person and hold or detain such person, except in case of an unmarried minor by parent thereof, for any of the following reasons is guilty of kidnapping:

- (1) To hold for ransom or reward, or as a shield or hostage; or
- (2) To facilitate commission or any crime or flight thereafter; or
- (3) To inflict bodily injury upon or to terrorize the victim or another person; or
- (4) To interfere with the performance of any Tribal, other governmental, or political function.

Kidnapping is a Class A crime.

5-6-2 POSSESSION OF RANSOM OR REWARD ILLEGAL--Any person who receives, possesses, or disposes of any money or any portion of any property, which has at any time been delivered as a ransom or reward in connection with the violation of any statute against kidnapping, knowing the same to be money or property which has been at any time delivered as such ransom or reward, is guilty of a Class A crime.

5-6-3 CUSTODIAL INTERFERENCE--Any person, whether or not he is the parent of the child involved, is guilty of custodial interference if:

- (1) He, knowing that he has no legal right of custody or visitation with said child at that time and place, takes, entices, conceals, or detains a child under the age of 14 years from any person having lawful custody of said child;
or
- (2) Having actual physical custody of child under the age of 14 years pursuant to a judicial decree of a Court of competent jurisdiction which has granted to another person visitation or custody rights, and without legal cause, he detains or conceals said child with the intent to deprive said other person of lawful visitation or custody rights; or
- (3) Without legal cause he takes, entices, or detains an incompetent or other person who has been committed by legal authority to the custody of a third person or institution from said third person or institution, knowing he has no legal right to do so.

Custodial interference is a Class B crime.

CHAPTER SEVEN

SEX OFFENSES

5-7-1 RAPE--Rape is an act of sexual penetration accomplished with any person other than the actor's spouse under any or more of the following circumstances:

- (1) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
- (2) Where the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (3) Where the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent, or because of hypnosis, administered by or with privity of the accused; or
- (4) Where the victim is less than 15 years of age.

Rape is a Class A crime.

5-7-2 SEXUAL PENETRATION DEFINED--Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal opening of another person's body. Practitioners of the healing arts lawfully practicing within the scope of their practice are excepted from the provisions of this section.

5-7-3 SEXUAL CONTACT DEFINED--As used in this chapter, the term "sexual contact", means any touching, not amounting to rape, of the breast of the female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

5-7-4 SEXUAL CONTACT WITH A MINOR--Any person, aged 15 years or more, who knowingly engages in sexual contact with any minor person under the age 15 years, other than his spouse, is guilty of sexual contact with a minor. Sexual contact with a minor is a Class B crime if the act is less than three years older than the minor. If the actor is three years or more older than the minor, then sexual contact with a minor is a Class A crime.

5-7-5 INDECENT EXPOSURE--A person is guilty of indecent exposure if, for the purpose of arousing or gratifying the sexual desires of any person, he exposes his genitals in such a fashion that they might be reasonably seen by the public.

Indecent exposure is a Class C offense.

5-7-6 INCEST--A person is guilty of incest if he knowingly cohabits or has sexual penetration or sexual contact with any person he knows to be an ancestor or descendent, brother, sister, aunt, uncle, nephew, niece or first cousin, any of which are either whole or half blood, and without regard to legitimacy or adoption, or with a step-parent or step-child, while such relationship exists.

Incest is a Class A crime.

5-7-7 KNOWLEGE OF AGE OF VICTIM IRRELEVANT-Whenever an element of any crime in this chapter depends upon the age of the victim being less than 15 years, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than age 15.

CHAPTER EIGHT

CRIMES AGAINST THE FAMILY

5-8-1 BIGAMY--Any person who, while being married to another presently living person, marries any third person, is guilty of bigamy.

It is an affirmative defense to a charge of bigamy that:

- (1) The actor's spouse in the former marriage has been absent from the Rosebud Sioux Reservation for over five successive years without being known to be living by the actor; or
- (2) The actor's spouse in the former marriage has absented himself or herself from the actor by being outside the United States continuously for over five years; or
- (3) The actor's previous marriage has been pronounced void, annulled, or dissolved by a Court of competent jurisdiction.

Bigamy is a Class B crime.

5-8-2 CRIMINAL NON-SUPPORT--Any person who intentionally fails or refuses without lawful excuse to furnish necessary food, clothing, shelter, medical attention, or other remedial care or means of support for his spouse or minor child under the age of 18, is guilty of criminal non-support.

As used in this section, the word "child" includes any child born out of wedlock whose paternity has been admitted by the actor or has been otherwise acknowledged or established in a civil proceeding.

It is no defense in a prosecution under this section that the spouse or minor child to be supported received necessary support from any source other than the Defendant.

A parent who chooses medical treatment for his minor child by spiritual means alone in lieu of traditional medical attention is not for that reason alone in violation of this section.

In any prosecution under this section against a parent who is not the lawfully appointed custodian of the minor child to be supported, it is an affirmative defense that at the time of trial, the Defendant is current with any and all child support payment obligations imposed upon him by any Court of competent jurisdiction.

Criminal non-support is a Class B crime.

5-8-3 FAILURE TO SEND CHILDREN TO SCHOOL--Any person who being the parent, guardian, or other person having a child under the age of 18 years in his care, custody or control, shall without good cause, neglect or refuse to send such child to school is guilty of failure to send children to school.

Failure to send children to school is a Class C crime.

5-8-4 CHILD NEGLECT

Any person who shall, without proper cause, fail to take proper care of or neglect any minor child dependent upon him, including any dependent child born out of wedlock, and he being able to provide proper care, shall be deemed guilty of a Class A offense.

5-8-5 CHILD ABUSE

(1) Any person who shall willfully abuse any minor child, shall be deemed guilty of a Class A offense.

(2) Any person who shall willfully abuse any unborn child by excessive consumption of alcohol or other controlled substance, said person being the mother of the unborn child, shall be deemed guilty of a Class A offense.

5-8-6 REPORTS OF CHILD ABUSE REQUIRED--Any physician, dentist, chiropractor, doctor of osteopath, optometrist, psychologist, social worker, law enforcement officer, teacher, school employee or official, nurse, employee of the Public Health Service, licensed or registered child welfare provider, or other person having reasonable cause to suspect that a child under the age of 18 years examined by such person either for care or treatment, or having observed said child in the course of ordinary and usual contact with said child, has been abused or neglected, or has been injured by other than accidental means by any person including a parent or other person responsible for such child's care, shall report or cause reports to be made orally and immediately by telephone or otherwise to the Tribal Prosecutor of the Rosebud Sioux Tribe or to the South Dakota or BIA Department of Social Services, or to the Tribal or BIA Police or to the State's Attorney or County Sheriff of the county in which the child resides, if the child resides outside the Rosebud Sioux Reservation. Such person shall additionally file written reports under oath if requested to do so by the agency to which the suspected abuse has been reported. Failure to comply with this section constitutes the offense of failing to report suspected child abuse.

Failing to report suspected child abuse is a Class B crime.

5-8-7 IMMUNITY FROM LIABILITY FROM REPORTING SUSPECTED CHILD ABUSE--Any person who in good faith makes a report of suspected child abuse pursuant to Section 5-8-6 above shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed,, and shall have the immunity with respect to participation in any judicial proceeding resulting from such report.

5-8-8 PRIVILEGED COMMUNICATIONS NOT AVAILABLE IN DEFENSE OF CHILD ABUSE OR NEGLECT PROCEEDING--The following evidentiary privileges are not available and may not be claimed in any judicial proceeding involving child abuse or neglect or resulting from the giving of any report concerning a child's injury or neglect or the cause thereof pursuant to section 5-8-7 above, namely;

- (1) Physician-patient privilege,
- (2) Communications between husbands and wives, or
- (3) Communications between teachers and students.

5-8-9 COMPELLING ANOTHER TO MARRY--Any person who by force, menace, or duress compels another to marry, is guilty of a Class B crime.

CHAPTER NINE

PROSTITUTION AND RELATED OFFENSES

5-9-1 PROSTITUTION--Any person who:

- (1) Is an inmate or resident of a house of prostitution or otherwise engages in sexual penetration for a fee; or
- (2) Loiters in or within view of a public place for the purpose of being hired to engage in sexual penetration;
- (3) Engages in or offers or agrees to engage in any sexual penetration with another person for a fee; is guilty of prostitution.

Prostitution is a Class B crime.

5-9-2 PIMPING--Any person who:

- (1) Solicits another person to patronize a prostitute; or
- (2) Procures or attempts to procure a prostitute for another; or
- (3) Transports a person into the Rosebud Reservation to promote that person's engaging in prostitution or procures or pays for said transportation; or
- (4) Owns, controls, manages, supervises, or otherwise keeps alone or in association with another, a house of prostitution or a prostitution business, or leases or otherwise permits a place under his control to be used for prostitution or the promotion of prostitution by others; or
- (5) Solicits, receives, or agrees to receive any benefit for doing or agreeing to do anything forbidden by this section; is guilty of pimping.

Pimping is a Class A crime.

5-9-3 PROCURING, PROMOTING, OR PATRONIZING PROSTITUTION-- Any person who:

- (1) Encourages, induces, procures or otherwise purposely causes another to become or remain a prostitute; or
- (2) Promotes prostitution of a minor; or
- (3) Promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible; or
- (4) Pays or offers to pay another person a fee for the purpose of engaging in sexual penetration; or

(5) Enters or remains in a house of prostitution for the purpose of engaging in sexual penetration;

is guilty of a Class A crime.

5-9-4 DEFINITIONS--The term sexual penetration shall have the same meaning as is used in section 5-7-2 of this Code.

A house of prostitution is any place where sexual penetration or promotion of sexual penetration is regularly carried on by one or more persons for a fee, under the control, management, or supervision of another.

On the issue of whether a place is house of prostitution, the following shall be admissible into evidence, namely its general reputation, the reputation of the persons who reside in or frequent the place, and the frequency, timing or duration of visits by non-residents.

5-9-5 HUSBAND-WIFE PRIVILEGE NOT AVAILABLE--The husband and wife evidenciary privilege may not claim by any person who is a witness during the prosecution under this chapter.

5-9-6 GIVING VENERAL DISEASE TO ANOTHER--Any person who, knowing or having reason to believe he is infected with a venereal disease, shall infect another with said venereal disease is guilty of spreading venereal disease.

Spreading venereal disease to another is a Class C crime.

The Rosebud Sioux Tribal Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted person and may also order and compel the convicted person to disclose confidentially to the appropriate medical authorities the identities of other persons who may have been exposed by the convicted person.

CHAPTER TEN

HOMOCIDE

5-10-1 MURDER-BY PREMEDITATED DESIGN--Any person who kills another human being without the authority of law and with a premeditated design to affect the death of the person killed or of any other human being, is guilty of murder.

Murder by premeditated design is a Class A crime.

5-10-2 FELONY MURDER--Any person who kills another human being while engaged in the perpetration of, or attempt to perpetrate, any arson, rape, robbery, burglary, kidnapping, or theft, is guilty of felony murder.

Felony murder is a Class A crime.

5-10-3 MANSLAUGHTER--Any person who, without a design to affect death:

(1) Kills another human being while engaged in the commission of any crime other than those mentioned in section 5-10-2 above; or

(2) Kills another human being in a heat of passion; or

(3) Kills another human being by means of a dangerous weapon; or

(4) Kills another human being by any act imminently dangerous to others and evincing a disregard of human life; or

(5) Kills another human being by the use of excessive force or more force than was reasonably necessary, either while resisting an attempt by the deceased to commit a crime, or after such attempt shall have failed;

is guilty of manslaughter.

Manslaughter is a Class A crime.

5-10-4 VEHICLE HOMOCIDE--Any person who, while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any other drug or substances, causes the death of another human being by the operation of a motor vehicle in a reckless, negligent, or careless manner, is guilty of vehicle homicide.

For the purpose of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile.

Vehicle homicide is a Class A crime.

5-10-6 JUSTIFIABLE HOMICIDE--Homocide is justifiable when committed by law enforcement officers and by those persons acting by their command and in their aid and assistance, when necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any legal duty, or when necessarily committed in retaking felons who have escaped, or when necessarily committed in arresting felons fleeing from arrest.

5-10-7 REFERRAL TO JUSTICE DEPARTMENT--No prosecution can be made under this Homocide Chapter unless the case has been submitted to the United States Attorney or other appropriate federal official and the case has been declined for prosecution.

CHAPTER ELEVEN

CRIMES RELATED TO WEAPONS

5-11-1 DEFINITIONS--The word "firearm" means any weapon from which a projectile or projectiles may be discharged by gunpowder.

The word "gunpowder" includes any propellant that upon oxidation emits heat and light and is commonly used in firearm cartridges.

The word "dangerous weapon" means any firearm, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm.

The word "antique firearm" means any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before the year 1898 or any replica of such firearm, if such replica has not been designed or redesigned for using rim fire or conventional centerfire fixed ammunition, or uses rim fire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade, or any other firearm which has been permanently altered so that it is incapable of being discharged.

5-11-2 CONTROLLED WEAPON--Any person who knowingly possesses a controlled weapon is guilty of a Class A crime.

As used in this Section, the word "controlled weapon" includes a firearm silencer, machine gun, short shotgun, or short rifle.

The word "firearm silencer" means any instrument, attachment, weapon, or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon.

The word "machine gun" means any firearm that automatically discharges two or more cartridges by a single function of the firing device, or is capable of being modified to function as a machine gun.

The word "short shotgun" means a shotgun having a barrel less than 18 inches long or an overall length of less than 26 inches.

The word "short rifle" means a rifle having a barrel less than 16 inches long or an overall length of less than 26 inches.

5-11-3 EXCEPTIONS TO CONTROLLED WEAPONS STATUTE--The following persons may lawfully possess a controlled weapon within the Rosebud Reservation, namely:

(1) A person who holds a valid federal license issued pursuant to law for such weapon or has registered such weapon with the proper federal authorities pursuant to law; or

(2) A person who is a law enforcement officer or member of the Armed Forces of the United States acting in the lawful discharge of his duties; or

(3) A person who possesses a controlled weapon briefly after having found it or taken it from an aggressor and is in the process of delivering it to law enforcement officers.

5-11-4 DISCHARGE OF A WEAPON IN A PUBLIC PLACE--Any person who wilfully discharges any firearm, air gun, bow and arrow, or other weapon, in any public place, or in any place where there is any person likely to be endangered thereby, although no injury to any person results, is guilty of discharge of a weapon in a public place.

Discharge of a weapon in public place is a Class A crime.

5-11-5 CARRYING A CONCEALED WEAPON--Any person, other than a law enforcement officer engaged in the discharge of his duties, who carries, loaded or unloaded, concealed about his person, any firearm or other dangerous weapon without an appropriate Tribal license, shall be guilty of the crime of carrying a concealed weapon.

Carrying a concealed weapon is a Class B crime.

5-11-6 POSSESSION OF FIREARM BY FELON--Any person who has been convicted in the Courts of the United States or any state thereof of a felony or has been convicted in the Courts of the Rosebud Sioux Tribe of any Class A crime who has in his possession or under his control a firearm, is guilty of a Class A crime.

This Section shall not apply to any person who has been discharged from prison, jail, probation, or parole for his most recent felony or Class A crime more than 5 years prior to the commission of said crime.

5-11-7 POSSESSION OF FIREARM OR DANGEROUS WEAPON WHILE INTOXICATED--Any person who, being under the influence of an alcoholic beverage or controlled substance or drug or medication or any other substance whatever, who has in his possession or under his custody or control any firearm or other dangerous weapon is guilty of possession of a firearm while intoxicated.

Possession of a firearm while intoxicated is a Class C crime if the firearm was unloaded. Possession of a firearm while intoxicated is a Class B crime if the firearm was loaded. Possession of any other dangerous weapon while intoxicated is a Class B crime.

5-11-8 POSSESSION OF FIREARM BY A MINOR--No person under the age of 16 years may possess or own a firearm without the consent of his parent or guardian and the appropriate license issued by the Rosebud Sioux Tribe.

A violation of this section is a Class B crime.

5-11-9 ANTIQUE FIREARMS EXEMPT--The restrictions of this chapter shall not apply to antique firearms.

5-11-10 FIREARMS PERMITS--The Treasurer of the Tribe with the approval of the director of the Department of Natural Resources of the Rosebud Sioux Tribe and the head of the Tribal police may issue permits to persons under the age of 16 but of the age of at least 12 years to carry firearms for hunting purposes only. The fee for the issuance of said permit shall be \$5. Said permit shall be effective through age 15.

The Tribal Treasurer's office, with the approval of the Chief Judge of the Tribal Court and the head of the Tribal police force, may issue a license to a person to carry a pistol concealed on or about his person on the Reservation for a period of not more than 2 years from the date of issue, if it appears that the applicant has good reason to fear an injury to his person or his property, or has some other proper reason for carrying a pistol and that he is a suitable person to be so licensed and is not disqualified pursuant to section 5-11-6 of this code. The Treasurer's office will maintain a record of the written applications for said licenses and the applicant will subscribe an oath before the Treasurer that the statements made on the application are true. The fee for issuing such license shall be \$25.00.

5-11-11 FORFEITURE OF WEAPONS OR FIREARMS--Any controlled weapon or firearm or other dangerous weapon used or possessed in violation of the provisions of this chapter shall be forfeited to the Tribe to be destroyed or sold or delivered to the Tribal police for their use or if the same was stolen, returned to the lawful owner upon the proof of ownership. The sale of any such weapons shall be the responsibility of the head of the Tribal police who shall remit the proceeds of any such sale promptly to the Tribal Treasurer's office to be deposited in the general fund. The Tribal Treasurer in addition shall, upon receipt of the funds or upon any notification from Tribal law enforcement officer, cancel any weapons permit that was issued on said weapon.

CHAPTER TWELVE

DESTRUCTIVE DEVICES

5-12-1 DESTRUCTIVE DEVICE DEFINED--For the purposes of this Section, a "destructive device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive, acid, or poisonous or inflammable substance, chemical or compound, or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or strike with any of its parts, unexpectedly when moved, handled, or opened, or after the passage of time or under a condition or in a manner calculated to endanger health, life, limb, or property.

5-12-2 PLACING DESTRUCTIVE DEVICE IN VEHICLE--Any person who with intent to injure or to threaten to injure any person or property places or causes to be placed a destructive device on any motor vehicle, aircraft, watercraft, railroad, or common carrier or on or about the property of another or in any place where another person is likely to be injured thereby, without lawful authority is guilty of a Class A crime.

5-12-3 POSSESSION OF DESTRUCTIVE DEVICE WITH INTENT TO INJURE--Any person who has in his possession any destructive device with intent to injure, intimidate or terrify any person, or with the intent to injure or destroy any property without lawful authority is guilty of a Class A crime.

CHAPTER THIRTEEN

VANDALISM AND RELATED CRIMES

5-13-1 VANDALISM--Any person who, intentionally:

(1) Injures, defaces, damages, or destroys private property in which any other person has an interest without the consent of such other person; or

(2) Damages, defaces, injures, or destroys Tribal or other public property without the lawful consent of the appropriate governing body having jurisdiction thereof; or

(3) Causes or threatens a substantial interruption or impairment of any public utility service, including but not limited to transportation, water supply, gas, power or other utility service; or

(4) Causes a substantial interruption or impairment in mass communications service or police, fire, or other public service communications or in amateur or citizen's band radio communications being used for public service or emergency communications; or

(5) Deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or at any vehicle while such vehicle is either in motion or stationary;

is guilty of vandalism.

Vandalism is a Class C crime if the damage inflicted is \$100 or less. Vandalism is a Class B crime if the damage inflicted is more than \$100 but \$500 or less. Vandalism is a Class A crime if the damage inflicted is more than \$500.

CHAPTER FOURTEEN

ESCAPE AND RELATED CRIMES

5-14-1 ESCAPE--Any person who without lawful permission removes himself from custody, or fails to return to custody following temporary leave granted for a specific purpose or limited period is guilty of escape.

The word "custody" means arrest, detention in any facility for custody of persons under charge or conviction of crime, or any other detention for law enforcement purposes; but "custody" does not include supervision under probation or parole, or limitations incident to release on bail.

Escape is a Class B crime.

If any person convicted under this section is under sentence of imprisonment, his sentence on conviction for escape shall commence following the expiration of the term of the last sentence of his imprisonment.

5-14-2 AIDING AN ESCAPE--Any person who:

- (1) Aids another person to escape from custody; or
- (2) Knowingly provides a person in custody with anything which may facilitate such person's escape; or
- (3) While in custody, knowingly procures, makes, or possesses anything which may facilitate another's escape;

is guilty of aiding an escape.

Aiding an escape is a Class B crime.

5-14-3 PROVIDING CONTRABAND--Any person who knowingly provides another person in custody with alcoholic beverages, drugs, controlled substances, weapons, firearms, any implement to aid an escape, or any other thing or substance which the actor knows the detainee cannot lawfully possess under the terms of the detainee's custody, is guilty of providing contraband.

Providing contraband is a Class B crime.

CHAPTER FIFTEEN

DOG CONTROL AND RELATED CRIMES

5-15-1 CRUELTY TO ANIMALS--Any person who intentionally:

- (1) Tortures or seriously overworks an animal; or
 - (2) Fails to provide necessary food, care, or shelter for an animal in his custody or control; or
 - (3) Abandons an animal in his custody; or
 - (4) Transports or confines an animal in a cruel manner; or
 - (5) Kills, injures, or administers a poison to an animal without legal privilege to do so; or
 - (6) Causes one animal to fight with another;
- is guilty of cruelty to animals.

It is a defense to prosecution under this section that the conduct of the actor towards the animal involved was an accepted veterinary practice, or directly related to a bona fide experiment for scientific research, and that the animal being destroyed was destroyed in a manner no more cruel than necessary to accomplish the scientific research involved.

Cruelty to animals is a Class B crime

5-15-2 DOG CONTROL--DEFINITIONS--The following definitions will apply for this section; namely:

OWNER: Any person or family keeping or harboring a dog or dogs.

AT LARGE: Any dog shall be deemed to be at large when it is off the property of the owner and not under the control of the owner or other competent person.

UNDER CONTROL: A dog is under control within the meaning of this section if said dog is within the property limits of its owner, or if at some other place, said dog is on a leash or under other physical restraint, or if said dog is obedient to the commands of the owner or other person having responsibility for the dog.

DOG POUND: A shelter maintained by the Tribal police for the purpose of securing and caring for any dogs found at large within the boundaries of the Reservation.

5-15-3 ALLOWING DOG TO RUN AT LARGE--Any person who owns or is responsible for the custody of a dog or dogs and who shall knowingly allow said dog or dogs to be at large is guilty of a Class C crime.

5-15-4 DOG POUND--Personnel of the Tribal police are hereby authorized to impound any dogs

found at large within the boundaries of the Reservation. The Tribal police are further authorized to utilize Tribal Court prisoner labor for the purpose of erecting and maintaining the dog pound and for feeding and caring for impounded dogs until the same are disposed of pursuant to this ordinance.

5-15-5 IMPOUNDMENT FEES--In addition, and not in lieu of, any penalties or fines which may be imposed for violations of any section of this ordinance, there is hereby imposed a fee of \$5.00 against the owner of any dog which has been impounded by the Tribal police, and which shall be known as the impoundment fee.

There is also hereby imposed an additional daily fee in the amount of \$1.00 per day against the owner of any dog impounded which fee shall be paid for each and every day or portion thereof for which the dog has been held in the Tribal dog pound. Such fee will be known as the boarding fee.

The boarding fee and the impoundment fee shall be paid to the Tribal Treasurer's office prior to the Tribal police releasing said dog or dogs from the Tribal dog pound. The receipt for payment in full of the impoundment fee and the boarding fee from the Tribal Treasurer's office shall be the authorization for the Tribal police to release said dog from the Tribal dog pound.

All sums realized from collection of the impoundment fees and the boarding fees shall be remitted to the general fund of the Rosebud Sioux Tribe and shall be used to defray the cost of maintenance of the dog pound and the feeding of the dogs thereby impounded.

5-15-6 IMPOUNDMENT OF RABID OR BITING DOGS--Any dog which has bitten a human being, or for any other reason is suspect of being rabid or infected by rabies, may be impounded by the Tribal police under such terms and conditions as may be requested of the Tribal police by the Public Health Service or other medical authorities. If the Public Health Service or other medical authorities involved deem it reasonably necessary, the Tribal police are hereby authorized to destroy said dog for the purpose of making a final determination of its status as a rabies carrier or for the purpose of eliminating the dog as rabid.

5-15-7 VACCINATION OF DOGS--The owner of any dog within the boundaries of the Rosebud shall cause said dog to be vaccinated against rabies within the first six months that said dog is present within the Reservation and shall cause said rabies vaccination to be renewed within every two years thereafter. The owner shall either cause the dog to carry a collar with a tag thereon bearing the date of vaccination or the owner shall preserve a shot record for the dog so that the same can be presented to the Tribal police for inspection at any time upon request. The owner of any dog who fails to comply with the vaccination requirements of this section or to maintain adequate proof of vaccination and present the same to the Tribal police pursuant to this section is guilty of a Class C crime.

In addition, any dog found to be not in compliance with this section shall be impounded by the Tribal police until said dog is in compliance with this section or until otherwise disposed of.

5-15-8 DISPOSITION OF IMPOUNDED DOGS--At the time any dog is taken into custody by the Tribal police for the purpose of impoundment, said police shall attempt to orally notify the owner of the said animal if the owner can be identified. If the owner of the dog cannot be identified, the Tribal police shall give notice of the impoundment of the dog by posting an official notice in the Tribal building and the Agency offices in Rosebud and by utilizing the local radio station if the same is in

operation. The owner of such impounded dog shall have 24 hours from notification within which to pay the impoundment fees and boarding fees as described above and arrange for vaccination of the dog if needed. If such items are not accomplished by the owner within the said 24 hours following notice, then the Tribal police are hereby authorized to sell the dog to any person for the amount of the impoundment fees, boarding fees, and vaccination costs, or in the event no other person is available to purchase said dog, said dog shall be destroyed.

CHAPTER SIXTEEN

PERJURY AND RELATED CRIMES

5-16-1 PERJURY--Any person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which such an oath may by law be administered, intentionally and contrary to such oath, states any material matter he knows to be false, is guilty of perjury.

A false statement is material, regardless of the admissibility of the statements under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the false statement to be immaterial.

It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement.

No person shall be convicted of an offense under this section if he retracted the false statement in the course of the proceedings in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

An unqualified statement of that which one does not know or reasonably believe to be true is equivalent to a statement of that which one knows to be false.

Perjury is a Class B crime.

5-16-2 FALSE ALARMS--Any person who knowingly:

(1) Causes a false fire alarm or alarm of other type of emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or

(2) Gives false information to any law enforcement officer with the intent to implicate another in a crime; or

(3) Reports to law enforcement authorities a crime or other incident within their official concern knowing that said crime or incident did not occur; or

(4) Fails or refuses to give his correct name or address to a law enforcement officer in the lawful discharge of his official duties;

is guilty of giving a false alarm.

Giving a false alarm is a Class B crime.

5-16-3 TAMPERING WITH WITNESSES--Any person who, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or otherwise cause a person to:

- (1) Testify or inform falsely; or
- (2) Withhold any testimony, information, documents, or things of value to the investigation; or
- (3) Elude legal process* summoning him to testify or supply evidence; or
- (4) Absent himself from any proceeding or investigation to which he has been legally summoned;

is guilty of tampering with a witness.

Tampering with a witness is a Class A crime.

5-16-4 RETALIATION AGAINST A WITNESS--Any person who harms another person or property by an unlawful act in retaliation for anything done by said other person or member of his family in a capacity as a witness or informant, is guilty of retaliation against a witness.

Retaliation against a witness is a Class A crime.

5-16-5 SOLICITATION--Any person who solicits, accepts, or agrees to accept any benefit for doing any of the things prohibited by sections 5-16-1 and 5-16-3 above is guilty of solicitation to tamper with a witness.

Solicitation to tamper with a witness is a Class A crime.

5-16-6 TAMPERING WITH EVIDENCE--Any person who, believing that an official proceeding or investigation is pending or about to be instituted.:

(1) Alters, destroys, conceals, or removes any record, document, or other potential item of evidence with the intent to impair its accuracy or availability in such proceeding or investigation; or

(2) Makes, presents, uses, or offers into evidence as genuine any record, document, or other thing, knowing it to be false and with the intent to mislead the finder of fact in such official proceeding or investigation;

is guilty of tampering with evidence.

Tampering with evidence is a Class A crime.

5-16-7 TAMPERING WITH PUBLIC RECORDS--Any person who:

(1) Knowingly makes a false entry in, or false alteration of any record, document, or thing belonging to or received or kept by the Tribe or the United States or any state government for information or recording, or required by law to be kept by others for information of the Tribe or the United States or any state government; or

(2) Makes, presents, or uses any record, document, or other thing knowing it to be false, with the intent that it be taken as a genuine part of information or records referred to in (1) above; or

(3) Intentionally and unlawfully destroys, conceals, removes, or otherwise impairs the accuracy or availability of any record document, or thing, described in (1) above;

is guilty of tampering with public records.

Tampering with public records is a Class A crime.

5-16-8 IMPERSONATING AN OFFICER OR PUBLIC SERVANT--Any person who falsely pretends to be a public servant or law enforcement officer with the intent to induce another person to submit to such pretended official authority or otherwise to act in reliance upon the pretense to his prejudice, is guilty of impersonating a public servant or officer.

Impersonating a public servant or officer is a Class A crime.

5-16-9 DEFINITIONS--The word "official proceeding" means any proceeding before a legislative, judicial, administrative or other Tribal or government body or official authorized by law to take evidence under oath or affirmation, including a Notary Public or other person taking evidence in connection with any proceeding described in this sentence.

The word "public servant" means any officer or employee of the Tribe, United States government or any state government, including judges and Tribal leaders, and any person participating as a juror, advisor, consultant, or otherwise, in performing a governmental function, but the term does not include witnesses.

5-16-10 COMPOUNDING A CRIME--Any person who accepts or offers or agrees to accept any pecuniary benefit as consideration for:

(1) Refraining from seeking prosecution of an offender; or

(2) Refraining from reporting to law enforcement authorities the commission or suspected commission of any crime or information relating to a crime;

is guilty of compounding a crime.

Compounding a crime carries the same penalty as the crime which was compounded, that is to say, if the principal crime was a Class B crime, the penalty for compounding said crime would also be a Class B crime.

5-16-11 THREATENING OR INTIMIDATING A JUDICIAL OFFICER--Any person who, directly or indirectly, utters or addresses any threat or intimidation to any juror, referee, arbitrator, judge, hearing officer, umpire, assessor, or Tribal official authorized by law to hear or determine any controversy, with the intent to induce him either to do any act not authorized by law, or to omit or delay the performance of any duty imposed upon him by law, or for having performed any duty imposed upon him by law, is guilty of a Class A crime.

5-16-12 ATTEMPTING TO INFLUENCE JUROR AND OTHERS--Any person who attempts to influence a juror, or any person summoned or drawn as a juror, or chosen as an arbitrator or appointed as a referee or Judge with respect to his verdict or decision in any cause or matter pending before him, or about to be brought before him:

(1) By means of any communication, oral or written, had with him, except in the regular course of proceedings upon the trial of the cause; or

(2) By means of any book, paper, or instrument exhibited otherwise than in the regular course of the proceedings upon the trial of the cause; or

(3) By publishing any statement, argument, or observation relating to the cause;

is guilty of a Class A crime.

5-16-13 AGREEMENT TO GIVE A VERDICT--Any juror or person drawn or summoned as a juror or referee, arbitrator, judge, hearing officer, or any other person authorized by law to hear or determine a controversy, who makes any promise or agreement to give a verdict for or against any party is guilty of a Class B crime.

5-16-14 RESISTING ARREST--Any person who, with the intent of preventing a law enforcement officer from affecting an arrest or detention of himself or of any other person, or of discharging any other duty, creates a substantial risk of bodily harm to anyone, or employs a means justifying or requiring substantial force to overcome the resistance, regardless of whether there is a legal basis for the arrest or detention, is guilty of resisting arrest.

Resisting arrest is a Class B crime.

CHAPTER SEVENTEEN

DISORDERLY CONDUCT

5-17-1 DISORDERLY CONDUCT--Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

- (1) Engaging in fighting or in violent or threatening behavior; or
- (2) Making unreasonable noise; or
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
- (4) Obstructing vehicular or pedestrian traffic; or
- (5) Using abusive, indelicate, profane, or vulgar language in a public place, or makes an offensive gesture or display in a public place, which language or gesture tends to incite an immediate breach of the peace; or
- (6) Creates by chemical means any noxious order in a public place; or
- (7) Displays a firearm or other deadly weapon in a public place; or
- (8) Beggars in any public place for money or any other thing of value;

is guilty of disorderly conduct.

Disorderly conduct is a Class C crime.

CHAPTER EIGHTEEN

PROTECTIVE CUSTODY AND RELATED ALCOHOL CRIMES

5-18-11 PROTECTIVE CUSTODY--Any person who appears to be intoxicated by alcohol in a public place and to be in need of help, may be assisted to his home or may be taken into protective custody by law enforcement officers and taken forthwith to the hospital or to a jail for the purposes of detoxification. No person placed in protective custody under this section shall be held for a period exceeding 24 hours. In taking a person into protective custody under this section, the detaining officer may take reasonable steps to protect himself.

A taking into protective custody under this section is not an arrest. No warrants, complaints or summons shall issue pursuant to this section. Law enforcement officers are, however, specifically authorized to maintain records of the identity of persons placed in protective custody and dates thereof under this section for use in alcohol commitment proceedings and any other judicial proceeding where the person's use or abuse of alcohol may be in question.

5-18-2 PUBLIC CONSUMPTION OF ALCOHOL--Any person who voluntarily consumes any alcoholic beverages, or has in his possession an open package containing any alcoholic beverage in a public place, is guilty of public consumption.

As used in this section, the word "public place" means any property which is not privately owned, or any private property which is ordinarily open to or has free access by the public, and includes any motor vehicle.

Public consumption of alcohol is a Class C crime.

5-18-03 MINOR IN POSSESSION OF ALCOHOL BEVERAGE--Any person under the age of 18 years who:

(1) Possesses or consumes any beer, wine, ale, whiskey, or any other alcoholic beverage; or

(2) Misrepresents his age for the purpose of buying or otherwise obtaining any alcoholic beverage;

is guilty of minor in possession of an alcoholic beverage.

Minor in possession of an alcoholic beverage is a Class C crime.

CHAPTER NINETEEN

CURFEW

5-19-1 CURFEW VIOLATIONS--Any person under the age of 18 years who is away from his place of residence in a public place or a private place, other than the place where he intends to spend the night with the permission of the owner of such place and the permission of his parents or guardian, is guilty of curfew violation.

This section shall not apply to those persons accompanied by a parent or guardian; or to persons in attendance at or returning directly home from an organized school, church, or Tribal function.

Curfew violation is a Class C crime.

CHAPTER TWENTY

CONTRIBUTING TO THE DELINQUENCY OF A MINOR

5-20-1 CONTRIBUTING TO THE DELINQUENCY OF A MINOR--Any person who:

(1) Sells or gives to or otherwise makes any alcoholic beverage available to a person under the age of 18 years; or

(2) By act or omission, encourages, causes, or contributes to the delinquency of a person under the age of 18 years.

is guilty of contributing to the delinquency of a minor.

It is no defense to this section that the person charged did not know or that the minor was in fact under the age of 18 years.

Contributing to the delinquency of a minor is a Class B crime.

CHAPTER TWENTY ONE

DEFRAUDING CREDITORS AND RELATED CRIMES

5-21-1 DEFRAUDING CREDITORS--Any person who:

(1) Destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a valid security interest, lien, or mortgage, with the intent to hinder enforcement of said security interest, lien, or mortgage; or

(2) Knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors:

(a) Destroys, removes, encumbers, transfers, or otherwise deals with any property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) Knowingly falsifies any writing or record relating to said property; or

(c) Knowingly misrepresents or refuses to disclose to any person entitled to administer property for the benefit of creditors, the existence, amount, or location of said property, or any other information which the actor could legally be required to furnish in relation to such administration;

is guilty of defrauding creditors.

Defauding creditors is a Class A crime.

5-21-2 MAKING A FALSE CREDIT REPORT--Any person who knowingly makes a materially false or misleading statement in writing for the purpose of obtaining property or credit or an extension of credit for himself or another person or to keep some other person from obtaining property or credit or an extension of credit is guilty of making a false credit report.

Making a false credit report is a Class B crime.

5-21-3 UNAUTHORIZED TRANSFER OF MORTGAGED PROPERTY--Any person who owns, or has under his possession or control, any personal property which is the subject of a valid and enforceable security interest or other lien, and with respect to said property commits any of the following; namely:

(1) Willfully destroys, conceals, sells, or in any other manner disposes of or materially injures any part of said property without the written consent of the then holder of such security interest or other lien; or

(2) Willfully abandons said property without first giving written notice to the then holder of said security interest or other lien, of his intention to abandon such property; or

(3) When said property consists of livestock, willfully fails to notify the hold of said security interest or other lien upon such livestock of the death of any such livestock immediately after the death of said livestock; or

(4) Removes any part of said property to a point outside the Rosebud Sioux Tribe Reservation without the written consent of the then holder of the security interest or other lien;

is guilty of unauthorized transfer of mortgaged property.

Unauthorized transfer of mortgaged property is a Class A crime.

Paragraph (4) above shall not be applicable to motor vehicles used primarily for personal transportation or business which are temporarily off the Reservation in accordance with the usual and customary business or personal transportation practices of the person who would otherwise be required to obtain permission to remove said vehicle from the Reservation.

CHAPTER TWENTY-TWO

ARSON AND RELATED OFFENSES

5-22-1 ARSON—Any person who intentionally sets fire to or burns or causes to be burned any structure or other real or personal property not his own without the consent of the owners thereof, is guilty of arson.

Where the value of the property burned or damaged by fire is less than \$100, arson is a Class B crime.

Where the value of the property burned or damaged by fire is \$100 or more but less than \$200, arson is a Class B crime.

Where the value of the property burned or damaged by fire is greater than \$200, arson is a Class A crime.

5-22-2 BURNING TO DEFRAUD INSURER—Any person who, with the intent to injure or defraud an insurer, sets fire to or burns or causes to be burned any real or personal property of any kind, whether said property belongs to himself or any other person, which property is insured against fire, is guilty of a Class A crime.

5-22-3 OWNER OF PROPERTY DEFINED—For the purposes of this chapter, the owner of any property includes all persons who have a legal or equitable interest in the property.

5-22-4 RECKLESS BURNING—Any person who:

- (1) Recklessly starts, or causes a fire to be started, which endangers human life; or
- (2) Damages property of another by reckless use of fire; or
- (3) Having started a fire, whether recklessly or not, and knowing that said fire is spreading and will endanger lives or property of another, either fails to take reasonable measures to put out or control said fire or fails to give a prompt fire alarm, is guilty of reckless burning.

Reckless burning is a Class B crime.

CHAPTER TWENTY-THREE

BURGLARY AND RELATED OFFENSES

5-23-1 BURGLARY--Any person who enters or remains in any structure with the intent to commit any crime therein is guilty of burglary.

Burglary is a Class A crime.

The following affirmative defenses may be asserted by the Defendant in a burglary charge, namely;

- (1) That the premises involved were at the time open to the public; or
- (2) That the Defendant had at the time permission or a privilege to enter the structure.

5-23-2 SIMPLE TRESPASS--Any person who, knowing he is not privileged to do so, enters or remains in any place where notice against trespass is given by;

- (1) Actual communication to the actor by the owner of the premises or by any other authorized person; or
- (2) Posting of signs reasonably likely to come to the attention of intruders; or
- (3) Fencing or other type enclosure which a reasonable person would recognize as being designed to exclude intruders; is guilty of simple trespass.

Simple trespass is a Class C crime.

5-23-3 DEFENSES TO SIMPLE TRESPASS--The following are affirmative defenses to simple trespass, namely:

- (1) That the premises were at the time open to the members of the public; or
- (2) That the actor reasonably believed that the owner of the premises, or other authorized person, would have permitted him to enter or remain.

5-23-4 AGGRAVATED TRESPASS-- Any person who, knowing that he is not privileged to do so, enters or remains upon property under circumstances not amounting to burglary, with the intent to commit a crime thereon, is guilty of aggravated trespass.

Aggravated trespass is a Class B crime.

CHAPTER TWENTY-FOUR

ROBBERY

5-24-1 ROBBERY DEFINED--Any person who intentionally takes personal property, regardless of value, in the possession of another from his person or immediate presence, and against his will, accomplished by means of force or fear, is guilty of robbery.

Robbery is a Class A crime.

It is an affirmative defense to a charge of robbery that the actor has the right to take the property pursuant to legal process or otherwise pursuant to law.

5-24-2 TYPES OF FORCE OR FEAR NECESSARY TO CONSTITUTE ROBBERY--To constitute robbery, the amount or degree of force or fear employed is immaterial. However, the force or fear must be employed either to obtain or retain possession of the property or to prevent or overcome resistance to the taking. If force or fear is employed merely as a means of escape, it does not constitute robbery.

The fear which constitutes an element of the offense of robbery may be either:

(1) The fear of an injury, immediate or future, to the person or property of the person robbed, or of any relative of his or member of his family; or

(2) The fear of an immediate injury to the person or property of anyone in the company of the person robbed at the time of the robbery.

5-24-3 TAKING WITHOUT KNOWLEDGE OF VICTIM IS NOT ROBBERY--The taking of property from the person of another or in his immediate presence is not robbery when it clearly appears that the taking was fully completed without his knowledge.

CHAPTER TWENTY-FIVE

THEFT AND RELATED CRIMES

5-25-1 THEFT DEFINED--Any person who takes, steals, obtains, or exercises control over property of another with the intent to deprive the owner thereof, is guilty of theft.

5-25-2 CATEGORIES OF THEFT--Theft of any property or services under this chapter shall be punishable as follows:

(1) If the value of the property or services involved is less than \$ 50, the theft shall be a Class C crime.

(2) If the value of the property or services involved is \$50 or more but less than \$200, theft shall be a Class B crime.

(3) If the value of the property or services involved is \$200 or more, theft shall be a Class A crime.

If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it is otherwise proven that theft has been committed, the crime shall be a Class C crime.

5-25-3 THEFT BY FRAUD--Any person who obtains property of another by fraud is guilty of theft. A person commits fraud if he intentionally, regarding a matter material to the transaction:

(1) Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but fraud as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgement regarding a transaction; or

(3) Fails to correct a false impression which the actor previously created or reinforced, or which the actor knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of public record.

The term "fraud" does not, however, include matters having no pecuniary significance, or mere puffing by statements unlikely to deceive ordinary persons.

5-25-4 THEFT BY EXTORTION--Any person who obtains or exercises control over property of another with the intent to deprive the owner thereof by extortion is guilty of theft.

Extortion occurs when a person threatens to:

- (1) Inflict bodily injury on any person or commit any other criminal offense; or
- (2) Accuse anyone of a criminal offense; or
- (3) Take or withhold action as an official, or cause an official to take or withhold action; or
- (4) Expose any secret tending to subject any person to hatred contempt, or ridicule, or to impair his credit or business reputation; or
- (5) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
- (6) Testify or provide information, or withhold testimony or information, with respect to another's legal claim or defense; or
- (7) Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationship.

It is an affirmative defense to prosecution based upon paragraphs (2),(3), or (4) of this Section, that the property obtained was honestly due as restitution or indemnification for harm done in the circumstances to which the threat of accusation, exposure, or official action related, or as compensation for a legitimate debt.

5-25-5 THEFT OF LOST, MISLAID, OR MISTAKENLY DELIVERED PROPERTY--Any person who comes into control or possession of property of another, and knowing or reasonably believing that said property has been lost, mislaid, or delivered under a mistake as to the nature or amount of property or the identity of the recipient, and with the intent to deprive the owner thereof, fails to take reasonable measures to restore the property to the persons entitled thereto, is guilty of theft.

5-25-6 RECEIVING STOLEN PROPERTY--Any person who receives, retains, or disposes of property of another, knowing that said property has been stolen, or believing that said property has probably been stolen, unless said property is received, retained, or disposed of, with the intent to restore the same to the owner thereof, is guilty of theft.

5-25-7 THEFT OF SERVICES--Any person who intentionally:

(1) Obtains services which he knows are available only for compensation by fraud, extortion, force, or any other means designed to avoid the regular payment therefore; or

(2) Having control over the disposition of services of other, to which he is not entitled, diverts such services to his own benefit, or to the benefit of another not entitled thereto;

is guilty of theft.

When compensation for services is ordinarily paid immediately upon the rendering of such services, refusal to pay, or absconding without payment or offer to pay, gives rise to a presumption that the service was obtained by fraud as to the intent to pay.

The word "services" includes, but is not limited to labor, professional services, telephone or other public service, accomodation in motels, restaurants or elsewhere, admissions to places for which a charge for admission is made, the use of vehicles, or use of any other movable or real property.

5-25-8 THEFT BY EMBEZZLEMENT--Any person, who has been entrusted with property belonging to another, who, with the intent to benefit any person not entitled to benefit from said property, appropriates said property to his own use or to a use or a purpose not in the due and lawful execution of his trust, is guilty of theft by embezzlement. A distinct act of taking is not necessary to constitute theft by embezzlement.

A person is "entrusted with property of another" if he has possession or control of:

(1) Real or personal property owned in whole or in part by a deceased person and which property is the proper subject of an estate proceeding; or

(2) Real or personal property, the legal title to which is in the Rosebud Sioux Tribe or any subdivision thereof, the United States of America or any subdivision thereof, or of any financial institution; or

(3) Real or personal property, the legal title to which is in any person other than the actor, and which property is not subject to a lien or security interest in favor of the actor.

5-25-9 THEFT BY CREDIT CARD--Any person, who, by use of a credit card issued to another person, without the consent of the person to whom issued, or by use of a credit card which has been revoked or cancelled or has expired, or by use of a falsified, mutilated, altered, or counterfeit credit card, obtains property or services on credit, is guilty of theft.

5-25-10 GENERAL DEFENSE TO THEFT--It is an affirmative defense to any prosecution for theft that the Defendant acted under an honest claim of right to the property or service involved, or that he had a right to acquire or dispose of said property or service as he did.

It is not a defense to theft that the actor has an interest in the property or services taken if any other person also has an interest that the actor is not entitled to infringe upon.

5-25-11 RECENT POSSESSION OF STOLEN PROPERTY MAY BE THEFT--Possession of property recently stolen, when no satisfactory explanation of such possession is made or available, shall give rise to a presumption that the person in possession of said property stole the same.

CHAPTER TWENTY-SIX

FORGERY AND RELATED CRIMES

5-26-1 FORGERY DEFINED--Any person who, with intent to defraud, falsely makes, completes, or alters a written instrument of any kind, or passes such an instrument, is guilty of forgery.

Forgery is a Class A crime.

5-26-2 CRIMINAL SIMULATION--Any person who, with the intent to defraud, makes, alters, completes, or attempts to sell or circulate as genuine, any object other than a written instrument, so that the same appears to have value because of antiquity, rarity, source, or authorship which it does not actually possess, is guilty of criminal simulation.

Criminal simulation is a Class B crime.

5-26-3 POSSESSING, FILING, OR RECORDING OF FORGED INSTRUMENTS--Any person who, with intent to defraud, knowingly offers for recording as a public record, possesses, or offers for filing with the Tribal Court or any public agency or the Rosebud Sioux Tribe or the United States of America or any of its political subdivisions, a forged instrument or a false instrument is guilty of filing, recording, or possessing a forged instrument.

Filing, recording, or possessing a forged instrument is a Class A crime.

CHAPTER TWENTY-SEVEN

BAD CHECKS

5-27-1 CHECK DEFINED--As used in this chapter, the word "check" means any check, draft, order, or other commercial device which orders a financial institution to pay a certain sum of money upon its presentation to said financial institution.

5-27-2 ISSUING BAD CHECKS--Any person who issues or passes a check for any of the following purposes, namely:

(1) To then and there obtain money, property or other thing of value; or

(2) To pay for rent, wages, salary, taxes due the Rosebud Sioux Tribe or the United States of America or any of its subdivisions, or as payment for services ordinarily paid immediately upon the rendering of such service,

knowing or believing that said check will not be honored by the financial institution upon which the same was drawn, is guilty of issuing bad checks.

Issuing bad checks is a Class B crime if the check upon which the prosecution is based was returned because of insufficient funds in the account upon which the same was drawn.

Issuing bad checks is a Class A crime if the check upon which the prosecution was based is returned from the financial institution because no account existed in the financial institution against which the check was drawn at the time the check was passed.

5-27-3 JURY INSTRUCTIONS REGARDING BAD CHECKS--In any prosecution for bad checks where the same is tried to a jury, the jury shall be instructed that where a check in evidence was returned from the financial institution because of insufficient funds in the account against which it was drawn, or because no account existed in the financial institution against which the check was drawn at the time the check was passed, such evidence is sufficient upon which to base a conviction of bad checks unless such return by the financial institution is satisfactorily explained by the facts and circumstances brought out at the trial.

The jury shall also be instructed that no person can be convicted of issuing bad checks where the evidence establishes that the check was post dated, or was a "hold" check, or was issued in payment for credit previously negotiated or arranged.

CHAPTER TWENTY-EIGHT

DRUGS AND CONTROLLED SUBSTANCES

5-28-1 DEFINITIONS--The following definitions are applicable to this section:

(1) "Controlled substances" means a drug, substances, or immediate precursor listed in Schedules I through V of this Act.

(2) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a controlled substance, whether or not there is an agency relationship. For purposes of this Act, it also includes an offer to sell a controlled substance. Proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(3) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of a practitioner (in the course of professional practice or research), including prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery.

(4) "Dispenser" means a person who dispenses.

(5) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance.

(6) "Distributor" means a person who distributes.

(7) "Marijuana" means and includes all parts of the plant *cannabis sativa*, *cannabis americana*, and *cannabis indica*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plants, its seeds, or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks except the resin extracted therefrom, fiber oil, cake, or the sterilized seed of such plant which is incapable of germination.

(8) "Narcotic drugs" means coca leaves, opium, cannabis, isonipecaine, amidone, isoamidone, ketobemidone, lysergic acid diethylamide, commonly known as LSD, and every substance neither chemically nor physically distinguishable from them; and any other drugs to which the Federal laws relating to narcotic drugs may now apply.

(9) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

(10) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds

(11) "Person" means any individual, corporation, government, or government subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(12) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(13) "Possession" means actual care, custody, control or management.

(14) "Practitioner" means:

(a) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze or conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this State; or

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this State.

(15) "Production" includes manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(16) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal by him or by a member of his household.

5-28-2 STANDARDS AND SCHEDULES--The Rosebud Sioux Tribal Council determines that the substances listed in Schedules I, II, III, IV, and V shall be controlled substances.

5-28-3

SCHEDULE I--OPIATES AND HALLUCINOGENICS--Schedule I shall initially consist of the controlled substances listed in this section, as follows:

(1) Any of the following opiates, indicating their isomers, esters, ethers, salts, and salts, of isomers, esters, and ethers unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- | | |
|-------------------------|----------------------------|
| (a) Allylprodine | (b) Benzethidine |
| (c) Betaprodine | (d) Clonitazene |
| (e) Dextrorphan | (f) Diampromide |
| (g) Diethylthiambutene | (h) Dimenoxadol |
| (i) Dimethylthiambutene | (j) Dioxaphetyl Butyrate |
| (k) Dipipanone | (l) Ethylmethylthiambutene |
| (m) Etonitazene | (n) Etoxidine |
| (o) Furethidine | (p) Hydroxypethidine |
| (q) Ketobemidone | (r) Levophenacymorphan |
| (s) Meprodine | (t) Methadol |
| (u) Moramide | (v) Morpheridine |
| (w) Noracymethadol | (x) Norlevorphanol |
| (y) Normethadone | (z) Norpipanone |
| (A) Phenodoxone | (B) Phenampromide |
| (C) Phenomorphan | (D) Phenorperidine |
| (E) Pir tramide | (F) Proheptazine |
| (G) Proheptazine | (H) Propiram |
| (I) Trimeperidine | |

(2) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- | | |
|------------------------------|----------------------------|
| (a) Acetorphine | (b) Acthldihydrocodeine |
| (c) Benzylmorphine | (d) Codeine methyrbromide |
| (e) Codeine-N-Oxide | (f) Cyprenorphine |
| (g) Desomorphine | (h) Dihydromorphine |
| (i) Etorphine | (j) Heroin |
| (k) Hydromorphinol | (l) Methyldesorphine |
| (m) Methyldihydromorphine | (n) Norphine methylbromide |
| (o) Morphine methylsulfonate | (p) Morphine-N-Oxide |
| (q) Myrophine | (r) Nicocodeine |
| (s) Nicomorphine | (t) Normorphine |
| (u) Pholcodine | (v) Thebacon |

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

3,4-methylenedioxy amphetamine
5-methoxy-3, 4-methylenedioxy amphetamine
3, 4, 5-trimethoxy amphetamine
Bufotenine
Diethyltryptamine
Dimethyltryptamine
4-methyl-2, 5-dimethoxyamphetamine
Ibogaine
Lysergic acid diethylamide
Marijuana
Mescaline
Peyote
N-ethyl-3-piperidyl benzilate
N-methyl-3-piperidyl benzilate
Psilocybin
Psilocyn

Tetrahydrocannabinols and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

delta-3, 4 cis or trans tetrahydrocannabinol and its optical isomers.

5-28-4 SCHEDULE II--OPIUM AND AMPHETAMINES--Schedule II shall initially consist of the controlled substances listed in this section, as follows:

(1) Any of the following substances, except those narcotic drugs listed in other schedules, however produced:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

- (A) Raw opium
- (B) Opium extracts
- (C) Opium Fluid extracts
- (D) Powdered opium
- (E) Granulated opium
- (F) Tincture of opium
- (G) Apomorphine
- (H) Codeine
- (I) Ethylmorphine
- (J) Hydrocodone
- (K) Hydromorphine
- (L) Metopon
- (M) Morphine
- (N) Oxycodone
- (O) Oxymorphone
- (P) Thebaine

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this section, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straws;

(d) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- | | |
|-------------------|--------------------|
| (a) Alphaprodine | (b) Anileridine |
| (c) Bexitramide | (d) Dihydrocodeine |
| (e) Dephenoxylate | (f) Fentanyl |
| (g) Isomethadone | (h) Levomethorphan |
| (i) Levorphanol | (j) Metazocine |
| (k) Methadone | |

- (l) Methadone-Intermediate, 4-cyano-2dimethylamino-4, 4-diphenyl butane
- (m) Moramide-Intermediate, 2-methyl-3-corpholino-1, 1-duphenylporpane-carboxylic acid
- (n) Pethidine
- (o) Pethidine-Intermediate-A, 4-cyano-1-methyl-4- phenylpiperidine
- (p) Pethidine-Intermediate-B, ethyl-4-phenyl-piperdine-4-carboxylate
- (q) Pethidine-Intermediate-C, 1-methyl-4-phenyl-piperidine-4-carboxylic acid
- (r) Phenazocine
- (s) Piminodine
- (t) Racemethorphan
- (u) Racemorphan

(3) Unless listed in another Schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) Amphetamine, its salts, optical isomers, and salts of its optical isomers
- (b) Methamphetamine, including its salts, isomers, and salts of isomers
- (c) Methylphenidate and its salts
- (d) Phenmetrazine and its salts

(4) Methaqualone

5-28-5 SCHEDULE III-DEPRESSANTS AND NARCOTICS

(1) Schedule III shall initially consist of the controlled substances listed in this section, as follows.

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect of the central nervous system:

- (a) Any substance which contains any quantity of a derivative or barbituric acid, or any salt of a derivative or barbituric acid, except those substances which are specifically listed in other schedules.
- (b) Chlorhexadol
- (c) Glutethimide
- (d) Lysergic acid
- (e) Lysergic acid amide
- (f) Methyprylon
- (g) Phencyclidime
- (h) Sulfondiethylmethane
- (i) Sulfonethylmethane
- (j) Sulfonmethane

(3) Nalorphine

(4) Any material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any salts thereof:

(a) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine, of any of its salts, per 100 milliliters or per 100 grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

5-28-6 SCHEDULE IV--BARBITURATES.

(1) Schedule IV shall initially consist of the controlled substances listed in this section, as follows.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (a) Barbital
- (b) Chloral Betaine
- (c) Chloral Hydrate
- (d) Ethchlorvynol

- (e) Ethinamate
- (f) Methohexital
- (g) Meprobamate
- (h) Methylphenobarbital
- (i) Paraldehyde
- (j) Petrichloral
- (k) Phenobarbital

(3) Any compound, mixture, or preparation containing any depressant substance listed in Section (2) of this section is excepted from the application of all or any part of this Act if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

5-28-7 SCHEDULE V--PRESCRIPTION DRUGS

(1) Schedule V shall initially consist of the controlled substances listed in this section, as follows.

(2) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal quantities other than those possessed by the narcotic drug alone:

- (a) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (b) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (c) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (e) Not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams.

5-28-8 EXCLUSION FROM SCHEDULE--A non-narcotic substance is excluded from Schedule I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act and the Tribal Council shall have no power to include a non-narcotic substance in Schedules I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act.

5-28-9 REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

(1) Registration Requirements

(a) Every person who manufactures, distributes, analyzes, or dispenses any controlled substance within the exterior boundaries of the Rosebud Sioux Tribe Indian Reservation must possess a valid registration from the South Dakota State Board of Pharmacy. Said registrations must be obtained annually and be in compliance with all rules and regulations promulgated by the State.

(b) Persons registered with the State of South Dakota or the United States of America to manufacture, distribute, dispense, analyze or conduct research with controlled substances may possess, manufacture, distribute, dispense, analyze or conduct research with those substances to the extent authorized by their registration.

5-28-10 DISTRIBUTION, MANUFACTURE, OR POSSESSION WITH INTENT TO DISTRIBUTE--Except as authorized by this Act, any person who knowingly or intentionally manufactures, distributes, or possesses with intent to manufacture or distribute a controlled substance listed in Schedules I through V, is guilty of a Class A crime.

5-28-11 UNLAWFUL POSSESSION OF CONTROLLED SUBSTANCE--Except as authorized by this Act, any person who knowingly or intentionally possesses a controlled substance listed in Schedules I through V unless the substances was obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice, is guilty of a Class B crime.

5-28-12 PEYOTE EXEMPTION--The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

5-28-13 INHABITING A ROOM WHERE CONTROLLED SUBSTANCE IS ILLEGALLY STORED OR USED--Any person who inhabits a room knowing that any controlled drug or substance is being illegally stored or used therein is guilty of a Class B crime.

5-28-14 SALE OF LYSOL PROHIBITED--It shall be unlawful for any merchant to sell Lysol within the boundaries of the Rosebud Sioux Reservation. A violation of this provision is a Class C crime. The Rosebud Sioux Tribal Court shall have the authority to enforce this provision by injunction.

CHAPTER TWENTY-NINE

MARIJUANA

5-29-1 POSSESSION OF MARIJUANA--No person shall knowingly possess marijuana. Any person who knowingly possesses marijuana is guilty of a Class B crime if the amount of marijuana possessed is 1 ounce or less. Possession of more than 1 ounce of marijuana is a Class A crime.

5-29-2 MANUFACTURE, DISTRIBUTION, OR POSSESSION WITH INTENT TO DISTRIBUTE--Any person who knowingly:

- (1) Grows marijuana; or
- (2) Manufactures marijuana; that is to say packages, repackages, dries, or prepares marijuana for distribution; or
- (3) Distributes marijuana; or
- (4) Possesses marijuana with the intent to distribute the same;

is guilty of a Class A crime.

5-29-3 DISTRIBUTION OF MARIJUANA TO A MINOR--Any person who distributes marijuana, with or without consideration, to any other person under the age of 18 years is guilty of distribution of marijuana to a minor.

It is no defense to a prosecution under this section that the defendant was not aware of the true age of the other person to whom the marijuana was distributed.

Distribution of marijuana to a minor is a Class A crime.

CHAPTER THIRTY

BRIBERY AND ABUSE OF PUBLIC OFFICE

5-30-1 BRIBERY OF PUBLIC OFFICE--Any person who gives or offers to give a bribe to any public officer or employee with the intent to influence him in respect to any act, decision, vote, opinion, or other proceeding which the public officer or employee is responsible for, is guilty of bribery of a public officer.

Bribery of a public officer is a Class A crime

5-30-2 SOLICITATION OF A BRIBE--Any public officer or employee who asks, receives or agrees to receive a bribe upon an agreement or understanding that his vote, opinion or action upon any matter then pending, or which may by law be brought before him in his official capacity, will be influenced thereby is guilty of solicitation of a bribe.

Solicitation of a bribe is a Class A crime.

5-30-3 INABILITY TO ACT NO DEFENSE--It is no defense to prosecution under sections 5-30-1 and 5-30-2 above that the person sought to be influenced or bribed was not qualified to act in the desired way because he had not yet assumed office, lacked authority, or for any other reason.

5-30-4 SELLING OFFICIAL CONDUCT--Any public officer or employee who asks for or receives any pecuniary benefit for the performance of any official function which has not been performed, or who asks for or receives any pecuniary benefit for doing any official act, is guilty of selling official conduct.

It is an affirmative defense to a charge under this section that the fees or consideration received or requested by the public official were authorized by law or required to be collected by law.

Selling official conduct is a Class A crime.

5-30-5 SELLING OMISSION OF OFFICIAL CONDUCT--Any public officer or employee who asks for or receives any pecuniary benefit or other consideration for omitting or deferring performance of any official conduct, is guilty of selling omission of official conduct.

Selling the omission of official conduct is a Class A crime.

5-30-6 BRIBERY OR UNLAWFUL INFLUENCE OF THE TRIBAL COUNCIL--Any person who gives or offers to give a bribe to any member of the Tribal Council or attempts directly or indirectly by menace, deceit, or any other unlawful means, to influence a Tribal Council member in giving or withholding his vote or in not attending a Council meeting or meeting of any Committee thereof is guilty of unlawful influence of the Tribal Council.

Unlawful influence of the Tribal Council is Class A crime.

5-30-7 SOLICIATION BY THE TRIBAL COUNCIL--Any member of the Tribal Council who asks, receives, or agrees to receive any bribe or other consideration upon any understanding that his official vote, opinion, judgment, or action shall be influenced thereby or shall be given in any manner upon which he will be required to act in his official capacity, is guilty of solicitation by the Tribal Council

Solicitation by the Tribal Council is a Class A crime.

CHAPTER THIRTY-ONE

RIOT AND RELATED CRIMES

5-31-1 RIOT--Any person who:

(1) Simultaneously with two or more other persons engages in threatening or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or

(2) Assembles with two or more persons with the purpose of engaging immediately thereafter in threatening or violent conduct, knowing or having reason to believe that two or more persons in the assembly have the same purpose;

Is guilty of riot.

Riot is a Class A crime.

5-31-2 FAILURE TO DISPERSE--Any person who refuses or wilfully fails to obey an order to disperse or leave the immediate vicinity given by a law enforcement officer or other public servant performing the function of a law enforcement officer at the scene of a riot, fire, or other public disorder or given in the course of executing or enforcing the law or in the course of investigation of the scene of an accident or the commission of a fire, crime, or suspected crime is guilty of failure to disperse.

Failure to disperse is a Class B crime.

CHAPTER THIRTY-TWO

HUFFING

5-32-1 HUFFING—Any person who intentionally ingests, inhales, breathes, or otherwise takes into his body any substance, except an alcoholic beverage, for the purpose of becoming intoxicated, unless such substance is prescribed by a physician or other practitioner of the medical arts lawfully practicing within the scope of his practice, is guilty of huffing.

Huffing is a Class B crime.

CHAPTER THIRTY-THREE

INVASION OF PRIVACY

5-33-1 TRESPASSING WITH INTENT TO EAVESDROP--Any person who

(1) Trespasses on property with the intent to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or uses any such unauthorized installation;

is guilty of trespassing with intent to eavesdrop.

It is an affirmative defense to this section that the actor had legal authorization to engage in the conduct here prohibited or that the actor was a law enforcement officer or acting under the direction of a law enforcement officer and engaged in the performance of lawful duties.

Trespassing with intent to eavesdrop is a Class B crime.

5-33-2 WINDOW PEEKING--Any person who enters the private property of another and peeks in the door or window of any inhabited building or structure located thereon without having lawful purpose with the owner or occupant thereof is guilty of window peeking.

Window peeking is a Class C crime.

CHAPTER THIRTY-FOUR

HABITUAL OFFENDERS

5-34-1 INCREASED PENALTIES FOR PERSONS WITH PRIOR CONVICTIONS--In any criminal prosecution under this code where it appears that the Defendant has been previously convicted by this Court under the same statute one or more times previously within the last 1 year, the penalty for the crime charged shall be increased to the next class which is more severe, one class for each prior conviction, which has been established. An example of what is intended here would be as follows. If a Defendant was charged under a section which was a Class C crime, and the evidence established that the same person had been convicted of the same offense one time previously within the last 1 year then in such event the penalty for the violation of that section would be increased by one class and the Defendant upon conviction would thereby be punished as for a Class B crime.

5-34-2 DUTY TO REPORT KNOWLEDGE OF PRIOR CONVICTION--Whenever any jailor, probation or parole officer, law enforcement officer, or other Tribal or U.S. government official has knowledge that any person charged in this Court has been previously convicted of a like offense, it shall become his duty forthwith to report the same to the Tribal prosecutor.

5-34-3 PRIOR CONVICTION INFORMATION--An allegation that a Defendant has prior convictions must be filed as a separate charge at the time of or before arraignment. The information must state the times, places, and specific crimes alleged to be prior convictions and must be signed by the Tribal prosecutor. An official Court record under seal will be sufficient to be admitted into evidence without further foundation to prove the allegation that the Defendant has prior convictions.

5-34-4 PROCEDURE WITH REGARD TO PRIOR CONVICTIONS INFORMATION--The Defendant shall be apprised of the prior convictions charge and shall be arraigned on said charge at the same time as arraignment on the principal charge. In the event of a jury trial on the principal charge, the jury shall not be advised of the prior convictions charge until they have reached a verdict on the principal crime. If the operative effect of this chapter is to increase the penalty for the crime to a point where the right to jury trial is invoked, the Defendant shall be entitled to separate jury trials on the principal offense charged and on the prior convictions charge, although the same jury may hear both cases.

CHAPTER THIRTY-FIVE

GAME, FISH & PARKS CODE

5-35-1 GENERAL PROVISIONS AND DEFINITIONS

(a) INTENT--It is the intent of the provisions contained herein to provide for an orderly system on the Rosebud Sioux Indian Reservation for the management and control of the wildlife, fishery, forest, and outdoor recreation resources of the Rosebud Sioux Tribe.

(b) JURISDICTION--The provisions contained herein specifically address all lands within the boundaries of Todd County, South Dakota, all territory of the Tribe outside of Todd County but within original boundaries of the Rosebud Sioux Indian Reservation, and all matters contained herein relating to propagation, conservation, management, distribution, transportation, storage, and taking of fish and game, relating to the management, conservation and control of reservation lands, forests and waters for fish and game purposes, and relating to fishing, hunting, trapping, timber harvest, sale, barter, and exchange of fish, game, timber and timber products from the local resources on the Rosebud Sioux Indian Reservation and relating to the use of boats, snowmobiles and other off-road recreational vehicles on the Rosebud Sioux Indian Reservation as well as other outdoor recreational activities are all subject to the absolute jurisdiction of the Rosebud Sioux Tribe.

(c) FORESTS, FISH AND WILDLIFE PROPERTY OF THE TRIBE--

(1) All fish, wildlife and forest resources, now or hereafter within the Rosebud Indian Reservation, not held in private ownership legally acquired, and which for the purposes of this code shall include all big game animals, game birds, water fowl, game fish, reptiles, amphibians, fur bearing animals, and all other forms of wildlife, and all forest and timber stands, whether harvested or unharvested mentioned in these provisions, are hereby declared to be the property of the Rosebud Sioux Tribe and no right, title, interest or property therein can be acquired or transferred or the possession thereof had or maintained, except as herein expressly provided.

(2) It shall be lawful for the Department of Natural Resources or any person or entity appointed by it in writing so to do under the direction of the Director of the Department of Natural Resources, to take fish and wildlife, or cut timber for the purpose of inspection, cultivation, propagation, distribution, scientific, or other purposes deemed by it to be in the best interest of the fish, game and timber industry of the Tribe.

(d) COOPERATIVE AND RECIPROCAL AGREEMENTS--The Department of Natural Resources is hereby authorized, subject to the approval of the Rosebud Sioux Tribal Council, to enter into reciprocal and cooperative agreements with the State of South Dakota and any other governments or governmental agencies, federal or otherwise, for the purposes of promoting and implementing fishery, and wildlife management programs, forestry programs and outdoor recreational activities.

(e) DEFINITIONS; INTERPRETATION--The following terms, words and definitions shall be used in Chapter 35 and shall have the meaning so ascribed to them in the respective sections unless a different meaning clearly appears from the context:

(1) "Reservation" means all territory within the boundaries of Todd County, South Dakota, all territory outside of Todd County, South Dakota but within the original boundaries of the Rosebud Sioux Reservation, and any and all territory within the exterior boundaries within that land area referred to as Rosebud Sioux Indian Reservation by federal law.

(2) "Tribe" means Rosebud Sioux Indian Tribe.

(3) "Tribal Court" means Rosebud Sioux Indian Tribal Court.

(4) "Department" means Rosebud Sioux Tribal Department of Natural Resources.

(5) "State" means the State of South Dakota.

(6) "Possession" means physical possession or control of any undomesticated game or nongame animal or parts thereof, on ones person, premises, motor vehicle, or public or private place of processing or storage.

(7) "Motor Vehicle" means a motorized vehcile including any trailed or towed vehicle thereof which may travel on land, water, snow, or air.

(8) "Big Game Tag" means an adhesive-backed tag issued with big permit which must be attached around the hock of the big game animal at the time it is taken.

(9) "Antlered" means a male animal with a visible antler at least four inches above the head.

(10) "Antlerless" means any animal not classified as antlered as defined in number 9 above.

(11) "Loaded Firearm" means any firearm containing cartridges in the chamber, clip or magazine.

(12) "Hunt/Trap" means any effort to kill, injure, capture or disturb any wild animal or wild bird as defined herein.

(13) "Fish" means any effort made to kill, injure, disturb, capture, or otherwise possess fish in and from the waters of the Rosebud Sioux Indian Reservation.

(14) "Carcass" means the dead body of any wild animal to which it refers including the head, hair, skin, plumage, skeleton, or any other parts thereof.

(15) "Game" means all wild animals and birds for which hunting seasons have been established by provisions contained within this chapter.

(16) "Game Fish" means all species belonging to the paddlefish, sturgeon, salmon trout, pike, catfish, bullheads, sunfish, black bass, bluegill, crappies, perch, walleye, and sauger families of fish species.

- (17) "Rough Fish" means any and all fish species, not included in the game fish families.
- (18) "Nongame Species" means all species of birds and animals which are not listed or covered or provided for within the provisions of this chapter and are protected.
- (19) "Restricted water or trout Water" means that fishing methods on any lake, pond, stream or any part thereof may be limited to the use of artificial lures or bait other than live fish.
- (20) "Bag Limit" means maximum number of game species which may be legally taken per day and shall include maximum number of each species of sex.
- (21) "Possession Limit" means maximum number of game species which may be possessed.
- (22) "Seasons" means all of the time during the entire year except during the "open season" as specified by regulation or ordinance of the Rosebud Sioux Tribal Council.
- (23) "Open Season" means the time specified by rule, regulation, order, resolution or ordinance of the Rosebud Sioux Tribal Council when it shall be lawful to hunt, fish or trap for any animals, birds or fish. Each period of said time shall be specified as an "open season" and the period during each day when these activities can legally take place.
- (24) "Closed Waters" means any lake, pond, river, stream, body of water or any part thereof within the Rosebud Indian Reservation wherein it shall be unlawful to fish, hunt, or trap, said waters may be closed to one or all of these activities depending on the designation of these waters.
- (25) "Predator" means animals which kill and eat the flesh of other animals.
- (26) "Fur Bearer" means animals which are taken primarily for sale of their pelts.
- (27) "Resident" means a person whose domicile is in the Rosebud Sioux Indian Reservation or the State of South Dakota.
- (28) "Non Resident" means persons other than residents as defined in number 27 above.
- (29) "Officer" means a Conservation Officer of the Rosebud Sioux Tribal Department of Resources or any other law enforcement officers of the Bureau of Indian Affairs or Rosebud Sioux Tribe.
- (30) "Sell" means to offer or possess for sale, barter, exchange or trade or the act of selling, bartering, exchanging or trading.

- (31) "Tag" means a card, label, or other identification device issued for the carcass of any game animal.
- (32) "Take" means to fish, angle, hunt, pursue, catch, capture, trap, kill or otherwise possess any wildlife or any attempt to commit any of these acts.
- (33) "Closed Area" means any area where by authority of the Department of Natural Resources, hunting and trapping is prohibited and to which access or any other activities may not be allowed if signs so state in conspicuous places along access routes.
- (34) "Specified Areas" means areas where the taking of game animals is restricted to the specifications set forth by rules, regulations, ordinance, or resolutions set forth by the Department of Natural Resources in conjunction with the Rosebud Sioux Tribal Council.
- (35) "Wildlife" means any form of animal life generally living wild in a state of nature, endowed with sensation and the power of voluntary motion, including all wild mammals, birds, fish reptiles, amphibians and their eggs, nests, and spawn, and any animals, birds, or fish which are part of a Department program which may be in semidomesticated state.
- (36) "Bait" means any food item including but not limited to shelled or unshelled grains, shucked or unshucked grains, beans, alfalfa hay, food supplements, salt, and any other items which entices or attracts game to a particular place.
- (37) "Baiting" means the act of putting out, scattering, or in other ways distributing bait for the purposes of attracting and taking any game animal or hunting over bait.
- (38) "Snagging" means the use of hook or hooks and line, with or without a pole, to impale or attempt to impale fish in a manner other than by natural feeding behavior by fish.
- (39) "All-Terrain Vehicle" means any motorized vehicle designed for or capable of travel over unimproved terrain.
- (40) "Recreational Vehicle" means any snowmobile or all-terrain vehicle engaged in off-highway recreational use.
- (41) "Snowmobile" means any motorized vehicle designed for travel on snow and/or ice and supported in whole or in part by skis, belts, cleats, runner, or low-pressure tires.
- (42) "Bait Fish" means any fish or minnow which is used for angling or the capture or taking of fish.
- (43) "Live Bait" means the use of any baitfish, amphibian, or any other animal while alive for angling.

(44) "Cold Water Fishery" means any lake, pond, stream, creek or river or any part thereof which is managed for trout, and where the use of live bait and bait-fish is prohibited.

(45) "Creel Limit" means the maximum number of any species of fish which may be legally taken per day

(46) "Trot Line" means any line used for fishing with one or more hooks which is not used with a conventional rod and reel and is left unattended which shall include but not be limited to the terms throwline, set line, limb line or jug line.

(47) "License" means the primary document issued by authority of the Rosebud Sioux Tribe which grants authority to engage in activities covered by the provisions of this Chapter.

(48) "Permit" means a secondary document including stamps, requiring a license as a prerequisite to its issuance, which grants authority to engage in certain specified activities under the provisions of this chapter, within the parameters of Tribal rules and regulations governing these activities.

(49) "Small Game" shall be defined as including the following: Family Anatidate--limited to geese, brants, dabbling ducks, diving ducks, tree ducks, sea ducks, and mergansers; Family Rallidae - including coots (mudhens) and gallinules (Rails and Soras); Family Charadiidae - including plovers and turnstones; Family Scolopacdae - including snipe, woodcock, and sandpipers; Gallinaceous Birds (with the exception of family Malaegrididae - wild turkeys (to include family tetraonidae - Sharptail grouse and Prairie chicken; Family Phasianidae - Bobwhite Quail, Ringneck Pheasant, and Hungarian Partidge; Family Columbideau - Mourning Dove; Cottontail Rabbit, Eastern Fox Squirrel, Red Squirrel, Gray Squirrel, and Pine Squirrel.

(50) "Big Game" shall be defined as wild Turkey and any undomesticated clovenhooved ungulate, including whitetail deer, mule deer, antelope, elk, and buffalo, for which harvest may be established by the Rosebud Sioux Tribe.

(51) "Unprotected Species" means those species of birds and animals which are not protected under the provisions of this Chapter, and for which, year round hunting is allowed. This shall include the following:

Prairie Dog	Redwing Black birds
Jackrabbits	European Starling
Groundsquirrels	Raven
Crows	Brewer's Blackbirds
Purple Grackles	Bronzed Grackles
All species of Skunks	

(52) "Water Fowl" means any wild geese, brants, or wild ducks.

5-35-2 POWERS AND DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES

(a) RECOGNITION--There is hereby recognized within the scheme of government of the Rosebud Sioux Tribe the Department of Natural Resources as has heretofore been established by the Rosebud Sioux Tribal Council.

(b) POLICY AND INTENT--It shall be and is hereby established as the policy and intent of the Department of Game, Fish and Parks, in conjunction with the Rosebud Sioux Tribal Council to establish the following:

- (1) To provide an adequate and flexible system for the protection and conservation of all forestry, fish and game resources on the Rosebud Sioux Indian Reservation;
- (2) To provide for the establishment of rules, regulation and ordinances relating to the harvest of fish, wildlife and timber on the Rosebud Sioux Indian Reservation;
- (3) To provide for the general management and supervision of all wildlife, fishery, forestry and outdoor recreational activities on the Rosebud Sioux Indian Reservation.
- (4) To provide for the establishment of license requirements, prohibited acts, penalties in regard to wildlife, fishery, forestry and outdoor recreational activities on the Rosebud Sioux Indian Reservation.

(c) REGULATIONS AND ORDINANCES, CONTENT- The Department of Natural Resources shall, from time to time recommend to the Rosebud Sioux Tribal Council for the adoption, amendment, promulgation, or repeal of such regulations and ordinances, consistent with the policy, objectives and intent of this Chapter as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this Chapter;

Such regulations and ordinances, shall without limiting the general powers herein conferred, include the following;

- (1) To fix seasons and shorten, extend or close seasons on any species of wildlife in any specific locality or localities, or in the entire reservation, when it shall be found, after investigation, that such action is necessary either to assure maintenance of an adequate supply thereof, to regulate taking, or to effectuate proper game management and control.
- (2) To close or open lakes, streams, and refuges or parts thereof to angling, trapping or hunting, and to regulate and prescribe the means by which wildlife may be taken as may be best to perpetuate, restore, increase or control any species of wildlife and assure an adequate supply thereof, and to regulate the transportation and storage of all wildlife or parts thereof within the boundaries of the Rosebud Sioux Indian Reservation and the shipment or transportation off of the Rosebud Sioux Indian Reservation.

- (3) To establish or change bag limits & possession limits.
- (4) To establish and change territorial limits for the taking of all species of wildlife.
- (5) To prescribe the types of or kinds of bait, lures, tackle, equipment, trap, firearms and weapons, the tagging of game or fish or parts thereof or any other means or devices for taking of such wildlife.
- (6) To designate the areas for hunting with bow and arrow and seasons therefore.
- (7) To establish big game, small game, fish, and/or furbearing animal refuges, production areas, demonstration areas, and research areas; when private property is to be included in one of the above, written consent of the owner must first be obtained; all boundary lines shall be posted at the usual place of ingress with signs bearing instructions and title of the Department of Natural Resources of the Rosebud Sioux Tribe.
- (8) To establish methods for checking hunters, fishermen or trappers into and out of designated areas, to prescribe safety and fire control measures and other regulations as may be deemed necessary in the interest of range, forest, game, fish or furbearing animal management, and for the safety and welfare of hunters, trappers, fishermen, landowners and the Rosebud Sioux Tribe.
- (9) To establish fees and license costs for hunting seasons, general, special or otherwise.
- (10) To establish rules and regulations governing the operations of boats upon waters located within the exterior boundaries of the Rosebud Sioux Tribe.
- (11) To establish rules and regulations governing the operation of snowmobiles and other all-terrain recreational vehicles on the lands of the Rosebud Sioux Tribe, which shall also include aircraft.
- (12) To establish guidelines, rules and regulations for the harvest of timber and to supervise such activities in such a way as to perpetuate the timber resources and to provide for sustained yield.

5-35-3 PROCEDURAL RULES

(a) OFFICER DUTIES--It shall be the duty of every Tribal Conservation Officer and Tribal Law Enforcement Officer to enforce the rules, regulations and ordinances promulgated hereunder relating to hunting, fishing, trapping, and all other regulations which may relate to all activities pursuant to the policy and intent of this Chapter and such officers may issue citations and/or make arrests and bring before the proper court any persons violating the provisions of this Chapter or any of the regulations, ordinances or rules adopted thereto pertaining to the policy, intent and purposes of this Chapter.

(b) RELATION TO CRIMINAL PROCEDURES UNDER THE ROSEBUD SIOUX TRIBAL CODE-- Unless other wise provided for within in this Chapter the procedural and substantive provisions of the Rosebud Sioux Tribal Code relating to criminal procedure and substantive crime shall apply within this chapter.

(c) SEARCH--Any Officer may search without warrant any conveyance vehicle, game bag, game basket, game coat or any receptacle, for game animals, birds, fish, or any package, box, hunting camp or similar place where he has reason to believe contains evidence of violation of this code, regulations, ordinances or rules adopted hereunder pertaining to hunting, fishing or trapping.

(d) AUTHORITY TO ENTER PRIVATE LAND--Any Officer in the course of his duty may enter upon any lands or waters of the Rosebud Sioux Indian Reservation and remain thereon while performing such duties hereunder, and such actions by such Officers shall not constitute trespass.

(e) SEIZURE--Any Officer may upon probable cause, seize without warrant, all birds, animals, or parts thereof taken, killed, transported or possessed, contrary to the provisions of this Chapter or any regulation, rule or ordinance pertaining to hunting, fishing, or trapping, and or gun, trap, net, seine, decoy, bait, boat, light, fishing tackle, or other device unlawfully used in hunting, fishing or trapping, or held with the intent to unlawfully use for hunting, fishing or trapping.

(f) FORFEITURE PROCEDURE--Any contraband game or fish seized shall be subject to forfeiture at the order of the Tribal Court of the Rosebud Sioux Tribe after notice and opportunity for hearing or trial as herewith set forth. In case it appears upon the sworn complaint of the Officer making the seizures that any articles seized were not in the possession of any person, and that the owner thereof is unknown, the Court shall have the power and jurisdiction to forfeit such articles unknown by publishing such summons in any newspaper or of general circulation for a period of two successive issues. The summons shall describe the articles seized and shall give the owner 15 days from the date of the last publication to appear before the Tribal Court and contest the forfeiture.

(g) FORFEITURE; DISPOSITION OF PROPERTY--In the event that the Tribal court orders forfeiture of any articles seized, such articles shall be sold at auction with proceeds going to the Department of Natural Resources. If any articles are not declared forfeited by the Order of the Tribal Court, they shall be returned to the person from whom seized, after the completion of the case and the fines and liquidated damages, if any, have been paid. If fines and/or liquidated damages are assessed by the Court and not paid within a period of time to be established by the Court, the Court may dispose of said property as described above.

(h) CIVIL LIABILITY TO THE TRIBE--Upon conviction of an offense where the defendant has illegally taken, killed or possessed any species of fish or wildlife, the defendant shall be liable for liquidated damages. The minimum damages to be paid to the Department of Natural Resources shall be as follows:

BIG GAME

MALES

FEMALES

Deer
Antelope
Elk
Buffalo
Turkey

SMALL GAME

Ducks
Geese
Pheasants
Grouse & Prairie
 Chicken
Mourning dove
Hungarian
Partidge
Rabbits

FISH--All fish, regardless of species, will have a value of \$2.00 per inch.

FURBEARERS

Coyote
Fox
Bobcat
Mountain Lion
Mink
Raccoon
Weasel
Badger
Porcupine

NONGAME SPECIES

All songbirds (except unprotected species) will have a value of \$15.00.

5-35-4 GENERAL LICENSING, HUNTING AND FISHING PROVISIONS--

(a) LICENSE AND PERMIT--License and permit fees for hunting and fishing within the exterior boundaries of that land area wherever situated known as the Rosebud Sioux Indian Reservation shall be established by the Rosebud Sioux Tribal Council for:

	RESIDENT	NON-RESIDENT
General Hunting	\$1.00	\$2.00
Fishing	\$3.00	\$10.00 5 day permit \$20.00 year round
Dove	\$5.00	NONE ALLOWED
Grouse	\$4.00	\$20.00
Pheasant	\$4.00	\$20.00
Deer (Muzzle Loader & Archery)	\$15.00	\$50.00
Antelope	\$15.00 Tribal Members Only	
Deer (Rifle)	\$15.00 Tribal Members \$20.00 Non-Members	\$100.00
Turkey	\$5.00 Residents Only	
Furbearer	\$5.00 Tribal Members Only	

(b) GENERAL HUNTING LICENSE--The general hunting license is required of every hunter within the exterior boundaries of that land wherever situated known as the Rosebud Sioux Indian Reservation; Hunters between the ages of 12 and 15 years inclusive must possess a certificate of competency or a hunters safety card and must be accompanied by a parent, guardian or responsible adult while in the actual acts of hunting; the general hunting license provided for hereunder shall not be issued to anyone under the age of 12.

(c) PERMIT TO HUNT BIG GAME--It shall be unlawful for any person to hunt any big game animal except persons to whom a tribal game permit has been issued.

(d) SMALL GAME PERMIT--The small game permit as provided for herein is required of every hunter who hunts small game, including migratory water fowl.

(e) FISHING LICENSE--It shall be unlawful for any person to take fish, frogs, turtles, or any other form of aquatic life without a valid Tribal fishing license.

(f) HANDICAPPED HUNTERS--Licensed hunters who are paraplegic or otherwise physically unable to walk with or without crutches, braces, or other mechanical support devices in the fields or woods, and who have obtained special permits from the Department, may shoot from a standing vehicle in the course of hunting game animals or game birds.

(g) PROTRUDING GUNS-- Except as otherwise provided for herein it shall be unlawful for any gun or firearm to protrude from any motor vehicle or conveyance while on a highway or public road within the exterior boundaries of that land area known as the Rosebud Indian Reservation.

(h) DISTURBING WILDLIFE PROHIBITED-- No person shall scare, chase, harass, disperse, rally or otherwise disturb any wildlife by means other than by legal hunting methods and in the ordinary course of hunting.

(i) SIZE OF PARTY LIMITED--No more than twenty (20) persons shall cooperate as a group in hunting.

(j) HUNTING METHODS RESTRICTED TO SHOULDER GUNS AND BOW AND ARROWS-- No person shall at any time hunt any game bird or game animal in any other manner than by shooting with a gun held to the shoulder or with a bow and arrow with a draw weight of at least twenty pounds and a draw peak of twenty eight inches at the draw peak of draw, except that large caliber handguns of the calibers .41 and .44 caliber may be used in taking of big game animals; all cross bows or various forms thereof shall be illegal.

(k) USE OF RIFLES TO HUNT BIRDS PROHIBITED--The use of rifles in the hunting of game birds is prohibited, except that rifles using center fire cartridges may be used in the hunting of wild turkeys.

(l) USE OF ARTIFICIAL LIGHT IN HUNTING PROHIBITED--No person shall take or attempt to take any game or wild animal with the aid or use of artificial light, except raccoons after they have been treed with the aid of dogs.

(m) HUNTING FROM A MOTOR VEHICLE PROHIBITED--No person while in or on a motor vehicle or any conveyance attached thereto shall take game nor discharge any firearm at any wild animal while on a public highway or in a field of unharvested grain.

(n) HUNTING FROM A MOTOR VEHICLE OR SNOWMOBILE UNLAWFUL--It shall be unlawful for any person to chase, drive or harass or hunt any game animal, game bird or any other form of wildlife with or from a motorcycle or snowmobile.

(o) USE OF AIRCRAFT FOR HUNTING PROHIBITED--It shall be unlawful to hunt from an airplane or any form of aircraft within the exterior boundaries of the Rosebud Indian Reservation or any trust land of the Tribe outside of Todd County:

(1) It shall be unlawful to assist in any way hunters on the ground with the aid of an aircraft, to spot game for the purpose of making it less difficult to harvest game, or to disturb, rally, drive, stirup, or otherwise harass any game or other wildlife species with an airplane;

(2) It shall be unlawful to hunt big game, predators, furbearers, waterfowl on the same day that one has flown aircraft over, around or through the Rosebud Indian Reservation.

(p) POSSESSION OF UNLAWFULLY TAKEN OR IMPORTED BIRD, ANIMAL OR FISH UNLAWFUL--It shall be unlawful for any person, at any time, to have in his possession or under his control, any bird, animal, fish, or any part thereof, which has been unlawfully taken on the Rosebud Sioux Indian Reservation, this state or any other state or Indian Reservation, which has been unlawfully transported into this reservation.

(q) POSSESSION DURING CLOSED SEASONS AS PRIMA FACIE EVIDENCE OF TAKING DURING CLOSED SEASON--The possession or having under control by any person of any bird, animal, fish or part thereof at any time when the killing, taking or possession thereof is by the law of the Rosebud Sioux Tribe declared to be unlawful, shall be prima facie evidence that such taking or killing has occurred the closed season.

(r) INSPECTION AND COUNTING OF BIRDS, ANIMALS AND FISH TO BE PERMITTED BY PERSON IN POSSESSION--Every person having in possession any game, bird, animal or fish or any part thereof, shall upon the request of any person authorized to enforce the game and fish laws of the Rosebud Sioux Tribe, permit the inspection and count of such birds, animals or fish in his possession, and any motor vehicle may be stopped for such inspection and count by any uniformed law enforcement officer.

(s) USE OF CITIZEN BAND RADIOS PROHIBITED--It shall be unlawful to use citizen band radio from either base stations or vehicles to make it easier or less difficult to harvest any form of wildlife on the Rosebud Reservation.

(t) ACCOMPANIMENT BY UNLICENSED HUNTER--It shall be unlawful for anyone to accompany properly licensed hunters in the field with a bow and arrow or firearm of any type without possessing a valid tribal hunters license and permit for the wildlife species being hunted.

(u) LICENSING, MISREPRESENTATION--Misrepresentation of identity, age, or residency while purchasing a tribal license or tribal permit shall be unlawful and shall constitute fraud.

(v) TRANSFER/ALTERATION OF LICENSES--Tribal licenses and tribal permits shall be valid only for the person whose name appears on the license and/or permit; further it shall be unlawful to alter or change in any way any tribal license or permit after being issued by the Department or authorized vendor.

(w) DESTRUCTION OF PROPERTY--No person shall deface, mutilate, shoot at, tear or pull down, or destroy any sign on the Rosebud Indian Reservation, nor shall any person cut, run through, tear out, take down, and leave down, fence, or leave gates open or in any way destroy gates or fence on any lands on the Rosebud Sioux Indian Reservation; in addition to the penalty provided for violating this provision, any person convicted of such a violation may be required by the convicting Court to pay for all damages resulting from such violation.

(x) WASTE PROHIBITED--No person shall wantonly waste or destroy any of the birds, animals, or fish of the kinds protected by the laws of the Rosebud Sioux Tribe.

(y) FINANCE--All revenue taken in by the Department from hunting, fishing, and trapping licenses and permit sales, timber harvest permit, bait vendors license, sale of timber and timber products, sale of any species of wildlife, receipt of liquidated damages and fines from violations of

this code will be used to operate the Department and the Departments programs to implement the best possible management and practices for tribal natural resources.

(z) PUNISHMENT--Unless otherwise specifically provided for within this Chapter or any subsection thereof, any person convicted hereunder for the acts or omissions made unlawful and provided for herein shall be deemed to have committed an offense against the Rosebud Sioux Tribe and the peace and dignity thereof and may be fined in an amount not to exceed \$500.00, and may be sentenced to a period in the Rosebud Sioux Jail facilities for period not to exceed 6 months or both such fine and imprisonment; in addition thereto the civil liabilities as provided for within this Chapter shall be applied as against anyone who is convicted and sentenced and fined hereunder.

5-35-5 BIG GAME PROVISIONS--

(a) BIG GAME TAGGING--The locking seal issued with each big game permit shall be attached securely around one leg between the hoof and knee joint.

(b) GENERAL--No big game animal shall be hunted or harvested by any other method than is prescribed by this Code.

(c) BAITING--It shall be unlawful to use bait of any kind to attract big game animals while hunting or to hunt or take big game over bait.

(d) EVIDENCE OF SEX--After harvesting a big game animal evidence of sex must be left attached to the carcass. Suitable evidence of sex shall include scrotum, udder, head, or identifiable portions of reproductive organs.

(e) SILENCING--It shall be unlawful to use any mechanism to silence, muffle, or minimize the report of any firearm while hunting big game.

(f) HUNTING FOR ANOTHER--No person shall hire another person to hunt big game for him nor shall any person hunt big game for another with or without any form of compensation.

(g) DISTURBING WILDLIFE PROHIBITED--No person shall scare, chase, harass, disperse, call or otherwise disturb any wildlife by means other than by legal hunting methods and in the ordinary course of hunting.

(h) ACCOMPANIMENT PROHIBITED--No big game permittee, while hunting in the field during any big game season shall be accompanied by any non-licensesee or non-permittee carrying any firearm or bow and arrow. A "non-licensesee" or "non-permittee" is a person not having a big game license for the same season.

(i) MINIMUM CALIBER OF BIG GAME AMMUNITION--It shall be unlawful for any person to hunt any big game animal with a firearm which discharges a projectile of a diameter less than 22/100 of an inch. The cartridge must contain a soft point or expanding bullet.

(j) MINIMUM LENGTH OF BIG GAME AMMUNITION--It shall be unlawful for any person to hunt any big game animal with a cartridge less than two inches in length, except with large Caliber handguns.

(k) LARGE CALIBER HANDGUNS--It shall be unlawful to hunt any species of wildlife on the Rosebud Sioux Reservation with a handgun, except that big game may be hunted with handguns of .41 and .44 caliber using factory loaded ammunition with expanding bullets and with at least a 4 inch barrel. All other calibers of handguns shall be illegal for hunting of big game

(l) MINIMUM CALIBER OF MUZZLE-LOADING BIG GAME AMMUNITION--It shall be unlawful for any person to hunt big game with any muzzle loading rifle which discharges a projectile of a diameter less than 42/100 of an inch.

(m) MAXIMUM NUMBER OF CARTRIDGES IN SELF-LOADING FIREARMS USED TO HUNT BIG GAME--No self-loading firearm that holds more than six cartridges may be used to hunt any big game animal.

(n) BUCKSHOT PROHIBITED IN HUNTING BIG GAME--No buckshot may be used, and no single call or rifled slug weighing less than ½ ounce may be used in hunting big game animals.

(o) DOGS PROHIBITED IN HUNTING BIG GAME--No dog shall be used in the hunting of big game animals.

(p) USE OF SALT TO ATTRACT BIG GAME PROHIBITED--No person shall place any salt or salt lick or construct a blind or stand at or near any salt lick for the purpose of hunting big game animals.

(q) USE OF ARTIFICIAL LIGHT IN HUNTING BIG GAME PROHIBITED--It shall be unlawful to use any artificial light in taking or attempting to take big game animals, or to use artificial light in big game areas while in possession of a firearm or bow and arrow.

(r) UNLAWFUL TAKING, POSSESSION, SALE OR TRANSPORTATION OF GAME BIRDS, ANIMALS, OR FISH--Any person who takes, catches, kills, or has in his possession with intent to sell; sells, or causes to be conveyed; has in his possession with intent to ship or convey to any point, either within or without this Reservation, any game birds, animals, or fish or parts thereof, in violation of any law of this Tribe or any legally prescribed pertinent regulations of the Department of Natural Resources, or any common carrier or agent or agents thereof who aids or abets any person in shipping such game animals or fish, or has the same in his possession with intent to ship or convey to any point either within or without this Reservation contrary to law, shall be guilty of a misdemeanor.

(s) ARCHERY EQUIPMENT RESTRICTIONS--No person hunting with bow and arrow shall use or possess explosive points, poisonous points, barbed points, or cross bows.

(t) MINIMUM SIZE OF BOW AND ARROW--Big game permittees hunting with bow and arrow shall be equipped with a bow of not less than forty pounds pull at twenty-eight inches of draw or at peak of draw, capable of shooting an arrow one hundred twenty-five yards. The cutting edge of the arrowhead must be of steel and not be less than 7/8 inches wide and not less than 1½ inches long. The shaft of the arrow must be at least 24 inches long. Broadheads must be of reasonable sharpness (razor sharp). Each cutting blade of the broadhead must be of one piece, and all broadheads with spiral shaped cutting surfaces are prohibited.

(u) ARCHERS PROHIBITED FROM POSSESSING FIREARMS--No person licensed in a season restricted to archery only shall possess any firearm in the field while hunting with bow and arrow.

(v) TAGGING REQUIREMENTS FOR BIG GAME--No big game animal taken on this Reservation shall be transported unless the tag bearing the licensee/permittee's number for that season, has been securely attached at the time the big game animal is brought into any hunting camp, dwelling, farmyard, or other place or abode of any kind occupied overnight or in the event such big game animal is brought out to a road or trail, then before the same is placed upon or in a vehicle of any kind. All tagging instructions printed on the tag must be followed.

5-35-6 FISHING REGULATIONS

(a) LABELING AND ACCESS TO FISHING HOUSES--Fish houses, shanties, or other shelters must display on the outside the name and address of the owner in letters at least 2 inches high. The door must permit entry at all times except when unoccupied and locked from the outside. All such shelters must be removed from the ice by March 5 or earlier, as determined by the Department.

(b) ICE HOLE SIZE RESTRICTIONS--No hole shall be cut or drilled through the ice or a greater diameter than 12 inches, nor shall the length of any side of the ice hole exceed 12 inches which is used for ice fishing.

(c) REFUSE LEFT ON ICE--It shall be unlawful for any person to deposit any form of organic or inorganic waste on the ice of any water of the Rosebud Sioux Reservation.

(d) FISHING RESTRICTED TO AUTHORIZED METHODS--It shall be unlawful to catch or attempt to catch, take, or kill any fish by any method, except as provided in this code.

(e) MAXIMUM NUMBER OF LINES AND HOOKS--It shall be unlawful for any person to fish with more than two lines at the same time, and no more than three hooks shall be attached to the same line. Artificial lures constitute one hook, regardless of the number of gang hooks attached.

(f) ROUGH FISH: DEFINITION; CONDITIONS--It is legal to take certain rough fish by means of bow and arrow. "Rough Fish" means; Paddle fish, carp, buffalo, carpsuckers, suckers, gar, drum, and gizzard shad.

- (1) Each bow and arrow shooter shall have in his possession a valid Tribal fishing license.
- (2) The minimum weight of bows shall be twenty-five pounds.
- (3) The maximum length of arrows shall be thirty-two inches.
- (4) Each arrow must have a barbed head.
- (5) Each arrow must be shot from a bow.
- (6) A line must be attached from bow to arrow.
- (7) It shall be unlawful to take fish using a crossbow.

(g) ROUGH FISH AREAS; RESTRICTIONS--All streams, lakes, ponds, and other waters in the Rosebud Sioux Reservation are subject to Tribal Games, Fish & Parks Regulations relative to fishing, and are open to the taking of certain rough fish by means of bow and arrow, except that all water areas within a distance of 100 yards of any boat dock, swimming area, picnic area, or other place where people are congregated, are closed to bow and arrow fishing. Bow and arrow fishing is permitted only during daylight hours.

(h) SNAGGING; UNLAWFUL--To catch or take any fish by hand fishing, toe fishing, snagging, or by use of brush lines, jug or float line fishing, or any other similiar device; Snagging as prohibited by law, shall not include hooking when the fish by its action takes into its mouth a bait or lure. A fish hooked in any manner must be immediately released into the water from which it came. If not immediately released, the person hooking the fish shall be guilty of snagging.

(i) SEINES; NETS; SPEARS; TRAPS; UNLAWFUL--It is unlawful for any person to have in his possession any seine trammel net, hook net, gill net, fish gig, fish spear, fish trap; or other device, contrivance or material for the purpose of taking fish, except as otherwise provided for by law.

(j) DELETERIOUS SUBSTANCES; EXPLOSIVES; UNLAWFUL--It is unlawful to place in or upon any waters within the Rosebud Sioux Reservation any deleterious substances, or fish berries, or to place or explode dynamite, giant powder, lime, nitroglycerine or any other explosive of any character or kind in any waters on the Rosebud Sioux Tribe, with the intent to take or kill, stun or wound fish.

(k) RODS, LINES, BAITED HOOKS--It is unlawful to take fish by any other means than by rods, lines and baited fishhooks, except as provided by law.

(l) BAIT MINNOWS--

(a) The taking of the common bait minnow (family Cyprinidae) and top minnows or killifish (family Cyprinodontidae) from streams, rivers, and lakes of the Rosebud Sioux Reservation, for use as bait, is permitted subject to the limitation that possession of such minnows and/or small fish taken in excess of 500 per day is prohibited and declared to be unlawful.

(b) It is lawful to have and use, for the sole purpose of taking minnows for a bait, a minnow seine not more than *four* feet wide and *Fifteen* feet long with a mesh not larger than *one-fourth* inch square measure; and a glass or wire minnow trap with throat not larger than *One inch* in diameter, any other seine or seine of device shall be unlawful.

(c) The taking of bait minnows for resale, trade, or other commercial purpose is prohibited, except as otherwise provided in the Rosebud Sioux Tribal Code.

(m) BAIT VENDORS LICENSES--It shall be unlawful to sell, trade, or barter baitfish on the Rosebud Sioux Reservation without possessing and displaying in a conspicuous place a valid Rosebud Sioux Tribal Bait Vendor's License.

(n) PURCHASE OF LICENSE--The bait Vendor's License may be purchased from the Department of Natural Resouces and is valid until December 31 of the year of issuance. The cost of the Bait Vendor's License is determined by the Department of Natural Resources.

(o) GAME FISH, CATFISH, ROUGH FISH AS BAIT UNLAWFUL--It shall be unlawful to sell, trade, or barter game fish, catfish or rough fish as bait, or for any other purpose on the Reservation. No baitfish shall be introduced to any waters of the Reservation for any purpose unless, specifically authorized by the Department.

(p) BAIT FISH IN WATERS UNLAWFUL--It is unlawful to empty the contents of any minnow bucket or otherwise introduce bait Minnows or fish of any species into the waters of the Rosebud Sioux Tribe.

(q) BAITFISH IN RESTRICTED WATERS UNLAWFUL--It is unlawful to use bait minnows while fishing in any restricted waters prohibiting the use of bait minnows or any cold-water fishery of the Rosebud Sioux Tribe.

It is unlawful to buy or sell frogs or fish, except as provided by the Rosebud Sioux Tribal Code.

(r) FROGS

(1) A valid Rosebud Fishing license is required for any person to take, catch or kill bullfrogs, except those person exempt by law from having such a license.

(2) Bullfrogs may legally taken by hand, dip-net, and by hook and line. Any and all other means and methods of catching, taking and/or killing bullfrogs are prohibited

5-35-7 TRAPPING

(a) TRAPPING; MEMBERS, NONMEMBERS--Trapping of furbearers on the Rosebud Reservation is limited to tribal members only, except that nonmembers farmer/ranchers may trap predators in the course of their farm and ranch operation for animal damage control.

(b) TRAPS; MAKING--All traps will be marked with the owners name and address.

(c) TRAPS; DISTURBING--No one shall disturb in any way another person's trap sets, harrass, kill, or take a trapped animal from another person's trap set.

(d) TRAPS TO BE CHECKED--Traps set shall be checked at least once every 48 hours.

(e) TRAPPING AREAS--No traps shall be set within 200 yards of any house, dwelling, community, town, city limits, public use area, picnic area, or other place where public gatherings are likely to take place. No traps shall be set within 200 yards of any Cemetery.

(f) TRAPPING GAME ANIMALS UNLAWFUL--It shall be unlawful to trap any small or big game animals. Only furbearers, predators, and unprotected species may be legally trapped.

(g) TRAPPING ON PRIVATE LAND--If trapping is to take place on leased land, the lesser must be notified prior to setting traps.

(h) TRAPPING PROTECTED SPECIES--If protected species are trapped, the animal shall be left undisturbed and the Department of Natural Resources notified.

(i) STEEL LEGHOLD TRAPS--No steel leghold traps larger than #4 are permitted.

(j) HARVESTING BOBCATS; TAGGING--Bobcats may be harvested between December 16 and January 15 and upon harvesting a bobcat the unskinned carcass must be presented to a Conservation Officer for inspection and tagging. Bobcats shall not be sold without being tagged by a Conservation Officer.

(k) POSSESSION OF PREDATOR, FURBEARER--No predator or furbearer shall be held in possession by anyone while in a living state, except that one furbearer may be kept as a pet under humane conditions.

(l) PHYSICAL ALTERATION OR WILD PREDATOR OR FURBEARER--No wild predator or furbearer which is to be kept as a pet shall physically altered in any way. This shall include declawing, defanging, descenting, spaying, or any other intentional physical alteration.

(m) NUMBER OF PREDATOR OR FURBEARER; PETS --No wildlife species other than one predator or furbearer may be kept as a pet or held in possession by anyone while in a living state.

5-35-8 FORESTRY

(a) OWNERSHIP--All timber resources on the Rosebud Indian Reservation are owned by the Tribe, except for tree claims and other tree stands located on private lands within the Reservation.

(b) MANAGEMENT--The management and control of all tribal timber resources is delegated to the Rosebud Sioux Tribal Department of Natural Resources and the Natural Resources Committee.

(c) SALES--The sale of timber and timber products from tribal timber stands is under the control of the Rosebud Sioux Tribal Department of Natural Resources and the Natural Resources Committee.

(d) TIMBER RESERVE ACTIVITIES--All harvest, collection of firewood vehicular travel, and recreational activities within the Rosebud Sioux Tribe Timber Reserve is under the control of the Department of Natural Resources.

(e) TIMBER HARVEST REGULATED--

(1) All harvest products will require supervision by the Natural Resources Department, based upon prior contract in the form of "Timber Harvest Permit", and issued by The Natural Resources Department. Validity requires Concurrence by the Bureau of Indian Affairs.

(2) A schedule of stumpage fees will apply as set by the Tribal Council from time to time.

- (a) Dry Wood
- (b) Live Trees

- I. Public Use
- II. Personal Use

- 1. Post & hole
- 2. House logs
- 3. Christmas Trees
- 4. Ornamental stock
- 5. seedlings
- 6. firewood

(3) Monies collected will be credited to the Natural Resources Department with the stipulation that they support Forest management/conservation practices.

(f) TREES--All live trees to be cut will be so designated prior to harvest, with a paint type mark applied by the sale supervisor.

(g) STUMPS--Stumps shall be cut as low as practicable to avoid waste. The mean height of any stump shall not exceed one-half its diameter except that where this height is considered to be impracticable, higher stumps may be authorized by an authorized official of the Department of Natural Resources.

(h) SLASH--Slash disposal shall require that where practical limbs and other refuse shall be piled for future burning (with snow cover). Where not practical to pile, slash must be cut down low to ground surface and not to exceed eighteen (18) inches in height.

(i) TRAILS AND ROADS--Skidding trails and hard roads will be designated by the sale supervisor to minimize the soil erosion hazard.

(j) PERMITS; EXTENSIONS--Timber harvest permits shall specify the time period limitations of the sale. Extensions, will be permitted only in the event that weather and/or moisture conditions are unacceptable from the standpoint of operations or resources damage susceptibility.

(k) CUTTING WITHOUT PERMIT: UNLAWFUL--It shall be unlawful to cut, dig, or in any other way remove living trees from Tribal lands for any purpose without possessing a valid timber harvest permit issued by the Department of Natural Resources.

(l) CUTTING AREAS AND TIME; UNLAWFUL--It shall be unlawful to cut, dig, or in any other way remove living trees from tribal lands other than those trees designated for removal by the Department, and within the area or areas designated for harvest, and only during the time frame established by the Department, as shown on the Timber Harvest Permit.

(m) DAMAGE; WASTE; UNLAWFUL--It shall be unlawful to harvest trees in a careless manner, which could cause damage to adjacent trees or to property, or to wantonly damage or destroy living trees or to limb living trees for any purpose, unless authorized by the Department.

(n) SALE WITHOUT AUTHORIZATION; UNLAWFUL--It shall be unlawful to sell, barter, or trade any timber or timber harvest products taken from tribal lands unless such sale is authorized by the Department, and the operation is part of a program authorized by the Department.

(o) REMOVAL FROM PROGRAM AREAS; UNLAWFUL--It shall be unlawful to remove any trees, parts thereof, or timber harvest products from a work area in which a Department approved timber management program is occurring/has occurred, without the consent of the Department.

(p) VEHICLES OFF ESTABLISHED ROADS; UNLAWFUL--It shall be unlawful to drive any motor vehicle off of established roads or fire trails in the timber reserve, unless specifically authorized, by the Department.

(q) FIREFIGHTING--Any timber Harvest Permittee will assist Tribal or BIA Officers to fight fire during the period of this permit without pay if the area covered by this permit is on fire or treated, otherwise at the prevailing rate of pay.

(r) FIRES--No fires are allowed in the Timber Reserve except at designated campsites. Fires may be further restricted by the Department and the public will be notified by signs posted along access routes to camping areas and through the media.

5-35-9 RECREATION

(a) LICENSING--Every boat propelled by a motor on waters located within the boundaries of the Rosebud Reservation shall be numbered and licensed as prescribed by Tribal Law.

(b) LIGHTS--All boats afloat after dark must be equipped with running lights attached to bow and stern and these lights must be in use during hours of darkness.

(c) LIFE PRESERVERS--All motorboats must be equipped with Coast Guard Approved life preservers. One life preserver is required for every occupant.

(d) FIRE EXTINGUISHERS--Every boat propelled by a motor to ten horsepower and greater must be equipped with a Coast Guard Approved Fire Extinguisher.

(e) SAFE OPERATION--No motorboat shall be operated in such a way as to endanger the lives of others or to cause nuisance or destruction of property.

(f) WATERSKIING--No waterskiing shall take place with 100 yards of any swimming area. If buoy markers are used to designate such areas, all waterskiing shall take place outside of these bouys.

(g) OARS REQUIRED--All motorboats shall be equipped with a set of oars.

(h) WASTE--No bilge or any other organic or inorganic waste shall be pumped or in other way introduced to the waters of the Reservation.

(i) WILDLIFE TAKING FROM MOTORBOATS--Motorboats while underway with the aid of a motor shall not be used in the taking of any wildlife on the Reservation.

(j) REPORTS OF CAPSIZING OR SINKING--The capsizing or sinking of any boat shall be reported to the Department of Natural Resources within 24 hours.

CHAPTER THIRTY-SIX

ROSEBUD TRIBAL PESTICIDE CODE

5-36-1 DEFINITIONS FOR PURPOSES OF THIS CODE

- A. The term "Administrator" means the administrator of the Environmental Protection Agency.
- B. The term "Agricultural Commodity" means any plant, or part thereof, or animal, or animal products, produced by a person (including farmers, ranchers, vineyardists, plant propagators, christmas tree growers, aquaculturalists, floriculturalists, orchardists, foresters or other comparable persons) primarily for sale, consumption, propagation, or other use by man or animals.
- C. The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
- D. Applicators:
1. The term "certified applicator" means any individual who is certified by the Rosebud Natural Resources/Land Management Committee as authorized to use or supervise the use of any pesticide which is classified for restricted use.
 2. The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified.
 3. The term "commercial applicator" means a certified applicator (whether or not he is a private applicator which respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or, on any property other than as provided by paragraph 2.
 4. Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied "under the direct supervision of a certified applicator) if it is applied by a competent person acting under the instructions and control of a certified applicator who is available and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.
- E. The term "code" means the Rosebud Tribal Pesticide Code.
- F. The term "Committee" means the Rosebud Natural Resources/Land Management Committee or that body deligated this authority by the Rosebud Sioux Tribe.
- G. The term "Council" means the Rosebud Sioux Tribal Council.
- H. The term "EPA" means the U.S. Environmental Protection Agency.
- I. The term "District Court" means a United States district court.

J. The term "Environment" includes water, air, land, and all plants and man and other animals living therein, and the inter-relationships which exist among these.

K. The term "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, as Amended (1972, 1975, and 1978).

L. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually having more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

M. Label and Labeling:

1. The term "Label" means the written, printed or graphic matter on or attached to, the pesticide or device or any of its containers or wrappers.

2. The term "Labeling" means all labels and all other written, printed, or graphic matter--
a. accompanying the pesticide or device at any time; or
b. to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Department of Agriculture and Interior, the Department of Health, Education and Welfare, State experiment stations, State institutions or agencies authorized by law to conduct research in the field of pesticides.

N. The term "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivance, and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

O. The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25 (c) (1) of FIFRA or which the Committee declares to be a pest.

P. The term "Pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended of use as a plant regulator, defoliant, or desiccant: Provided, that the term "Pesticide" shall not include any article (1) (a) that is a "new animal drug" within the meaning of Section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of Section 201 (x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this provision.

Q. The term "Protect Health and the Environment" and "Protection of health and the environment" mean protection against any unreasonable adverse effects on the environment.

R. The term "Reservation Lands" means all lands within the exterior boundaries of the Rosebud Sioux Indian Reservation, Todd County, South Dakota, and all Trust Lands in Tripp, Mellette, Lyman, and Gregory Counties, South Dakota, which are within the original boundaries of the Rosebud Sioux Indian Reservation.

S. The term "Restricted use Pesticide" means any pesticide use classified for restricted use by the Rosebud Natural Resources/Land Management Committee, the Secretary of the South Dakota Department of Agriculture, or the Administrator of the U.S. Environmental Protection Agency.

T. The term "Secretary" means the secretary of the South Dakota State Department of Agriculture.

U. The term "State" means the State of South Dakota.

V. The term "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

W. The term "Weed" means any plant which grows where not wanted.

X. The term "Wildlife" means all living things that are neither human, domesticated, nor as defined in this Code, pests, including but not limited to mammals, birds, and aquatic life.

Y. The term "Establishment" means any place where a pesticide or device or active ingredient use in producing a pesticide is produced, or held, for distribution or sale.

Z. The term "To use any registered pesticide in manner inconsistent with its labeling" means to use any registered pesticide in a manner include (1). applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling; (2). applying a pesticide against any target pest not specified on the labeling if the application is to the crop, animal, or site specified on the labeling, unless the Administrator has required that the labeling specifically states that the pesticide may be used only for the pests specified on the labeling after the Administrator has determined that the use of the pesticide against other pests would cause an unreasonable adverse effect on the environment; (3). employing any method of application not prohibited by the labeling; or (4). mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling. Provided further, that the term also shall not include any use of a pesticide in conformance with Section 5, 18, or 24 of FIFRA, or any use of a pesticide in a manner that the Administrator determines to be consistent with the purpose of FIFRA: and provided further, that after March 31, 1979, the term shall not include the use of a pesticide for agricultural or forestry purposes at a dilution less than the label dosage unless before or after that date the Administrator issues a regulation or advisory opinion consistent with the study provided for it in Section 27 (B) of the Federal Pesticide Act of 1978, which regulation or advisory opinion specifically requires the use of definite amounts of dilution.

5-36-2 CLASSIFICATION OF PESTICIDES--The Rosebud Sioux Tribal Council or its designated agent shall recognize all pesticide products introduced on the Rosebud Reservation for "restricted use" or "general use" according to the standards consistent with Section 3 of FIFRA. As a minimum, the council will consider all pesticide products classified for restricted use by the Administrator of EPA as for restricted use on the Rosebud Reservation. In addition, the Council may restrict the use

of additional pesticide products if the uses be restricted to prevent damages to property other than the property of which they are directly applied or to persons, animals, crops or vegetation other than the pests which they are intended to destroy.

Individuals not appropriately certified are prohibited from using restricted use pesticides, with the exception of those individuals applying the pesticides under the direct supervision of a certified applicator, as shown in 5-36-1 D (4) of this code.

5-36-3 CLASSIFICATION OF PESTICIDE APPLICATORS--Pesticide applicators shall be classified as commercial applicators or private applicators according to the definitions shown in 5-36-1 D of this code.

5-36-4 CATEGORIZATION OF COMMERCIAL APPLICATORS

Commercial applicators shall be classified as commercial applicators or private applicators according to the definition shown in 5-36-1 D of this code.

A. Categories

1. Agricultural Pest Control

a. Plant

This category includes commercial applicators using or supervising the use of restricted use pesticides in production of agricultural crops, including without limiting the foregoing, tobacco, peanuts; cotton, feed grains, soybeans and forage; vegetables, small fruit, tree fruits and nuts, as well as on grasslands and non-crop agricultural lands.

b. Animal

This category commercial applicators using or supervising the use of restricted use pesticides on animals, including without limiting the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry and livestock, and to places on or in which animals are confined.

Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publically holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

2. Forest Pest Control

This category includes commercial applicators using or supervising the use of restricted use pesticides in forests, forest nurseries, and forest seed producing areas.

3. Ornamental and Turf Pest Control

This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers and turf.

4. Seed Treatment

This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

5. Aquatic Pest Control

This category included commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in category 8 below.

6. Right-of-Way Pest Control

This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.

7. Industrial, Institutional, Structural and Health Related Pest Control

This category includes commercial applicators using or supervising the use of restricted use pesticides in, on, or around food handling establishments, human dwellings, institutions, such as schools and hospitals, industrial establishments, including warehouses and grain elevators, and any other structures and adjacent areas, public or private; and for the protection of stored, processed, or manufactured products.

8. Public Health Pest Control

This category includes State, Federal, Tribal or other governmental employees, using or supervising the use of restricted use pesticides in public health programs for the management and control of pests having medical and public health importance.

9. Regulatory Pest Control

This Category includes State, Federal, Tribal or other governmental employees who use or supervise the use of restricted use pesticide in the control of regulated pests.

10. Research and Demonstration Pest Control

This category includes: (1) individuals who demonstrate to the public the proper use and techniques of application of restricted use pesticides or supervise such demonstration, and (2) persons conducting field research with pesticides, and in doing so, use or supervising the use of restricted use pesticides.

Included in the first group are such persons as extension specialists and county agents, commercial representatives demonstrating pesticide products, and those individuals demonstrating methods used in public programs.

The second group includes; State, Federal, Tribal, Commercial and other persons conducting field research on or utilizing restricted use pesticide.

11. Rodent, Predator, and Bird Pest Control

This category includes commercial applicators using or supervising the use of any restricted use pesticides in the control of rodents, predators, or birds.

All commercial applicators are further subcategorized according to the types of pesticides they apply, these subcategories are:

- a. Herbicides, desiccants, defoliants, and plant regulators
- b. Insecticides, attractants, and repellents
- c. piscicides
- d. rodenticides, predacides, and avicides
- e. fungicides and nematocides
- f. disinfectants and germicides

All applicators who apply pesticides via aircraft must comply with all applicable Federal regulations administered by the State of South Dakota and special provisions set forth by the Committee.

5-36-5 STANDARDS OF COMPETENCY FOR CERTIFICATION

A. General Standards for Commercial Applicators

All commercial applicators, shall demonstrate knowledge of the following subjects:

1. Label & Labeling Comprehension

- a. All certified applicators should be required to be familiar with the Tribal Pesticide Code.
- b. The general format and terminology of pesticide labels and labeling.
- c. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels.
- d. Classification of the product, general or restricted; and
- e. Necessity for use consistent with the label.
- f. Each applicator will be given a copy of the code before he/she is certified.

2. Safety-Factors including

- a. Pesticide toxicity and hazard to man and common exposure routes;
- b. Common types and causes of pesticide accidents;
- c. Precautions necessary to guard against injury to applicators
- d. Need for and use of protective clothing and equipment;
- e. Symptoms of pesticide poisoning;
- f. First aid and other procedures to be followed in case of pesticide accident; and
- g. Proper identification, storage, transport, handling, mixing procedures and disposal, methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

3. Environment-The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
 - a. Weather and other climatic conditions;
 - b. Types of terrain, soil, or other substrate;
 - c. Presence of fish, wildlife, and other non-target organisms; and
 - d. Drainage patterns.
4. Pests-Factors such as:
 - a. Common features of pest organisms and characteristics of damages needed for pest recognition;
 - b. Recognition of relevant pests; and
 - c. Pest development and biology as it may be relevant to problem identification and control.
5. Pesticides-Factors such as:
 - a. Types of pesticides;
 - b. Types of formulations;
 - c. Compatibility, synergism, persistence and animal and plant toxicity of the formulation;
 - d. Hazards and residues associated with use;
 - e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
 - f. Dilution procedures.
6. Equipment-Factors including:
 - a. Types of equipment and advantages and limitations of each type; and
 - b. Uses, maintenance and calibration
7. Application Techniques - Factors including:
 - a. Methods of procedure used to apply various formulations of pesticides, solutions, and gasses, together with a knowledge of which technique of application to use in a given situation.
8. Laws and Regulations - Applicable State, Federal, and Tribal Laws and Regulations.

B. Category Specific Standards

In addition to the general standards, commercial applicators must demonstrate knowledge of the principles of pesticide use as they relate to the particular use category in which the applicator is involved. The following are the category specific standards:

1. Agricultural Pest Control

a. Plants

Applicators must demonstrate practical knowledge of the crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting for the use of restricted use pesticides in agricultural areas.

b. Animal

Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since most animals will frequently be used for food.

Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress, and extent of treatment.

2. Forest Pest Control

Applicators shall demonstrate practical knowledge of the types of forests, forest nurseries, and seed production in their State and on the Reservation, and the pests involved. They should possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated especially as it may relate to meteorological factors and adjacent land use.

3. Ornamental and Turf Pest Control

Applicators shall demonstrate practical knowledge of pesticide problems associated with the production and maintenance of ornamental trees, shrubs, plantings, and turf, including cognizance of potential phytotoxicity due to a wide variety of plant material, drift, and persistence beyond the intended period of pest control. Because of the frequent proximity of human habitations to application activities, applicators in this category must demonstrate practical knowledge of application methods which will minimize or prevent hazards of humans, pets, and other domestic animals.

4. Seed Treatment

Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting, and mixing, and misuse of treated seeds such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seed.

5. Aquatic Pest Control

Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faculty

applications of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects, and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

6. Right-of-Way Pest Control

Applicators shall demonstrate practical knowledge of a wide variety of environments since right-of-ways can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way areas, and the impact of their application activities in the adjacent areas and communities.

7. Industrial, Institutional, Structural and Health-Related Pest Control

Applicators must demonstrate a practical knowledge of a wide variety of pests including their life cycles, types of formulations appropriate for their control and methods of application that avoid contamination of food, damage and contamination of habitat and exposure to people and pets. Since human exposure, including babies, children, pregnant women, and elderly people, is frequently a potential problem applicators must demonstrate practical knowledge of the specific factors which may lead to a hazardous condition, including continuous exposure in the various situations encountered in this category. Because health-related pest control may involve outdoor applications, applications must also determine practical knowledge of environmental conditions particularly related to this activity.

8. Public Health Pest Control

Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They should also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

9. Regulatory Pest Control

Applicators shall demonstrate practical knowledge of regulated pests applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, and spread and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties since their services are

frequently required in other areas of the country where emergency measures are invoked to control regulated pests, and where individual judgments must be made in new situations.

10. Research and Demonstration Pest Control

Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problem situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pest, and population levels occurring in each demonstration situation is required. Further, they should demonstrate an understanding of pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all the standards detailed in Section 171.4(b) of FIFRA regulations. In addition, they shall meet the specific standards required for categories (1) through (7) of this section as may be applicable to their particular activity.

Persons conducting field research or method improvement work with restricted use pesticides should be expected to know the general standards detailed in 5-36-5A of this Code. In addition, they shall be expected to know the specific standards required for categories 1 through 9 and 11 of this section, applicable to their particular activity, or alternately, to meet the more inclusive requirements listed under "Demonstration".

11. Rodents, Predator, and Bird Pest Control

Applicators must demonstrate a practical working knowledge of both the biological and behavioral patterns of target species and related non-target species. The importance of such knowledge is extreme in controlling rodents, predators, and birds, considering that in a rural environment many species of related non-target wildlife may occur in addition to target species. A practical knowledge of the toxicity of specific pesticides is required also because of the possibility of the carcass of the controlled species being consumed by non-target species.

C. Exemptions from Standards

The above standards do not apply to the following persons for purposes of this Code:
(1) Persons conducting laboratory type research involving restricted use pesticides; and
(2) Doctors of medicine and Doctors of Veterinary Medicine applying pesticides as drugs or medicine during the course of their normal practice.

D. Standards of Competency for Private Applicators

All Private applicators shall demonstrate knowledge of the following subjects:

1. All certified applicators should be required to be familiar with the Tribal Pesticide Code.

2. Recognize common pests to be controlled and damage caused by them.
3. Read and understand the label and labeling information—including the common name of pesticide he applied; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or re-entry restrictions; and any specific disposal procedures.
4. Apply pesticides in accordance with label instructions and warnings, including the ability under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
5. Recognize local environmental situations that must be considered during application to avoid contamination.
6. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.
7. Each applicator applicant will be given a copy of the code before he/she is certified.

E. Standards for Supervision of Non-Certified Applicators by Certified Private and Commercial Applicators

Certified applicators whose activities indicate a supervisory role must demonstrate a practical knowledge of Federal, State, and Tribal supervisory requirements, including labeling, regarding the application of restricted use pesticides by non-certified applicators.

The availability of the certified applicator must be directly related to the hazard of the situation. In many situations, where the certified applicator is not required to be physically present, "direct supervision" shall include verifiable instruction to the competent person, as follows: (1) detailed guidance for applying the pesticide property, and (2) provisions for contacting the certified applicator in the event he is needed. In other situations as required in the event he is needed. In other situations as required by the label, the actual physical presence of a certified applicator may be required when application is made by a non-certified applicator.

5-36-6 CERTIFICATION PROCEDURES

A. Commercial Applicators

1. Certification Document Required

No person shall apply restricted use pesticides on the Rosebud Sioux Indian Reservation lands without first obtaining a Rosebud certification document from the Rosebud Natural Resources/Land Management Committee. Rosebud tribal certification is obtained by presenting to the Committee a valid commercial applicator

certification document issued by the State of South Dakota. The tribal certification document issued will reflect tribal certification only in the commercial applicator categories appearing on the State certification document presented, which the Committee determines to meet the competency standards given in Section 5-36-5 (b) of this Code. Further the expiration date on the Rosebud certification document shall not exceed the expiration date printed on the State certification document presented.

2. Certification Renewal

A Rosebud certification may be renewed according to the procedures described in Section 5-36-6 A(1) of this Code by presenting a valid State of South Dakota certification document to the Rosebud Natural Resources/Land Management Committee.

3. Records Maintained

Commercial applicators shall keep and maintain records of each application of any pesticide to include the following information:

- a. Name and address of owner of property treated;
- b. Location of treatment site, if different from (a);
- c. Date and time application;
- d. Wind direction, wind velocity, and temperature at time of application (non-structural applications);
- e. Name of pesticide, formulation, concentration, rate applied, and total amount used;
- f. Purpose of application (name of pest treated);
- g. Specific crop or designated area to which pesticide application was made; and
- h. Name and address of applicator.

Such records shall be kept for a period of three years from the date of application of the pesticide and shall be available for inspection by the Rosebud Natural Resources/Land Management Committee at reasonable times. The Committee shall, upon written request, be furnished a copy of such records by the commercial applicator. Records of restricted use pesticide applicators performed by persons under the direct supervision of a certified commercial applicator shall be the responsibility of the supervising certified applicator.

Private Applicators

1. Certification Required

No applicator as defined in Section 5-36-1 D(1) of this Code shall use or supervise the use of any restricted use pesticide without a private applicator's certificate issued by the Rosebud Natural Resources/Land Management Committee.

2. Certification Methods

A private applicator may become certified to purchase and/or apply restricted use pesticides on the Rosebud Reservation Lands by presenting a current valid South Dakota Private Applicators certification to the Rosebud Natural Resources/Land Management Committee. The Committee will issue a Rosebud Tribal Certification document to the holder of a South Dakota certification document. The expiration date of the tribal certification will be the same as that given on the South Dakota document. Recertification may be obtained by presenting an updated South Dakota certification document to the Committee.

C. Certification of Non-English Speaking Applicants

Since pesticide labels are printed in English, persons who cannot read English cannot be certified on the Rosebud Reservation.

5-36-7 STORAGE AND DISPOSAL OF PESTICIDES AND PESTICIDE CONTAINERS

No person shall transport, store, or dispose of any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, or to pollute any waterway in a manner harmful to any wildlife or aquatic organisms therein.

5-36-8 UNLAWFUL ACTS

Any person who has committed any of the following acts is subject to penalties provided in Section 5-36-10 of this Code:

- A. Made false or fraudulent claims through any media, misrepresenting the effect of pesticide or methods to be utilized;
- B. Made a pesticide recommendation or application inconsistent with the labeling registered with EPA, the Secretary of South Dakota Department of Agriculture, or the Department of Natural Resources/Land Management Committee, for that pesticide, or in violation of EPA's, the Secretary's, or the Committee's restrictions on the use of that pesticide;
- C. Operate faulty or unsafe pesticide application equipment;
- D. Operate pesticide equipment in a faulty, careless, or negligent manner;
- E. Neglected, or after notice, refused to comply with the provision of this Code or to any lawful order of the Committee;
- F. Refused or neglected to keep and maintain the records required by this Code or to make reports when and as required;
- G. Made false or fraudulent records, invoices, or reports;

H. Used, or supervised the use of, a pesticide which is restricted to use by "certified applicators" without having qualified as a certified applicator; or without working under the direct supervision of a certified applicator as described in Section 5-36-5 (E) of this Code;

I. Used fraud or misrepresentation in making applications for or renewal of certification.

J. Refusal or neglected to comply with any limitations or restrictions on or in a duly issued certification;

K. Used or caused to be used any pesticide in a manner inconsistent with its labeling or codes by the Committee if these codes further restrict the uses provided on the labeling;

L. Aided or abetted a certified or uncertified person to evade the provisions of this Code; conspired with a certified or an uncertified person to evade the provisions of this Code; or allowed one's certification to be used by another person.

M. Made false or misleading statements during an inspection concerning any infestation or infection of pests found on land;

N. Impersonated any Federal, State, County, Tribal or other governmental official;

O. Distributed any pesticide labeled for restricted use to any person unless such person or his agent has a valid certification to use, supervise the use of, or distribute, restricted use pesticides;

P. Manufactured any restricted use pesticide or distributed any improperly labeled or unlabeled restricted use pesticide;

Q. Applied pesticides onto any land without consent of the owner or person in possession thereof; except, for governmental agencies which must abate a public health problem; or

R. Applied pesticides known to be harmful to honeybees on blossoming crops on which bees are working during the period between two hours after sunrise and two hours before sunset; except, on property owned or operated by the applicator.

5-36-9 DENIAL, SUSPENSION, REVOCATION, OR MODIFICATION OR CERTIFICATION

A. The Natural Resources/Land Management Committee, or its designated agent, may, for good cause shown or upon its own information and belief, informally contact any applicator about possible violations of the Code or practices which may result in violations. These informal contacts are to assist the applicator in adhering to practices which promote the proper use of pesticides.

B. Upon recommendation to the Committee by its designated agent, or, based upon its own feelings and belief, the Committee may issue a Warning of Possible Violation in the form of a letter from the Committee to an applicator. The letter will explain the basis for the Warning, and an explanation of the steps that the Committee may take if the applicator does not take positive corrective action.

C. The Committee may suspend, pending inquiry, for not longer than ten days; and, after opportunity for a hearing, may deny, revoke, or modify; any certification issued under this Code if the Committee finds that the applicant or the holder of a certification has been convicted or is subject to a final order imposing a criminal or civil penalty pursuant to Section 14 of FIFRA, or has committed any of the unlawful acts listed in Section 5-36-8 of this Code; provided, that any person requiring certification under this Code shall be subject to the penalties provided for by Section 5-36-10 of this Code.

5-36-10 PENALTIES

A. Any person violating any provision of this Code may be assessed a civil penalty not to exceed \$500.00 per violation. In determining the amount of the penalty, the Tribal Court shall consider the appropriateness of such penalty to the size of business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

5-36-11 DELEGATION OF AUTHORITY

Any authority vested in the Committee by this Code may with equal force and effect be delegated to such Tribal Officials as the Committee may designate.

5-36-12 ENTRY AND INSPECTION

For purposes of carrying out this Code, the Natural Resources/Land Management Committee for its designated agent may enter public or private premises at reasonable times by permission or warrant for sampling, inspection, and observational purposes.

5-36-13 COOPERATION

The Tribal Council, Tribal Chairman, or their designee is authorized to cooperate with and enter into agreements with and accept grants-in-aid from any agency of the State of South Dakota, Indian Tribal Authority, or the United States Government for the purposes of carrying out the provisions of this Code.

5-36-14 SEVERABILITY

If any provision of this Code is found to be invalid in any Tribal or Federal Court proceedings, the Court's decision will apply only to that provision found to be invalid, leaving the remainder of this Code intact.

CHAPTER 37

ELDERLY ABUSE

5-37-1 Terms used in this Act, unless a different meaning is clearly indicated by the context mean:

(1) "Disabled adult", any person 18 years of age or over who is incapacitated due to a physical or mental disability or due to age, who is found to be in a situation or condition whereby he is unable to protect his own interest or where he faces abuse or attempts to cause abuse by a caretaker, or who is suffering from neglect, or who is exploited by his caretaker, or any other individual.

(2) "Abuse", any willful or negligent act which results in physical injury or pain or mental anguish or injury, sexual abuse, unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm or mental anguish, or other maltreatment or exploitation.

(3) "Mental anguish or injury", willingly subjecting a disabled adult to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(4) "Neglect", the caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(5) "Caretaker", an individual or public institution who has assumed the responsibility for the care of a person either voluntarily, by contract, by receipt of payment for care, as the result of family relationship or by order of a court.

(6) "Exploitation", illegal or improper utilization of a disabled person or their resources for monetary or personal benefit, profit or gain.

(7) "Goods and services necessary to avoid physical harm or mental anguish", includes but is not limited to provision of medical care for physical and mental health needs assistance in personal hygiene, providing adequate clothing, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, and transportation necessary to secure these needs.

(8) "Elderly Protection Team (E.P.T.)", a resource group of Professional comprised of representatives from those agencies whose goals include serving the elderly population of the Rosebud Reservation. The function of the E.P.T. is as outlined in sections 3,5,6, and 8 of this Chapter.

5-37-2 Notwithstanding any other provisions of this Chapter, no caretaker who in good faith is providing treatment to a person solely by spiritual means through prayer in accordance with the tenets and practices of a recognized group through a duly accredited practitioner shall for the reason alone be considered to have abused or neglected that person under this Chapter.

5-37-3 Any person knowing or having reasonable cause to suspect that a disabled adult is or has been abused other than by accidental means shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, the agency shall immediately notify the E.P.T. The report must be in writing and shall contain the name, age, and address of the disabled adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section will share liability.

5-37-4 Any person who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony.

5-37-5 Upon receiving a report of abuse of a disabled adult, the E.P.T. shall make a prompt and thorough investigation to determine if such abuse exists and whether the disabled adult is in need of protection services. Services provided to abused disabled adults by the E.P.T. may include:

- (1) Identification of the disabled adult and provisions of services from the Emergency Protection Team;
- (2) Evaluation and diagnosis of the needs of the disabled adult;
- (3) Assistance in locating and receiving alternative living arrangements as necessary;
- (4) Assistance in locating and receiving necessary protection services;
- (5) The coordination and cooperation of other agencies to provide for the needs of the disabled adult; and
- (6) Referral of the alleged abuse to the Tribal Prosecutor.

5-37-6 The E.P.T. shall establish a central registry for reports of and convictions of abuse of disabled person. The information in the central registry shall be confidential and may be released only to the E.P.T.

5-37-7 All records, files, and information concerning disabled adult abuse reports are confidential, and no disclosure or release of such information shall be made except as authorized by section Six (6) of this Act. Any person who knowingly violates the confidential nature of such records, files, and information shall be criminally liable.

5-37-8 The Emergency Protection Team shall provide no services to an abused disabled adult unless the adult gives consent. If the abused, disabled adult is incapable of giving consent due to legal disability or incompetency, and the caretaker of the disabled adult refuses to provide the necessary service or to allow the E.P.T. to provide the service, the E.P.T. may petition Tribal Court to assume guardianship.

5-37-9 The confidential relation privilege may not be claimed in any judicial proceedings involving abuse of a disabled adult.

5-37-10 Any person who intentionally abuses a disabled person in a manner which does not constitute aggravated assault is guilty of abuse and neglect, as defined in section 1 of this Chapter, and the penalty shall be a \$500.00 fine and /or 6 months in jail.

5-37-11 Any person who negligently abuses a disabled person in a manner which does not constitute simple assault is guilty of abuse and neglect as defined in section 1 of this Chapter, and the penalty shall be a \$500.00 fine and 60 days in jail.