DOT DRUG & ALCOHOL POLICY

Subpart A

CHOCTAW TRIBE ALCOHOL AND CONTROLLED SUBSTANCES POLICY FOR DOT COVERED EMPLOYEES

TABLE OF CONTENTS

I. POLICY STATEMENT 1

II. SUMMARY OF POLICY 1

III. DEFINITION 2

- A. Alcohol 2
- B. Alcohol Use 2
- C. Alcohol Test 2
- D. Breath Alcohol Cencentration (BrAc) 2
- E. Breath Alcohol Technician 2
- F. Commerce Means 2
- G. Canceled or Invalid Test 3
- H. Collection Site Person 3
- I. Commerical Motor Vehicle (CMV) 3
- J. Confirmation Test 3
- K. FHWA/DOT Covered Position 3
- L. Drug Test 3
- M. Evidential Breath Testing Device (EBT) 4
- N. Follow Up Testing 4
- O. Initial or Screening Test 4
- P. Licensed Medial Practitioner 4
- Q. Medical Review Officer (MRO) 4
- R. Performing (a safety-sensitive function) 4
- S. On Premises 4
- T. Post-Accident Testing 5
- U. Pre-Employement Test 5
- V. Random Test 5
- W. Reasonable Suspicion Testing 5
- X. Refusal to Submit 5
- Y. Retest 5
- Z. Return-to-Duty Testing 5
- AA. Safety Sensitive Function 5
- BB. Screening Test 6
- CC. Substance Abuse Professional (SAP) 6

IV. TYPES AND METHODS OF DRUG AND ALCOHOL TESTING 6

- A. Pre-Employement 7
- B. Random 7
- C. Post-Accident 8
- D. Resonable Suspicion 9
- E. Return-to-Duty 9
- F. Follow-Up 9

V. ALCOHOL AND DRUG TESTING PROCEDURES 10

A. Initial Procedures Applicable to Testing for both Alcohol and Drugs 10
B. Drug Testing Procedures 10
1. Generaly 10
2. Overview of the Specimen Collection Process 11
a. Pretesting and Testing Procedures 11
b. Post Testing Procedures 12
3. Split Specimen Collection 13
4. Direct Observation Testing 14
5. Qualifications and Role of Medical Review Officers 15
C. Alcohol Testing Procedures 16
1. Evidential Breath Testing Device 16
2. The Breath Alcohol Technician 17
3. Testing Procedures 18
4. Invalid Test 19
5. Reporting Results 19

VI. CONSEQUENCES OF A POSITIVE ALCOHOL TEST 20

A. Alcohol Reading Between 0.02 - 0.04 BrAc 20
B. Alcohol Reading Greater than 0.04 BrAc 20

VII. SUBSTANCE ABUSE PROFESSIONAL (SAP) 20

VIII. CONFIDENTIALITY AND RELEASE OF INFORMATION 21

IX. EMPLOYEE TREATMENT & COUNSELING SERVICES 22

X. RECORD KEEPING & ANNUAL REPORTS 22

A. Record Keeping 22
B. Annual Report 22

XI. DRUG/ALCOHOL PROGRAM ADMINISTRATOR 23

XII. NON-WAIVER 23

I. POLICY STATEMENT

The Mississippi Band of Choctaw Indians recognizes the value of its employees and their importance in assisting the Tribe to reach its goals. To maximize the skills and talents of all Tribal employees, the Tribal has established a policy and a set of procedures to help all individuals holding Tribal employment to understand the dangers of drug and alcohol abuse. Substance abuse is a serious threat to any organization and its employees. Although the percentage of employees who abuse drugs and/or alcohol may be relatively small, practical experience and research indicate that appropriate precautions are necessary. The Mississippi Band of Choctaw Indians believes that the benefits derived from the policy objectives outweigh the potential inconvenience to employees.

To increase safety and to deter and detect the use of controlled substances and alcohol by employees who are employed in safety-sensitive positions and to comply with the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated by the U.S. Department of Transportation (which includes the Federal Highway Administration and others), the Tribe has adopted a drug and alcohol testing program. The regulations may be found in the Code of Federal Regulations at 49 C.F.R. Parts 40, 382, 391, 392, and 395, all amended as of 1997. This Alcohol and Controlled Substance Policy clarifies and summarizes the Tribe's position regarding the use, abuse and possession of drugs and alcohol. The objectives of this policy are as follows:

A. To create and maintain a safe, drug-free working environment for all employees.

B. To encourage any employee with a dependence on, or addiction to alcohol or other drugs, to seek help in overcoming the problem.

C. To reduce problems of absenteeism, tardiness, carelessness, and/or other unsatisfactory characteristics related to job performance.

D. To reduce the likelihood of incidents of accidental personal injury and/or damage to Tribal property.

E. To reduce the likelihood that Tribal property will be used for illicit drug activities.

F. To protect the reputation of the Tribal organization and its employees within the organization.

II. SUMMARY OF POLICY

The unlawful manufacture, distribution, dispensation or possession of a controlled substance by any employee in the workplace is strictly prohibited. No driver shall report for duty or remain on duty requiring the performance of safety sensitive function when the driver uses any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substances will not adversely affect the driver's ability to safely operate a commercial motor vehicle. Employees using prescription drugs or over-the-counter drugs are responsible for being aware of any potential effects that such drugs may have on their judgment or ability to perform their duties and for reporting such use and potential effect to their supervisor prior to reporting to work. The use, abuse, transportation or sale of alcohol "on premises" or while on-duty is also strictly prohibited. The off-duty use of alcohol is prohibited for a minimum of at least four hour prior to performing safety-sensitive functions.

To further this policy and to comply with the Omnibus Transportation Employee Testing Act of 1991, the Mississippi Band of Choctaw Indians will conduct drug and alcohol testing of all current and prospective employee-drivers of commercial motor vehicles who are required to obtain commercial driver's licenses (CDLs). Those covered employees who refuse to participate in the Tribe's drug alcohol testing program, or who test positive in violation of this policy, will not be permitted to perform or continue to perform safety-sensitive functions and will be subject to disciplinary action, up to and including termination. Those potential employees who are covered by this policy and who refuse to participate in the Tribe's drug testing program or who test positive in violation of this policy, will be eliminated from any further consideration for employment.

All covered employees must review this policy and sign an agreement to be bound by its terms as a condition of continued employment. All prospective employees who are covered by this policy must also sign an agreement to be bound by its terms as a condition of employment.

III. DEFINITIONS

A. **Alcohol**

The intoxicating agent in beverage alcohol, ethyl alcohol, or other law molecular weight alcohols including methyl and isopropyl alcohol.

B. **Alcohol Use**

The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

C. **Alcohol Test**

A test of an individual's breath for evidence of alcohol use.

D. **Breath Alcohol Concentration (BrAc)**

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

E. **Breath Alcohol Technician**

An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

F. **Commerce means:**

1. Any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside of the United States and

2. Trade, traffic, and transportation in the United States which affects any trade, traffic and transportation described in paragraph (1) of this definition.

G. **Canceled or Invalid Test**

In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. A sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test deemed invalid. An invalid test is neither a positive nor a negative test.

H. **Collection Site Person**

A person who instructs and assists individuals at a collection site and who received and makes a screening examination of the urine specimen provided by those individuals.

I. **Commercial Motor Vehicle (CMV)**

A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. Has a gross vehicle weight rating of 26,001 or more pounds; or

3. Is designed to transport 16 or more passenger, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the vehicle to be placarded under the Hazardous Materials Regulations.

J. **Confirmation Test**

For controlled substance testing, a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screening test. Gas chromatography/mass spectrometry is the only authorized confirmation method of chemical analysis used to perform the confirmation test.

For alcohol testing, a second testing, following a screening test with a positive result, that provides quantitative data alcohol concentration. Confirmation of an EBT test result between 0.00 and 0.02 is not administered pursuant to Department of Transportation regulations.

K. **FHWA/DOT Covered Position**

Any employee who is subject to commercial driver's license requirements and who drivers a commercial motor vehicle (CMV).

L. **Drug Test**

A chemical test of an individual's urine for evidence of controlled substance use. The Tribe will test for marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP).

M. **Evidential Breath Testing Device**

An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed of NHTSA's "Conforming Products List of Evidential Breath Measurement Devices." (CPL)

N. **Follow Up Testing**

A program of unannounced testing for a period up to five years at a rate designated by the Substance Abuse Professional (SAP) following rehabilitation of an employee who failed a drug or alcohol test, who passed a return-to- duty drug or alcohol test and who was returned to work.

O. **Initial or Screening Test**

In alcohol testing, an analytical procedure to determine whether individual may have a prohibited concentration of alcohol in a breath specimen. In drug testing, an immunoassay screen to eliminate negative urine specimens from further consideration. Licensed medical practitioner means a person who is licensed, certified, and\ or registered, in accordance with applicable federal, state, local or foreign laws and regulations, to prescribe controlled substances and other drugs.

P. **Licensed Medical Practitioner**

A person who is licensed, certified, and\ or registered, in accordance with applicable federal, state, local or foreign laws and regulations, to prescribe controlled substances and other drugs.

Q. **Medical Review Officer (MRO)**

A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the Tribe's drug testing program that has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information.

R. **Performing (a safety-sensitive function)**

A driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

S. **On Premises**

Any work location and anywhere else the employee is while being paid by the Tribe to perform assigned work, including, but not limited to, any vehicle, property or office which is owned, leased, serviced, controlled, or used by the Tribe and includes employee-owned vehicles on property owned, leased, used or controlled by the Tribe.

T. **Post-Accident Testing**

A test which is preformed after an accident involving a commercial motor vehicle.

U. **Pre-Employment Test**

A test given to a prospective employee in a FHWA\DOT covered position or to a current employee transferred from a non-covered position to a covered position.

V. **Random Test**

Testing of current employees by random selection of individual employees in a manner which provides that all employees have a substantially equal chance of selection through a scientifically valid basis.

W. **Reasonable Suspicion Testing**

Testing of current employees who are reasonably suspected of using dangerous drug or of abusing because of behavioral pattern or performance indicators.

X. **Refusal to Submit**

An employee who refuses to provide a specimen for purposes of testing or to submit to a controlled substance test when, for example, the employee fails to provide adequate urine for drug testing or fails to provide adequate breathe for alcohol testing without a valid medical explanation or when he\she engages in conduct that clearly obstructs the testing process. The consequences for a refusal to submit are the same as it the employee had tested positive.

Y. **Retest**

With regard to drug testing, an analysis of the employee's split urine specimen was reported positive, as requested by the donor within seventy-two (72) hours of being informed of the primary specimen being reported as a positive test result

Z. **Return-to –Duty Testing**

A test preformed after rehabilitation of as employee who failed a test before the employee is returned to duty.

AA. **Safety Sensitive Function**

All time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

1. All time at an employer or shipper –plant, terminal, facility, or other public property, waiting to be dispatched unless the driver has been relieved from duty by the employer;

2. All time inspecting equipment or inspecting, servicing, or conditioning any commercial motor vehicle at any time;

3. All time spent at the driving controls of a commercial motor vehicle in operation

4. All time, other than driving time, in or upon any commercial motor vehicle expect time spent resting in a sleeper berth;

5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

BB. **Screening Test**

In alcohol testing, It means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

CC. **Substance Abuse Professional (SAP)**

A licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorder.

IV. TYPES AND METHODS OF DRUG AND ALCOHOL TESTING

All alcohol and drug testing procedures shall be completed in accordance with 49 CFR 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This policy is automatically changed whenever these regulations are amended or altered.

The tribe will conduct drug testing for Marijuana, Opiates, Amphetamines, and Phencyclidine (PCP) for Pre-Employment, Random, Post-Accident, Reasonable Suspicion, Return-to-Duty and Follow-Up Testing. The Tribe will utilize a federally certified laboratory for all urinalysis testing. Cut-off limits as established by the Department of Health and Human Services (DHHS) and the Department of Transportation (DOT), will be utilized for the above stated five drugs. For the initial test, these cut-off limits are as follows: 1) marijuana-50ng/ml, 2) cocaine-300 ng/ml, 3) opiate-2000 ng/ml, 4) phencydidine-25 ng/ml, and 5) amphetamines-1000 ng/ml. The specimens identified as positive on the initial test shall be tested using the following cutoff levels: 1) marijuana-50ng/ml, 2) cocaine-150 ng/ml, 3) opiate-2000 ng/ml, 4) phencydidine-25 ng/ml, and 5) amphetamines-500 ng/ml.

The initial drug test will be performed by Immunoassay Technology. No drug test will be ruled as a verified positive until the urine specimen has been tested again by Gas Chromatography/Mass Spectrometry (GC/MS) technology and confirmed positive and then has been reviewed by a Medical Review Officer (MRO).

The Tribe will also conduct breath testing for alcohol for Random, Post-Accident, Reasonable Suspicion, Return-to-Duty and Follow-Up Testing. Both the initial and confirmatory alcohol tests will be performed by Electronic Breath Testing (EBT) devices listed on the National Highway Traffic Safety Administration Conforming Products List.

All current employees whose drug test is confirmed positive by an MRO or whose confirmatory alcohol test registers above 0.04 BrAc, or who have refused to participate in drug and/or alcohol testing or who have voluntarily admitted to drug and/or alcohol abuse will be immediately removed or suspended from the performance of safety-sensitive duties and will be referred to a Substance Abuse Professional (SAP). The consequences following an alcohol test registering below 0.04 BrAc are not administered pursuant to Department of Transportation regulations. All expenses occurring from referral to a SAP are the sole responsibility of the referred employee. An employee who fails or refuses to cooperate and comply with a referral to a SAP will be subject to disciplinary action, including termination.

The Tribe shall ensure that a SAP does not refer the driver to (1) the SAP's private practice, or (2) to a person or organization from which the SAP receives remuneration or in which the SAP has a financial interest, unless the referral is to (1) a public agency, (2) to the Tribe, or the entity providing treatment for alcohol or controlled substance problems on behalf of the Tribe, or (3) is the sole source of treatment under the driver's health insurance program or readily accessible to the driver.

A. **Pre-Employment**

All job applicants who seek a position covered by FHWA/DOT regulations must undergo a pre-employment drug and alcohol test. Employment in a safety-sensitive position is contingent upon passing the pre-employment drug and alcohol test. The pre-employment alcohol test is not administered pursuant to Department of Transportation regulations.

When an employee is transferred from a non-FHWA/DOT covered position (as determined by federal regulation) to a FHWA/DOT- covered position, pre-employment drug and alcohol test will be performed. Transfer from a non-FHWA/DOT covered position to a FHWA/DOT covered position is contingent upon passing a pre-employment drug or alcohol test. The pre-employment alcohol test is not administered pursuant to Department of Transportation regulations.

B. **Random**

The Tribal Drug/Alcohol Program Administrator will implement and monitor a random program of drug and alcohol testing of current employees by scientifically calculating the number of test required to achieve the random testing level of minimum of the percentage designated by the FHWA yearly. Although from year to year, the FHWA may change the testing level based on the reported violation rate of the entire industry, the current minimum annual percentage rate for drug testing is 50% of the average number of FHWA/DOT covered positions and for alcohol testing is 25% of the average number of FHWA/DOT covered positions. Each year, the Tribe will test at whatever rate FHWA sets.

Random tests will be spread reasonably throughout the calendar year and employees will not notified of when random testing will be given. The selection of employees will be made by a scientifically valid method, such as a random number table of a computer based random number generator that is matched with the employee's social security number or other comparable identifying number. All covered employees will have an equal chance of being tested each time selected for a random test. However, alternates may be used when selected employees are on vacation, sick, or personal leave, or not performing their normal job function.

A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive function, or just after the driver has ceased performing such function.

C. **Post-Accident**

As soon as practicable following an occurrence involving a commercial motor vehicle, each surviving driver who was performing safety-sensitive function with respect to the vehicle will be tested for alcohol and controlled substances, if the accident involved the loss of human life. If the accident causes bodily injury to any person, who immediately receives medical treatment away from the scene of the accident, or if the accident causes disabling damage to one or more motor vehicles, requiring the motor vehicle to be transported away from the scene by tow truck or other motor vehicle, and the driver received a traffic citation for a moving violation arising from the accident, then each surviving driver will be tested for alcohol and controlled substances.

The drug test must be performed within 32 hours following the accident. If the drug test is not administered within 32 hours, the Tribe shall cease all attempts to have a drug test performed on the employee, and prepare and maintain on file a record stating the reasons the test was not administered. These records shall be submitted to the FHWA upon request.

The alcohol test must be performed within two (2) hours following the accident. If an alcohol test is not performed within two (2) hours following the accident, the Tribe shall document and maintain on file a record stating the reason(s) the alcohol test was not promptly administered. These records shall be submitted to the FHWA upon request. If the alcohol is not administered within eight (8) hours following the accident, the Tribe will cease all attempts to have an alcohol test performed on the employee(s). Employees who are subject to post-accident alcohol testing may not drink any alcohol until they have been tested for alcohol after the accident, or for at least 8 hours following the accident.

Employees subject to post-accident testing must remain readily available for such testing or will be deemed to have refused to submit to testing, except that a driver may leave the scene for the period necessary emergency medical care. In no event will necessary medical attention for injured people be delayed. If a local law enforcement officer conducts a drug and/or alcohol test after an accident in compliance with federal, state, tribal or local law and provides the results to the Tribe, the results will satisfy the post-accident testing requirements.

D. **Reasonable Suspicion**

An employee will be required to participate in a drug test when the employee's supervisor has reasonable suspicion to believe that the individual used a controlled substance. An employee will be required to participate in an alcohol test when the employee's supervisor has a reasonable suspicion to believe that the individual has used within the preceding four (4) hours of reporting for work in a safety-sensitive position.

The determine that reasonable suspicion exits will be based on specific, contemporaneous, or articulable observations concerning the appearance, behavior, speech or body odors employee. The decision may be made be any individual whose job function is that of a supervisor and who has received training in detecting such conduct. The people who make the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test. For drug tests, the observations may include indications of the chronic and withdrawal effects of controlled substances. For drug tests only, a written record will be made of the observation leading to the test and sighed by the supervisor who made these observations, within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier.

An alcohol test will be performed as soon as possible on the employee, but the test must be performed within two (2) hours following the supervisor's determination. If the alcohol test is not performed on the employee(s) within two (2) hours, the Tribal Alcohol Program Administrator will document and maintain on file a record stating the reason(s) the alcohol test was not promptly administered. If the alcohol test is not performed within eight (8) hours, the Tribe will cease attempts to perform the alcohol test on the employee(s), but will document the reasons for not administering the test.

The Tribe shall notify an employee of the results of random, reasonable suspicion and post-accident tests if the test result is verified positive, listing the substance(s) which were verified positive.

E. **Return-to-Duty**

If an employee has failed a drug/or alcohol test and has satisfactorily completed rehabilitation at his/her own expense, the Tribe, in its discretion, may consider reinstating the employee in a safety-sensitive position. If this is the case the employee must present records of rehabilitation to the Substances Abuse Professional (SAP). The SAP will review the records and if the SAP determines that the employee has completed rehabilitation satisfactorily, the SAP will require the employee to undergo a return-to-duty drug and/or alcohol test with a result. The additional requirement of negative alcohol breath test evidence by a breath alcohol concentration from 0.00 to 0.02 is not administered pursuant to Department of Transportation regulations.

In no way is this option to be construed as requiring the Tribe to hold any position or guarantee employee who either refuses to participate in testing or who fails a test.

F. **Follow-Up**

In any instance where an employee returns to duty after successfully completing a rehabilitation program for substance abuse, after being evaluated by the SAP, and after having passed a Return-To-Duty drug and/or alcohol test, the SAP shall determine a program of unannounced drug and/or alcohol testing which shall require the employee

to participate in such unannounced testing at a rate and period of time as specified by the SAP, but which shall include a minimum of six follow-up drug and/or alcohol tests with a negative result during the first 12 months after returning for duty, and which the total period shall not exceed five years. Such follow-up drug and/or alcohol testing shall be paid for the employee.

V. ALCOHOL AND DRUG TESTING PROCEDURES

When a covered employee is called upon to give a drug and/or alcohol test specimen, they can expect that the procedures mandated by federal law, as outlined in this policy, will be followed. Each covered employee tested is be notified whether such testing is being done under FHWA authority or not, and the FHWA regulations do not provide authority for testing unless the individual is able to give consent.

All testing procedures shall be completed in accordance with 49 CFR Part 40 as amended: Procedures for Transportation Workplace Drug and Alcohol Testing Programs and 49 CFR 654 as amended: Prevention of alcohol misuse in transit organizations. These procedures are specifically designed to safeguard a covered employee's privacy during the testing process and to assure accurate test results. If you believe that a test was conducted in a manner other than as specifies in this policy, please inform your supervisor immediately.

A. Initial Procedures Applicable to Testing for both Alcohol and Drugs

A covered employee being tested will be treating courteously and with individualized attention to minimize any stress or anxiety associated with the testing procedure. The individual conducting the drug testing specimen collection process is called a Collection Site Person ("CSP"), and the individual conducting alcohol testing is called a Breath Alcohol Technician ("BAT"). BAT and CSPs will not use language that might be considered offensive or accusatory, but will strive to be courteous at all times to the person to be tested. In addition, BATs and CSPs will follow the procedures outlined in this policy to assure the integrity and quality of the alcohol and drug testing process, thereby maximizing accurate test results.

A particular CSP or BAT works with only one person to be tested at a time. Prior to beginning the testing process, each person must show proof of identification through a covered employee's license or other picture-bearing identification card. If positive proof of identification is not possible through a picture bearing identification card, specimen collection or any aspect of alcohol or controlled substance testing will not proceed unless a Tribal supervisor attests to the identity of the covered employee being tested.

The procedures for alcohol testing are different from the procedures for drug testing. For this reason, each testing procedure will be discussed separately. Covered employees are subject to both types of tests and will be informed whether the test is for alcohol, drugs, or both.

B. Drug Testing Procedures

1. Generally

Drug use is prohibited at all times. Thus, drug testing can be conducted any time while on duty. Therefore, the Tribe will have available a facility capable of performing testing all days and hours that transit system employees perform safety-sensitive functions. A urinalysis will be used to test for drugs. Testing under this

policy will be to detect the following drugs: a) marijuana, b) cocaine, c) opiates (e.g., heroin, morphine, codeine) d) phencyclidine (PCP), and e) amphetamines. Testing for any additional drugs is not done pursuant to FHWA regulations. Therefore, a non-DOT custody form must be used, and the employee must be notified that testing is not being done through FHWA regulation requirements.

All laboratories used for drug testing must be DHHS certified. The collection site must meet all DOT guidelines applicable. It must provide a private enclosure for urination, a void receptacle, a suitable clean writing surface, and a water source for hand washing, which if practicable, should be outside the privacy enclosure. The collections cite must secure the privacy enclosure when not in use or, if this is not possible, visually inspect it prior to specimen collection to ensure the unauthorized persons are not present and that there are no unobserved entrances points. In all cases, the privacy enclosure must have restricted access during specimen collection.

2. **Overview of the Specimen Collection Process**

a. Pretesting and Testing Procedures

All collections of urine samples shall be according to the rules established by the Department of Transportation and/or the Department of Health and Human Services as appropriate. The employer shall be immediately notified if the employee does not timely report for testing. After a covered employee has presented proper proof of identification, the CSP will conduct a short interview to document the relevant information about the person to be tested. Relevant information from this interview and from the compete split specimen collection process is documented on a US DOT carbonless custody and control form, which identifies the specimen donor, the particulars of the collection process, and the transfer of the specimen to the appropriate lab or other facility for testing. In addition, the covered employee will be provided a consent form to sign, giving written consent to the testing procedure. Of an employee refuses to consent or revokes his consent at any point, the testing procedures will not proceed with the test. Refusal to submit to drug testing under the terms of this policy is a violation of this policy and will be considered the same as a positive result.

After the initial interview, the covered employee will be requested to remove any coat or any unnecessary outer garments that might conceal materials that could be used to alter or affect the specimen to be given. In any event, the covered employee will be allowed to retain his or her wallet during the process of urine collection, or if they prefer, their wallet can be securely locked in a storage compartment at the clinic.

The specimen will be collected in a clean, single use, sealed and securely wrapped container to the covered employee, the CSP will allow the covered employee to wash and dry his or her hands in the view of the CSP. The CSP will remain with the covered employee and observe him to make certain that the covered employee has no access to water or other substances that might be used to alter the specimen.

The CSP will then give the specimen collection container to the covered employee and place him in the collection room, where the covered employee will fill the collection container with at least 45 milliliters of urine. To insure the integrity and accuracy of the drug testing specimen collection process, toilet bluing agents shall be used to tint the water in the toilet located in the collection room. All other sources of water in that area are secured so that the covered employee cannot obtain access to them. In addition, the covered employee is not allowed to flush the commode while in the collection room, because flushing may be used to dispose of evidence of materials used to contaminate or tamer with the specimen. If the seal of the commode that secures it against flushing is broken or if flushing sounds are heard from the specimen collection room, that specimen will be considered questionable and the covered employee must submit to a retest.

If the covered employee is unable to urinate or us unable to provide and require minimum urine amount of 45ml, the specimen collection process must be begun again, and the CSP will assist the employee by providing fluids to drink. Any urine sample collected that is less than 45ml will be discarded since DOT does not allow the combination of urine from two collections to reach the required volume. The covered employee will be allowed a reasonable time (not to exceed three hours) to consume fluids (not to exceed 40 ounces) and provide a specimen. If the covered employee is unable to provide a specimen in three hours, a physician will evaluate him to determine if the problem is a medical one or constitutes a refusal to cooperate. The physician will be report the results of this evaluation to the Tribal Drug/Alcohol Program Administrator.

Unless circumstances require, there will be no direct observation of the covered employee while the covered employee is providing the urine specimen. (Direct observation testing is discussed below). All aspects of the collection process are designed to maintain the modesty and privacy of the covered employee. No unauthorized person shall be allowed to be present in the specimen collection area at any time during the procedure. After the covered employee returns with the specimen in the collection container he will be allowed to wash and dry his hands.

b. Post Test Procedure

After the covered employee delivers the containerized specimen to the CSP, the specimen will remain in the view of the covered employee at all times until it is split into two separate specimen containers, labeled and sealed. (Split Specimen Collection is explained more full below). Immediately following collection, the CSP must measure the temperature of the specimen. The temperature measuring device must accurately reflect the temperature of the specimen and not contaminate the specimen. In no case shall the time from urination to the measuring of the temperature of the specimen exceed four (4) minutes. When the specimen temperature is outside the rage of 32 deg. -38 deg. C/ 90deg. -100 deg. F, there is reason to believe that the specimen has been altered or substituted.

Also, immediately following collection of the specimen, the CSP shall inspect the specimen to determine coloration and look for signs of contaminants. Any usual findings shall be noted on the urine custody and control form. All suspected of being adulterated shall be forwarded to the laboratory for testing and a second specimen shall be obtained as soon as possible.

The covered employee will observe the sealing and labeling of the specimen container by the CSP, and the covered employees will initial the identification labels on the bottles to certify that they contain his specimen. The specimen containers are then sealed in the appropriate mailing envelope or container and remain under the control and supervision of the CSP at all times until the package id prepared for shipment to the laboratory. After the container has been sealed and initialed by the covered employee, a custody and control form will be completed by the CSP certifying that the collection was accomplished according to the applicable Federal requirements. A writing instrument that is permanent and legible must be used when completing the custody and control forms. The covered employees shall be asked to read and sign a statement on the drug testing custody and control form certifying the specimen identified was in fast the specimen provided by him.

Once these procedures are complied with, the urine specimen collection process is complete. The urine specimen and the chain of custody form are ready for shipment. The CSP shall ensure that specimens not immediately prepared for shipment are appropriately safeguarded during temporary storage. From the time the covered employee is initially identified until he specimen has been collected, split, labeled, initialed, and sealed, the CSP is not allowed to lease the specimen collection area at any time. If it becomes necessary due to emergency or other unavoidable circumstances for the CSP to leave, any collection begun at that point will be nullified and the test begun again.

3. **Split Specimen Collection**

Using two separate containers for the covered employee's urine specimen is known as the split specimen collection method. With this method, the specimen is split by the CSP into a "primary" specimen consisting of at least 30 ml and a second "split" specimen containing at least 15 ml of urine. Both are labeled and forwarded to a DHHS certified lab. All initial and confirmation testing conducted by the certified laboratory will be conducted on the primary specimen only. However, the laboratory must also maintain the split specimen in secure storage until a negative result is confirmed. Once a negative result has been confirmed, the remaining sample may be discarded. The laboratory must keep the split specimen in storage if the results are confirmed positive.

A covered employee has seventy-two (72) hours from the time he is informed by the Medical Review Officer ("MFO") that the result of the laboratory's test of the primary specimen is positive to request an analysis of the split

specimen being held by the laboratory. Any request for analysis of the split specimen after the initial seventy-two (72 hours period will not be honored unless the MRO, in his discretion, determines after discussion with the covered employee that her were unusual that cause an excusable delay in requesting the test. The expense of split specimen testing will be the responsibility of the requesting covered employee.

Once a proper request for a split sample test has been made, the MRO must inform the laboratory in writing and the laboratory must forward immediately the split specimen to a second certified laboratory, with the seal intact and with proper chain of custody documentation, as well as a copy of the MRO's request. The split specimen test will be conducted by the second lab and will report the results of that test to the MRO. If the split test does not confirm the results of the first test, both specimens ate then tested for the adulterant. If adulterants are found, that employee will be considered to have refused to submit to the test. Where no a adulterant are found, the test is considered canceled. Administrative action may be taken following a confirmed positive result and need not wait the testing of the spilt specimen.

4. **Direct Observation Testing**

This policy attempts to protect the privacy and modesty of all covered employees tested. For that reason, all collections shall be non-observed except collection may ne observed in the following instances:

1. The individual has presented a urine specimen that falls outside the normal temperature range (32.5 to 3707bC or 90.5 to 99.80 F) and the individual refuses to provide a measurement of body temperature or body temperture varies by more than 1.8 F from the temperature of the specimen.
2. The last urine specimen provided by the individual was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L.
3. The collection site person observed conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample.
4. The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

Direct observation specimen collection may be necessary under these circumstances to assure the integrity of the drug testing process. In all cases, the decision to conduct direct observation collection will be made only after consultation with and approval by the Tribal Drug/Alcohol Program Administrator

If it is suspected or discovered at the collection site that the specimen was tampered with, another specimen will be collected under direct observation by a same gender collection technician or any licensed medical professional. A supervisor of the collection site person and the Tribal Drug/Alcohol Program Administrator or his designated representative, shall review and concur in advance with any decision by a collection site person

to obtain a specimen under direct supervision. If at all possible and practical, collections shall not be performed by the immediate supervisor of the donor.

If the specimen tampering is discovered at the laboratory, the laboratory will inform the Medical Review Officer, who, after discussing the laboratory findings with the lab, will contract the donor to discuss the unsuitability of the specimen. The MRO shall inquire as to medications the donor may be taking (after discussing disclosure rules), and if no acceptable explanation is provided, the MRO will inform the donor that another specimen will be collected under direct observation. The MRO will also inform the Tribe that another specimen must be collected under direct observation. If there is an acceptable reason for the unsuitability of a specimen, the MRO will report the specimen as canceled.

5. **Qualifications and Role of Medical Review Officers**

The facility used for alcohol and drug testing under this policy will be staffed with qualified physicians who serve as medical Review Officers ("MRO") (federally required drug testing) and who assist other, voluntary drug testing programs (not federally mandated) in evaluating laboratory results of drug testing. The MRO must be familiar with the DHHS, DOT and FHWA requirements for interviewing covered employees who test positive to determine whether a particular test result is confirmed positive, and they also maintain the required drug testing records for blind sampling and composite reporting, as well as individual test results.

A report on each person tested will be sent to the MRO by the laboratory conducting the tests. This report will identify the drugs for which tests were run, indicate what a positive or negative result was obtained, display the specimen number assigned, and contain the drug testing laboratory identification number.

A positive laboratory test result does not automatically identify a covered employee, applicant, as having used drugs in violation of the DOT or FHWA rule. Instead, the MRO reviews the laboratory results along with the circumstances of the tested employee to determine whether the test is in fact a confirmed positive. This review must be performed prior to reporting the test results to the Tribal Drug/Alcohol Program Administrator. The MRO examines alternate medical explanations for nay positive laboratory test result. This includes conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors revealed by the covered employee.

Prior to verifying a positive test result for an individual, the MRO give the individual an opportunity to discuss the test results. The MRO may verify a test as positive without having communicated directly with the covered employee about the test in three circumstances:

1. The covered employee expressly declines the opportunity to discuss the test;
2. More than five days have passed since the date the covered employee was contacted by a designated Tribal representative and informed to contact the medical review officer as soon as possible; or
3. Other circumstances provided for in Department of Transportation Agency Drug Testing Regulations

If the MRO is unable to reach the individual directly, the MRO will contact the Tribal Drug/Alcohol Program Administrator or his designated representative who, in turn, will contact the employee. In the case where the covered employee has failed to contact the MRO for more that five (5) days since the data since the date the covered employee was contacted by the designated Tribal representative, there may still reopen the verification process if the covered employee contacts the MRO and presents information that his delay in getting in touch with the MRO resulting from serious illness, injury or other unavoidable circumstances.

The purpose of the MRO interview is to allow the employee to present information concerning a legitimate explanation for the positive laboratory test. If after such action, the medical review officer concludes that there is a legitimate explanation of the positive test, the medical review officer may declare the test to be negative. Otherwise, the result will be verified as a "confirmed positive." Following verification of a positive test result, the medical review officer will refer the case to the Tribal Drug/Alcohol program Administrator and the tribal Personnel Officer to recommend or take administrative action.

The MRO is the only person authorized to order a re-analysis of the original sample or a test of the split specimen. Authorization for a split specimen test may be made by the employee within seventy-two (72) hours of his or her having received actual notice of a positive test. If the retest to split specimen test is negative, the medical review officer will cancel the rest.

The MRO will not disclose to any party any medical information provided by the individual as part of the testing verification process. There is an exception to this rule where, in the MRO's reasonable medical judgment, the information indicates that continued performance by the individual of his or her safety-sensitive function could pose a significant safety risk. Before obtaining medical information from any individual as part of the verification process, the MRO explains to the covered employee that nay information provided may be disclosed to third parties if continued performance by the covered employee of his or her safety-sensitive function could pose a significant safety risk.

C. **Alcohol Testing Procedures**

Alcohol testing must be conducted just before, during or just after performing a safety-sensitive function. Thus a facility for testing all days and hours that transit system employees perform safety-sensitive functions will be used as needed. All collections of breath samples shall be according to the rules established by the Office of the Secretary, Department of Transportation and/or Department of Health & Human Services as appropriate. A Breath Alcohol Testing Form for each alcohol test shall be utilized that conforms to DOT requirements, and shall be maintained by the alcohol Program Administrator, his designee or agent.

1. **Evidential Breath Testing Device**

The testing apparatus used for alcohol is a breath machine, referred to as an EBT (evidential breath testing device),, and the particular make and model used is certified by the National Highway Traffic Safety Administrator (NHTSA) and roust appear on NHTSA's "Conforming Products List of Evidential Breath Measurement

Devices." This list is referred to in the industry as the CPL, and it is somewhat analogous to the drug testing requirements that the laboratories be listed as certified by the DHHS.

The requirements for the EBT are somewhat different for initial screening vs. confirmatory testing, but if the machine meets the requirements for confirmatory testing, it can be used for the initial screening as well. For confirmation testing, the EBT must be able to distinguish between alcohol and acetone at alcohol concentration levels of .02. Also, the machine must be capable of printing in triplicate or on three consecutive and identical copies: the test result; the EBT's serial number and manufacturer; the time of the test; and a unique number generated by the EBT to identify the particular specimen being tested. The unique identification number produced by the EBT must also be capable of being read before the test is conducted.

For the initial screening test only, it is permissible to use an EBT that is on NHTSA's CPL list but does not meet all the other requirements just discussed. If such a machine is used, the tester must use a highly stylized log book to track the data for each initial screening test. However, in all cases, confirmation testing for alcohol must be conducted on an EBT meeting all the requirements off the preceding paragraph. The regulations require that the manufacturer of the EBT develop a Quality Assurance Plan of testing and maintenance for the machine.

2. **The Breath Alcohol Technician**

The Tribe will only use Breath Alcohol Technician (BATs) who have successfully completed a course of instruction that is equivalent to the DOT model course, as determined by the National Highway Traffic Safety Administration (NHTSA). The NHTSA may, from time to time, review the BAT instruction course for equivalency.

The course will, at a minimum, train the BAT in the following areas:

1. Proficiency un using the specific Electronic Breath Tester (EBT) to be used by the BAT;
2. Principals of EBT methodology; operation and calibration checks;
3. Fundamentals of breath analysis for alcohol content;
4. Procedures required in this part for obtaining a breath sample; and
5. Interpreting and recording EBT results.

In addition, the BAT will be trained to externally calibrate the particular model of EBT to be used. Training will include practical experience with the EBT, so that the BAT will become proficient it preparing the breath alcohol simulator or alcohol standard. Additionally, the BAT will learn ongoing maintenance and calibration of the EBT. As new or additional devices are acquired, or changes occur in technology, the BAT will receive additional training.

If the Tribe has a BAT-qualified supervisor conduct alcohol tests on employees, that supervisor shall not be the direct supervisor of the employee. The direct supervisor will not, in any case, conduct the alcohol test on the employee.

If an occasion arises where a BAT-qualified supervisor is not available to conduct an alcohol test on the DOT-covered employee, the Tribe shall make all attempts to utilize an outside collection site with a certified by a state or local government to operate the EBT used for the alcohol test. Only if these conditions are met may the law enforcement official be considered qualified to conduct an acceptable test.

3. **Testing Procedures**

Following presentation of the covered employee's proof of identification, the BAT shall explain the testing procedures to the employee. The testing us to be conducted at a location and in a manner that endures oral and visual privacy , provides security with no unauthorized access, and provides necessary testing forms. If all of the testing requirements are met, mobile testing units may be used. In the event that testing s an emergency being done at the scene of an accident, as much privacy as possible will be provided. The Tribe must be notified if the employee does not report for testing a timely manner.

Following identification and explanation of the testing procedures, the employee must sign a consent form to be tested. The EBT will then instruct the covered employee to blow into the mouthpiece for at lease six (6) seconds. If this initial testing discloses a breath alcohol concentration of less than .02, the test is considered negative. If the result of the initial test is .02 or greater, a confirmation test is required.

The confirmation test must be performed within thirty (30) minutes of the completion of the screening test. However, there is a fifteen minute waiting period in which the covered employee shall be instructed not to eat or drink anything. To be an absolute violation of this policy the confirmation test must be .04 or greater. If a different BAT is used for the confirmation testing, the new BAT must go through the initial identification and explanation steps.

There is a waiting period between the initial screening test and the confirmation test of fifteen (15) minutes, counted from the conclusion of the screening test. This waiting period can not exceed thirty (30) minutes. During the waiting period, the BAT will instruct the employee not to put anything in his mouth and not to belch, if possible. This will prevent an inflated or inaccurate alcohol reading on the confirmation test. But, regardless of whether these instructions are followed, the confirmation test will still be conducted at the end of the waiting period. Failure to follow these instructions will be noted on the testing form.

The testing procedures themselves for the confirmation test are identical to the initial test In terms of instructions to the covered employee, using a new mouth piece and getting a valid specimen. Before administering the test however, the BAT must conduct an Air Blank test to assure that the EBT registers 0.00 on the Air Blank. If the first Air Blank test is 0.00, the test may proceed. If not, the test must not proceed using that machine. That EBT will not be used in FHWA testing

again until it has been checked for calibration and tolerances in accordance with the manufacture's assurance program.

If the EBT confirmation test result is different from the initial test result, the confirmations test results controls. As with the initial test, the BAT will show the result of the confirmation test to the employs and will complete the testing form. Both the covered employee and the BAT must then sign the testing form. The BAT will then conduct an additional Air Blank test and, if the result is greater than zero, the confirmation test is invalid.

To be considered positive and in absolute violation, a covered employee's confirmed alcohol level must be .04 or greater. No employee with a positive result will be allowed to return to duty performing safety-sensitive functions until a SAP conducts an evaluation, and the covered employee passes a return-to-duty test. Results between .02 and .039 are not absolute violations but require that the employee be relieved of safety-sensitive duties for eight hours or until retest shows an alcohol concentration of less than .02

4. **Invalid Test**

As with the drug testing procedures, any suspicious behavior, failure to cooperate, inability to provide a specimen or other behavior which makes completion of an alcohol test impossible shall terminate the test and shall be documents by the BAT. Similarly, if a test is interrupted or events occur which would render the test invalid, the test must be aborted and started over using new materials and new forms.

If a covered employee is unable to provide a specimen of air suitable for testing, the agency shall be so informed, and the agency will select a physician to evaluate whether the failure to provide enough air is medically explainable. The report must be submitted to the agency in writing. If there is no valid medical explanation for the failure to provide the specimen, it is treated as a refusal to cooperate and this a positive test.

A breath alcohol test is considered invalid under the following circumstances: failure to observe the fifteen (15) minute waiting period; failure of EBT to pass calibration and tolerance tests at the nest subsequent check; failure of the BAT to conduct Air Blank testing; failure of the BAT to sign the form or to note in the "remarks" section that the employee failed or refused to sign the form; EBT's failure to print a confirmation test result; disparity between the covered employee identification number of alcohol concentration as between the printed result from the digital reading on the machine.

5. **Reporting Results**

The result of the alcohol test is reported on a triplicate form, the format of which is required by the FHWA regulations. All standards of confidentiality will be fully adhered to. This includes compliance with the requirements that testing records and results be released only to those authorized by the FHWA regulations to receive such information.

If the test results are initially communicated other than in writing, the BAT and the Tribal Drug/Alcohol Program Administrator must have a system of identification before the information is provided. The initial oral report must be followed by delivery of the Tribe's copy of the testing form and the Tribe is responsible for maintaining this and all other required records in a secure manner.

VI. CONSEQUENCES OF A POSITIVE ALCOHOL TEST

A. **Alcohol Reading Between 0.02 – 0.04 BrAc**

When an employee's alcohol test results in a Breath Alcohol Concentration (BrAc) between 0.02 and 0.04, employee will not be allowed to perform or continue to perform safety-sensitive functions, including driving a commercial motor vehicle until the start of the next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. The Tribe may discipline the employee, up to and including termination. This discipline is not administered pursuant to Department of Transportation regulations.

B. **Alcohol Reading Greater than 0.04 BrAc**

An employee with a breath test equal to or greather than 0.04 BrAc will immediately be removed from the FHWA/DOT covered position and evaluate by a Substance Abuse Professional (SAP) to determined what assistance the employee may need in resolving problems associated with alcohol misuse or abuse. The employee shall also be advised of resources for resolving problems associated with the misuse or abuse of alcohol.

The Tribe may discipline the employee, up to and including termination. This discipline, other than removal from the FHWA/DOT – covered position, is not administered pursuant to Department of Transportation regulations.

The Tribe may consider reinstating an employee in a safety sensitive position if the employee successfully completers rehabilitation and agrees to take a Return-To-Duty Alcohol Test and to be subject to Follow-Up Alcohol Testing.

VII. SUBSTANCE ABUSE PROFESSIONAL (SAP)

The company shall designate a Substance Abuse Professional (SAP) who shall be a licensed physician (Medical Doctor of Osteopathy), or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of drugs and controlled substances-related disorders.

If the Tribe wishes to return a covered employee to work in a safety sensitive position and the covered employee has failed a required drug and/or alcohol test, the covered employee shall first pass a return to duty test and then shall be referred to a Substance Abuse Professional (SAP), who shall determine that:

1. The individual is drug and/or alcohol free.
2. The individual has successfully completed any approved rehabilitation program; and
3. The risk of subsequent use of dangerous drugs or controlled substances and/or by that person is sufficiently low to justify his or her return to work.

In addition, the SAP will determine a program of unannounced drug and/or alcohol testing at the expense of the employee of at least six (6) tests within the first twelve (12) months for the individual for a period as determined by the SAP for up to 5 years.

VIII. CONFIDENTIALITY & RELEASE OF INFORMATION

Information relating to drug and alcohol test results or rehabilitation will only be relayed to the designated Tribal Drug/Alcohol Program Administrator or his designee, attorney or agent by the Medical Review Officer, and/or the Substance Abuse Professional, and in such a manner so as to exclude other personnel form receiving this information.

The Tribal Drug/Alcohol Program Administrator(s), shall maintain all drug and alcohol testing results in secured files that will be separate from personnel files and medical records. Only the Tribal Drug/Alcohol Program Administrator(s), and those personnel who are authorized by the Tribal Drug/Alcohol Program Administrators to be directly involved in the drug and/or testing program, will have access to the secured files.

The Tribe shall not release individual drug and/or alcohol test results or other personal information for anti-drug and/or alcohol program records except in the following instances:

1. To management/supervisory personnel and/or attorney with need-to-know.
2. If the individual tested signs a specific authorization for the release of the results to an identified person or entity. Release of suck information is permitted only in accordance with the terms of the employee's consent.
3. To the individual tested pursuant to a specific written request.
4. As required by the Department of Transportation Rules for DOT inquiry.
5. To the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the individual and arising out of the results of a drug and/or alcohol test (including, but not limited to, a workers' compensation or unemployment compensation proceeding)
6. To the National Transportation Safety Board as part of an accident investigation.

The Tribe shall provide the employee, upon written request, a copy of his or her drug and/or alcohol testing records in a timely manner. Access to these records will not be contingent upon payment for records. Disclosure by the subsequent employer of the employee's record is permitted only as expressly authorized by the terms of the employee's specific written request.

If an employee's records are requested by a federal agency (such as the Federal Highway Administration), the Tribe will make available copies of all results of employer drug and/or alcohol testing conducted under DOT regulations, and other requested information pertaining to the Tribe's Drug and Alcohol Program. The records shall be specific to the request made by the federal agency.

When the National Transportation Safety Board requests records as part of an accident investigation, the Tribe will provide information related to the Tribe's administration of any post accident drug and/or alcohol tests performed after said accident(s).

The Tribe shall also make available any required drug and/or alcohol testing records of an employee to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug and/or alcohol test administered under DOT authority, or from the Tribe's determination that the employee engaged in conduct prohibited by a DOT agency drug and/or alcohol misuse regulation.

IX. EMPLOYEE TREATMENT & COUNSELING SERVICES

Treatment and counseling services for drug and alcohol abuse by covered employees are available from the Choctaw Health Center, if the covered employee is a member of the Tribe, as well as from other sources. Any covered employee requiring such services will be given a list of available services. A covered employee who voluntarily advises his or her supervisor in advance that he or she has a problem with drug or alcohol abuse, who has not engaged treatment and rehabilitation program, will be eligible for a non-paid leave of absence, with no obligation on the part of the Mississippi Band of Choctaw Indians for nay payment of associated costs. Participation in a treatment and/or rehabilitation program will not prevent disciplinary action, including termination, as a result of continued engagement in prohibited activities.

All supervisory personnel of covered employees shall receive a minimum of one hour's education and training on the manifestations of and the behavioral, physical and performance indicators that may indicate drug and/or alcohol use and abuse.

X. RECORD KEEPING & ANNUAL REPORTS

A. RECORD KEEPING

The following records will be kept by the Drug/Alcohol Program Administrator for the designated time periods:

Negative and canceled drug/ alcohol test results	1 year
Collection process	2 years
Training	As long as trainee is employed and 2 years thereafter
Positive drug/alcohol test results including drugs found positive	5 years
A copy of each calendar year summary	5 years
Documentation of refusals to take tests	5 years
Driver evaluation and referrals	5 years
Calibration documentation	5 years
Records related to the administration of the alcohol and controlled substances testing programs	5 years

B. **Annual Report**

The Drug/Alcohol Program Administrator will prepare and maintain and annual calendar year summary of the requests of the Tribe's drug and alcohol testing programs by March 15th of each year. If the Tribe is notified by the FHWA by mail on or around January 2nd of nay year to submit the annual report, the Tribe shall submit the report in the manner prescribed by the FHWA by March 15th of that same year.

XI. DRUG/ALCOHOL PROGRAM ADMINISTRATOR

The Tribe has designated the following individual to act as Drug Program Administrator:

_____

_____

_____

The Tribe has designated the following individual to act as Alcohol Program Administrator:

_____

_____

_____

The duties of the Drug/Alcohol Program Administrator are as follows:

1. To manage the Drug/Alcohol Program Administrator in conjunction with the third party provider and the Substance Abuse Professional;
2. To maintain test records in a secured location apart from personnel files and medical records;
3. To disseminate information materials to all employees on the requirements of this Policy and Procedures;
4. To provide information and otherwise answer any question an employee may have regarding applicable state and federal, drug testing laws, what rights each employee has, and what responsibilities each employee must follow to participate in this drug/alcohol testing program.

XII. NON-WAIVER

Nothing contained herein grants or shall be construed to grant to the State Of Mississippi or any agency or department thereof, general state civil regulatory or taxing authority, or criminal jurisdiction, over the Tribe or its lands, property, members or activities.

This policy does not, and shall not be construed to change, enlarge, diminish, or waive the sovereignty or jurisdiction of the Mississippi Band of Choctaw Indians or the rights, privileges, or immunities of any person. In addition, this policy does not, and shall not be construed, to create any right to administrative or judicial review or any other right, benefit or responsibility, substantive or procedural, enforceable by any person against the Mississippi Band of Choctaw Indians, its officers or employees, or any other person.