

ADMINISTRATIVE
PERSONNEL POLICY & PROCEDURES

MISSISSIPPI BAND OF CHOCTAW INDIANS

Adopted April 9, 2013

P.O. Box 6010 | 101 Industrial Road
Choctaw, MS 39350

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Message from the Tribal Chief

Dear Tribal Employee:

The Mississippi Band of Choctaw Indians (“MBCI”) is one of Mississippi’s largest private employers with more than 6,000 people working on the Choctaw Indian Reservation. As an employee of the Mississippi Choctaw tribe you belong to a group of professionals with proven effectiveness and efficiency in Indian country.

To our new employees, we welcome you to a winning circle! To our current employees, we thank you for your loyal service to the tribe. A tribal employee is always progressive, positive and possesses great integrity and professionalism. Our goal is to always work together as a team and provide support, encouragement and resources to each other and tribal members.

In the following pages you will find the personnel policies and practices of the Mississippi Band of Choctaw Indians. This policy was developed as an informational resource for tribal government employees. I encourage you to refer to this policy whenever you have questions and discuss these policies with your supervisor or the Tribal Human Resource Director should you have questions.

Communication is key to the success of any organization. It is my sincere hope that through a clear understanding of the policies and administrative procedures of the tribe we may all benefit from a productive and happy workplace.

It is great to have you as part of MBCI’s team!

Many Blessings,

Chief Phyliss J. Anderson

I. INTRODUCTION

A. Responsibility

The Tribal Chief (“Chief”) is empowered by the Tribal Council with the responsibility of administering these written personnel policies and to issue procedures necessary to carry out these policies. The Chief retains final signature authority for hiring employees working in the Tribal Government Services with the exception of those employees whose employment must be confirmed by Council. The Tribal Chief retains the authority to discipline, suspend, and terminate employees. Changes or amendments to these Policies must be approved by the Tribal Council at any regular or special called meeting.

No personnel action, such as transfer of employees, hiring of new employees, terminations, suspensions, changes in salary, or any other personnel action is valid or effective until all levels of the chain of command have authorized the action consistent with these Policies and other Tribal ordinances and resolutions, as determined appropriate under the applicable law.

B. Application

This Administrative Personnel Policy applies to all MBCI Government Services employees including, managers, supervisors and Tribal Council members. Elected officials of the Tribe, such as Tribal Council Members, while acting in their elected capacities, are governed in some instances by additional ordinances. This policy is not an actual or implied contract between MBCI and any of its employees. All policies, practices, procedures, and benefits of MBCI, whether or not described in this policy, may be changed, modified, or discontinued by MBCI at any time, without prior notice and with retroactive effect. From time to time, this policy may be amended. You will be responsible for familiarizing yourself with the amendments as they are issued and for complying with any amendments. Each page of this policy is numbered and dated. As revised pages are issued from time to time, the pages which they supersede should be removed and discarded.

All employees will be given a copy of this policy, and they will sign an acknowledgment certifying that they have read and understand the Policies.

C. Sovereign Immunity

Nothing in this policy shall be construed as an express or implied waiver of the Tribe’s sovereign immunity.

II. EMPLOYMENT POLICIES

A. Native American Preference

MBCI adheres to a publically announced policy and practice of extending preferential treatment to all eligible Native Americans with regard to recruitment, employment, reduction in force, promotion, training, and related employment actions to the maximum extent permitted by applicable law. For purposes of this policy, an eligible "Native American" shall be defined and interpreted to be an enrolled MBCI Member first; descendants of members of the MBCI second; and all other Native American Indians enrolled in a federally recognized Tribe third.

MBCI maintains a program of recruiting, training, and upgrading Native Americans, and to the extent that funding permits, shall provide pre-employment and pre-promotion training for eligible Native Americans to help achieve its goal of ensuring maximum Native American employment in all levels of the workforce, including management.

Notwithstanding this Native American preference, MBCI will employ non-MBCI members only when no qualified member of MBCI can be recruited, trained, or upgraded to fill a given job vacancy within a reasonable period of time at a reasonable cost, and then only when a Waiver of Native American Preference has been secured from the Committee on Human Resources, Training and Development on a case by case basis.

The authority to waive Native American Preference laws can only be exercised by the Committee on Human Resources, Training and Development, and the Committee will exercise its discretion to do so only when a motion is made by a committee member to support such waiver and the Committee determines by reviewing the facts and appropriate written documentation that a waiver is justified. A waiver to allow the employment of a non-MBCI member can be made by the Committee only for as long as the non-MBCI member remains in the position for which the waiver was granted. That waiver does not apply to other openings for which the non-MBCI member or other Native American may have interest in or apply for. The Committee only has the right to approve or disapprove a waiver that has been requested by Executive branch supervisors, and has no right to direct that any specific applicant other than the one for which waiver is sought, be employed. Supervisors who do not follow the Native American Preference are subject to disciplinary action up to termination.

All personnel job vacancy announcements shall include the Native American Preference Clause.

B. Veterans Preference

Subject to the Native American preference, the Tribe shall adhere to a publicly-announced policy and practice of extending preferential treatment to qualified MBCI veterans with regard to recruitment, employment, reduction-in-force, promotion, training, and other employment actions.

Qualified MBCI veterans are veterans who have served and have been honorably discharged or who are presently serving in the Armed Forces of the United States of America beginning with World War II through the current time period.

C. Equal Employment Opportunity

MBCI is an Equal Opportunity Employer, and except to the extent required by its Native American Preference Policy, MBCI prohibits any discrimination because of race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information, or any other basis protected by applicable law. This policy applies to all employment decisions, including hiring, promotion, termination, and other matters affecting terms and conditions of employment.

D. Harassment

MBCI prohibits harassment because of race, color, religion, sex, pregnancy, age, national origin, citizenship status, veteran status, physical or mental disability, genetic information, or any other basis protected by applicable law.

Sexual harassment comes in many forms and can be directed against males or females by any employees, supervisors, vendors, or customers. We expect all employees to act professionally at all times and to use the complaint/grievance procedure detailed herein, if offensive conduct has occurred at MBCI. Prohibited conduct includes, but is not limited to, the following:

- Offensive, derogatory, inappropriate or abusive statements, comments, slurs or gestures;
- The use of sexually suggestive language and other behavior that is offensive, derogatory, inappropriate or abusive;
- Conduct that interferes with job performance or creates an offensive or intimidating work environment;
- Unwelcome flirtation, requests for sexual favors, sexual advances or propositions, requests for “dates,” and other verbal or physical conduct of a sexual nature;
- Display of sexually suggestive or sexually explicit pictures, greeting cards, books, drawings, photographs, magazines, websites, cartoons or objects;
- Circulation of e-mails, texts messages or other communication or jokes, or materials that reasonably could be viewed as offensive by any employee;
- Implying, by words or actions, that an employee must tolerate or submit to sexual advances or offensive, inappropriate, or abusive conduct.

E. Other Illegal or Unethical Conduct Prohibited

MBCI is committed to the highest regard for law and ethics. Illegal or unethical conduct of any type is prohibited. If you believe someone (supervisor or fellow employee) has asked or instructed you to commit an illegal or unethical act, or if you believe you are being retaliated against for refusing to do so, this must be reported immediately. MBCI prohibits any employee from engaging in any illegal or unethical conduct or asking or instructing another to do so. Further, if a vendor or customer engages in illegal or unethical activity, or asks you to do so, this must also be reported.

F. Retaliation Prohibited

MBCI prohibits retaliation against anyone who makes a good faith complaint or report under this policy, participates in an investigation of a complaint under this policy, or who otherwise acts to enforce or uphold this policy. If you believe you are being retaliated against for reporting a suspected violation, or participating in an investigation, please use the reporting procedure set forth immediately below and report the matter immediately.

G. Reporting Violations of Policy

You must report all incidents of discrimination, harassment, abusive behavior, retaliation, illegal or unethical conduct directed at you or another person, regardless of the offender's identity or position. The report of suspected violations should be made to your supervisor. If you feel uncomfortable reporting to your supervisor, or do not get a prompt response, you should promptly contact the Director of Human Resources.

H. The Investigation

We will promptly investigate all complaints. Complaints of discrimination in recruitment, hiring, reduction-in-force, promotion, training, termination, and related employment actions shall be treated as grievances, and after exhaustion of the complaint procedures specified in this section of the policy, they shall proceed to Step 2 of the Grievance Procedure specified in the grievance resolution process.

An employee may be suspended, with or without pay, pending the results of the investigation. The investigation may include interviews with the employees and other people who may have relevant information. Employees are expected to cooperate fully and provide all relevant information concerning the investigation. Failure to cooperate fully with an internal investigation may result in disciplinary action up to and including termination from employment.

We will maintain confidentiality of the complaint, the investigation and the result to the extent possible, and we will instruct everyone contacted during the investigation to do so as well. The complaining party and any accused employee will be given full opportunity to present their views and will be advised of the results of the investigation.

I. Responsive Action and Appeal

If we conclude that a policy violation or illegal or unethical activity has occurred, we will take appropriate corrective action. While the action will be intended to effectively resolve the complaint, if you disagree with the resolution of any complaint, you may submit a written appeal pursuant to the grievance resolution process.

J. Failure to Report

If you have knowledge of discrimination, retaliation, abusive behavior, or illegal or unethical conduct, promptly report what you know, using the procedures set forth above. If an employee is aware of prohibited conduct, failure to promptly report the matter may result in disciplinary action, up to, and including, termination from employment.

K. Policy Against Weapons And Workplace Violence; Reporting Procedure

MBCI strictly prohibits employees from: possessing, using, transferring or selling any firearm, knife or other dangerous weapon during working hours or while on or conducting Tribal business and/or while representing MBCI; fighting, "horseplay," and/or other conduct that may harm, offend, threaten, intimidate, and/or coerce any employee, client, vendor, supplier, or member of the public. These prohibitions apply to behavior on Tribal property, while on Tribal business on or off the property, and while representing MBCI in any other manner.

If you know of a potential violation of this policy, or if you feel some person or something is suspicious, please do not intercede or otherwise place yourself in danger. Immediately report any concerns you have about weapons and/or actual or potential workplace violence to your supervisor. If you cannot immediately reach this person, or if danger is imminent and/or if there is any other reason why contacting this person is inappropriate under the circumstances, please immediately contact the Human Resources Office. We will take appropriate action as dictated by the circumstances.

III. Nature of Employment

This policy is not a contract of employment, unless you have an individual written employment agreement for a definite period of time provided otherwise, signed by you and the Chief. No representative of MBCI has the authority to offer or promise you anything different.

No employee of the Tribe running for any political office should engage in any political activity while on the job, nor should he or she use any tribal property (communications systems, emails, printers, paper, vehicles, or any other property belonging to the Tribe) in campaigning for office.

All Tribal employees are to refrain from involving themselves in any activities that may be deemed politically oriented during regular business hours (generally Monday through Friday, 8:00 a.m. through 4:30 p.m.) or during any time when the employee is on duty, whether or not that duty is during regular business hours or on tribal government property. Some instances of political activity include:

1. Making political statements to customers, employees or the public;
2. Wearing pro-candidate clothing, buttons, pins or campaign paraphernalia;
3. Postings on bulletin boards or email systems for political purposes or distributing or receiving push cards or campaign literature in any manner;
4. Engaging in political fundraising or political informational meetings within the workplace;
5. Missing work for political purposes without complying with the Administrative Personnel Policies on pre-approved leave;
6. Using any tribal resource (paper or other consumable supplies, telephones, copies, computers, etc. for a political purpose).

It is permissible to use community buildings and ball fields as locations to meet with constituents for political purposes, but only during non-working hours and with the prior approval of the applicable Administrative official to whom that duty is assigned.

MBCI has resources available to assist employees with problems they may encounter at work. Employees should use all available levels of supervision in the chain of command to address issues involving their employment. Using resources outside of the chain of command can result in delay and inappropriate action. Any deviation from the chain of command may result in appropriate discipline.

IV. Integrity and Standards of Conduct; Confidentiality of MBCI Business

All employees shall adhere to the highest standards of conduct, personal integrity and honesty, always acting in a way that merits the continued trust and confidence of the public. Some of the standards of conduct that employees must follow include, but are not limited to:

1. All documents must be completed truthfully. *Examples: job applications, employment records, time cards, expense reports.* Falsification of any documents or records is strictly prohibited.
2. Employees are expected to cooperate fully with internal investigations. All employees are subject to investigation for workplace and related matters and purposes, including investigations conducted by outside parties.
3. Illegal or unethical conduct will not be tolerated. MBCI is committed to the highest regard for law and ethics. If any employee believes he/she has been instructed or requested by MBCI, or anyone acting on behalf of MBCI, to engage or participate in any unlawful or unethical activity, the employee should immediately contact his/her supervisor or Human Resources.
4. Treat all employees, visitors, vendors and customers courteously and with respect. We expect each employee to demonstrate respect for both fellow employees and management. Discourteous conduct is harmful to you and MBCI, and it will not be tolerated.
5. Perform your job to the best of your ability and cooperate with your supervisor to achieve the best in his or her efforts to improve your performance. We expect all employees to maintain fully satisfactory performance and to cooperate with others to achieve MBCI's goals as efficiently and effectively as possible. Insubordination is not tolerated.
6. Maintain the confidentiality of any and all information regarding MBCI's operations, policies and procedures, fellow employees, vendors, customers and/or other companies with whom we have business relations. All business matters within MBCI are of the highest confidential nature. Disclosing any confidential information to third persons is a breach of the duty of confidentiality.
7. Avoid all possible conflicts of interest or appearances of conflicts of interest. A conflict of interest may arise from any number of circumstances, including an employee's financial interest in or involvement with an entity with which MBCI competes for business, or involvement in an activity that interferes with your job performance. Employees must disclose, immediately and in writing, any possible conflicts of interest to the Chief. The Chief will make a determination on a case by case basis. The Chief's decision is final.
8. Be honest in all matters. Report information as accurately as possible in all matters relating to your employment and the business of MBCI. This includes MBCI documents such as your employment application, hours worked, and expenses. MBCI will not tolerate dishonesty.
9. Respect the property of MBCI and of your fellow employees. Misuse or abuse of equipment or property belonging to MBCI, customers, or any other entity doing business with MBCI is prohibited. This includes unauthorized personal use of MBCI's supplies, computers, vehicles, mechanical equipment and long distance telephone lines.
10. All relationships must be built on mutual trust. For this reason, surreptitious taping of conversations with management, other employees, customers, or any entity with which MBCI has business relations is prohibited, except as provided herein.

11. Do not bring or possess any type of unauthorized weapon or unlawful drug at the workplace, or have any such weapon or drug in your possession at any time while you are on MBCI business.
12. Your behavior, whether on or off duty, including any use of Social Media, should always reflect favorably upon MBCI. Employees shall follow the policies herein on Equal Employment Opportunities, discrimination, and harassment.

V. GENERAL EMPLOYMENT AND PERSONNEL ACTIONS

A. Promotion-From-Within

While maintaining consistent application of our Native American Preference Policy, members of MBCI who are employed by the Tribe, including participants in training programs within the MBCI, will be given preference in the filling of vacancies. Promotions entailing only salary increases and/or modifications of or additions to existing job responsibilities and duties of an employee may be made at the discretion of the Tribal Chief.

B. Identification of Hiring and Salary Approval Authority

The Chief must approve a manager or supervisor's recommendation for employment before any offer is made to a prospective employee. This includes rate of pay approval. The Tribal Council shall establish a basic departmental structure for the Tribal Government executive branch.

C. Nepotism

No person may hold a position over which a near relative exercises supervisory authority or in which a near relative is in a position to order or recommend personnel actions which would affect him or her. Similarly, no person may hold a position in which he or she exercises supervisory authority or responsibility over a near relative. This provision does not apply to persons occupying positions to which they were elected.

A near relative is defined as one of the following: husband, wife, child, step-child, grandchild, grandparent, mother, father, sister, brother, son-in-law, daughter-in-law, father-in-law, mother-in-law, sister-in-law, brother-in-law.

D. Candidate Screening Practices

To the maximum extent possible, the Tribe will check the references and former employers listed by applicants on the standard application form. If the position requires that an employee be licensed, the Tribe will inquire whether the candidates have been licensed or are able to be licensed upon commencement of employment.

Where the nature of the job warrants it, the job announcement may cite that the applicant is subject to examination. The examination shall pertain to those matters which test the capacity and fitness of the candidate to discharge in a satisfactory manner the essential duties of the job for which he/she is applying. Examinations may be oral, written, physical, manual, or a combination, and, if the job description so states, may be required annually for recertification and continued employment.

The Chief is authorized to hire persons in professional health positions at Choctaw Health Center and Community Health Clinics and persons in the Division of Schools requiring certification or licensure (such as physicians, registered nurses, dentists, and pharmacists and teachers) without having issued a job announcement and without securing a Waiver of Native American Preference.

Applicants for Education Contract positions, and other educational and non-educational positions, as in the Head Start and Day Care programs, must sign a declaration prior to employment which lists:

1. all pending and prior criminal arrests and charges related to child sexual abuse and their disposition;
2. all convictions related to other forms of child abuse and/or neglect; and
3. all convictions of criminal conduct; provided that the declaration may exclude:
 - (a) traffic fines of \$200 or less;
 - (b) any offense, other than any offense related to child abuse and/or child sexual abuse or violent felonies, committed before the prospective employee's 18th birthday, which was finally adjudicated in a juvenile court or under youth offender law;
 - (c) any conviction the record of which has been expunged under federal or state law; and
 - (d) any conviction set aside under the Federal Youth Corrections Act or similar state authority.

Prior to placing such person on regular status, the Human Resources Office shall have conducted a state and/or national criminal record check.

Persons making material misrepresentations in their application shall be subject to immediate termination.

E. Probationary Period

All regular employees, except Education Contract employees, will be placed on probation for the first ninety (90) calendar days of employment. Temporary and casual employees shall remain in probationary status during their entire period of employment. During the probationary period the supervisor shall meet every thirty (30) calendar days with the employee to review the employee's job performance and the supervisor's expectations of the employee. At the end of the ninety (90) day period, the supervisor shall evaluate the employee's fitness and ability to perform the duties of the position. The supervisor shall announce in writing to the employee a change in status from probationary to regular full-time employee and shall place a copy of such notice in the permanent record of the employee, and it shall constitute the first evaluation of the employee.

Upon satisfactory completion of the probationary period, all rights and privileges of a regular employee shall be vested in the employee as of the first day of employment. MBCI reserves the right to terminate any employee during his or her probationary period for any or no reason and without appeal. Any adverse personnel action that is initiated by a supervisor before the end of the ninety (90) day probationary period, but which is not yet finalized, will be deemed to have been finalized before the end of the probationary period, and the employee may be terminated. However, continued employment either during or after completion of the probationary period is not guaranteed. Acceptance of employment is expressly conditioned on this understanding.

VI. POLICY FOR A DRUG-FREE AND ALCOHOL-FREE WORKPLACE

MBCI has three (3) separate Drug and Alcohol Policies, and each tribal employee will be covered under a specific policy depending upon their job duties. The policies are as follows:

1. MBCI Drug and Alcohol Policy;
2. DOT Drug and Alcohol Policy; and
3. FTA Drug and Alcohol Policy.

Each employee is required to sign an Employee Notice and Acknowledgement of MBCI's Drug and Alcohol Testing Requirements which will indicate which Drug and Alcohol Policy the employee is required to follow.

A. Criminal Charges Related to Drugs Or Alcohol

All employees are required to report, within five working days, any arrest for violation of a drug statute or alcohol violation to the Office of Human Resources and their supervisor. Refusal to submit to a drug or alcohol test as required by law enforcement shall be considered a positive test result.

MBCI shall, in the case of arrest or conviction of an employee, whether on or off duty, take appropriate personnel action against such employee and/or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes, within 30 days of notification.

VII. SOCIAL MEDIA POLICY

A. Introduction

Social media tools are a powerful form of communication that can have a significant impact on organizational, professional, and individual reputations. Forms of social media include but are not limited to Facebook.com, Google+, LinkedIn.com, MySpace.com, and Twitter.com, as well as personal websites and weblogs (blogs).

Employees must exercise care when participating in social media, as the lines between personal and professional content, lawful and unlawful, and between public and private content, are often blurred. Whether participating on behalf of MBCI or personally, employees should follow the same standards of behavior “online” as they would if in “person”. Remember that the Internet is not anonymous, and it does not forget.

The purpose of this policy is to encourage clear and consistent communications with our employees, customers and the media and to protect the trade secrets and intellectual property rights of MBCI, to promote compliance with state, tribal and federal laws, including Federal Trade Regulations and National Labor Relations Board guidance. Employees are also advised that MBCI maintains workplace policies prohibiting sexual harassment and other misconduct which equally apply to social media activities by employees. Provided however nothing herein grants jurisdiction to any court or federal agency that such court or federal agency does not possess.

B. MBCI Policies Extend to Social Media Activities

The following are general guidelines for employees’ participation in social media and on-line communications while they are off duty as social media communication or participation is strictly prohibited while an employee is on duty.

1. Take Responsibility and Be Transparent.
 - a. You are responsible for anything you write or do online.
 - b. Use good judgment when you post, and think about the consequences of what you are posting. Assume your writings will spread.
 - c. Ensure that your communications or postings do not violate any of the policies set forth in MBCI’s Policies & Procedures or otherwise, including but not limited to, Equal Employment Opportunity, Non-Harassment Policies, and the Integrity and Standard of Conduct policies contained in this Employee Policy.
 - d. Do not express, communicate or link to comments that are vulgar, obscene, threatening, pornographic, harassing or defamatory or which are a violation of the employer’s workplace policies against sabotage, discrimination, hostility or harassment on account of age, race, religion, sex, ethnicity, nationality, disability, or other protected class, status, or characteristic.
 - e. Managers and supervisors should avoid social media relationships with non-managerial employees, except in cases where the relationship is limited to business-related networking or there is a legitimate business purpose.
 - f. The Human Resources Department is responsible for providing references to employees, in accordance with MBCI’s policy as well as to comply with applicable federal, tribal and state employment laws. Managers and supervisors shall *not* provide references for current or former employees via social networking sites (i.e. LinkedIn).

2. Protect the Trade Secrets, Intellectual Property Rights, and Privacy Rights of MBCI, Its Employees, and Its Customers
 - a. The Tribe's livelihood depends on its trade secrets and intellectual property rights remaining protected. To this end and in accordance with the Tribe's trade secrets, employees are prohibited from posting any information on social media that would reveal trade secrets, confidential strategic business initiatives (e.g., a new secret product line, acquisition, or "secret sauce"), or compromise MBCI's intellectual property rights in any way.
 - b. Similarly, and in accordance with state and federal law, employees are prohibited from posting confidential personal information about customers or employees (social security numbers, protected health information, credit card numbers, drivers' license numbers, mother's maiden name, complete date of birth, minor children's names, etc.).
 - c. Employees also may not use any client or vendor trademarks or logos, for commercial use, without their express permission. MBCI expects all employees to abide by all Copyright laws.
 - d. Social media is not for everyone, and many employees opt not to socialize with their coworkers, via social media or otherwise. To this end, employees are not required to connect with any coworker or to "friend" them on social media sites. Employees are prohibited from threatening other employees to coerce them to engage in social media activities.

3. Obligation to Report Violations of This Policy

If an Employee becomes aware of a violation of this policy, please report it to an appropriate supervisor or to Human Resources.

If an Employee feels he or she is being harassed, discriminated against or retaliated against for reporting a violation of this policy, he or she should immediately report this to his or her supervisor or to Human Resources.

VIII. EMPLOYEE CLASSIFICATION

A. Exempt Employees

Exempt employees are paid on a salary basis and, with certain exceptions, must be paid their full salary for any week in which they perform work. The exceptions for which an exempt employee's pay may be reduced are as follows:

1. Employees who are absent for at least a full day because of sickness or disability will not be paid for that day unless they are eligible for benefits under MBCI's paid time off, vacation, sickness, or disability policies. An exempt employee's pay will not be reduced if he/she is absent for less than a full day because of sickness or disability.
2. Employees who take leave under the Family and Medical Leave Act ("FMLA") will not be paid for that time unless they have accrued benefits under MBCI's leave policies which run concurrent with the FMLA leave. Pay of employees on FMLA leave will be reduced by the hours missed even if it is less than a full day.
3. Employees who are absent from work for at least a full day for personal reasons other than sickness or disability will not be paid for that day. If an employee is absent for less than a full day for personal reasons, his or her pay will not be reduced.
4. Employees who are absent from work for jury duty, attendance as a witness at a trial, or temporary military leave will have their pay reduced by the amount of payment they receive in the form of jury fees, witness fees, or military pay. Their pay will not be reduced by the number of hours or days they are absent from work unless they perform no work in a given week.
5. If an employee violates a safety rule of major significance while on duty, his or her pay may be reduced in an amount to be determined by MBCI as a penalty for that violation.
6. Employees may be suspended without pay for certain other types of workplace misconduct, but only in full-day increments. The reduction in pay will be proportionate to the number of days suspended.
7. Employees who work less than 40 hours during their first or last week of employment will be paid a proportionate part of their full salary for the time actually worked.
8. Exempt employees shall be at their designated worksite at all times during the work day. If an exempt employee will be away from their designated work site for more than a brief period of time and annual or sick leave has not been approved, they must obtain their supervisor's written approval to be away from the work site. It is entirely within the supervisor's authority to deny the request.

MBCI will reimburse any exempt employee whose pay is reduced in violation of this policy. If you feel your pay has been improperly reduced, please notify your Supervisor or the Human Resources Director.

B. Non-Exempt Employees

Nonexempt employees will be paid only for actual hours worked unless they receive benefits under the MBCI's leave policies.

All hours of work must be accurately recorded. If you have been instructed to falsify time records by any person, you must report this matter immediately to the Human Resource Director.

C. Probationary Employees

Probationary employees have not yet completed 90 calendar days of employment. Upon demonstrating satisfactory job performance, they will automatically become regular employees at the end of their probationary period unless given prior written notice to the contrary, such as the initiation of an adverse personnel action by a supervisor. Probationary employees, whether on the initial three-months probation or disciplinary probation may take the following leave with pay: Holiday, emergency leave, civil leave, administrative leave, military leave and leave without pay during the time of their probation. However, they may not take annual leave, sick leave.

D. Regular Full-time Employees

Employees who are regularly scheduled to work at least 40 hours per week and are eligible for full employee benefits.

E. Regular Part-Time Employees

Employees who are regularly scheduled to work less than 40 hours per week will be eligible for prorated sick leave, annual leave benefits, and workers' compensation.

F. Casual Temporary Employees

Employees hired for a specific and limited period of less than six (6) months are eligible only for workers compensation benefits. If it is determined at the conclusion of the six months to continue employment, temporary employees may be reclassified as Regular, Part-Time or Full-Time, which may make them eligible for employee benefits.

G. Education Contract Employees

All employees with positions in the Department of Schools are Education Contract Employees. Education Contract employees shall serve on the basis of an annual contract, with the exception of school principals, whose contracts may be for a period of up to three years, subject to an annual evaluation.

Education Contract employees will not receive annual leave, but will receive time off in the form of school holidays and personal leave. Personal Leave will be awarded at the beginning of each contract period in amounts determined by section XII. Time Off from Work.

Substitute employees in tribal educational programs are considered intermittent employees and are retained on an as needed basis only, are not guaranteed any certain number of hours of work per week or pay period, and are eligible only for the benefit of workers' compensation.

H. Political Appointees

Political appointees are those persons occupying positions directly appointed by the Chief and supervised by the Chief or the Chief's designee. Political appointees' positions may or may not be advertised, and will not be subject to an initial probationary period; and incumbents of such positions shall not have recourse, as a result of termination or for any other cause, to the grievance procedures described in these Policies. A Waiver of Native American Preference is not necessary for political appointee positions as the nature of these positions are at the discretion of the Tribal Chief who retains ultimate authority to select who is best qualified for the position.

IX. Attendance and punctuality

The normal workweek is 40 hours, Saturday through Friday, at all tribal locations unless otherwise specified and approved by the Chief. Daily hours are from 8:00 a.m. to 4:30 p.m. with a one-hour lunch break between 12:00 and 1:00 p.m., unless otherwise decided by the Chief. Individuals may alter this schedule by prior agreement with their supervisors, provided the regularly scheduled hours are worked each week. Some positions may require employees to work nights and weekends.

MBCI expects all employees to report to work as scheduled. If you must be absent or will be tardy, you must notify your supervisor in advance of the anticipated tardiness or absence. If you cannot provide advance notice, call your supervisor as soon as possible, but in no event later than 30 minutes after your scheduled start time. You also may be required to submit documentation of the reason for your tardiness or absence.

Any employee absent from work for a period of two (2) consecutive workdays, without daily notification to your supervisor of the reasons for the absence, will be considered as having voluntarily resigned. It is not sufficient to leave a voice mail message; you must personally contact your supervisor. If for any reason you are unable to contact your supervisor personally, then you must contact your supervisor's superior. In the rare case where neither can be contacted personally, you must leave your supervisor a voice mail message, stating the date and time you called, the reason for your absence, and where and how you can be reached.

In the event of an emergency situation (hurricane, flood, severe weather) contact your supervisor to determine whether MBCI is open for business. If you cannot reach your supervisor, contact the Office of Human Resources. If MBCI is open for business, we expect you to report to work if possible. If you are unable to report to work, you still must contact your supervisor to inform him or her why you are unable to report to work. MBCI will make every effort to make public notifications regarding closures in emergency situations through the media or Tribal website.

X. Compensation

Salaries will be paid biweekly on Thursday with a two week lag in reimbursement. All supervisors will submit two week time sheets prior to each pay period for each nonexempt employee under their supervision and for exempt employees who take leave during the pay period.

Non-Exempt employees who take time away from their duties will submit appropriate documentation to their supervisor and their time sheets must reflect the absence. In the case of Education Contract Employees working only for the school year, employees will receive their contract salaries on a prorated basis during the entire year.

Overtime will be paid at the rate of one and one-half times any non-exempt employee's regular hourly rate for all time in excess of the regularly scheduled 40-hour week of hours actually worked. Overtime shall not be worked without the prior written approval of the employee's supervisor. Exempt employees will not be eligible for overtime.

A. Salary Grades

Grades for each position may be reviewed before the beginning of each fiscal year for possible adjustments as determined by market considerations. Salary adjustments will not be automatic, will depend upon available funds, and may differ from job to job.

B. Hire-In Rates

Employees must be compensated at the minimum pay rate for the grade. However, an unusually well-qualified candidate or unusual market conditions may justify hire-in at a higher rate within the grade.

In the case of persons hired as certified instructional staff and administrators in the Choctaw Tribal Schools, the Revised Education Pay Schedule will determine salary levels. Salary levels are determined by the employees' level of certification and their years of experience with a maximum of ten (10) years' experience credited from other school districts. Tribal members who become certified teachers or administrators will be credited for their years of experience as an instructional aide in the Choctaw Tribal Schools. Administrators for designated positions will be compensated in accordance with their corresponding position on the Revised Education Pay Schedule multiplied by an additional factor approved by the Chief and the Tribal Council.

C. Promotion Salary Adjustments

If an individual is promoted to a tribal job with a higher salary range, pay will be adjusted upward to step one of the range of the new position. If pay already exceeds step one, the individual will enter the new range at whatever step is next above his or her present pay.

All Tribal positions will have written job descriptions which will be used for position evaluation to determine equitable pay with public and private sector jobs comparable to those of the Tribe. The supervisor and employee will review the job description on an annual basis during employee performance reviews. The supervisor should notify the Human Resources Office of any recommended changes to the job description.

D. Outside Activities

Outside employment or activities of any sort shall not interfere with the efficient performance of an employee's duties; involve a conflict of interest with regard to the employee's duties or involve the performance of duties regularly performed by the employee in his or her employment with the MBCI. Employment or economic activity outside of an employee's primary position with the Division of Tribal Government Services must be approved in advance and in writing by the Chief. Honorariums or compensation received by an employee for work done representing the Tribe or involving the employees' tribal work shall be remitted to the Finance office for deposit into the general fund.

E. Transfer

The Chief may transfer employees from one job in the Division of Tribal Government Services to another for which they are qualified, without the job having to be advertised or announced. Transferring employees, including employees transferring from Tribal Council to Executive Branch employment, may transfer all of their accrued leave and will maintain other benefits.

F. Salary Advances

No employee can receive his salary or compensation in advance unless there is a death in the employee's immediate family as defined in the sick leave policy or whose paycheck has already been printed.

No emergency pay advance forms are to be taken to the Tribal Chief's Office without first being approved by the Office of Human Resources. Emergency pay advance forms are **not** to be used upon resignation or termination of employees.

G. Working On-Call

The nature of some positions with MBCI requires that some employees in those positions be placed "on call". This will always be reflected in the position description and all new employees will be informed of this before they agree to accept a job offer. Employees that are placed "on call" are asked to respond to pagers, beepers or cellphones by reporting to their duty station within a reasonable time period.

XI. Benefits

MBCI offers a broad range of benefits to eligible employees. The summary plan descriptions and formal plan documents provide the eligibility requirements and an explanation of the benefits offered. Copies of the summary plan descriptions, the formal plan documents, or any other documents relating to employee benefit plans, will be made available to employees upon hire. If you have any questions regarding this information, please contact the Office of Risk Management.

XII. Time Off From Work

A. Holidays

Employees are eligible for “holiday pay” on thirteen (13) holidays each year. The holidays recognized by MBCI are:

New Years’ Day (Jan. 1) MLK, Jr. Day (3 rd Monday in Jan.) President’s Day (third Monday in Feb.) Good Friday (Friday before Easter) Memorial Day (last Monday in May) Independence Day (July 4) Nanah Waiya Day (2 nd Friday in August)	Labor Day (first Monday in Sept.) Native American Day (4 th Friday in Sept.) Veteran’s Day (Nov. 11) Thanksgiving Day (4 th Thursday in Nov.) Native American Heritage Day (day after Thanksgiving) Christmas Day (December 25)
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If a holiday falls on a Saturday, it will be observed the day before on Friday. If a holiday falls on a Sunday, it will be observed on the following Monday.

To be eligible to receive holiday pay, however, you must work your scheduled hours or be on pre-approved leave on the workday immediately preceding and the workday immediately following the holiday. If any holiday occurs during an approved annual leave, that day will not be charged against your annual leave.

Exempt employees receive no additional compensation beyond their salary, base, or commissioned pay for holidays.

B. Annual Leave

Each employee may take annual leave with full salary at such time as is mutually agreed upon with his or her supervisor. Annual leave may be taken in “one-hour” increments or longer, based on the following accrual rate: employees with less than three (3) years of satisfactory, continuous service to MBCI government services shall accrue annual leave at the rate of one-half (1/2) day for each full biweekly pay period; employees with more than three (3) but less than ten (10) years continuous service to MBCI government services shall accrue three-fourths (3/4) day annual leave for each biweekly pay period; employees with ten (10) or more years continuous service to MBCI government services will accrue one (1) day annual leave for each biweekly pay period. Employees with a greater accrual rate under prior policy will continue accrual under that policy until they reach a higher rate under this new annual leave accrual policy.

A regular full-time and regular part-time employee accrues annual leave from the first day of employment but is not eligible to take accrued annual leave until he or she has completed 90 continuous calendar days of service. Employees may not borrow annual leave time. At the beginning of any fiscal year, the employee may carryover from the preceding year(s) no more than 480 hours of annual leave.

Education Contract employees who have an annual leave balance they accrued prior to becoming an Education Contract Employee may maintain, use, or be compensated for such leave under the same terms and conditions as other tribal employees, provided that no education contract

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employee may carry-over from one contract to the next more than a total of 480 hours of combined annual and personal leave. Employees, who are transferred out of the Department of Schools, may convert their personal leave balance to annual leave.

A regular full-time or regular part-time employee will be reimbursed for unused annual leave not to exceed 60 days, (480 hours) at the salary rate he or she is earning at the time of termination of employment subject to the availability of funds. If a medically documented illness occurs during an annual leave period, sick leave may be substituted for those days during the vacation when the employee was ill.

No new employee may be granted annual leave until he or she has been employed for ninety (90) continuous calendar days. An employee who leaves Tribal employment voluntarily and in good standing, and who returns to work for the Tribe within two (2) years of departure, including political appointees and Tribal employees transferring to and from employment with Tribal Enterprises, may be given a benefit bridge to reinstate their accrual rate for annual leave and may participate in the retirement program without the waiting period, upon approval by the Office of the Chief.

C. Sick Leave

Paid sick leave is accrued at the rate of one-half day per full biweekly pay period. Employees may borrow paid sick leave from themselves in an amount not to exceed the amount they would have accrued by the end of MBCI's fiscal year, or by the end of their budget's program year, at the discretion of the Chief. Terminated employees who have borrowed sick leave will have those days deducted from their final paycheck. At termination of employment there is no cash reimbursement for unused sick leave.

Employees may not accrue the full amounts of sick and annual leave during a pay period when an employee has worked less than 80 hours due in that pay period.

Sick leave may be granted for:

1. Personal illness or physical incapacity;
2. An acute illness among the members of the employee's immediate family (husband, wife, child, grandchild, brother, sister, mother, father, grandmother, grandfather, or any aunt, uncle, niece and nephew who is related to the employee within the 3rd degree according to the Nolan Chart of Relationships and Degrees of Kindred); and/or
3. Medical, dental, optical, psychiatric or psychological examination or treatment to the employee by a licensed physician or a traditional Indian practitioner or examination or treatment of a member of the employee's immediate family, if the employee must accompany them to the examination or treatment. For purposes of this policy, the term "immediate family" is the same as stated above in Section 2.

Whenever the employee has prior knowledge of the need to use sick leave, he or she must make his or her request in advance to the supervisor. When the employee does not have prior knowledge of the need to use sick leave, he or she must contact his or her supervisor as soon as is reasonably possible. The supervisor, in his or her discretion, may require a medical excuse for any absence due to a claimed illness.

Any grant of such leave in excess of two (2) working days must be supported by a medical certificate from either a physician, family nurse practitioner or an Indian practitioner. Female employees, upon certification by an attending physician, will be granted maternity leave to be taken in one increment. Maternity leave may also be charged against sick leave, annual leave or leave without pay.

Illness due to alcohol or drug abuse: Should an employee be absent from work for greater than three (3) days as a result of the effects of alcohol or drug abuse, sick leave shall not be granted, and the employee shall be given leave without pay, provided, however, that if the employee is institutionalized in a licensed institution, sick leave shall be granted. For purpose of this paragraph, a medical certificate must be signed by a medical doctor and the signature of a traditional Indian Practitioner shall not be acceptable.

When an employee retires or leaves MBCI employment, he may transfer up to 100 hours of sick leave to his spouse or child or parent or sibling who is also an employee of Tribal Government Services Division. Any other accrued sick pay or accrued sick leave is placed into the Leave Bank for use by other employees of MBCI.

D. Bereavement Leave

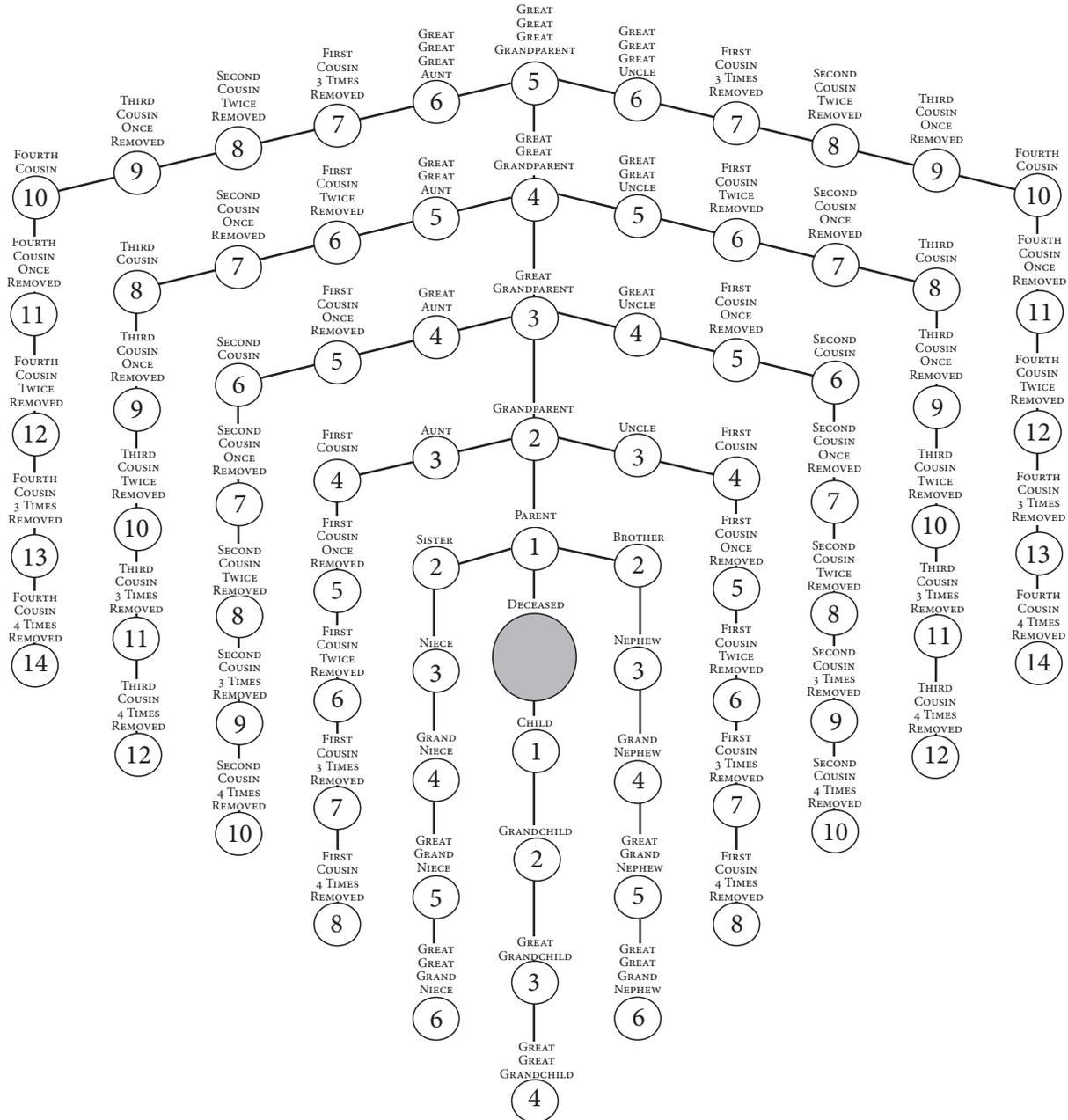
Employees are entitled to two (2) paid days of bereavement leave for the death of immediate family members as the term is defined in the sick leave policy.

Any employee who is an ordained minister and who registers in the Office of Human Resources as such may receive up to eight (8) hours of Administrative Leave per bi-weekly pay period for their service to the community for conducting the funeral services of Tribal members. Documentation must be provided to the employee's supervisor in the form of an obituary or funeral program which lists the minister's name as having conducted the funeral service. The documentation should be attached to the Time and Attendance records.

E. Personal Leave

Education Contract employees are eligible for personal leave. Such leave shall accrue at the beginning of each contract period at the rate of two days for the first three years of employment, three days for the next seven years of employment, and seven days thereafter. In addition, school employees who have more than three years continuous employment with the tribe and who have a contract period more than the standard school year will accrue additional personal leave hours. The additional personal leave hours will accrue, at the same rate as other regular full-time employees accrue annual leave, during pay periods worked that are not included in the standard school year. Educational contract employees will be reimbursed for unused personal and annual leave, subject to the same limitations as other non-contract employees.

The NOLAN CHART* of RELATIONSHIPS and DEGREES of KINDRED According to the Civil Law



Encircled numerals indicate degree of kindred to the deceased. Straight lines indicate the lower person as issue of the next preceding higher person. Full cousins are indicated in red (shaded). On the chart, all cousins above full cousins are *cousins in the ascendancy*, all below are *cousins in the descendancy*. Consult State Statutes of Descent and Distribution for rights of persons of each relationship and degree of kindred.

XIII. FMLA (Family and Medical Leave Policy)

MBCI complies with the Family and Medical Leave Act of 1993 (the “Act” or “FMLA”). The following briefly describes eligibility and notice requirements for those employees needing to take FMLA leave. For further information, please contact the Human Resources Office.

A. Eligibility

To be eligible for leave under this policy, an employee must have at least one (1) year of service with MBCI, have worked at least 1,250 hours, during the twelve (12) month period preceding the commencement of the leave, and must work at a location employing fifty (50) or more employees in a seventy-five (75) mile radius.

B. Description of Time-Off Benefit

An eligible employee shall be entitled to a total of twelve (12) workweeks of unpaid leave during a twelve (12)-month period for one (1) or more of the following reasons:

1. The birth of a son or daughter and to care for such child;
2. The placement of a son or daughter with the employee for adoption or foster care;
3. To care for a spouse, or son, daughter, or parent, if such spouse, son, daughter or parent has a serious health condition; and/or
4. A serious health condition that makes the employee unable to perform the functions of his or her position.
5. A qualifying exigency arising out of the fact that your spouse, son or daughter (of any age), or parent is a covered military member, is on active duty (or has been notified of an impending call or order to active duty) in the National Guard or Reserves or is a retired member of the Armed Forces or Reserves and has been notified of an impending call or order to active duty in support of a contingency operation.

An eligible employee who is the spouse, son, daughter, parent or next of kin of a current service member of the Armed Forces, including the National Guard or Reserves, may take up to 26 weeks of Military Caregiver Leave to care for a service member who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. This 26 weeks of Military Caregiver leave in measured in a “rolling 12-month period”. The amount of time which may be taken for Military Caregiver Leave will be determined by the balance in an employee’s 26-week leave entitlement period, measured backward from the date of the employee’s most recently requested FMLA start date. This is a rolling 12-month period.

The leave entitlement described in this Policy applies on a per covered service member, per injury basis. However, no more than 26 weeks of FMLA, Active Duty, or Military Caregiver Leave may be taken in the rolling 12 month time period described above.

C. Employment of Both Spouses

If both spouses are employed by MBCI, they will be limited to a combined total of twelve (12) weeks if the family leave is due to the birth or placement of a child, or serious health condition of a parent. Each may take up to twelve (12) weeks, however, if the leave is for his or her own serious health condition or to care for a child or spouse with a serious health condition. When both spouses are employed by MBCI, service member caregiver leave is limited to a combined 26

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workweeks during the relevant 12 month period, counting all leave based on FMLA and Active Duty leave.

D. Intermittent Leave and Leave on a Reduced Basis

FMLA leave taken because of the serious health condition of either the employee or a covered family member can be taken intermittently (*i.e.*, not all at once) or through a reduced work schedule if the health care provider certifies that such arrangement is medically necessary. When an employee takes leave intermittently or through a reduced schedule, that leave will be subtracted from the amount of the employee's remaining available leave on an hour-for-hour basis.

Leave taken due to the birth or placement of a child must be taken in one unbroken period unless approved in advance by MBCI. Decisions regarding requests for intermittent or reduced work schedule leaves in birth, adoption and foster care situations will be based on the business needs of MBCI.

E. Calculation of the 12-Month Period

The twelve-month period in which the twelve (12) weeks of FMLA or the twenty six (26) weeks of Military Caregiver leave may be taken is a "rolling" twelve-month period, measured backward from the date an employee uses any FMLA leave. Thus, each time an employee uses FMLA leave, the remaining FMLA leave entitlement will be any balance of the twelve (12) weeks that has not been used during the preceding twelve (12) months. Any FMLA leave taken because of the birth or placement of a child must be completed within the twelve-month period following the date of birth or placement.

F. Required Substitution of Available Annual and Sick Leave

An employee will be required to use all available annual and sick leave during any leave taken under the FMLA, Active Duty Leave, or Military Caregiver Leave. For example, an employee who has five (5) days of annual or sick leave available, and seeks twelve (12) weeks of FMLA leave, must first use the annual or sick leave during the first five (5) days of FMLA leave with the balance of FMLA leave as unpaid leave. FMLA leave also runs concurrently with workers' compensation leave.

G. Requests for Leave

When the need for leave under these policies is foreseeable, such as for an expected birth, placement of a child, or planned medical treatment, the employee must provide MBCI with at least thirty (30) days written notice before the leave is to begin.

If this is not possible, the employee must notify MBCI of the need for leave as soon as practicable, at least within 1 or 2 business days of when the need for leave becomes known to the employee. Of course, failure to provide notice may be grounds for delay of leave and/or disciplinary action for absenteeism.

FMLA requires that you make reasonable efforts to cooperate with us in scheduling FMLA leave to avoid unduly disrupting MBCI operations. Please give us as much notice as possible. Request forms are available through the Office of Human Resources.

H. Certification

Where leave is taken for a serious health condition, you will be required to provide a health-care-provider certification. You will be provided with the appropriate form for submission to your doctor. If FMLA leave is requested for your serious health condition, a second medical opinion may be requested at MBCI's expense. If the first and second medical opinions differ, MBCI may pay for a third and final Medical Certification that will be binding on all parties. The employee may obtain a copy of the second and third medical opinions upon written request.

Where the leave is foreseeable and at least thirty (30) days' notice has been provided, the certification should be provided before the leave begins. When the leave is not foreseeable, or less than thirty (30) days' notice has been provided, MBCI will inform the employee when the requested certification must be provided. MBCI may require subsequent medical re-certification on a reasonable basis.

Employees taking leave due to their own serious health condition may be required to provide a certification of fitness for duty prior to returning to work. **Failure to comply with any of the certification requirements may result in disciplinary action, up to and including termination of employment.**

I. Benefits/Restoration of Position

Ordinarily, an employee who takes FMLA leave will either be placed in the position held when the leave commenced or an equivalent position. However, if an employee fails to return to work on the workday after the expiration of an approved FMLA leave, then the employee will be deemed to have resigned employment.

The taking of FMLA leave will not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Employees will not accrue any additional benefits during any period of leave under the FMLA.

During any period that an eligible employee takes FMLA leave, MBCI will allow the employee to maintain coverage under the group health insurance plan for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in active employment continuously for the duration of such leave. MBCI will deduct any employee's health coverage payment as a regular payroll deduction.

During unpaid leave, the employee will be required to submit premium payments to MBCI if the employee desires to maintain coverage. Payments are due at the same time as they would be made by payroll deduction. Health coverage will cease, retroactive to the last day for which payment was received, if payment becomes more than 30 days late.

If an employee fails to return to work at the end of FMLA leave, the employee will be required to reimburse MBCI for the cost of health coverage paid by MBCI during the unpaid leave unless the employee's reason for not returning to work is directly related to a serious health condition or other circumstance beyond the employee's control.

MBCI may require the employee to periodically report on the employee's status and intention to return to work.

J. Notification of Rights

MBCI will provide to any employee who requests leave under the Act additional written guidance regarding the requested leave. MBCI will designate all periods of leave taken by an employee as either FMLA or non-FMLA leave. If you have any questions about the policy, please contact the Human Resources Office.

XIV. Leaves of Absence

A. Military Leave

Military leave shall be granted for a period not to exceed fifteen working days in any calendar year. During such Military leave, the employee will receive his normal pay without regard to any compensation received from his military unit for such services. Any military leave of absence required beyond 20 days per year must be taken as annual leave, or leave without pay as appropriate. Where the military exercise to be participated in is voluntary, granting of leave shall be at the discretion of the Chief.

B. Extended Leaves of Absence

Extended leaves of absence without pay can be granted for personal needs such as personal, professional, or educational development opportunities subject to approval by the supervisor and the Chief. An extended leave may not exceed six months from the last day at work and a minimum of one year full-time, regular employment is necessary for an extended leave of absence to be approved. A request for such leave must be in writing, stating the reason for the leave and intention to return to work at a specified date. During the leave the employee will not earn annual leave or sick leave, and the leave will not be counted for subsequent benefits eligibility or for automatic pay adjustments. On return, MBCI will try to place the employee in the same position or one of the like status and pay. If such is not available, the employee will be eligible for normal termination benefits.

C. Civil Leave

An employee subpoenaed or summoned by Tribal Court, Federal Court, State Court, or political subdivision thereof, to serve either as a juror or a witness, for that jurisdiction, may be granted civil leave with pay during the period of such service. Request for civil leave must be made in advance with a copy of the court subpoena or summons furnished to the employee's supervisor.

An employee subpoenaed or summoned in private litigation by some party other than the Federal Government, the Tribal Government, the State Government, or political subdivision thereof, to testify in a capacity that is not official, but as an individual, shall not be eligible for civil leave. Such employee must take annual leave or leave without pay as appropriate.

D. Administrative Leave

An employee may be granted administrative leave with pay with the approval of his supervisor and the Chief, if, in their judgment, the employee can serve MBCI by temporarily performing duties not specifically related to the job. Administrative leave approval must be in writing.

The Chief may excuse any or all employees from duty during a work day, or portion thereof, with pay in emergency situations. Examples of such emergencies would be extreme weather conditions, disaster or other natural phenomenon which prevent employees from working or reporting to work.

The Chief, also has the sole discretion to grant administrative leave for an individual or group for governmental or other purposes. If an employee has been approved for annual or sick leave, prior to a day when administrative leave is granted, the period of time covered by the administrative leave will not be deducted from the employee's annual or sick leave.

XV. Voluntary Leave Transfer Program (Donated Leave)

This program was designed to give employees with excess leave the opportunity to help those employees with long-term medical emergencies that are left without sufficient leave to provide for their income maintenance during extended periods of sickness.

Employees of MBCI may donate unused accrued annual or sick leave to an Employee Leave Emergency Pool for use by employees who have a medical emergency or family medical emergencies and have insufficient leave available. Employees entitled to use such pool may not be in a probationary period and must otherwise be eligible for leave. Any request to use the Employee Leave Emergency Pool must be approved by the Human Resources Office.

“Medical emergency” means a medical condition of an employee or family member that is likely to require the employee’s absence from duty for a prolonged period and could result in a substantial loss of income to the employee because of unavailability of leave, and must be supported by a physician’s certificate.

“Family member” has the same definition of immediate family under the Sick Leave Policy. To be eligible to participate in the program, an employee must have exhausted all available paid leave and must have been or expect to be on leave without pay status for at least the number of hours in the employee’s biweekly work schedule. Additionally, the employee must comply with procedures in place regarding the Voluntary Leave Transfer Program.

The Office of Human Resources shall maintain a leave bank, which will be a ledger account for the purpose of accepting and distributing and monitoring donated annual or sick leave. Contributions of annual or sick leave into the leave bank will be accepted at any time during the year. Only earned leave may be donated. An employee may not donate more than one-half of his or her annually earned annual or sick leave; nor may an employee’s donation bring his or her current total annual and/or sick leave to less than the number of hours the employee is regularly scheduled to work during a bi-weekly pay period. All requests to donate leave to the leave bank, or to use leave from the leave bank, must be in writing signed by the employee. An employee may not accrue leave on the leave that has been donated to him.

No employee may directly or indirectly attempt to persuade, intimidate, threaten or coerce, any other employee in the donating, receiving or use of annual or sick leave under this program. Any violation should be reported to the Director of Human Resource. Should this occur, it may be considered a violation of this Policy and result in disciplinary action up to and including termination.

An employee may not receive more than 200 hours per fiscal year from the Voluntary Leave Transfer Program.

XVI. Employee Development

A. Career Development Plans

All supervisors and regular employees shall prepare career development plans for each employee. The supervisor and employee should develop and, at least annually review the plan, which should include:

1. career goal;
2. courses, training sessions, or workshops designed to assist employee in meeting goals; and
3. a timetable for achievement.

A copy of the plan should be given to the employee, the supervisor, and the Office of Human Resources.

B. Educational Assistance

Each employee of MBCI will be encouraged and assisted to further his or her personal and career development through academic study and by such other means to contribute to further service to the Tribe that will not conflict with regular duties.

1. Employee Initiated Training

Subject to the availability of program funds, each MBCI Tribal member employed by the Tribe may have available job-related education assistance funds. This includes any training program, conferences, workshops or classes that are job-related by agreement between employee and supervisor and approved by the Chief or the Chief's designee.

This training will normally occur during non-working hours. Eligibility for employee initiated education assistance funds will not be accumulated from fiscal year to fiscal year.

Payment of fees for conferences or other training experiences shall be made when recommended by the supervisor, approved by the Chief, and when such plans:

- (a) complement Tribal purposes;
- (b) benefit the individual's career;
- (c) are submitted in advance for approval by the Chief; and
- (d) will not interfere with satisfactory discharge of responsibilities even though training may occur during normal working hours.

2. Enrollment in Post Secondary Educational Courses

MBCI's policy is to allow MBCI Tribal member employees of the Tribal Government Services Division to enroll in part-time classes for four (4) hours weekly or less. However, the Tribal Chief may make an exception and grant educational leave of more than four (4) hours per week, but not to exceed ten (10) hours per week when a degree can be obtained by additional coursework within the same semester. Such enrollment in school and subsequent absence from work is, of course, with the prior approval and written authorization from the employee's supervisor. The program or department's goals and objectives must not be neglected or diminished by an employee's enrollment in classes and absence from work.

C. Performance Reviews and Corrective Actions

1. Probationary Performance Reviews

All new employees, except Education Contract employees, political appointees, and elected officials serve a 90 calendar day probationary period beginning on their first working day to determine whether or not they fully satisfy requirements of the job. Supervisors will carefully monitor performance during this time and will provide regular performance feedback every 30 days to the new employees. The employee may be terminated without notice and with or without cause during or at the end of the probationary period.

2. Annual Performance Reviews

Each supervisor will conduct at least one written performance review annually of each staff member they supervise using documented forms for this purpose. The objective of these reviews is to assist employees in their career development and to improve overall effectiveness of tribal operations. The review will be shown to employees in draft form and discussed with them. At the same time the supervisor and employee will review and, if necessary, suggest revisions to the employee's job description, said suggestions being made to the Office of Human Resources who shall have the final authority to modify the job description, with the approval of the Chief.

Subsequent changes in the performance review may be agreed upon before a final record is made. If agreement cannot be reached, the employee may prepare a separate statement for the record as appropriate. All performance reviews will be signed by both parties, indicating that they have communicated on the subject matter even though they may not have agreed. The Department Director and Office of Human Resources will receive a copy of each written review. Employees will also be given a copy of the final document. Performance reviews will be required of any employee promoted from within prior to the completion of three months in that new position.

3. Corrective Action

For purpose of this policy, corrective action may at the discretion of the supervisor be taken in any circumstance where individual job-related performance and/or conduct is below minimum acceptable levels and where its continuation could result in termination. This includes, but is not limited to, policies and standards of conduct described in this policy.

4. Procedure

Documentation, discipline and corrective action of unsatisfactory performance is the responsibility of the Supervisor. The Supervisor will administer the Corrective Interview Report in accordance with this policy. The Supervisor will complete the Corrective Interview Report and, following a disciplinary conference, secure approval through the appropriate supervisory chain.

- a. The Corrective Interview Report procedure will be applied when it is determined that an individual's job performance and/or, conduct is at such a level to require discipline and corrective action beyond verbal counseling. Corrective action may be in the form of counseling, warning, suspension or immediate termination.
- b. Some circumstances of unsatisfactory job performance and/or conduct shall, at the Chief's discretion call for immediate termination.
- c. Immediate terminations may result from, but are not limited to, possession and/or use of alcohol, illegal drugs or similar dangerous intoxicants at work; possession or use of deadly weapons; falsification of records or misrepresentation; theft of MBCI

or co-workers' property; serious violation of MBCI's electronic mail and Internet policies; insubordination; sexual misconduct; conduct unbecoming of an employee of the MBCI; working elsewhere while on leave of absence; violation of confidentiality; discrimination against any member of a protected group (race, color, religion, national origin, disability veteran status) in hiring, transfer, promotion, training, compensation, benefits or other employment related matters that violates this Policy; retaliation against or harassment of an employee for using the complaint procedure to oppose any kind of discrimination/harassment or for cooperating in an investigation of a complaint of discrimination/harassment; and violations of state, tribal or federal laws affecting business and industry. On occasion an internal investigation may be required while an employee is suspended pending investigation. If an internal investigation is required, the employee concerned will fully cooperate with Human Resources Office or Internal Audit whether on suspension or not.

If an employee is arrested for any criminal offense, that employee must promptly report same to the Department Head and Human Resources within five (5) working days of the arrest.

If the results of an investigation show that a violation of this policy has occurred, the supervisor shall make a recommendation to the Human Resources Officer that an employee should be disciplined, suspended without pay for a period of time, placed on probation, or terminated, and the Chief will make the final decision.

- d. Disciplinary Probation or Suspension: With the concurrence of Human Resources, and the Chief, a supervisor may suspend, terminate, or place an employee on probation for violation of rules of MBCI, such as but not limited to: insubordination, chronic absenteeism or tardiness, repeated failure to complete tasks assigned, refusal to complete required training, breaches of confidentiality, under the influence on duty, failure to communicate or work effectively with other employees and agencies, or failure to learn the guidelines of the program in which he or she is employed.
- e. Discussion of the Corrective Interview Report will take place in a private conference between the employee concerned and his/her Supervisor and a witness, preferably another member of management or Human Resources.
 - i. Except in cases of termination, the conference shall stress performance improvement requirements as specified in the Corrective Action Report.
 - ii. A follow-up conference shall be established, if required or requested.
 - iii. It shall be explained to the employee that the Corrective Interview Report will become part of his/her personnel record, and that his/her future conduct and performance will determine how much weight this report will have in any future situation requiring disciplinary action and with respect to any future wage increases. Specifically, if there are two or more Corrective Interview Reports in the preceding three (3) years, an employee should expect to receive a lower percentage cost of living and/or other raise and the employer has the right, if approved by the Chief, to deny such an increase. Any employee on probation or suspension at the time a cost of living or other raise is given shall not receive the increase.

Upon completion of the conference, the report will be signed and dated by the supervisor, employee and witness. The employee is given the opportunity to write his/her comments on the form. The supervisor will forward the original of the completed report for filing in the employee's personnel file to the Office of Human Resources.

The supervisor shall ensure that the follow-up conference, if one is warranted, is conducted at the time established.

If placed on probation, the probationary period generally should not exceed ninety (90) calendar days, but the Chief has the final determination on the period of probation. During that period, the employee will accrue but not able to use sick leave or annual leave. Like employees on probation during their first ninety (90) days of employment, employees on disciplinary probation will be subject to termination without cause without appeal. In order to place an employee on probation, the supervisor must notify him or her in writing, and the notification must contain the following:

- i. A factual description of the actions leading to probation;
- ii. A review of past corrective efforts;
- iii. Suggestions of positive corrective steps the employee must take; and
- iv. A caution that an occurrence during the probationary period, or further violations at any time thereafter, could result in termination.

If the employee does not achieve fully satisfactory performance during the probationary period, and at all times thereafter, termination may result.

If the employee successfully completes the probationary period he or she must be notified in writing that he or she has been restored to full-time, permanent status.

- f. The Chief may suspend an employee, with or without pay for a period not to exceed 30 working days due to refusal to follow reasonable orders or directives; threatening or commission of any act of physical violence; libel; slander; breach of confidentiality; arrest for an offense the immediate consequences of which would prevent the employee from carrying out normal job duties; allegations (in the case of tribal employees in positions which involve regular contact with, or control over, Indian children) of child sexual abuse or neglect, or of a commission of a violation of federal, state, or tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, or crimes against persons; or making false statements on reports or records or for any other circumstances of unsatisfactory work performance and/or conduct. In cases where the Human Resources Director and the Department head recommend termination rather than suspension, the Chief may take that action rather than issuing a suspension notice.

The suspended employee must be given written notification that continued employment is in jeopardy and must cooperate with any internal investigation. If the employee is retained, he or she will be told what must be done to improve the situation. With this notice, the employee will be placed on probationary status. Uncooperative behavior or negative attitude which will affect or has affected the work or morale of others at the Tribe will ordinarily result in termination.

Except as provided herein suspended employees shall not receive any compensation for the period of suspension, shall not accrue or receive annual leave, shall not accrue or receive sick leave, and shall not receive leaves of absence. During the suspension the employee shall continue to receive disability benefits, health benefits, and insurance benefits. The end of the period of suspension shall not necessarily mean that the employee returns to work. The Chief shall investigate the matter, and shall make a determination of the fitness of the suspended employee to return to normal duties. All suspensions shall run for the full term of the suspension, unless good cause is shown to end the suspension earlier.

Under certain circumstances, the Chief shall have the authority to suspend an employee with pay for not more than thirty working days. These instances will be those in which an employee accused of misconduct must wait until a court of competent jurisdiction or other arbitrator must determine the guilt or innocence of the accused employee. In such instances also, unless the employee shall have pleaded guilty, has entered into a plea bargain, or has plead nolo contendere to the charges, the Chief may award suspension with pay status retroactively if the employee is exonerated of all charges.

XVII. Termination of Employment

The end of an employment relationship with the Tribe will fall within one of the following categories, with indicated policies applicable to each:

1. Resignation:

An employee may voluntarily terminate his/her employment for any reason he or she chooses. Two weeks notice is requested by the Tribe. If the Supervisor directs, the resigning employee may be relieved from further work upon receipt of a written or verbal notice of resignation. Any employee absent from work for a period of two (2) consecutive workdays, without daily notification to the supervisor of the reasons for the absence, will be considered as having voluntarily resigned.

If an Education Contract employee leaves employment during the period of the employee's contract, the employee's remaining pay not earned will be retained by the Tribe, and the Tribe may contact the Mississippi Department of Education requesting that the employee's teaching certificate be rescinded.

(2) Mutual Agreement:

An arrangement whereby both the employee and MBCI think that it would be mutually beneficial to end the employment relationship. Under these circumstances, no termination notice period is set by the Tribe, and a departure date is informally agreed upon within a reasonable time period.

(3) Reduction in Force:

A reduction-in-force is action resulting from job elimination due to reorganization or financial considerations determined by the Chief. Any Tribal member employee so affected will be paid one month's compensation after the date of the notice.

(4) Unsatisfactory Performance:

An employee's performance is considered unsatisfactory if he or she fails to meet performance standards, fails to complete tasks in a timely manner, fails to maintain an adequate attendance record, fails to cooperate with or follow instructions from his or her supervisor, engages in unacceptable conduct or misconduct or violates any MBCI policy;

(5) Retirement:

Retirement occurs when the employee voluntarily leaves employment for purposes of retiring from gainful employment with MBCI.

Under most circumstances and if resources are available, all accrued annual leave pay for which the employee is eligible, not to exceed the maximum number of allowable annual leave hours, may be paid to the employee when the employee separates employment. Any indebtedness to the Tribe, including the replacement cost of Tribal property not returned by the separated employee within 3 days of the separation, will be deducted from any available, annual leave, or other pay from the last check.

XVIII. Grievance

Any employee, except those on probation, temporary employees, casual employees or political appointees, 1) terminated from employment due to reduction in force, 2) terminated from employment due to unsatisfactory performance, 3) terminated from employment due to misconduct, 4) demoted for cause, or 5) suspended for any reason by the Chief, may file a grievance on the action. Any employee who wishes to grieve a violation of MCBI's Personnel Policies, or other civil rights violation shall have the right to file a grievance on the action. The grievant shall have the right to file written statements or briefs prior to the hearing in support of his or her position. The employee shall have the right to be represented by anyone of his or her choice, including an attorney at no expense to the Tribe. The grievant shall have the right to present witnesses on his behalf and to cross-examine tribal staff or witnesses presented by the Tribal Administration.

A. Procedure

The following procedure will be followed in filing grievances:

- (1) STEP ONE: The employee shall, within two (2) working days of the grievable event, discuss his or her grievance with the employee's supervisor, and every effort shall be made to resolve the matter at this point. When the grievance is against the supervisor, the action shall be initiated directly with the Department Director. Grievances alleging violations of MCBI's EEO and Policies against Unlawful or Unethical Activities should first be presented to the Director of Human Resources. If the employee is not satisfied with the results of this step, the employee may, within two (2) working days, initiate STEP TWO.
- (2) STEP TWO: If the employee wants to appeal further, the employee shall submit in writing a request for hearing to the Director of Human Resources describing the grievance or appeal with a copy to the Chief. A hearing shall be scheduled within five (5) working days of the date of the request, with all parties and documentation present. The Policy Development Officer or other appropriate designee by the Chief shall conduct the hearing, and shall make every effort to resolve the grievance or appeal.
- (3) STEP THREE: If the grievance is not resolved in STEP TWO, the employee shall within five (5) working days, request in writing a hearing with the Tribal Personnel Grievance Panel submitting the request to the Chair of the Panel and to the Director of Human Resource with all written statements or briefs. The Panel shall schedule a hearing on the matter within fifteen (15) working days. The grievant and all parties concerned shall be given written notice of the date, time, and place of the hearing at least two (2) business days prior to the hearing. The Chair of the Panel shall preside at the hearing on the appeal, which shall be held in executive session, with only members of the Panel and parties to the grievance or appeal present. The decision of the Panel is final and not appealable to any forum.

B. Confidentiality

All aspects of all grievances shall be confidential, and shall be discussed with only the parties concerned with the grievance, and members of the Panel. Breaches of confidentiality shall be treated with appropriate disciplinary actions.

C. Appearances at Hearings

The Panel shall compel any and all parties to a grievance, to attend any hearings or meetings pursuant to resolving a grievance, if such parties are tribal members, Tribal Council members, supervisors, or employees. The Panel may request other parties to appear at such meetings as it deems necessary.

XIX. General Employment Policies

A. Fraternization

The relationship between employees, as well as between employees and management, should be professional and comply with MBCI's harassment and nepotism policies. Supervisors and managers are prohibited from dating or engaging in romantic relationships with subordinates. Such relationships can disrupt the work environment and create potential conflicts of interest.

B. Dress Code / Appearance

Employees are responsible for dressing appropriately, whether the job requires business casual, casual attire or uniforms. The key is to present a neat, appropriate appearance at all times. Each Department may establish specific dress requirements, approved by Human Resources. Wearing outlandish clothing, overly revealing clothing, body piercing and the like may be prohibited in certain positions or departments. If you report to work in inappropriate clothing, or having disregarded other provisions of this dress code, you will be sent home to change at the discretion of the supervisor. The time lost due to your failure to report to work in appropriate attire will not be counted as "hours worked" for purposes of your pay. Tattoos, "passion marks" and the like should be covered to the greatest extent possible.

C. Personal Telephone Calls and Mail

MBCI phones whether office or cell phones, are for business and personal emergency use. Personal phone calls should be kept to a minimum. Long distance personal calls should not be made without prior permission of your supervisor and the employee will be charged for any long distance costs. In emergencies, employees may receive personal messages.

MBCI does not permit personal mail to be stamped by the postal meter. Also, no personal mail should be sent to MBCI as our clerical staff opens all incoming mail daily.

D. Absence From Premises or Work Area

If you leave the premises or your work area for any reason (established meals and break periods excluded) during the workday, you should obtain your supervisor's permission, advising the supervisor in advance of where you are going and when you expect to return to your work area and how to get in touch with you in the interim. Non-exempt employees will not be paid if they are away from the premises on non-work related business.

E. Personal Property

MBCI is not responsible for loss, damage or theft of an employee's personal property. Your personal property is not covered by MBCI insurance.

F. Personnel Records

It is important, both to you and MBCI, that your personnel records be correct and up-to-date. It is your responsibility to notify your supervisor of any changes in your address, name, telephone number, marital status, or number of dependents. It is also important to have your current telephone number listed with your supervisor so you can be advised of unusual operating schedules or events.

Material in your personnel record file is considered confidential MBCI property. You may periodically review your personnel record upon request. However, you will not be permitted to see any letters or notes relating to pre-employment reference inquiries made by MBCI. If you wish to review your personnel file, please give written notice to the Department of Human Resources at least (24) hours in advance. Your review of the record will be conducted in the Human Resources office.

If, after examining your personnel record, you believe it contains inaccurate information, you must advise the Director of Human Resources, in writing, of any perceived inaccuracy within (48) hours after you have reviewed your file. He or she will review any such matters and determine whether any corrections are appropriate.

G. Prohibition from Accepting Gifts, Rewards, or Favor

Tribal employees, and members of the Tribal Council or any other policy-making group are prohibited from accepting gifts, money or gratuities under circumstances in which said gift, monies, or gratuities are or may be intended to influence said person's official or employment conduct:

1. From persons receiving benefits or services under any program financially assisted by the Federal Government or by the Tribal Government;
2. From any person or agency performing services under contract to the Tribe;
3. From persons who are otherwise in a position to benefit from the actions of any employees or Tribal Council members.

Gifts, rewards, or favors with a value of \$25 or less are excluded but gifts, rewards or favors with a value of more than \$25 shall be reported to your supervisor. De minimus honorariums for less than \$50 for voluntary speaking engagements approved in advance by the Chief are likewise excluded.

H. Non-Solicitation/Non-Distribution And Use of Bulletin Boards

MBCI prohibits unauthorized solicitation by employees during working time (*i.e.*, when either the employee doing the solicitation or the employee being solicited is required to be performing work tasks) or at any time in employee areas. MBCI prohibits employees from distributing any non-business related literature or materials in any working area or at any time during working time (*i.e.*, when either the employee doing the solicitation or the employee being solicited is required to be performing work tasks). Non-employees may not solicit employees or distribute literature on MBCI property, owned or leased, for a non-business purpose at any time.

Bulletin boards are used to convey information concerning the business of MBCI and programs that relate to you. You should check the bulletin boards regularly. No bulletins, notices, announcements, or other material may be posted on bulletin boards, or any other MBCI property, without specific prior approval through the Office of the Tribal Chief or the Department Director.

I. Off-Duty Employees

Off-duty employees are not allowed access to interior areas of MBCI property except for the purpose of conducting business with MBCI, and with prior approval by the Department Director.

J. Visitors

Visitors, including family members, are not permitted in employee work areas without the advance approval of your supervisor. Children are prohibited from the workplace at all times for liability reasons. Visitors and applicants for employment must follow established protocol for each office upon arrival.

K. References

Requests for information on current or former employees will be handled only through the Office of Human Resources. Supervisors, managers, and fellow employees are **not** authorized to disclose any information to outside sources regarding current or former employees. All calls or inquiries should be directed to the Office of Human Resources.

Without a written release signed by the employee or former employee, or lawful legal process, the Director of Human Resources ordinarily will not make available any non-neutral information to outside sources on either current or previous employees. The Director of Human Resources ordinarily confirms or verifies only the dates of employment and last job title of the employee or former employee.

Any further information requested, such as that pertaining to job performance, may be obtained only if the person or organization requesting the information secures the employee's or former employee's written authorization for MBCI to release such data and provides MBCI with a copy of the written release, or if the information is requested through legal or administrative proceedings.

L. Pagers and Cell Phones

To facilitate accessibility, some employees may be asked to maintain tribally-issued activated pagers and/or cell phones.

As a matter of safety for employees and the traveling public, any employee who operates a vehicle while conducting or in furtherance of MBCI business should not use a cellular phone while driving. In the event an employee needs to use a cellular phone, the employee should first remove the vehicle from traffic. Employees with an appropriate hands-free or Bluetooth device may be excluded from this requirement if the communication does not cause or serve as a distraction to operating the vehicle.

M. Use of Equipment and Property

MBCI prohibits the loaning of Tribal equipment or property to any employee, outside person or outside organization which is not affiliated with the MBCI. If an employee, whether doing the lending or being involved in the use of the equipment is involved in damage, loss, failure to notify of moving of equipment, lending equipment, in violation of this policy, he or she will be subject to pay actual costs of the equipment (if it is damaged or lost. Equipment includes automobiles, tractors, trailers, computers, typewriters, and any other property belonging to the Tribe, such as money.

Violations of this policy can not only result in employees paying the cost of any equipment damaged due to a violation, it can also result in disciplinary action up to and including termination.

N. Monitoring, Inspection and Waiver of Privacy Rights

While limited personal use of MBCI-provided communication systems is permitted, you have no privacy rights in your personal use of our communication systems. Upon obtaining the prior approval of the Chief, MBCI has the right to monitor and inspect all information on and/or usage of any MBCI-provided communication system at any time, for any reason and without further notice. To the extent an employee uses his or her own personal equipment such as a personal computer, thumb/portable drive device or Smartphone, for conducting or in furtherance MBCI business, upon obtaining prior approval of the Chief, MBCI shall have the right to inspect and retrieve from said device any proprietary information stored in or located on the employee's personal device.

Available technology allows the review of e-mails sent or received (even after they are deleted) and review of Internet web sites viewed by an employee. If you want personal information and/or personal use to be private, then do not use MBCI-provided communication systems and tell your friends not to deliver private information to you at work and/or by use of MBCI-provided communication systems. Also, please make sure your personal use does not interfere with your job performance or violate any policies in this policy or the Network Use Policies.

Employees utilizing or having access to MBCI computers or communication systems are required to be familiar with MBCI's Network Use Policies which are issued separately to employees.

O. Prohibited Uses

You may use MBCI-provided communication systems only in a manner that complies with MBCI policies. For example, employees are prohibited from any use of MBCI-provided communication systems regarding information that:

1. Violates MBCI's policies relating to harassment, discrimination, retaliation, illegal conduct, unethical conduct and violence;
2. Discloses any confidential, trade secret and/or other privileged information to any unauthorized person;
3. Violates any license or copyright;
4. Interferes with employee job performance;
5. Creates a conflict of interest; or
6. Adversely affects the interests of MBCI.

Further, you may not use any personal computer or other communication device in violation of any MBCI policy while on duty or in any Tribal Building. If you use personal communication devices, including a computer, I-Phone, Blackberry, or the like, such is subject to all applicable policies regarding searches, and must be turned into the Office of Human Resources for cleaning of Tribal material upon termination of your employment.

P. Business Records and Confidentiality of Information

All information that is related to MBCI business is the property of MBCI and should be treated as confidential information. Please respect the confidential nature of information concerning MBCI's business and our employees and customers. You may access, copy, remove, or disseminate MBCI business records only if you are authorized to do so, and then only for the purpose of MBCI's business. Never discuss MBCI business with anyone outside MBCI, including your spouse or other members of your family.

Q. Surveillance and Searches of Persons And Property

MBCI's Security or Police may conduct video surveillance of the premises in public areas (all areas except locker rooms or restrooms). MBCI also may monitor telephone calls and e-mails periodically to ensure compliance with our policies.

All property furnished to you by MBCI (office, vehicle, desk, computer, locker, cell phones and/or storage area, etc.) remains the sole property of MBCI and is subject to inspection and/or search by MBCI at any time, for any reason and without further notice. Subject to the restrictions of the Constitution and Bylaws of the MBCI, Tribal Security or Police, upon approval of the Human Resource Director for reasonable cause may search and/or inspect any person or personal property belonging to you (vehicle, purse, briefcase, etc.) on MBCI governmental premises. If you want to avoid inspection of any articles, materials or other belongings, do not bring them on MBCI governmental premises or store them in or on MBCI governmental property.

When you sign the Acknowledgment and Consent form, you are knowingly and voluntarily consenting to surveillance and search by MBCI's authorized personnel.

R. Use of Automobiles

When no MBCI vehicle is available and a supervisor determines it is necessary for approved employees to use their own automobiles for tribal business requiring trips in excess of five (5) miles roundtrip from the employee's regular worksite, they will be reimbursed at the prevailing federal rate. On extended trips, automobile mileage reimbursement may not total more than round trip economy air fare. Individuals operating their personal vehicle on a reimbursable basis must possess liability insurance and a valid driver's license.

S. Smoking / Tobacco Use

Smoking and/or use of smokeless tobacco products is not permitted in MBCI buildings or MBCI vehicles. **Smoking is allowed only in other areas designated by the Chief.** Smoking is prohibited on the campus of the Choctaw Health Center and all CHC healthcare facilities.

XX. TAPING/EAVESDROPPING ON CONVERSATIONS

It is the policy of MBCI to encourage open communications among our employees and between employees and management. To facilitate such open communications, and to prevent the chilling effect that may occur if employees are permitted to tape or secretly record or surreptitiously listen in on any conversation or communication, and to ensure compliance with applicable federal, state, and local wiretapping, eavesdropping and privacy laws, MBCI has instituted the following policy:

Without the prior written authorization of the MBCI, no employee may openly or secretly tape or otherwise surreptitiously record, or videotape, any conversations, communication, activity, or event. This prohibition applies to any conversation, communication, activity, or event which in any way involves the MBCI or employees of MBCI or any of our agencies or departments, or any customers or clients, or any other individual with whom MBCI is doing business or intending to do business in any capacity (for example, vendors, suppliers, consultants, attorneys, independent contractors). This policy also applies to conversations and communications with any other third parties unrelated to MBCI including, but not limited to, outside legal counsel, auditors and regulatory officials.

“Taping” and “Recording” under this policy includes the taping or recording of any conversation or communication, regardless of whether the conversation or communication is taking place in person, over the telephone, or via any other communications device or equipment, and regardless of the method used to tape or record (e.g., as with a cell phone, tape recorder, video recorder, mechanical recording; or wiretapping equipment), and regardless of where the conversation or communication takes place, i.e., whether on or off MBCI’s government premises.

“Taping” and “Recording” as used in this policy does not include any lawful taping and recording engaged in by an employee on the employee’s own time, with the employee’s own equipment, away from MBCI’s place of business, and which does not involve in any manner whatsoever, directly or indirectly, the business or activities of MBCI, or any of its employees.

No employee may eavesdrop on the conversations or communications of other employees or non-employees in accordance with the same standards set forth above.

From time to time MBCI may tape, record, videotape, or otherwise monitor conversations or other communications between employees and/or between employees and non-employees for legitimate business purposes. Generally, employees will be notified when such taping or recording occurs, in accordance with applicable laws and sound employee relations principles. Under certain circumstances, however, notice may not be given, such as where MBCI is conducting an investigation into allegedly unlawful or unethical activities, in conjunction with regulatory or other enforcement authorities, such as law enforcement investigation.

Violations of this policy may result in disciplinary action against the offending employee(s), up to and including an unpaid suspension or termination of employment. Where the conduct engaged in is illegal, violators may also be subject to prosecution under applicable federal, state or local laws.

If an employee has any questions or concerns regarding whether any contemplated taping or recording would violate this policy, he or she should discuss the matter with the appropriate supervisor, before engaging in any such activities.

XXI. CONFIDENTIALITY OF MBCI INFORMATION

The nature of business and the economic well being of MBCI is dependent upon protecting and maintaining proprietary MBCI information. During the course of work, employees may have access to highly sensitive confidential and privileged information concerning citizens, customers, clients, vendors, and other employees. All such information should be considered confidential and retained within MBCI. Continued employment with MBCI is contingent upon compliance with this policy.

It is the responsibility of all MBCI employees to safeguard sensitive MBCI information. The Department of Human Resources will be responsible for the orientation of employees to ensure enforcement of MBCI confidentiality.

Employees are advised to be most discreet in their handling of confidential and privileged information, even when talking to fellow employees. If there are questions concerning the disclosure or communication of any information, please consult the Office of Human Resources.

Certain information and material are, by their very nature, considered confidential information.” The term “confidential information” includes, but is not limited to:

- a. files, papers, documents, and communications related to MBCI customers, clients, and vendors;
- b. personnel records, salary and benefit information, medical records or information, communication to or regarding MBCI employees;
- c. computer systems information, media, and passwords;
- d. negotiations and contracts;
- e. plans and strategies;
- f. financial data, budgets;
- g. inter- and intra-office communications among employees;
- h. information that employees have access to only because of his/her position;
- i. all other information regarding MBCI employees, customers, clients, contractors and its vendors; and/or
- j. student records.

Confidential information should never be discussed with or disclosed to anyone outside MBCI or with an employee of MBCI who does not require the information in order to perform the functions of his/her job.

Files, papers or documents relating to MBCI and its contractors, employees, computer systems or computer media, are not to be removed from the premises under any circumstances. This includes taking work home unless given the approval of the employee’s supervisor.

To facilitate access to communication systems and computers, passwords or security devices are known and approved by an employee’s supervisor. Your passwords and security codes should not be disclosed to or used by any other employee.

Personal computer passwords, and other passwords used by various employees for general access, are considered extremely confidential. All employees are required to keep their passwords secret and protected at all times. Divulging confidential or privileged information may result in personal liability.

Departmental Directors may institute other rules regarding confidentiality of MBCI information as it relates to the efficient and effective functioning of their work areas. However, such rules shall not conflict with the MBCI's policies or with laws regarding whistle blowing and reporting of illegal activities.

ANY EMPLOYEE COMMUNICATING OR DISTRIBUTING CONFIDENTIAL INFORMATION WITHOUT PRIOR APPROVAL MAY BE SUBJECT TO IMMEDIATE TERMINATION AND SUCH FURTHER LEGAL ACTION, AS MBCI BELIEVES NECESSARY.

ACKNOWLEDGEMENT & CONSENT

By this document, I hereby acknowledge the receipt of the Administrative Personnel Policy that I have read, understand and will abide by *all* policies contained and referenced in this policy as a condition of my continued employment. I understand that the policy is not a contract of employment, express or implied, and does not create binding obligations on MBCI. I also understand that MBCI has the right, at any time, and for any reason, to make changes in all employment policies, instructions, and procedures and with retroactive effect. I further understand that my employment is not for any specific term or period of time, and that the MBCI may take any action concerning my employment, including termination of my employment, with or without cause, without notice, and without further obligation to me. I further understand and agree that future updates to these Policies and Procedures may be made and noticed through any means.

I hereby agree to abide by all MBCI policies and to use their specific reporting procedures if I believe I have experienced or witnessed conduct, illness or injury covered by the policies.

I specifically consent to MBCI conducting telephone monitoring and video surveillance on MBCI premises (other than locker and restrooms), and monitoring and/or inspecting any information on or from MBCI-provided communication systems. Any personal belongings and vehicles are also subject to search for reasonable cause consistent with the Constitution and Bylaws of the Mississippi Band of Choctaw Indians.

I further understand and agree that, if I am terminated or I terminate my employment, I have three business days to return all MBCI property in my possession or signed out to me. I understand and agree that the cost for any unreturned MBCI property, as well as any outstanding debts or negative balance annual leave I owe to MBCI may be withheld from my final paycheck. I understand and agree that if my final paycheck does not cover the cost for any unreturned MBCI property, outstanding debt, or negative balance sick leave, and I do not pay those amounts to MBCI by December 31 of that year, MBCI will consider those amounts to be gross income and will report those amounts on my W-2 form for that taxable year.

PLEASE PRINT NAME

SIGNATURE

DATE

**EMPLOYEE NOTICE AND ACKNOWLEDGEMENT OF
MBCI DRUG AND ALCOHOL TESTING REQUIREMENTS**

Notice of Drug and Alcohol Testing Policy and Procedures: The Mississippi Band of Choctaw Indians is committed to providing a drug-free, safe, healthy and productive workplace environment. It is the policy of the Mississippi Band of Choctaw Indians (“Tribe”) to require employees, as a condition of employment, to consent to testing for the presence of illegal drugs and/or alcohol as well as consent to lawful searches or inspections of person and property to ensure no drugs, alcohol, drug paraphernalia or other contraband are present in the workplace. It is also the Tribe’s policy to encourage employees to voluntarily seek assistance for alcohol or substance abuse.

As part of the Tribe’s drug and alcohol testing policy, employees are required to consent to random testing, post-rehabilitation testing, post accident testing and reasonable suspicion testing. An employee who fails a test will be subject to disciplinary action up to and including termination. An employee has the right to refuse to undergo testing, search or inspection. However, refusal to take a drug or alcohol test or consent to a search or inspection required under this policy will result in termination of employment. Likewise, any employee that fails to appear for a test, refuses to cooperate in the testing process or procedures, adulterates or dilutes or substitutes the specimen, or sends an imposter is considered to have refused to take the required test. A complete copy of the Drug and Alcohol Testing Policy is either attached to this notice or will be given to you upon request.

Applicant Acknowledgement and Consent: I have received, read, and understand the above notice of the Tribe’s Drug and Alcohol Testing Policy. I understand that I may request a complete copy of the Drug and Alcohol Testing Policy for my records. I agree to abide by the terms of the Tribe’s Drug and Alcohol Testing Policy as a condition of my continued employment. I understand that those terms may require that I be asked to consent and submit to random drug and alcohol tests as well as agree to allow the Tribe to make lawful searches of my person or property, including my vehicle, while on Tribal property. I further consent to any drug or alcohol test if I have been injured in an accident on the job or while operating MBCI machinery or vehicles and due to such injuries, I am unable to then consent.

Check which Policy Which Applies:

- MBCI Drug & Alcohol Policy _____ (Initial)
- DOT Drug & Alcohol Policy _____ (Initial)
- FTA Drug & Alcohol Policy _____ (Initial)

PLEASE PRINT NAME

SIGNATURE

DATE

MBCI DRUG
&
ALCOHOL POLICY

MISSISSIPPI BAND OF CHOCTAW INDIANS

DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES

PURPOSE OF POLICY

The Mississippi Band of Choctaw Indians (the “Tribe”) is committed to providing a drug-free, safe and healthy workplace environment for all tribal employees and visitors. The Tribe recognizes the health risks associated with controlled substance use and alcohol misuse and is committed to supporting employees who seek treatment for these conditions. The Tribe also recognizes that controlled substance use and alcohol misuse diminish workplace safety and undermine the Tribe’s ability to reach its goals. The Tribe has established a policy and set of procedures for drug and alcohol testing to increase safety and deter and detect the use of controlled substances and alcohol by tribal employees. Compliance with this policy is considered a condition of employment.

The Drug and Alcohol Testing Policy addresses application, prohibited conduct, authorized use of prescribed medicine, enforcement through testing and searches, and discipline for policy violation.

The objectives of this Policy are:

- 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 Tribe, its government and businesses and its employees.

APPLICABILITY OF THIS POLICY

This policy and drug and alcohol testing program shall apply to:

- 1) all current or future government services division employees, including appointed officials;
- 2) all current or future employees of Ordinance 56 enterprises;
- 3) all persons who receive stipend payments for services;
- 4) all contract employees; and
- 5) all applicants for employment in the above categories.

This policy does not apply to;

- 1) employees in FTA or DOT or SAFETY-SENSITIVE FUNCTION positions that are subject to commercial driver's license requirements and are covered under a separate policy; and
- 2) Choctaw Resort Development Enterprise or any other Enterprise whose Board has adopted a separate Drug and Alcohol Testing Policy.

All employees and job applicants must receive notice and review this policy and sign an agreement to be bound by its terms as a condition of continued employment. Those employees who refuse to participate in the Tribe's drug and alcohol testing program will be subject to immediate termination. Job applicants who refuse to participate in the drug and alcohol testing program will be eliminated from any further consideration for employment.

Elected officials of the Mississippi Band of Choctaw Indians will participate in the testing procedures outlined in this Drug and Alcohol Testing Policy and Procedure. The test results of elected officials who participate shall be reported to the Human Resources Office for inclusion in the officials' personnel file and to the Secretary-Treasurer of the Tribe and the Chief.

This policy applies to any tribal premises, 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, equipment, property or office which is owned, leased, serviced, controlled, or used by the Tribe, including employee-owned vehicles on property owned, leased, used or controlled by the Tribe.

POLICY

A. Prohibited Conduct. The Tribe will not tolerate any drug or alcohol use which imperils the safety, health and well being of its employees or threatens or negatively impacts the Tribe, its government or businesses. The following conduct is prohibited and will result in disciplinary action, up to and including termination:

1. **Alcohol:** The unauthorized use, sale, manufacture, distribution, possession, storage, or dispensing alcohol on tribal premises or land of the Mississippi Band of Choctaw Indians, in the workplace, or while on tribal business or while using tribally supplied vehicles or equipment wherever located.

2. **Controlled Substances/Illegal Drugs:** Using, selling, manufacturing, distributing, possessing, storing, or dispensing controlled substances or illegal drugs or drug paraphernalia on tribal premises or land of the Mississippi Band of Choctaw Indians, in the workplace, or while on authorized business travel or while using tribally supplied vehicles or equipment wherever located.

3. **Under the Influence While at Work:** Being under the influence of an unauthorized controlled substance, illegal drug or alcohol, during working hours or while on tribal premises, in the workplace, or while on authorized business travel or while using tribally supplied vehicles or equipment wherever located.

- a. “Under the influence” is a condition in which a person is affected by a drug or by alcohol in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion, a scientifically valid test, such as urinalysis or blood analysis, and in some cases by the opinion of a layperson. In the case of a blood alcohol test, it is defined as a blood alcohol content (BAC) of .04. In the case of a controlled substance or illegal drug, it is defined as having a detectable level as a result of a positive confirmed urine test.

4. **Employee Treatment Programs:** Failing to meet the requirements of a drug or alcohol treatment program that the Tribe requires an employee to complete as a condition of employment.

5. **Workplace Search or Inspection:** Interfering with a workplace search or inspection under this policy.

6. **Impaired Job Performance or Attendance:** Alcohol misuse or controlled substance use, even though not during working hours or in the workplace, which impairs job performance or attendance.

7. **Testing Procedures:** Failing any drug or alcohol test or engaging in any other conduct prohibited under the Tribe’s drug or alcohol testing procedures.

8. **Prescription Drug Use:** Being under the influence of legally prescribed drugs in the workplace that prevent an individual from performing the essential functions of his or her job or where that individual poses a direct threat while using those drugs.

9. **Other Misconduct:** Any other conduct that the Tribe determines to be inconsistent with providing a drug-free and alcohol-free workplace.

B. Authorized Use of Prescribed Medicine.

1. Employees may maintain their prescription drugs on tribal premises provided the drugs have been prescribed by a doctor for the person in possession of the drugs. Employees must keep all prescribed medicine in its original container, which identifies the drug, date of prescription, and prescribing doctor.

2. 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. Employees undergoing prescribed medical treatment with any drug which may alter their behavior or physical or mental ability must report this treatment to the supervisor who will determine whether the employee’s job assignment should be temporarily changed during the period of treatment. Supervisors who have questions regarding an employee’s prescription drug use and whether an employee’s job assignment should be changed, should contact the Human Resources Office as the Tribe retains the right to judge the effect of the legal drug on the job

performance and to restrict the employee's work activity or presence at the workplace accordingly.

3. Inquiries regarding prescription drug use by employees should be made only as authorized by the Human Resources Office.

C. Types of Drug and Alcohol Testing. The Tribe reserves the right, as set forth below, to require its employees and job applicants to consent and submit, as a condition of continued or prospective employment, to breath, saliva, urine and/or blood tests, or other examinations to deter and detect the use of controlled substances and alcohol by tribal employees. These types of tests may be utilized under the following circumstances:

1. **Pre-Employment.** All job applicants who seek a position with the Tribe are subject to a pre-employment drug and alcohol test. Applicants who have been offered employment will be required to consent and submit to a drug and alcohol test to determine fitness for employment as a condition prior to employment. All job applicants must pass the drug and alcohol test to be considered for employment. No applicant may be scheduled to work until the drug and alcohol testing has been completed and results obtained. Refusing to submit to testing will result in any offer of employment being withdrawn.

2. **Random.** All current tribal employees shall be subject to random testing for controlled substances and/or illegal drugs and alcohol. Random tests will be spread reasonably throughout the calendar year and employees will not be notified when random testing will be given. The selection of employees will be made by a random selection process such as a computer-based random number generator that is matched with the employee's identification number or other comparable number identifier. All covered employees will have an equal chance of being tested each time selections are made, even if that employee has earlier been selected for a random test. However, alternates may be used when selected employees are on vacation, sick or personal leave.

3. **Post Rehabilitation.** An employee who has a chemical dependency and has completed a rehabilitation program shall also be required to consent and submit to an alcohol and drug test as a condition of reinstatement upon completion of a drug or alcohol treatment or counseling program or return to work after being granted a leave of absence. The employee shall also be subjected to post-rehabilitation monitoring by unannounced testing for a period up to one year thereafter as well as random testing.

4. **Post Accident.** A drug and/or blood alcohol test will be required for any employee who suffers or contributes to a work related accident requiring medical treatment away from the workplace for himself or another employee or involves property or equipment damage under circumstances in which the employee may have contributed to the accident. Such testing shall occur as soon as possible after 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 an employee may leave the scene for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. In no event will necessary medical attention for injured people be delayed.

An employee who fails to promptly report an accident shall also be subjected to post-accident monitoring by unannounced testing for a period of six months following the report, and other disciplinary action as warranted.

5. **Reasonable Suspicion.** An employee shall be subject to being tested for drugs or alcohol when the employee's supervisor, department head, Human Resources Officer or Tribal Safety Officer has reasonable suspicion to believe the individual has used illegal drugs or a controlled substance, or in the case of alcohol, whether the individual has used alcohol and that use is affecting the employee's job performance. A decision to conduct reasonable suspicion testing must be based on specific aspects of the performance, appearance, behavior, speech, or body odors of the employee consistent with drug or alcohol use.

D. Testing Procedures. All drug and alcohol tests will be conducted in accordance with privacy and confidentiality protections and safety and security procedures. In all instances, except for post-accident testing done by a law enforcement officer in the course of investigation of an accident, the employee or applicant must sign a Drug and Alcohol Test Consent form. Refusal to submit to drug and/or alcohol testing, retesting or otherwise comply with all testing procedures and requirements is equivalent to a positive test result and is considered a serious act of insubordination, which will result in disciplinary action as described in Section G.

1. **Pre-Employment Testing Procedures.**

- a. The Human Resources Office is responsible for advising all job applicants that they must submit to a drug and alcohol screen and successfully pass the screen before being hired. Notice of the Tribe's pre-employment testing policy must be prominently displayed at the Human Resources Office. Supervisors and managers should refer any questions from applicants regarding the nature of the drug and alcohol testing to the Human Resources Office.
- b. Once an applicant is offered a position, he or she must submit to a drug and alcohol testing per directions of the Human Resources Office.
- c. The applicant will be tested at a designated site for pre-employment drug and alcohol screening.
- d. If the applicant fails to report for testing at the stated time and location, this will be considered as a refusal to submit and the offer of employment shall be rescinded.
- e. If the applicant is unable to provide a sample for testing for (any reason) after two attempts within four (4) hours, this will be considered as a refusal to submit and the offer of employment shall be rescinded.
- f. Upon receipt of the initial drug screen results, the Human Resources Office will notify the applicant and appropriate management personnel of the initial results.

- g. Should the applicant test positive for a controlled substance, the specimen will be sent to an independent testing facility to verify the results.
- h. Should the applicant test positive for alcohol, a second test to determine the presence of alcohol will be conducted from the same sample.
- i. Applicants who do not pass the confirmation drug and/or alcohol screen will be informed by telephone by the Human Resources Office that they are being denied employment on the basis of a positive drug or alcohol screen result. The individual who notifies the applicant of the results must sign his or her name and date at the bottom of the Toxicology Report to acknowledge the applicant has been advised.
- j. Applicants who fail the drug and/or alcohol screen or fail to appear for the drug and/or alcohol screen at appointed time will not be eligible for employment for one (1) year from the date displayed on the Drug and Alcohol Test Consent form. The exception to these criteria would be if the applicant has proof to show he has completed a drug/alcohol rehabilitation program or is undergoing drug/alcohol rehabilitation. In these instances the applicant would be subject to another drug and alcohol screening in accordance with this policy.

2. Random Drug and Alcohol Testing Procedures.

- a. Each employee will be required to submit to random drug and alcohol testing through a computer-generated process of selecting employees as a condition of continued employment.
- b. The random drug testing is spread reasonably through a 12-month period.
- c. An employee may be tested more than once a year under this program because the selection is random.
- d. Employees tested under the random program are not under suspicion of taking drugs or use of alcohol and are selected randomly.
- e. When an employee is notified of selection for random testing, he or she must proceed immediately to the designated testing site, but not more than one (1) hour from the time of notification. Prior to the testing the Human Resources personnel or other designated personnel at the testing site will explain the specimen collection procedures to the employee.
- f. The method of testing will be: non-instant oral fluid/saliva screen for use of illegal drugs and instant oral fluid/saliva for initial alcohol screen and blood

for confirmation alcohol screen.

- g. Should the employee test positive for a controlled substance, a second, confirmation test will be administered and sent to an independent testing facility to verify the results.
- h. Should the employee test positive for alcohol when the oral test is administered, a medical technician at the testing site will evaluate him and samples of blood will be taken and sent to an independent testing facility to verify the results.
- i. If there is a positive result, the Tribe will make the necessary arrangements to get the employee to his home either by a member of the family, Tribal security or other transportation.
- j. Should the employee test positive for drugs or alcohol, the Human Resources Officer or Enterprise shall be immediately notified. Human Resources or the Enterprise officials shall have full authority to place the employee on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.
- k. The Human Resources Office shall investigate any case involving positive drug or alcohol tests, laboratory test results, and doctor's reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.
- l. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.

3. **Post-Rehabilitation Testing Procedures.**

- a. An employee is required to consent and submit to an alcohol and drug test as a condition of reinstatement to employment upon completion of a drug or alcohol treatment or counseling program or return to work after being granted a leave of absence.
- b. If the returning employee fails to report for testing at the stated time and location, this will be considered as a refusal to submit and shall be terminated.
- c. If the returning employee is unable to provide a sample for testing after two attempts within four (4) hours, with no plausible medical explanation for the failure, this will be considered as a refusal to submit and is subject to termination.

- d. Upon receipt of the initial drug screen results, the Human Resources Office will notify the returning employee and appropriate management personnel of the initial results.
- e. Should the returning employee test positive for a controlled substance, the specimen will be sent to an independent testing facility to verify the results.
- f. Should the returning employee test positive for alcohol, the employee may have a confirmation blood test to determine the presence of alcohol. A medical technician will evaluate him or her and samples of blood will be taken and sent to an independent testing facility to verify the results.
- g. Returning employees who test positive for drugs or alcohol after confirmation testing are in violation of this policy and are subject to disciplinary action as described in Section G.
- h. After successfully completing the post-rehabilitation testing, the employee shall also be subjected to post-rehabilitation monitoring by unannounced testing for a period up to one (1) year after returning to work, as well as random testing.

4. Post Accident Testing Procedures.

- a. An employee is required to submit to both a drug and alcohol test when the accident requires medical treatment away from the workplace for himself or another employee or involves property or equipment damage that is estimated to exceed Two Hundred Dollars (\$200.00) under circumstances in which the employee may have contributed to the accident.
- b. Employees must remain readily available for testing after an accident, except that an employee may leave the scene for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. In no event will necessary medical attention for injured people be delayed.
- c. Drug testing will be conducted as soon as possible after the accident, but in no case more than thirty-two (32) hours. If the post accident drug test is not administered within that timeframe, there shall be no further attempts to have the test performed on the employee and the records shall reflect why no test was administered.
- d. Alcohol testing must be administered within eight (8) hours following the accident. If a test is not administered within two (2) hours, a written

statement must be prepared stating the reasons for the delay. If the test is not performed within eight (8) hours of the accident, there shall be no further attempts to administer an alcohol test and the records shall reflect why no test was administered.

- e. Employees are prohibited from using alcohol for eight (8) hours after an accident or until an alcohol test is given, whichever is sooner.
- f. If a local law enforcement officer conducts a drug and/or alcohol test after an accident in compliance with federal, state or local law and provides the results to the Tribe, the results will satisfy the post accident testing requirements.
- g. If the test results are negative, the employee will proceed to the appropriate medical treatment facility for their injury or may return to work.
- h. If the initial drug test results are positive for a controlled substance, a second confirmation test will be administered and sent to an independent facility to verify the results.
- i. If the initial alcohol test results are positive for alcohol, the employee shall be required to give samples of blood which will be sent to an independent testing facility to verify the results.
- j. The Tribe will make the necessary arrangements to get the employee to his home either by a member of the family or other transportation.
- k. Should the employee test positive for alcohol or drugs, the employee will be placed on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.
- l. The Human Resources Office will investigate any case involving positive drug or alcohol tests, considering witness statements, laboratory test results, Security and doctor's reports or law enforcement reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.
- m. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.

- n. If the tests are negative, the employee's supervisor will review the employee's behavior on the date of the incident and decide whether any disciplinary action is warranted. For example, an employee may have taken too much of a prescribed drug, or may have not followed the physician's directions while taking the drug and, as a result, the employee's behavior was altered and it interfered with his ability to perform his work properly. If the employee's supervisor decides not to take any disciplinary action, the employee will be allowed to return to work with full pay from, and including the date on which he or she was suspended.

5. Reasonable Suspicion Testing Procedures.

- a. Reasonable suspicion is based on objective facts sufficient to lead a prudent person to conclude a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreased in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable suspicion" situations.
- b. If an employee's actions indicate he or she may be under the influence of alcohol and/or a controlled substance, the employee's supervisor, department head, Tribal Security Officer or Human Resources Officer will observe the employee's behavior.
- c. When feasible, it is preferable that the employee's conduct or appearance that indicates that the employee may be under the influence of drugs, alcohol or a controlled substance be witnessed by at least two individuals.
- d. A determination that a reasonable suspicion exists will be based on specific, contemporaneous, or articulable observations concerning the performance, appearance, behavior, speech or body odors of the employee. For drug tests, the observations may include indications of the chronic and withdrawal effects of controlled substances.
- e. The person(s) who makes the determination that reasonable suspicion exists to conduct a drug or alcohol test shall not conduct the test.
- f. If the behavior is out of the ordinary or is preventing the employee from properly performing the job and creates the reasonable suspicion that the employee is under the influence of drugs and/or alcohol, the employee's supervisor, department head, Tribal Security Officer or Human Resources Officer will tell the employee that his condition is out of the ordinary or interferes with properly performing his or her duties. The employee will be asked if he or she has any explanation for their unusual conduct or behavior.

If there is no reasonable or medically plausible reason for the conduct or behavior, the employee will be requested to report to the designated testing location or designated medical facility for a drug and/or alcohol test.

- g. Drug testing will be conducted as soon as possible after the determination that reasonable suspicion exists to support a drug and, but in no case more than thirty-two (32) hours. If the reasonable suspicion drug test is not administered within that timeframe, there shall be no further attempts to have the test performed on the employee and the records shall reflect why no test was administered.
- h. Alcohol testing should be administered within two (2) hours, but no more than eight (8) hours, following the reasonable suspicion determination. If a test is not administered within two hours, a written statement must be prepared stating the reasons for the delay. If the test is not performed within eight (8) hours of the accident, there shall be no further attempts to administer an alcohol test and the records shall reflect why no test was administered.
- i. An employee must adhere and comply with all testing procedures and requirements of the Tribe and testing facility. Should the employee refuse to take the test or comply with all testing procedures, he or she will be advised their refusal to take the test or comply with procedures subjects them to disciplinary actions as described in Section G. Refusal to submit to drug testing is equivalent to a positive test result and is considered a serious act of insubordination, which will result in termination of employment. The employee will be read the following statement:

“We have cause to believe that you are under the influence of alcohol or a controlled substance. After being notified of the contents of this policy, you are directed to submit to an immediate evaluation, including laboratory tests, at a tribally designated facility, or be subjected to discipline, including but not limited to the penalty of termination.”
- j. The employee must sign the necessary consent form.
- k. A written record will be made of the observations leading to the test and signed by the Supervisor or other tribal official or witnesses who make the observations, within twenty four (24) hours of the observed behavior or before the results of the test are released, whichever is earlier.
- l. An employee who consents to be examined and tested will be suspended pending investigation if the outcome of the initial drug or alcohol test is positive.

- m. Should the employee test positive for a controlled substance, a second confirmation test will be administered and sent to an independent testing facility to verify the results.
- n. If the initial alcohol test results are positive for alcohol, the employee shall be required to give samples of blood will be taken and sent to an independent testing facility to verify the results.
- o. Should the employee test positive for alcohol or drugs, the employee will be placed on suspension until the case may be investigated and the results of the drug and/or alcohol tests are confirmed.
- p. The Tribe will make the necessary arrangements to get the employee to his home either by a member of the family, a co-worker or other transportation.
- q. The Human Resources Office will investigate any case involving positive drug or alcohol tests, considering witness statements, laboratory test results, or doctor's reports. All such statements and reports will be considered confidential. The Human Resources Office will advise the employee's supervisor of the investigation findings and appropriate disciplinary action will be taken. The employee's supervisor and/or Human Resources staff will meet with the employee upon the completion of the investigation where the entire matter will be reviewed.
- r. If the tests reveal the presence of a controlled substance and/or non-prescribed drug, or a blood alcohol level of .04 or higher, the employee will be subject to appropriate discipline as described in Section G.
- s. If the tests are negative, the employee's supervisor will review the employee's behavior on the date of the incident and decide whether any disciplinary action is warranted. For example, an employee may have taken too much of a prescribed drug, or may have not followed the physician's directions while taking the drug and, as a result, the employee's behavior was altered and it interfered with his or her ability to perform his work properly. If the employee's supervisor decides not to take any disciplinary action, the employee will be allowed to return to work with full pay from, and including the date on which he or she was suspended.

E. Consent Required. No test, search or inspection will be conducted without consent of the employee at the time the test, search or inspection is requested. No breath, saliva, urine/ blood test will be conducted without a signed written consent form. An employee's or applicant's consent to submit to drug and alcohol testing or a search or inspection is required as a condition of employment. Refusal of any employee to consent to a test, search or inspection, or sign a written consent form when requested is sufficient grounds for termination.

F. Searches and Inspections.

1. The Tribe reserves the right to conduct unannounced searches and inspection for drugs, drug paraphernalia or alcohol on tribal property, including tribal owned or controlled vehicles or equipment wherever located, as well as an employee's personal effects placed in such tribal property, where the Tribe suspects that property or personal effects may contain drugs, drug paraphernalia or alcohol. The Tribe also reserves the same right to search employees and their personal effects, including automobiles on tribal premises where justified by reasonable suspicion of the employee's possession of drugs, paraphernalia or alcohol.

2. All searches and inspections will be performed with concern for each employee or person's personal privacy, dignity and confidentiality. Illegal substances, drugs, drug paraphernalia or other prohibited items discovered through searches or inspections will be turned over to the proper law enforcement authorities.

3. An employee will be requested to consent to such a search or inspection. An employee's consent to search or inspection is required as a condition of employment. Refusal to consent to a search or inspection is sufficient grounds for termination.

G. Violation of the Policy; Discipline.

1. A positive test result for alcohol or any controlled substance is a violation of this policy.

- a. Any applicant who is found through drug or alcohol testing to have tested positive for an illegal drug or alcohol as indicated in Section 1.i. shall have any offer of employment withdrawn.
- b. Any employee who is found through drug or alcohol testing to have a detectable amount of an illegal drug or alcohol as indicated in Sections D.2.1, D.3.g, D.4.m or D.5.r will be subject to discipline up to and including termination except that, depending on the circumstances of the case and the employee involved, the employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program approved by the Tribe in lieu of, or in addition to, disciplinary action for violation of this policy. However, the offer of rehabilitation assistance shall not be made to any employee whose violation involves selling or transferring illegal drugs, or serious misconduct.

2. Any refusal to submit to a drug or alcohol test when required by this policy, in addition to being considered as insubordination, is also treated as a positive test result subject to termination pursuant to Section G.4. or withdrawal from consideration for employment if an applicant.

3. An employee or job applicant will be considered to have refused to submit to a drug test if he or she:

- a. fails to appear for a test or fails to remain at the testing site until the process is complete;
- b. refuses to cooperate in the testing process or procedures in such a way that prevents completion of the test;
- c. adulterates or dilutes the specimen;
- d. substitutes the specimen with that from another person or sends an imposter; or
- e. will not sign the required forms.

4. If an employee refuses to submit to any test, or is an employee (other than an employee listed in Section G.5) and tests positive to any drug or alcohol test two (2) times, there shall be an automatic termination and the employee shall not be allowed to apply for employment for a period of one (1) year following termination.

5. The Tribe finds that employees that are employed in the following jobs are employed in safety-sensitive positions: Law enforcement personnel, fire personnel, ambulance drivers, medical providers, and equipment operators. If any of these employees violate this policy one (1) time, they shall be automatically terminated, but will be eligible for re-employment within one (1) year.

6. Employees who refuse to consent to a search or inspection when required by this policy, in addition to being considered as insubordination, are in violation of this policy and will be subject to disciplinary action, up to and including, immediate termination.

7. Any employee who is found to be in possession of drugs, alcohol, drug paraphernalia or other contraband in violation of this policy will be subject to discipline up to and including termination.

8. Any employee who is found to be under the influence of drugs or alcohol while at work is in violation of this policy and will be subject to discipline up to and including termination.

H. Enforcement of Policy.

1. The Human Resources Office shall be responsible for the coordination, implementation, application and strict enforcement of this policy. All questions about enforcement or interpretation should be directed to that Office.

2. Appropriate disciplinary action will be taken against employees who violate this policy, up to and including, termination.

3. This policy shall be enforced uniformly, and no favoritism shall be shown to any employee or applicant. Supervisors, department heads shall be held accountable for enforcement of this policy.

I. Reconsideration of a Drug or Alcohol Test Result.

1. An employee whose drug or alcohol test reported positive will be offered the opportunity at the meeting described in Sections 2.k, 3.d.,4.l or 5.q., to discuss the test results to offer an explanation and request reconsideration of the test results. The purpose of a reconsideration request will be to determine if there is any reason that a positive finding could have resulted from some cause other than drug or alcohol use. The Tribe, through its Human Resource officials, will judge whether an offered explanation merits further inquiry or reconsideration. The determination of whether further inquiry or reconsideration is warranted is solely that of the Human Resource Officer.

2. An employee whose drug or alcohol test is reported positive may be offered the opportunity to:

- a. Obtain and independently test, at the employee's expense, the remaining portion of the urine specimen that yielded the positive result;
- b. Obtain the written test result and submit it to an independent medical review at the employee's expense.

3. The decision whether or not to reconsider the drug or alcohol test results or conduct additional inquiries or to allow an independent test or review is final and not subject to appeal. Similarly, any decision of the Human Resource Office based on consideration of any independent testing or review by the employee shall be considered a final decision and not subject to appeal.

J. Confidentiality and Release of Information.

1. To preserve employee privacy, especially where matters regarding medical and personal information are involved, all coordination and investigation of suspected drug and alcohol abuse will be handled through the Human Resources Office. Information will be released only on a need-to-know basis.

2. It is the Tribe's intent to maintain strict confidentiality in matters regarding enforcement of this policy. It is the responsibility of the Human Resources Office to establish procedures for dissemination and filing of applicant test reports and to preserve the confidentiality of all records relating to drug and alcohol use by an employee.

3. Every effort will be made to limit the number of persons involved in such matters, and to restrict information or evidence generated or obtained during such actions on a need-to-know basis.

4. All information regarding drug and/or alcohol test results must be treated as confidential. The drug and/or alcohol test results must be maintained in a separate locked file in the Human Resources Office. Such information will be released only in accordance with the procedures established by the Human Resources Office.

5. Tribal representatives will not discuss interpretations of the drug and/or alcohol test results. If the employee or applicant requests a copy of the results, the Human Resources Office shall release a copy to the individual.

6. Violators of the confidentiality provision of this policy are subjected to disciplinary action, up to and including termination.

K. Assistance for Employees Who Voluntarily Seek Help for Alcohol or Substance Abuse.

1. Early recognition and treatment of chemical dependency problems is important for successful rehabilitation, economic return to the Tribe, reduced personal and family social disruption. The Tribe supports sound treatment efforts for its employees who have experienced or are experiencing drug and alcohol problems. It is the Tribe's intent to make assistance available to those individuals who voluntarily seek help.

2. Any employee experiencing problems resulting from drug, narcotic, or alcohol abuse or dependency should seek professional evaluation. No employee will be subject to disciplinary action for voluntarily requesting help due to chemical or alcohol dependency.

3. Employee requests for assistance will be treated as confidential and only those persons needing to know will be made aware of such request.

4. Unless absent under an approved leave of absence, any employee undergoing outpatient treatment or therapy will be expected to maintain satisfactory job performance and any use of controlled substances must be for prescribed medical purposes or for the purpose of treatment in accordance with a program of therapy prescribed and monitored under an approved medical program.

5. An employee who is diagnosed or evaluated as chemically dependent and is undergoing treatment for substance abuse will be allowed to use available leave to undertake rehabilitation treatment. The employee must cooperate fully with the treatment process and will not be permitted to return to work until a release from treatment is presented to the Human Resources Office certifying that the employee is rehabilitated and capable of returning to work. Employees must satisfy all requirements under the applicable leave policy. An employee who returns to work after having undergone a rehabilitation program, will be expected to comply with this policy and any prescribed after-care program. A returning employee is required to undergo post-rehabilitation testing in accordance with this policy.

L. Drug Testing Facility Qualifications.

1. A fully certified laboratory facility will be used to conduct all laboratory testing. The contracted external laboratory shall use state-of-the-art medical and laboratory facilities and procedures to conduct the laboratory tests.

2. The drug testing facility selected to conduct the analysis shall be certified, staffed with technically competent and experienced technicians and adheres to approved procedures to ensure proper quality control, documentation, chain-of-custody, confidentiality, collection testing and storage.

3. All procedures to ensure proper quality control, documentation, chain of custody, handling, testing and storage for specimens must be adhered to and all required forms must be completed by the proper parties.

M. Application, Modification and Interpretation. The Tribe reserves the right to interpret, change, rescind or depart from this policy as circumstances and situations change. As current laws are modified and/or otherwise changed concerning the policy set forth herein, the Tribe, as a statement of policy clarification, hereby adopts the position of complying with such modifications in principle and in practice.

The Tribe intends to apply this policy uniformly and consistently to employees. Any change, departure or addition must be approved in advance by the Director of the Human Resources Office.

The Tribe will develop and implement training for supervisors and department heads regarding the application of this policy.

DOT DRUG
&
ALCOHOL POLICY

Subpart A

**CHOCTAW TRIBE ALCOHOL AND
CONTROLLED SUBSTANCES POLICY
FOR DOT COVERED EMPLOYEES**

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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 low 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 on 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 performed 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 performed 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 except 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) phencyclidine-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) phencyclidine-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 be 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 test 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 for 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 exists will be based on specific, contemporaneous, or articulable observations concerning the appearance, behavior, speech or body odors employee. The decision may be made by 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 signed 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 site 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 complete 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. If 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 tamper 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 is 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 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 fully 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 range of 32 deg. - 38 deg. C / 90 deg. - 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 unusual 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 is 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 fact 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 the specimen has been collected, split, labeled, initialed, and sealed, the CSP is not allowed to leave 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 are then tested for the adulterant. If adulterants are found, that employee will be considered to have refused to submit to the test. Where no 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 split 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 be observed in the following instances:

1. The individual has presented a urine specimen that falls outside the normal temperature range (32.5 to 37.0°C or 90.5 to 99.80 F) and the individual refuses to provide a measurement of body temperature or body temperature 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 any 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 than five (5) days since the date the covered employee was contacted by the designated Tribal representative, there may still be an opportunity to 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 retest.

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 any 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 must 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 is 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 is 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 in 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 least 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 next 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 greater than 0.04 BrAc will immediately be removed from the FHWA/DOT covered position and evaluate by a Substance Abuse Professional (SAP) to determine 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 completes 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 from 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 such 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 any 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 an 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 any 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.

FTA DRUG
&
ALCOHOL POLICY

Drug and Alcohol Policy

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Choctaw Transit

Policy Adopted 11/5/2007

Revised 04/09/2013

Any provisions set forth in this policy that are included under the sole authority of the Mississippi Band of Choctaw Indians (“MBCI”) and are not provided under the authority of the below named Federal regulations are underlined.

A. PURPOSE

The Mississippi Band of Choctaw Indians/Choctaw Transit – State Grant provides public transit and paratransit services. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees, and the general public. In keeping with this mission, MBCI declares that the unlawful manufacture distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.

This policy complies with 49 CFR Part 655, as amended, and 49 CFR Part 40, as amended. All drug and alcohol testing is conducted in accordance with these regulations.

Copies of Parts 655 and 40 are available in the drug and alcohol program manager’s office.

All covered employees are required to submit to drug and alcohol tests as a condition of employment.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991.

Additionally, MBCI operates the Education Division and Department of Public Works and Forestry Program that operate vehicles which require certain vehicle operators to have a Commercial Drivers License (“CDL”). It is the mission of MBCI to operate these vehicles in a safe and efficient manner and to establish policies to ensure the workplace remains free from the effects of drugs and alcohol. MBCI finds it is in its best interest to apply the policy outlined hereafter to MBCI positions other than FTA positions which perform a safety-sensitive function. This policy may be applied prospectively to any new positions which meet the definition of safety-sensitive function.

B. APPLICABILITY

This policy applies to every employee performing a “safety-sensitive function” as defined herein, and any person applying for such positions.

You are a safety-sensitive employee if you perform any of the following:

Operation of a revenue service vehicle, whether in or out of revenue service;

Operation of a non-revenue vehicle when required to be operated by a holder of a commercial driver’s license (CDL);

Controlling movement or dispatch of a revenue service vehicle;

Security personnel who carry firearms for security purposes;

Maintenance (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service;

Contractor employees that stand in the shoes of covered employees also are required to comply with this policy.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function. A volunteer is a covered employee if: (1) The volunteer is required to hold a commercial driver's license to operate the vehicle; or (2) The volunteer performs a safety-sensitive function and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

See Attachment A for a list of covered positions by job title. MBCI has determined that the job duties for the list of covered positions by job title require or may require the performance of safety-sensitive duties.

C. DEFINITIONS

Accident means an occurrence associated with the operation of a revenue service vehicle even when not in revenue service or a non-revenue-service vehicle which requires a Commercial Drivers License to operate, if as a result-

(1) A person dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle.

Disabling Damage means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

Inclusion-Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.

Exclusion - (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

Adulterated specimen A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

Canceled Test is a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

Covered Employee means an employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees.)

Designated Employer Representative (DER) an employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40 and 655.

Department of Transportation (DOT) Department of the federal government which includes the Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

Dilute specimen A specimen with creatinine and specific gravity values that is lower than expected for human urine.

Evidentiary Breath Testing Device (EBT) A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

Medical Review Officer (MRO) means a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute A drug test result, which is negative for the five-drug/drug metabolites, but has a specific gravity value lower than expected for human urine.

Negative test result for a drug test means a verified presence of the identified drug or its metabolites below the minimum levels specific in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

Non-negative test result is a test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.

Performing (a safety-sensitive function) means covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, immediately available to perform, or immediately after performing a safety sensitive duty.

Positive test result for drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

Prohibited drugs mean marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Revenue Service Vehicles include all transit vehicles that are used for passenger transportation service or that require a CDL to operate. Includes all ancillary vehicles used in support of the transit system.

Safety-sensitive functions include (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL); (c) maintaining a revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle; and (e) carrying a firearm for security purposes.

Substance Abuse Professional (SAP); A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted Specimen A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

Test Refusal You have refused to take a test if you:

- Fail to appear for a test within a reasonable time and/or,
- Fail to provide a breath or urine sample and/or,
- Provide an insufficient volume of breath or urine without valid medical explanation and/or,
- Leave the collection facility prior to test completion and/or,
- Fail to permit an observed or monitored collection when required and/or,
- Fail to take a second test when required and/or,
- Fail to undergo a medical examination when required and/or,
- Fail to cooperate with any part of the testing process and/or,
- Fail to sign Step 2 of alcohol test form and/or,

Once test is underway, fail to remain at site and provide a specimen and/or fail to remain readily available for post accident testing, including notifying the employer of your location if you

leave the scene of the accident prior to submission to testing and/or,

For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process and/or,

Possess or wear a prosthetic or other device that could be used to interfere with the collection process and/or,

Admit to the collector or MRO that you adulterated or substituted the specimen and/or,

The MRO verifies that you provided an adulterated/substituted sample.

For pre-employment tests only, failure to appear, aborting the collection before the test commences, or failure to remain at site prior to commencement of test is NOT a test refusal:

Verified negative test means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test means drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment B of this policy. Under MBCI's own authority, supervisory personnel will also be trained on how to intervene constructively and how to effectively integrate an employee back into his/her workgroup following intervention and treatment.

E. PROHIBITED SUBSTANCES

Prohibited substances addressed by this policy include the following.

Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of hemp related products, as which cause drug or drug metabolites to present in the body above the minimum threshold is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) and MBCI policy requires that all covered employees be tested for marijuana, cocaine, amphetamines (including MDMA (Ecstasy)), opiates, and phencyclidine. Use of these illegal drugs is prohibited at all times, and thus covered employees may be tested for these drugs anytime that they are on duty.

Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to the Operations Supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test may only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety sensitive job functions. Under Choctaw Transit's authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

F. PROHIBITED CONDUCT

All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.

Each covered employee is prohibited from consuming alcohol while performing safety sensitive job functions or while on-call to perform safety-sensitive job functions. If an employee has consumed alcohol, they must acknowledge the use of alcohol at the time they are call to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline.

The MBCI shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

No covered employee shall consume alcohol for eight (8) hours following involvement in

an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

No covered employee shall consume alcohol within four (4) hours prior to performance of safety-sensitive job functions.

MBCI prohibits the consumption of alcohol while the employee is on duty, or anytime the employee is in uniform.

Consistent with the Drug-Free Workplace Act of 1988, all covered employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place, including MBCI premises, transit vehicles, while in uniform or while on MBCI business.

G. DRUG STATUTE CONVICTION

Consistent with the Drug-Free Workplace Act of 1998, all employees are required to notify management of any criminal drug statute conviction for an occurrence, in the workplace within five days after such conviction. Failure to comply with this provision shall result in discipline, including termination.

H. TESTING PROCEDURE

All testing will be conducted as required in 49 CFR Part 40, as amended.

I. PRE-EMPLOYMENT TESTING

Pre-employment drug and alcohol tests are conducted after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment drug and alcohol test.

A negative pre-employment drug and alcohol test result is required before an employee can first perform safety-sensitive duties.

A negative pre-employment drug and alcohol test result is required for covered employees who have been away from work for more than 90 consecutive calendar days, and have been removed from the random testing pool during that time, prior to resuming a safety-sensitive function.

When a covered employee or applicant has previously failed or refused a DOT pre-employment drug and/or alcohol test, the employee must provide proof of having successfully completed a referral, evaluation and treatment plan meeting DOT requirements.

Failure of a pre-employment drug and/or alcohol test will disqualify an applicant for employment for a period of at least one year.

When an employee being placed, transferred, or promoted from a non-covered position to a covered position submits a drug test with verified positive result, and/or an alcohol concentration above 0.02 the employee shall be subject to discipline, including termination.

Applicants are required to provide consent for MBCI to request previous DOT covered

employer drug and alcohol test results. Failure to do so will result in the employment offer being rescinded.

J. REASONABLE SUSPICION TESTING

All covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there is a reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor, or other company official who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

Under DOT authority, MBCI may direct a covered employee to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. Under MBCI authority a non-DOT reasonable suspicion alcohol testing can be conducted at any time the employee is on duty.

If an alcohol test is not administered within two hours following the determination to conduct a reasonable suspicion test, the supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination to test, the supervisor shall cease attempts to administer an alcohol test and update the record with the reasons for not administering the test.

MBCI shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation that might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action.

A written record of the observations that led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation as documentation for the file. This written record shall be submitted to MBCI's management and shall be attached to the forms reporting the test results.

K. POST-ACCIDENT TESTING

Safety-sensitive employees shall be subject to post-accident alcohol and controlled substances testing under the following circumstances:

Fatal Accidents. As soon as possible following an accident involving the loss of human life, DOT drug and alcohol tests shall be conducted on all surviving covered employees operating the vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, shall be tested.

Non-fatal Accidents. Post-accident testing is required if one of the following conditions is met,

An accident results in injuries requiring immediate medical treatment away from the scene, and the covered employee contributed to the accident,

or

One or more vehicles receive disabling damage and have to be towed from the scene, and the covered employee contributed to the accident.

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision, is tested.

Disabling damage means damage that prevented the departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, tail lights, turn signals, horn, or windshield wipers that makes them inoperative.

If an alcohol test is not administered within two hours following the time of the accident, MBCI will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination to test, MBCI will cease attempts to administer an alcohol test and update the record with the reasons for not administering the test. The drug test should be administered as soon as possible. MBCI will cease attempts to collect the drug test after 32-hours.

The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.

Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

In the rare event that MBCI is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), MBCI may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

L. RANDOM TESTING

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimal annual percentage rate set each year by the DOT Administrator. The current year testing rates can be obtained from the DER or viewed on line at <http://www.dot.gov/ost/dapc/rates.html>.

The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

Each employee selected for testing shall be tested during the selection period. A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Under MBCI's authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing shall proceed to the test site immediately.

M. RESULT OF A POSITIVE DRUG/ALCOHOL TEST

Any applicant, transferee, or employee, who tests positive for drugs and/or alcohol or refuses to test will be immediately removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment, treatment and education.

The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant, transferee, or employee.

N. TREATMENT / DISCIPLINE

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duties, and will be referred to a substance abuse professional (SAP). The employee also will face discipline up to and including termination. The employee will be eligible to return to work only after being evaluated by the SAP, successfully completing the education and treatment program recommended by the SAP and passing a return-to-duty test.

Following a BAC of 0.02 or greater, but less than 0.04 – the employee is immediately removed from safety sensitive duties for at least eight hours unless a retest results in the employee's alcohol concentration of less than 0.02.

O. RETURN TO DUTY TESTING

Any employee who is allowed to return to duty after a refusal to submit to a test or failing an alcohol and/or drug test, must be first be evaluated by a substance abuse professional (SAP), and provide negative drug, alcohol (or both) return-to-duty test result.

All return to duty and follow-up testing will be under direct observation. The observer shall be the same gender as the employee, but need not be the collector. The observer is responsible for ensuring that the specimen goes from the employee's body into the collection container. If the employee declines to allow a directly observed collection when required or permitted under this policy, it is considered a refusal to test.

P. FOLLOW-UP TESTING

Employees returning to duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing as directed by the SAP. The SAP shall direct the number and frequency of such follow-up testing with a minimum of six tests in the first 12 months. The employee will be subject to follow-up testing for a period of 1 to 5 years as determined by the SAP. All testing will be conducted in accordance with Part 40, subpart O.

Q. NEGATIVE DILUTE DRUG TEST RESULTS

With the exception of pre-employment tests, a negative dilute specimen will not require a retest.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 655 for a positive test or test refusals are not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

MBCI is dedicated to assuring fair, and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who deliberately misuses the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

Drug/Alcohol testing records shall be maintained by MBCI's Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Department Supervisor and Personnel Manager on a need to know basis.

Records will be released to a subsequent employer only upon receipt of a written request from the employee.

Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding. The information will only be released with binding stipulation that the decision maker

will make it available only to parties in the proceeding.

Records will be released to the National Transportation Safety Board during an accident investigation.

Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

Records will be released if requested by a Federal, state or local safety agency with regulatory authority over MBCI or the employee.

If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation of the FTA.

U. SYSTEM CONTACTS

Any question regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s):

Drug and Alcohol Program Manager / DER

Billy Robertson / Sandra McNeil
Choctaw Transit Program Manager / Project Director
258 Industrial Rd
Choctaw MS 39350
301-650-7429

MEDICAL REVIEW OFFICER

Dr. Amos Belknap
7 Lakeland Circle
Suite 100A
Jackson MS 39216
601-693-6638

SAP

Tamara Pucket
4500 I-55 North
Suite 293-S
Jackson MS
601-613-6088

Current Random Testing Rates 2012

DOT Agency	2012 Random Drug Testing Rate	2012 Random Alcohol Testing Rate
Federal Transit Administration [FTA]	25%	10%

ATTACHMENT A

SAFETY-SENSITIVE POSITIONS/CHOCTAW TRANSIT

Program Director
Project Director
Program Administrative Assistant
Office Manager
Secretary
Bus Driver
Dispatcher
Other Staff Secretary
Driver/Custodian
Custodian/Sub. Driver
Job Coach
Field Trainer
Industrial Trainer
Vocational Evaluator
Placement Specialist
Horticultural Trainer
Rehabilitation Counselor
Personal Attendant/ Driver
Rehabilitation Technician
Work Adjustment Counselor
Vocational Training Assistant
Career Exploration & Preparation Instructor
Mechanics
Service Writer
Service Manager
Parts Manager
Parts Specialist
Mechanic Trainers
Tire/Wrecker Specialist

ATTACHMENT B

ALCOHOL FACT SHEET

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical response and progressively impairs mental functions.

Signs and Symptoms of Use

- Dulled mental processes
- Lack of coordination
- Odor of alcohol on breath
- Possible constricted pupils
- Sleepy or stupor us condition
- Slowed reaction rate
- Slurred speech

(Note: Expect for the odor, these are general signs and symptoms of any depressant substance.)

1\ Health Effects

The chronic consumption of alcohol (average of three servings per day of beer {12 ounces}, whiskey {1 ounce}, or wine {6 ounce glass} over time may result in the following health hazards:

- Decreased sexual functioning
- Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed “alcoholic”)
- Fatal liver disease
- Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma
- Kidney disease
- Pancreatitis
- Spontaneous abortion and neonatal mortality
- Ulcers
- Birth defects (up to 54 percent of all birth defects are alcohol related).

Social Issues

- Two-thirds of all homicides are committed by people who drink prior to the crime.
- Two to three percent of the driving population is legally drunk at any one time.

This rate is double at night and weekends.

- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetime.
- The rate of separation and divorce in families with alcohol dependency problem is 7 times the average.
- Forty percent of family court cases are alcohol problem related.
- Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

The Annual Toll

- 24,000 people will die on the highway due to the legally impaired driver.
- 12,000 more will die on the highway due to the alcohol-affected driver.
- 15,800 will die in non-highway accident.
- 30,000 will die due to alcohol-caused liver disease.
- 10,000 will die due to alcohol-induced brain disease or suicide.
- Up to another 125,000 will die due to alcohol-related conditions or accidents.

Workplace Issues

- It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.