**[MODEL TRIBAL]**

**[insert formal tribal name] COMMERCIAL DRIVER’S LICENSE**

**AND COMMERCIAL MOTOR VEHICLE ORDINANCE**

**Title \_\_\_\_\_\_\_**

**Chapter \_\_\_\_\_\_**

**Subchapter 1 General Provisions**

**Sec. 1.1. Purpose; Construction and Interpretation.**

(a) A variety of Commercial Motor Vehicles (CMVs) can be seen daily throughout tribal lands, including tractor-trailer big rigs and tour buses, emergency vehicles and school buses, medical transport to child day care shuttle buses, heavy equipment and delivery trucks. Community members and visitors alike need to be assured that all CMVs, and their operators who possess Commercial Driver’s Licenses (CDLs) pose no threat. Public safety within the territorial jurisdiction of [insert formal tribal name] requires the enactment of legislation to address the variety of commercial motor vehicles traversing all roadways within tribal lands and appropriate standards for operators holding commercial driver’s licenses.[[1]](#footnote-1) While some roadways within tribal lands may be maintained and patrolled by state or county officers, there are remote portions of these roadways that are patrolled less frequently than others. In addition, there are other roadways maintained by the Tribe and/or BIA where state or county officers may not patrol. This legislation is intended ensure the health, welfare, safety, and protection of all travelers on all roadways within tribal lands by establishing standards for the safe operation of CMVs and licensing of operators. This legislation will form the basis for tribal law enforcement officers to enforce those standards and, when necessary or appropriate, cite alleged violations of those standards into tribal court for disposition.

(b) In all actions before any court of the [insert formal tribal name], the provisions of this Ordinance will be construed and interpreted to reasonably fulfill the purpose set forth in subsection (a) above.

**Sec. 1.2. Authority; Jurisdiction.**

(a) Federal Authority

1. Statutes

 18 USC § 1151 (Indian country includes rights-of-way)

 25 USC § 311 (rights-of-way in Indian country)

 25 USC § 323 (rights-of-way in Indian country)

 25 USC § 324 (rights-of-way in Indian country)

 2. Regulations

 25 CFR § 169.9 (tribal law applicable to ROW; state law is not)

 25 CFR § 169.10 (right-of-way does not diminish tribal jurisdiction)

 25 CFR § 170.933 (tribes can regulate and permit travel)

 3. Treaties (if applicable)

 4. Court Decisions

(b) Tribal Authority

 1. Tribal Constitution [or other organic document]

The Constitution of [insert formal tribal name] affirmatively describes the jurisdiction of the Tribe to include [example language]: “all lands within the exterior boundaries of the reservation, to such other lands as may in the future be added thereto and to all land which may from time to time be owned by the Tribe.”

The governmental power of the Tribe includes the duty and authority “to promote and protect the health, peace, morals, education and general welfare of the Tribe and its members,” and “to pass ordinances necessary or incidental to the exercise of inherent power.”

“Except as prohibited by Federal law, the Tribe shall have jurisdiction of all

person, property, lands, water, air space, resources and all activities occurring within the boundaries of the reservation or on other lands within the jurisdiction of the Tribe, ***notwithstanding the issuance of any right-of-way***. Nothing in this article shall be construed to limit the ability of the Tribe to exercise its jurisdiction based upon its inherent sovereignty as an Indian Tribe.”].

 2. Tribal Legislation [?]

**Sec. 1.3. Severability; Sovereign Immunity.**

(a) If any provision(s) of this Title or any application of its provisions is held invalid by a court of competent jurisdiction, the application of the remaining provisions of this Title shall not be affected thereby.

(b) Nothing in this Title shall be interpreted or construed as consent by the Tribe to be sued in any court. This Title is not, and shall not be interpreted or construed as, a waiver of the Tribe’s sovereign immunity.

(c) Nothing in this Title shall be construed as limiting the civil or criminal power of the Tribe over non-Indians other than the express limitations imposed by the laws of the United States.

**Sec. 1.4. Definitions.**

(a) Terms used in this ordinance typically will have the same meaning as provided for those terms in 49 CFR §§ 171.8, 382.107, 383.5, 387.5, 390.5, 393.5, and 395.2, as may be amended from time to time, unless the context requires a different connotation or interpretation.

(b) Terms used in any state statutory, regulatory, or governmental policy language that is adopted pursuant to any section of this ordinance typically will have the same meaning as provided for those terms in the originating state legal authority, so long as that meaning comports with any applicable definition provided in 49 CFR §§ 171.8, 382.107, 383.5, 387.5, 390.5, 393.5, and 395.2, as may be amended from time to time, unless the context requires a different connotation or interpretation.

(c) “Jurisdiction of the Tribe” means the inherent sovereign, treaty-affirmed, or delegated legislative, executive, and judicial authority of the Tribe to exert its political and governmental dominion over the territory of the Tribe which includes: all land within the exterior boundaries of the [Tribe’s reservation; Pueblo; Rancheria; Community] including fee patented land; rights-of-way; roads; waters; bridges; land used for schools, churches, hospitals, or federal departmental or agency use; all lands purchased by the Tribe or held in trust by the United States government for the benefit of the Tribe; all allotments, the Indian title to which has not been extinguished or which has or may be converted to trust or restricted status through purchase, devise, gift, or escheat; and such other lands without the exterior boundaries of the [Tribe’s reservation; Pueblo; Rancheria; Community] that have been or may be added to the [Tribe’s reservation; Pueblo; Rancheria; Community] or held in trust for the Tribe, or to which alienation has been restricted under any lawful authority of the United States; and any other lands over which the Tribe may lawfully exert authority, whether exclusive or concurrent with any state pursuant to Pub.L. 83-280.

 (d) “Ordinance” means this [insert formal tribal name] Commercial Driver’s License and Commercial Motor Vehicle Ordinance.

(e) “Tribe” [Tribes, Band, Nation, Community, Rancheria, Pueblo] means the [insert formal tribal name].

**Subchapter 2 FMCSA General Regulations**

**Sec. 2.1. Controlled Substances and Alcohol Use and Testing****.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 382 Controlled Substances and Alcohol Use and Testing, Subpart B – Prohibitions, §382.201 Alcohol concentration, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 382 Controlled Substances and Alcohol Use and Testing, Subpart B – Prohibitions, §382.205 On-duty use, as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 382 Controlled Substances and Alcohol Use and Testing, Subpart B – Prohibitions, §382.213 Controlled substance use, as may be amended from time to time.

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 382 Controlled Substances and Alcohol Use and Testing, Subpart B – Prohibitions, §382.211 Refusal to submit to a required alcohol or controlled substances test, as may be amended from time to time.

(e) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 382 Controlled Substances and Alcohol Use and Testing, Subpart B – Prohibitions, §382.215 Controlled substances testing, as may be amended from time to time.

(f) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsections (a) through (e) of this Section.

**Sec. 2.2.** **Commercial Driver’s License Standards; Requirements and Penalties.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 383 Commercial Driver’s License Standards; Requirements and Penalties, Subpart B – Single License Requirement, §383.23 Commercial driver’s license, as may be amended from time to time.

(b) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsection (a) of this Section.

**Sec. 2.3 Qualifications of Drivers.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 391 Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors, Subpart B – Qualification and Disqualification of Drivers, §391.11(b)(5) General qualifications of drivers, Driver lacking valid license or endorsement(s) for vehicle type, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 391 Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors, Subpart E – Physical Qualifications and Examinations, §391.41(a) Physical qualifications of drivers, Driving without a valid medical certificate, as may be amended from time to time.

(c) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsection (a) of this Section.

(d) The requirements under Subsection (a) above are in addition to any specific qualifications required for the issuance and maintenance of any certification, permit, or other authorization required pursuant to tribal law, statute or ordinance.

**Sec. 2.4. Driving of Commercial Motor Vehicles.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 392 Driving of Commercial Motor Vehicles, Subpart A – General, §392.2 Applicable operating rules,

as may be amended from time to time, involving the following:

 1. Violations coded as 392.2C – Failure to obey traffic control device;

 2. Violations coded as 392.2DIM – Dimension violation;

3. Violations coded as 392.2LV – Lane restriction violation;

 4. Violations coded as 392.2RG – State vehicle registration or license plate

Violation;

 5. Violations coded as 392.2S or 392.2SLLS2 – State/local laws – Speeding 6-10

miles over reasonable and prudent speed limit;

6. Violations coded as 392.2S or 392.2SLLS3 – State/local laws – Speeding 11-14

miles over reasonable and prudent speed limit;

7. Violations coded as 392.2S or 392.2SLLS4 – State/local laws – Speeding 15 or

more miles over reasonable and prudent speed limit;

8. Violations coded as 392.2SLLT – State/local laws – Operating a CMV while

Texting;

9. Violations coded as SLLEWA1 - Excessive weight: 2,501-5,000 lbs over on

an axle/axle groups;

10. Violations coded as SLLEWA3 - Excessive weight: more than 5,000 lbs over

on an axle/axle groups;

11. Violations coded as SLLEWG1 - Excessive weight: 1-2,500 lbs over on gross

weight;

12. Violations coded as SLLEWG3 - Excessive weight: more than 5,000 lbs over

on gross weight;

13. Violations coded as 392.2W – Size and weight violation.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 392 Driving of Commercial Motor Vehicles, Subpart B – Driving of Commercial Motor Vehicles, §392.16 Use of seat belts, as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 392 Driving of Commercial Motor Vehicles, Subpart H – Limiting the Use of Electronic Devices, §392.80(a) Prohibition against texting, as may be amended from time to time;

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 392 Driving of Commercial Motor Vehicles, Subpart H – Limiting the Use of Electronic Devices, §392.82(a)(1) Using a hand-held mobile telephone, as may be amended from time to time.

(e) A person shall be deemed in violation of this section if such person is found in violation of the tribal authority cited in Subsections (a) through (d) of this Section.

**Sec. 2.5. Parts and Accessories Necessary for Safe Operation.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart B – Lamps, Reflective Devices, and Electrical Wiring, §393.9 Lamps operable, prohibition of obstructions of lamps and reflectors, as may be amended from time to time, involving the following:

1. Violations coded as 393.9 – Required lamp not operable;

 2. Violations coded as 393.9H – Inoperative head lamp;

3. Violations coded as 393.9T - Inoperative tail lamp;

4. Violations coded as 393.9TS – Inoperative turn signal.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart B – Lamps, Reflective Devices, and Electrical Wiring, §393.11 Lamps and reflective devices, as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart B – Lamps, Reflective Devices, and Electrical Wiring, §393.17(c) Lamps and reflectors—combinations in driveaway-towaway operation, as may be amended from time to time.

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart B – Lamps, Reflective Devices, and Electrical Wiring, §393.25(f) Requirements for lamps other than head lamps, Stop lamp operation, as may be amended from time to time.

(e) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart C – Brakes, §393.43 Breakaway and emergency braking, as may be amended from time to time.

(f) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart C – Brakes, §393.45(b)(2) Brake tubing and hoses; hose assemblies and end fittings, Brake tubing and hose installation, as may be amended from time to time.

(g) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart C – Brakes, §393.47 Brake actuators, slack adjusters, linings/pads and drums/rotors, as may be amended from time to time.

(h) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart C – Brakes § 393.48(a) Brakes to be operative, General rule, as may be amended from time to time.

(i) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart G – Miscellaneous Parts and Accessories § 393.75 Tires, as may be amended from time to time.

(j) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart G – Miscellaneous Parts and Accessories §393.78(a) Windshield wiping and washing systems, Vehicles manufactured on or after December 25, 1968, as may be amended from time to time.

(k) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49, Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 393 Parts and Accessories Necessary for Safe Operation, Subpart H – Emergency Equipment, §393.95 Emergency equipment on all power units, Fire extinguishers, as may be amended from time to time.

(l) A person shall be deemed in violation of this section if such person is found in violation of the tribal authority cited in Subsections (a) through (k) of this Section.

**Sec. 2.6. Hours of Service of Drivers.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 395 Hours of Service of Drivers, Subpart A – General, §395.3 Maximum driving time for property-carrying vehicles, as may be amended from time to time, that involve the following:

 1. Violations coded as 395.3(a)(2) Driving beyond 14-hour duty period;

 2. Violations coded as 395.3(a)(3) Driving beyond 11-hour driving limit;

3. Violations coded as 395.3(a)(3)(ii) Driving beyond 8-hour limit since the end

of the last 30-minute rest break.

 (b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 395 Hours of Service of Drivers, Subpart A – General, §395.8 Driver's record of duty status, Maximum driving time for property-carrying vehicles, as may be amended from time to time, that involve the following:

 1. Violations coded as 395.8(a) No log(s) in driver’s possession;

 2. Violations coded as 395.8(e) False log;

3. Violations coded as 395.8(f)(1) Driver’s log not current;

4. Violations coded as 395.8(k)(2) Retention of driver's log for the previous 7

consecutive days.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 395 Hours of Service of Drivers, Subpart B – Electronic Logging Devices (ELDs), §395.22 Motor carrier responsibilities – In general, as may be amended from time to time, that involve the following:

 1. Violations coded as 395.22(a) Registered ELD required;

 2. Violations coded as 395.22(h) In-vehicle ELD information packet.

(d) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsection (a) through (c) of this Section.

**Sec. 2.7. Inspection, Repair, and Maintenance.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 396 Inspection, Repair, and Maintenance §396.(a)(1) General inspection/repair/maintenance, safe and proper operating condition, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 396 Inspection, Repair, and Maintenance §396.3(a)(1)B Brakes (general), as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 396 Inspection, Repair, and Maintenance §396.5(b) Oil and/or grease leak, as may be amended from time to time.

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter III, Subchapter B Federal Motor Carrier Safety Regulations, Part 396 Inspection, Repair, and Maintenance §396.17(c) Operating a CMV without periodic inspection, as may be amended from time to time.

(e) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsection (a) through (d) of this Section.

**Subchapter 3 Hazardous Materials**

**Sec. 3.1. Hazardous Materials Program Procedures.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter A, Part 107 Hazardous Materials Program Procedures, Subpart G – Registration of Persons Who Offer or Transport Hazardous Materials, §107.608 General registration requirements, as may be amended from time to time.

(b) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsection (a) of this Section.

**Sec. 3.2. Hazardous Materials Communications.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart C – Shipping Papers §172.200(a) Offering hazardous material without preparing a shipping paper, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart C – Shipping Papers §172.202(b) Failing to enter basic description of hazardous material in proper sequence, as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart D – Marking §172.328(d) Failing to mark manual remote shutoff device, as may be amended from time to time.

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart E – Labeling §172.400(a) Package/containment not labeled as required, as may be amended from time to time.

(e) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart F – Placarding §172.502(a)(1) Failing to provide carrier required placards, as may be amended from time to time.

(f) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 172, Subpart F – Placarding §172.504(a) Vehicle not placarded as required, as may be amended from time to time.

(g) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsections (a) through (f) of this Section.

**Sec. 3.3. Hazardous Materials, General Requirements for Shipments and Packagings.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 173, Subpart B – Preparation of Hazardous Materials for Transportation §173.24(b)(1) Release of hazardous material from package, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 173, Subpart B – Preparation of Hazardous Materials for Transportation §173.24(f)(1) Packaging closures open or leaking, as may be amended from time to time.

(c) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsections (a) or (b) of this Section.

**Sec. 3.4. Hazardous Materials, Carriage by Public Highway.**

(a) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 177, Subpart A – General Information and Regulations §177.801 Unacceptable hazardous materials shipments, Accepting/transporting hazardous material not prepared properly, as may be amended from time to time.

(b) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 177, Subpart A – General Information and Regulations §177.817(a) Shipping papers, General requirements, as may be amended from time to time.

(c) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 177, Subpart A – General Information and Regulations §177.817(e) Shipping papers, Shipping paper accessibility, as may be amended from time to time.

(d) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 177, Subpart A – General Information and Regulations §177.823(a) Movement of motor vehicles in emergency situations, No placards/markings when required, as may be amended from time to time.

(e) The content of [cite state statutory authority] and all related applicable state agency administrative rules and regulations, as may be amended from time to time, regarding the driving of commercial motor vehicles are hereby adopted in pertinent part so far as the same are not contrary to or inconsistent with the sovereignty of the [insert formal tribal name] and shall be applicable to violations of the same occurring within the jurisdiction of the Tribe so long as the state legislation and administrative rules and regulations are consistent with the provisions of the Code of Federal Regulations, Title 49 Subtitle B, Chapter I, Subchapter C Hazardous Materials Regulations, Part 177, Subpart B – Loading and Unloading §177.834(a) General requirements, Package not secure in vehicle, as may be amended from time to time.

(f) A person shall be deemed in violation of this section if such person is found in violation of the authority cited in Subsections (a) through (e) of this Section.

**Subchapter 4 Tribal Court Procedures**

 **Sec. 4.1. Issuance of Citation or Notice of Violation.**

(a) Who can issue for moving violations and non-inspection-related infractions:

 (1) Tribally-commissioned law enforcement officers;

(2) Bureau of Indian Affairs law enforcement officers acting under the authority of the Tribe to enforce tribal law; and,

(3) State or local law enforcement officers acting pursuant to a [mutual aid compact, cross commission, cross deputation, intergovernmental agreement, MOU, MOA].

(b) Additional requirement for inspection-related infractions.

Any law enforcement officer otherwise authorized to issue a citation or notice of violation for an offense or violation must also possess the appropriate training and certification to conduct commercial motor vehicle inspections required by federally recognized or mandated standards or the applicable standards of the State of [identify] for any infraction that may require a vehicle inspection.

**Sec. 4.2. Form of Citation; Filing of Citation or Notice of Violation.**

(a) Any authorized law enforcement officer who issues a [citation, traffic complaint, notice of violation] alleging one or more violations of this Ordinance shall utilize the same form as used in this jurisdiction for a violation of any other civil traffic offense.

(b) The [citation, traffic complaint, notice of violation] may be prepared and filed separately from any other traffic offense(s), or the [citation, traffic complaint, notice of violation] may join all such offenses in one charging document.

(c) The [citation, traffic complaint, notice of violation] will be filed with the tribal court according to the existing procedures set forth in tribal law, policy or administrative order of the tribe or tribal court regarding the filing of any other civil traffic offense.

**Sec. 4.3. Hearing Date.**

 The scheduling of a hearing date for a [citation, traffic complaint, notice of violation] alleging a violation of this Ordinance will follow the same process as the scheduling of any other civil traffic offense.

**Sec. 4.4. Hearing Procedures.**

 The court procedure for the adjudication of a [citation, traffic complaint, notice of violation] alleging a violation of this Ordinance will follow the same process as the adjudication of any other civil traffic offense.

**Sec. 4.5. Dispositions.**

(a) Every adjudicated violation of any provision of this Ordinance is considered a civil offense for which only civil remedies may be imposed, notwithstanding the characterization of the similar offense as civil regulatory or criminal prohibitory pursuant to the laws of the State of [identify] from which the language of any provision of this Ordinance was adopted.

(b) No criminal penalty of incarceration may be imposed for any adjudicated violation of any provision of this Ordinance.

(c) The Chief Judge of the Tribal Court, in consultation with appropriate executive and administrative offices and departments of the Tribe, is authorized to establish a schedule of monetary sanctions to be imposed as a penalty for each adjudicated violation of any provision of this Ordinance.

OPTIONAL: (d) The law enforcement agency that issued the [citation, traffic complaint, notice of violation], upon payment of any monetary sanction in full, shall be entitled to and shall receive [ten, twenty, other] percent [10%, 20%, etc.] of the amount paid to be deposited into that agency’s operating budget, or in the case of a non-tribal agency,

according to any [mutual aid compact, cross commission, cross deputation, intergovernmental agreement, MOU, MOA] in effect at the time the [citation, traffic complaint, notice of violation] was issued.

OPTIONAL: (e) The Tribal Court is authorized to report every civil monetary sanction imposed as a civil judgment to any credit reporting agency pursuant to an agreement or contract entered into between such agency and the Tribe.

OPTIONAL: (f) The [Tribal Court, Tribal Finance Department, Tribal Attorney or General Counsel, etc.] is authorized to utilized the services of a debt collection agency in order to secure payment of and satisfy any outstanding unpaid monetary sanction pursuant to an agreement or contract entered into between such agency and the Tribe.

**Sec. 4.6. Post-disposition Remedies.**

 Every post-conviction remedy available pursuant to tribal law to a person adjudicated to be in violation of any other civil traffic offense pursuant to tribal law shall be available to a person who is adjudicated to be in violation of any provision of this Ordinance.

**Sec. 4.7. Court Records and Reporting Dispositions of CDL/CMV Violations.**

(a) The Tribal Court shall maintain a record of every [citation, traffic complaint, notice of violation] for an offense pursuant to this Ordinance in a separate database from other civil traffic offenses.

(b) The Tribal Court shall send a copy of the judgment and order for every disposition of a violation of any provision of this Ordinance to the appropriate tribal agency or department, tribal commercial or industrial entity, or non-tribal employer located on tribal lands which employed the offender at the time of the violation.

(c) An abstract of the details of the driver of a vehicle who holds a commercial driver’s license and the disposition of every adjudicated violation of this Ordinance will be prepared by the [Court Administrator, Clerk of the Court] and submitted for inclusion in the driving history of that driver with the driver’s licensing agency of the State of [identify] pursuant to [law, administrative rule, IGA or MOA, etc. between the tribe and the state regarding the same] and submission to the national CDLIS.

**Sec. 4.8. Issuance of Provisional or Restricted Licenses or Permits.**

(a) The Judge of the Tribal Court who enters a judgment and disposition order for a violation of any provision of this Ordinance, in his or her discretion and upon request by the person against whom such order was entered and for good cause showing, may issue an order authorizing an appropriate tribal agency or a SDLA to issue a provisional or restricted license or permit to the offender to operate a non-commercial motor vehicle for purposes including, but not limited to, commuting to and from work, to attend medical, dental, vision, mental health, and other similar services including court-ordered services, or other appropriate purposes PROVIDED that the issuance of such provisional or restricted operating license or permit is not otherwise inconsistent with tribal or state law or applicable federal regulations.

(b) Any tribal provisional or restricted license or permit issued pursuant to this Section shall be in effect only within the jurisdiction of the [insert formal tribal name] as defined in Subchapter 1, Sec. 1.4(c) of this Ordinance.

**Sec. 4.9. Prohibition on Masking of Convictions**.

 A tribal judge must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a tribal traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the state where the driver is licensed or another state. Any tribal judge who violates this prohibition shall be subject to the appropriate disciplinary action established for alleged judicial ethical or standards of judicial conduct violations or other similar judicial misconduct processes.

**# # #**

This material is based upon work supported by the Federal Motor Carrier Safety Administration (FMCSA) under Grant No. FM-CDL-18. The FMCSA is a component of the United States Department of Transportation. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect the view of the FMCSA and/or the U.S. Department of Transportation.

1. According to the GAO (GAO Report: Tribal Transportation, GAO-17-423 (May 2017)), the National Tribal Transportation Facility Inventory contains over 147,000 miles of roads located within Indian reservations nationwide, with over 23,000 owned by states, almost 30,000 owned by the BIA, 17,000 owned by tribes, and nearly 70,000 owned by local non-Indian governments. Overall, about 40% of these roads are paved. The actual distribution of paved roads is: 21,600 state, 7,200 BIA, 1,000 tribes, and 28,700 local, (58,500 total). [↑](#footnote-ref-1)