

DRUG FREE WORKPLACE POLICY

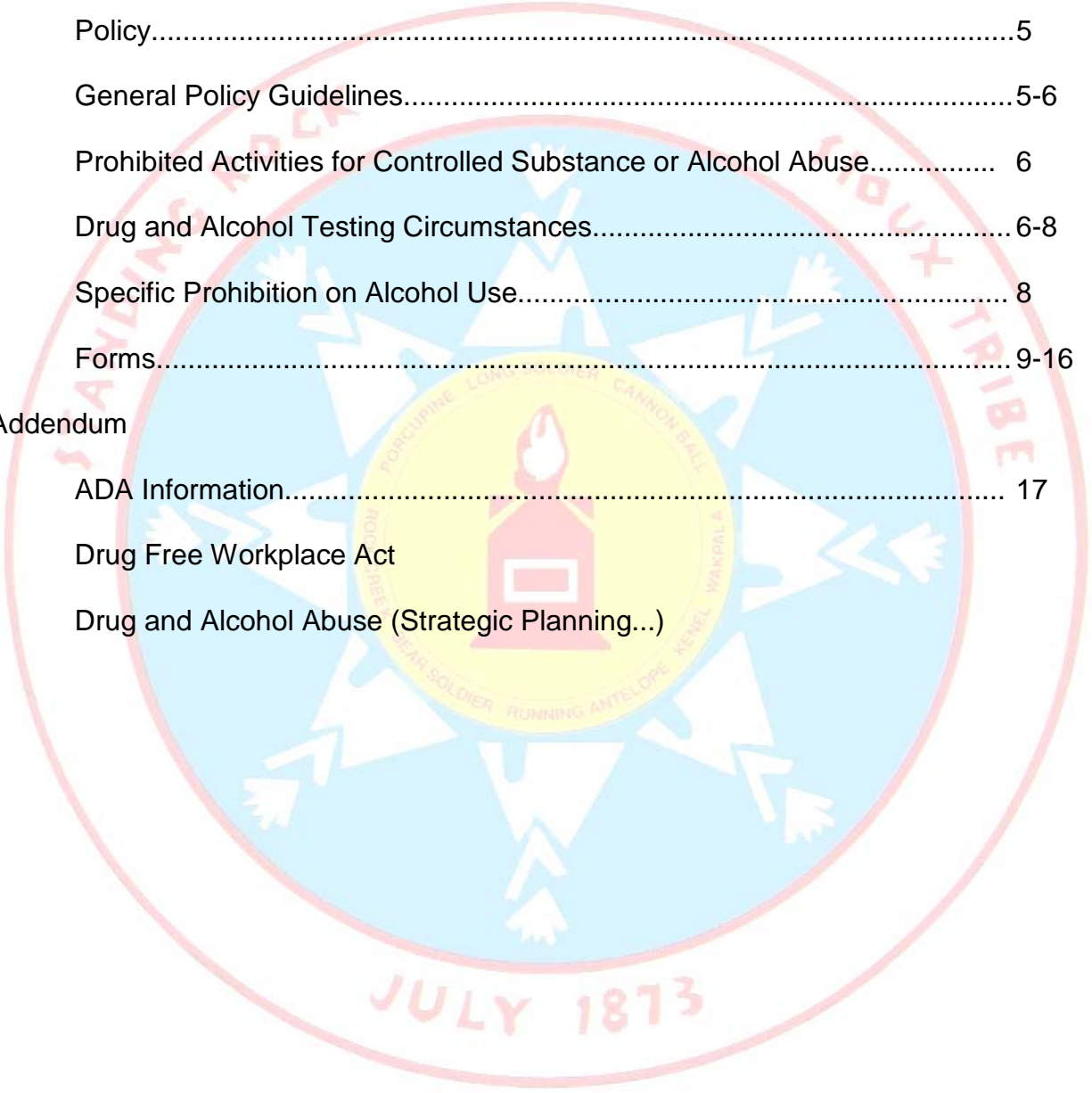


STANDING ROCK SIOUX TRIBE

NON- DOT DRUG FREE WORKPLACE POLICY

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CHECKLIST FOR IMPLEMENTING THIS NON-DOT POLICY

Please review the following checklist as you implement this policy. This policy has been designed to follow and conform to “The Drug Free Workplace Act of 1988 (Appendices) and the Americans with Disabilities Act”. The Standing Rock Sioux Tribe (SRST) with the recommendations of the SRST Drug Free Workplace Committee has established this policy for all tribal employees and tribal councilmen. It should be understood that all employees with Commercial Driver’s Licenses (CDL’s) must abide by the federal guidelines for Department of Transportation (DOT) drivers as described and defined in the Standing Rock Sioux DOT Policy. In such cases, the CDL drivers shall conform to the Tribal DOT Policy which shall supersede the Non-DOT Policy. The SRST Non – DOT Policy will be followed for all other consideration that are not included in the SRST DOT Policy.

Has the policy been reviewed with the Standing Rock Sioux Tribal Council?

Has the policy been distributed to all covered Employees and their supervisors? This includes employees operating under contracts with SRST.

Have all present employees signed the “Acknowledgement of Receipt” and the Policy on Controlled Substances (page 13, 14)?

Have potential new employees been given the policy to read and signed the “To Be Tested Consent Form” (page 12) prior to being offered an employment opportunity?

Has a new employee after they are hired been given the employee handout, read, it, and signed the appropriate forms? This includes forms; (12), (13), and (14).

DEFINITIONS

- A. **“Controlled Substance”** – any substance including those assigned by 21 U.S.C> 802 and includes all substances listed on Schedule I., through Schedule V., as they may be revised from time to time (21 CFR 1308).
- B. **“Drug Testing”** or **“Drug Test”** – scientific analysis for the presence of drugs or their metabolites in the human body.
- C. **“Tribal Employee”** – an individual and/or elected official who has been made an offer of employment with the SRST under Title XVIII; an elected official, and employees of all SRST entities.
- D. **“Prospective Employee”** – any individual who has been made a written offer of employment with the SRST.
- E. **“Reasonable Suspicion”** or **“For Cause Testing”** – any articulated belief, based on recorded specific facts and reasonable inference drawn from those facts that an employee is in violation of this policy.
- F. **“Random Testing”** – unannounced drug testing of an employee who was selected by using a method uninfluenced by any personal characteristic other than job category.
- G. **“Sample”** – any sample of urine, blood, breath, saliva or hair used for drug and/or alcohol testing.
- H. **“DOT Safety Sensitive Position”** – all employees who possess Commercial Driver’s Licenses (CDL’s) and who operate a vehicle with the following characteristics:
- A gross vehicle weight of rating over 26,000 pounds.
 - Vehicle contains 16 passengers, including the driver
 - The vehicle contains hazardous material including placards.
- I. **“On Duty”** – any employee waiting to be dispatched, inspecting equipment, driving in a vehicle, loading or unloading a vehicle and attending a disable vehicle.
- J. **“Medical Review Officer” (MRO)** – a licensed physician (medical doctor or doctor of osteopathy), responsible for receiving laboratory results generated by an employer’s drug 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 biomedical information. This individual is also responsible for reporting all confirmed positive results to the designated employer.
- K. **“Alcohol Testing”** – testing conducted by a Department of Transportation (DOT) certified breath-alcohol technician using a DOT approved breath-testing device.
1. Reasonable Suspicion for cause individuals will be sent to the SRST Law Enforcement Program to be tested by a PBT testing analyzer device. The following parameters will follow:
 - a. If breath alcohol level measures 0.020% - 0.039% = employee will be sent home and be allowed to return to work after 24 hours.
 - b. If an employee measures 0.040 or > employee will be sent to a certified lab for a PBT analysis.
- L. **“Drug Free Workplace”** 1988 (See Appendices I)

- M.** “**Conviction**” – means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal, State, or Tribal criminal drug statutes while discharged in the duties of SRST.
- N.** “**Criminal Drug Statute**” – a criminal drug statute involving manufacture, distribution, dispensation, use or possession of any controlled substance.
- O.** “**Non-DOT Safety Sensitive Tribal Drivers**” – all employees who operate tribal vehicles of SRST and/or who are in a “Position of Trust” as described by the SRST Non-DOT Policy shall abide by the same laws as defined under the SRST DOT policies. This includes, but is not limited to, after hours, not regular working hours, (8am-430pm –regular working hours) usage of the vehicle (also described as on duty time.)
- P.** “**Drug Free Workplace Liaison**” – the SRST shall appoint a contact person (The Tribal Human Resources Manager) who shall retain the “chain of custody” drug testing documents as well as receive laboratory results (drug and alcohol) and manages interventions as defined in SRST DOT and Non-DOT policies. The liaison understands and practices strict confidentiality rules with respect to employee’s drug and alcohol testing results and interventions.
- Q.** “**Chain of Custody**” – procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen to final disposition of the specimen. In drug testing, these procedures shall require that an appropriate drug testing custody form be used from the time of collection to receipt by the laboratory. Once the specimen reaches the laboratory, an appropriate laboratory chain of custody form(s) accounts for the sample of sample aliquot within the laboratory.
- R.** “**Confidentiality**” – the Drug Free Workplace Liaison (SRST) shall receive reports and maintain records of employees of the SRST with regard to Alcohol Misuse and Controlled Substance abuse prevention programs. These records are to be maintained in a secured location, with limited and controlled access.
- S.** “**Position of Trust**” – a position where there is a trust and responsibility that involves the care and nurturing of children, youth, adult and elders (disabled and non-disabled).
- T.** “**SRST Drug Free Workplace Committee**” – a group of professionals from the SRST, who are classified as members of their selective departments and who are both knowledgeable and trained on DOT/Non-DOT policies as required by law (date of training will follow upon acceptance by SRST Council of the DOT and non-DOT Drug Free Workplace Policies).
- U.** “**Alcohol**” – the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl and isopropyl alcohol.

POLICY

Purpose

The Standing Rock Sioux Tribe is committed to providing a workplace environment which ensures the safety, and encourages the personal health and productivity of its employees. The Tribe recognizes that substance and alcohol abuse in the workplace is a threat to the safety, health and job performance of its employees. The goal of this policy is to balance the Tribe's respect for individuals, with the need to maintain a safe, productive, drug and alcohol-free workplace and to conform to the "Drug Free Workplace Act of 1988, and the Americans With Disabilities Act (ADA)"; as it pertains to the Drug and Alcohol Abuse in the Workplace.

The purpose of this policy is to convey to the Tribal employees the policy on alcohol and drug use in the workplace. These policies and procedures are not intended to create a contract between the Tribe and its employees.

Scope

All employees of the SRST and its entities are covered by this policy. All employees of SRST will be:

Drug & Alcohol Test:

- As a condition of an offer of employment the prospective employee will be subject to a Pre-employment Drug & Alcohol Test.
- Subject to "random" drug and alcohol testing utilizing a computer generated random selection process; which will comprise 25% of the SRST employee pool. This will occur at an interval of four (4) times per fiscal year (10/01 – 9/30).
- Subject to a "reasonable suspicion for cause" drug and/or alcohol test as defined under this policy.
- Subject to a "Post Accident Drug and Alcohol" test as defined under this policy.

As a condition of employment, employees are required to abide by this policy.

It is, therefore the policy of the Standing Rock Sioux Tribe, that the following activities are strictly prohibited during working and on duty hours as defined in Section A "Definitions."

GENERAL POLICY GUIDELINES

The Tribe shall maintain all test results in a separate, secure, locked file cabinet (not with other personnel records) with limited access to the records. Confidential records will be shared only with the employee, personnel, or supervisors that have the need to know for proper function of the policy.

Results are reported only to a Tribal Drug Free Workplace Liaison that has been authorized to receive test results. The liaison is defined by code and listed as the point of contact for all test-related matters.

Any employee with a positive test result for alcohol (0.04 percent or greater) or a positive drug test result will be referred to a qualified Substance Abuse Professional and will not be allowed to resume duties of a safety sensitive position until they are evaluated.

The Supervisors shall complete the Observed Behavior/Reasonable Suspicion Form prior to any request for a Reasonable Suspicion test. All employees of the SRST will be required to read and become familiar with SRST's Non-DOT Drug Free Workplace reference book.

PROHIBITED ACTIVITIES FOR CONTROLLED SUBSTANCE OR ALCOHOL ABUSE

It is against the Standing Rock Sioux Tribal policy for an employee to report to work with the presence of a Controlled Substance or Alcohol in their body. Any employee violating this policy shall not be allowed to work and shall be subject to disciplinary action.

It is against tribal policy for an employee to sell, distribute, use, purchase, manufacture, or be in possession of a Controlled Substance or Alcohol while on tribal time, on tribal business or on tribal property. This policy is in effect for all employees when they are "on duty" as defined in the Section under "**Definitions.**"

It is against tribal policy for an employee to sell or illegally purchase Controlled Substances or Alcohol on tribal time, tribal business or on tribal property. The use of a Controlled Substance is prohibited except when the use is pursuant to the instructions of a physician, where the physician has advised the employee that the substance will not affect the employee's ability to safely function in the workplace.

It is against tribal policy for an employee to operate any vehicle or machinery while under the influence of any drug or alcohol which renders the employee incapable of safely and adequately operating the vehicle or equipment. Presence of a listed prohibited drug in the body of an employee will constitute a violation of this policy.

It is against tribal policy for an employee to refuse to submit to a drug and alcohol specimen (as defined in this policy.) Refusal to submit a specimen will prohibit an employee from working for the SRST and will result in termination of employment with the SRST.

DRUG AND ALCOHOL TESTING CIRCUMSTANCES

Pre-employment Procedures: All prospective employees who are offered a position of employment for the SRST will be asked to submit to a drug and alcohol test within **48** hours of an offer at a Tribal designated facility. Failure to consent to the test, or to take it within the time allowed, or to provide information or assistance necessary to test completion, or to pass the test, will result in withdrawal of the offer and render the candidate ineligible for employment with the SRST for a period of six (6) months. Final employment with the Tribe can be offered to those who successfully pass the pre-employment drug and alcohol test.

Post Accident Tests: The Standing Rock Sioux Tribe will require drug and alcohol testing of any employee involved in an on duty motor vehicle (whether privately or government owned) accident. Post-accident testing will be carried out pursuant to DOT rules and regulation for drug and alcohol tests after an accident. (See DOT Rules, Regulations).

Reasonable Suspicion: (For Cause Test) Reasonable Suspicion testing will be done in cases where there is a belief by a Drug Free Workplace trained supervisor/manager that an employee may be using a controlled substance or alcohol. Reasonable Suspicion or For-Cause tests will be required when there is:

1. Observable phenomena (actual use or possession)
2. Abnormal behavior
3. A drug-related investigation, arrest or conviction

Random Testing: Random testing will be administered by a third-party administrator, consortium collection agency or the Tribe. Random testing will be conducted for all employees of the SRST as specified by rules and regulations promulgated by the SRST 1997 Non-DOT Drug Free Workplace Policy.

Employees will not be given any notification of their selection for a random drug or alcohol test.

Twenty-five (25%) of the total employees of SRST (drug and alcohol testing pool) will be selected by a computer generated random selection program. This will occur 4 times per fiscal year. Under this selection process, each employee has an equal chance of being tested each time selections are made.

Prohibited Drugs: Tribal policy prohibits the use, possession or sale of any Controlled Substance. The Tribe will specifically test for the following controlled substances and alcohol, as part of the Tribe's Drug Free Workplace Policy and to comply with SRST's Drug Free Workplace Policy of 1997:

1. Marijuana
2. Cocaine
3. Amphetamines
4. Phencyclidine (PCP)
5. Opiates
6. Barbiturates
7. Methadone
8. Methaqualone
9. Propoxyphene
10. Alcohol

Any employee that tampers with or adulterates a drug or alcohol specimen will be in violation of tribal policy.

Violations of tribal policy will be subject to disciplinary action.

It will be the policy of the Tribe to make any employee that is subject to a Post-Accident test readily available for such testing.

It will be the policy of the Tribe to make any employee subject to a "Reasonable Suspicion" For Cause test (alcohol and /or controlled substance) when there is reason to believe by a trained Drug Free Workplace supervisor or manager that an employee may be using an illegal controlled substance or alcohol; as defined in this policy (see Section under Definitions page 3-4) and to submit to a test within the defined period of this policy.

SPECIFIC PROHIBITIONS ON ALCOHOL USE

It will be tribal policy to test any employee for alcohol within 2 hours of an accident, that resulted in a fatality (to anyone involved) or a moving violation (to the driver). It will be tribal policy not to test any employee for alcohol beyond 8 hours after the accident occurs.

It will be tribal policy not to allow an employee that has a Breath Alcohol Content (BAC) of 0.040% to operate any vehicle. Any employee that has a BAC of 0.040% or higher will be referred to a Substance Abuse Professional (SAP) for an evaluation within a 24 hour period from the time that the test results are received. Employees will not be allowed to return to work until they are evaluated by a SAP.

It is against tribal policy for any employee to report to work with a BAC of 0.020-0.039%. An employee with a BAC within this range will not be allowed to work for 24 hours after the positive test. Any employee that has a BAC of 0.040% or greater, will be referred to a SAP for an evaluation within a 24 hour period from the test results are received. Employees will not be allowed to return to work until they are evaluated by a SAP.

It will be against tribal policy for employees to possess any un-manifested isopropyl, methyl or ethyl alcohol.

Generally

It will be tribal policy to test employees at any time during the performance of a safety sensitive function.

It will be against tribal policy for any supervisor/manager that has actual knowledge of an employee using a controlled substance or alcohol to permit the employee to perform or continue to perform safety sensitive function (DOT and non-DOT). (See DOT Rules under Safety Sensitive Functions).

CONFIDENTIAL
FIRST POSITIVE DRUG OR ALCOHOL TEST TRACKING SHEET (MANDATORY)

Evaluation Conducted: _____

Date: _____

Substance Abuse Professional Signature: _____

Treatment Requirements:

In-Patient: _____

Out-Patient (6 weeks): _____

Week 1: _____

Week 2: _____

Week 3: _____

Week 4: _____

Week 5: _____

Week 6: _____

Education/Classes: _____

Support Groups: AA _____

Both AA/NA _____

NA _____

Other _____

Follow-up (Aftercare)

Week 1: _____ Week 9: _____

Week 2: _____ Week 10: _____

Week 3: _____ Week 11: _____

Week 4: _____ Week 12: _____

Week 5: _____ Week 13: _____

Week 6: _____ Week 14: _____

Week 7: _____ Week 15: _____

Week 8: _____ Week 16: _____

CONFIDENTIAL

Date: _____

Time: _____

Name: _____ SSN: _____

Contact Individual: _____

The above-named individual was advised in person, that he/she has tested positive on a drug screening administered by a certified Laboratory. The results of the drug screening were reviewed by the Medical Review Officer, before the SRST was informed.

According to the SRST policy, the above named individual will be subject to the following criteria:

1. 1st Positive Test – the employee is responsible to obtain an evaluation and follow through with any treatment requirements as defined by any Substance Abuse Professionals (SAP).
2. 2nd Positive Test – mandatory evaluation by any Substance Abuse Professional (SAP).
3. 3rd Positive Test – termination.

By no means does the above agreement prevent the SRST from dismissing the employee based on other causes.

Employee's Signature

Date

Supervisor's Signature

Date

Drug Free Workplace Liaison Signature

Date

CONFIDENTIAL
SECOND POSITIVE DRUG OR ALCOHOL TEST TRACKING SHEET (MANDATORY)

Evaluation Conducted: _____

Date: _____

Substance Abuse Professional Signature: _____

Treatment Requirements:

In-Patient: _____

Out-Patient (6 weeks): _____

Week 1: _____

Week 2: _____

Week 3: _____

Week 4: _____

Week 5: _____

Week 6: _____

Education/Classes: _____

Support Groups: AA _____

Both AA/NA _____

NA _____

Other _____

Follow-up (Aftercare)

Week 1: _____ Week 9: _____

Week 2: _____ Week 10: _____

Week 3: _____ Week 11: _____

Week 4: _____ Week 12: _____

Week 5: _____ Week 13: _____

Week 6: _____ Week 14: _____

Week 7: _____ Week 15: _____

Week 8: _____ Week 16: _____

**CONSENT FORM FOR
PRE-EMPLOYMENT DRUG SCREENING**

The Standing Rock Sioux Tribe is committed to providing a safe and productive working environment for its employees. As part of this effort, passing a drug-screening analysis is required as a condition of employment and all candidates who are offered employment are required to undergo a drug-screening test and an alcohol (PBT) test no later than 48 hours after receiving an offer of employment. All offers of employment are expressly conditioned upon satisfaction of this requirement. Failure to consent to the tests will result in the withdrawal of the offer and render the candidate ineligible for employment with the SRST for a period of six (6) months from the date of conditional offer. Post employment drug screening may be required where deemed necessary or appropriate; participation in such screening is an express condition of continued employment.

My signature indicates that:

1. I understand and agree to the Standing Rock Sioux Tribe's drug screening and alcohol testing requirements as stated above and I hereby consent to the tests;
2. I authorize any certified testing laboratory or Medical Review Officer to release test results and other pertinent information to authorized representatives of the Standing Rock Sioux Tribe, with the understanding that this information will be conducted in a confidential manner;
3. I understand that test results will be provided to me upon request and if I fail the test, I may have another test performed at a SAMSHA certified drug testing laboratory, at my own expense, using an aliquot of sample from the original specimen.

NAME: _____

MAILING ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE #: _____

SIGNATURE: _____ DATE: _____

TEST ADMINISTRATOR DATE: _____

**ACKNOWLEDGEMENT OF RECEIPT OF SRST POLICY
ON CONTROLLED SUBSTANCES AND ALCOHOL**

I, the undersigned employee or prospective employee of the SRST, hereby acknowledge that I have received a copy of the drug and alcohol policy of the Tribe. I also agree to comply with the Drug Free Workplace Policy as a condition of employment with the Tribe. Further, I also understand that this agreement does not create an obligation or contract of employment between myself and the SRST.

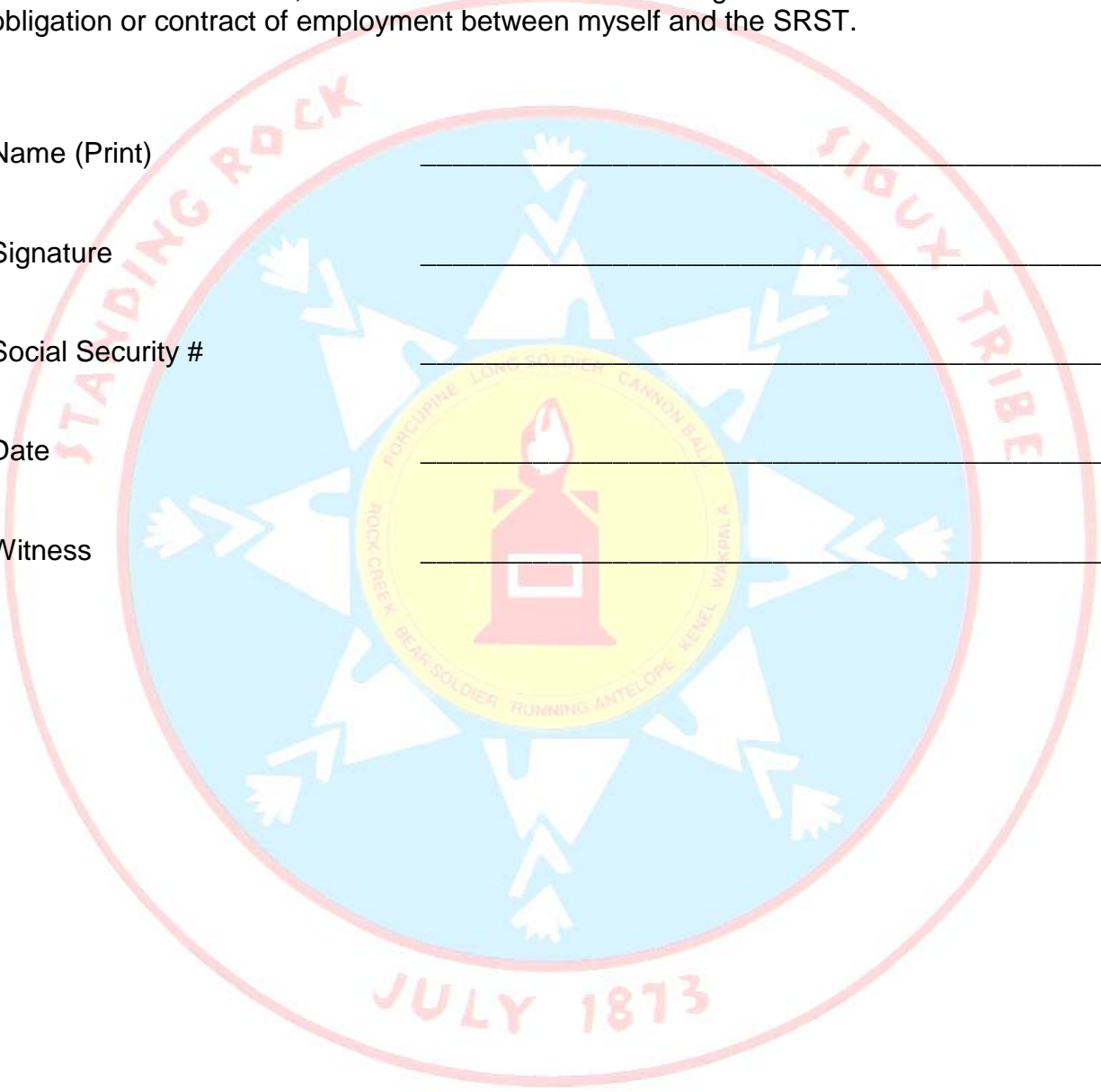
Name (Print) _____

Signature _____

Social Security # _____

Date _____

Witness _____



**EMPLOYEE'S ACKNOWLEDGEMENT OF AWARENESS OF THE DRUG FREE
WORKPLACE ACT OF 1988**

I, _____, acknowledge that I have been given a copy of the Standing Rock Sioux Tribe's Drug Free Workplace Policy as required by the Drug Free Workplace Act of 1988.

I have been given information on the Tribe's Policy on illegal drug activity in the workplace. I understand that penalties up to and including termination can be imposed for conviction of a drug-related offense that occurs in the workplace.

I am aware that illegal drug use is dangerous.

I acknowledge that the Tribe's Drug Free Workplace Policy provides information about resources for drug counselling and rehabilitation.

I acknowledge that the Tribe intends to have a drug-free workplace and wants to provide assistance to any employee who has a drug-related problem.

I acknowledge that the Tribe's Drug Free Workplace Policy requires that I must report any charge of a drug-related offense to my supervisor within five (5) days.

SIGNATURE

DATE

**ALCOHOL AND CONTROLLED SUBSTANCE TESTING
PREVIOUS EMPLOYER INFORMATION RELEASE FORM**

Previous Employer: _____ Date: _____

Address: _____

City, State, Zip: _____

The person identified below has sought employment with us as an employee, subject to the alcohol and controlled substances testing provisions of the Drug Free Workplace Policy of the SRST 1997. Pursuant to 49 CFR 382, 413, we are requesting the results of alcohol and drug testing of this individual while in your service since January 1, 20__ and for the past 2 years. The employee has given written consent in the release below. Person for whom information is requested

Name: _____ SSN#: _____

Dates of employment with you, from _____ to _____

Release:

I hereby authorize the release of alcohol and drug testing results for the past 2 years to the _____ identified below.

Signature: _____ Date: _____

Report of Test Result: _____ Not subject to Federal Testing Regulations

Alcohol: Tested 0.040% BAC or greater _____ No _____ Yes

If Yes, date _____

Controlled Substances: Tested Positive _____ No _____ Yes

If Yes, date _____

Refusal to Test: _____ No _____ Yes

If Yes, date _____

Please return this information to: (Mark Envelope Confidential)

Individual's Name: _____ Title: _____

Tribe: _____

Address: _____

If you prefer to reply by telephone: _____

If you prefer to reply by FAX: _____

Provide information on to the individuals identified below:

The Health & Environmental Office of the Standing Rock Sioux Tribe – Observed behavior reasonable suspicion record.

Employee Name _____ Social Security No. _____ Date of Birth _____

Location _____ From: _____ am/pm To: _____ am/pm
Observable Time _____ Observable Date _____

Reasonable suspicion of current use or impairment by: Alcohol Drugs Both

Cause for Suspicion

Appearance

Normal Flushed Puncture marks Dishevelled Bloodshot eyes Tremors

Dilated/Constricted Pupils Profuse Sweating Dry-Mouth

Runny Nose/Sores/Frequent Sniffing

Inappropriate Wearing of Sunglasses Other: _____

Behavior: Speech

Normal Incoherent Slurred Silent Confused Slowed

Whispering Loud Other: _____

Motor Skills: Balance

Normal Swaying Falling Staggering Head Bobbing

Other: _____

Motor Skills: Other

Dropping things Lack of Coordination Slowed reaction time

Other observable actions of behavior (Specify): _____

Check if the following conditions are met, (test only if both conditions are met):

Observations are specific, contemporaneous, and articulable on the appearance, behavior, speech, or body odors of the individual

For alcohol testing, observations are made during, just preceding, or just after the individual is required to be in compliance (performing safety-sensitive functions) with DOT/FHWA regulations.

If unable to test in 2 hours of reasonable suspicion determination, state reasons: _____

If unable to test within 8 hours of reasonable suspicion determination, cease attempts to test and state reasons: _____

Supervisor/Tribal Official's Name _____ Signature _____ Date _____

Comments and/or corroboration by a second supervisor or Tribal official: _____

Supervisor/Tribal Official's Name _____ Signature _____ Date _____

EMPLOYEE DISABILITY (ADA)

Alcoholism is considered a disability under the Americans with Disability Act (the “ADA”). The Tribe will make reasonable accommodations under the ADA for employees who suffer from alcoholism, including encouraging an employee to participate in rehabilitation programs. However, the Tribe will hold an alcoholic employee to the same performance standards as other employees and will discipline an employee, up to and including termination, if the employee’s alcohol use adversely affects the employee’s job performance.

The Equal Opportunity Employment Commission states in its guidelines, coverage as stated under the ADA:

- A person who is an alcoholic is an individual with a disability under the ADA.
- An employer may discipline, discharge or deny employment to an alcoholic employee whose use of alcohol impairs job performance or conduct to the extent that the employee is no longer a “qualified individual with a disability.”

Although individuals with alcoholism are protected by the ADA, they can be held to the same standards as other employees. Therefore, behavior cannot be condoned just because it may be alcohol related.

DRUG AND ALCOHOL ABUSE QUESTIONS AND ANSWERS

Introduction

The ADA specifically permits employers to ensure that the workplace is free from the illegal use of drugs and the use of alcohol, and to comply with other Federal laws and regulations regarding alcohol and drug use. At the same time, the ADA provides limited protection from discrimination from, recovering drug addicts and for alcoholics.

Overview for Legal Obligations

- An individual who is currently engaging in the illegal use of drugs is not an “individual with a disability” when then employer acts on the basis of such use.
- An employer may prohibit the illegal use of drugs and the use of alcohol at the workplace.
- It is not a violation for the ADA for an employer to give tests for the illegal use of drugs.
- An employer may discharge or deny employment to persons who currently engage in the illegal use of drugs.
- An employer may not discriminate against a drug addict who is not currently using drugs and who has been rehabilitated, because of a history of drug addiction.
- A person who is an alcoholic is an “individual with a disability” under the ADA.
- An employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol impairs job performance or conduct to the extent that he/she is not a “qualified individual with a disability.”

- Employees who use drugs or alcohol may be required to meet the same standards of performance and conduct that are set for other employees.
- Employees may be required to follow the Drug Free Workplace Act of 1988 and rules set by Federal agencies pertaining to drug and alcohol use in the workplace.

Illegal Use of Drugs

An employer may discharge or deny employment to current illegal users of drugs on the basis of such drug use, without fear of being held liable for disability discrimination. Current illegal users of drugs are not “individuals with disabilities” under the ADA.

The illegal use of drugs includes the use, possession, or distribution of drugs which are unlawful under the Controlled Substances Act. It includes the use of illegal drugs and the illegal use of prescription drugs that are “controlled substances.”

For Example: Amphetamines can be legally prescribed drugs. However, amphetamines, by law, are “controlled substances” because of their abuse and potential for abuse. If a person takes amphetamines without a prescription, that person is using drugs illegally, even though they could be prescribed by a physician.

The illegal use of drugs does not include drugs taken under the supervision of a licensed health care professional, including experimental drugs for people with AIDS, epilepsy or mental illness.

For Example: A person who takes morphine for the control of pain caused by cancer in not using a drug illegally if it is taken under the supervision of a licensed physician. Similarly, a participant in a methadone maintenance treatment program cannot be discriminated against by an employer based upon the individual's lawful use of methadone.

An individual who illegally uses drugs but also has a disability, such as epilepsy, is only protected by the ADA from discrimination on the basis of the disability (epilepsy). An employer can discharge or deny employment to such an individual on the basis of his/her illegal use of drugs.

What does “current” drug use mean?

If an individual tests positive on a test for illegal use of drugs, the individual will be considered a current drug user under the ADA where the test correctly indicates that the individual is engaging in the illegal use of a controlled substance.

“Current” drug use means that the illegal use of drugs occurred recently enough to justify an employer’s reasonable belief that involvement with drugs is an on-going problem. It is not limited to the day of use, or recent weeks or days, in terms of an employment action. It is determined on a case by case basis.

For Example: An applicant or employee who tests positive for an illegal drug cannot immediately enter a drug rehabilitation program and see to avoid the possibility of discipline or termination by claiming that he/she now is in rehabilitation and is no longer using drugs illegally. A person who tests positive for illegal use of drugs is not entitled to the protection that may be available to former users who have been or are in rehabilitation (see below).

Alcoholism

While a current illegal user of drugs has no protection under the ADA if the employer acts on the basis of such use, a person who currently uses alcohol is not automatically denied protection simply because of the use. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if he/she is qualified to perform the essential functions of a job. However, an employer may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely effects job performance or conduct to the extent that he/she is not “qualified.”

For Example: If an individual who has alcoholism often is late for work or is unable to perform the responsibilities of his/her job, an employer can take disciplinary action on the basis of the poor job performance and conduct. However, an employer may not discipline an alcoholic employee more severely than it does other employees for the same performance or conduct.

Recovering Drug Addicts

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.

For Example: An addict who is currently in a drug rehabilitation program and has not used drugs illegally for some time is not excluded from the protection of the ADA. This person will be protected by the ADA because he/she has a history of addiction or if he/she is “regarded as” being addicted.

Similarly, an addict who is rehabilitated or who has successfully completed a supervised rehabilitation program and is no longer illegally using drug is not excluded from the ADA.

However, a person who casually used drugs illegally in the past, but did not become addicted is not an individual with a disability based on the past drug use. In order for a person to be “substantially limited” because of drug use, he/she must be addicted to the drug.

To ensure that drug use is not recurring, an employer may request evidence that an individual is participating in a drug rehabilitation program or may request the results of a drug test.

A “rehabilitation program” may include in-patient, out-patient, or employee assistance programs, or recognized self-help programs such as Narcotics Anonymous (NA).

Persons “Regarded As” Addicts and Illegal Drug Users

Individuals who are not illegally using drugs, but who are erroneously perceived as being addicts and as currently using drugs illegally, are protected by the ADA.

For Example: If an employer perceived someone to be addicted to illegal drugs based upon rumor and the groggy appearance of the individual, but the rumor was false and the appearance was a side-effect of a lawfully prescribed medication, this individual would be “regarded as” an individual with a disability (a drug addict) and would be protected from discrimination based upon the false assumption. If an employer did not regard the individual as an addict, but simply as a social user of illegal drugs, the individual would not be “regarded as” an individual with a disability and would not be protected by the ADA.

As with other disabilities, an individual who claims that he/she was discriminated against because of past or perceived illegal drug addiction, may be asked to provide that he/she has a record of, or is regarded as having, an addiction to drugs.

Efforts to Prohibit Drug and Alcohol Use in the Workplace

The ADA does not prevent efforts to combat the use of drugs and alcohol in the workplace.

The ADA does not interfere with employers’ programs to combat the use of drugs and alcohol in the workplace. The Act specifically provides that an employer may:

- Prohibit the use of drugs and alcohol in the workplace.
- Require that employees not be under the influence of alcohol or drugs in the workplace.

For Example: An employer can require that employees not report to work or return from lunch under the influence of alcohol or drugs used illegally.

Require that employees who illegally use drugs or alcohol meet the same qualification and performance standards applied to other employees. Unsatisfactory behaviour such as absenteeism, tardiness, poor job performance, or accidents caused by alcohol or illegal drug use need not be accepted nor accommodated.

For Example: If an employee is often late or does not show up for work because of alcoholism, an employer can take direct action based on conduct. However, an employer would violate the ADA if it imposed greater sanction on such an alcoholic employee than it did on other employees for the same misconduct.

While the ADA permits an employer to discipline or discharge an employee for illegal use of drugs or where alcoholism results in poor performance or misconduct, the Act does not require this. Many employers have established employee assistance programs for employees who abuse drugs or alcohol that are helpful to both employee and employer. However, the ADA does not require an employer to provide an opportunity for rehabilitation in place of discipline or discharge to such employees. The ADA may, however, require consideration of reasonable accommodation for a drug addict who is rehabilitated and not using drugs or an alcoholic who remains a “qualified individual with a disability.” For example, a modified work schedule, to permit the individual to attend an ongoing self-help program, might be reasonable accommodation for such an employee.

An employer can fire or refuse to hire a person with a past history of illegal drug use, even if they person no longer uses drugs, in specific occupations, such as law enforcement, when an employee can show that this policy is job-related and consistent with business necessity.

For Example: A law enforcement agency might be able to show that excluding an individual with a history of illegal drug use from a police officer position was necessary, because such illegal conduct would undermine the credibility of the officer as a witness for the prosecution in a criminal case.

However, even if this case, exclusion of a person with a history of illegal drug use might not be justified automatically as a business necessity, if an applicant with a history could demonstrate an extensive period of successful performance as a police officer since the time of drug use.

An employer also may fire or refuse to hire an individual with a history of alcoholism or illegal drug use if it can demonstrate that the individual poses a “direct threat” to health and safety because of the high probability that he/she would return to the illegal drug use or alcohol abuse. The employer must be able to demonstrate that such use would result in a high probability of substantial harm to the individual or others which could not be reduced or eliminated with a reasonable accommodation. Examples of accommodations in such cases might be to require a periodic drug or alcohol test, to modify job duties or to provide increased supervision.

An employer cannot prove a “high probability” of substantial harm simply by referring to statistics indicating the likelihood that addicts or alcoholics in general have a specific probability of suffering a relapse. A showing of “significant risk of substantial harm” must be based upon an assessment of the particular individual and his/her history of substance abuse and the specific nature of the job to be performed.

For Example: An employer could justify excluding an individual who is an alcoholic with a history of returning to alcohol abuse from a job as a ship captain.

Pre-Employment Inquiries about Drug and Alcohol Use

An employer may make certain pre-employment, pre-offer inquiries regarding use of alcohol or the illegal use of drugs. An employer may ask whether an applicant drinks alcohol or whether he/she is currently using drugs illegally. However, an employer may not ask whether an applicant is a drug addict or alcoholic, nor inquire whether he/she has ever been in a drug or alcohol rehabilitation program.

After a conditional offer of employment, an employer may ask any question concerning past or present drug or alcohol use. However, the employer may not use such information to exclude an individual with a disability, on the basis of a disability, unless it can show that the reason for exclusion is job-related and consistent with business necessity, and the legitimate job criteria cannot be met with a reasonable accommodation.

Drug Testing

An employer may conduct tests to detect illegal use of drugs. The ADA does not prohibit, require, or encourage drug tests. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made. An employee also can be required to take a drug test, whether or not such a test is job-related and necessary for the business. (On the other hand, a test to determine an individual's blood alcohol level would be a "medical examination" and only could be determined by an employer in conformity with the ADA.)

An employer may refuse to hire an applicant or discharge or discipline an employee based upon a test result that indicates the illegal use of drugs. The employer may take these actions even if an applicant or employee claims that he/she recently stopped illegally using drugs.

Employers may comply with applicable Federal, state, or local laws regulating when and how drug tests may be used, what drug tests may be used, and confidentiality. Drug tests must be conducted to detect illegal use of drugs. However, test for illegal use of drugs also may reveal the presence of lawfully-used drugs.

If a person is excluded from a job because the employer erroneously "regarded" him/her to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA. To avoid such potential liability, the employer would have to determine whether the individual was using a legally prescribed drug. Because the employer may not ask what prescription drugs an individual is taking before making a conditional job offer, one way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at anytime under the ADA. Since applicants who test positive for illegal drugs who are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use.

If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential, in the same way as any medical record. If the results reveal information about the disability in addition to information about drug use, the disability-related information is to be treated as confidential medical record.

For Example: If drug test results indicate that an individual is HIV positive, or that a person has epilepsy or diabetes because use of a related prescribed medicine is revealed, this information must remain confidential.

Laws and Regulations concerning Drugs and Alcohol

An employer may comply with other Federal laws and regulations concerning the use of drugs and alcohol, including the Drug Free Workplace Act of 1988; regulation applicable to particular types of employment, such as law enforcement position; regulation of the Department of Transportation for airline employees, interstate motor carrier drivers and railroad engineers; and regulations for safety sensitive position established by the Department of Defence and the Nuclear Regulatory Commission. Employers may continue to require that their applicants and employees comply with such Federal Laws and regulations.

For Example: A trucking entity can take appropriate action if an applicant or employee tests positive on a drug test required by Department of Transportation regulations or refuses to take such drug test.

APPENDICES

DRUG FREE WORKPLACE ACT OF 1988

Drug Free Workplace Requirement

1. Persons other than individuals. No person, other than an individual, shall receive a grant from any Federal agency unless such person has certified to the granting agency that it will provide a drug free workplace by –
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited at the grantee's workplace and specifying action that will be taken against employees for violations of such prohibition.
 - B. Establishing a drug free awareness program to inform employees about –
 - i. The dangers of drug abuse in the workplace;
 - ii. The grantee's policy of maintaining a drug free workplace;
 - iii. Any available drug counselling, rehabilitation, and employee assistant programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations;
 - C. Making it a requirement that each employee to be engaged in performance of such grant may be given a copy of the state required by subparagraph (A);
 - D. Notifying the employee in the statement required by subparagraph (A), that a condition of employment on such grant, the employee will –
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
 - E. Notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;
 - F. Imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted, as required by section 5154; and
 - G. Making a good faith effort to continue to maintain a drug free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).
2. Individuals. No Federal agency shall make a grant to any individual unless such individual certifies to the agency as a condition of such grant that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conduction any activity with such grant.

Suspension, Termination, or Debarment of the Grantee

1. Grounds for Suspension, Termination, or Debarment. Each grant awarded to a Federal agency shall be subject to suspension of payments under the grant or termination of the grant, or both, and the grantee there under shall be subject to suspension or debarment in accordance with the requirements of this section if the agency of the granting agency determines, in writing, that –
 - A. The grantee has made a false certification under subsection (a);
 - B. The grantee violates such certification by failing to carry out the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a) (1); or
 - C. Such a number of employees of such grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug free workplace as required by subsection (a)(1).
2. Conduct of Suspension, Termination, and Debarment Proceedings. A suspension of payments, termination, or suspension of payments, termination of suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding Executive Order and regulation promulgated to implement such law or Executive Order.
 - A. In the case of a waiver with respect to a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.
 - B. Exclusive authority. The authority of an agency under this section to waive a termination, suspension or debarment shall not be delegated.

Section 5156. Regulations

Not later than 90 days after the date of enactment of this subtitle, the government wide regulations governing actions under this subtitle shall be issued pursuant to the Office of Federal Procurement Policy Act (41 USC 401 et seq.).

Section 5156. Definitions

For the purpose of this subtitle –

1. The term “drug free workplace” means a site for the performance of work done in connection with a specific grant or contract described in section 5152, 5153 or an entity at which employees of such entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this Act;
2. The term “employee” means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the provisions of the grant or contract described in section 5152 or 5153;
3. Effect of debarment. Upon issuance of final decision under this subsection requiring debarment of a grantee, such grantee shall be ineligible for award of any grant by any Federal agency, and for participating in any future grant from any Federal agency for a period specified in the decision, not to exceed 5 years.

Section 5154. Employee Sanctions and Remedies

A grantee or contractor shall, within 30 days after receiving notice from an employee of a conviction pursuant to section 5152 (A)(1)(D)(ii) or 5153 (A)(1)(D)(ii) –

1. Take appropriate personnel action against such employee up to and including termination; or
2. Require such employee to satisfactorily participate in drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

Section 5155. Waiver

A. In general; Termination, suspension of payments or suspension or debarment under this subtitle may be waived by the head of an agency with respect to a particular contract or grant if –

1. In the case of a waiver with respect to a contract, the head of the agency determines under section 5152 (B)(1), after the issuance of a final determination under such section, that suspension of payments, or termination of the contract, or suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contact, as the case may be, would severely disrupt the operation of such agency to the detriment of the Federal Government or the general public; or
2. The term “controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 USC 812);
3. The term “conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;
4. The term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use or possession of any controlled substance;
5. The term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant;
6. The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract; and
7. The term “federal agency” means any agency as that term is defined in section 552 (f) of title 5, United States Code.

Section 5158. Construction of Subtitle

Nothing in this subtitle shall be construed to require law enforcement agencies, if the head of the agency determines it would be inappropriate in connection with the agency’s undercover operations, to comply with the provisions of this subtitle.

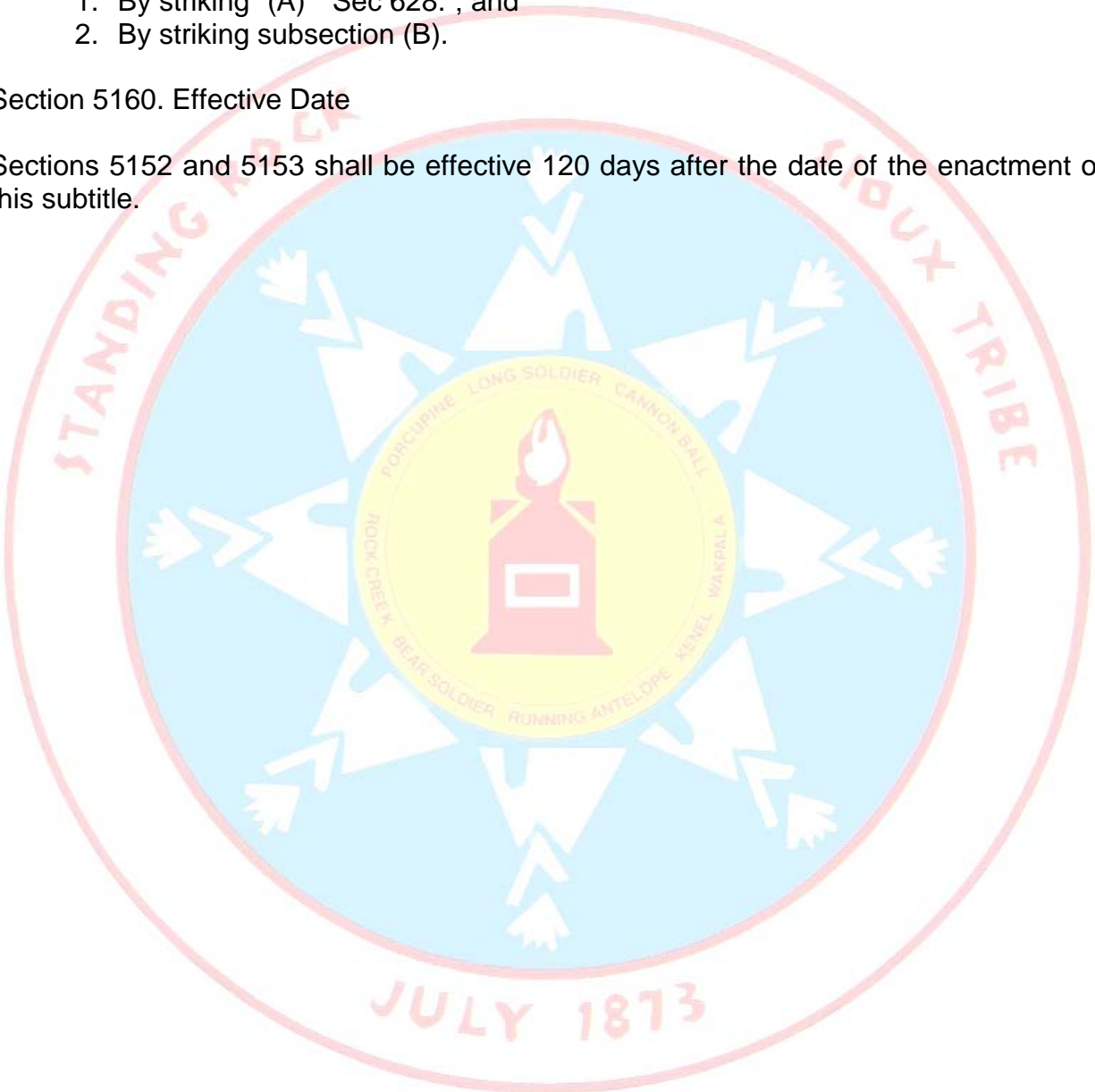
Section 5159. Repeal of Limitation on Use of funds

Section 628 of Public Law 100-440 (relating to restriction on the use of certain appropriated amounts) is amended –

1. By striking “(A)” “Sec 628.”; and
2. By striking subsection (B).

Section 5160. Effective Date

Sections 5152 and 5153 shall be effective 120 days after the date of the enactment of this subtitle.



REGULAR TRIBAL COUNCIL MEETING FOLLOW-UP

MEETING DATE: March 6, 1997

PAGE: 2

MOTION #3 IS CONTINUED.

PUBLIC.

ROLL CALL VOTE: TAKEN ALIVE, J. - NOT VOTING

ARCHAMBAULT, D.	YES	MCLAUGHLIN, E.	E.
BEAR KING, L.	YES	MURPHY, C.	E.
CLAYMORE, S.	YES	RED BEAR, K.	E.
GATES, R.	YES	RED TOMAHAWK, W.	YES
HARRISON, L.	YES	TWO BEARS, S.	YES
JAMERSON, J.	YES	WHITE EAGLE, C.	E.
KEEPSEAGLE, J.	YES	WHITE MOUNTAIN, SR., J	YES
KUNTZ, T.	E.	YELLOW FAT, T.	E.

VOTE: YES - 10 NO - 0 NOT VOTING - 1

MOTION CARRIED. 6 - EXCUSED

JUDICIAL COMMITTEE - Joe White Mountain, Sr., reporting.
March 4, 1997 (REGULAR MEETING)

#4. MOTION WAS MADE BY JIM JAMERSON, SECONDED BY JOE KEEPSEAGLE, TO APPROVE OF THE NON-DOT DRUG FREE WORKPLACE POLICY, BY RESOLUTION.

ROLL CALL VOTE: TAKEN ALIVE, J. - NOT VOTING

ARCHAMBAULT, D.	YES	MCLAUGHLIN, E.	E.
BEAR KING, L.	YES	MURPHY, C.	E.
CLAYMORE, S.	YES	RED BEAR, K.	E.
GATES, R.	YES	RED TOMAHAWK, W.	YES
HARRISON, L.	YES	TWO BEARS, S.	YES
JAMERSON, J.	YES	WHITE EAGLE, C.	E.
KEEPSEAGLE, J.	YES	WHITE MOUNTAIN, SR., J	YES
KUNTZ, T.	E.	YELLOW FAT, T.	E.

VOTE: YES - 10 NO - 0 NOT VOTING - 1

MOTION CARRIED. 6 - EXCUSED

#5. MOTION WAS MADE BY JOE WHITE MOUNTAIN, SR., SECONDED BY JIM JAMERSON, TO APPROVE THAT THE SNOW REMOVAL PERSONNEL WORK THE REGULAR WORKING HOURS (i.e. 8:00 A.M. - 4:30 P.M. MONDAY THRU FRIDAY) UNLESS THERE IS AN EMERGENCY AS DETERMINED BY THE ROAD SUPERVISOR, MR. KEN MCLAUGHLIN.

RESOLUTION NO. 141-97

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indian, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council: and

WHEREAS, the Standing Rock Sioux Tribal Council, pursuant to the Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1(a) and 1(c), is empowered to promote and protect the health, education, and general welfare of the members of the Tribe, and to administer services that may contribute to the social and economic advancement of the Tribe and its members; and

WHEREAS, the Standing Rock Sioux Tribal Council is committed to providing leadership which ensures the safety, and encourages the personal health and productivity of the Tribal Council Body and the Tribal Members and recognizes that substance and alcohol abuse while holding a leadership position is non-productive, and

WHEREAS, the Standing Rock Sioux Tribal Council realizes the need to maintain a safe, productive, drug and alcohol free-Tribal Government to conform to the "Drug Free Workplace Act of 1988 and the Americans with Disabilities Act (ADA)" as it pertains to the Drug and Alcohol Abuse in the Workplace.

NOW THEREFORE BE IT RESOLVED, the purpose of this Resolution is to convey to the Tribal Members and Employees on alcohol and drug use within the Tribal Council and Tribal Council hereby approves to be Drug and Alcohol tested in a separate pool from the Tribal Employees not les than four (4) times annually and not exceeding twelve (12) times annually and that the results be made public each time.


BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

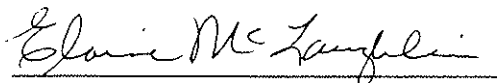
CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribal Council, do hereby certify that the Tribal Council is composed of 17 members, of whom 11 constituting a quorum, were present at a meeting thereof, duly and regularly called, noticed, convened and held on the 6th day of **MARCH, 1997**, and that the foregoing resolution was duly adopted by the affirmative vote of 10 members, with 0 opposing, and with 1 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED EXCEPT IN CASE OF A TIE.**

DATED THIS 6th DAY OF **MARCH, 1997**.

ATTEST:


Jesse Taken Alive, Chairman
Standing Rock Sioux Tribe


Elaine McLaughlin, Secretary
Standing Rock Sioux Tribe

(Official Tribal Seal)

REGULAR TRIBAL COUNCIL MEETING FOLLOW-UP

MEETING DATE: March 6, 1997

PAGE: 1

#1. MOTION WAS MADE BY JIM JAMERSON, SECONDED BY SAM CLAYMORE, TO APPROVE OF THE AGENDA FOR MARCH 6, 1997.

ROLL CALL VOTE: TAKEN ALIVE, J. - NOT VOTING

ARCHAMBAULT, D.	YES	MCLAUGHLIN, E.	E.
BEAR KING, L.	YES	MURPHY, C.	E.
CLAYMORE, S.	YES	RED BEAR, K.	E.
GATES, R.	YES	RED TOMAHAWK, W.	YES
HARRISON, L.	YES	TWO BEARS, S.	YES
JAMERSON, J.	YES	WHITE EAGLE, C.	E.
KEEPSEAGLE, J.	YES	WHITE MOUNTAIN, SR., J	NO
KUNTZ, T.	E.	YELLOW FAT, T.	E.

VOTE: YES - 9 NO - 1 NOT VOTING - 1

MOTION CARRIED. 6 - EXCUSED

#2. MOTION WAS MADE BY DAVE ARCHAMBAULT, SECONDED BY REVA GATES, TO APPROVE TO FILE IN TRIBAL COURT ON THE DAKOTA SOVEREIGN TRADITIONAL OYATE A DECLARATORY AND INJUNCTIVE RELIEF COMPLAINT AND WILL BE PREPARED BY THE TRIBAL ATTORNEY.

ROLL CALL VOTE: TAKEN ALIVE, J. - NOT VOTING

ARCHAMBAULT, D.	YES	MCLAUGHLIN, E.	E.
BEAR KING, L.	YES	MURPHY, C.	E.
CLAYMORE, S.	YES	RED BEAR, K.	E.
GATES, R.	YES	RED TOMAHAWK, W.	YES
HARRISON, L.	YES	TWO BEARS, S.	YES
JAMERSON, J.	YES	WHITE EAGLE, C.	E.
KEEPSEAGLE, J.	YES	WHITE MOUNTAIN, SR., J	YES
KUNTZ, T.	E.	YELLOW FAT, T.	E.

VOTE: YES - 10 NO - 0 NOT VOTING - 1

MOTION CARRIED. 6 - EXCUSED

#3. MOTION WAS MADE BY DAVE ARCHAMBAULT, SECONDED BY LEONARD BEAR KING, TO APPROVE OF THE RESOLUTION WHICH STATES "THE TRIBAL COUNCIL HEREBY APPROVES TO BE ALCOHOL AND DRUG TESTED IN A SEPARATE POOL FROM THE TRIBAL EMPLOYEES AND TESTING WILL NOT BE LESS THAN 4 TIMES ANNUALLY OR WILL NOT EXCEED 12 TIMES ANNUALLY AND THAT THE RESULTS BE MADE